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# States' Alternative Dispute Resolution Statutes

## State of Utah

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# States' Alternative Dispute Resolution Statutes

# STATE OF UTAH

***Index***



## Alternative Dispute Resolution Act

Title 78B, Chapter 6, Part 2.

*Current through 2008 Second Special Session*

§ 78B-6-201. Title

This part is known as the "Alternative Dispute Resolution Act."

§ 78B-6-202. Definitions

As used in this part:

(1) "ADR" means alternative dispute resolution and includes arbitration, mediation, and other means of dispute resolution, other than court trial, authorized by the Judicial Council under this part.

(2) "ADR organization" means an organization which provides training for ADR providers or offers other ADR services.

(3) "ADR provider" means a neutral person who conducts an ADR procedure. An arbitrator, mediator, and early neutral evaluator are ADR providers. An ADR provider may be an employee of the court or

an independent contractor.

(4) “Arbitration” means a private hearing before a neutral or panel of neutrals who hear the evidence, consider the contentions of the parties, and enter a written award to resolve the issues presented pursuant to Section 78B-6-206.

(5) “Award” as used in connection with arbitration includes monetary or equitable relief and may include damages, interest, costs, and attorney fees.

(6) “Civil action” means an action in which a party seeks monetary or equitable relief at common law or pursuant to statute.

(7) “Early neutral evaluation” means a confidential meeting with a neutral expert to identify the issues in a dispute, explore settlement, and assess the merits of the claims.

(8) “Mediation” means a private forum in which one or more impartial persons facilitate communication between parties to a civil action to promote a mutually acceptable resolution or settlement.

(9) “Summary jury trial” means a summary presentation of a case to a jury which results in a nonbinding verdict.

§ 78B-6-203. Purpose and findings

(1) The purpose of this part is to offer an alternative or supplement to the formal processes associated with a court trial and to promote the efficient and effective operation of the courts of this state by authorizing and encouraging the use of alternative methods of dispute resolution to secure the just, speedy, and inexpensive determination of civil actions filed in the courts of this state.

(2) The Legislature finds that:
(a) the use of alternative methods of dispute resolution authorized by this part will secure the purposes of Article I, Section 11, Utah Constitution, by providing supplemental or complementary means for the just, speedy, and inexpensive resolution of disputes;
(b) preservation of the confidentiality of ADR procedures will significantly aid the successful resolution of civil actions in a just, speedy, and inexpensive manner;
(c) ADR procedures will reduce the need for judicial resources and the time and expense of the parties;
(d) mediation has, in pilot programs, resulted in the just and equitable settlement of petitions for the protection of children under Section 78A-6-304 and petitions for the terminations of parental rights under Section 78A-6-505; and
(e) the purpose of this part will be promoted by authorizing the Judicial Council to establish rules to promote the use of ADR procedures by the courts of this state as an alternative or supplement to court trial.

§ 78B-6-204. Dispute Resolution Programs--Director--Duties--Report

(1) Within the Administrative Office of the Courts, there shall be a director of Dispute Resolution Programs, appointed by the state court administrator.

(2) The director shall be an employee of the Administrative Office of the Courts and shall be responsible for the administration of all court-annexed Dispute Resolution Programs. The director shall have duties, powers, and responsibilities as the Judicial Council may determine. The qualifications for employment of the director shall be based on training and experience in the management, principles, and purposes of alternative dispute resolution procedures.

(3) In order to implement the purposes of this part, the Administrative Office of the Courts may employ or contract with ADR providers or ADR organizations on a case-by-case basis, on a service basis, or on a program basis. ADR providers and organizations shall be subject to the rules and fees set by the Judicial Council. The Administrative Office of the Courts shall establish programs for training ADR providers and orienting attorneys and their clients to ADR programs and procedures.

(4) An ADR provider is immune from all liability when conducting proceedings under the rules of the Judicial Council and the provisions of this part, except for wrongful disclosure of confidential information, to the same extent as a judge of the courts in this state.

(5) The director shall report annually to the Supreme Court, the Judicial Council, the Judiciary Interim Committee, the governor, and the Utah State Bar on the operation of the Dispute Resolution Programs.
(a) Copies of the report shall be available to the public at the Administrative Office of the Courts.
(b) The report shall include:
(i) identification of participating judicial districts and the methods of alternative dispute resolution that are available in those districts;
(ii) the number and types of disputes received;
(iii) the methods of alternative dispute resolution to which the disputes were referred;
(iv) the course of the referral;
(v) the status of cases referred to alternative dispute resolution or the disposition of these disputes; and
(vi) any problems encountered in the administration of the program and the recommendations of the director as to the continuation or modification of any program.
(c) Nothing may be included in a report which would impair the privacy or confidentiality of any specific ADR proceeding.

§ 78B-6-205. Judicial Council rules for ADR procedures

(1) To promote the use of ADR procedures, the Judicial Council may by rule establish experimental and permanent ADR programs administered by the Administrative Office of the Courts under the supervision of the director of Dispute Resolution Programs.

(2) The rules of the Judicial Council shall be based upon the purposes and provisions of this part. Any procedural and evidentiary rules adopted by the Supreme Court may not impinge on the constitutional rights of any parties.

(3) The rules of the Judicial Council shall include provisions:
(a) to orient parties and their counsel to the ADR program, ADR procedures, and the rules of the Judicial Council;
(b) to identify types of civil actions that qualify for ADR procedures;
(c) to refer to ADR procedures all or particular issues within a civil action;

(d) to protect persons not parties to the civil action whose rights may be affected in the resolution of the dispute;
(e) to ensure that no party or its attorney is prejudiced for electing, in good faith, not to participate in an optional ADR procedure;
(f) to exempt any case from the ADR program in which the objectives of ADR would not be realized;
(g) to create timetables to ensure that the ADR procedure is instituted and completed without undue delay or expense;
(h) to establish the qualifications of ADR providers for each form of ADR procedure including that:
(i) an ADR provider may, but need not be, a certified ADR provider pursuant to Title 58, Chapter 39a, Alternative Dispute Resolution Providers Certification Act; and
(ii) formal education in any particular field may not, by itself, be either a prerequisite or sufficient qualification to serve as an ADR provider under the program authorized by this part;
(i) to govern the conduct of each type of ADR procedure, including the site at which the procedure is conducted;
(j) to establish the means for the selection of an ADR provider for each form of ADR procedure;
(k) to determine the powers, duties, and responsibilities of the ADR provider for each form of ADR procedure;
(l) to establish a code of ethics applicable to ADR providers with means for its enforcement;
(m) to protect and preserve the privacy and confidentiality of ADR procedures;
(n) to protect and preserve the privacy rights of the persons attending the ADR procedures;
(o) to permit waiver of all or part of fees assessed for referral of a case to the ADR program on a showing of impecuniosity or other compelling reason;
(p) to authorize imposition of sanctions for failure of counsel or parties to participate in good faith in the ADR procedure assigned;
(q) to assess the fees to cover the cost of compensation for the services of the ADR provider and reimbursement for the provider's allowable, out-of-pocket expenses and disbursements; and
(r) to allow vacation of an award by a court as provided in Section 78B-11-124.

(4) The Judicial Council may, from time to time, limit the application of its ADR rules to particular judicial districts.

§ 78B-6-206. Minimum procedures for arbitration

(1) An award in an arbitration proceeding shall be in writing and, at the discretion of the arbitrator or panel of arbitrators, may state the reasons or otherwise explain the nature or amount of the award.

(2) The award shall be final and enforceable as any other judgment in a civil action, unless:
(a) within 30 days after the filing of the award with the clerk of the court any party files with the clerk of court a demand for a trial de novo upon which the case shall be returned to the trial calendar; or
(b) any party files with the arbitrator or panel of arbitrators and serves a copy on all other parties a written request to modify the award on the grounds:
(i) there is an evident miscalculation of figures or description of persons or property referred to in the award;
(ii) the award does not dispose of all the issues presented to the arbitrator or panel of arbitrators for resolution; or
(iii) the award purports to resolve issues not submitted for resolution in the arbitration process.

(c) The period for filing a demand for trial de novo is tolled until the arbitrator or panel of arbitrators have acted on the request to modify the award, which must be completed within 30 days of the filing.

(3) The parties to an arbitration procedure may stipulate that:
(a) an award need not be filed with the court, except in those cases where the rights of third parties may be affected by the provisions of the award; and
(b) the case is dismissed in which the award was made.

(4)(a) At any time the parties may enter into a written agreement for referral of the case or of issues in the case to arbitration pursuant to Title 78B, Chapter 11, Utah Uniform Arbitration Act, or the Federal Arbitration Act, 9 U.S.C. Sec. 1 et seq., as the parties shall specify.
(b) The court may dismiss the case, or if less than all the issues are referred to arbitration, stay the case for a reasonable period for the parties to complete a private arbitration proceeding.

§ 78B-6-207. Minimum procedures for mediation

(1) A judge or court commissioner may refer to mediation any case for which the Judicial Council and Supreme Court have established a program or procedures. A party may file with the court an objection to the referral which may be granted for good cause.

(2)(a) Unless all parties and the neutral or neutrals agree only parties, their representatives, and the neutral may attend the mediation sessions.
(b) If the mediation session is pursuant to a referral under Subsection 78A-6-108(9), the ADR provider or ADR organization shall notify all parties to the proceeding and any person designated by a party. The ADR provider may notify any person whose rights may be affected by the mediated agreement or who may be able to contribute to the agreement. A party may request notice be provided to a person who is not a party.

(3)(a) Except as provided in Subsection (3)(b), any settlement agreement between the parties as a result of mediation may be executed in writing, filed with the clerk of the court, and enforceable as a judgment of the court. If the parties stipulate to dismiss the action, any agreement to dismiss shall not be filed with the court.
(b) With regard to mediation affecting any petition filed under Section 78A-6-304 or 78A-6-505:
(i) all settlement agreements and stipulations of the parties shall be filed with the court;
(ii) all timelines, requirements, and procedures described in Title 78A, Chapter 6, Parts 3 and 5, and in Title 62A, Chapter 4a, shall be complied with; and
(iii) the parties to the mediation may not agree to a result that could not have been ordered by the court in accordance with the procedures and requirements of Title 78A, Chapter 6, Parts 3 and 5, and Title 62A, Chapter 4a.

§ 78B-6-208. Confidentiality

(1) ADR proceedings shall be conducted in a manner that encourages informal and confidential exchange among the persons present to facilitate resolution of the dispute or a part of the dispute. ADR proceedings shall be closed unless the parties agree that the proceedings be open. ADR proceedings may not be recorded.

(2) No evidence concerning the fact, conduct, or result of an ADR proceeding may be subject to discovery or admissible at any subsequent trial of the same case or same issues between the same parties.

(3) No party to the case may introduce as evidence information obtained during an ADR proceeding unless the information was discovered from a source independent of the ADR proceeding.

(4) Unless all parties and the neutral agree, no person attending an ADR proceeding, including the ADR provider or ADR organization, may disclose or be required to disclose any information obtained in the course of an ADR proceeding, including any memoranda, notes, records, or work product.

(5) Except as provided, an ADR provider or ADR organization may not disclose or discuss any information about any ADR proceeding to anyone outside the proceeding, including the judge or judges to whom the case may be assigned. An ADR provider or an ADR organization may communicate information about an ADR proceeding with the director for the purposes of training, program management, or program evaluation and when consulting with a peer. In making those communications, the ADR provider or ADR organization shall render anonymous all identifying information.

(6) Nothing in this section limits or affects the responsibility to report child abuse or neglect in accordance with Section 62A-4a-403.

(7) Records of ADR proceedings under this chapter or under Title 78B, Chapter 11, Utah Uniform Arbitration Act, may not be subject to Title 63G, Chapter 2, Government Records Access and Management Act, except settlement agreements filed with the court after conclusion of an ADR proceeding or awards filed with the court after the period for filing a demand for trial de novo has expired.

§ 78B-6-209. Dispute Resolution Fund--Appropriation

There is created within the General Fund a restricted account known as the Dispute Resolution Fund. Three dollars of the fees established in Subsections 78A-2-301(1)(a) through (e), (1)(g), and (1)(r) shall be allocated to and deposited in the fund. The Legislature shall annually appropriate money from the Dispute Resolution Fund to the Administrative Office of the Courts to implement the purposes of the Alternative Dispute Resolution Act.

## Judicial Council Rules of Judicial Administration

*Current with amendments received through 2008*

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:

This rule does not apply to the following actions:

(1) Title 26, Chapter 19, Medical Benefits Recovery Act;

(2) Title 62A, Chapter 11, Recovery Services;

(3) Title 78A, Chapter 8, Small Claims Court;

(4) Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer;

(5) Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act;

(6) Title 78B, Chapter 12, Utah Child Support Act;

(7) Title 78B, Chapter 15, Utah Uniform Parentage Act;

(8) Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act;

(9) Title 62A, Chapter 15, Substance Abuse and Mental Health Act;

(10) Rules 65A, 65B and 65C of the Utah Rules of Civil Procedure;

(11) temporary orders requested under Title 30, Husband and Wife;

(12) uncontested matters brought under:

(12)(A) Title 42, Chapter 1, Change of Name;

(12)(B) Title 75, Utah Uniform Probate Code;

(12)(C) Title 78B, Chapter 5, Part 3, Foreign Judgment Act;

(12)(D) Title 78B, Chapter 6, Part 1, Adoption; or

(13) actions pursued by an assignee of a claim.

This rule applies in the district court. Paragraph (6) applies only in judicial districts 2, 3 and 4.

Statement of the Rule:

(1) Definitions.

(1)(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.

(1)(B) “ADR program” means the alternative dispute resolution program.

(1)(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.

(1)(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.

(1)(E) “Court Qualified Mediator” means a mediator who is currently on the Utah Court Approved ADR Roster or who for some reason cannot join the roster due to a conflict of interest but meets all of the requirements to be on the Utah Court Approved ADR Roster.

(1)(F) “Director” means the Director of Dispute Resolution Programs.

(1)(G) “Domestic Mentor” means a mediator who has completed 300 hours in conducting mediation in domestic cases and completed a domestic mentor orientation.

(1)(H) “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.”

(1)(I) “Nonbinding arbitration” means an ADR proceeding in which the award is subject to a trial de novo;

(1)(J) “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 40-hour mediator training requirement for the roster.

(1)(K) “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.

(1)(L) “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:

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

(2)(B) annually prepare and submit the report required by the Utah Code;

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

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

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

(3) Qualification of providers.

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

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

(3)(A)(i)(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;

(3)(A)(i)(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;

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

(3)(A)(i)(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;

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

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

(3)(A)(iv) be recertified annually.

(3)(B) To be included on the roster as a mediator:

(3)(B)(i) all new applicants to the court roster must also have successfully completed at least 40 hours of court-approved basic formal mediation training in the last three years. This training shall be under a single training course from a single, court-approved training provider. The applicant must also complete 10 hours of experience in observing a court qualified mediator conduct mediation, and 10 hours in either conducting mediations singly or co-mediating with a court qualified mediator, or meet such other education, training and experience requirements as the Council finds will promote the effective administration of the ADR program;

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

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

(3)(B)(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.

(3)(C) To be included on the court roster for qualified divorce mediators:

(3)(C)(i) All new applicants to the roster of divorce mediators must also have an additional 32 hours of court-approved training specific to the skills, Utah laws, and information needed to conduct divorce mediation. This training shall be under a single training course from a single, court-approved provider.

(3)(C)(ii) All applicants must have a minimum of 6 hours of training specific to domestic violence and screening for domestic violence which may be included in the court approved 32 hour training referred to above.

(3)(C)(iii) New applicants to the court roster of divorce mediators are required to have acquired experience specific to divorce mediation. This is in addition to the 20 hours of experience required for the court roster of basic mediators. The additional experience includes having observed a minimum of two divorce mediations, co-mediating two divorce mediations and having been observed conducting two divorce mediations. Each of these includes debriefing and analysis afterward with a mediator who has Domestic Mentor status. The Domestic Mentor may charge a fee for this service.

(3)(C)(iv) The Director will maintain and make available a list of those mediators who have Domestic Mentor status.

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

(3)(E) To be included on the roster as a Domestic Mentor, the provider must also have completed 300 hours in conducting mediation in domestic cases and completed a domestic mentor orientation.

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

(3)(F)(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;

(3)(F)(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

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

(3)(G) 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.

(3)(H) 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.

(3)(I) A provider may be sanctioned 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 or state statute. The committee shall inform the public of public sanctions against a provider promptly after imposing the sanction. Private sanctions may include singly or with other sanctions:

(3)(I)(i) admonition;

(3)(I)(ii) re-take and successfully pass the ADR ethical exam.

Public sanctions may include singly or with other sanctions:

(3)(I)(iii) a written warning and requirement to attend additional training;

(3)(I)(iv) require the mediator to allow the Director or designee to observe a set number of mediation sessions conducted by the mediator;

(3)(I)(v) suspension for a period of time from the court roster;

(3)(I)(vi) removal from the court roster.

(3)(J) The committee shall approve and publish procedures consistent with this rule to be used in imposing the sanction. The complainant shall file a written and signed complaint with the director. The director shall notify the provider in writing of the complaint and provide an opportunity to respond. The director may interview the complainant, the provider and any parties involved. Upon consideration of all factors, the director may impose a sanction and notify the complainant and the provider. If the provider seeks to challenge the sanction, 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.

(4)(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 40-hour mediator training requirement

must abide by the following:

(4)(A)(i) Course content requirements:

(4)(A)(i)(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.

(4)(A)(i)(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 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.

(4)(A)(i)(c) Readings. All training programs must provide the participants with copies of Rule 4-510 UCJA, Rule 104 (the ethical code),Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act, and Title 78B, Chapter 10, Utah Uniform Mediation Act. 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.

(4)(A)(i)(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.

(4)(A)(ii) Training Methodology:

(4)(A)(ii)(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.

(4)(A)(ii)(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.

(4)(A)(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:

(4)(A)(iii)(a) Successful completion of a minimum of 40 hours of mediation training.

(4)(A)(iii)(b) Participation in a minimum of 300 hours of mediation acting as the mediator.

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

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

(4)(A)(iii)(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.

(4)(A)(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.

(4)(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.

(6)(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:

(6)(A)(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, 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.

(6)(A)(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.

(6)(A)(iii) All the parties file with the clerk a written agreement signed by counsel and the parties to submit the case to binding arbitration as provided by law.

(6)(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.

(6)(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.

(6)(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:

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

(7)(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.

(7)(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.

(10)(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.

(10)(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).

(11)(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.

(11)(B) The parties may select:

(11)(B)(i) An ADR provider from the roster; or

(11)(B)(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.

(11)(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.

(11)(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.

(11)(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.

## Utah Uniform Arbitration Act

Title 78B, Chapter 11.

*Current through 2008 Second Special Session*

§ 78B-11-101. Title

This chapter is known as the "Utah Uniform Arbitration Act."

§ 78B-11-102. Definitions

As used in this chapter:

(1) "Arbitration organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator.

(2) "Arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.

(3) "Court" means a court of competent jurisdiction in this state.

(4) "Knowledge" means actual knowledge.

(5) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(6) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

§ 78B-11-103. Notice

(1) Except as otherwise provided in this chapter, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

(2) A person has notice if the person has knowledge of the notice or has received notice.

(3) A person receives notice when it comes to the person's attention or the notice is delivered at the

person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

§ 78B-11-104. Application

(1) This chapter applies to any agreement to arbitrate made on or after May 6, 2002.

(2) This chapter applies to any agreement to arbitrate made before May 6, 2002, if all the parties to the agreement or to the arbitration proceeding agree on the record.

§ 78B-11-105. Effect of agreement to arbitrate--Nonwaivable provisions

(1) Except as otherwise provided in Subsections (2) and (3), a party to an agreement to arbitrate or to an arbitration proceeding may waive or, the parties may vary the effect of, the requirements of this chapter to the extent permitted by law.

(2) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:
(a) waive or agree to vary the effect of the requirements of Subsection 78B-11-106(1), 78B-11-107(1), 78B-11-118(1) or (2), or Section 78B-11-109, 78B-11-127, or 78B-11-129;
(b) agree to unreasonably restrict the right under Section 78B-11-110 to notice of the initiation of an arbitration proceeding;
(c) agree to unreasonably restrict the right under Section 78B-11-113 to disclosure of any facts by a neutral arbitrator; or
(d) waive the right under Section 78B-11-117 of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under this chapter, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

(3) A party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or Sections 78B-11-108, 78B-11-115, 78B-11-119, 78B-11-123 through 78B-11-125, 78B-11-130, Subsection 78B-11-104(1), 78B-11-121(3) or (4), or 78B-11-126(1) or (2).

§ 78B-11-106. Application for judicial relief

(1) Except as otherwise provided in Section 78B-11-129, an application for judicial relief under this chapter shall be made by motion to the court and heard in the manner provided by law or rule of court for making and hearing motions.

(2) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under this chapter shall be served in the manner provided by law for the service of a summons in a civil action. Otherwise, notice of the motion must be given in the manner provided by law or rule of court for serving motions in pending cases.

§ 78B-11-107. Validity of agreement to arbitrate

(1) An agreement contained in a record to submit to arbitration any existing or subsequent controversy

arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

(2) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(3) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(4) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

§ 78B-11-108. Motion to compel arbitration

(1) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:
(a) if the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate; and
(b) if the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

(2) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.

(3) If the court finds that there is no enforceable agreement, it may not, pursuant to Subsection (1) or (2), order the parties to arbitrate.

(4) The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

(5) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be made in that court. Otherwise a motion under this section may be made in any court as provided in Section 78B-11-128.

(6) If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(7) If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

§ 78B-11-109. Provisional remedies

(1) Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party

to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

(2) After an arbitrator is appointed and is authorized and able to act:
(a) the arbitrator may issue orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and
(b) a party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

(3) A party does not waive a right of arbitration by making a motion under Subsection (1) or (2).

§ 78B-11-110. Initiation of arbitration

(1) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought.

(2) Unless a person objects for lack or insufficiency of notice under Subsection 78B-11-116(3) not later than the beginning of the arbitration hearing, the person, by appearing at the hearing, waives any objection to lack of or insufficiency of notice.

§ 78B-11-111. Consolidation of separate arbitration proceedings

(1) Except as otherwise provided in Subsection (3), upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:
(a) there are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;
(b) the claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;
(c) the existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and
(d) prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(2) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(3) The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

§ 78B-11-112. Appointment of arbitrator--Service as a neutral arbitrator

(1) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator appointed by the court has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

(2) An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

§ 78B-11-113. Disclosure by arbitrator

(1) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:
(a) a financial or personal interest in the outcome of the arbitration proceeding; and
(b) an existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness, or another arbitrator.

(2) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.

(3) If an arbitrator discloses a fact required by Subsection (1) or (2) to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under Subsection 78B-11-124(1)(b) for vacating an award made by the arbitrator.

(4) If the arbitrator did not disclose a fact as required by Subsection (1) or (2), upon timely objection by a party, the court under Subsection 78B-11-124(1)(b) may vacate an award.

(5) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under Subsection 78B-11-124(1)(b).

(6) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under Subsection 78B-11-124(1)(b).

§ 78B-11-114. Action by majority

If there is more than one arbitrator, the powers of an arbitrator must be exercised by a majority of the arbitrators, but all of them shall conduct the hearing under Subsection 78B-11-116(3).

§ 78B-11-115. Immunity of arbitrator--Competency to testify--Attorney fees and costs

(1) An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.

(2) The immunity afforded by this section supplements any immunity under other law.

(3) The failure of an arbitrator to make a disclosure required by Section 78B-11-113 does not cause any loss of immunity under this section.

(4) In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify, and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of this state acting in a judicial capacity. This Subsection (4) does not apply:
(a) to the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding; or
(b) to a hearing on a motion to vacate an award under Subsection 78B-11-124(1)(a) or (b) if the movant establishes prima facie evidence that a ground for vacating the award exists.

(5) If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of Subsection (4), and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization, or representative reasonable attorney fees and other reasonable expenses of litigation.

§ 78B-11-116. Arbitration process

(1) An arbitrator may conduct an arbitration in a manner the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality, and weight of any evidence.

(2) An arbitrator may decide a request for summary disposition of a claim or particular issue:
(a) if all interested parties agree; or
(b) upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding, and the other parties have a reasonable opportunity to respond.

(3) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the

party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

(4) At a hearing under Subsection (3), a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(5) If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with Section 78B-11-112 to continue the proceeding and to resolve the controversy.

§ 78B-11-117. Representation

A party to an arbitration proceeding may be represented by an attorney.

§ 78B-11-118. Witnesses--Subpoenas--Depositions--Discovery

(1) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

(2) In order to make the proceedings fair, expeditious, and cost-effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

(3) An arbitrator may permit any discovery the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost-effective.

(4) If an arbitrator permits discovery under Subsection (3), the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this state.

(5) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this state.

(6) All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this state.

(7) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this state and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost-effective. A subpoena or discovery-related order issued by an arbitrator in another state must be served in the manner provided by law for service of subpoenas in a civil action in this state and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this state.

(8) Upon stipulation of the parties, or where a statute or the written agreement of the parties provides that discovery shall be conducted in accordance with the Rules of Civil Procedure, an attorney may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding, enforced in the manner for enforcement of subpoenas in a civil action.

§ 78B-11-119. Judicial enforcement of preaward ruling by arbitrator

If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under Section 78B-11-120. A prevailing party may make a motion to the court for an expedited order to confirm the award under Section 78B-11-123, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award under Section 78B-11-124 or 78B-11-125.

§ 78B-11-120. Award

(1) An arbitrator shall make a record of an award. The record must be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

(2) An award must be made within the time specified by the agreement to arbitrate or, if not specified in the agreement, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree on the record to extend the time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

§ 78B-11-121. Change of award by arbitrator

(1) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

(a) on any grounds stated in Subsection 78B-11-125(1)(a) or (c);

(b) if the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or
(c) to clarify the award.

(2) A motion under Subsection (1) must be made and notice given to all parties within 20 days after the movant receives notice of the award.

(3) A party to the arbitration proceeding must give notice of any objection to the motion within ten days after receipt of the notice.

(4) If a motion to the court is pending under Section 78B-11-123, 78B-11-124, or 78B-11-125, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:
(a) on any grounds stated in Subsection 78B-11-125(1)(a) or (c);
(b) if the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or
(c) to clarify the award.

(5) An award modified or corrected pursuant to this section is subject to Subsection 78A-6-119(1) and Sections 78B-11-123, 78B-11-124, and 78B-11-125.

§ 78B-11-122. Remedies--Fees and expenses of arbitration proceeding
(1) An arbitrator may award punitive damages or other exemplary relief if the award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

(2) An arbitrator may award reasonable attorney fees and other reasonable expenses of arbitration if the award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

(3) As to all remedies other than those authorized by Subsections (1) and (2), an arbitrator may order any remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under Section 78B-11-123 or for vacating an award under Section 78B-11-124.

(4) An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.

(5) If an arbitrator awards punitive damages or other exemplary relief under Subsection (1), the arbitrator shall specify in the award the basis in fact justifying, and the basis in law authorizing, the award and state separately the amount of the punitive damages or other exemplary relief.

§ 78B-11-123. Confirmation of award

After a party to an arbitration proceeding receives notice of an award in a matter not pending before a court, the party may petition the court for an order confirming the award. If the notice of award is in a matter pending before the court, the party may file a motion for an order confirming the award. The

court shall issue a confirming order unless the award is modified or corrected pursuant to Section 78B-11-121 or 78B-11-125 or is vacated pursuant to Section 78B-11-124.

§ 78B-11-124. Vacating an award

(1) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:
(a) the award was procured by corruption, fraud, or other undue means;
(b) there was:
(i) evident partiality by an arbitrator appointed as a neutral arbitrator;
(ii) corruption by an arbitrator; or
(iii) misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;
(c) an arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to Section 78B-11-116, so as to substantially prejudice the rights of a party to the arbitration proceeding;
(d) an arbitrator exceeded the arbitrator's authority;
(e) there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising an objection under Subsection 78B-11-116(3) not later than the beginning of the arbitration hearing; or
(f) the arbitration was conducted without proper notice of the initiation of an arbitration as required in Section 78B-11-110 so as to substantially prejudice the rights of a party to the arbitration proceeding.

(2) A motion under this section must be filed within 90 days after the movant receives notice of the award pursuant to Section 78B-11-120 or within 90 days after the movant receives notice of a modified or corrected award pursuant to Section 78B-11-121, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion must be made within 90 days after the ground is known or by the exercise of reasonable care would have been known by the movant.

(3) If the court vacates an award on a ground other than that set forth in Subsection (1)(e), it may order a rehearing. If the award is vacated on a ground stated in Subsection (1)(a) or (b), the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in Subsection (1)(c), (d), or (f), the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in Subsection 78B-11-120(2) for an award.

(4) If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award is pending.

§ 78B-11-125. Modification or correction of award

(1) Upon motion made within 90 days after the movant receives notice of the award pursuant to Section 78B-11-120 or within 90 days after the movant receives notice of a modified or corrected award pursuant to Section 78B-11-121, the court shall modify or correct the award if:
(a) there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

(b) the arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or
(c) the award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

(2) If a motion made under Subsection (1) is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.

(3) A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

§ 78B-11-126. Judgment on award--Attorney fees and litigation expenses

(1) Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment conforming to the award. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

(2) A court may allow reasonable costs of the motion and subsequent judicial proceedings.

(3) On application of a prevailing party to a contested judicial proceeding under Section 78B-11-123, 78B-11-124, or 78B-11-125, the court may add reasonable attorney fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

§ 78B-11-127. Jurisdiction

(1) A court of this state having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

(2) An agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award under this chapter.

§ 78B-11-128. Venue

A motion pursuant to Section 78B-11-106 must be made in the court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which it was held. Otherwise, the motion may be made in the court of any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this state, in the court of any county in this state. All subsequent motions must be made in the court hearing the initial motion unless the court otherwise directs.

§ 78B-11-129. Appeals

(1) An appeal may be taken from:
(a) an order denying a motion to compel arbitration;
(b) an order granting a motion to stay arbitration;

(c) an order confirming or denying confirmation of an award;
(d) an order modifying or correcting an award;
(e) an order vacating an award without directing a rehearing; or
(f) a final judgment entered pursuant to this chapter.

(2) An appeal under this section must be taken as from an order or a judgment in a civil action.

§ 78B-11-130. Electronic Signatures in Global and National Commerce Act

The provisions of this chapter governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464, and supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.

§ 78B-11-131. Effect of chapter on prior agreements or proceedings

This act does not affect an action or proceeding commenced or right accrued before this chapter takes effect. Subject to Section 78B-11-104 of this chapter, an arbitration agreement made before May 6, 2002 shall be governed by the arbitration act in force on the date the agreement was signed.

## Utah Uniform Mediation Act

Title 78B, Chapter 10.

*Current through 2008 Second Special Session*

§ 78B-10-101. Title

This chapter is known as the "Utah Uniform Mediation Act."

§ 78B-10-102. Definitions

As used in this chapter:

(1) "Mediation" means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

(2) "Mediation communication" means conduct or a statement, whether oral, in a record, verbal, or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.

(3) "Mediation party" means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.

(4) "Mediator" means an individual who is neutral and conducts a mediation.

(5) “Nonparty participant” means a person, other than a party or mediator, that participates in a mediation.

(6) “Person” means an individual, corporation, estate, trust, business trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(7) “Proceeding” means:
(a) a judicial, administrative, arbitral, or other adjudicative process, including related prehearing and posthearing motions, conferences, and discovery; or
(b) a legislative hearing or similar process.

(8) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) “Sign” means:
(a) to execute or adopt a tangible symbol with the present intent to authenticate a record; or
(b) to attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate a record.

§ 78B-10-103. Scope

(1) Except as otherwise provided in Subsection (2) or (3), this chapter applies to a mediation in which:
(a) the mediation parties are required to mediate by statute, court, or administrative agency rule or referred to mediation by a court, administrative agency, or arbitrator;
(b) the mediation parties and the mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged against disclosure; or
(c) the mediation parties use as a mediator an individual who holds himself or herself out as a mediator or the mediation is provided by an entity that holds itself out as providing mediation.

(2) The chapter does not apply to a mediation:
(a) relating to the establishment, negotiation, administration, or termination of a collective bargaining relationship;
(b) relating to a dispute that is pending under or is part of the processes established by a collective bargaining agreement, except that the chapter applies to a mediation arising out of a dispute that has been filed with an administrative agency or court;
(c) conducted by a judge who might make a ruling on the case; or
(d) conducted under the auspices of:
(i) a primary or secondary school if all the parties are students; or
(ii) a correctional institution for youths if all the parties are residents of that institution.

(3) If the parties agree in advance in a signed record, or a record of proceeding reflects agreement by the parties, that all or part of a mediation is not privileged, the privileges under Sections 78B-10-104 through 78B-10-106 do not apply to the mediation or part agreed upon. However, Sections 78B-10-104 through 78B-10-106 apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

§ 78B-10-104. Privilege against disclosure--Admissibility--Discovery

(1) Except as otherwise provided in Section 78B-10-106, a mediation communication is privileged as provided in Subsection (2) and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by Section 78B-10-105.

(2) In a proceeding, the following privileges apply:
(a) A mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication.
(b) A mediator may refuse to disclose a mediation communication, and may prevent any other person from disclosing a mediation communication of the mediator.
(c) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant.

(3) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

§ 78B-10-105. Waiver and preclusion of privilege

(1) A privilege under Section 78B-10-104 may be waived in a record or orally during a proceeding if it is expressly waived by all parties to the mediation, and:
(a) in the case of the privilege of a mediator, it is expressly waived by the mediator; and
(b) in the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.

(2) A person that discloses or makes a representation about a mediation communication which prejudices another person in a proceeding is precluded from asserting a privilege under Section 78B-10-104, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

(3) A person that intentionally uses a mediation to plan, attempt to commit or commit a crime, or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege under Section 78B-10-104.

§ 78B-10-106. Exceptions to privilege

(1) There is no privilege under Section 78B-10-104 for a mediation communication that is:
(a) in an agreement evidenced by a record signed by all parties to the agreement;
(b) available to the public under Title 63G, Chapter 2, Government Records Access and Management Act, or made during a mediation session which is open, or is required by law to be open, to the public;
(c) a threat or statement of a plan to inflict bodily injury or commit a crime of violence;
(d) intentionally used to plan a crime, attempt to commit or commit a crime, or to conceal an ongoing crime or ongoing criminal activity;
(e) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator;

(f) except as otherwise provided in Subsection (3), sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a party based on conduct occurring during a mediation; or
(g) subject to the reporting requirements in Section 62A-3-305 or 62A-4a-403.

(2) There is no privilege under Section 78B-10-104 if a court, administrative agency, or arbitrator finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that:
(a) the evidence is not otherwise available;
(b) there is a need for the evidence that substantially outweighs the interest in protecting confidentiality; and
(c) the mediation communication is sought or offered in:
(i) a court proceeding involving a felony or misdemeanor; or
(ii) except as otherwise provided in Subsection (3), a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.

(3) A mediator may not be compelled to provide evidence of a mediation communication referred to in Subsection (1)(f) or (2)(c)(ii).

(4) If a mediation communication is not privileged under Subsection (1) or (2), only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under Subsection (1) or (2) does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

§ 78B-10-107. Prohibited mediator reports

(1) Except as required in Subsection (2), a mediator may not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, administrative agency, or other authority that may make a ruling on the dispute that is the subject of the mediation.

(2) A mediator may disclose:
(a) whether the mediation occurred or has terminated, whether a settlement was reached, and attendance;
(b) a mediation communication as permitted under Section 78B-10-106; or
(c) a mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment.

(3) A communication made in violation of Subsection (1) may not be considered by a court, administrative agency, or arbitrator.

§ 78B-10-108. Confidentiality

Unless subject to Title 52, Chapter 4, Open and Public Meetings Act, and Title 63G, Chapter 2, Government Records Access and Management Act, mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this state.

§ 78B-10-109. Mediator's disclosure of conflicts of interest--Background

(1) Before accepting a mediation, an individual who is requested to serve as a mediator shall:
(a) make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and an existing or past relationship with a mediation party or foreseeable participant in the mediation; and
(b) disclose any known fact to the mediation parties as soon as practical before accepting a mediation.

(2) If a mediator learns any fact described in Subsection (1)(a) after accepting a mediation, the mediator shall disclose it as soon as practicable.

(3) At the request of a mediation party, an individual who is requested to serve as a mediator shall disclose the mediator's qualifications to mediate a dispute.

(4) Subsections (1), (2), (3), and (6) do not apply to an individual acting as a judge or ombudsman.

(5) This chapter does not require that a mediator have a special qualification by background or profession.

(6) A mediator must be impartial, unless after disclosure of the facts required in Subsections (1) and (2) to be disclosed, the parties agree otherwise.

§ 78B-10-110. Participation in mediation

An attorney or other individual designated by a party may accompany the party to, and participate in, a mediation. A waiver of participation given before the mediation may be rescinded.

§ 78B-10-111. International commercial mediation

(1) In this section:
(a) “International commercial mediation” means an international commercial conciliation as defined in Article 1 of the Model Law.
(b) “Model Law” means the Model Law on International Commercial Conciliation adopted by the United Nations Commission on International Trade Law on 28 June 2002 and recommended by the United Nations General Assembly in a resolution (A/RES/57/18) dated 19 November 2002.

(2) Except as otherwise provided in Subsections (3) and (4), if a mediation is an international commercial mediation, the mediation is governed by the Model Law.

(3) Unless the parties agree in accordance with Subsection 78B-10-103(3) that all or part of an international commercial mediation is not privileged, Sections 78B-10-104 through 78B-10-106 and any applicable definitions in Section 78B-10-102 of this chapter apply to the mediation and nothing in Article 10 of the Model Law derogates from Sections 78B-10-104 through 78B-10-106.

(4) If the parties to an international commercial mediation agree under Article 1, Section (7), of the Model Law that the Model Law does not apply, this chapter applies.

§ 78B-10-112. Relation to Electronic Signatures in Global and National Commerce Act

This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act or authorize electronic delivery of any of the notices described in Section 103(b) of that act.

§ 78B-10-113. Uniformity of application and construction

In applying and construing this chapter, consideration should be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 78B-10-114. Application to existing agreements or referrals

(1) This chapter governs a mediation pursuant to a referral or an agreement to mediate made on or after May 1, 2006.

(2) Notwithstanding Subsection (1), on or after May 1, 2007, this chapter governs all agreements to mediate whenever made.

## Alternative Dispute Resolution Providers Certification Act

Title 58, Chapter 39A.

*Current through 2008 Second Special Session*

§ 58-39a-1. Short title

This chapter is known as the "Alternative Dispute Resolution Providers Certification Act."

§ 58-39a-2. Definitions

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1)(a) "Alternative dispute resolution" or "ADR" means the provision of an alternative system for settling conflicts between two or more parties, which operates both independent of or as an adjunct to the judicial-litigation system, through the intervention of a qualified neutral person or persons who are trained to intercede in and coordinate the interaction of the disputants in a settlement process.
(b) "Alternative dispute resolution" or "ADR" includes arbitration, mediation, conciliation, negotiation, mini-trial, moderated settlement conference, neutral expert fact-finding, summary jury trial, and use of special masters and related processes in civil disputes.

(2) "Board" means the Alternative Dispute Resolution Providers Certification Board created in Section 58-39a-3.

(3)(a) "Certified dispute resolution provider" or "certified ADR provider" means a person providing services as a mediator, negotiator, conciliator, or arbitrator who has voluntarily qualified for

certification and is certified under this act or whose certification by another state is recognized by the division in collaboration with the board.
(b) Only Subsection 58-1-501 (1)(e) applies to a certified dispute resolution provider or a certified ADR provider.

(4) "Dispute resolution provider" means a person, other than a judge acting in his official capacity, who holds himself out to the public as a qualified neutral person trained to function in the conflict-solving process using the techniques and procedures of negotiation, conciliation, mediation, arbitration, mini-trial, moderated settlement conference, neutral expert fact-finding, summary jury trial, special masters, and related processes.

(5) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes any one or more of the following:
(a) providing alternative dispute resolution services if there are reasonable grounds to believe any parties to the procedure might affect the impartiality of the ADR provider; and
(b) failure to clearly define the services to be provided, the rules of conduct to govern, the criteria to be applied, or the applicable fees charged.

§ 58-39a-3. Board--Composition--Duties

(1) There is created an Alternative Dispute Resolution Providers Certification Board consisting of seven members who have a demonstrated interest in ADR. The board shall be established by August 1, 1991.
(a) No more than three members may represent any one profession.
(b) The board shall include one attorney, two judges, and four members of the general public who have a demonstrated interest in ADR.

(2) The board shall be appointed and serve in accordance with Section 58-1-201 except number of members and qualifications are governed by this section.

(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203 as applicable to certification.

§ 58-39a-4. Certification and recognition of certification by other states

(1) The division shall issue to individuals qualified under the provisions of this chapter a certificate in the appropriate types of ADR provider as specified under Title 58, Chapter 39a.

(2) The division in collaboration with the board shall establish standards and procedures for authorization of ADR providers certified in other states to practice in Utah.

§ 58-39a-5. Qualifications for certification

Applicants for certification as an alternative dispute resolution provider shall:

(1) submit an application in a form as prescribed by the division;

(2) pay a fee as determined by the department under Section 63J-1-303;

(3) be of good moral character; and

(4) complete a program of education or training, or both, in ADR or have demonstrated sufficient experience in ADR, as determined by the division in collaboration with the board.

§ 58-39a-5.5. Term of certificate--Expiration--Renewal

(1) Each certificate issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.

(2) Each certificate automatically expires on the expiration date shown on the certificate unless renewed by the certified ADR provider in accordance with Section 58-1-308.

§ 58-39a-6. Grounds for denial of certificate--Disciplinary proceedings

Grounds for refusal to issue a certificate to an applicant, for refusal to renew the certificate of a certified ADR provider, to revoke, suspend, restrict, or place on probation the certificate of a certified ADR provider, to issue a public or private reprimand to a certified ADR provider, and to issue cease and desist orders shall be in accordance with Section 58-1-401.

## Governmental Dispute Resolution Act

Title 63G, Chapter 5. Part 1.

*Current through 2008 Second Special Session*

**General Provisions**

§ 63G-5-101. Title

This chapter is known as the "Governmental Dispute Resolution Act."

§ 63G-5-102. Definitions

As used in this chapter:

(1) "Agency" is defined in Section 63G-4-103.

(2) "Alternative dispute resolution" or "ADR" means a process other than litigation used to resolve disputes including mediation, arbitration, facilitation, regulatory negotiation, fact-finding, conciliation, early neutral evaluation, and policy dialogues.

(3) "ADR organization" is defined in Section 78B-6-202.

(4)(a) “ADR provider” means a neutral person who:
(i) meets the qualifications established by Judicial Council rules authorized under Section 78B-6-205; and
(ii) conducts an ADR procedure.
(b) “ADR provider” includes an arbitrator, mediator, and early neutral evaluator and may be an employee or an independent contractor.

(5) “Arbitration” means a private hearing before an ADR provider or panel of ADR providers who hear the evidence, consider the contentions of the parties, and enter a written award to resolve the issues presented.

(6) “Mediation” is defined in Section 78B-6-202.

(7) “Neutral” means a person who holds himself out to the public as a qualified person trained to use alternative dispute resolution techniques to resolve conflicts.

**Part 2. Alternative Dispute Resolution**

§ 63G-5-201. Alternative dispute resolution--Authorization--Procedures--Agency coordinators--Contracts

(1) An agency may use an ADR procedure to resolve any dispute, issue, or controversy involving any of the agency's operations, programs, or functions, including formal and informal adjudications, rulemakings, enforcement actions, permitting, certifications, licensing, policy development, and contract administration only with the consent of all the interested parties.

(2)(a) An agency may develop and adopt an ADR procedure governed by rules, adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(b) In developing and adopting an ADR procedure under Subsection (2)(a), an agency shall consider:
(i) public interest in maintaining open access to and neutrality of an ADR provider or neutral;
(ii) providing a broad selection of ADR providers or neutrals; and
(iii) creating objective criteria for an ADR provider or neutral to become qualified to conduct an agency ADR procedure.

(3) ADR procedures developed and used by an agency must be consistent with the requirements of Title 63G, Chapter 4, Administrative Procedures Act.

(4) ADR procedures are voluntary and may be used:
(a) at the discretion of the agency; or
(b) with an agency that has adopted an ADR procedure under Subsection (2), at the request of an interested party to a dispute.

(5) An agency that chooses to use an ADR procedure shall develop an agreement with interested parties that provides:
(a)(i) for the appointment of an ADR provider or a neutral;
(ii) whose appointment is agreed upon by all parties to the dispute;

(b) specifies any limitation periods applicable to the commencement or conclusion of formal administrative or judicial proceedings and, if applicable, specifies any time periods that the parties have agreed to waive; and
(c) sets forth how costs and expenses shall be apportioned among the parties.

(6)(a) An ADR provider or neutral agreed upon in Subsection (5) shall have no official, financial, or personal conflict of interest with any issue or party in controversy unless the conflict of interest is fully disclosed in writing to all of the parties and all of the parties agree that the person may continue to serve.
(b) An agency may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to develop standards to assure the neutrality of an ADR provider or neutral.

(7) An agreement developed in accordance with Subsection (5) may be included in an enforcement order, stipulation, contract, permit, or other document entered into or issued by the agency.

(8)(a) The administrative head of an agency may designate an employee as the ADR coordinator for that agency.
(b) The agency ADR coordinator shall:
(i) make recommendations to the agency's executive staff on issues and disputes that are suitable for alternative dispute resolution;
(ii) analyze the agency's enabling statutes and rules to determine whether they contain impediments to the use of ADR procedures and suggest any modifications;
(iii) monitor the agency's use of ADR procedures;
(iv) arrange for training of agency staff in ADR procedures; and
(v) provide information about the agency's ADR procedures to the agency's staff and to the public.

(9) In order to implement the purposes of this chapter, an agency may employ or contract with a neutral, an ADR provider, an ADR organization, another agency, or a private entity for any service necessary on a case-by-case basis, on a service basis, or on a program basis.

(10) ADR procedures developed and used under this chapter are subject to the confidentiality requirements of Section 78B-6-208.

**Part 3. Application**

§ 63G-5-301. Effect on other laws

Nothing in this chapter or in the agreements and procedures developed in Section 63G-5-201 shall:

(1) limit other dispute resolution procedures available to an agency; and

(2) deny a person a right granted under federal or other state law, including a right to an administrative or judicial hearing.

*Current with amendments effective 2008*

RULE 101. CONDUCT OF MEDIATION PROCEEDINGS

(a) Selection of Mediator. The mediator shall be selected as provided in Code of Judicial Administration Rule 4-510(11).

(b) Pre-mediation Conference. Within 10 days following selection, and after consultation with the participating parties or their counsel, the mediator shall conduct a pre-mediation conference and schedule the place, date and time of the mediation conference. The pre-mediation conference may be conducted by telephone, with the parties individually, or together. During the pre-mediation conference, the mediator shall inform the parties of their right to withdraw from the mediation process before a final settlement agreement is signed. The mediation conference should be held within 45 days of the pre-mediation conference. The parties may agree to conduct discovery pursuant to paragraph (f). The mediator may request that the parties exchange and/or submit a disclosure statement prior to the mediation conference.

(c) Mediation Conference. The mediation conference shall commence at the place, date, and time agreed upon by the mediator and the parties. All parties shall be present, shall be prepared to discuss, and shall have the authority to fully settle, all relevant issues in the case. The mediator shall conduct the mediation conference and determine the length and timing of sessions and recesses, and the order and manner of presentation of the issues. The mediation conference should proceed in a fashion that furthers the goals of the mediation process, preserves confidentiality, and encourages candor on the part of participating parties. The mediator should serve as a neutral facilitator, assisting the parties in defining and narrowing the issues and encouraging each party to examine the dispute from various perspectives, without undertaking to decide any issue, make findings of fact, or impose any agreement.

(d) Separate Consultation With Parties During the Mediation Conference. During the mediation conference, the mediator may meet or consult separately with one or more participating parties, or may divide the conference into groups of fewer than all the parties. Information disclosed to the mediator on a confidential basis during separate consultation shall not be disclosed to other parties without the disclosing party's consent.

(e) Settlement. In the event that a settlement to all issues is reached during the mediation conference, the participating parties or the mediator shall prepare, and the parties shall execute, a written settlement agreement and promptly file with the clerk of the court any documents appropriate for resolution of the action. In the event that a resolution of less than all of the issues is reached, the parties shall prepare and execute a stipulation concerning those issues that were resolved and identifying those issues that remain in dispute. Upon filing of the stipulation with the clerk, the case shall be withdrawn from the ADR program.

(f) Discovery. Discovery may proceed during the pendency of the mediation proceedings, except as stipulated by the parties. Subpoenas for the production of evidence by nonparties may be issued, served and enforced by the court as provided by the Utah Rules of Civil Procedure.

(g) Termination. If the mediator determines that the parties are unable to participate meaningfully in the process or that a reasonable agreement is unlikely to be achieved, the mediator may suspend or

terminate the mediation process without explanation. The parties may terminate the proceedings at any time.

(h) Absent Parties. Upon written recommendation by the mediator or motion by any party, the court may order absent parties to show cause why they failed to attend the mediation conference and, if appropriate, why sanctions should not be imposed.

(i) Change to Arbitration. At any time prior to the conclusion of the mediation proceedings, the parties may agree to submit the matter to arbitration. Written notice signed by all parties and counsel of such agreement shall be sent to the Director. Selection of an arbitrator shall be governed by Code of Judicial Administration Rule 4-510(11). The parties may by agreement request that the mediator serve as an arbitrator.

(j) No interlocutory appeal may be taken from an order granting or denying a motion to refer a civil action pending on January 1, 1995 to the ADR program.

RULE 102. CONDUCT OF NONBINDING ARBITRATION PROCEEDINGS

(a) Selection of arbitrator(s). The arbitrator(s) shall be selected as provided in Code of Judicial Administration Rule 4-510(11).

(b) Pre-hearing conference.

(1) Scheduling, purposes, and participants. Within 30 days after selection of the arbitrator(s), the arbitrator(s) shall conduct a pre-hearing conference for the purposes of: reviewing the case; assisting the parties in defining and narrowing the issues; determining the scope and timing of any discovery, including the exchange of disclosure statements; reaching a stipulation for admission of facts and documents; identifying witnesses; determining the necessity of subpoenas; and scheduling the arbitration hearing. All participating parties or their counsel shall attend the pre-hearing conference. The arbitration hearing shall be held within 120 days of the date of the pre-hearing conference.

(2) Written and oral testimony. Where appropriate in the course of the pre-hearing conference, the arbitrator(s) shall: encourage the use of stipulations, affidavits, proffers of testimony, written submission of expert opinions, and other timesaving evidentiary tools and procedures; and instruct the parties to limit live testimony, if any, to the resolution of factual disputes and witness credibility issues. The arbitrator(s) also shall instruct the parties that, unless otherwise authorized by the arbitrator(s) or agreed upon by the parties, issues other than those defined in the pre-hearing conference shall not be raised at the arbitration hearing and will not be considered in determining any arbitration award.

(c) Interim procedural orders; continuance. The arbitrator(s) shall have the power to make such interim procedural orders in furtherance of the purposes of the arbitration proceeding and these rules as are deemed necessary and appropriate. Upon motion by any party or its own motion, the arbitrator(s) may continue the arbitration hearing, provided the hearing is commenced within 30 days of the original date set at the pre-hearing conference. Except as to matters of pre-hearing scheduling, or continuance of the arbitration hearing, no party or counsel for a party shall communicate ex parte with the arbitrator(s) concerning the case.

(d) Change to mediation. At any time prior to the conclusion of the arbitration hearing the parties may agree to submit the matter to mediation. Written notice signed by all parties and counsel of such agreement shall be sent to the Director. The mediator may not be the same person as the arbitrator(s) unless the parties by agreement request that one of the arbitrator(s) serves as the mediator.

(e) Exhibits; objections; waiver. Not less than 20 days nor more than 30 days before the arbitration hearing, a party who intends to offer documentary evidence at the arbitration hearing shall serve copies of the exhibits, together with written notice of that party's intention to offer the same, upon all participating parties and the arbitrator(s). Not less than 7 days before the arbitration hearing, each party may serve upon the offering party and the arbitrator(s) written objections to one or more of the exhibits, specifying the exhibit and the specific grounds for objection. Any objections to any exhibit based upon any issue of evidentiary foundation, authentication, or hearsay not served as provided herein shall be deemed to be waived. Each party shall mark all original exhibits and copies prior to the arbitration hearing.

(f) Discovery. Discovery shall be stayed during the pendency of the arbitration proceedings, except as stipulated by the parties. Subpoenas for the production of evidence by nonparties may be issued, served and enforced by the court as provided by the Utah Rules of Civil Procedure.

(g) Record of proceedings. Any participating party, at that party's own expense and upon 5 days notice to the arbitrator(s) and the other participating parties, may make arrangements for stenographic or other non-video recording of the arbitration hearing and cause a transcript to be made of the proceedings, provided that a copy of any such transcript or recording shall be supplied to the arbitrator(s) at no charge. Copies of the transcript or recording shall be made available to all participating parties upon request and at a reasonable expense. Such transcript is not admissible in any subsequent de novo trial, but may be used in connection with a motion to modify or vacate an award. No other disclosure of the transcript or its contents may be made. All transcripts shall be destroyed at such time as an award becomes final or upon a demand for a trial de novo.

(h) Arbitration hearing. The arbitration hearing shall be commenced at the place, date, and time designated and shall be conducted by the arbitrator(s). The arbitrator(s) may administer oaths. If a panel is used, the chair shall preside. The arbitration hearing may proceed in the absence of any party who, after written notice of the scheduling of the hearing, does not appear. At the request of any participating party, non-party witnesses, except when testifying, shall be excluded from the arbitration hearing. The arbitrator(s) shall determine the mode and order of presentation of issues, argument, the testimony of witnesses, and other evidence, limiting the amount of time to which each party is entitled. The burden of proof among the parties shall be allocated and presumptions, if any, shall apply, as if at trial before the court. The arbitrator(s) shall not have the authority to rule on summary judgment motions or other motions pending in the litigation.

(1) Each party to the arbitration proceeding is entitled, in person or through counsel, to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(2) If the arbitrator(s) finds it necessary to make an inspection or other outside investigation, the arbitrator(s) shall designate the date, time and place of the same, and shall notify all parties and counsel, who may be present at such inspection or investigation if desired.

(3) The arbitrator(s) shall specifically inquire of all parties whether they have any further proof to offer or witnesses to be heard. Upon receiving negative replies and if satisfied that the record is complete, the arbitrator(s) shall declare the hearing closed. If post-hearing briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator(s) for the receipt of briefs.

(4) At any time before the award is made, the arbitration hearing may be reopened on the arbitrator's initiative, or for good cause shown upon application of a party. If the reopening is requested to consider additional issues, the reopening may be held only if all parties agree.

(5) If the parties settle the dispute during the course of the arbitration, the arbitrator may set forth the terms of the agreed settlement in an award.

(i) Issues to be decided. Absent a stipulation by all parties, the arbitrator(s) shall make no determination regarding issues not defined at the pre-hearing conference or subsumed therein. Where the arbitrator(s) determines that such other issues must be determined in order to render an award, and the parties agree to determination of such issues, the parties shall be allowed to present any additional evidence and argument as is necessary to resolve such issues.

(j) Evidence; admissibility; applicability of Utah rules of evidence. All oral testimony at the arbitration hearing shall be taken under oath or affirmation. The arbitrator(s) shall determine the admissibility of evidence offered at the arbitration hearing. The arbitration hearing shall be conducted in general conformity with the Utah Rules of Evidence, but the arbitrator(s) may receive evidence otherwise inadmissible if the arbitrator(s) finds the evidence to be relevant and trustworthy and the receipt of such evidence is not unfairly prejudicial to any party against whom it is offered and does not violate any rule of privilege. The arbitrator(s) may take judicial notice of adjudicative facts.

(k) privacy and confidentiality of arbitration proceedings. To protect and preserve the privacy and confidentiality of an arbitration proceeding and the privacy rights of the parties, all proceedings shall be subject to Rule 103, unless all parties have stipulated that the proceeding be open to the public. Any disclosure statements made or prepared incident to any ADR process shall be treated as negotiations in compromise and shall be subject to exclusion as provided in Rule 408 of the Utah Rules of Evidence.

(l) Arbitration award.

(1) The arbitrator(s) shall prepare and file with the clerk of the court an award within 20 days after the conclusion of the arbitration hearing, and shall mail copies of the award to all participating parties and counsel of record and to the Director.

(2) The award shall be in writing, signed by the arbitrator(s), and shall state with particularity the name(s) of the prevailing party or parties, the name(s) of the party or parties against whom the award is rendered, and the precise amount(s) of the award. With respect to monetary relief, the arbitrator(s) may, but is not required to, make findings of fact or otherwise explain the basis of the award. If issues of law are involved, the award shall specify such issues and how they were resolved. Where equitable or other nonmonetary relief is sought, the award shall state with particularity the nature and extent of such relief, if any, found to be an appropriate remedy.

(3) Upon filing of the award, Utah Code Section 78B-6-206 shall apply.

(4) In all matters where a hearing before a judge is required by law, the final arbitration award shall be treated as a stipulation by the parties.

(5) If, upon trial de novo, the party filing a demand therefor has not achieved a better result than provided in the award, such party shall pay all arbitration fees and costs and the attorneys' fees of the other party. The payment obligation that may be imposed pursuant to this paragraph shall not exceed the lesser of 20% of the amount of the original monetary award or $2,000.

(m) No interlocutory appeal. may be taken from an order granting or denying a motion to refer a civil action pending on January 1, 1995 to the ADR program.

RULE 103. CONFIDENTIALITY IN NONBINDING ADR PROCEEDINGS

ADR proceedings shall be conducted in a manner that encourages an informal and confidential exchange among counsel, the parties, and the ADR provider to facilitate resolution of disputes. Unless otherwise directed by the court or by stipulation of all parties, ADR proceedings shall be conducted in private.

(a) Confidentiality in ADR communications. Motions, memoranda, exhibits, affidavits, and other written, oral or other communication submitted by counsel or the parties to the ADR provider pursuant to the requirements of these rules or at the direction, if any, of the ADR provider, shall be confidential and shall not be made a part of the record or filed with the clerk of the court. Neither shall any such communication be transmitted to the judge to whom the case is assigned, except as required elsewhere in these rules.

(b) ADR provider confidentiality. All ADR providers shall preserve and maintain the confidentiality of all ADR proceedings in which they officiate. They shall not disclose to or discuss with anyone, including the assigned judge, any information about or related to the proceedings, unless specifically required elsewhere in these rules. ADR providers shall secure and ensure the confidentiality of ADR proceeding records and shall return them to the submitting parties at the conclusion of the proceeding.

RULE 104. CODE OF ETHICS FOR ADR PROVIDERS

This Code applies to all arbitrators and mediators on the court roster acting pursuant to these rules and Code of Judicial Administration Rule 4-510. A court may impose sanctions against an ADR provider for violations of this Code which raise a substantial question as to the partiality of the arbitrator or a member of the majority of a panel, but a violation of other provisions of this Code does not establish grounds or authority for other judicial review of arbitration awards made under the court-annexed ADR program.

CANON I. ADR PROVIDERS SHOULD UPHOLD THE INTEGRITY AND FAIRNESS OF THE ADR PROGRAM

(a) Alternative Dispute Resolution is an important and proven method for resolving disputes. In order for ADR to be effective, there must be broad public confidence in the integrity and fairness of the process, similar to the confidence the public has in judges who adjudicate cases in the district court of

this state. Like the court's judges, ADR providers serving under the program must observe high standards of ethical conduct so that the integrity and fairness of the process will be preserved. Accordingly, ADR providers should recognize their responsibility to the court, to the public, to the parties, and to all other participants in the ADR processes. The provisions of this Code should be construed and applied to advance these objectives.

(b) For a case that is referred to arbitration or mediation, providers should accept an appointment only if they are in a position to adhere to the specific time limits for arbitration and mediation proceedings preserved by the rules.

(c) After accepting appointment to and while serving as provider for a particular case, an ADR provider should avoid entering into any financial, business, professional, family, or social relationship, or acquiring any financial or personal interest which (1) is likely to affect their impartiality or (2) might reasonably create the appearance of partiality or bias. For a reasonable time after an ADR proceeding has been concluded, the provider should avoid entering into any such relationship, or acquiring any such interest, under circumstances which might reasonably create the appearance that the provider had been influenced in the proceeding by the anticipation or expectation of the relationship or interest.

(d) Providers should conduct themselves in a manner that is fair to all parties and their counsel; they should not be swayed by outside pressure, public clamor, fear of criticism, or self-interest.

(e) Providers should neither exceed the authority delegated to them nor do less than is required to exercise that authority.

(f) Providers should make all reasonable efforts to prevent delaying tactics, harassment of parties or other participants, or other abuse of, or disruption to, the ADR processes.

(g) The ethical objectives of providers begin prior to acceptance of the appointment to a particular case and continue throughout all stages of the proceedings. In addition, wherever specifically set forth in this Code, certain ethical obligations continue even after the award in the case has been made or after the case has been successfully resolved.

(h) A provider should not directly contact a party to solicit the selection of that provider in a particular case if the party is represented by counsel.

(i) A provider should refrain from promises and guarantees of results. A provider should not advertise statistical settlement data or settlement rates.

(j) A provider should accurately represent his/her qualifications. In an advertisement or other communication, a mediator may make reference to meeting state, national, or private organizational qualifications only if the entity referred to has a procedure for qualifying ADR providers and the provider has been duly granted the requisite status.

(k) A provider should have the participants sign a written agreement to mediate their dispute.

(l) A provider should include in the participants' written agreement to mediate a description of their fee arrangement with the provider.

CANON II. DISCLOSURE AND DISQUALIFICATION

(a) When requested to serve, ADR providers should carefully consider prior to accepting a case whether they have:

(1) any financial or personal interest in the outcome of the proceeding;

(2) any existing or past financial, business, professional, family, or social relationships which are likely to affect their impartiality or which might reasonably create an appearance of partiality or bias;

(3) any such relationships which they personally have with any party or its lawyer, or with any individual who may serve as a witness; and

(4) any such relationships involving their families, current employers, partners, or significant business associates.

(b) ADR providers should make a reasonable effort to inform themselves of any interests or relationships of the kind described in paragraph (a).

(c) The obligation to consider interests or relationships described in paragraph (a) is a continuing duty which requires an ADR provider who accepts an appointment to disclose, at any stage of the ADR proceeding, any such interests or relationships which may arise, or which are recalled or discovered.

(d) If relationships or interests exist that may create an impression of partiality or bias, but that, in the judgment of the ADR provider, pose no obstacle to objectively evaluating the case, making an arbitration award, or mediating the matter, then the provider should disclose those interests or relationships as early as possible in the course of the ADR proceedings. Such disclosure should be made to all parties and their attorneys and, where the matter is being arbitrated, to the other arbitrators.

(e) Where any ADR provider determines that existing interests and relationships preclude participation as a provider and constitute grounds for self-disqualification or recusal, the ADR provider should recuse and notify the Director of the recusal.

(f) In the event that a mediator is requested by any party to withdraw, the mediator should do so. In the event that an arbitrator is requested to withdraw by fewer than all of the parties because of alleged partiality or bias, absent a showing of good cause to the contrary, the arbitrator need not withdraw.

CANON III. ADR PROVIDERS SHOULD CONDUCT THE PROCEEDINGS FAIRLY AND DILIGENTLY

(a) ADR providers should conduct the proceedings in an evenhanded manner and treat all parties with equality and fairness at all stages of the proceedings.

(1) Impartial means free from favoritism or bias in word, action or appearance, and includes a

commitment to assist all participants as opposed to any one individual.

(2) ADR providers should guard against bias or partiality based on the participants' personal characteristics, background or performance at the proceeding.

(b) ADR providers should perform their duties diligently and conclude the case as promptly and efficiently as the circumstances reasonably permit, without compromising the interests of justice.

(c) ADR providers should be patient with and courteous to the parties, their attorneys, and any witnesses. They should encourage similar conduct by all participants in the proceedings.

(d) Unless otherwise agreed by the parties, providers should accord to all parties the right to appear in person and to be heard after due notice in writing of the date, time, and place of hearing.

(e) ADR providers should not deny any party the opportunity to be represented by counsel.

(f) Where any party fails to appear, arbitrators may proceed with scheduled ADR proceedings only after ensuring that appropriate written notice was provided to the absent party.

(g) If a panel is selected for arbitration, the chair should permit and encourage all arbitrators to participate equally in the arbitration process.

(h) Mediators shall inform the participants that they may withdraw from mediation at any time and are not required to reach an agreement. However, if the mediation is conducted pursuant to a mandatory mediation program, the mediator shall inform the parties of any participation requirements of that program.

CANON IV. ADR PROVIDERS SHOULD BE FAITHFUL TO THE RELATIONSHIP OF TRUST AND CONFIDENTIALITY INHERENT IN THAT APPOINTMENT

(a) Maintaining confidentiality encourages candor, a full exploration of issues, and the integrity of the ADR program. Ethical standards require strict compliance with the promise of confidentiality as an integral element of the ADR process. Participation as a provider assumes building a relationship with the parties that is based on trust. At no time should any provider use confidential information acquired during ADR proceedings to gain advantage, personal or otherwise, or to adversely affect the interests of any party or any other individual or entity.

(b) The provider should discuss the providers' and the participants' expectations of confidentiality prior to undertaking the process. Prior to undertaking the process the provider should inform the participants of applicable limitations of confidentiality such as statutory, judicial or ethical reporting requirements.

(c) In mediation, the written agreement to mediate should include provisions concerning confidentiality.

(d) ADR providers should not utilize any information disclosed during the ADR processes for private gain or personal advantage. Neither should providers seek publicity from participation in a particular ADR proceeding to enhance their personal or professional position or status.

(e) Unless otherwise agreed by the parties, providers should keep confidential all matters relating to the proceedings and decisions in which they participate. No information about evidence produced, admissions, or stipulations made, legal positions taken, reasons for the amount or nature of all arbitration award, unless set forth therein, or conclusions as to the credibility of any witness should be disclosed to anyone who is not a party to the arbitration proceeding.

(f) No arbitrator is at liberty to inform anyone of, or to discuss with anyone other than the parties and other arbitrators, the award or decision.

(g) Mediators should preserve and maintain the confidentiality of all mediation proceedings. They should not disclose or discuss any information about or related to the proceedings to anyone, including the assigned judge. Mediators should keep confidential from other parties any information obtained in individual caucuses unless the party to the caucus permits disclosure. They should secure and ensure the confidentiality of mediation proceeding records that they do not destroy. They should render anonymous all identifying information when mediation proceeding materials are used for research, training, or statistical compilations.

(h) If subpoenaed or otherwise given notice to testify or to produce documents the mediator should inform the participants immediately. The mediator should not testify or provide documents in response to a subpoena or other notice without an order of the court if the mediator reasonably believes doing so would violate an obligation of confidentiality to the participants.

CANON V. PROHIBITION AGAINST DISCRIMINATION

In their ADR practice, ADR providers should not practice, condone, facilitate, or promote any form of invidious discrimination. ADR providers should be aware of cultural differences and how such differences may affect a party's values and negotiating style. Providers should avoid condoning or displaying stereotypical attitudes toward parties and their attorneys in ADR proceedings.

CANON VI. AN ARBITRATOR SHOULD MAKE DECISIONS IN A JUST, INDEPENDENT, AND DELIBERATE MANNER.

(a) An arbitrator should decide all matters justly, exercising independent judgment; no arbitrator should permit outside pressure to affect or bear upon its decision.

(b) Arbitrators should not delegate the obligation to make an appropriate determination in the case to any other person or authority.

CANON VII. WHEN COMMUNICATING WITH THE PARTIES, ARBITRATORS SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY

(a) In the absence of a stipulation to the contrary, arbitrators should not discuss a case with any party in the absence of any other party, except that they may discuss with a party such matters as setting the time and place of hearings or making other arrangements for the proceedings.

(b) Whenever an arbitrator communicates in writing with one party, that arbitrator or mediator should

at the same time transmit a copy of the communication to each other party and the other arbitrators. Whenever an arbitrator receives from one party any case-related written communication which has not been served on all other parties, that arbitrator promptly should provide the same to the other parties and to the other arbitrators.

CANON VIII. PROCESS AND TERMS OF SETTLEMENT IN MEDIATION

(a) As self-determination is a fundamental principle of mediation, the mediator recognizes that the primary responsibility for the resolution of a dispute and the forging of a settlement agreement rests with the parties and their attorneys if represented. The mediator's obligation is to assist the disputants to reach an informed and voluntary agreement.

(b) Primary responsibility for the resolution of a dispute and the forging of a settlement agreement rests with the parties and their attorneys. The mediator's obligation is to assist the disputants to reach an informed and voluntary settlement. In the course of the mediation process, no mediator shall coerce a settlement or otherwise pressure any party or the attorneys for any party into accepting an agreement. Nor shall any mediator make for any party substantive decisions affecting the matter at issue. Mediators may make suggestions and may draft proposals for consideration by the parties and their attorneys, but all decisions are to be made voluntarily and without duress on the part of the mediator by the parties in consultation with their attorneys.

(c) Mediators should not attempt to usurp or otherwise assume the role of counsel for any party.