

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 - PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

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MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 - PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

ADD new Rule 17-401, as follows:

Rule 17-401. GENERAL PROVISIONS

(a) Definitions

The following definitions apply in this Chapter:

(1) Chief Judge

"Chief Judge" means the Chief Judge of the Court of Special Appeals.

(2) CSA ADR Division

"CSA ADR Division" means the Court of Special Appeals Office of ADR Programs, a unit within the Court of Special Appeals.

(3) Settlement Conference

"Settlement conference" means a conference at which the parties, their attorneys, or both appear before an impartial individual to discuss settlement, dismissal of the appeal, and methods of streamlining the appellate process, including limitation of issues, contents of and times for filing the record and record extract, consolidation of multiple appeals, consolidated briefs, prehearing motions, seeking certiorari in the Court of Appeals, and other procedures under Title 8 of these Rules.

(b) Administration of ADR Programs

(1) CSA ADR Division

Subject to supervision by the Chief Judge, the CSA ADR Division is responsible for performing the duties assigned to it by the Rules in this Chapter and generally administering the ADR programs of the Court of Special Appeals. The Chief Judge shall appoint a Director of the Division, who shall serve at the pleasure of the Chief Judge.

(2) Delegation by Chief Judge

The Chief Judge may delegate to another judge of the Court of Special Appeals any of the duties and authority assigned to the Chief Judge by the Rules in this Chapter.

(3) Judicial Function

Court-designated mediators, settlement conference chairs and all court employees involved in the ADR program when acting in their official capacity and within the scope of their authority shall be regarded as performing a judicial function.

Cross reference: See 93 Opinions of the Attorney General 68 (2008).

(4) Screening of Information Reports

(A) Recommendation of CSA ADR Division

The CSA ADR Division shall screen all civil appeal information reports filed pursuant to Rule 8-205 and promptly make a recommendation to the Chief Judge as to whether the parties and their attorneys should be ordered to participate in mediation or a settlement conference in accordance with Rule 8-206 and the Rules

in this Chapter.

(B) Screening Communications

In the screening, the CSA ADR Division may communicate orally and in writing with any party's attorney and any self-represented party with respect to referral of the issues in the appeal to ADR. Such a communication is not a prohibited ex parte communication. Whether or not ADR is ordered, communications with the CSA ADR Division have the same status as mediation communications under Rule 17-105.

Cross reference: For the confidentiality of information reports and supplemental reports, see Rule 8-205 (f).

(5) Order by the Chief Judge

The Chief Judge shall consider the recommendation of the CSA ADR Division and, within 30 days after the filing of the appellant's information report, enter an order in accordance with Rule 8-206 (a).

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 - PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

ADD new Rule 17-402, as follows:

Rule 17-402. ADR PROCEEDINGS

(a) Applicability

This Rule applies to an ADR proceeding ordered pursuant to Rule 8-206.

(b) Mediation

(1) Selection of Mediator

If mediation is ordered, the CSA ADR Division shall select one or more mediators approved by the Chief Judge as having the qualifications prescribed by Rule 17-403 (a) to conduct the mediation. In selecting a mediator, the CSA ADR Division is not required to choose at random or in any particular order from among the qualified individuals and may consider, in light of the issues and circumstances presented by the action or the parties, any special training, background, experience, expertise, or temperament of the available mediators.

(2) If Full Settlement is Not Reached

If a full settlement of the issues in the appeal is not achieved, the mediator and the parties may discuss the prospect of (A) extending the mediation session, (B) further mediation sessions, (C) engaging in other forms of ADR, or (D) a settlement

conference to consider appropriate methods of streamlining the appellate process.

(3) If Full or Partial Settlement Achieved

If a full or partial settlement is achieved and an order is necessary, the parties shall proceed in accordance with section (d) of this Rule.

(c) Settlement Conference

(1) Chair

If a settlement conference is ordered, the Chief Judge shall select a judge having the qualifications prescribed by Rule 17-403 (b) to serve as the chair of the settlement conference.

(2) If Full Settlement is Not Achieved

If a full settlement of the issues in the appeal is not achieved, the settlement conference chair and the parties may discuss the prospect of (1) another settlement conference, (2) engaging in other forms of alternative dispute resolution, or (3) methods of streamlining the appellate process, including limitation of issues, contents of and times for filing the record and record extract, consolidation of multiple appeals, consolidated briefs, prehearing motions, seeking certiorari in the Court of Appeals, and other procedures under Title 8 of these Rules.

(3) If Full or Partial Settlement Achieved

If a full or partial settlement is achieved and an order is necessary, the parties shall proceed in accordance with section (d) of this Rule.

(d) Consent Order

(1) Proposed Order

Within 30 days after the conclusion of a Court-ordered ADR proceeding at which settlement or any other agreement was reached, if an order is necessary to implement their agreement, the parties shall file one or more proposed orders.

Committee note: The provisions of a proposed order may include dismissal of the appeal, proceeding with the appellate process, limiting issues, a remand pursuant to Rule 8-602 (e), and implementing other agreements reached by the parties with respect to the appeal.

(2) Action of Chief Judge

The Chief Judge shall sign the order as presented, reject it, or return it to the parties with recommended changes, but the Chief Judge may not preclude the appellant from dismissing the appeal as permitted by Rule 8-601 or preclude the parties from otherwise proceeding in a manner authorized under the Rules in Title 8.

(3) Action on Recommended Changes

Subject to subsection (d)(2) of this Rule, if the parties do not accept any recommended changes within 15 days after an order is returned to them, the appeal shall proceed as if no agreement had been reached. If the parties accept the recommended changes, the Chief Judge shall sign the order including those changes.

(4) Duties of Clerk

The clerk shall serve a copy of each signed order on each party pursuant to Rule 1-321 and transmit a copy to the CSA ADR

Division.

(e) Sanctions

Upon the failure of a party or attorney to comply with an order issued under this Rule, the court may (1) dismiss part or all of the appeal, (2) assess against the failing party or attorney any expenses caused by the failure, including attorney's fees or expenses incurred by the other party and part or all of the appellate costs, and (3) impose any other appropriate sanction.

(f) Recusal

A judge who conducts or participates in an ADR proceeding under this Rule shall not sit as a member of a panel, including an in banc panel, assigned to hear the appeal and shall not participate in any court conference regarding the judicial resolution of the appeal.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 - PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

ADD new Rule 17-403, as follows:

Rule 17-403. QUALIFICATIONS OF MEDIATORS AND SETTLEMENT
CONFERENCE CHAIRS

(a) Qualifications of Mediators

To be approved as a mediator by the Chief Judge, an individual shall:

(1) be (A) an incumbent judge of the Court of Special Appeals; (B) a retired judge of the Court of Appeals, the Court of Special Appeals, or a circuit court, approved for recall for service under Code, Courts Article, §1-302; or (C) a staff attorney from the Court of Special Appeals designated by the CSA ADR Division;

(2) have either completed at least 40 hours of basic mediation training in a program meeting the requirements of Rule 17-104 or have conducted at least two Maryland appellate mediations prior to the adoption of this Rule;

(3) have completed advanced appellate mediation training approved by the CSA ADR Division;

(4) unless waived by the CSA ADR Division, have observed at least two Court of Special Appeals mediation sessions and have participated in a debriefing with a staff mediator from the CSA ADR Division after the mediations;

(5) be familiar with the Rules in Titles 8 and 17 of the Maryland Rules;

(6) abide by any mediation standards adopted by the Court of Appeals;

(7) comply with mediation procedures and requirements established by the Court of Special Appeals;

(8) submit to periodic monitoring by the CSA ADR Division; and

(9) unless waived by the CSA ADR Division, complete in each calendar year four hours of continuing mediation-related education in one or more of the topics set forth in Rule 17-104, or any other advanced mediation training approved by the CSA ADR Division.

(b) Qualifications of Settlement Conference Chair

To be designated by the Chief Judge to serve as the chair of a settlement conference, an individual shall be:

(1) a judge of the Court of Special Appeals; or

(2) a retired judge of the Court of Appeals or the Court of Special Appeals approved for recall for service under Code, Courts Article, §1-302.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 - PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

ADD new Rule 17-404, as follows:

Rule 17-404. NO FEE FOR COURT-ORDERED ADR

Court of Special Appeals litigants and their attorneys shall not be required to pay a fee or additional court costs for participating in a mediation or settlement conference ordered by the Court.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE
TITLE 1 - GENERAL PROVISIONS
CHAPTER 100 - APPLICABILITY AND CITATION

AMEND Rule 1-101 to conform section (q) to revisions of
Title 17, as follows:

Rule 1-101. APPLICABILITY

. . .

(q) Title 17

Title 17 applies to alternative dispute resolution proceedings in civil actions in the District Court, a circuit court, and the Court of Special Appeals, except for actions or orders to enforce a contractual agreement to submit a dispute to alternative dispute resolution.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 200 - OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-205 by deleting a reference to a prehearing conference; by adding a reference to Alternative Dispute Resolution under Title 17, Chapter 400; and by adding a cross reference, as follows:

Rule 8-205. INFORMATION REPORTS

. . .

(f) Confidentiality

Information contained in an information report or a supplemental report shall not (1) be treated as admissions, (2) limit the disclosing party in presenting or arguing that party's case, or (3) be referred to except at a ~~prehearing or~~ scheduling conference or during ADR under Title 17, Chapter 400 of these Rules.

Cross reference: See Rule 17-102 (a) for the definition of ADR and Rule 17-401 concerning the use of information reports by the CSA ADR Division.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 200 - OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-206 to change the title of the Rule, to change the time for the initial determination under section (a) from 20 days to 30 days, to delete provisions pertaining to a prehearing conference, to add certain provisions pertaining to alternative dispute resolution, and to make stylistic changes, as follows:

Rule 8-206. ~~PREHEARING AND~~ ADR AND SCHEDULING PROCEDURE
CONFERENCES

(a) Initial Determination by Court

Within ~~20~~ 30 days after the filing of appellant's information report, the Chief Judge of the Court of Special Appeals shall enter an order or a judge of the Court designated by the Chief Judge shall consider any recommendation of the CSA ADR Division made pursuant to Rule 17-401 (b) (4) and enter an order:

(1) that the appeal proceed without ~~a prehearing~~ ADR under Title 17, Chapter 400 of these Rules or a scheduling conference;

~~or~~

(2) that the parties, their attorneys, or both the parties and their attorneys appear ~~before the Chief Judge or a judge of the Court designated by the Chief Judge at a designated time and place for a prehearing conference or a scheduling conference~~ at a

designated time and place for one mediation session or one settlement conference session in accordance with the applicable provisions of Rule 17-402;

(3) that the parties, their attorneys, or both the parties and their attorneys appear before the Chief Judge or a judge of the Court designated by the Chief Judge at a designated time and place for a scheduling conference in accordance with section (b) of this Rule; or

(4) upon the written request of the parties, that proceedings be stayed for a period of time stated in the order so that the parties, their attorneys, or both the parties and their attorneys may participate in a form of ADR other than a court-ordered mediation session or settlement conference.

Cross reference: For the definition of "ADR," see Rule 17-102 (a) and for the definition of "CSA ADR Division," see Rule 17-401 (a) (2).

~~(b) Prehearing Conference~~

~~The purpose of a prehearing conference is to discuss settlement, dismissal of the appeal, limitation of the issues, contents of the record and record extract, continuance of the appeal, the time or times for filing the record and briefs, and other pertinent matters. Information disclosed at a prehearing conference shall be regarded as disclosed solely for purposes of settlement negotiations and shall not (1) be treated as admissions, (2) limit the disclosing party in presenting or arguing that party's case, or (3) be referred to except at a prehearing conference.~~

~~(c)~~ (b) Scheduling Conference

(1) Purpose and Order to Attend

On its own initiative pursuant to subsection (a)(3) of this Rule or on written request of a party, the court may enter an order setting a scheduling conference. The purpose of a scheduling conference is to discuss the contents of the record and record extract, the time or times for filing the record and briefs, and other administrative matters that do not relate to the merits of the case.

~~(d)~~ (2) Order upon Completion of Scheduling Conference

On completion of ~~any conference conducted under this Rule~~ a scheduling conference, the judge shall enter an order reciting the actions taken and any agreements reached by the parties. The judge may order additional conferences and may enter an order of remand pursuant to Rule 8-602 (e). The Clerk shall serve a copy of the order on each party pursuant to Rule 1-321.

~~(e)~~ (c) Sanctions

Upon failure of a party or attorney to comply with Rule 8-205, this Rule, or an order under this Rule, the Court of Special Appeals may: (1) dismiss part or all of the appeal, (2) assess against the party or attorney the reasonable expenses caused by the failure, including attorney's fees, (3) assess against the party or attorney part or all of the appellate costs, or (4) impose any other appropriate sanction.

~~(f) Recusal~~

~~A judge who conducts a prehearing conference shall not sit~~

~~as a member of the panel assigned to hear the appeal in that case.~~

Source: This Rule is in part derived from former Rule 1024 and in part new.

MARYLAND RULES OF PROCEDURE
TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION
CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 17-101 to correct a Committee note and to add section (e) pertaining to the applicability of Chapter 400, as follows:

Rule 17-101. APPLICABILITY

(a) General Applicability of Title

Except as provided in section (b) of this Rule, the Rules in this Title apply when a court refers all or part of a civil action or proceeding to ADR.

Committee note: The Rules ~~is~~ in this Title do not apply to an ADR process in which the parties participate without a court order of referral to that process.

(b) Exceptions

Except as otherwise provided by Rule, the Rules in this Title do not apply to:

(1) an action or order to enforce a contractual agreement to submit a dispute to ADR;

(2) an action to foreclose a lien against owner-occupied residential property subject to foreclosure mediation conducted by the Office of Administrative Hearings under Rule 14-209.1;

(3) an action pending in the Health Care Alternative Dispute Resolution Office under Code, Courts Article, Title 3, Subtitle 2A, unless otherwise provided by law; or

(4) a matter referred to a master, examiner, auditor, or parenting coordinator pursuant to Rule 2-541, 2-542, 2-543, or 9-205.2.

(c) Applicability of Chapter 200

The Rules in Chapter 200 apply to actions and proceedings pending in a circuit court.

(d) Applicability of Chapter 300

The Rules in Chapter 300 apply to actions and proceedings pending in the District Court.

(e) Applicability of Chapter 400

The Rules in Chapter 400 apply to civil appeals pending in the Court of Special Appeals.

Source: This Rule is derived from former Rule 17-101 (2011).