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West's Annotated Code of Maryland
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Title 17. Alternative Dispute Resolution
Chapter 100. General Provisions

MD Rules, Rule 17-101

RULE 17-101. APPLICABILITY

Currentness

(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 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).

Credits

Adopted Nov. 1, 2012, eff. Jan. 1, 2013. Amended Oct. 17, 2013, eff. Jan. 1, 2014.

<Editor's Note: Per order of the Maryland Court of Appeals dated November 1, 2012, previous Title 17 was deleted and new Title 17 was adopted effective January 1, 2013.>

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MD Rules, Rule 17-102

RULE 17-102. DEFINITIONS

Currentness

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 factfinding, 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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MD Rules, Rule 17-103

RULE 17-103. ROLE OF MEDIATOR

Currentness

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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MD Rules, Rule 17-104

RULE 17-104. BASIC MEDIATION TRAINING PROGRAMS

Currentness

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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MD Rules, Rule 17-105

RULE 17-105. MEDIATION CONFIDENTIALITY

Currentness

(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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MD Rules, Rule 17-201

RULE 17-201. AUTHORITY TO ORDER ADR

Currentness

(a) Generally. A circuit court may order a party and the party's attorney to participate in ADR but only in accordance with the Rules in this Chapter and in Chapter 100 of this Title.

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

(c) Mediation of Child Custody or Visitation Disputes. Rule 9-205 governs the authority of a circuit court to order mediation of a dispute as to child custody or visitation, and the Rules in Title 17 do not apply to proceedings under that Rule except as otherwise provided in that Rule.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 17-103 (a) (2012).

Section (b) is new.

Section (c) is derived from former Rule 17-103 (c)(1) (2012).

Credits

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Chapter 200. Proceedings in Circuit Court

MD Rules, Rule 17-202

RULE 17-202. GENERAL PROCEDURE

Currentness

(a) **Scope.** This Rule does not apply to health care malpractice actions under Code, Courts Article, Title 3, Subtitle 2A, which are governed by Rule 17-203.

(b) **Participation Requirements.**

(1) *Non-fee-for-service Settlement Conference.* The court may require the parties and their attorneys to participate in a non-fee-for-service settlement conference.

Committee note: If a settlement conference is required, it should be conducted subsequent to any other court-referred ADR.

(2) *Other ADR.* The court may refer all or part of an action to one ADR process in accordance with sections (c), (d), and (e) of this Rule, but the court may not require participation in that ADR if a timely objection is filed in accordance with section (f) of this Rule.

(c) **Designation of ADR Practitioner.**

(1) *Direct Designation.* In an order referring all or part of an action to ADR, the court may designate, from a list of approved ADR practitioners maintained by the court pursuant to Rule 17-207, an ADR practitioner to conduct the ADR.

(2) *Indirect Designation if ADR is Non-fee-for-service.* If the ADR is non-fee-for-service, the court may delegate authority to an ADR organization selected from a list maintained by the court pursuant to Rule 17-207 or to an ADR unit of the court to designate an ADR practitioner qualified under Rules 17-205 or 17-206, as applicable, to conduct the ADR. An individual designated by the ADR organization pursuant to the court order has the status of a court-designated ADR practitioner.

Committee note: Examples of the use of indirect designation are referrals of indigent litigants to publicly funded community mediation centers and referrals of one or more types of cases to a mediation unit of the court.

(d) **Discretion in Designation.** In designating an ADR practitioner, the court is not required to choose at random or in any particular order from among the qualified ADR practitioners or organizations on its lists. The court should endeavor to use the services of as many qualified persons as practicable, but the court 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.

(e) Contents of Order of Referral; Termination or Extension of ADR; Restriction on Fee Increase.

An order of referral to ADR shall specify a maximum number of hours of required participation by the parties. An order to a fee-for-service ADR shall also specify the hourly rate that may be charged for ADR services in the action, which may not exceed the maximum stated in the applicable fee schedule. The parties may participate for less than the number of hours stated in the order if they and the ADR practitioner agree that no further progress is likely. The parties, by agreement, may extend the ADR beyond the number of hours stated in the order. During any extension of the ADR, the ADR practitioner may not increase the practitioner's hourly rate for providing services relating to the action.

Committee note: Having a maximum number of hours in the court's order of referral encourages participation in ADR by assuring the parties that the ADR does not require an open-ended commitment of their time and money. Although the parties, without further order of court, may extend the ADR beyond the maximum, an amendment to the time requirements contained in a scheduling order may be made only by order of the court.

Cross reference: See Rule 2-504, concerning scheduling orders, and Rule 17-208, concerning fee schedules and sanctions for noncompliance with an applicable schedule.

(f) Objection; Alternatives.

(1) *Applicability.* This section applies to a referral to ADR other than a non-fee-for-service settlement conference.

(2) *Time for Filing.* If the court issues an order referring all or part of an action to ADR, a party, within 30 days after entry of the order, may file (A) an objection to the referral, (B) an alternative proposal, or (C) a "Request to Substitute ADR Practitioner" substantially in the form set forth in section (g) of this Rule. If the order delegates authority to an ADR organization to designate an ADR practitioner, the objection, alternative proposal, or "Request to Substitute ADR Practitioner" shall be filed no later than 30 days after the party is notified by the ADR organization of the designation.

(3) *Notification of Rights.* An order referring all or part of an action to ADR, an order delegating authority to an ADR organization to designate an ADR practitioner, and an announcement of a determination to enter an order referring all or part of an action to ADR shall include the information set forth in subsection (f)(2) of this Rule.

(4) *If No Objection or Alternative Filed.* If an objection, alternative proposal, or "Request to Substitute ADR Practitioner" is not filed within the time allowed by this section, the order shall stand, subject to modification by the court.

(5) *Ruling.* If a party timely objects to a referral, the court shall revoke its order. If the parties offer an alternative proposal or agree on a different ADR practitioner, whether or not the ADR practitioner's name is on the court's list, the court shall revoke or modify its order, as appropriate.

(g) Form of Request to Substitute ADR Practitioner. A Request to Substitute ADR Practitioner shall be substantially in the following form:

[Caption of Case]

REQUEST TO SUBSTITUTE ADR PRACTITIONER AND SELECTION OF ADR PRACTITIONER BY STIPULATION

We agree to attend ADR conducted by

_____.

(Name, address, and telephone number of ADR Practitioner).

We have made payment arrangements with the ADR Practitioner and we understand that the court's fee schedules do not apply to this ADR. We request that the court substitute this ADR Practitioner for the ADR Practitioner designated by the court.

.....
(Signature of Plaintiff)

(Signature of Defendant)

.....
(Signature of Plaintiff's Attorney, if any)

(Signature of Defendant's Attorney, if any)

[Add additional signature lines for any additional parties and attorneys.]

I, _____,

(Name of ADR Practitioner)

agree to conduct the following ADR in the above-captioned case [check one]:

- mediation in accordance with Rules 17-103 and 17-105.
- ADR other than mediation: _____ [specify type of ADR].

At the conclusion of the ADR, I agree to comply with the provisions of Rule 17-202 (h).

I solemnly affirm under the penalties of perjury that I have the qualifications prescribed by the following Rules [check all that are true]:

- Rule 17-205 (a) [Basic mediation]
- Rule 17-205 (b) [Business and Technology]
- Rule 17-205 (c) [Economic Issues--Divorce and Annulment]
- Rule 17-205 (d) [Health Care Malpractice]

- Rule 17-205 (e) [Foreclosure]
- Rule 17-206 [ADR other than mediation]
- None of the above.

.....

Signature of ADR Practitioner

(h) Evaluation Forms; Notification to Court. At the conclusion of an ADR, the ADR practitioner shall give to the parties any ADR evaluation forms and instructions provided by the court and promptly advise the court whether all, some, or none of the issues in the action has been resolved.

Source: This Rule is derived in part from former Rule 17-103 (b) and (c)(2)-(4) (2012) and is in part new.

Credits

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MD Rules, Rule 17-203

RULE 17-203. HEALTH CARE MALPRACTICE ACTIONS

Currentness

(a) Applicability. This Rule applies to health care malpractice actions under Code, Courts Article, Title 3, Subtitle 2A.

(b) Mandatory Referral to ADR; Timing. Within 30 days after a defendant has filed an answer to the complaint or within 30 days after a defendant has filed a certificate of a qualified expert pursuant to Code, Courts Article, Title 3, Subtitle 2A-04, whichever is later, the court shall issue a scheduling order requiring the parties to engage in ADR at the earliest practicable date, unless all parties file with the court an agreement not to engage in ADR and the court finds that ADR would not be productive.

Cross reference: See Rule 2-504 (b)(2)(C) and Code, Courts Article, § 3-2A-06C (b).

(c) Designation

(1) By the Parties. Within 30 days after the defendant has answered the complaint or filed a certificate of a qualified expert pursuant to Code, Courts Article, Title 3, Subtitle 2A-04, whichever is later, the parties may agree on an ADR practitioner and shall promptly notify the court of their agreement and the name of the ADR practitioner. A Notice of Selection of ADR Practitioner shall be substantially in the following form:

[Caption of Case]

NOTICE OF SELECTION OF ADR PRACTITIONER BY STIPULATION

We agree to attend ADR conducted by

(Name, address, and telephone number of ADR Practitioner).

We have made payment arrangements with the ADR Practitioner and we understand that the court's fee schedules do not apply to this ADR. We request that the court designate this ADR Practitioner in lieu of any court- appointed ADR Practitioner.

.....

(Signature of Plaintiff)

(Signature of Defendant)

.....
(Signature of Plaintiff's
Attorney, if any)

(Signature of Defendant's
Attorney, if any)

[Add additional signature lines for any additional parties and attorneys.]

I, _____,

(Name of ADR Practitioner)

agree to conduct the following ADR in the above-captioned case [check one]:

- mediation in accordance with Rules 17-103 and 17-105.
- ADR other than mediation: _____ [specify type of ADR].

At the conclusion of the ADR, I agree to comply with the provisions of Rule 17-203 (f).

I solemnly affirm under the penalties of perjury that I have the qualifications prescribed by the following Rules [check all that are true]:

- Rule 17-205 (a) [Basic mediation]
- Rule 17-205 (b) [Business and Technology]
- Rule 17-205 (c) [Economic Issues--Divorce and Annulment]
- Rule 17-205 (d) [Health Care Malpractice]
- Rule 17-205 (e) [Foreclosure]
- Rule 17-206 [ADR other than mediation]
- None of the above.

.....
Signature of ADR Practitioner

(2) *By the Court.* If the parties do not timely notify the court that they have agreed upon an ADR practitioner, the court promptly shall appoint a mediator who meets the qualifications prescribed by Rule 17-205 (d) and notify the parties. Within 15 days after the court notifies the parties of the name of the mediator, a party may object in writing, stating the reason for the objection. If the court sustains the objection, the court shall appoint a different mediator.

(d) Initial Conference; Outline of Case. The ADR practitioner shall schedule an initial conference with the parties as soon as practicable. At least 15 days prior to the initial conference, each party shall provide to the ADR practitioner a brief written outline of the strengths and weaknesses of the party's case. A party is not required to provide the outline to any other party, and the ADR practitioner shall not provide the outline or disclose its contents to anyone unless authorized by the party who submitted the outline.

Cross reference: See Code, Courts Article, § 3-2A-06C (h)(2) and (k).

(e) Discovery. If the ADR practitioner determines that discovery is necessary to facilitate the ADR, the ADR practitioner, consistent with the scheduling order, may mediate the scope and schedule of that discovery, adjourn the initial conference, and reschedule an additional conference for a later date.

(f) Evaluation Forms. At the conclusion of the ADR, the ADR practitioner shall give to the parties any ADR evaluation forms and instructions provided by the court.

(g) Notification to the Court. The parties shall notify the court if the case is settled. If the parties agree to settle some but not all of the issues in dispute, the ADR practitioner shall file a notice of partial settlement with the court. If the parties have not agreed to a settlement, the ADR practitioner shall file a notice with the court that the case was not settled.

(h) Costs. Unless otherwise agreed by the parties, the costs of the ADR shall be divided equally between the parties.

Source: This Rule is new.

Credits

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MD Rules, Rule 17-204

RULE 17-204. NEUTRAL EXPERTS

Currentness

(a) Appointment. With the consent of all parties participating in the ADR, a court-designated ADR practitioner may select a neutral expert to participate in the ADR. The expense of the neutral expert shall be allocated among the parties in accordance with their agreement.

(b) Confidentiality.

(1) *Mediation Proceedings.* In a mediation, the provisions of Rule 17-105 apply to the neutral expert.

(2) *Other ADR.* In all ADR other than mediation, the parties and the ADR practitioner may require the neutral expert to enter into a written agreement binding the neutral expert to confidentiality. The written agreement may include provisions stating that the expert may not disclose or be compelled to disclose any communications related to the ADR in any judicial, administrative, or other proceedings. Communications related to the ADR that are confidential under an agreement allowed by this subsection are not subject to discovery, but information otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its use related to the ADR.

Source: This Rule is derived from former Rule 17-105.1 (2012).

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MD Rules, Rule 17-205

RULE 17-205. QUALIFICATIONS OF COURT-DESIGNATED MEDIATORS

Currentness

(a) Basic Qualifications. A mediator designated by the court 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 Rule 17-104 or, for individuals trained prior to January 1, 2013, former Rule 17-106;

(3) be familiar with the rules, statutes, and practices governing mediation in the circuit courts;

(4) have mediated or co-mediated at least two civil cases;

(5) 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;

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

(7) submit to periodic monitoring of court-ordered mediations by a qualified mediator designated by the county administrative judge; and

(8) comply with procedures and requirements prescribed in the court's case management plan filed under Rule 16-202 b. relating to diligence, quality assurance, and a willingness to accept, upon request by the court, a reasonable number of referrals at a reduced-fee or pro bono.

(b) Business and Technology Cases. A mediator designated by the court for a Business and Technology Program case shall, unless the parties agree otherwise:

(1) have the qualifications prescribed in section (a) of this Rule; and

(2) within the two-year period preceding an application for approval pursuant to Rule 17-207, have served as a mediator in at least five non-domestic civil mediations, at least two of which involved types of conflicts assigned to the Business and Technology Case Management Program.

(c) Economic Issues in Divorce and Annulment Cases. A mediator designated by the court for issues in divorce or annulment cases other than those subject to Rule 9-205 shall:

(1) have the qualifications prescribed in section (a) of this Rule;

(2) have completed at least 20 hours of skill-based training in mediation of economic issues in divorce and annulment cases; and

(3) have served as a mediator or co-mediator in at least two mediations involving marital economic issues.

(d) Health Care Malpractice Claims. A mediator designated by the court for a health care malpractice claim shall, unless the parties agree otherwise:

(1) have the qualifications prescribed in section (a) of this Rule;

(2) within the two-year period preceding an application for approval pursuant to Rule 17-207, have served as a mediator in at least five non-domestic civil mediations, at least two of which involved types of conflicts assigned to the Health Care Malpractice Claims ADR Program;

(3) be knowledgeable about health care malpractice claims through experience, training, or education; and

(4) agree to complete any continuing education training required by the court.

Cross reference: See Code, Courts Article, § 3-2A-06C.

(e) Foreclosure Cases.

(1) This section does not apply to an ADR practitioner selected by the Office of Administrative Hearings to conduct a “foreclosure mediation” pursuant to Code, Real Property Article, § 7-105.1 and Rule 14-209.1.

(2) A mediator designated by the court in a proceeding to foreclose a lien instrument shall, unless the parties agree otherwise:

(A) have the qualifications prescribed in section (a) of this Rule; and

(B) through experience, training, or education, be knowledgeable about lien instruments and federal and Maryland laws, rules, and regulations governing foreclosure proceedings.

(f) Experience Requirement. The experience requirements in this Rule may be met by mediating in the District Court or the Court of Special Appeals.

Source: This Rule is derived in part from former Rule 17-104 (a),(c),(d),(e), and (f) (2012) and is in part new.

Credits

Adopted Nov. 1, 2012, eff. Jan. 1, 2013.

<Editor's Note: Per order of the Maryland Court of Appeals dated November 1, 2012, previous Title 17 was deleted and new Title 17 was adopted effective January 1, 2013.>

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Maryland Rules (Refs & Annos)
Title 17. Alternative Dispute Resolution
Chapter 200. Proceedings in Circuit Court

MD Rules, Rule 17-206

RULE 17-206. QUALIFICATIONS OF COURT-DESIGNATED
ADR PRACTITIONERS OTHER THAN MEDIATORS

Currentness

(a) Generally. Except as provided in section (b) of this Rule, an ADR practitioner designated by the court to conduct ADR other than mediation shall, unless the parties agree otherwise:

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

(2) submit to periodic monitoring of court-ordered ADR proceedings by a qualified person designated by the county administrative judge;

(3) comply with procedures and requirements prescribed in the court's case management plan filed under Rule 16-202 b. relating to diligence, quality assurance, and a willingness, upon request by the court, to accept a reasonable number of referrals at a reduced-fee or pro bono;

(4) either (A) be a member in good standing of the Maryland bar and have at least five years experience as (i) a judge, (ii) a practitioner in the active practice of law, (iii) a full-time teacher of law at a law school accredited by the American Bar Association, or (iv) a Federal or Maryland administrative law judge, or (B) have equivalent or specialized knowledge and experience in dealing with the issues in dispute; and

(5) have completed any training program required by the court.

(b) Judges and Masters. An active or retired judge or a master of the court may chair a non-fee-for-service settlement conference.

Cross reference: Rule 16-813, Maryland Code of Judicial Conduct, Canon 4F and Rule 16-814, Maryland Code of Conduct for Judicial Appointees, Canon 4F.

Source: This Rule is derived from former Rule 17-105 (2012).

Credits

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MD Rules, Rule 17-207

RULE 17-207. PROCEDURE FOR APPROVAL

Currentness

(a) Generally.

(1) *Scope.* This section applies to individuals who seek eligibility for designation by a court to conduct ADR pursuant to Rule 9-205, Rule 14-212, or Rule 17-201 other than in actions assigned to the Business and Technology Case Management Program or the Health Care Malpractice Claims ADR Program.

(2) *Application.* An individual seeking designation to conduct ADR shall file an application with the clerk of the circuit court from which the individual is willing to accept referrals. The application shall be substantially in the form approved by the State Court Administrator and shall be available from the clerk of each circuit court. The clerk shall transmit each completed application, together with all accompanying documentation, to the county administrative judge or the judge's designee.

(3) *Documentation.*

(A) An application for designation as a mediator shall be accompanied by documentation demonstrating that the applicant meets the requirements of Rule 17-205 (a) and, if applicable, Rule 9-205 (c)(2) and Rule 17-205 (c) and (e).

(B) An application for designation to conduct ADR other than mediation shall be accompanied by documentation demonstrating that the applicant is qualified as required by Rule 17-206 (a).

(C) The State Court Administrator may require the application and documentation to be provided in a word processing file or other electronic format.

(4) *Action on Application.* After such investigation as the county administrative judge deems appropriate, the county administrative judge or designee shall notify the applicant of the approval or disapproval of the application and the reasons for a disapproval.

(5) *Court-Approved ADR Practitioner and Organization Lists.* The county administrative judge or designee of each circuit court shall maintain a list:

(A) of mediators who meet the qualifications set forth in Rule 17-205 (a), (c), and (e);

(B) of mediators who meet the qualifications of Rule 9-205 (c);

(C) of other ADR practitioners who meet the applicable qualifications set forth in Rule 17-206 (a); and

(D) of ADR organizations approved by the county administrative judge.

(6) *Public Access to Lists.* The county administrative judge or designee shall provide to the clerk of the court a copy of each list, together with a copy of the application filed by each individual on the lists. The clerk shall make these items available to the public.

(7) *Removal from List.* After notice and a reasonable opportunity to respond, the county administrative judge may remove a person from a court-approved list for failure to maintain the qualifications required by Rule 17-205, Rule 9-205 (c), or Rule 17-206 (a) or for other good cause.

(b) Business and Technology and Health Care Malpractice Programs.

(1) *Scope.* This section applies to individuals who seek eligibility for designation by a court to conduct ADR pursuant to Rule 17-201 in an action assigned to the Business and Technology Case Management Program or pursuant to Rule 17-203 in an action assigned to the Health Care Malpractice Claims ADR Program.

(2) *Application.* An individual seeking designation to conduct ADR shall file an application with the Administrative Office of the Courts, which shall transmit the application to the Committee of Program Judges appointed pursuant to Rule 16-108 b. 4. The application shall be substantially in the form approved by the State Court Administrator and shall be available from the clerk of each circuit court.

(3) *Documentation.*

(A) An application for designation as a mediator, shall be accompanied by documentation demonstrating that the applicant meets the applicable requirements of Rule 17-205.

(B) An application for designation to conduct ADR other than mediation shall be accompanied by documentation demonstrating that the applicant is qualified as required by Rule 17-206 (a).

(C) The State Court Administrator may require the application and documentation to be provided in a word processing file or other electronic format.

(4) *Action on Application.* After such investigation as the Committee of Program Judges deems appropriate, the Committee shall notify the Administrative Office of the Courts that the application has been approved or disapproved and the reasons for a disapproval. The Administrative Office of the Courts shall notify the applicant of the action of the Committee and the reasons for a disapproval.

(5) *Court-Approved ADR Practitioner Lists*. The Administrative Office of the Courts shall maintain a list:

(A) of mediators who meet the qualifications of Rule 17-205 (b);

(B) of mediators who meet the qualifications of Rule 17-205 (d); and

(C) of other ADR practitioners who meet the qualifications of Rule 17-206 (a).

(6) *Public Access to Lists*. The Administrative Office of the Courts shall attach to the lists such additional information as the State Court Administrator specifies, keep the lists current, and transmit a copy of each current list and attachments to the clerk of each circuit court, who shall make these items available to the public.

Committee note: Examples of information that the State Court Administrator may specify as attachments to the lists include information about the individual's qualifications, experience, and background and any other information that would be helpful to litigants selecting an individual best qualified to conduct ADR in a specific case.

(7) *Removal from List*. After notice and a reasonable opportunity to respond, the Committee of Program Judges may remove an individual from a court-approved practitioner list for failure to maintain the qualifications required by Rule 17-205 or Rule 17-206 (a) or for other good cause.

Source: This Rule is derived in part from former Rule 17-107 (2012) and is in part new.

Credits

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MD Rules, Rule 17-208

RULE 17-208. FEE SCHEDULES

Currentness

(a) Authority to Adopt. Subject to the approval of the Chief Judge of the Court of Appeals, the county administrative judge of each circuit court shall develop and adopt maximum hourly rate fee schedules for court-designated individuals conducting each type of fee-for-service ADR. In developing the fee schedules, the county administrative judge shall take into account the availability of qualified individuals willing to provide those services and the ability of litigants to pay for them.

Committee note: The maximum hourly rates in a fee schedule may vary based on the type the alternative dispute resolution proceeding, the complexity of the action, and the qualifications of the ADR practitioner.

(b) Applicability of Fee Schedules. The court's fee schedules apply only to ADR practitioners who are initially designated by the court, and not to an individual selected by the parties as a substitute mediator or to an ADR practitioner selected by the parties at the outset, even if the selection is subsequently memorialized by the court in an order of referral or consent order.

(c) Compliance. A court-designated ADR practitioner subject to a fee schedule may not charge or accept a fee for the ADR in excess of that allowed by court order, and the amount stated in the court order may not exceed the fee stated in the applicable schedule. Violation of this Rule shall be cause for removal from court-approved ADR practitioner lists.

Source: This Rule is derived from former Rule 17-108 (2012).

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Chapter 300. Proceedings in the District Court

MD Rules, Rule 17-301

RULE 17-301. ADR OFFICE

Currentness

(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.

Credits

Adopted Nov. 1, 2012, eff. Jan. 1, 2013.

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Chapter 300. Proceedings in the District Court

MD Rules, Rule 17-302

RULE 17-302. GENERAL PROCEDURES AND REQUIREMENTS

Currentness

(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.

Credits

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MD Rules, Rule 17-303

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

Currentness

(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.

Credits

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MD Rules, Rule 17-304

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

Currentness

(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.

Credits

Adopted Nov. 1, 2012, eff. Jan. 1, 2013.

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MD Rules, Rule 17-305

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

Currentness

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.

Credits

Adopted Nov. 1, 2012, eff. Jan. 1, 2013.

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Chapter 400. Proceedings in the Court of Special Appeals

MD Rules, Rule 17-401

RULE 17-401. GENERAL PROVISIONS

Currentness

(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.

Credits

Adopted Oct. 17, 2013, eff. Jan. 1, 2014.

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MD Rules, Rule 17-402

RULE 17-402. ADR PROCEEDINGS

Currentness

(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.

Credits

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MD Rules, Rule 17-403

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

Currentness

(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.

Credits

Adopted Oct. 17, 2013, eff. Jan. 1, 2014.

<Editor's Note: Per order of the Maryland Court of Appeals dated November 1, 2012, previous Title 17 was deleted and new Title 17 was adopted effective January 1, 2013.>

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West's Annotated Code of Maryland
Maryland Rules (Refs & Annos)
Title 17. Alternative Dispute Resolution
Chapter 400. Proceedings in the Court of Special Appeals

MD Rules, Rule 17-404

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

Currentness

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.

Credits

Adopted Oct. 17, 2013, eff. Jan. 1, 2014.

<Editor's Note: Per order of the Maryland Court of Appeals dated November 1, 2012, previous Title 17 was deleted and new Title 17 was adopted effective January 1, 2013.>

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Title 9. Family Law Actions

Chapter 200. Divorce, Annulment, Alimony, Child Support, and Child Custody (Refs & Annos)

MD Rules, Rule 9-205

RULE 9-205. MEDIATION OF CHILD CUSTODY AND VISITATION DISPUTESCurrentness

(a) Scope of Rule. This Rule applies to any action or proceeding under this Chapter in which the custody of or visitation of a minor child is an issue, including:

- (1) an initial action to determine custody or visitation;
- (2) an action to modify an existing order or judgment as to custody or visitation; and
- (3) a petition for contempt by reason of non-compliance with an order or judgment governing custody or visitation.

(b) Duty of Court.

(1) Promptly after an action subject to this Rule is at issue, the court shall determine whether:

- (A) mediation of the dispute as to custody or visitation is appropriate and likely would be beneficial to the parties
- (B) a mediator possessing the qualifications set forth in section (c) of this Rule is available to mediate the dispute

(2) If a party or a child represents to the court in good faith that there is a genuine issue of abuse, as defined in Article 4-501, of the party or child, and that, as a result, mediation would be inappropriate, the court may not order mediation.

(3) If the court concludes that mediation is appropriate and likely to be beneficial to the parties or the child and the mediator is available, it shall enter an order requiring the parties to mediate the custody or visitation dispute. The order shall set forth the terms and conditions of the mediation, and the court may suspend or stay some or all further proceedings in the action pending the mediation on terms and conditions set forth in the order.

Cross reference: With respect to subsection (b)(2) of this Rule, see Rule 1-341 and Rules 3.1 and 3.3 of the Maryland Rules of Professional Conduct.

(c) Qualifications of Court-Designated Mediator. To be eligible for designation as a mediator by the court, an individual must:

- (1) have the basic qualifications set forth in Rule 17-205 (a);
- (2) have completed at least 20 hours of training in a family mediation training program that includes:
 - (A) Maryland law relating to separation, divorce, annulment, child custody and visitation, and child and spousal support;
 - (B) the emotional aspects of separation and divorce on adults and children;
 - (C) an introduction to family systems and child development theory;
 - (D) the interrelationship of custody, visitation, and child support; and

(E) if the training program is given after January 1, 2013, strategies to (i) identify and respond to power imbalance and the presence and effects of domestic violence, and (ii) safely terminate a mediation when termination is warranted.

(3) have co-mediated at least eight hours of child access mediation sessions with an individual approved by the court administrative judge, or, in addition to any observations during the training program, have observed at least eight hours of mediation sessions.

(d) Court Designation of Mediator.

(1) In an order referring a matter to mediation, the court shall:

(A) designate a mediator from a list of qualified mediators approved by the court;

(B) if the court has a unit of court mediators that provides child access mediation services, direct that unit to select a mediator; or

(C) direct an ADR organization, as defined in Rule 17-102, to select a qualified mediator.

(2) If the referral is to a fee-for-service mediation, the order shall specify the hourly rate that the mediator may charge in the action, which may not exceed the maximum stated in the applicable fee schedule.

(3) A mediator selected pursuant to subsection (d)(1)(B) or (d)(1)(C) of this Rule has the status of a court-designated mediator.

(4) In designating a mediator, the court is not required to choose at random or in any particular order. The court shall use the services of as many qualified mediators as practicable, but the court 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 prospective designees.

(5) The parties may request to substitute for the court-designated mediator another mediator who has the qualifications prescribed in Rule 17-205 (a)(1), (2), (3), and (6) and subsection (c)(2) of this Rule, whether or not the mediator's name is on the list of qualified mediators, by filing with the court no later than 15 days after service of the order of referral to mediation a Request to Substitute Mediator.

(A) The Request to Substitute Mediator shall be substantially in the following form:

[Caption of Case]	
REQUEST TO SUBSTITUTE MEDIATOR AND SELECTION OF MEDIATOR BY STIPULATION	
We agree to attend mediation proceedings pursuant to Rule 9-205 conducted by _____	
(Name, address, and telephone number of mediator)	
and we have made payment arrangements with the mediator. We request that the court substitute this mediator designated by the court.	
_____ (Signature of Plaintiff)	_____ (Signature of Defendant)
_____ (Signature of Plaintiff's Attorney, if any)	_____ (Signature of Defendant's Attorney, if any)
I, _____	
(Name of Mediator)	
agree to conduct mediation proceedings in the above-captioned case in accordance with Rule 9-205 (e), (f), and (j).	
I solemnly affirm under the penalties of perjury that I have the qualifications prescribed by Rule 9-205 (d)(1) through (d)(3).	

Signature of Mediator

(B) If the Request to Substitute Mediator is timely filed, the court shall enter an order striking the original designating the individual selected by the parties to conduct the mediation, unless the court determines after no opportunity to be heard that the individual does not have the qualifications prescribed by subsection (d)(5) of this Rule. If the Request to Substitute Mediator is timely filed, the mediator shall be the court-designated mediator.

(C) A mediator selected by stipulation of the parties and substituted by the court pursuant to subsection (d)(5)(B) is not subject to the fee schedule provided for in section (j) of this Rule and Rule 17-208 while conducting mediation pursuant to the stipulation and designation, but shall comply with all other obligations of a court-designated mediator.

Committee note: Nothing in this Rule or the Rules in Title 17 prohibits the parties from selecting any individual, regardless of qualifications, to assist them in the resolution of issues by participating in ADR that is not court-ordered.

(e) **Role of Mediator.** The role of a mediator designated by the court or agreed upon by the parties is as set forth in Rule 17-105.

(f) **Confidentiality.** Confidentiality of mediation communications under this Rule is governed by Rule 17-105.

Cross reference: For the definition of "mediation communication," see Rule 17-102 (h).

Committee note: By the incorporation of Rule 17-105 by reference in this Rule, the intent is that the provisions of the Mediation Confidentiality Act are inapplicable to mediations under Rule 9-205. See Code, Courts Article, § 3-1802 (c).

(g) Scope of Mediation; Restriction on Fee Increase.

(1) The court's initial order may require the parties to attend a maximum of four hours in not more than two mediation sessions. If, in good cause and upon the recommendation of the mediator, the court may order up to four additional hours. The parties' agreement, may extend the mediation beyond the number of hours stated in the initial or any subsequent order.

Committee note: Although the parties, without further order of court, may extend the mediation, an amendment to the requirements contained in a scheduling order may be made only by order of the court.

Cross reference: See Rule 2-504.

(2) Mediation under this Rule shall be limited to the issues of custody and visitation unless the parties agree otherwise.

(3) During any extension of the mediation pursuant to subsection (g)(1) of this Rule or expansion of the issues that are subject to mediation pursuant to subsection (g)(2) of this Rule, the mediator may not increase the mediator's hourly rate for services relating to the action.

Cross reference: See Rule 17-208, concerning fee schedules and sanctions for noncompliance with an applicable fee schedule.

(h) **If Agreement.** If the parties agree on some or all of the disputed issues, the mediator shall provide copies of an agreement embodying the points of agreement to the parties and their attorneys for review and signature. If the document is signed by the parties as submitted or as modified by the parties, a copy of the signed document shall be sent to the mediator, with a copy to the court.

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

(i) **If No Agreement.** If no agreement is reached or the mediator determines that mediation is inappropriate, the mediator shall advise the court but shall not state the reasons. If the court does not order mediation or the case is returned to the court for mediation without an agreement as to all issues in the case, the court promptly shall schedule the case for hearing on a motion for summary judgment or other appropriate relief not covered by a mediation agreement.

(j) **Evaluation Forms.** At the conclusion of the mediation, the mediator shall give to the parties any evaluation form provided by the court.

instructions provided by the court.

(k) Costs

(1) *Fee Schedule.* Fee schedules adopted pursuant to Rule 17-208 shall include maximum fees for mediators designated to this Rule, and a court-designated mediator appointed under this Rule may not charge or accept a fee for a mediation conducted pursuant to that designation in excess of that allowed by that schedule.

(2) *Payment of Compensation and Expenses* Payment of the compensation and reasonable expenses of a mediator compelled by order of court and assessed among the parties as the court may direct. In the order for mediation, the mediator may waive payment of the compensation and reasonable expenses.

Source: This Rule is derived in part from the 2012 version of former Rule 9-205 and is in part new.

Credits

Adopted Nov. 1, 2012, eff. Jan. 1, 2013.

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