

ALTERNATIVE DISPUTE RESOLUTION PLAN

Circuit Court for Anne Arundel County

STATEMENT OF PURPOSE

Resort to the adversary system is frequently not the most cost efficient and expeditious method of resolving civil disputes. For this reason, this Court has a long history of promoting the effective use of various forms of Alternative Dispute Resolution. As part of this ongoing effort to improve the timely and expeditious handling of civil cases, this ADR Plan has been adopted.

It is the policy of this Court to encourage the use of alternative dispute resolution in accordance with Title 17 of the Maryland Rules of Procedure. Early intervention through ADR is encouraged to assist efficient case management and facilitate settlement. Furthermore, in conjunction with this Court's dedication to active judicial case management, the aggressive pursuit of ADR shall be addressed at every appropriate stage in a case including post judgment.

In addition, this court recognizes that the appropriate use of Alternative Dispute Resolution (ADR) will result in the following benefits:

1. increases litigants' options and therefore increases the public's access to justice;
2. provides people an opportunity to participate in the outcome of their disputes;
3. decreases the number of trials and motions;
4. reduces recurring litigation;
5. efficient use of court resources; and
6. saves time and money for the parties and the court.

1. Overview

Pursuant to the provisions of this Courts' Civil DCM Plan, every contested case that is subject to the Civil DCM Plan shall be reviewed by the office of Civil Case Management and selected for either a scheduling conference or for a scheduling order to issue without a Court conference. Part of the management process is a review and assessment of the particular case suitability for various ADR options. Criteria that Case Management will employ to evaluate if ADR will be used and what type will be recommended are: case type (i.e. Motor Tort or Contract), expected duration of trial, attorney and or litigant input as to their desire to engage in ADR, an assessment of the effectiveness of ADR as to that particular case, ADR resources available, as well as other factors. Case Management shall recommend to the DCM Judge that ADR be required by order in certain cases that are not set for a court scheduling conference. (Usually this means the use of a Settlement Conference Officer (SCO), however, in certain cases it could extend to Mediation or Arbitration if requested by the litigants. For cases that are set for a scheduling conference, the Judge or Master who conducts the scheduling conference shall review with counsel and the parties the appropriateness and timing of ADR. At any point in the litigation process parties may request ADR and such requests will be facilitated by Case Management subject to approval of the DCM Judge.

2. Available ADR Resources

This court maintains lists of practitioners qualified by the Administrative Judge in the following ADR processes:

- 1) Settlement Conference Officer Program
- 2) Mediation
- 3) Mediation of Family Cases
- 4) Mediation of Civil Non-Family Cases
- 5) Retired Judges
- 6) Arbitration

The Court may create additional lists for other ADR services as additional ADR resources as developed and/or became available and have been approved by the Bench.

3. Definitions

The Alternative Dispute Resolution processes mentioned in this plan follow the definitions below:

“Alternative Dispute Resolution” means the process of resolving matters in pending litigation through a settlement conference, mediation, arbitration, neutral case evaluation, neutral fact finding, other non-judicial resolution process, or combination of those processes.

“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, in court-referred arbitration is not binding, unless the parties agree otherwise in writing.

“Mediation” means a process in which the parties work with one or more impartial mediators who, without providing legal advice, assist the parties in reaching their own voluntary agreement for the resolution of all or part of their disputes. A mediator may identify issues and options, assist the parties or their attorneys in exploring the needs underlying their respective positions, and assist the parties in embodying the terms of their agreement in a written document. The mediator does not engage in other alternative dispute resolution processes, such as arbitration, neutral case evaluation, or neutral fact-finding and does not recommend the terms of an agreement, unless the parties agree otherwise.

“Mini-trial” means a process, either binding or advisory, in which the parties and their counsel present the case before a panel composed of one representative chosen by each party and one neutral person, to help define issues and explore settlement.

“Retired Judge” means the scheduling of a Pretrial before a retired judge qualified to conduct Pretrial Conferences in accordance with this Courts’ Civil DCM Plan. Retired Judges offer a different perspective than sitting judges because they will not try the case and can offer different settlement perspectives.

“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 settle 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.

“Summary Jury Trial” means an informal settlement process in which jurors hear shortened case presentations and deliver an advisory verdict, which serves as a starting point for settlement negotiations among the parties.

4. General Procedures and Requirements for ADR

The Court may not require a party or the party’s attorney to participate in an alternative dispute resolution proceeding except in accordance with Rule 17–103.

4.1. Scheduling of Civil Settlement Conferences

All civil cases in which an answer, affidavit of service or motion to dismiss has been filed shall be referred to the office of the Civil Case Administrator for the issuance of a scheduling order or an order for a scheduling conference. The Civil Case Administrator may include in any scheduling order recommended the appointment of a Settlement Conference Officer (“SCO”). The parties and counsel shall be required to attend the conference in accordance with the terms of any order issued by this Court. SCO Conferences may be scheduled in the office of the SCO or at such other place as the parties and/or counsel may agree upon. In some cases, the SCO Conference may be conducted in the Courthouse. In the appointment of SCO’s, every effort shall

be made to assign cases in the general practice area of the SCO as well as the general geographical area of the litigants.

4.1.1. Civil Settlement Conference Officer Program

During a scheduling conference, the judge or master may assign a case to be facilitated at a Pre-Trial Conference by a volunteer attorney, retired judge, or visiting judge approved by the County Administrative Judge in accordance with Md. Rule 17-105 to serve as an SCO. Such cases will not be rescheduled for settlement conferences. SCO's assist the parties in reaching settlement of any or all issues. There is no charge to the parties and the service rendered by the attorneys is a recognized Pro Bono contribution. Settlement conference officers have no ongoing involvement in the case.

4.1.2 In Court Settlement Conference Facilitation Program

The Court maintains a panel of volunteer attorneys and retired judges approved by the Administrative Judge who serve as facilitators on the day of the scheduling conference. Facilitators meet with the parties and/or counsel at the request of the Judge or Master conducting the scheduling conference or pretrial conference. Facilitators assist the parties in reaching settlement of any or all issues. There is no charge to the parties. Facilitators have no ongoing involvement in the case. The Court or counsel will prepare any consent orders resulting from a facilitated settlement.

4.1.3 Scheduling Conference Officer Qualifications

To serve as a settlement conference officer, individuals must be approved by the Administrative Judge and meet the criteria established in Md. Rule 17-105. They must:

1. Abide by the *Maryland Standards of Conduct for Mediators, Arbitrators and Other ADR Practitioners* which have been adopted by the Court of Appeals;
2. Submit to periodic monitoring of the settlement conference by a qualified person designated by the Administrative Judge;
3. Comply with the procedures outlined in this DCM Plan;
4. Either (1) 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 (2) 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 Administrative Judge.

4.1.4. Procedure of Approval for a Settlement Conference Officer

A person seeking to conduct ADR proceedings shall file an application with the clerk of the Court. The application shall be substantially in the form approved by the State Court Administrator and shall be accompanied by documentation demonstrating that the applicant has the qualifications listed above (unless the applicant wishes to conduct mediation sessions, in which case the qualifications listed in Section 6.9 should be followed).

4.2. Fee Schedules

Subject to the approval of the Chief Judge of the Court of Appeals, the administrative judge of the Court may develop and adopt maximum fee schedules for persons conducting each type of ADR. In developing the fee schedules, the 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 on the agreement of the

parties, to conduct an ADR proceeding, may not charge or accept a fee for that proceeding in excess of that allowed by the schedule.

4.3. Confidentiality

All parties and persons requested to attend sessions by the settlement conference officers (“SCO’s”) shall maintain confidentiality of the communications in those sessions. Participating parties may agree to enter into a written agreement to maintain the confidentiality of all conference communications. Additionally, the parties and any person present cannot disclose any conference communications at the request of any participating party. All proceedings at the conference, including any statements made or documents prepared for the conference by any a party, attorney, or other participant, are privileged and shall not be disclosed to the trial judge or construed as an admission against interest unless otherwise agreed.

5. Data Gathering

In an effort to ensure the most effective management of cases through the ADR processes, the Court is dedicated to gathering all information on pending cases as effectively as possible. The Court recognizes that this collection process is crucial to provide due attention to all cases brought before it.

6. Mediation Programs

Mediation can save parties time and money while providing them with a forum to determine for themselves solutions that go beyond the scope of the issues contested. Due to the parties’ active participation in resolving their own conflict, mediation often produces more meaningful, customized, enduring outcomes that result in high levels of compliance and satisfaction. Additionally, attending mediation early in the court process, even if agreement is not reached at the mediation session, may increase the likelihood of settlement at every event during the management of the case, significantly reduce the number of motions filed and decrease the likelihood of trial.

6.1 Civil Mediation Program

The Court maintains a panel of mediators available to assist the parties in reaching their own voluntary agreement for the resolution of any or all issues. Mediators are approved by the Administrative Judge as outlined in 3.1.5 below. Mediators are compensated for their services based on fees set by the Administrative Judge in accordance with Md. Rule 17-108 as outlined in 3.1.8 below. Mediators have no on-going involvement in the case.

6.2 Scheduling of Civil Mediation

The Court encourages the early use of mediation in all appropriate cases. During the scheduling conference, if the judge or master deems mediation appropriate, the scheduling order produced will list the name of a mediator from the court-approved list. For all contract cases that do not receive a scheduling conference, mediation will be incorporated into the scheduling orders as permitted in Maryland Rule 17-102. The mediator shall contact the parties or their attorneys within fifteen (15) days of the date of the scheduling order to arrange a date for mediation. The mediation process must be finished at least fifteen (15) days prior to the discovery deadline printed on the scheduling order.

6.3 Mediation Referral

Civil cases may be referred to a court-appointed mediator upon agreement of the parties as part of the Court’s DCM Program. Participation in the program requires attendance at one (1) 2-hour session with a private mediator skilled in the resolution of property issues.

6.4 Scheduling of Domestic Property Mediation

Upon agreement of both parties, the Court will mail a copy of the Order for Mediation to the court-appointed mediator. The mediator shall contact the parties or their attorneys within

fifteen (15) days of the date of the scheduling order to arrange a date for mediation.

Parties will be ordered to complete mediation of all property issues by the time of the Pretrial Conference or another time specified in the Scheduling Order. Both the parties and their counsel may be required to attend the property mediation session at the discretion of the mediator.

6.5 Mediated Domestic Property Agreements

When the parties have been able to reach an agreement on some or all issues, counsel will prepare a written draft of the agreement for signature. In the alternative, the agreement may be incorporated into a Consent Order resolving all outstanding issues in the case and presented to the Court at or before the Pre-trial Conference. The mediator will submit a Property ADR Disposition Form to the Civil Law Case Coordinator within 10 business days of the mediation session.

6.6 Failure to Attend Mediation

If a party, counsel or required insurance representative fails to attend any session of Mediation, the Court will issue a show cause order requiring that party to attend a prompt show cause hearing. At the conclusion of the show cause hearing, the Court may impose monetary sanctions, dismissal of action, enter judgment of default or any other appropriate sanction.

All show cause hearings for failure to attend mediation shall be set before the DCM Judge or designee.

6.7 Costs

Fees for court-approved mediators are set by the Administrative Judge. Mediators may not accept a fee in excess of the set fee, unless agreed to by the parties. Violation is cause for removal as a mediator.

The fee for **civil mediation** is \$150.00 per hour. The full cost for the two-hour session is therefore \$300.00. These costs are split by the parties. Each party must bring \$150.00 in full to the first mediation session.

6.8 Pro Bono Mediation Services

If a party is receiving pro bono legal representation through an approved pro bono program, the fee for mediation is waived and the mediator delivers service pro bono.

If a party is pro se, the fee for mediation may be waived if a Motion for Waiver of Mediation Fee and related documents are filed. When a Motion for Waiver of Mediation Fee is received it will be forwarded to the Administrative Judge for consideration. If an Order Waiving Mediation Fee is entered, the mediator's services shall be provided pro bono.

6.9 Mediator Qualifications

Court-approved mediators meet the criteria approved by the Administrative Judge in accordance with Md. Rule 17-104. Mediators, other than by agreement of the parties, must:

1. Unless waived by the court, be at least 21 years old;
2. Unless waived by the court, have at least a bachelor's degree from an accredited college or university;
3. Have completed at least forty (40) hours of mediation training meeting the requirements of Md. Rule 17-106;
4. Complete in every two-year period eight hours of continuing mediation-related

education in a program meeting the requirements of Rule 17-106;

5. Abide by the Maryland Standards of Conduct for Mediators, Arbitrators and Other ADR Practitioners which have been adopted by the Court of Appeals;
6. Agree to accept a reasonable number of cases on a reduced fee or pro bono basis as requested by the Court;
7. Submit to periodic monitoring of court-ordered meditating by a qualified mediator designed by the Administrative Judge; and
8. Comply with procedures and requirements prescribed in the court's case management plan filed under Rule 16-202(b) relating to diligence, quality assurance, and a willingness to accept a reasonable number of referrals on a reduced-fee or pro bono basis upon request by the court.

7. Arbitration

If the parties agree and request Arbitration as defined in the Maryland Rules, the presiding Judge or Master may Order the parties to attend said Arbitration. Parties that request Arbitration outside of a Court Scheduling Conference are directed by Case Management to the list of Arbitrators kept by the Bar Association. Once an order is filed, the arbitration proceedings must be completed by date certain.

8. ADR Supervision Committee

The Court has a committee in place, consisting of selected judges and lawyers, to periodically review the various methods and rules concerning the ADR process. Should the committee decide any changes are necessary, it will make recommendations to the entire Bench accordingly.

9. ADR for the Business and Technology Program

Should a party desire, a case may be classified under the Business and Technology Case Management Program. After such a designation, potential ADR processes will be discussed at the initial scheduling conference. Should an ADR process be selected, it will be conducted either by the Court or an agreed upon facilitator and shall establish a deadline for its completion. Limited discovery may be ordered to facilitate the ADR process.