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MARYLAND RULES OF CIVIL PROCEDURE

Title 17. ALTERNATIVE DISPUTE RESOLUTION

Chapter 100. PROCEEDINGS IN CIRCUIT COURT

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Rule 17-101. APPLICABILITY.

(a) Generally

The rules in this Chapter apply to all civil actions in circuit court except (1) they do not apply to actions or orders to enforce a contractual agreement to submit a dispute to alternative dispute resolution and (2) other than Rule 17-104, they do not apply to health care malpractice claims.

Committee note: Alternative dispute resolution proceedings in a health care malpractice claim are governed by Code, Courts Article, §3-2A-06C.

(b) Rules Governing Qualifications and Selection

The rules governing the qualifications and selection of a person designated to conduct court-ordered alternative dispute resolution proceedings apply only to a person designated by the court in the absence of an agreement by the parties. They do not apply to a master, examiner, or auditor appointed under Rules 2-541, 2-542, or 2-543.

Source: This Rule is new.

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Rule 17-102. DEFINITIONS.

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

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

Committee Note. Nothing in these Rules is intended to restrict the use of consensus-building to assist in the resolution of disputes. Consensus-building means a process generally used to prevent or resolve disputes or to facilitate decision making, often within a multi-party dispute, group process, or public policy-making process. In consensus-building processes, one or more neutral facilitators may identify and convene all stakeholders or their representatives and use techniques to open communication, build trust, and enable all parties to develop options and determine mutually acceptable solutions.

(b) *Arbitration.*- "Arbitration" means a process in which (1) the parties appear before one or more impartial arbitrators and present evidence and argument supporting their respective positions, and (2) the arbitrators render a decision in the form of an award that is not binding, unless the parties agree otherwise in writing.

Committee Note. Under the Federal Arbitration Act, the Maryland Uniform Arbitration Act, at common law, and in common usage outside the context of court-referred cases, arbitration awards are binding unless the parties agree otherwise.

(c) *Fee-for-service.*- "Fee-for-service" means that a party will be charged a fee by the person or persons conducting the alternative dispute resolution proceeding.

(d) *Mediation.*- "Mediation" means a process in which the parties work with one or more impartial mediators who, without providing legal advice, assist the parties in reaching their own voluntary agreement for the resolution of the dispute or issues in the dispute. A mediator may identify issues and options, assist the

parties or their attorneys in exploring the needs underlying their respective positions, and, upon request, record points of agreement reached by the parties. While acting as a mediator, the mediator does not engage in arbitration, neutral case evaluation, neutral fact-finding, or other alternative dispute resolution processes and does not recommend the terms of an agreement.

(e) *Mediation communication.*- "Mediation communication" means speech, writing, or conduct made as part of a mediation, including communications made for the purpose of considering, initiating, continuing, or reconvening a mediation or retaining a mediator.

(f) *Neutral case evaluation.*- "Neutral case evaluation" means a process in which (1) the parties, their attorneys, or both appear before an impartial person and present in summary fashion the evidence and arguments supporting their respective positions, and (2) the impartial person renders an evaluation of their positions and an opinion as to the likely outcome of the dispute or issues in the dispute if the action is tried.

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

(h) *Settlement conference.*- "Settlement conference" means a conference at which the parties, their attorneys, or both appear before an impartial person to discuss the issues and positions of the parties in the action in an attempt to resolve the dispute or issues in the dispute by agreement or by means other than trial. A settlement conference may include neutral case evaluation and neutral fact-finding, and the impartial person may recommend the terms of an agreement.

[Amended Nov. 1, 2001, effective Jan. 1, 2002.]

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Rule 17-103. GENERAL PROCEDURES AND REQUIREMENTS.

(a) *In general.*- A court may not require a party or the party's attorney to participate in an alternative dispute resolution proceeding except in accordance with this Rule.

(b) *Minimum qualifications required for court designees.*- A court may not require a party or the party's attorney to participate in an alternative dispute resolution proceeding conducted by a person designated by the court unless (1) that person possesses the minimum qualifications prescribed in the applicable rules in this Chapter, or (2) the parties agree to participate in the process conducted by that person.

(c) *Procedure.*-

(1) *Inapplicable to Child Access Disputes.*- This section does not apply to proceedings under Rule [9-205](#).

(2) *Objection.*- If the court enters an order or determines to enter an order referring a matter to an alternative dispute resolution process, the court shall give the parties a reasonable opportunity (A) to object to the referral, (B) to offer an alternative proposal, and (C) to agree on a person to conduct the proceeding. The court may provide that opportunity before the order is entered or upon request of a party filed within 30 days after the order is entered.

(3) *Ruling on Objection.*- The court shall give fair consideration to an objection to a referral and to any alternative proposed by a party. The court may not require an objecting party or the attorney of an objecting party to participate in an alternative dispute resolution proceeding other than a non-fee-for-service settlement conference.

(4) *Designation of Person to Conduct Procedure.*- In an order referring an action to an alternative dispute resolution proceeding, the court may tentatively designate any person qualified under these rules to conduct the proceeding. The order shall set a reasonable time within which the parties may inform the court that (A) they have agreed on another person to conduct the

proceeding, and (B) that person is willing and able to conduct the proceeding. If, within the time allowed by the court, the parties inform the court of their agreement on another person willing and able to conduct the proceeding, the court shall designate that person. Otherwise, the referral shall be to the person designated in the order. In making a designation when there is no agreement by the parties, the court is not required to choose at random or in any particular order from among the qualified persons. Although the court should endeavor to use the services of as many qualified persons as possible, the court may consider whether, in light of the issues and circumstances presented by the action or the parties, special training, background, experience, expertise, or temperament may be helpful and may designate a person possessing those special qualifications.

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Rule 17-104. Qualifications and selection of mediators.

(a) *Qualifications in general.*- To be designated by the court as a mediator, other than by agreement of the parties, a person must:

(1) unless waived by the court, be at least 21 years old and have at least a bachelor's degree from an accredited college or university;

Committee Note: This subsection permits a waiver because the quality of a mediator's skill is not necessarily measured by age or formal education.

(2) have completed at least 40 hours of mediation training in a program meeting the requirements of Rule [17-106](#);

(3) complete in every two-year period eight hours of continuing mediation-related education in one or more of the topics set forth in Rule [17-106](#);

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

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

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

(b) *Additional qualifications - Child access disputes.*- To be designated by the court as a mediator with respect to issues concerning child access, the person must:

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

(2) have completed at least 20 hours of training in a family

mediation training program meeting the requirements of Rule [17-106](#);
and

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

(c) Additional qualifications - Business and Technology Case Management Program cases.- To be designated by the court as a mediator of Business and Technology Program cases, other than by agreement of the parties, the person must:

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

(2) within the two-year period preceding application for approval pursuant to Rule [17-107](#), have completed as a mediator at least five non-domestic circuit court mediations or five non-domestic non-circuit court mediations of comparable complexity (A) at least two of which are among the types of cases that are assigned to the Business and Technology Case Management Program or (B) have co-mediated an additional two cases from the Business and Technology Case Management Program with a mediator already approved to mediate these cases;

(3) agree to serve as co-mediator with at least two mediators each year who seek to meet the requirements of subsection (c) (2) (B) of this Rule; and

(4) agree to complete any continuing education training required by the Circuit Administrative Judge or that judge's designee.

(d) Additional qualifications - Marital property issues- To be designated by the court as a mediator in divorce cases with marital property issues, the person must:

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

(2) have completed at least 20 hours of skill-based training in mediation of marital property issues; and

(3) have observed or co-mediated at least eight hours of divorce mediation sessions involving marital property issues

conducted by persons approved by the county administrative judge, in addition to any observations during the training program.

(e) *Additional Qualifications - Health Care Malpractice Claims* - To be designated by the court as a mediator of health care malpractice claims, other than by agreement of the parties, the person must:

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

(2) have completed as a mediator at least five non-domestic circuit court mediations or five non-domestic non-circuit court mediations of comparable complexity;

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

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

Cross reference: Code, Courts Article, §3-2A-06C (c).

[Amended Nov. 1, 2001, effective Jan. 1, 2002; Nov. 12, 2003, effective Jan. 1, 2004; November ##, 2005, effective January 1, 2006.]

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Rule 17-105. Qualifications and selection of persons other than mediators and neutral experts.

(a) *Generally.*- Except as provided in section (b) of this Rule, to be designated by the Court to conduct an alternative dispute resolution proceeding other than mediation, a person, unless the parties agree otherwise, must:

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

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

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

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

(5) unless waived by the court, have completed a training program that consists of at least eight hours and has been approved by the county administrative judge.

(b) *Judges and masters.*- A judge or master of the court may conduct a non-fee-for-service settlement conference.

[Amended Nov. 1, 2001, effective Jan. 1, 2002; Nov. 12, 2003, effective Jan. 1, 2004.]

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Rule 17-105.1. Neutral experts.

(a) *Definition.*- A "neutral expert" means a person who has special expertise to provide impartial technical background information, an impartial opinion, or both in a specific area.

(b) *Selection.*- When a court-appointed alternative dispute resolution practitioner or one or both of the parties believe that it would be helpful to have the assistance of a neutral expert, the practitioner may select a neutral expert, with the consent of the parties and at their expense, to be present at or participate in the mediation at the request of the practitioner.

(c) *Confidentiality.*-

(1) *Mediation proceedings.*- In a mediation, the provisions of sections (a), (b), and (e) of Rule [17-109](#) apply to the neutral expert.

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

[Added Nov. 12, 2003, effective Jan. 1, 2004.]

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Rule 17-106. Mediation training programs.

(a) *In general.*- To qualify under Rule [17-104](#) (a) (2), a mediation training program must include the following:

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

(2) mediation skills and techniques, including information gathering skills, communication skills, problem solving skills, interaction skills, conflict management skills, negotiation techniques, caucusing, cultural and gender issues, and power balancing;

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

(4) rules, statutes, and practice governing mediation in the circuit courts; and

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

(b) *Child access mediation training.*- To qualify under Rule [17-104](#) (b) (2), a mediation training program must include the following:

(1) Maryland law relating to separation, divorce, annulment, child custody and visitation, child and spousal support;

(2) emotional aspects of separation and divorce on adults and children;

(3) screening for and addressing domestic violence;

(4) introduction to family systems and child development theory; and

(5) inter-relationship of custody and child support.

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Rule 17-107. Procedure for approval.

(a) *Generally.* -

(1) *Filing application.* - A person seeking designation to conduct alternative dispute resolution proceedings pursuant to Rule [2-504](#) in actions other than those assigned to the Business and Technology Case Management Program shall file an application with the clerk of the circuit court from which the person is willing to accept referrals. The application shall be substantially in the form approved by the State Court Administrator and shall be available from the clerk of each circuit court. If the person is applying for designation as a mediator, the application shall be accompanied by documentation demonstrating that the applicant has the qualifications required by Rule [17-104](#). If the person is applying for designation to conduct alternative dispute resolution proceedings other than mediation, the application shall be accompanied by documentation demonstrating that the applicant has the qualifications required by Rule [17-105](#)(a). The State Court Administrator may require the application and documentation to be provided in a word processing file or other electronic format.

(2) *Action on application.* - After any investigation that the county administrative judge deems appropriate, the county administrative judge shall notify each applicant of the approval or disapproval of the application and the reasons for a disapproval.

(3) *Approved lists.* - The clerk shall prepare a list of mediators found by the county administrative judge to meet the qualifications required by Rule 17-104 and a list of persons found by the county administrative judge to meet the qualifications required by Rule [17-105](#)(a). The lists, together with the applications of the persons on the lists, shall be kept current by the clerk and be available in the clerk's office to the public.

(4) *Removal from list.* - After notice and a reasonable opportunity to respond, the county administrative judge shall remove a person from a list for failure to maintain the applicable qualifications of Rule [17-104](#) or Rule [17-105](#)(a) or for other good cause.

(b) *Business and Technology Case Management Program.* -

(1) *Filing application.* - A person seeking designation to conduct alternative dispute resolution proceedings pursuant to Rule [2-504](#)

in actions assigned to the Business and Technology Case Management Program shall file an application with the Administrative Office of the Courts, which shall transmit the application to the Committee of Program Judges appointed pursuant to Rule [16-108](#)(b)(4). The application shall be substantially in the form approved by the State Court Administrator and shall be available from the clerk of each circuit court. If the person is applying for designation as a mediator, the application shall be accompanied by documentation demonstrating that the applicant has the qualifications required by Rule [17-104](#). If the person is applying for designation to conduct alternative dispute resolution proceedings other than mediation, the application shall be accompanied by documentation demonstrating that the applicant has the qualifications required by Rule [17-105](#)(a). The State Court Administrator may require the application and documentation to be provided in a word processing file or other electronic format.

(2) *Action on application.*- After any investigation that the Committee of Program Judges deems appropriate, the Committee shall notify the Administrative Office of the Courts that the application has been approved or disapproved, and if disapproved, shall state the reasons for the disapproval. The Administrative Office of the Courts shall notify each applicant of the action of the Committee and the reasons for a disapproval.

(3) *Approved lists.*- The Administrative Office of the Courts shall prepare a list of mediators found by the Committee to meet the qualifications required by Rule 17-104 and a list of persons found by the Committee to meet the qualifications required by Rule [17-105](#)(a). The Administrative Office of the Courts shall (A) attach to the lists such additional information as the State Court Administrator specifies; (B) keep the lists current; and (C) transmit a copy of each current list to the clerk of each circuit court, who shall make them available to the public.

Committee note: Examples of information that the State Court Administrator may specify as attachments to the lists made pursuant to this subsection include information about the person's qualifications, experience, and background and any other information that would be helpful to litigants selecting a person best qualified to conduct alternative dispute resolution proceedings in a specific case.

(4) *Removal from list.*- After notice and a reasonable opportunity to respond, the Committee of Program Judges shall remove a person from a list for failure to maintain the applicable qualifications of Rule [17-104](#) or Rule [17-105](#)(a) or for other good cause.

[Amended Nov. 12, 2003, effective Jan. 1, 2004.]

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Rule 17-108. Fee schedules.

Subject to the approval of the Chief Judge of the Court of Appeals, the circuit administrative judge of each circuit court may develop and adopt maximum fee schedules for persons conducting each type of alternative dispute resolution proceeding other than on a volunteer basis. In developing the fee schedules, the circuit administrative judge shall take into account the availability of qualified persons willing to provide those services and the ability of litigants to pay for those services. A person designated by the court, other than with the agreement of the parties, to conduct an alternative dispute resolution proceeding under Rule [2-504](#) may not charge or accept a fee for that proceeding in excess of that allowed by the applicable schedule. Violation of this Rule shall be cause for removal from all lists.

[Amended Nov. 12, 2003, effective Jan. 1, 2004.]

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Rule 17-109. Mediation confidentiality.

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

(b) *Parties.*- Subject to the provisions of sections (c) and (d) of this Rule, (1) the parties may enter into a written agreement to maintain the confidentiality of all mediation communications and to require any person present or otherwise participating in the mediation at the request of a party to maintain the confidentiality of mediation communications and (2) the parties and any person present or otherwise participating in the mediation at the request of a party may not disclose or be compelled to disclose mediation communications in any judicial, administrative, or other proceeding.

(c) *Signed document.*- A document signed by the parties that reduces to writing an agreement reached by the parties as a result of mediation is not confidential, unless the parties agree in writing otherwise.

Cross References. See Rule [9-205](#) (d) concerning the submission of a memorandum of the points of agreement to the court in a child access case.

(d) *Permitted disclosures.*- In addition to any disclosures required by law, a mediator and a party may disclose or report mediation communications to a potential victim or to the appropriate authorities to the extent that they believe necessary to help:

- (1) prevent serious bodily harm or death,
- (2) assert or defend against allegations of mediator misconduct or negligence, or
- (3) assert or defend against a claim or defense that because of fraud, duress, or misrepresentation a contract arising out of a mediation should be rescinded.

Cross References: For the legal requirement to report suspected

acts of child abuse, see Code, Family Law Article, §§ 5-705.

(e) *Discovery; admissibility of information.*- Mediation communications that are confidential under this Rule are privileged and not subject to discovery, but information otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its use in mediation.

[Amended Nov. 12, 2003, effective Jan. 1, 2004; Nov. ##, 2005, effective January 1, 2006.]

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MARYLAND RULES OF PROCEDURE

TITLE 9

CHAPTER 200 - Divorce, Annulment, Alimony, Child Support, and
Child Custody

Rule 9-205. Mediation of child custody and visitation disputes.- as Modified

(a) *Scope of Rule.*- This Rule applies to any case under this Chapter in which the custody of or visitation with a minor child is an issue, including an initial action to determine custody or visitation, an action to modify an existing order or judgment as to custody or visitation, and a petition for contempt by reason of non-compliance with an order or judgment governing custody or visitation.

(b) *Duty of court.*-

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

(A) mediation of the dispute as to custody or visitation is appropriate and would likely be beneficial to the parties or the child; and

(B) a properly qualified mediator is available to mediate the dispute.

(2) If a party or a child represents to the Court in good faith that there is a genuine issue of physical or sexual abuse of the party or child, and that, as a result, mediation would be inappropriate, the court shall not order mediation.

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

Cross References.

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

(c) *Scope of mediation.*-

(1) The court's initial order may not require the parties to attend more than two mediation sessions. For good cause shown and upon the recommendation of the mediator, the court may order up to two additional mediation sessions. The parties may agree to further mediation.

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

(d) *If agreement.*- If the parties agree on some or all of the disputed issues, the mediator may assist the parties in making a record of the points of agreement. The mediator shall provide copies of any memorandum of points of agreement to the parties and their attorneys for review and signature. If the memorandum is signed by the parties as submitted or as modified by the parties, a copy of the signed memorandum shall be sent to the mediator, who shall submit it to the court.

COMMITTEE NOTE: It is permissible for a mediator to make a brief record of points of agreement reached by the parties during the mediation and assist the parties in articulating those points in the form of a written memorandum, so that they are clear and accurately reflect the agreements reached. Mediators should act only as scribes recording the parties' points of agreement, and not as drafters creating legal memoranda.

(e) *If no agreement.*- If no agreement is reached or the mediator determines that mediation is inappropriate, the mediator shall so advise the court but shall not state the reasons. If the court does not order mediation or the case is returned to the court after mediation without an agreement as to all issues in the case, the court promptly shall schedule the case for hearing on any pendente lite or other appropriate relief not covered by a mediation agreement.

(f) *Confidentiality.*- Confidentiality of mediation communications under this Rule is Governed by Rule 17-109.

Cross References. For the definition of "mediation communication," see Rule 17-102 (e).

(g) *Costs.*- Payment of the compensation, fees, and costs of a mediator may be compelled by order of court and assessed among the parties as the court may direct. In the order for mediation, the court may waive payment of the compensation, fees, and costs.

Cross References. For the qualifications and selection of mediators, see Rule [17-104](#).

[Added Mar. 5, 2001, effective July 1, 2001.]