

# **Maryland Circuit Courts**

## ***Health Care Malpractice Claims ADR Program Application***

Pursuant to Maryland Courts and Judicial Proceedings (“CJ”) Code Ann., §3-2A-06C, the Court is required to order parties in health care malpractice cases to engage in alternative dispute resolution (“ADR”). In developing a cadre of experienced ADR Providers to implement this statute, the Conference of Circuit Judges believes it is imperative that the ADR Providers assigned by the Court demonstrate experience in medical malpractice or comparable complex civil cases in addition to having advanced ADR skills. This application will assist the Court in identifying ADR Providers for all ADR processes designated in CJ §3-2A-06C, as defined in Title 17 of the Maryland Rules. ADR Providers should only apply for those services for which they are qualified.

### **ADR Process Definitions**

#### **Mediation**

As defined in Maryland Rule 17-102(g), "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 the dispute or issues in the dispute.

#### **Neutral Case Evaluation**

As defined in Maryland Rule 17-102(i), "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 supporting their respective positions, and (2) the evaluator renders an evaluation of their positions and an opinion as to the likely outcome of the litigation.

#### **Neutral Fact Finding**

As defined in Maryland Rule 17-102(g), "neutral fact-finding" means a process in which (1) the parties, their attorneys, or both appear before an impartial individual and present evidence and arguments supporting their respective positions as to particular 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.

#### **Settlement Conference Facilitation**

As defined in Maryland Rule 17-102 (l), "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 terms of an agreement.

#### **Fees and additional information for court selected ADR Providers**

If an ADR Provider is designated by the Court from its list for this program, fees for that ADR Provider will be billed at the rate of \$250/hour for all services on an assigned case. Unless otherwise agreed by the parties or ordered by the Court, those costs shall be divided equally between the parties. The parties are free to engage an ADR provider not on the Court's list, and in such case, the ADR Provider will be paid at the rate negotiated by the parties. ADR Providers will be required to conduct ADR sessions in the jurisdiction where the litigation is pending.



**II. REQUIRED QUALIFICATIONS FOR MEDIATORS ONLY** (See Maryland Rules 17-205)

*(If you are not seeking to be listed as a mediator, please skip to section III.)*

**(1) Age Requirement**

\_\_\_\_\_ I am at least 21 years old. (for mediators only)

\_\_\_\_\_ I am requesting a waiver of the requirement that I am at least 21 years old. (for mediators only)

**(2) Education** - Please list colleges, universities and other higher education institutions attended and degrees attained:

<u>Institution</u>	<u>City/State</u>	<u>Dates Attended</u> <u>From</u> <u>To</u>	<u>Degree</u> <u>Attained</u>	<u>Major</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

or

\_\_\_\_\_ I request that the court waive the bachelor's degree requirement in connection with particular actions. To support this request, attached is additional information outlining why my mediation experience, work history, and/or community activities make me uniquely qualified to handle particular types of circuit court cases.

**(3) Mediation Training**

a) \_\_\_\_\_ I have completed a 40-hour mediation training program that meets the requirements of Maryland Rule 17-104, including training in (1) conflict resolution and mediation theory, (2) mediation skills and techniques, (3) mediator conduct, and (4) simulations and role-playing.

Please describe below all mediation training you have received.

<u>Course</u>	<u># Hours</u>	<u>Trainer/Organization</u>	<u>Location</u>	<u>Date</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

b) \_\_\_\_\_ I agree to complete any continuing education training required by the ADR Committee of the Conference of Circuit Judges.

c) \_\_\_\_\_ If my application to mediate health care malpractice cases is approved, I agree to serve as a co-mediator with at least two mediators each year who are seeking to meet the requirements of Rule 17-205(d).

***If you only want to apply only as a mediator, skip to Section IV. If you want to apply as a neutral case evaluator, neutral fact finder, or settlement conference facilitator, please continue to Section III.***

**III. REQUIRED QUALIFICATIONS For Neutral Case Evaluators, Neutral Fact Finders, and Settlement Conference Facilitators ONLY** (See Maryland Rule 17-206) (If you are **not** seeking to be listed as a neutral case evaluator, neutral fact finder, or settlement conference facilitator, please skip to section IV.)

(4) \_\_\_\_\_ I am a member in good standing of the Maryland Bar and have at least five years experience in the active

practice of law. My experience is as follows:

<u>Profession</u>	<u>Years of Experience</u>
Judge	_____
Master	_____
Attorney	_____
Full-time teacher of law at an ABA accredited law school	_____
Administrative Law Judge	_____

or

\_\_\_\_\_ I am not a member of the Maryland Bar, but I have equivalent or specialized knowledge and experience dealing with health care claims as listed below. Examples of equivalent or specialized knowledge and experience include the practice of law in other states, extensive non-mediation ADR experience, experience as a **health care provider**, experience in the **medical malpractice insurance industry**, or significant **technical expertise in the health care field** where disputes are typically handled by circuit courts. Include the years of experience for each example of your specialized knowledge or experience.

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**(5) ADR Training**

a) \_\_\_\_\_ I have completed a training program consisting of at least eight hours, and which was approved by the ADR Committee of the Conference of Circuit Judges, as described below:

<u>Course</u>	<u># Hours</u>	<u>Trainer/Organization</u>	<u>Location</u>	<u>Date</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

or

\_\_\_\_\_ I request the court waive the training requirement based on my experience as stated in number 4 above or based on my experience conducting non-mediation ADR processes for a circuit court as noted in number 6 below.

b) \_\_\_\_\_ I agree to complete any continuing education training required by the ADR Committee of the Conference of Circuit Judges.

**Please continue to Section IV.**

**IV. REQUIREMENTS FOR ALL APPLICANTS:**

**(6) Required additional ADR experience for Health Care Malpractice ADR Providers:**

- a) \_\_\_\_\_ I am interested in providing ADR services in health care malpractice cases, meet all of the general mediator or other ADR Provider qualifications, and, in addition to the basic training programs required, I have conducted, as a mediator, neutral case evaluator, neutral fact finder, or settlement conference facilitator, at least five non-domestic circuit court cases or five non-domestic non-circuit court disputes of a complexity comparable to a circuit court medical malpractice case.
- b) \_\_\_\_\_ I am knowledgeable about health care malpractice claims based on my experience, training, and education as described below:

**Health Care Malpractice Experience:** \_\_\_\_\_

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**Health Care Malpractice Training:** \_\_\_\_\_

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**Health Care Malpractice Education:** \_\_\_\_\_

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- c) In narrative form, and by attachment to this application, please list five non-domestic circuit court cases or non-domestic non-circuit court disputes that you conducted as a neutral of comparable complexity to a circuit court medical malpractice case. Include in your attachment the following as to each dispute:

- ✓ the type of ADR provided (mediation, neutral case evaluation, neutral fact finding, settlement conference);
- ✓ name of the court or indicate if it was a non-court referred matter (include a case number where applicable);
- ✓ the subject and clear description of the dispute; and,
- ✓ the date(s) the ADR process took place.

Additionally, you may include any attorney or participant references for those disputes, although not required.

**(7) Ethics, Monitoring, Procedures and Other Requirements**

- I agree to abide by the Standards of Conduct for Mediators and Other ADR Providers approved by the Court of Appeals, to submit to periodic monitoring of court-referred ADR sessions by a qualified ADR Provider designated by the ADR Committee of the Conference of Circuit Court Judges, and to comply with reasonable procedures and requirements prescribed in the court's case management plan relating to diligence and quality assurance.
- I agree to be responsible for finding an appropriate (if requested, ADA accessible) location, within the geographical jurisdiction of the referring circuit court, for all ADR sessions.
- I agree to maintain my hourly rate consistent with the rate set by the court for all court referred cases.
- I agree to continue the ADR process as long as all of the participants want to continue, so long as progress is being made.

**(8) Other Occupations**

Please list any other occupations that you have or have had that may assist in your performance of duties as an ADR Provider in a health care malpractice case.

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**(9) Professional Affiliations/Community Activities**

Please list any professional affiliations and/or community activities that you consider relevant to your designation as an ADR Provider for health care malpractice cases.

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**(10) Criminal or Disciplinary Actions -- Pending Complaints**

- a) Have you ever been convicted of any crime in Maryland or elsewhere other than a minor traffic violation? If so, please provide details including the conviction date, the location and name of the court, the offense, and the sentence imposed.

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b) Are there currently any criminal charges pending against you in Maryland or elsewhere other than minor traffic violations? If so, please provide details including the date of the alleged incident, the location and name of the court and the alleged offense.

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c) Have you ever been disciplined by any court, administrative agency, Attorney Grievance Commission, Judicial Disabilities Commission, or other disciplinary committee, agency, or group in Maryland or elsewhere for unethical conduct or for the violation of any Code of Ethics? If so, please provide details including the date, the disciplinary body, the conduct at issue and the disciplinary action taken.

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d) Are there any complaints or charges currently pending against you by any court, administrative agency, Attorney Grievance Commission, Judicial Disabilities Commission, or other disciplinary committee, agency, or group in Maryland or elsewhere for unethical conduct or for the violation of any Code of Ethics? If so, please provide details including relevant dates, the conduct at issue and the disciplinary body involved.

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**REQUIRED DOCUMENTATION — CHECKLIST**

I have attached the following:

\_\_\_\_\_ Proof that I have at least a bachelor's degree, **or** documentation supporting my request for this requirement to be waived in connection with particular actions. **(FOR MEDIATORS ONLY)**

\_\_\_\_\_ Proof that I am a member of the Maryland bar (certificate available upon letter of request to the Maryland Court of Appeals at a cost of seven dollars) and that I have at least five years experience in the active practice of law as either a judge, master, attorney, full-time teacher of law at a law school accredited by the American Bar Association, or a Federal or Maryland administrative law judge **or** that I have equivalent or specialized knowledge and experience in dealing with health care malpractice cases. **(FOR NON-mediators ONLY)**

\_\_\_\_\_ A copy of a certificate or other proof documenting my completion of the training that meets the requirements of the Maryland Rules, and proof of all other training courses completed.

\_\_\_\_\_ An affidavit, affirming under the penalties of perjury and upon personal knowledge, that the information contained herein is true.

\_\_\_\_\_ Any other information to support my application as an ADR Provider for Health Care Malpractice Claims (optional).

I hereby represent that all information provided by me in this application is true and correct:

**Signed:** \_\_\_\_\_ **Dated:** \_\_\_\_\_  
(Applicant)

Being listed for designation as a health care malpractice claims ADR Provider for health care malpractice cases *does not guarantee that you will receive any case referrals* from the circuit court nor does it establish court employee status for the provider. Please read Maryland Rules, Title 17, containing circuit court Rules applicable to alternative dispute resolution and to being listed for designation as a mediator, neutral case evaluator, neutral fact finder, or settlement conference facilitator.

If I am designated as a Health Care Malpractice Claims mediator, neutral case evaluator, neutral fact finder, and/or settlement conference facilitator, I give my permission to have such designation(s) listed, along with my contact information, on a court-based website. I understand that such a listing is not an endorsement of my skills and abilities, nor will it create an employment relationship with any court. I also understand that checking either yes or no below has no bearing on the decision of my designation.

\_\_\_\_\_ Yes                      \_\_\_\_\_ No