

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).

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

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

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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.

Source: This Rule is derived from former Rule 17-101 (2012).

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Rule 17-102. DEFINITIONS

In this Title, the following definitions apply except as expressly otherwise provided or as necessary implication requires:

(a) ADR

"ADR" means "alternative dispute resolution."

(b) ADR Organization

"ADR organization" means an entity, including an ADR unit of a court, that is designated by the court to select individuals with the applicable qualifications required by Rule 9-205 or the Rules in this Title to conduct a non-fee-for-service ADR ordered by the court.

(c) ADR Practitioner

"ADR practitioner" means an individual who conducts ADR under the Rules in this Title.

(d) Alternative Dispute Resolution

"Alternative dispute resolution" means the process of resolving matters in pending litigation through arbitration, mediation, neutral case evaluation, neutral fact-finding, settlement conference, or a combination of those processes.

(e) Arbitration

"Arbitration" means a process in which (1) the parties appear before one or more impartial arbitrators and present evidence and argument to support their respective positions, and (2) the arbitrators render an award that is not binding unless the

parties agree otherwise in writing.

Committee note: Under the Federal Arbitration Act, the Maryland Uniform Arbitration Act, the International Commercial Arbitration Act, and at common law, arbitration awards are binding unless the parties agree otherwise.

(f) Fee-for-service

"Fee-for-service" means that a party will be charged a fee by an ADR practitioner designated by a court to conduct ADR.

(g) Mediation

"Mediation" means a process in which the parties work with one or more impartial mediators who, without providing legal advice, assist the parties in reaching their own voluntary agreement for the resolution of all or part of a dispute.

Cross reference: For the role of the mediator, see Rule 17-103.

(h) Mediation Communication

"Mediation communication" means a communication, whether spoken, written, or nonverbal, made as part of a mediation, including a communication made for the purpose of considering, initiating, continuing, reconvening, or evaluating a mediation or a mediator.

(i) Neutral Case Evaluation

"Neutral case evaluation" means a process in which (1) the parties, their attorneys, or both appear before an impartial evaluator and present in summary fashion the evidence and arguments to support their respective positions, and (2) the evaluator renders an evaluation of their positions and an opinion as to the likely outcome of the litigation.

(j) Neutral Expert

"Neutral expert" means an individual with special expertise

to provide impartial technical background information, an impartial opinion, or both in a specific area.

(k) Neutral Fact-finding

"Neutral fact-finding" means a process in which (1) the parties, their attorneys, or both appear before an impartial individual and present the evidence and arguments to support their respective positions as to disputed factual issues, and (2) the individual makes findings of fact as to those issues that are not binding unless the parties agree otherwise in writing.

(l) Settlement Conference

"Settlement conference" means a conference at which the parties, their attorneys, or both appear before an impartial individual to discuss the issues and positions of the parties in an attempt to agree on a resolution of all or part of the dispute by means other than trial. A settlement conference may include neutral case evaluation and neutral fact-finding, and the impartial individual may recommend the terms of an agreement.

Source: This Rule is derived as follows:

- Section (a) is new.
- Section (b) is new.
- Section (c) is new.
- Section (d) is derived from former Rule 17-102 (a) (2012).
- Section (e) is derived from former Rule 17-102 (b) (2012).
- Section (f) is derived from former Rule 17-102 (c) (2012).
- Section (g) is derived from former Rule 17-102 (d) (2012).
- Section (h) is derived from former Rule 17-102 (e) (2012).
- Section (i) is derived from former Rule 17-102 (f) (2012).
- Section (j) is new.
- Section (k) is derived from former Rule 17-102 (g) (2012).
- Section (l) is derived from former Rule 17-102 (h) (2012).

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Rule 17-103. ROLE OF MEDIATOR

A mediator may help identify issues and options, assist the parties and their attorneys in exploring the needs underlying their respective positions, and, upon request, record points of agreement expressed and adopted by the parties. While acting as a mediator, the mediator does not engage in any other ADR process and does not recommend the terms of an agreement.

Committee note: Mediators often record points of agreement expressed and adopted by the parties to provide documentation of the results of the mediation. Because a mediator who is not a Maryland lawyer is not authorized to practice law in Maryland and a mediator who is a Maryland lawyer ordinarily would not be authorized to provide legal advice or services to parties in conflict, a mediator should not be authoring agreements regarding matters in litigation for the parties to sign. If the parties are represented by counsel, the mediator should advise them not to sign the document embodying the points of agreement until they have consulted their attorneys. If the parties, whether represented or not, choose to sign the document, a statement should be added that the points of agreement as recorded by the mediator constitute the points of agreement expressed and adopted by the parties.

Source: This Rule is derived from the last two sentences of former Rule 17-102 (d) (2012).

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Rule 17-104. BASIC MEDIATION TRAINING PROGRAMS

To qualify under Rule 17-205 or 17-304, a basic mediation training program shall include the following:

(a) conflict resolution and mediation theory, including causes of conflict, interest-based versus positional bargaining, and models of conflict resolution;

(b) mediation skills and techniques, including information-gathering skills; communication skills; problem-solving skills; interaction skills; conflict management skills; negotiation techniques; caucusing; cultural, ethnic, and gender issues; and strategies to (1) identify and respond to power imbalances, intimidation, and the presence and effects of domestic violence, and (2) safely terminate a mediation when such action is warranted;

(c) mediator conduct, including conflicts of interest, confidentiality, neutrality, ethics, and standards of practice; and

(d) simulations and role-playing, monitored and critiqued by experienced mediator trainers.

Source: This Rule is derived from former Rule 17-106 (a) (2012).

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Rule 17-105. MEDIATION CONFIDENTIALITY

(a) Mediator

Except as provided in sections (c) and (d) of this Rule, a mediator and any person present or otherwise participating in the mediation at the request of the mediator shall maintain the confidentiality of all mediation communications and may not disclose or be compelled to disclose mediation communications in any judicial, administrative, or other proceeding.

(b) Parties

Except as provided in sections (c) and (d) of this Rule:

(1) a party to a mediation and any person present or who otherwise participates in a mediation at the request of a party may not disclose or be compelled to disclose a mediation communication in any judicial, administrative, or other proceeding; and

(2) the parties may enter into a written agreement to maintain the confidentiality of mediation communications and to require all persons who are present or who otherwise participate in a mediation to join in that agreement.

Cross reference: See Rule 5-408 (a) (3).

(c) Signed Document

A document signed by the parties that records points of agreement expressed and adopted by the parties or that constitutes an agreement reached by the parties as a result of mediation is

not confidential, unless the parties agree otherwise in writing.

Cross reference: See Rule 9-205 (h) concerning the submission of a document embodying the points of agreement to the court in a child access case.

(d) Permitted Disclosures

In addition to any disclosures required by law, a mediator, a party, and a person who was present or who otherwise participated in a mediation may disclose or report mediation communications:

(1) to a potential victim or to the appropriate authorities to the extent they reasonably believe necessary to help prevent serious bodily harm or death to the potential victim;

(2) when relevant to the assertion of or defense against allegations of mediator misconduct or negligence; or

(3) when relevant to a claim or defense that an agreement arising out of a mediation should be rescinded because of fraud, duress, or misrepresentation.

Cross reference: For the legal requirement to report suspected acts of child abuse, see Code, Family Law Article, §5-705.

(e) Discovery; Admissibility of Information

Mediation communications that are confidential under this Rule are not subject to discovery, but information that is otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its use in mediation.

Cross reference: See Rule 5-408 (b). See also Code, Courts Article, Title 3, Subtitle 18, which does not apply to mediations to which the Rules in Title 17 apply.

Source: This Rule is derived from former Rule 17-109 (2012).

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Rule 17-301. ADR OFFICE

(a) Definition

"ADR Office" means the District Court Alternative Dispute Resolution Office, a unit within the Office of the Chief Judge of the District Court.

(b) Duties

The ADR Office is responsible for administering the ADR programs of the District Court. Its duties include processing applications for approval as ADR practitioners, conducting orientation for approved ADR practitioners and applicants for approval as such practitioners, arranging the scheduling of ADR practitioners at each District Court location, collecting and maintaining statistical information about the District Court ADR programs, and performing such other duties involving ADR programs as are required by the Rules in this Chapter or are assigned by the Chief Judge of the District Court.

Source: This Rule is new.

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Rule 17-302. GENERAL PROCEDURES AND REQUIREMENTS

(a) Authority to Order ADR

Except as provided in sections (b) and (c) of this Rule and Rule 17-303, the court, on or before the day of a scheduled trial, may order a party and the party's attorney to participate in one non-fee-for-service mediation or one non-fee-for-service settlement conference.

Committee note: Under this Rule, an order of referral to ADR may be entered regardless of whether a party is represented by an attorney. This Rule does not preclude the court from offering an additional ADR upon request of the parties.

(b) When Referral Prohibited

The court may not enter an order of referral to ADR in an action for a protective order under Code, Family Law Article, Title 4, Subtitle 5, Domestic Violence.

(c) Objection by Party

(1) Notice of Right to Object

If, on the day of a scheduled trial, an order of referral is contemplated or entered by the court, the court shall inform the parties that they have a right to object to the referral at that time. If a written order of referral is entered and served on the parties prior to the date of the scheduled trial, the order shall inform the parties that they have a right to object to a referral and state a reasonable time and method by which the objection may be made.

(2) Consideration of Objection

(A) If a party objects to a referral, the court shall give the party a reasonable opportunity to explain the basis of the objection and give fair and prompt consideration to it.

(B) If the basis of the objection is that the parties previously engaged in good faith in an ADR process that did not succeed and the court finds that to be true, the court may offer the opportunity for, but may not require, participation in a new court-referred mediation or settlement conference.

Source: This Rule is new.

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Rule 17-303. DESIGNATION OF MEDIATORS AND SETTLEMENT CONFERENCE
CHAIRS

(a) Limited to Qualified Individuals

(1) Court-Designated Mediator

A mediator designated by the court or pursuant to court order shall possess the qualifications prescribed in Rule 17-304 (a).

(2) Court-Designated Settlement Conference Chair

A settlement conference chair designated by the court or pursuant to court order shall possess the qualifications prescribed in Rule 17-304 (b).

(b) Designation Procedure

(1) Court Order

The court by order may designate an individual to conduct the ADR or may direct the ADR Office, on behalf of the court, to select a qualified individual for that purpose.

(2) Duty of ADR Office

If the court directs the ADR Office to select the individual, the ADR Office may select the individual or may arrange for an ADR organization to do so. An individual selected by the ADR Office or by the ADR organization has the status of a court-designated mediator or settlement conference chair.

(3) Discretion in Designation or Selection

Neither the court nor the ADR Office is required to choose at random or in any particular order from among the qualified individuals. They should endeavor to use the services of as many qualified individuals as practicable, but the court or ADR Office 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 prospective designees.

(4) ADR Practitioner Selected by Agreement of Parties

If the parties agree on the record to participate in ADR but inform the court of their desire to select an individual of their own choosing to conduct the ADR, the court may (A) grant the request and postpone further proceedings for a reasonable time, or (B) deny any request for postponement and proceed with a scheduled trial.

Source: This Rule is new.

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Rule 17-304. QUALIFICATIONS AND SELECTION OF MEDIATORS AND
SETTLEMENT CONFERENCE CHAIRS

(a) Qualifications of Court-Designated Mediator

To be designated by the court as a mediator, an individual shall:

- (1) unless waived by the parties, be at least 21 years old;
- (2) have completed at least 40 hours of basic mediation training in a program meeting the requirements of (A) Rule 17-104 or (B) for individuals trained prior to January 1, 2013, former Rule 17-106;
- (3) be familiar with the Rules in Title 17 of the Maryland Rules;
- (4) submit a completed application in the form required by the ADR Office;
- (5) attend an orientation session provided by the ADR Office;
- (6) unless waived by the ADR Office, observe, on separate dates, at least two District Court mediation sessions and participate in a debriefing with the mediator after each mediation;
- (7) unless waived by the ADR Office, mediate on separate dates, at least two District Court cases while being reviewed by

an experienced mediator or other individual designated by the ADR Office and participate in a debriefing with the observer after each mediation;

(8) agree to volunteer at least six days in each calendar year as a court-designated mediator in the District Court day-of-trial mediation program;

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

(10) submit to periodic monitoring by the ADR Office;

(11) in each calendar year complete four hours of continuing mediation-related education in one or more of the topics set forth in Rule 17-104; and

(12) comply with the procedures and requirements posted on the ADR Office's website relating to diligence and quality assurance.

(b) Qualifications of Court-Designated Settlement Conference Chair

To be designated by the court as a settlement conference chair, an individual shall be:

(1) a judge of the District Court;

(2) a retired judge approved for recall for service under Maryland Constitution, Article IV, §3A; or

(3) an individual who, unless the parties agree otherwise, shall:

(A) abide by any applicable standards adopted by the Court of Appeals;

(B) submit to periodic monitoring of court-ordered ADR by a

qualified person designated by the ADR Office;

(C) be a member in good standing of the Maryland Bar and have at least three years experience in the active practice of law;

(D) unless waived by the court, have completed a training program of at least six hours that has been approved by the ADR Office; and

(E) comply with the procedures and requirements posted on the ADR Office's website relating to diligence and quality assurance.

(c) Procedure for Approval

(1) Filing Application

An individual seeking designation to mediate or conduct settlement conferences in the District Court shall submit to the ADR Office a completed application substantially in the form required by that Office. The application shall be accompanied by documentation demonstrating that the applicant has met the applicable qualifications required by this Rule.

Committee note: Application forms are available from the ADR Office and on the Maryland Judiciary's website, www.mdcourts.gov/district/forms/general/adr001.pdf.

(2) Action on Application

After such investigation as the ADR Office deems appropriate, the ADR Office shall notify the applicant of the approval or disapproval of the application and the reasons for a disapproval.

(3) Court-Approved ADR Practitioner and Organization Lists

The ADR Office shall maintain a list:

(A) of mediators who meet the qualifications of section (a) of this Rule;

(B) of settlement conference chairs who meet the qualifications set forth in subsection (b)(3) of this Rule; and

(C) of ADR organizations approved by the ADR Office.

(4) Public Access to Lists

The ADR Office shall provide to the Administrative Clerk of each District a copy of each list for that District maintained pursuant to subsection (c)(3) of this Rule. The clerk shall make a copy of the list available to the public at each District Court location. A copy of the completed application of an individual on a list shall be made available by the ADR Office upon request.

(5) Removal from List

After notice and a reasonable opportunity to respond, the ADR Office may remove a person as a mediator or settlement conference chair for failure to maintain the applicable qualifications of this Rule or for other good cause.

Source: This Rule is new.

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CHAPTER 300 - PROCEEDINGS IN THE DISTRICT COURT

Rule 17-305. NO FEE FOR COURT-ORDERED ADR

District Court litigants and their attorneys shall not be required to pay a fee or additional court costs for participating in a mediation or settlement conference before a court-designated ADR practitioner in the District Court.

Source: This Rule is new.

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