

CHAPTER 200. PROCEEDINGS IN CIRCUIT COURT.

Editor's note. — This Chapter was added November 1, 2012, effective January 1, 2013.

Rule 17-201. Authority to order ADR.

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

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

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

Source. — This Rule is derived as follows:
Section (a) is derived from former Rule 17-103 (a) (2012).

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

Rule 17-202. General procedure.

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

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

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

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

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

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

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Committee note. — Examples of the use of indirect designation are referrals of indigent litigants to publicly funded community medi-

ation centers and referrals of one or more types of cases to a mediation unit of the court.

(d) **Discretion in designation.** In designating an ADR practitioner, the court is not required to choose at random or in any particular order from among the qualified ADR practitioners or organizations on its lists. The court should endeavor to use the services of as many qualified persons as practicable, but the court may consider, in light of the issues and circumstances presented by the action or the parties, any special training, background, experience, expertise, or temperament of the available prospective designees.

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

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

ments contained in a scheduling order may be made only by order of the court.

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

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

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

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

(4) **If no objection or alternative filed.** If an objection, alternative proposal, or "Request to Substitute ADR Practitioner" is not filed within the time

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allowed by this section, the order shall stand, subject to modification by the court.

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

(g) Form of Request to Substitute ADR Practitioner

A Request to Substitute ADR Practitioner shall be substantially in the following form:

[Caption of Case]
Request to Substitute ADR Practitioner and
Selection of ADR Practitioner by Stipulation

We agree to attend ADR conducted by _____

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

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

(Signature of Plaintiff)

(Signature of Defendant)

(Signature of Plaintiff's
Attorney, if any)

(Signature of Defendant's
Attorney, if any)

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

I, _____,

(Name of ADR Practitioner)

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

mediation in accordance with Rules 17-103 and 17-105.

ADR other than mediation: _____ [specify type of ADR].

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

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

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

Signature of ADR Practitioner

(h) **Evaluation forms; notification to court.** At the conclusion of an ADR, the ADR practitioner shall give to the parties any ADR evaluation forms

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and instructions provided by the court and promptly advise the court whether all, some, or none of the issues in the action has been resolved.

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

Rule 17-203. Health care malpractice actions.

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

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

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

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

[Caption of Case]

Notice of Selection of ADR Practitioner by Stipulation

We agree to attend ADR conducted by _____

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

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

(Signature of Plaintiff)

(Signature of Defendant)

(Signature of Plaintiff's
Attorney, if any)

(Signature of Defendant's
Attorney, if any)

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

I, _____

(Name of ADR Practitioner)

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

mediation in accordance with Rules 17-103 and 17-105.

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ADR other than mediation: _____ [specify type of ADR].

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

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

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

Signature of ADR Practitioner

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

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

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

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

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

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

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

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Source. — This Rule is new.

Rule 17-204. Neutral experts.

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

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

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

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

Rule 17-205. Qualifications of court-designated mediators.

(a) **Basic qualifications.** A mediator designated by the court shall:

(1) unless waived by the parties, be at least 21 years old;

(2) have completed at least 40 hours of basic mediation training in a program meeting the requirements of Rule 17-104 or, for individuals trained prior to January 1, 2013, former Rule 17-106;

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

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

(5) complete in each calendar year four hours of continuing mediation-related education in one or more of the topics set forth in Rule 17-104;

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

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

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

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

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

(2) within the two-year period preceding an application for approval pursuant to Rule 17-207, have served as a mediator in at least five non-domestic civil

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mediations, at least two of which involved types of conflicts assigned to the Business and Technology Case Management Program.

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

- (1) have the qualifications prescribed in section (a) of this Rule;
- (2) have completed at least 20 hours of skill-based training in mediation of economic issues in divorce and annulment cases; and
- (3) have served as a mediator or co-mediator in at least two mediations involving marital economic issues.

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

- (1) have the qualifications prescribed in section (a) of this Rule;
- (2) within the two-year period preceding an application for approval pursuant to Rule 17-207, have served as a mediator in at least five non-domestic civil mediations, at least two of which involved types of conflicts assigned to the Health Care Malpractice Claims ADR Program;
- (3) be knowledgeable about health care malpractice claims through experience, training, or education; and
- (4) agree to complete any continuing education training required by the court.

Cross references. — See Code, Courts Article, § 3-2A-06C.

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

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

- (A) have the qualifications prescribed in section (a) of this Rule; and
- (B) through experience, training, or education, be knowledgeable about lien instruments and federal and Maryland laws, rules, and regulations governing foreclosure proceedings.

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

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

Rule 17-206. Qualifications of court-designated ADR practitioners other than mediators.

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

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

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

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

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

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

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

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

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

Rule 17-207. Procedure for approval.

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

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

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

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

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

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

(5) Court-approved ADR practitioner and organization lists. The county administrative judge or designee of each circuit court shall maintain a list:

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

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

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

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

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

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

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

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

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

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

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

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

(5) Court-approved ADR practitioner lists. The Administrative Office of the Courts shall maintain a list:

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

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

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

(6) Public access to lists. The Administrative Office of the Courts shall attach to the lists such additional information as the State Court Administra-

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tor specifies, keep the lists current, and transmit a copy of each current list and attachments to the clerk of each circuit court, who shall make these items available to the public.

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

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

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

Rule 17-208. Fee schedules.

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

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

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

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

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