

## **Part 2**

### **Alternative Dispute Resolution Act**

#### **78B-6-201 Title.**

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

Renumbered and Amended by Chapter 3, 2008 General Session

#### **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.

Renumbered and Amended by Chapter 3, 2008 General Session

#### **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 80-3-201 and petitions for the terminations of parental rights under Section 80-4-201; 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.

Amended by Chapter 262, 2021 General Session

**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.
- (4) The Administrative Office of the Courts shall:
  - (a) establish programs for training ADR providers and orienting attorneys and their clients to ADR programs and procedures; and
  - (b) ensure that any training described in Subsection (4)(a) complies with Title 63G, Chapter 22, State Training and Certification Requirements.
- (5) ADR providers and organizations are subject to the rules and fees set by the Judicial Council.
- (6) 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.
- (7)
  - (a) The director shall report annually to the Supreme Court, the Judicial Council, the governor, and the Utah State Bar on the operation of the Dispute Resolution Programs.
  - (b) The director shall provide the report to the Judiciary Interim Committee, if requested by the committee.
  - (c) Copies of the report shall be available to the public at the Administrative Office of the Courts.
  - (d) 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.

- (e) Nothing may be included in a report which would impair the privacy or confidentiality of any specific ADR proceeding.

Amended by Chapter 200, 2018 General Session

**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 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 indigency 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.

Amended by Chapter 272, 2022 General Session

**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.

Renumbered and Amended by Chapter 3, 2008 General Session

**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 in accordance with a referral under Section 80-3-206 or 80-4-206, 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 80-3-201 or 80-4-201:
- (i) all settlement agreements and stipulations of the parties shall be filed with the court;
  - (ii) all timelines, requirements, and procedures described in Title 80, Chapter 2, Child Welfare Services, Title 80, Chapter 2a, Removal and Protective Custody of a Child, Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, and Title 80, Chapter 4, Termination and Restoration of Parental Rights, 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 80, Chapter 2, Child Welfare Services, Title 80, Chapter 2a, Removal and Protective Custody of a Child, Title 80, Chapter 3, Abuse, Neglect, and Dependency Proceedings, and Title 80, Chapter 4, Termination and Restoration of Parental Rights.

Amended by Chapter 335, 2022 General Session

**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 80-2-602.
- (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.

Amended by Chapter 335, 2022 General Session

**78B-6-209 Dispute Resolution Account -- Appropriation.**

There is created a restricted account within the General Fund known as the "Dispute Resolution Account." Five dollars of the fees established in Subsections 78A-2-301(1)(a) through (e), (1)(g), and (1)(s) shall be allocated to and deposited into the Dispute Resolution Account. The Legislature shall annually appropriate money from the Dispute Resolution Account to the Administrative Office of the Courts to implement the purposes of Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act.

Amended by Chapter 74, 2015 General Session