

SAMPLE COURT ADR RULE

UTAH

[Rule 4-510](#): ADR for Civil Cases in District Courts

Statewide or local: Statewide

Processes:

- Mediation
- Non-binding arbitration

Eligible cases: All civil cases with the exception of those in which the parties have participated in a collaborative law process.

Summary:

Under these rules, mediation is mandatory within 30 days after the filing of the responsive pleading; however, voluntary nonbinding arbitration may be selected in lieu of mandatory mediation. Generally, parties select the neutral from a court-approved roster, but they may stipulate to a non-roster neutral. In the case of arbitration, the parties may stipulate, or the court may order, the use of a three-member panel. In either process, the parties pay the neutral.

Related authority:

The rule is based on the Utah Dispute Resolution Act ([Title 78, Chapter 6](#)), which provides for minimum procedures and funding, and covers confidentiality. It is also written in conjunction with the Utah Rules of Court-Annexed Alternative Dispute Resolution ([Rules 101 to 104](#)), which cover the conduct of the mediation and arbitration proceedings, confidentiality, and the code of ethics.

What is good about this rule:

- *Well-written:* It uses clear, easily understood language.
- *Director's duties:* Outlines the specific responsibilities of the ADR Director, which aids the court in the management and oversight of the program.
- *Neutrals must abide by the [Code of Ethics for ADR providers](#):* All programs should require that neutrals abide by a set of ethical standards. This promotes confidence in the program, molds expectations and behaviors, and provides quality control.
 - ⇒ For a discussion of ethical standards for mediators, see [National Standards for Court-Connected Mediation Programs](#), Center for Dispute Settlement
 - ⇒ See also, [Model Standards of Conduct for Mediators](#), American Arbitration Association, American Bar Association, Association for Conflict Resolution
 - ⇒ For arbitrator ethics, see [The Code of Ethics for Arbitrators in Commercial Disputes](#), American Arbitration Association, American Bar Association
- *Requires neutrals to pass an exam on ethics:* Not only do the approved neutrals have to complete training, they have to demonstrate an understanding of Utah's Code of Ethics for ADR providers.

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- *Nicely detailed requirements for court-approved training:* By controlling the content of the training, the court standardizes the trainings and thereby helps to standardize the quality of the mediators.
- *Requires mediators to report the number of mediations conducted per year:* Since mediators need to complete 6 mediations in the past year to stay on the roster, they are required to report the number of mediations they conduct each year. It is often difficult for courts to obtain post-mediation reports from mediators; this requirement helps the courts to keep tabs on what is happening.
- *Pro bono requirement:* Neutrals must agree to conduct three cases a year for which they are not compensated. Since this program relies on party compensation to the neutral, it is essential that there be some exception to this for parties who cannot afford to pay. This ensures that more parties have access to the process.

Additional points to note:

- *Master mediator category:* Master mediators are those who have completed 300 hours in mediation as documented by the ADR Director.
- *No degree is required to be an approved roster neutral:* This recognizes that specific educational backgrounds do not necessarily lead to quality mediation.
- *Mediators need to conduct 6 mediations in the past year to stay on the roster:* Mediation is a skill that requires continued practice. This provision recognizes that. However, jurisdictions with few cases may find the provision to be overly limiting.
- *Mediation is mandatory within 30 days of filing, but allows for deferral:* Deferral is allowed only when both counsel and party have reviewed the ADR videotape and have discussed participation in ADR, or if all parties agree to nonbinding arbitration. This encourages early mediation, which can reduce the costs associated with litigation.
- Cases that have gone through collaborative law are not required to go through ADR.

Further Reading:

Qualifications

[National Standards for Court-Connected Mediation Programs](#), Center for Dispute Settlement

Training

[Guidelines for Implementation of Qualifications Standards for Neutrals](#), Massachusetts Supreme Judicial Court Standing Committee on Dispute Resolution

Monitoring and Evaluation

[Monitoring and Evaluating Court-Based Dispute Resolution Programs: A Guide for Judges and Court Managers](#), National Center for State Courts, 1997

UTAH CODE OF JUDICIAL ADMINISTRATION
PART I. Judicial Council Rules of Judicial Administration
Chapter 4. Operation of the Courts
Article 5. Civil Practice

Rule 4-510. Alternative dispute resolution.

Intent:

To establish a program of court-annexed alternative dispute resolution for civil cases in the District Courts.

Applicability:

These rules shall apply to cases filed in the District Court in the Second, Third and Fourth Judicial Districts. The rules do not apply to: actions brought by or through the Office of Recovery Services under Title 26, Chapter 19, Medical Benefits Recovery Act, Title 62A, Chapter 11, Recovery Services, Title 78, Chapter 45, Uniform Civil Liability for Support Act, and Title 78, Chapter 45a, Uniform Act on Paternity, or to; actions brought under Chapters 3a, 6, 36, and 45c of Title 78, Chapter 6 of Title 30, Chapter 12 of Title 62A, Chapter 20a of Title 77, Rules 64 and 65 of the Utah Rules of Civil Procedure, temporary orders requested under Title 30, or to; uncontested matters brought under Chapter 1 of Title 42, Title 75, and Chapters 22a, 30 and 41 of Title 78; or actions pursued by an assignee of a claim.

Statement of the Rule:

(1) Definitions.

(A) "ADR" means alternative dispute resolution and includes arbitration, mediation, and other means of dispute resolution, other than court trial, authorized by this rule and URCADR;

(B) "ADR program" means the alternative dispute resolution program described in Chapter 31b, Title 78;

(C) "Binding arbitration" means an ADR proceeding in which the award is final and enforceable as any other judgment in a civil action unless vacated or modified by a court pursuant to statute, and in which the award is not subject to a demand for a trial de novo;

(D) "Collaborative Law" is a process in which the parties and their counsel agree in writing to use their best efforts and make a good faith effort to resolve their divorce, paternity, or annulment action by agreement without resorting to judicial intervention except to have the court approve the settlement agreement and sign orders required by

law to effectuate the agreement of the parties. The parties' counsel may not serve thereafter as litigation counsel except to obtain court approval of the settlement agreement.

(E) "Director" means the Director of Dispute Resolution Programs;

(F) "Master Mediator" means a provider who has completed 300 hours in conducting mediation sessions documented as required by the director. A master mediator may also act as a "Primary Trainer."

(G) "Nonbinding arbitration" means an ADR proceeding in which the award is subject to a trial de novo as provided in Utah Code Ann. ' 78-31b-6(2);

(H) "Primary Trainer" means a provider who qualifies as a "Master Mediator" on the court roster or a person with equivalent experience researching and teaching the theory and practice of alternative dispute resolution and may oversee mediation training that fulfills the court's 30 hour mediator training requirement for the roster.

(I) "Roster" means the list of those persons qualified to provide services under the ADR program, and includes the information supplied by such persons pursuant to paragraph (3)(A)(i) of this rule;

(J) "URCADR" or "Utah Rules of Court-Annexed Alternative Dispute Resolution" means the rules adopted by the Utah Supreme Court which govern the ADR program.

(2) Responsibilities of the Director. The Director shall:

(A) have general responsibility for the administration of the ADR program;

(B) annually prepare and submit the report required by Utah Code Ann. ' 78-31b-4(5);

(C) establish and maintain the roster, and provide copies of the roster upon request;

(D) prepare model forms for use by the courts, counsel and parties under these rules, and provide copies of the forms upon request; and

(E) establish procedures for the review and evaluation of the ADR program and the performance of ADR providers.

(3) Qualification of providers.

(A) To be eligible for the roster, an applicant must:

(i) submit a written application to the Director setting forth:

(a) a description of how the applicant meets, or will meet within a reasonable time, the requirements specified in paragraph (3)(B)(i), if applicable;

(b) the major areas of specialization and experience of the applicant, such as real estate, estates, trusts and probate, family law, personal injury or property damage, securities, taxation, civil rights and discrimination, consumer claims, construction and building contracts, corporate and business organizations, environmental law, labor law, natural resources, business transactions/commercial law, administrative law and financial institutions law;

(c) the maximum fees the applicant will charge for service as a provider under the ADR program; and

(d) the judicial districts in which the applicant is offering to provide services and the location and a description of the facilities in which the applicant intends to conduct the ADR proceedings;

(ii) agree to complete and annually complete up to six hours of ADR training as required and offered by the Judicial Council;

(iii) submit an annual report to the Director indicating the number of mediations and arbitrations the ADR provider has conducted that year; and

(iv) be recertified annually.

(B) To be included on the roster as a mediator, the provider must also:

(i) have successfully completed at least 30 hours of formal mediation training and 10 hours of experience in either conducting mediations or observing a qualified mediator conduct mediations, or meet such other education, training and experience requirements as the Council finds will promote the effective administration of the ADR program;

(ii) successfully pass an examination on the Code of Ethics for ADR providers;

(iii) agree to conduct at least three pro bono mediations each year as referred by the Director; and

(iv) be of good moral character in that the provider has not been convicted of a felony, a misdemeanor involving moral turpitude, or any other serious crime, and has not received professional sanctions that, when considered in light of the duties and responsibilities of an ADR provider, are determined by the Director to indicate that the best interests of the public are not served by including the provider on the roster.

(C) To be included on the roster as a Master Mediator, the provider must also have completed 300 hours in conducting mediation sessions.

(D) To be included on the roster as an arbitrator, the provider must also:

(i) have been a member in good standing of the Utah State Bar for at least ten years, or meet such other education, training and experience requirements as the Council finds will promote the effective administration of the ADR program;

(ii) be of good moral character in that the provider has not been convicted of a felony, a misdemeanor involving moral turpitude, or any other serious crime, and has not received professional sanctions that, when considered with the duties and responsibilities of an ADR provider are determined by the Director to indicate that the best interests of the public are not served by including the provider on the roster; and

(iii) agree to conduct at least one pro bono arbitration each year as referred by the Director.

(E) To be recertified as a mediator, the provider must, unless waived by the Director for good cause, demonstrate that the provider has conducted at least six mediation sessions or conducted 24 hours of mediation during the previous year.

(F) To be recertified as an arbitrator, the provider must, unless waived by the Director for good cause, demonstrate that the provider has conducted at least three arbitration sessions or conducted 12 hours of arbitration during the previous year.

(G) A provider may be removed from the roster by the director for failure to comply with the code of ethics for ADR providers as adopted by the Supreme Court or for failure to meet the requirements of this rule. The director shall notify the provider in writing of the director's intent to remove the provider from the roster. If the provider seeks to challenge the removal, the provider must notify the director within 10 days of receipt of the notification. The provider may request reconsideration by the director or a hearing by the Judicial Council's ad hoc committee on ADR. The decision of the committee is final.

(4) Responsibilities of the Administrative Office of the Courts. (A) The Administrative Office shall establish or qualify programs for the education and training of ADR providers, attorneys, and judges in the applicable judicial districts of this State as to the purposes and operation of, and the rules governing, the ADR program. Any trainer or training program seeking to offer a mediator training program that fulfills the Court's 30 hour mediator training requirement must abide by the following:

(i) Course content requirements:

(a) Submission of training materials. When applying for certification and renewal, training programs shall provide the ADR Office at the AOC with all training materials which will be used in the training program. These materials shall include, but are not limited to, the following: the training manual that is given to the participants including the required readings; all exercises and handouts. Revisions, deletions and/or additions to

the previously approved training materials must be reported to the Office prior to conducting any course.

(b) ADR syllabus approval. In addition to submission of training materials, each training program must seek approval of its syllabus from the Office 20 working days in advance of each offering of a certified mediation training program. The syllabus shall be reviewed by the Office for compliance with the training standards. The syllabus must be to submitted in a format that easily identifies the presentation topic, the trainer(s) for each topic, the time allotted to each topic, any training activities, and the inclusion of the break times. The Office shall notify the trainer or training program of any deficiencies no later than 10 working days before the program is to be offered. Any deficiencies in the program syllabus shall be corrected prior to the commencement of the training program.

(c) Readings. All training programs must provide the participants with copies of Rule 4-510 UCJA, Rule 104 (the ethical code), and UCA 78-31-b-i-et seq. Time spent reading the required materials may not count towards the required number of hours of training and can be completed by participants at times when the training program is not being conducted. Trainers shall incorporate in this program some method of ensuring that the required readings are completed.

(d) Ethics Training. Training programs shall review with participants Rule 104 Code of Ethics for ADR Providers. In addition, ethics shall be woven throughout the program.

(ii) Training Methodology:

(a) Pedagogy. The program shall include, but is not limited to, the following: lecture, group discussion, written exercises, mediation simulations and role plays. In addition, outside readings should be provided by the trainer to supplement the training.

(b) Mediation Demonstration. All training programs shall present a role play mediation simulation (either live or by video) prior to the participant's role play experience as the mediator.

(iii) Trainer Qualifications. Training programs shall employ a primary trainer who meets the applicable qualifications of a primary trainer and who have been approved by the Office. In order to be approved as a primary trainer, a trainer must demonstrate the following qualifications:

(a) Successful completion of a minimum of 30 hours of mediation training.

(b) Participation in a minimum of 200 hours of mediation acting as the mediator.

(c) Completion of 6 hours of continuing mediator education in the last year.

(d) Primary trainers are approved for a three (3) year period.

(e) A primary trainer must be in attendance during the entire training program. It is preferable that a single primary trainer fulfill this obligation, but it is permissible that this be accomplished by more than one primary trainer.

(iv) Participant attendance: Participants must complete their training requirement by attending one entire program. The primary trainer is responsible for ensuring that the approved syllabus is complied with. Under no circumstances may a participant be excused from attending portions of the training; any portion of training missed shall be made up as directed by the primary trainer.

(B) The Administrative Office shall prepare a videotape demonstrating the use of ADR and the application of this rule and the URCADR to the ADR program. The videotape shall include information as to the differences between mediation and arbitration, and the different procedures and the different effects of an award between nonbinding and binding arbitration. Sufficient copies of the videotape shall be available for use as required by paragraph (6)(A)(i) of this rule, and for the purchase or rental by members of the Bar and other persons interested in the ADR program.

(5) Referral of civil actions pending on January 1, 1995. Any party may file a motion that the case or any unresolved or specified issues therein be referred to the ADR program. If the motion is granted, the matter shall proceed pursuant to the URCADR.

(6) Referral of civil actions filed after January 1, 1995.

(A) All cases subject to this rule shall be referred to the ADR program, pursuant to this rule and URCADR, upon the filing of a responsive pleading unless the parties have participated in a collaborative law process. The matter will proceed to mediation 30 days after the filing of the responsive pleading unless one of the following occurs:

(i) One or more parties file with the clerk a statement asking the court to defer ADR consideration until a later date. The statement shall be signed by both counsel and the party and shall state that counsel and the party have reviewed the ADR videotape and have discussed proceeding under the ADR program, but have determined that participation in ADR should be deferred. If participation in the ADR program is deferred in a divorce, paternity or annulment action, the case shall proceed to mediation within 90 days of the filing of an answer unless good cause is shown why mediation should not occur. If participation in the ADR program is deferred in other cases, the court and parties are required to address the usefulness of mediation or arbitration in resolving the case no later than the first pretrial conference. In no event shall this supersede a trial judge's ability to proceed with a trial on a date certain.

(ii) All parties file with the clerk a written agreement signed by counsel and the parties to submit the case to nonbinding arbitration pursuant to URCADR Rule 102.

(iii) All the parties file with the clerk a written agreement signed by counsel and the parties to submit the case to binding arbitration pursuant to Chapter 31a of Title 78 or the Federal Arbitration Act, 9 USC ' 1 et seq., or as otherwise provided by law.

(B) At the time a complaint is filed, the clerk shall provide to the party filing the complaint a notice stating the requirements and options set forth in the preceding subparagraphs. The notice shall include directions for obtaining a copy of the videotape. The party shall serve a copy of the notice on the other parties.

(C) If no response has been filed under (6)(A)(i), (ii) or (iii) within 30 days after the responsive pleading is filed, the action shall be stayed pending compliance with URCADR rules applicable to mediation.

(D) If the parties have timely filed an agreement to submit the case to nonbinding arbitration under URCADR Rule 102, the court shall issue an order staying the action and all discovery under the Utah Rules of Civil Procedure, except that discovery may continue under URCADR Rule 102(e). All subsequent proceedings shall be conducted in accordance with URCADR Rule 102 and such timetable as the court may establish to ensure the arbitration is instituted and completed without undue delay or expense. All timelines shall be tolled during the pendency of the ADR proceedings, and the timelines shall resume upon notification to the court of the final conclusion of ADR proceedings.

(7) At any time:

(A) the court, on its own motion, may refer the action or any issues therein to the ADR program.

(B) upon its own motion, or for good cause shown upon motion by a party, the court may order that an action that has been referred to the ADR program be withdrawn from the ADR program and restored to the trial calendar.

(C) a party, believing that continuing in mediation is no longer productive, may terminate participation and shall notify the other party and mediator.

(8) If a party unilaterally terminates a nonbinding arbitration procedure after the hearing has begun, that party shall be responsible for all of the ADR provider's fee, and any other party may move that the court also award reasonable attorney fees against the terminating party unless the terminating party shows good cause for the termination.

(9) The judge to whom an action is assigned shall retain full authority to supervise the action consistent with the Utah Rules of Civil Procedure and these rules.

(10) Notice requirements.

(A) Any time the parties determine to use mediation or arbitration in the resolution of the case, the plaintiff shall notify the court and specify the expected date for completion of the ADR process.

(B) Upon conclusion of an ADR process, the plaintiff shall notify the court of the outcome of the ADR process on a form provided by the court.

(11) Selection of ADR provider(s).

(A) Upon referral of a case or any issues therein to the ADR program, the Director shall provide the parties with a copy of the roster, and the parties shall choose the ADR provider(s) for the case. If mediation is the selected ADR process, one mediator shall be selected. If arbitration is the selected ADR process, one arbitrator shall be selected, unless the parties stipulate to or the court orders the use of a panel of three arbitrators. If a panel is used, the Director shall, from the panel selected, designate a chair who shall preside at all arbitration proceedings.

(B) The parties may select:

(i) An ADR provider from the roster; or

(ii) An ADR provider pro tempore having specialized skill, training, or experience in relevant subject matter. Pro tempore providers must agree in writing to comply with this rule and the URCADR.

(C) If the parties are unable to select a provider within 15 days of referral of the case to the ADR program, the parties shall return the list to the Director with the names of up to half of the members of the roster stricken. If there are more than two parties, each party shall be permitted to strike a proportion of names equal to or less than its proportion of the number of the parties. The Director shall select the provider(s) from among those providers not stricken by any party. If the parties do not return the list within 15 days or express no preference, the Director shall make the selection. The Director shall mail notice of the selection to all parties and the selected ADR provider.

(D) If a party, within 10 days of mailing of the notice of selection, files a written request that the selected provider be disqualified under Canon II of URCADR Rule 104, or if the ADR provider requests to withdraw for good reason from participation in a particular case to which that provider was appointed, the Director shall select another available qualified ADR provider to participate in that case, giving deference to the expressed preferences of the parties, if any, as provided in these rules.

(E) If the parties choose to utilize mediation or non-binding arbitration, the parties shall contact the ADR provider directly for services.

(12) The fees of the ADR provider shall be paid in advance and divided equally between or among the parties unless otherwise provided by the court or agreed by the parties. Any

party may petition the court for a waiver of all or part of the fees so allocated on a showing of impecuniosity or other compelling reason. If such waiver is granted, the party shall contact the Director who will appoint a pro bono ADR provider.

(13) An ADR provider acting as a mediator or arbitrator in cases under the ADR program shall be immune from liability to the same extent as judges of this state, except for such sanctions the judge having jurisdiction of the case may impose for a violation of URCADR Rule 104 which raises a substantial question as to the impartiality of the ADR provider and the conduct of the ADR proceeding involved.

(14) No ADR provider may be required to testify as to any aspect of an ADR proceeding except as to any claim of violation of URCADR Rule 104 which raises a substantial question as to the impartiality of the ADR provider and the conduct of the ADR proceeding involved.

(15) All ADR providers providing services pursuant to the ADR program shall be subject to this rule and the URCADR.

(16) Location of ADR Proceedings. Unless otherwise agreed upon by all the parties, all ADR proceedings shall be held at the office of the ADR provider or such other place designated by the ADR provider.