



Alabama Center for Dispute Resolution, Inc.

Alternative Dispute Resolution Procedures In Alabama With Mediation Model



Alabama State Bar
Dispute Resolution Section

ALTERNATIVE DISPUTE
RESOLUTION
PROCEDURES
IN ALABAMA
WITH
MEDIATION MODEL

- A Handbook -

4th EDITION
2015

The Alabama Center for Dispute
Resolution, Inc.
www.alabamaadr.org
and the
Alabama State Bar Dispute Resolution
Section

THIS BOOK IS INTENDED FOR INFORMATIONAL PURPOSES ONLY
AND IS NOT INTENDED FOR USE AS LEGAL ADVICE.

PREFACE

Alternative Dispute Resolution (ADR) continues to offer effective methods for parties to resolve disputes in a timely and efficient manner. In the past 20 years, mediators and arbitrators registered with the Alabama Center for Dispute Resolution have reported the resolution of 90,000 matters and counting! In 2014, Alabama witnessed its first state-wide mediation programs in family law and foreclosure prevention. These programs are examples of how the mediation process can help a broad number of Alabama citizens sharing common issues move forward with their lives. This handbook in its fourth edition remains the definitive guide to ADR in Alabama.

In this handbook, the reader will find explanations of the various forms of ADR and the rules governing each form. A majority of the content focuses on mediation because mediation is the most commonly used form of ADR embraced by practitioners and the courts. However, the use of arbitration for commercial, consumer and employment matters remains acceptable. As such, this handbook includes an arbitration model to aid the parties when an arbitration agreement is silent about the rules governing the arbitration process.

As outgoing Chair of the Alabama State Bar Dispute Resolution Section, I express my appreciation to each of the members of the section and the members of the Alabama Supreme Court Commission on Dispute Resolution for their contributions in revising this handbook.

This handbook would not be possible, but for the tireless efforts of Judy Keegan, Executive Director of the Alabama Center for Dispute Resolution. Judy has been more than a voice of ADR in Alabama, but the heart of “all things ADR” in Alabama. Through her guidance and support, the use of ADR in Alabama has proliferated in such a manner that dispute resolution is no longer “alternative,” but a primary method for resolving disputes. The Section thanks Judy for her dedication and passion to dispute resolution.

The Section trusts this handbook will be a tremendous resource to the public, the bench and the bar as we work together to help people solve legal problems.

Allison O’Neal Skinner, Dispute Resolution
Section, Outgoing Chair

Samuel N. Crosby, Dispute Resolution
Section, Incoming Chair

2015

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I. INTRODUCTION

It is firmly established in our country's judicial structure that trial by jury is the cornerstone of the legal system. Although this system has served us well, many state and federal courts have called for the development of appropriate alternatives to litigation, referred to as alternative methods of dispute resolution (ADR), in an effort to improve the delivery of legal services. Until the 1990's, there were few effective efforts to provide ADR for resolving conflicts. In the last 20 plus years, however, there has been substantial energy expended by both attorneys and judges in Alabama to create a model ADR program for our state court system. A brief review of significant efforts is appropriate here.

ADR Development in Alabama; The Alabama Supreme Court Commission on Dispute Resolution and the Alabama Center for Dispute Resolution

In the early 1990's, the President of the Alabama State Bar created a task force on ADR. In 1992, at the suggestion of the task force, the Alabama Supreme Court adopted, an amendment to Rule 16 of the Alabama Rules of Civil Procedure to provide that after a civil action had been filed, the parties could consider "the voluntary use by all parties of extra judicial procedures to resolve the dispute..." The purpose of this amendment to Rule 16 was to encourage early resolution of pending litigation through voluntary ADR methods. Concurrently, at the recommendation of the task force, the Alabama Supreme Court adopted, the Alabama Civil Court Mediation Rules (Mediation Rules) for implementing mediation as an acceptable and effective ADR method.

The task force expended considerable time during the next two years educating the bar, judiciary and the public about the use and benefits of the mediation process. In 1994, at the request of the task force, the Board of Bar Commissioners transformed the task force into a permanent, standing Committee on Alternative Methods of Dispute Resolution (State Bar Committee on ADR). Now, it has become the Dispute Resolution Section of the Alabama State Bar.

Also in 1994, the Alabama Supreme Court created the Alabama Supreme Court Commission on Dispute Resolution. This diverse Commission is comprised of members appointed by the Alabama State Bar, Alabama Association for Justice, District Court Judges, Alabama Court of Civil Appeals, Governor, Circuit Court Judges, Supreme Court of Alabama, Attorney General, Lt. Governor, Speaker of the House, Senate Pro Tem, Alabama Defense Lawyers, the Alabama Lawyers and At Large Members.

The Commission works to promote mediation in the trial and appellate courts through private and volunteer mediators, to promote peer mediation in the school systems, and to promote community based programs and state agency programs. It assists the community and local bar associations in obtaining information on (ADR) processes and programs. The Commission develops qualification criteria and standards of conduct for mediators and arbitrators, drafts court rules, and addresses funding for implementation of ADR programs. Ethical complaints about mediators and arbitrators are referred to the Commission. In addition, both may ask the Commission, by written request, for opinions on ethical issues. Since its inception, the Commission has dispensed \$300,000 in mini-grants to ADR programs throughout Alabama. The Commission also supervises the Alabama Center for Dispute Resolution.

The Alabama Center for Dispute Resolution, Inc., established in 1994 by the same Supreme Court order as the Commission, is housed in the State Bar headquarters in Montgomery. The Center is a 501(C)(3) non-profit organization which operates as the state office of dispute resolution and the administrative arm of the Commission. Its executive director is the Commission's secretary. The Center provides ADR education and training, publications and programs, maintains mediator, arbitrator and private judges rosters, and assists the courts, bar associations, state agencies, businesses, law schools and universities, and the public in all areas of ADR. The Center keeps statistics on ADR activity in the State of Alabama, but particularly court and private mediation statistics, arbitration and private judges statistics and statistics for ADR programs administered by the Center. A comprehensive Commission and Center website is located at www.alabamaadr.org.

FROM THE COMMISSION: Handbook on ADR

Since the initial publication of this handbook in 1994, we have seen great progress in the field of ADR in Alabama. However, there remains much more to do, especially in educating the general public, businesses and corporations. In an ideal world, individuals, businesses and corporations would think of alternatives to litigation before filing a lawsuit. This handbook is published to help the judiciary, attorneys and the public by providing information and explanations about various ADR processes that are appropriate alternatives to litigation. It serves as a resource for parties seeking ADR services, and offers both a mediation and arbitration model for judges and attorneys.

Advances in the field of ADR in Alabama are ongoing. Meanwhile, both attorneys and judges are more comfortable with alternatives to litigation than they were when we first began. This leads to benefits for every segment of society within our state.

William P. Cobb, II, Chair
H. Harold Stephens, Vice Chair
Judith M. Keegan, Secretary
Alabama Supreme Court Commission on Dispute Resolution

2015

II. ALTERNATIVES TO TRADITIONAL LITIGATION: THE PROCESSES

Disputants in any given conflict are generally free to develop mutually acceptable ADR approaches to accommodate their particular dispute. Practice has spawned innumerable variations, and more than one approach may be combined to resolve the dispute. The procedures described in this handbook are, therefore, only a starting point.

MEDIATION

Mediation is a private process in which a neutral third party, the mediator, assists disputing parties in reaching a mutually acceptable agreement to their dispute. Mediation sessions are intended to identify pertinent issues, clarify any misunderstandings, and seriously explore agreement between the parties. The mediator does not render a decision or impose a solution on any party; rather, the mediator facilitates discussions among the parties to assist them in resolving the dispute themselves. When parties agree on a solution, it is written in a document that parties sign, and becomes a binding agreement.

Rule 11 of the Alabama Civil Court Mediation Rules is clear that mediation is private and confidential. The mediator and the parties must maintain, to the extent required by law, the confidentiality of information disclosed during the mediation.

Guidelines for utilizing the mediation process are provided in the Mediation Model section of this handbook.

Any type of private dispute or civil action, including negligence, products liability, landlord-tenant, construction, contracts, divorce, family, discrimination, employment, environment, personal and real property, and wrongful death is suitable for mediation. Recently, discovery disputes and certain types of criminal matters have been resolved through mediation.

The Alabama State Court Mediator Roster is located at www.alabamamediators.org and a user may look for a mediator by name, by selecting a county from the county map of Alabama and viewing all mediators listed in that county or who will travel to that county, or by selecting a subject area specialization and receiving a list of mediators who mediate in that area of specialization.

ARBITRATION

Arbitration is a private process where the dispute is submitted to a neutral third party during a hearing. The hearing is less formal than at court, and usually conducted in a room with tables for the parties and the arbitrator. Parties may represent themselves in arbitration or have an attorney. The parties present their respective evidence and arguments to the arbitrator (or panel of arbitrators) who later issues a written decision called an "award." Arbitration takes the place of a trial before a judge or jury. The arbitrator's award will not establish legal precedent or principle. Pre-hearing discovery tends to be limited and may be denied entirely. Arbitration is generally binding, and the basis for appealing awards are few and narrow (See 9 U.S.C. §10, and case law). Arbitration awards are ultimately enforceable by court order.

Arbitration agreements, often found in pre-printed consumer contracts with banks, credit card companies, real estate brokers, manufacturers, automobile dealers, financial service providers, labor-management agreements, and employment contracts, require that parties to the contract submit their dispute in binding arbitration, rather than in court before a judge or jury. Commercial businesses often have arbitration clauses in their contracts with other business. Arbitration is the dispute mechanism of choice for labor and construction disputes, and is used ever more frequently for employment disputes. In addition, arbitration is used for conflicts in health care, energy, insurance, Olympic and professional sports, securities, intellectually property and in the international arena.

Written agreements to arbitrate future disputes in contracts that involve interstate commerce may be enforceable in accordance with the Federal Arbitration Act (FAA, 9 U.S.C. §§ 1-16). Written agreements to arbitrate existing disputes may be enforceable in accordance with Alabama Statutes, case law, and the FAA. The FAA is enforceable in both State and Federal courts.

Parties may tailor arbitration to their own needs; for example, they may agree to combine arbitration with another ADR process such as mediation (mediation/arbitration or Med/Arb), or may elect advisory arbitration. Even without a pre-existing contract to arbitrate, parties in litigation may agree to use arbitration, stipulating whether the decision will be binding or non-binding.

Any private dispute or civil action is appropriate for arbitration. The Alabama Arbitrator Roster is located at www.alabamiarbitrators.org and is searchable by name of arbitrator, county or subject matter expertise.

CONSUMER ARBITRATION

As mentioned above, arbitration agreements are often found in pre-printed consumer contracts for all sorts of purchases and services. The consumer either makes the purchase or buys the service with the agreement, or the consumer goes elsewhere in search of a deal without an arbitration clause. Most commonly, arbitration clauses are found in consumer loan documents, credit card applications, automobile purchase agreements, stock broker contracts, home purchase documents, computer and other equipment purchases (usually in the box with the equipment), nursing home contracts, and in service agreements for repairs of many items. They are also commonly found in employment agreements. Rules and costs for consumer arbitration vary.

For example, if the arbitration clause designates the American Arbitration Association (AAA) as the arbitration administrator, and a consumer files for arbitration, AAA will charge the consumer \$200. The business respondent, generally, will pay the remainder of the costs, and AAA will apply their consumer rules in the arbitration. Consumer arbitration may take different forms. In desk arbitration, parties submit their arguments and evidence to the arbitrator in writing. The arbitrator then makes an award based on the documents. No hearing is held. In a telephone hearing, the parties have the opportunity to tell the arbitrator about the case during a conference call. Often this is done after the parties have sent documents to the arbitrator for review. A telephone hearing can be easier than an in person hearing. At an in-person hearing the parties and the arbitrator meet in a conference room or office and the parties present their evidence in a process that is similar to going to court. However, an in-person hearing is not as formal as court. Generally, consumers are not prohibited from seeking relief in a small claims court for disputes or claims within the scope of its jurisdiction. Consumer cases are appropriate for arbitration.

LAST-OFFER ARBITRATION

When a dispute involves a monetary claim or questions of value, parties may prefer to submit their last demand and last offer to the arbitrator, authorizing that person to select one or the other, and agreeing to be bound by the selection. This is called last-offer arbitration.

Any private dispute or civil action is appropriate for last-offer arbitration.

MED/ARB

In Med/Arb, parties begin with mediation then use binding arbitration if they have not been able to come to agreement during the mediation session.

Any private dispute or civil action is appropriate for Med/Arb.

ARB/MED

Arb/Med begins with arbitration, but at the conclusion of the process the award is not disclosed to the parties. The parties then mediate the dispute, having acquired a full knowledge of the issues, and of each side's position and the relative strengths and weaknesses involved. If the mediation is unsuccessful, the arbitrator's award is then entered.

Any private dispute or civil action where factual issues need to be resolved prior to mediation is appropriate for Arb/Med.

MEDALOA

MEDALOA combines the advantages of mediation and last-offer arbitration. Parties agree to first engage in mediation. If unable to settle on some monetary amount between their positions, they submit their final demand and final offer to the neutral. The neutral must pick one position or the other, not something in between. This reduces the overall risk to the parties of the decision being outside their negotiated range or expectations.

Any mediation where parties wish to mediate, and if unsuccessful have a final monetary decision made by a neutral third party within an expected range, is appropriate for MEDALOA.

NEGOTIATION

In negotiation, the most commonly used ADR process, the parties and/or their attorneys typically communicate directly about issues they would like to clarify or resolve. No neutral third party is involved.

Any private dispute or civil action is appropriate for negotiation.

EARLY NEUTRAL EVALUATION

Early neutral evaluation (ENE) is a non-binding process in which a neutral person with experience in litigating the type of matter in dispute, usually an attorney or retired judge, reviews the case with the litigants and their attorneys and candidly assesses the strengths and weaknesses of their relative positions. The evaluation provided by the ENE evaluator will often educate the unrealistic client or attorney and promote a frank exchange of information and settlement discussions. In cases where ENE does not result in settlement, significant value may nevertheless be realized by focusing on the issues, narrowing the scope of discovery, and promoting a more realistic expectation for clients and their attorneys.

Most civil cases, including products liability, personal injury/wrongful death, antitrust, breach of contract, and insurance coverage, fraud, bad faith issues are appropriate for early neutral evaluation.

FACT-FINDING

In fact-finding, a neutral third party reviews information submitted by the parties, and/or conducts independent research regarding the facts and submits findings to the parties (or perhaps to the court). Fact-finding may be used in almost any situation where factual issues are unresolved; it may be used to resolve a single factual issue, or all outstanding issues in a dispute. The neutral may be a subject matter expert selected for his or her special knowledge. Factual findings may be binding or non binding.

Most private disputes or civil actions where facts are in dispute are appropriate for fact-finding.

PARTNERING

Partnering is a process designed to help parties prevent future disputes, and may be appropriate in situations where multiple parties need to work toward a common end, and want to prevent disputes from interfering. The parties involved in a project or contract come together with a neutral facilitator to discuss how to achieve the goals of the project, where conflicts might occur, and how to address them so they do not become full-blown disputes.

Partnering was developed for construction projects where it is still most commonly used. It is also used in land planning and by state and federal agencies to negotiate regulations with interested parties (often called “reg-neg” for negotiated rulemaking).

Any project with multiple participants will benefit from partnering.

MINI-TRIAL

The mini-trial process is most often used to resolve complex business disputes. It may be employed both in and out of the judicial context. It is typically structured to be confidential and non-binding.

The process involves an informal presentation of the case before a senior management representative of each party and before a third-party neutral advisor who may function as a mediator. The disputants present the case (within an agreed-upon time frame), then the management representatives attempt to negotiate a resolution of the dispute, drawing upon the advice and opinion of the neutral advisor/mediator. The neutral is often an attorney with expertise in the specific technical, legal or business areas in controversy.

The mini-trial allows management representatives to focus on reaching business solutions that are in the best interest of their respective companies.

Any complex or technical case being litigated in the subject matters of patent/copyrights, antitrust, environment, government contracts and business contracts will benefit from the mini-trial.

SUMMARY JURY TRIAL

The summary jury trial essentially is a confidential, abbreviated proceeding, typically one-half to one day in length, in which litigating parties present their evidence and summarize their arguments to a judge and a “mock” jury. (The jurors typically are selected from the regular jury panel, through limited voir dire, and are usually not informed of the advisory nature of their decision until after it is reached) Live testimony is generally excluded; rather, testimony of witnesses are presented through attorney summation, by affidavit or through videotapes.

The purpose of the proceeding is to provide the disputants with insight into how a jury would view their cases, without incurring the full expense of a trial. Each of the parties is given a specified time in which to present and summarize his respective position, after which the jury is provided an abbreviated explanation of the applicable law from the presiding judge. Typically, the parties agree beforehand that the jury’s “verdict” will be non-binding. The verdict may be a consensus verdict or may be represented by the individual comments of the jurors. Following the return of the advisory verdict, the parties are free to negotiate a resolution with the assistance, if appropriate, of the presiding judge or a private mediator. The summary jury trial allows the opposing sides to hear and analyze both sides of the case and usually results in settlement by the parties.

Those cases involving complex issues such as products liability, environmental contamination, civil RICO, securities fraud, patent infringement, cases involving multiple parties, or cases requiring the adjudication of the standard of “reasonableness,” such as negligence, are appropriate for summary jury trial.

COLLABORATIVE PRACTICE

Collaborative Practice is a consensual dispute resolution process in which parties settle legal conflicts without resort to litigation. In Collaborative Practice, the parties sign a collaborative participation agreement describing the nature and scope of the matter, and agreeing to voluntarily disclose all information which is relevant and material to the issues to be resolved. Communications made during the collaborative process are, by agreement and by law, privileged from disclosure in discovery or as evidence in a court of law or other tribunal. The parties agree to use good faith efforts in their negotiations to reach a mutually acceptable settlement. Each party is represented by a lawyer whose representation terminates upon the undertaking of any contested court proceeding; and the parties may engage mental health and neutral financial professionals whose engagement also terminates upon the undertaking of any contested court proceeding.

In Collaborative Practice, core elements form the parties’ commitments to this process, which are to:

- Negotiate a mutually acceptable resolution without having courts decide issues.
- Maintain open communication and information sharing.
- Create shared solutions acknowledging the highest priorities of all.

On January 1, 2014, the Uniform Collaborative Law Act went into effect in Alabama. Ala. Code 1975 §§ 6-6-26.1-26.21 (2014). On February 9, 2015, the Alabama Supreme Court enacted the procedural rules which keep collaborative communications confidential. Ala. R. Priv. in Coll. L. Prac. 1-4.

Collaborative Practice is similar to mediation in that both focus on information gathering, goal identification, and option development before solution. Both use interest based approaches to negotiation, and see client self-determination as a guiding principle. Both rely heavily on active listening, reframing, and emotional acknowledgements.

However, despite the similarities, Collaborative Practice differs from Mediation in several key aspects. Collaborative Practice has an express contract provision which requires full disclosure, and makes the collaborative professionals the guardians of the process. Collaborative Practice prohibits simultaneous litigation, an aspect which affects the leverage, options and type of discussion present in the process. Indeed, it completely aligns the clients' interests and the lawyers' interest in resolving the matter. Collaborative involves the inclusion of other collaboratively trained professionals, who are instrumental in dealing with communication, mental health and emotional issues. By using a team approach to manage conflict and achieve resolution, Collaborative engages the professionals with the appropriate skills needed to work through the issues presented by a particular conflict – legal issues are handled by lawyers, financial issues by neutral financial experts, and emotional issues are dealt with by the mental health professionals.

PRIVATE JUDGING

Alabama is one of several states to implement private judging. This means if you have a domestic relations, tort, contract, or combination tort/contract case, there is a procedure for you to select a judge, and within a short time have the case heard. Ala. Code §12-17-350 et seq. (1975, as amended). Private judging is designed to quickly resolve issues, and to provide a judge with expertise in the subject area of the case.

The website www.alabamaprivatejudges.org contains an on-line roster that provides names, expertise and information about judges that meet statutory requirements. Those requirements include (1) have been, but are not actively serving as a judge of a district or circuit court and have served in the capacity of judge for at least six consecutive years; (2) are admitted to the practice of law in Alabama; (3) are an active member in good standing of the Alabama State Bar Association; (4) are a resident of Alabama. The case must be one over which the court in which the former judge served would have had subject matter and monetary jurisdiction.

Once parties have agreed that hiring a private judge will be helpful, and have selected a judge from the roster, then all parties to the action must file a written petition with the circuit clerk of the court in which the action is pending requesting a private judge and naming the selected judge. The petition must be accompanied by a form signed by the private judge consenting to the appointment. This petition may be filed contemporaneously with the filing of the action, or at any time after the action has been filed, but before the beginning of trial. The filing fee is \$100.

The clerk of the court will forward the petition to the presiding judge of the circuit of the pending case who will enter an order granting the petition and appointing the private judge.

A trial by private judge is conducted without a jury. The judge has the same powers as the judge of a circuit court, and has judicial immunity. All proceedings are of record, are filed with the clerk of the circuit court, and are made available to the public. The Alabama Rules of Civil Procedure apply. An appeal from an action or judgment of a private judge is taken in the same manner as any appeal from the circuit court of the county where the

case if filed. The private judge has access to all pleadings and docket entries as would any judge.

A private judge may hear your case at any time or place in Alabama, and will provide the clerk with date, time and place of hearing at least three days before the proceeding. Compensation for a private judge is by contract with the parties, and will include costs of any personnel, facilities, or materials.

III. ADR AND ITS ADVANTAGES

Legal conflict is inevitable. In general, the traditional litigation process often results in prohibitive costs, time and hardship to the parties in the resolution of a dispute. Even then, the final result is often unsatisfactory. ADR processes, usually involving a neutral third party, are available to provide productive conflict resolution. ADR offers a number of optional procedures which, when properly employed, usually result in a faster and more satisfactory resolution. An ADR process may be appropriate at any time during the life of the dispute, even before a lawsuit is filed.

It should be noted that many of the advantages of ADR may not be available to participants in binding arbitration. Binding arbitration is often adversarial in nature and retains many of the characteristics of trial. The arbitrator makes a decision for the parties, who give up control of the ultimate outcome. Arbitration may offer limited discovery and may not include all of the parties necessary for resolution of the dispute. The appeal of an arbitrator's award is very limited, and the arbitrator's award will not establish legal precedent or principle. Consequently, binding arbitration may not be appropriate in every instance, and should be commenced only upon due consideration of the various aspects of this ADR procedure.

Except for binding arbitration, the various ADR methods offer a wide array of advantages:

Self Determination/Personal Control - Unlike litigation, ADR allows the parties substantial control over all aspects of the resolution of their dispute. The parties identify the issues to be resolved and set the timetable for resolving the dispute. Moreover, rather than have a result forced upon them by a judge or jury, parties in ADR are free to craft a unique solution that fits their circumstances and satisfies their needs. Even in arbitration, parties have some control over the process.

Cost Savings - ADR may permit disputants to avoid some of the expense of litigation, including attorney fees, expert witness fees, and other costs associated with protracted litigation and appeals.

Expeditious Resolution - Because of the large number of cases filed, court disposition of a civil case often takes a year or more, then an appeal looms as a possibility. The likelihood of resolving a conflict expeditiously is far greater with ADR than with traditional judicial disposition. This may be particularly important in time-critical disputes. The time savings afforded by ADR also minimizes the overhead expense incurred by the parties, their staff, and personnel.

Voluntary and Non-Binding Status - ADR is not intended to replace the judicial system, but instead functions as an aid to the system. All forms of ADR except binding arbitration are voluntary and non-binding, unless the parties agree otherwise. Those parties who are dissatisfied with the results retain the right to proceed with traditional trial and appeal procedures.

Qualified Neutrals - ADR participants select the neutral. This helps to ensure that an experienced, qualified neutral will facilitate the resolution of any technical or complex case.

Satisfactory Resolution - The “all or nothing” premise of the common law generally results in at least one of the parties to a lawsuit losing, and being dissatisfied. The voluntary nature of ADR advances the prospect that where agreement is reached between the parties, each party is likely to be more content with the results.

Reduced Emotional Trauma - Litigation is, by its nature, adversarial. Often, litigants are not prepared to deal with emotional strain and pressure of protracted litigation. ADR affords a means of resolving disputes in an atmosphere which is less hostile or adversarial than a courtroom.

Enhanced Accessibility - The expense of litigating disputes through the courts is frequently so substantial that only those persons or companies with considerable means can pursue resolution of their disputes to completion. ADR will frequently be more accessible to most disputants because the expenses associated with ADR are generally far less.

Preservation of Relationships - ADR techniques allow the parties to a dispute the opportunity to avoid the “blood letting” which accompanies many types of litigation. This may be particularly important where the parties are involved in personal, professional, or commercial relationships which they desire to maintain.

Privacy - Except in unusual circumstances, trials in the judicial system are open to the public, with the testimony and evidence becoming a matter of public record. ADR enables the parties to maintain confidentiality in the proceedings.

Judicial Economy - Utilization of ADR techniques affords the court system more opportunity to concentrate on “high impact” litigation and public policy disputes. Issues are often narrowed in ADR with litigation available for those not settled.

Reality Awareness - Parties to traditional litigation often have unrealistic expectations about their cases. The neutral third person is able to question and challenge these unrealistic expectations, and hopefully assist the parties in developing more realistic expectations. Disputants with realistic expectations of their cases often are more likely to reach reasonable settlements.

Informal Proceeding - ADR is more informal than traditional litigation. As a result, ADR typically affords the disputants the opportunity to participate personally in the proceedings rather than forcing them to participate only through their attorneys and only in compliance with court rules.

Flexibility - There are several standard ADR procedures, such as mediation and arbitration (binding and non-binding). All ADR procedures may be combined and modified to meet the particular needs of the disputants. Thus, ADR affords a high degree of flexibility, a benefit not available in the traditional judicial system.

IV. ADR WORKS

In instances where participation in ADR does not result in an immediate settlement, the parties' efforts are not wasted because the participation often prompts a later settlement of the dispute. Even if the disputants continue with traditional litigation, it is likely that participation in ADR will contribute positively to the development of the case. ADR processes encourage participants to narrow the issues, and to identify and address their most fundamental concerns. Litigation that follows ADR therefore tends to be more focused and efficient.

WHEN ADR IS MOST EFFECTIVE

ADR can be particularly effective in the following circumstances:

1. Traditional processes do not ensure the issues will be determined efficiently among the disputants.
2. Value of the disputed issue itself is lost due to the potential cost and disruption to both sides in a trial by judge or jury.
3. Disputants desire to avoid publicity.
4. Disputants wish to maintain or re-establish a professional or personal relationship.
5. Parties desire a quick resolution of the dispute.
6. Subject matter of the dispute involves complexities that may be understood and managed most effectively by a neutral with knowledge and expertise in the area rather than by a judge or jury.
7. Dispute involves numerous factual issues.

ADR may not be as effective when any of the following circumstances is present:

1. Disputants prefer for strategic reasons to litigate.
2. Parties perceive a need to establish a precedent or develop a policy for future disputes.
3. Constitutional issues are involved.

V. MEDIATION MODEL

A. EVALUATION OF CASES FOR POTENTIAL MEDIATION

At an early stage – even before filing a lawsuit – attorneys and disputing parties should consider whether their dispute is appropriate for mediation. If appropriate, parties should then mediate before filing to see if issues are resolvable without a law suit. However if a law suit is filed prior to evaluation for mediation, parties may subsequently request mediation at the first hearing during which the attorneys for both parties are present, or post discovery at a scheduled pretrial or settlement conference. One of the fundamental premises in evaluating a case for mediation is that both parties are willing to enter into the process in a good faith effort to resolve their dispute. This may save clients time and money.

While there are no specific guidelines that determine what types of cases are appropriate for mediation, there are some general concepts that should be considered. For example, when the disputing parties have an ongoing relationship such as buyer/seller, franchisor/franchisee, next door neighbors, parents who are divorcing and have children, or a family-owned business or professional partnership, or other similar situations, mediation may be appropriate to help preserve the relationship. In addition, a dispute between two companies over a contract interpretation might be better resolved in a “businesslike” manner through mediation, where the parties retain control of the result, rather than going to court where the outcome is uncertain. Mediation affords privacy to the disputing parties and often produces settlement, thereby saving the time and expense associated with litigation. Obviously, there are also cases that may not be appropriate for mediation, such as claims involving questions of constitutional law, cases seeking a presidential result, and disputes in which only a trial will satisfy the parties.

If the disputing parties have not requested mediation, during the pretrial conference the judge may inquire if mediation has been considered. Rule 16(c) (7) of the Alabama Rules of Civil Procedure allows this, as does Federal Rules of Civil Procedure. The judge should recognize that neither attorney may want to be the first to suggest mediation. The judge, in this event, should strongly suggest benefits of mediation. If the parties decide to use the mediation process, then an order referring the case to mediation should be entered (see Example Form No. 3).

B. FUNDAMENTALS OF MEDIATION

1. General

Mediation is a voluntary process where parties meet with a neutral third party to facilitate in-depth settlement discussions.

2. Function of Mediators

Mediators may be experts in the areas of the law or in the facts which are the

subjects of the dispute, but this is not a requirement. Mediators should have training in the techniques and goals of mediation. The Alabama Rules of Civil Procedure set out requirements for mediators who mediate for Alabama courts in Rule 4, “Qualification of a Mediator.” Alabama has standards for mediation training and for registration on the Alabama State Court Mediator Roster. These are available from the Alabama Center for Dispute Resolution or at the website: www.alabamaadr.org.

The role of the mediator is to facilitate discussion among parties in order to assist the parties in identifying the underlying issues and in developing a creative and responsive settlement package. Mediators do not make findings of fact, they do not make recommendations to the court, nor do they render decisions.

C. MEDIATION PROCEDURE

1. Eligible Cases

Any civil dispute may be mediated.

2. Timing of Mediation

- A. At any time by agreement of the parties
(See Example Form No. 1);
- B. By the court, on motion of one or both of the parties
(See Example Form No. 2); or
- C. By suggestion of the court.
(The parties should understand that they still retain the right to withdraw from mediation at any time).

See, Al. Statutes 6-6-20.

3. Selection /Appointment of a Mediator

Rule 4 of the Alabama Civil Court Mediation Rules states: “In court-ordered mediation, the mediator shall have those qualifications required by statute or by the Alabama Supreme Court Mediator Registration Standards....” While Alabama Statute 6-6-20 does not recite mediator qualifications, the Alabama Mediator Roster registration standards are clear about the amount of training, education, and good character requirements mediators in Alabama must have.

- a. When a case is appropriate for mediation, the parties may select the mediator by agreement. A roster of trained Alabama mediators is available at www.alabamamediators.org or by calling (334) 269-0409 and asking for the Alabama State Court Mediator Roster. Additionally, all judges have a copy of the Roster to help parties locate a mediator in their county. The parties should notify the court of the name and address of the person selected by the parties to serve as mediator.

- b. If the parties have not agreed on a mediator at the time of the request for referral to mediation, or within any court specified period of time, the court may appoint a mediator. Alternatively, the court may provide a list of three names of proposed mediators. These names shall be selected from the Alabama State Court Mediator Roster. Each party shall strike one name leaving one remaining name. This strike procedure is suitable for a simple two-party case. In cases of multiple parties, the court may need to expand this strike procedure to include more names. It may be suitable to add one name for each additional party.
- c. If the court appoints the mediator, it should determine the mediator's availability and promptly send its orders of appointment to the parties and the mediator.

4. Stay of Proceedings

When the court orders mediation, it may stay judicial proceedings including all discoveries. For good cause, the court may extend the stay. See, Rule 2, Alabama Civil Court Mediation Rules.

5. Neutrality of the Mediator

The mediator's first duty is to determine if he or she has any personal or financial interest in the dispute, or social or other relationships with the parties, their attorneys or their attorneys' law firms that will cause his or her neutrality to be questioned or will prohibit him or her from serving as mediator. The mediator shall promptly disclose this information to the parties. The mediator should disclose information about prior mediations with the same attorney or members of his or her law firm. In addition, he or she shall disclose information about mediation of any dispute related to the issues in the case. See, Standard 5(b)(1) of the Alabama Code of Ethics for Mediators, and Rule 4, Alabama Civil Court Mediator Rules for guidelines.

If, based on the disclosures, a party or attorney requests the mediator withdraw, the mediator should withdraw. If court appointed, he or she must report the withdrawal to the court.

The mediator's duty to disclose is a continuing duty. See Standard 5 (b)(6) of the Alabama Code of Ethics for Mediators.

6. Scheduling the Mediation

Once the mediator makes appropriate disclosures, the mediator should arrange the time and place for the mediation, and contact the parties. If court appointed, the mediator will schedule the mediation within the time ordered by the court, or if the court did not specify a time, within 30 days from the date of the court's order of appointment.

7. Written Submissions to the Mediator

Before the mediation, each party may be asked to send a short memorandum to the mediator that states his or her legal and factual positions about the issues in dispute. The mediator may request more information such as pleadings, motions and discovery materials. Generally, the parties' memoranda are confidential; however, the parties may agree to share them.

8. Pre-mediation Conference: Case by Case Customization

The mediator may arrange a pre-mediation conference if the memoranda raise matters that require clarification or explanation, or for any other reason the mediator believes will make the mediation successful. This is the perfect time to tailor the mediation process to the needs of the parties and the dispute. The timing of the mediation, whether to have opening statements, the exchange of information, are all elements that can be customized to the dispute.

9. Attendance at the Mediation

It is essential that persons with final settlement authority personally attend the mediation or be reasonably available to discuss settlement during the mediation session. Usually, parties and their attorneys should personally attend the mediation, and they should be prepared and authorized to discuss all relevant issues. When a party is an entity or when an insurance company represents a party's interest, an authorized representative of the party or the insurance company, with full authority to settle, should attend. Any party not represented by an attorney may be assisted by people of his or her choice. In family mediations it is not uncommon for the parties to attend without their attorneys. See, Rule 6, Alabama Civil Court Mediation Rules.

Mediation sessions are private, and the mediator and the parties must preserve appropriate confidentiality. Individuals other than the parties and their representatives may attend, but only with the consent of all parties and the mediator. See, Rule 10, Alabama Civil Court Mediation Rules.

10. The Mediation Setting

Mediation usually takes place in a conference room with several secondary conference rooms available as caucus rooms. Usually the rooms are comfortable and refreshments available for participants. Breaks in the negotiation are allowed so that parties and attorneys may have time to think about and consider various options.

11. Time and Place of Mediation

The parties and the mediator should agree on the time of the mediation session. The session shall be at any convenient location agreeable to the mediator and the parties, or as ordered by the court.

12. Safety

ADR processes are mostly safe for all involved, but there have been a few incidents of violence at mediation in the past few years. Fortunately for us, we now have some recommended guidance that can be used by practitioners and provider organizations to up the physical safety of participants. The Association for Conflict Resolution, Taskforce on Safety in ADR has given us ADR Safety Planning: Recommended

Guidance. The recommendations and protocols in this 16 page document provide good information to all who practice in the ADR arena. It is located at the Association's website. There are excellent suggestions about site safety and finding out about disputants past history and discussions. Alabama has a statutory requirement that, "a mediator who receives a referral or order from a court to conduct mediation shall screen for the occurrence of domestic or family violence between the parties." §6-6-20 (f) Code of Alabama 1975. Actually, this screening practice is a good idea for all civil cases, not just family, and the recommendations are helpful in all cases.

13. Procedure at Mediation

- a. The initial mediation session and subsequent sessions, if necessary, are informal. The mediator should conduct the process to aid the parties in settling some or all the issues in dispute.
- b. The mediator may hold separate meetings or private caucuses with any party or counsel. However, the mediator shall not disclose information discussed in the caucus to any other party or counsel unless permitted by the party and representative in the caucus.
- c. With consent of the mediator, the parties may produce witnesses to give the mediator and the parties more information about the disputed issues. The mediator may decide the manner that a witness will present information, and if appropriate, the manner in which the parties may informally question any witnesses. In general, however, witnesses do not appear at mediation.
- d. When appropriate, the mediator may get expert advice about technical aspects of the dispute if the parties agree and assume the expenses of hiring the expert. The parties or the mediator will arrange for hiring the expert, as determined by the mediator.
- e. If the parties fail to settle after reasonable efforts, or if the parties request, the mediator may suggest a settlement proposal the mediator believes is reasonable. The parties may consider the proposal and discuss it with the mediator.
- f. A party may terminate the mediation at any time after the initial mediation session. The mediator may also terminate the mediation. See, Rule 13, Alabama Civil Court Mediation Rules. See also, Standard 3(b), Alabama Code of Ethics for Mediators.
- g. If the court ordered the mediation, the mediator should report the results of the mediation to the court. Example Form No. 4 states the limited information the mediator should give the court. In general, court ordered mediations are terminated by filing with the court (1) notice that the parties have executed a signed settlement agreement or (2) a written declaration signed by the mediator stating that further efforts at mediation will not resolve the dispute; or (3) a written declaration signed by a party or parties or their attorney, stating that the mediation process is terminated. See Rule 13 (a)(1)-(2) of the Alabama Civil Court Mediation Rules

- h. If the parties settle, the mediator or attorney for a party will prepare the settlement agreement. Settlement agreements are signed, and the parties should be informed that they are entering an agreement that they intend to be binding and enforceable by the court.

14. Confidentiality

The entire mediation process, including all information produced in whatever form, is confidential. By mediating the dispute, the parties agree to preserve that confidentiality, and if court ordered, the parties are bound by the confidentiality provision in Rule 11, Alabama Civil Court Mediation Rules. Exceptions appear at 11(b)(3) of Rule 11 and are acknowledged in §6-6-25 Code of Alabama(1975), the Mediator Confidentiality Act. Neither the parties nor the mediator will disclose information disclosed during the mediation process. See, Mediator Confidentiality Act, 2008. (The parties, counsel, and the mediator may, however, respond to confidential inquiries or surveys by people authorized by the court to evaluate the mediation program, provided the inquiries or survey remain confidential and do not identify particular cases.).

The parties will treat the mediation as a compromise negotiation for settlement purposes under the Alabama Rules of Evidence, and under Rule 11(a) – (d), Alabama Civil Court Mediation Rules.

D. MISCELLANEOUS ADMINISTRATIVE PROVISIONS

1. No Record

No record is made of the mediation proceedings.

2. Mediator's Fee and Other Expenses

- a. Mediator's fee. A mediator shall be paid at a reasonable rate agreed to by the parties or as set by Rule 2, Alabama Civil Court Mediation Rules, or the court if mediation is court ordered. The parties will equally bear the mediator's fee unless they agree to a different arrangement, or unless the court directs otherwise.
- b. Other Expenses. The party producing a witness will bear the witness's expenses. The parties will equally bear all other expenses of mediation. The expenses may include necessary travel and other reasonable expenses of the mediator, the expenses of any witness consulted by the mediator, and the cost of any expert advice or other information produced at the direct request of the mediator. The parties may agree to a different arrangement, or the court may order otherwise.

IV. ARBITRATION MODEL

A. Arbitration Clauses in Contracts: Pre-dispute Arbitration Agreements

Business transactions everywhere rely on contracts to memorialize the deal to which parties have agreed. This includes business to business contracts as well as business to consumer contracts. Occasionally, problems or disputes will develop over these transactions. Knowing this, businesses have been adding dispute resolution clauses to their contracts so that everyone will know what to do when a dispute arises and how disputes are to be handled. One clause frequently used is the pre-dispute arbitration provision. It may be used in combination with mediation, obligating parties to participate in multi-step dispute resolution, or stand alone, as the method parties have selected to settle the dispute. Consumers may not know much about arbitration, but when they sign contracts with arbitration clauses, they are selecting arbitration as the method of resolving disputes with the business.

An example of a contract clause that parties use to provide for arbitration of future disputes might look like the following (from the American Arbitration Association website www.adr.org): “Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial (or Consumer, or whichever rules applies) Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.” Besides telling parties who will administer the arbitration and what rules will be used, the clause might tell parties how to initiate the arbitration process, who bears the cost, where arbitration will be conducted, and what state law will apply.

B. Arbitration After a Dispute Arises

After a dispute arises, parties may agree to submit the dispute to arbitration. They may choose to have it administered by an organization such as AAA, JAMS, or National Arbitration Forum, or they may decide on non administered arbitration. If they choose the latter, they might select the arbitrator from a roster, or pick someone they know. They can also decide what rules they will use, how many depositions each side will complete, how many witnesses they will call, where they will arbitrate, and how long the arbitration will continue. In truth, they can fashion the arbitration hearing as they wish.

C. Fundamentals of Arbitration

Arbitration was used regularly to resolve disputes involving family, personal, business and international conflict for several thousand years prior to the advent of the American legal system. For example, Moses used it for resolving disputes during Israel’s 40 years in the wilderness (Exodus 18:13-26). In the 18th Century, business men preferred arbitration over courts to help resolve disputes using industry standards. George Washington included an arbitration clause in his will to handle any dispute that unhappily might arise. During the 1920’s, when there was unionization of the workforce in the United States, statutory arbitration became popular. New York was the first state to enact a modern arbitration

statute. In 1925 the United States Congress passed the Federal Arbitration Act, 9 U.S.C. Sections 1-16. The popularity of arbitration as a dispute resolution process has moved beyond industrial relations in the 20th and the 21st Centuries to patent, copyright, and trademark disputes, to professional sports and the Olympics, to construction, to international commercial disputes, and to consumer disputes.

Arbitration is different from litigation in several ways. It is private, less formal, and conducted outside the public eye. Parties pick a time and a place that is convenient for them. They also pick the decision maker(s), a neutral third party who may or may not be an expert in the subject matter of their dispute. Additionally, parties retain more control over the process of arbitration than is ever possible with litigation. They decide how long the hearing will be, whether and how many witnesses will be called, whether briefs will be submitted. In the arbitration clause itself, parties may set standards for the arbitrator, the rules to be followed, the law or customs of the trade to be applied. Finally, parties pay the costs of arbitration, including the arbitrator's fee and any other expenses.

Arbitration is similar to litigation in that the parties, when they submit the case for arbitration, lose control of the outcome. The arbitrator will make a win-lose decision for the parties, just like a judge. Parties may, just like in court, maintain some security by deciding the high-low of the award before the decision. Additionally, parties may settle the case at any time before the arbitrator renders the award.

D. The Arbitration Process

1. **Initiation of the Process**

Arbitration is initiated by a demand for arbitration under a pre-dispute clause contained in a contract, or it is initiated by voluntarily submitting the dispute to arbitration after the dispute arises. Arbitration may also be initiated by court order upon motion of either party or upon the court's own motion.

2. **Pre-Hearing Matters**

In this phase, all persons involved are identified, and may include parties, witnesses, attorneys, consultants. Then the arbitrator or arbitrators are selected depending on the instructions in the arbitration clause or by agreement of the parties. As part of that process, parties will want to research the background of the arbitrator, determine any arbitrator conflict of interest and secure disclosures, and learn the arbitrator's fees. Parties will select the location of the arbitration hearing, and date and time of the hearing.

3. **Preliminary Hearing**

The preliminary hearing is conducted by the arbitrator, at his discretion or at the request of either party, and is attended by the parties and the arbitrator. It may be beneficial in more complex cases, but is frequently used, and often by conference call. Things that might be dealt with during the preliminary hearing include: clarifying issues, claims and counterclaims; identifying parallel cases; identifying all essential parties, attorneys, witnesses, any affiliated, related or successor persons or entities; identifying who will be at the hearing and the hearing length; the filing of exhibits; exchanging information between parties. Other tasks

might include ruling on evidence, stipulating uncontested facts, scheduling the production of documents and the extent of production, handling discovery issues. Parties and arbitrator may also discuss the necessity of written briefs.

4. Evidentiary Hearing

This hearing is usually conducted with parties and arbitrator present, unless it is a telephone hearing or paper hearing. Parties present their cases to the arbitrator. The format is similar to trial, and usually includes arbitrator's opening statement, claimant's opening statement, and respondent's opening statement. Afterwards, the claimant presents his case with witness testimony and introduction of exhibits. The respondent may cross examine the witnesses, and arbitrator may ask questions. The respondent then presents his case, witnesses, and exhibits, and the claimant will cross. Claimant will then make a closing statement or summation, as will respondent. The arbitrator may then require post hearing briefs. Any on-sight inspections or investigations may be conducted by the arbitrator at the request of a party or upon the arbitrator's determination with the knowledge of the parties.

5. Post Hearing Briefs

These briefs are optional and are submitted at the arbitrator's request.

6. Arbitrator's Award

The arbitrator's award is made in writing prior to the deadline determined by the procedural rules being followed, or by the agreement of the parties. The award terminates the arbitrator's role and authority and the arbitration proceedings.

7. Confirmation of the Award

A motion is filed in the court of competent jurisdiction by the party receiving the award, and is rendered a judgment.

E. Advantages & Benefits

1. Private and confidential

Arbitration is confidential and proceeding details cannot be disclosed, even in subsequent litigation. The arbitrator is bound by professional ethics and procedural rules to maintain confidentiality. Discovery is limited in type and scope. Only those persons with an interest in the dispute or a witness may attend the proceeding.

2. Voluntary

Arbitration is voluntary by agreement of the parties in the form of a pre-dispute arbitration clause in a written contract. However, a consumer may not be able to use the services or goods of a supplier unless he agrees to sign a contract with an arbitration agreement. In this situation, arbitration is not as voluntary as with commercial parties. Arbitration is also voluntary if parties agree to arbitrate when a dispute arises.

3. **Efficient**
Arbitration is not affected by crowded dockets, and thus is usually quicker than waiting for a trial date. There is an opportunity for an early resolution of the dispute, as parties may schedule at the first available date agreeable to parties and arbitrator. There is less focus on technical procedure, and more focus on the merits.
4. **Less Formal than Trial**
Strict rules of evidence are not applied at the hearing, and in general, the formal rules of civil procedure are not applicable unless parties have agreed to use them. There is no requirement for a written transcript of the proceedings or formal pleadings, or motions, or discovery. The arbitrator may question the witness personally or may inspect the site involved in the dispute.
5. **Cost Effective**
In general there will be less legal costs and less personal and staff time in the use of arbitration rather than litigation.
6. **May be Used to Settle a Variety of Disputes**
Commercial contracts, construction, securities, sports, IP, labor, insurance, consumer disputes are all arbitrable.
7. **Parties Have More Control Than in Litigation**
Parties select the date, time and place of the evidentiary hearing, as well as selecting the arbitrator who may have subject matter expertise. Parties determine the scope of the arbitrator's authority, the type of relief to be awarded, the deadline for rendering the award, the agenda of the arbitration proceeding, procedural rules that will be followed, and select the issues to be arbitrated.

F. Potential Disadvantages

1. The arbitrator may not be required to have a legal background, nor is the arbitrator always bound by substantive law.
2. The arbitration proceeding is not required to have a complete record, as in court.
3. The arbitrator's interpretations of the law may not be subject to judicial review.
4. The opportunity for appeal and the power to vacate an award are limited.
5. The arbitration process lacks some of the procedural safeguards available in traditional court litigation.
6. The award does not set a precedent.

III. FEDERAL COURT ADR

For cases pending in the federal courts, it is necessary to check with the court about the procedures for ADR. The following federal courts have rules, plans or procedures on the use of ADR in civil actions:

CIRCUIT COURT

United States Court for Appeals for the Eleventh Circuit
Kinnard Mediation Center
56 Forsyth Street, NW
Atlanta, GA 30303

Mediators are on staff at the Court of Appeals in the Kinnard Mediation Center.
To schedule mediation or for information: (404) 335-6260 fax: (404) 335-6270

DISTRICT COURT

U. S. District Court of the Northern District of Alabama
1729 5h Avenue North
Birmingham, Al. 35203

The Northern District has an ADR plan and panel of neutrals. To obtain an application to be on the panel and a copy of their Local Rules and ADR Plan (which included panel qualifications), the link is <http://www.alna.uscourts.gov/alternative-dispute-resolution-plan>. Or call the clerk's office (205) 278-1700.

U.S. District Court for the Middle District of Alabama

United States Courthouse
P. O. Box 711
Montgomery, Al. 36101

The Middle District has a section of its website <http://www.almd.uscourts.gov/getSearch.cfm> dedicated to mediation in the Middle District, and there are timelines for notifying the judge. The mediator will be a judicial officer—which usually means the magistrate that is also assigned to the case. See, Local Rule 16.2 for more information. Clerk's office (334) 954-3600.

U. S. District Court for the Southern District of Alabama

United State Courthouse
113 St. Joseph Street
Mobile, Al. 36602

The Southern District has an ADR plan and a neutral panel. To learn more about the plan and federal panel qualifications, go to <http://www.alsd.uscourts.gov/court-plans>. You may also call the clerk's office: (251) 690-2371.

APPENDIX A
ALABAMA CODE OF ETHICS
FOR MEDIATORS

ALABAMA CODE OF ETHICS FOR MEDIATORS
(Adopted by Order of the Supreme Court of Alabama,
December 14, 1995 and effective on March 1, 1996
Including amendments received through May 1, 2015.)

I. INTRODUCTION

This Code of Ethics for Mediators sets forth Standards to guide mediators in their mediation practices. These Standards are intended as rules of reason and should be interpreted with reference to the purposes of mediation. This Code does not exhaust the moral and ethical considerations that should guide a mediator. Rather, this Code provides a framework for the ethical practice of mediation.

Failure to comply with a Standard set out in this Code may be the basis for the removal from the roster of mediators maintained by the Alabama Center for Dispute Resolution and for such other action as may be taken by the Alabama Supreme Court Commission on Dispute Resolution.

This Code is designed to provide guidance to mediators. Violation of a Standard shall not give rise to a cause of action nor shall it create any presumption that legal duty has been breached. Nothing in this Code should be deemed to establish or augment any substantive legal duty on the part of mediators.

**II. SCOPE, DEFINITION, MEDIATOR'S ROLE, GENERAL PRINCIPLES,
AND EFFECTIVE DATE**

- (a) **Scope.** The Standards set out in this Code shall apply to:
- (1) Mediation of cases pending in courts of the State of Alabama; and
 - (2) Mediation conducted by persons whose names are listed on the roster of mediators maintained by the Alabama Center for Dispute Resolution.
- (b) **Definition of Mediation.** Mediation is a process whereby a neutral third party encourages and facilitates the resolution of a dispute without deciding what the resolution should be. It is an informal and non adversarial process whose objective is helping the disputing parties reach a mutually acceptable agreement.
- (c) **Mediator's Role.** In mediation, decision-making authority rests with the disputing parties. The role of the mediator includes, but is not limited to, assisting the disputing parties in identifying issues, facilitating communication, focusing the disputing parties on their interests, maximizing the exploration of alternatives and helping the disputing parties reach voluntary agreements.

- (d) **General Principals.** Mediation is based on communication, negotiation, facilitation, and the techniques or methods of solving problems. It emphasizes:
- (1) The needs and interest of the disputing parties;
 - (2) Fairness;
 - (3) Procedural flexibility;
 - (4) Privacy and confidentiality;
 - (5) Full disclosure; and
 - (6) Self-determination
- (e) **Effective Date.** This Code shall govern all mediation proceedings commenced on or after March 1, 1996.

III. STANDARDS

STANDARD 1. GENERAL

- (a) **Integrity, Impartiality, and Professional Competence.** Integrity, impartiality, and professional competence are essential qualifications of any mediator. Professional competence means the knowledge, skill, and thoroughness reasonably necessary for the mediation.
- (1) A mediator shall not accept any engagement, perform any service, or under take any act that would compromise the mediator's integrity.
 - (2) A mediator shall maintain professional competence in mediation skills. This includes, but is not limited to:
 - (A) Staying informed of, and abiding by, all statutes, rules, and administrative orders relevant to the practice of mediation; and
 - (B) Regularly engaging in educational activities promoting professional growth.
 - (3) If the mediator decides that a case is beyond the mediator's competence, the mediator shall decline appointment, withdraw, or request technical assistance.
- (b) **Concurrent Standards.** Nothing contained herein shall replace, eliminate, or render inapplicable relevant ethical standards not in conflict with these rules that may be imposed upon any mediator by virtue of the mediator's profession.

STANDARD 2. RESPONSIBILITIES TO COURT

A mediator shall be candid, accurate, and fully responsive to a court concerning the mediator's qualifications, availability, and other matters pertinent to his or her being selected to mediate. A mediator shall observe all administrative policies, procedural rules, and statutes that apply to mediation. A mediator shall refrain from any activity that has the appearance of improperly influencing a court to secure placement on a roster of mediators or appointment to a case.

STANDARD 3. THE MEDIATION PROCESS

- (a) **Orientation Session.** In order for parties to exercise self-determination they must understand the mediation process. At the beginning of the mediation session, the mediator should explain the mediation process.

This explanation should include:

- (1) The role of the mediator as a neutral party who will facilitate the discussion between the disputing parties but who will not decide the outcome of the dispute;
- (2) The procedures that will be followed during the mediation session or sessions;
- (3) The pledge of confidentiality that applies to the mediation process;
- (4) The fact that the mediator does not represent either party and will not give professional advice in the absence of a party's attorney and that, if expert advice is needed, the parties will be expected to consult with experts other than the mediator; and
- (5) The fact that the mediation can be terminated at any time by the mediator or by any of the parties.

Further, in the event a party is not represented by an attorney, the mediator should explain:

- (1) That the parties are free to consult legal counsel at any time and are encouraged to have any settlement agreement resulting from the mediation process reviewed by counsel before they sign it; and
- (2) That a mediated agreement, once signed, is binding and can have a significant effect upon the rights of the parties and upon the status of the case.

- (b) **Continuing Mediation.** A mediator shall withdraw from a mediation if the mediator believes the mediation is being used to further illegal conduct. A mediator may withdraw if the mediator believes any agreement reached would be the result of fraud, duress, overreaching, the absence of bargaining ability, or unconscionability. A mediator shall not prolong a mediation session if it becomes apparent that the case is unsuitable for mediation or if one or more of the parties is unable or unwilling to participate in the mediation process in a meaningful manner.
- (c) **Avoidance of Delay.** A mediator shall perform mediation services in a timely and expeditious fashion, avoiding delays whenever reasonably possible. A mediator shall refrain from accepting additional appointments when it becomes apparent that completion of mediation assignments already accepted cannot be accomplished in a timely fashion.

STANDARD 4. SELF-DETERMINATION

- (a) **Parties' Right to Decide.** A mediator shall assist the parties in reaching an informed and voluntary agreement. Substantive decisions made during mediation are to be made voluntarily by the parties.

- (b) **Prohibition of Coercion.** A mediator shall not coerce or unfairly influence a party into entering into a settlement agreement.
- (c) **Misrepresentation Prohibited.** A mediator shall not intentionally misrepresent material facts or circumstances in the course of a mediation.
- (d) **Balanced Process.** A mediator shall promote a balanced process and shall encourage the parties to participate in the mediation proceedings in a non-adversarial manner.
- (e) **Responsibility to nonparticipating parties.** A mediator may promote consideration of the interests of a person who may be affected by an agreement resulting from the mediation process and who are not represented in the mediation process.

STANDARD 5. IMPARTIALITY AND CONFLICT OF INTEREST

- (a) **Impartially.** A mediator shall be impartial and shall advise all parties of any circumstances that may result in possible bias, prejudice, or impartiality on the part of the mediator. Impartiality means freedom from favoritism or bias in work, action, and appearance. Impartiality implies a commitment to aid all parties, as opposed to one or more specific parties, in moving toward an agreement.
 - (1) A mediator shall maintain impartiality while raising questions for the parties to consider concerning the fairness, equity, and feasibility of proposed settlement options.
 - (2) A mediator shall withdraw from mediation, if the mediator believes the mediator can no longer remain impartial.
- (b) **Required Disclosure and Conflicts of Interest.**
 - (1) A mediator must disclose to the disputing parties the following:
 - (A) Any current or past representation of or consulting relationship with any party or the attorney of any party involved in the mediation.
 - (B) Any pecuniary interest the mediator may have in common with any of the parties or that may be affected by the outcome of the mediation process.
 - (C) Known potential conflicts, including membership on a board of directors, full – or part-time service as a representative or advocate, consultation work performed for a fee, current stock or bond ownership other than mutual fund shares or appropriate trust arrangements, or any other form of managerial, financial, or immediate family interest with respect to a party involved. A mediator who is a member of a law firm is obliged to disclose any representation of any of the disputing parties by the mediator’s firm or a member of that firm of which the mediator is aware.
 - (D) Any close personal relationship or other circumstances, in addition to those specifically mentioned in this Standard, that might reasonably raise a question as to the mediator’s impartiality.
 - (2) Mediators establish personal relationships with many representatives, attorneys, other mediators, and members of various other professional

associations. Mediators should not be secretive about such friendships or acquaintances, but disclosure of these relationships is not necessary unless that relationship is one of those mentioned in this Standard or some feature of a particular relationship might reasonably appear to impair impartiality.

- (3) Prior service as a mediator in a mediation involving a party or an attorney for a party does not constitute representation of the party or consultation work for the party. However, mediators are strongly encouraged to disclose such prior relationships. Mediators must disclose any ongoing relationship with a party or an attorney for a party involved in a mediation, including membership on a panel of persons providing mediation, arbitration, or other alternative dispute resolution services to that party or attorney.
- (4) A mediator shall not provide counseling or therapy to any party during mediation process, and a mediator who is a lawyer shall not represent a party in any matter during the mediation.
- (5) All disclosures required by this Standard shall be made as soon as practicable after the mediator becomes aware of the interest or the relationship.
- (6) The burden of disclosure rests on the mediator and continues throughout the mediation process. After appropriate disclosure, the mediator may mediate the dispute if all parties to the mediation agree to the mediator's participation and that agreement is reduced to writing. If the mediator believes that the relationship or interest would affect the mediator's impartiality, he or she should withdraw, irrespective of the expressed desire of the parties.
- (7) A mediator shall not use the mediation process to solicit any party to mediation concerning future professional services.
- (8) A mediator must avoid the appearance of a conflict of interest both during and after the mediation. Without the consent of all parties mediator shall not subsequently establish a professional relationship with one of the parties in a substantially related matter.

STANDARD 6. CONFIDENTIALITY

- (a) **Confidentiality.** A mediator shall preserve and maintain the confidentiality of all mediation proceedings except where required by statute or agreement to disclose information gathered during the mediation.
- (b) **Records and Research Data.** A mediator shall store and dispose of records relating to mediation proceedings in a confidential manner and shall ensure that all identifying information is removed and the anonymity of the parties is protected when material included in those records are used for research, training, or statistical compilations.

STANDARD 7. PROFESSIONAL ADVICE

- (a) **Generally.** A mediator shall not provide information the mediator is not qualified by training or experience to provide.
- (b) **Independent Legal Advice.** When a mediator believes a party does not understand or appreciate how a potential agreement reached through the mediation process may adversely affect the party's legal rights or obligation, the mediator should advise the participants to seek independent legal advice.
- (c) **Absent Party.** If one of the parties is unable to participate in the mediation process for psychological or physical reasons, a mediator should postpone or cancel mediation until such time as all parties are able to participate.
- (d) **Personal or professional opinion.** A mediator may discuss possible outcomes of a case, but a mediator may not offer a personal or professional opinion regarding the likelihood of any specific outcome except in the presence of the attorney for the party to whom the opinion is given.

STANDARD 8. FEES AND EXPENSES; PRO BONO SERVICE

- (a) **General Requirements.** A mediator occupies a position of trust with respect to the parties and the court system. In charging for services and expenses, the mediator must be governed by the same high standards of honor and integrity that apply to all other phases of the mediator's work. A mediator shall be scrupulous and honest in billing and must avoid charging excessive fees and expenses for mediation services.
- (b) **Records.** A mediator shall maintain adequate records to support charges for services and expenses and shall make an accounting to the parties or to the court upon request.
- (c) **Referrals.** No commissions, rebates, or similar remuneration shall be given to or received by a mediator for referral of persons for mediation or related services.
- (d) **Contingent Fees.** A mediator shall not charge or accept a contingent fee or base a fee in any manner on the outcome of the mediation process.
- (e) **Minimum Fees.** A mediator may specify in advance minimum charges for scheduling or conducting a mediation session without violating this Standard.
- (f) **Disclosure of Fees.** When a mediator is contacted directly by the parties for mediation services, the mediator has a professional responsibility to respond to questions regarding fees by providing a copy of the basis for charges for fees and expenses.
- (g) **Pro Bono Service.** Mediators have a professional responsibility to provide competent service to persons seeking their assistance, including those unable to pay for their services. As a means of meeting the needs of those who are unable to pay, a mediator should provide mediation services pro bono or at a reduced rate of compensation whenever appropriate.

STANDARD 9. TRAINING AND EDUCATION

- (a) **Training.** A mediator is obligated to acquire knowledge and training in the mediation process, including an understanding of appropriate professional ethics, standards and responsibilities. Upon request, a mediator is required to disclose the extent and nature of the mediator's education, training, and experience.
- (b) **Continuing Education.** It is important that mediators continue their professional education as long as they are actively serving as mediators. A mediator shall be personally responsible for ongoing professional growth, including participation in such continuing education as may be required by law or rule of an appropriate authority.
- (c) **New Mediator Training.** An experienced mediator should cooperate in the training of a new mediators, including serving as a mentor.

STANDARD 10. ADVERTISING AND SOLICITATION

- (a) **Advertising.** Advertising or any other communication with the public concerning mediation services offered by the mediator or regarding the education, training, and expertise of the mediator shall be truthful. Mediators shall refrain from making promises and guarantees of results.
- (b) **Solicitation.** A mediator shall not solicit business from a party to a dispute if the mediator knows the party is represented by a lawyer.

STANDARD 11. PROHIBITED AGREEMENTS

A mediator shall not enter into a partnership or employment agreement that restricts the rights of the mediator to mediate after the relationship forming the basis of the agreement is terminated, except that a mediator may enter into an agreement concerning benefits upon retirement.

STANDARD 12. ADVANCEMENT OF MEDIATION

A mediator should support the advancement of mediation by encouraging and participating in research, evaluation, or other forms of professional development and public education.

APPENDIX B
ALABAMA STATE COURT MEDIATOR ROSTER
REGISTRATION STANDARDS AND PROCEDURES

Mediator Registration Standards and Procedures

(Adopted September 18, 1998)

(Revised May 4, 2007; June 12, 2012)

- I. **State Court Mediator Roster:** The Alabama Center for Dispute Resolution (“the Center”) shall maintain a State Court Mediator Roster (“roster”), which consists of those mediators who meet the mediator registration standards and follow the procedures herein. This roster shall be maintained geographically by counties and by areas of practice and shall be made available to all state court judges, attorneys, and the general public.
- II. **Definition of Registration:** For the purpose of these provisions, the term “registration” and the related forms of this word shall mean only that the standards and procedures set forth herein have been met to the satisfaction of the Center. This term does not imply any degree of mediation skills or competency on behalf of any mediator subject to these provisions.
- III. **Mediator Registration Standards:** To be registered on the roster, a mediator must meet certain minimal standards which are specified in Appendix I. To be registered specifically as a domestic relations mediator, an individual must meet the minimal standards specified in Appendix II. All applicants must meet the good character requirements of Appendix III.
- IV. **Procedure for Registration:** Individuals who seek to be registered on the roster shall submit to the Center a completed application form. Should the individual meet the required standards and pay all applicable fees, his or her name shall be registered on the roster as a mediator. To remain on the roster, the mediator must meet such additional or different standards that may be hereafter imposed for registration. Registration decisions are made by the Center. Applicants who are denied registration for any reason may appeal within 30 days of that denial to the Committee on Standards for Neutrals of the Alabama Supreme Court Commission on Dispute Resolution, which committee may grant a hearing to the applicant. The Committee on Standards for Neutrals will make a determination whether the applicant should be registered. An adverse decision of the Committee on Standards for Neutrals may be appealed to the full Alabama Supreme Court Commission on Dispute Resolution within 30 days of the date of such decision. The commission shall grant a hearing, if requested, to the applicant.
- V. **Fees:** Individuals applying for mediator registration by the Center shall pay a \$30 application fee. If registration is approved, an annual fee of \$150 for registration will be assessed. Failure to pay the annual assessment or to meet the standards effective at the time of renewal will result in the individual being removed from the roster.

Appendix I

Mediator Registration Standards

An individual registered by the Alabama Center for Dispute Resolution (“the Center”) must meet the following minimum requirements:

1. Have reached the age of majority in Alabama.
2. Be of good character pursuant to Appendix III.
3. Satisfy any one of the following criteria:
 - a. Be licensed as an attorney by 1 of the 50 states of the United States or the District of Columbia and be in good standing, with 4 years’ legal or judicial experience; or
 - b. Have either a baccalaureate degree and at least 5 years of management or administrative experience in a professional, business, or governmental entity OR a high school diploma and 8 years of management or administrative experience in a professional, business, or governmental entity. Applicants seeking registration under this subsection also must have served professionally as the mediator in at least 10 mediations within the 2 years immediately preceding submission of an application for registration and must present, if requested, documentation of the mediations and names, addresses, and telephone numbers of persons who may be contacted regarding the mediations; or
 - c. Be licensed as an attorney by 1 of the 50 states of the United States or the District of Columbia and be in good standing and, within 2 years preceding application, have successfully completed a law school clinical mediation course approved by the Director of the Center. The Director will approve only law school courses that have educational training components equal to or greater than the training requirement in subsection 4. Approval of the course shall satisfy the training requirements for those applicants. Students in such courses further must have participated as the sole or co-mediator in at least 10 mediations.
4. Have successfully completed a 20-hour mediation training program approved by the Center within the 2 years preceding application. The mediation training must include two hours of Alabama mediator ethics education, or the applicant must take a separate two-hour training in Alabama mediator ethics. To be approved, training programs must include as part of their curricula, at a minimum, mock mediation exercises and ethics education.
5. Agree to subscribe and adhere to the Alabama Code of Ethics for Mediators and the rules of the Center for mediator registration.
6. Be willing to provide, upon request, at least 10 hours annually of pro bono mediation services to the public.

Appendix II

Domestic Relations Mediator Registration Standards

Individuals registered with the Alabama Center for Dispute Resolution (“the Center”) specifically to engage in mediation in the area of domestic relations must meet the following minimum requirements:

1. Have reached the age of majority in Alabama.
2. Be of good character pursuant to Appendix III.
3. Satisfy any one of the following:
 - a. Be licensed as an attorney by 1 of the 50 states of the United States or the District of Columbia and be in good standing, with 4 years’ legal or judicial experience; or
 - b. Have at least a master’s degree and at least five years of professional experience in any of the fields of psychology, social work, or mental health, and be in good standing with any licensing board or agency and able to present a current license number, if applicable; or
 - c. Have either a baccalaureate degree and at least 8 years of management or administrative experience in a professional, business, or governmental entity OR at least a high school diploma and 10 years of management or administrative experience in a professional, business, or governmental entity. Applicants seeking registration under this subsection also must have served professionally as the mediator in at least 10 domestic relations case mediations within the two years immediately preceding submission of an application for registration and must present, if requested, documentation of the mediations and names, addresses, and telephone numbers of persons who may be contacted regarding the mediations; or
 - d. Be licensed as an attorney by 1 of the 50 states of the United States or the District of Columbia and be in good standing and, within 2 years preceding application, have successfully completed a law school clinical mediation course approved by the Director of the Center. The Director will approve only law school courses that have educational training components equal to or greater than the training requirement in subsection 4. Approval of the course shall satisfy the training requirement for those applicants. Students in such courses further must have participated as the sole or co-mediator in at least 10 mediations.
4. Have successfully completed a 40-hour mediation course on domestic relations issues within 2 years preceding application, which course has been (a) certified by the Association of Conflict Resolution (“ACR”) or (b) approved by the Center as functionally equivalent or superior to an ACR 40-hour course. The mediator training must include two hours of Alabama mediator ethics education, or the applicant must take a separate two-hour training in Alabama mediator ethics. To be approved, training programs must include as part of their curricula, at a minimum, mock mediation exercises and ethics education.
5. Agree to subscribe and adhere to the Alabama Code of Ethics for Mediators and the rules of the Center for mediator registration.
6. Be willing to provide, upon request, at least 10 hours annually of pro bono mediation services to the public.

Appendix III

Good Character Requirement

1. **General.** No person shall be registered as a mediator unless the person first produces satisfactory evidence of good character, as required in Appendices I and II. A mediator shall have, as a prerequisite to registration and as a requirement for continuing registration, good character as set forth in subsequent sections.
2. **Purpose and Disclaimer.** The purpose of the good character requirement is to help protect participants in mediation and the public, and to safeguard the justice system. Any inquiry into an applicant's good character should not be deemed to be exhaustive or conclusive. Participants to a mediation also should use their own due diligence to ascertain the fitness or capability of an individual mediator to serve appropriately as mediator in their dispute.
3. **Registration and Removal.** The following shall apply for initial and continuing mediator registration:
 - a. The applicant's or mediator's character is subject to inquiry.
 - b. In assessing whether the applicant's or mediator's conduct demonstrates a lack of good character, the Alabama Center for Dispute Resolution ("the Center") will consider, without limitation, the following factors:
 - (1) the extent to which the conduct would interfere with a mediator's duties and responsibilities;
 - (2) the area of mediation in which registration is sought or held;
 - (3) the factors underlying the conduct;
 - (4) the applicant's or mediator's age at the time of the conduct;
 - (5) the recency of the conduct;
 - (6) the reliability of the information concerning the conduct;
 - (7) the seriousness of the conduct as it relates to mediator qualifications;
 - (8) the effect of the conduct or the totality of information gathered;
 - (9) any evidence of rehabilitation;
 - (10) the applicant's or mediator's candor;
 - (11) denial of application, disbarment, or suspension from any profession; and
 - (12) treatment or commitment for treatment of alcohol or other substance abuse.
 - c. An applicant for initial registration who has been convicted of a felony shall be ineligible for registration until such person has received a restoration of civil rights or has been pardoned.
 - d. A registered mediator shall be subject to removal from registration for any knowingly and willfully incorrect material information contained in any mediator application. There is a presumption of knowing and willful violation if the application is completed, signed, and notarized.
4. **Conviction of Crime.** A conviction of a felony or misdemeanor shall be reported by the mediator in writing to the Center within 30 days of such conviction. The report shall include a copy of the judgment of conviction.

- a. Upon receipt of a judgment of felony conviction, the Center shall immediately suspend all registration and refer the matter to the Alabama Supreme Court Commission on Dispute Resolution (“the Commission”).
- b. Upon receipt of a judgment of a misdemeanor conviction, the Center shall refer the matter to the Commission for appropriate action.
- c. If the Center becomes aware of a conviction prior to the required notification, it shall suspend registration in the case of a felony and refer the matter to the Commission for appropriate action.

APPENDIX C
TRIAL COURT MEDIATION

MANDATORY MEDIATION ACT – §6-6-20
MEDIATOR CONFIDENTIALITY ACT – DIVISION 3 – §6-6-25
RULE 16, ALABAMA RULES OF CIVIL PROCEDURE
ALABAMA CIVIL COURT MEDIATION RULES
TRIAL COURT MEDIATION FORMS
Joint Request for Referral to Mediation
Request for Referral to Mediation by Plaintiff or Defendant
Order of Referral to Mediation
Report of Mediator

MANDATORY MEDIATION ACT

On May 17, 1996, the legislature enacted §6-6-20 of the Code of Alabama (1975), which establishes a procedure of mandatory mediation upon motion by any party to a civil action. The mandatory mediation statute is inconsistent with the Committee Comment to Rules 2 of the Alabama Civil Court Mediation Rules which states that “participation in the mediation process is strictly voluntary.” Based upon the mediation rules, the mediation process is generally considered throughout this handbook to be voluntary in nature, and entered into by mutual agreement of the parties.

The full text of the Mandatory Mediation Act is as follows:

MANDATORY MEDIATION PRIOR TO TRIAL

The act which added this division became effective May 17, 1996.

§6-6-20. **Definition; instances requiring mediation; sanctions; exceptions; etc.**

- (a) For purposes of this section, “mediation” means a process in which a neutral third party assists the parties to a civil action in reaching their own settlement but does not have the authority to force the parties to accept a binding decision.
- (b) Mediation is mandatory for all parties in the following instances:
 - (1) At any time where all parties agree.
 - (2) Upon motion by any party. The party asking for mediation shall pay the cost of mediation, except attorney’s fees, unless otherwise agreed.
 - (3) In the event no party requests mediation, the trial court may on its own motion order mediation. The trial court may allocate the costs of mediation, except attorney fees, among the parties.
- (c) If any party fails to mediate as required by this section, the court may apply such sanctions as it deems appropriate pursuant to Rule 37 of the Alabama Rules of Civil Procedure.
- (d) A court shall not order parties into mediation for resolution of the issues in a petition for an order for protection pursuant to The Protection from Abuse Act, Section 30-5-1 through 30-5-10 or in any other petition for an order for protection where domestic violence is alleged.
- (e) In a proceeding concerning the custody or visitation of a child, if an order for protection is in effect or if the court finds that domestic violence has occurred, the court shall not order mediation.
- (f) A mediator who receives a referral or order from a court to conduct mediation shall screen for the occurrence of domestic or family violence between the parties. Where evidence of domestic violence exists mediation shall occur only if:
 - (1) Mediation is requested by the victim of the alleged domestic or family violence;
 - (2) Mediation is provided by a certified mediator who is trained in domestic and family violence in a specialized manner that protects the safety of the victim;

- (3) The victim is permitted to have in attendance at mediation a supporting person of his or her choice, including but not limited to an attorney or advocate.
- (g) Where a claim of immunity is offered as a defense, the court shall dispose of the immunity issue before any mediation is conducted.
- (h) A court shall not order parties into mediation in any action involving child support, adult protective services or child protective services wherein the Department of Human Resources is a party to said action (Acts 1996, No. 96-515, 1.)

MEDIATOR CONFIDENTIALITY ACT

Division 3

Mediator May Not Be Compelled to Testify Or Provide Documents

Effective date: The act which added this division became effective May 16, 2008.

§ 6-6-25. Definitions: legislative findings; compelled testimony, etc. mediators.

- (a) For the purpose of this section, the following words shall have the following meanings:
 - (1) Mediation. A process in which a mediator acts to encourage and facilitate the resolution of a dispute without imposing a settlement.
 - (2) Mediator. A neutral third party conducting a mediation, including any co-mediators, employees, agents, or independent contractors of the mediator or co-mediator, and any person attending or observing the mediation for purpose of training.
- (b) The Legislature finds that it is desirable to encourage public confidence in the use of alternative methods of dispute resolution by preventing a mediator from being compelled to testify or produce documents about a mediation.
- (c) Except as otherwise permitted by the Alabama Civil Court Mediation Rules, a mediator may not be compelled in any adversary proceeding or judicial forum, including, but not limited to, a hearing on sanctions brought by one party against another party, to divulge the contents of documents received, viewed, or drafted during mediation or the fact that such documents exist, nor may the mediator be otherwise compelled to testify in regard to statements made, actions taken, or positions stated by a party during the mediation. (Acts 2008 No.387, §1,2,3)

**ALABAMA RULES OF CIVIL PROCEDURE
RULE 16**

**PRETRIAL CONFERENCES;
SCHEDULING; MANAGEMENT.**

- (a) Pretrial conferences; objectives. In any action, the court may in its discretion at any time direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as
- (1) expediting the disposition of the action;
 - (2) establishing early and continuing control so that the case will not be protracted because of lack of management;
 - (3) discouraging wasteful pretrial activities;
 - (4) improving the quality of the trial through more thorough preparation; and
 - (5) facilitating the settlement of the case.
- When the court has not ordered a conference, any party may require the scheduling of such conference on written notice served at such time in advance of trial so as to permit the conference to take place at least twenty-one (21) days before the case is set for trial.
- (b) Scheduling and planning. The court may enter a scheduling order that limits
- (1) to join other parties and to amend the pleadings;
 - (2) to file and hear motions; and
 - (3) to complete discovery.
- The scheduling order also may include
- (4) the date or dates for conferences before trial, a final pretrial conference, and trial; and
 - (5) any other matters appropriate in the circumstances of the case. Any scheduling order shall be issued as soon as practicable. Once a scheduling order is issued, the schedule set thereby shall not be modified except by leave of court upon a showing of good cause.
- (c) Subjects to be discussed at pretrial conferences. The participants at any conference under this rule may consider and take action with respect to
- (1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses.
 - (2) the necessity or desirability of amendments to the pleadings;
 - (3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;
 - (4) the avoidance of unnecessary proof and of cumulative evidence;
 - (5) the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;

- (6) the advisability of referring matters to a magistrate or master;
- (7) the possibility of settlement or the voluntary use by all parties of extrajudicial procedures to resolve the dispute, including mediation conducted pursuant to the Alabama Civil Court Mediation Rules;
- (8) the form and substance of the pretrial order;
- (9) the disposition of pending motions;
- (10) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems and;
- (11) such other matters as may aid in the disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed.

- (d) Final pretrial conference. Any final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.
- (e) Pretrial orders. After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be modified only to prevent manifest injustice.
- (f) Sanctions. If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B), (C), (D). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.
- (g) District court rules. Pretrial procedure in the district court shall be as follows: Immediately preceding the trial on the merits, or prior thereto, if justice requires, the court may direct and require the attorney for the parties to appear before it for a conference to consider and determine:
 - (1) the simplification of the issues;
 - (2) the possibility of obtaining admission of fact and of documents which will avoid unnecessary proof;
 - (3) such other matters as may aid in the disposition of the action.
(Amended effective 8-1-92; Amended effective 10-1-95)

ALABAMA CIVIL COURT MEDIATION RULES
Effective August, 1992. Including amendments received through May 1, 2015

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INTRODUCTION

These rules have been promulgated with the assistance of the American Arbitration Association, whose mediation procedures have been applied in whole or in part in these rules.

[Adopted effective August 1, 1992]

RULE 1. DEFINITION OF MEDIATION AND SCOPE OF RULES

(a) Mediation is an extrajudicial procedure for the resolution of disputes, provided for by statute and by the Alabama Rules of Civil Procedure. A mediator facilitates negotiations between parties to a civil action and assists the parties in trying to reach a settlement, but does not have the authority to impose a settlement upon the parties.

(b) These rules shall apply:

(1) In mediation ordered by the courts of this State as provided by statute or by the Alabama Rules of Civil Procedure;

(2) In any other mediations by parties in a pending civil action in an Alabama court, other than the Alabama Supreme Court or Alabama Court of Civil Appeals, unless the parties expressly provide otherwise; and,

(3) In other mediations if the parties agree that these Rules shall apply.

[Adopted effective August 1, 1992; amended effective February 3, 1998; June 26, 2002]

Comment to Amendment, Effective June 26, 2002

Passage of Act No. 96-515, 1996 Ala. Acts, codified at §6-6-20, Ala. Code 1975, introduced a statutory basis for courts to order mediation that necessitated changes in the first sentence of Rule 1 (a). This change will reduce the need to amend these Rules in the event of a new or revised mediation statute or a future change in the Alabama Rules of Civil Procedure.

The new language in the second sentence of Rule 1 (a) emphasizes the facilitation role of a mediator. The former language might be seen as suggesting a more decision-making role for the mediator – it used phrases such as “submit their dispute” and “(t)he mediator may suggest ways of resolving the dispute.” The new language does not eliminate the possibility of a mediator’s evaluating a dispute and suggesting solutions (see Rule 9).

The revisions to Rule 1 (b) are designed to clarify when the Rules are mandatory as opposed to when they are optional. Clearly, any mediation ordered by a court should be conducted according to these Rules. Because §6-6-20 is not limited to actions in the circuit court, the prohibition against mediation in district courts is abolished. Rule (b) (2) establishes a presumption in favor of the application of these Rules in all pending trial court cases except when the parties agree otherwise. This adds greater uniformity in mediation procedures statewide and eliminates confusion about the applicability of these Rules in non-court-ordered mediation. Similarly, Rule 1 (b) (3) was added to plainly state that these Rules may apply in any action, including mediation of a case pending in an appellate court, if the parties agree.

RULE 2. INITIATION OF MEDIATION; STAY OF PROCEEDINGS

Parties to a civil action may engage in mediation by mutual consent at any time. The court in which an action is pending shall order mediation when one or more parties request mediation or it may order mediation upon its own motion. In all instances except where the request for mediation is made by only one party, the court may allocate the costs of mediation, except attorney fees, among the parties. In cases in which only one party requests mediation, the party requesting mediation shall pay the costs of mediation, except attorney fees, unless the parties agree otherwise.

Upon the entry of an order for mediation, the proceedings as to the dispute in mediation may be stayed for such time as set by the court in its order of mediation. Upon motion by any concerned party, the court may, for good cause shown, extend the time of the stay for such length of time as the court may deem appropriate.
[Adopted effective August 1, 1992; amended effective June 26, 2002]

Committee Comment to Rule 2

Participation in the mediation process is strictly voluntary. Any party wishing to terminate the process may do so at any time pursuant to Rule 13. Pursuant to Rule 13, the mediation process is also terminated by expiration of the period of stay provided for by Rule 2.

Comment to Amendment Effective June 26, 2002

Section 6-6-20, Ala. Code 1975, allows one party to require a court to order mediation of a dispute, irrespective of the position of any other party to the dispute. This change in the law required the amendment of the first paragraph of Rule 2, to make the rule consistent with §6-6-20.

In cases where the court can apportion the costs of mediation, the court may want to balance a number of considerations when deciding whether and how to apportion mediation costs between the parties. It may be helpful for the courts to consider the commitment to the mediation process that derives when each party has a financial stake in the process. Courts may find mediations are more successful if each party is required to pay some portion of the mediation costs.

Rules 2 as originally adopted provided in the last paragraph that the underlying proceedings “shall be stayed”; the change to “may be stayed” provides greater flexibility to courts and disputants in staying all or part of a dispute during the course of mediation.

RULE 3. APPOINTMENT OF A MEDIATOR

Upon an order for mediation, the court, or such authority as the court may designate, shall appoint a qualified mediator. The mediator appointed shall be agreed upon by the parties concerned, subject to the qualifications provisions of Rule 4, except that if the parties do not agree upon a mediator, then the selection of the mediator shall be in the discretion of the court or its designated authority. A single mediator shall be appointed unless the parties or the court determines otherwise.

[Adopted effective August 1, 1992; amended effective June 26, 2002]

Comment to Amendment Effective June 26, 2002

The language added to the second sentence was necessitated by the language added to Rule 4 regarding qualifications of mediators in court-ordered mediations.

RULE 4. QUALIFICATIONS OF A MEDIATOR

In court-ordered mediations, the mediator shall have those qualifications required by statute or by the Alabama Supreme Court Mediator Registration Standards or, in the absence of such statute or standards, the mediator shall have those qualifications the court may deem appropriate given the subject matter of the mediation. No person shall serve as a mediator in any dispute in which that person has any financial or personal interest, except by the written consent of all parties. Before accepting an appointment, the prospective mediator shall disclose to the parties any circumstances likely to create an appearance of bias or likely to prevent the mediation from commencing within a reasonable time. Upon receipt of such disclosure, the parties may name a different person as mediator. If the parties disagree as to whether a prospective mediator should serve, the court shall appoint the mediator.

[Adopted effective August 1, 1992; amended effective June 26, 2002].

Comment to Amendment Effective June 26, 2002

The first sentence of Rule 4 establishes a minimum standard for qualifications of mediators in court-ordered mediations. Presently, no statutory qualifications exist, so the rule was drafted to allow for the possibility of mediator qualifications by statute at a later date without the necessity of amending Rule 4.

The Alabama Supreme Court has adopted Mediator Registration Standards. The Rule does not require the selected mediator to actually be registered with the Alabama Center for Dispute Resolution, but the mediator must possess the training and skill sufficient to be registered.

Rule 4 applies only in court-ordered mediations; in mediations in which the parties mutually agree to mediate, the parties are free to select the mediator of their choice without regard to the provisions of Rule 4.

Any disclosures of possible bias, conflict of interest, or scheduling difficulty should be made to the parties, not the court. The parties are best situated to determine whether any of those items rises to such a level as to disqualify the mediator from serving. This should save time for judges, eliminate the possibility of the court's rejection of a mediator the parties would have found acceptable, and gives the parties the greatest possible control over the process. If the disclosure causes a rejection of the proposed mediator by a party, the parties should have the first option to select a successor. The court would have the final say in the event the parties could not agree upon a successor mediator.

RULE 5. VACANCIES

If any mediator becomes unwilling or unable to serve, the court shall appoint another mediator. The appointment of a successor mediator shall be by the same procedures and upon the same terms as an initial appointment.

[Adopted effective August 1, 1992; amended effective June 26, 2002]

RULE 6. ASSISTANCE AND SETTLEMENT AUTHORITY

Any party not represented by an attorney may be assisted by persons of his or her choice in the mediation. Each party, or that party's representative, must be prepared to discuss during mediation sessions the issues submitted to mediation and, unless otherwise expressly agreed upon by the parties or ordered by the court before the first mediation session, someone with authority to settle those issues must be present at the mediation session or reasonably available to authorize settlement during the mediation session.

[Adopted effective August 1, 1992; amended effective June 26, 2002]

Comment to Amendment Effective June 26, 2002

The first obligation imposed by the second sentence is that a party make reasonable efforts to participate in mediation by appearing at the mediation prepared to discuss the issues being submitted to mediation. This entails the party's possessing a sufficient knowledge of the facts of the dispute and the law governing the dispute.

Lawyers representing clients in mediation since the adoption of these Rules in 1992 have identified a problem of some parties appearing at mediations without full or realistic settlement authority. Such a practice unnecessarily prolongs the mediation and can be used improperly as a discovery or negotiating tactic. The ultimate aim of mediation is the resolution of the dispute; therefore, each party has an obligation to ensure, before agreeing to a date and time for the mediation, that a person with settlement authority for all issues being mediated will be readily available throughout the mediation to approve a settlement negotiated during the mediation.

The rule attempts to strike the proper balance between having a person with full settlement authority physically present at the mediation session and allowing such person to be within reasonable contact, such as by telephone. Mediation of disputes with small amounts in controversy or where the person with settlement authority would incur substantial cost to travel to the site of the mediation might best be accommodated by using a telephone conference or similar long distance communication. On the other hand, one value of mediation is having the decision-makers, such as a corporation's chief financial officer or chief executive officer, present to hear the discussions during mediation to personally assess the pros and cons of pursuing litigation versus settling the controversy for a particular amount. The default standard is that someone with full authority must be

available, such as by telephone, fax, or other means that can provide input on the settlement within a reasonable time. The parties may negotiate or the court may require the parties to have a person with full settlement authority present throughout the mediation. Presumably this would occur only in cases in which the cost of having such a person present would be reasonable in light of the amount in controversy in the underlying dispute.

There are a number of different ways a party could communicate with a person with full authority to settle the dispute. This Rule presumes that a party will make every reasonable effort to ensure the person with settlement authority remains continuously available throughout the mediation to consult and provide input on a potential settlement proposal. Because the length and types of mediations may vary greatly, and because the decision-maker may be in a different time zone from the time zone of the location of the mediation, the Rule does not attempt to define what is reasonable. If one party has a concern over the extent of the settlement authority the representative of a party present at the mediation has, an effort to identify the person with adequate authority and the availability of that person during the mediation should be undertaken at the beginning of the mediation. This can be done through private sessions with the mediator at the beginning of the mediation to protect a party's interest in not disclosing the extent of its settlement authority.

RULE 7. TIME AND PLACE OF MEDIATION

The mediator shall fix the time of each mediation session. The mediation sessions shall be held at any convenient location agreeable to the mediator and the parties or as otherwise designated by the court.

[Adopted effective August 1, 1992; amended effective June 26, 2002]

RULE 8. IDENTIFICATION OF MATTERS IN DISPUTE

A mediator may require each party concerned, within a reasonable time before the first scheduled mediation session, to provide the mediator with a brief memorandum setting forth the party's position with regard to the issues that need to be resolved. The mediator shall not distribute the memoranda to the parties without their consent.

At the first session, the parties shall produce all information reasonably required for the mediator to understand the issues presented. The mediator may require either party to supplement this information.

[Adopted effective August 1, 1992; amended effective June 26, 2002]

Comment to Amendment Effective June 26, 2002

The former requirement that each party in every type of mediation provide the mediator with a brief memorandum at least 10 days before the first mediation session was unnecessarily inflexible. Parties and mediators alike frequently ignored that requirement. The better practice is to allow a mediator to require such a memorandum if, in the mediator's judgement, a memorandum would be helpful or necessary. Therefore, "shall" is changed to "may" and the 10 days requirement is removed. In some cases, sharing the memoranda with the parties might facilitate the mediation, but the mediator should not allow the contents of any memorandum submitted by a party to be viewed by another party without the consent of the party who prepared the memorandum.

RULE 9. AUTHORITY OF MEDIATOR

The mediator does not have authority to impose a settlement upon the parties, but the mediator shall attempt to help the parties reach a satisfactory resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the parties, to communicate offers between the parties as the parties authorize, and, at the request of the parties, to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties agree to the mediator's obtaining such advice and assume the expenses of obtaining it. Arrangements for obtaining such advice shall be made by the mediator or by the parties. The mediator is authorized to end the mediation whenever, in the judgment of the mediator, further efforts at mediation would not contribute to a resolution of the dispute between the parties (see Rule 13(a)(2)).

[Adopted effective August 1, 1992; amended effective June 26, 2002]

Comment to Amendment Effective June 26, 2002

The amendment added the phrase "to communicate offers between the parties as the parties authorize" to the second sentence to emphasize that the parties control what offers are shared with another party and when those offers are shared. A mediator may, in private session, suggest a possible solution; however, the mediator must have the consent of the party with whom the proposed solution is first shared in order to communicate this proposed solution to the other party. Nothing in this section would prohibit the parties from mutually requesting a mediator to propose a solution to the dispute or an amount to settle a dispute. Indeed, the revision is not intended to reduce a mediator's role in helping parties in joint or private sessions to find creative solutions.

The fourth sentence was revised to remove the phrase "as the mediator shall determine," because the mediator does not have the power to compel any party to pay the costs of obtaining experts.

RULE 10. PRIVACY

Mediation sessions are private. An alleged victim of domestic or family violence may have in attendance at mediation a supportive person of his or her choice. In all other cases, persons other than the parties and their representative may attend mediation sessions only with the permission of the parties and with the consent of the mediator.

[Adopted effective August 1, 1992; amended effective June 26, 2002]

Comment to Amendment Effective June 26, 2002

The second sentence has been added to comply with §6-6-20 (f)(3), Ala Code 1975. This permits a person who is the alleged victim of abuse to bring a person, in addition to the party's attorney, with him or her to the mediation, irrespective of whether the accompanying person is an attorney, without receiving permission from the mediator or other party. The changes to the last sentence simplified the language of the original Rule in an attempt to make clear who could attend and under what circumstances.

RULE 11. CONFIDENTIALITY

(a) All information disclosed in the course of a mediation, including oral, documentary, or electronic information, shall be deemed confidential and shall not be divulged by anyone in attendance at the mediation except as permitted under this Rule or by statute. The term “information disclosed in the course of a mediation” shall include, but not be limited to:

(1) view expressed or suggestions made by another party with respect to a possible settlement of the dispute;

(2) admissions made by another party in the course of the mediation proceedings;

(3) proposals made or views expressed by the mediator;

(4) the fact that another party had or had not indicated a willingness to accept a proposal for settlement made by the mediator; and

(5) all records, reports, or other documents received by a mediator while serving as mediator.

(b) The following are exceptions to the general rule stated in Rule 11 (a):

(1) A mediator or a party to a mediation may disclose information otherwise prohibited from disclosure under this section when the mediator and the parties to the mediation all agree to the disclosure.

(2) Information otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its use in mediation.

(3) The confidentiality provisions of this Rule shall not apply:

(i) to a communication made during a mediation that constitutes a threat to cause physical injury or unlawful property damage;

(ii) to a party or mediator who uses or attempts to use the mediation to plan or to commit a crime; or

(iii) to the extent necessary if a party to the mediation files a claim or complaint against a mediator or mediation program alleging professional misconduct by the mediator arising from the mediation.

(c) Except as provided in Rule 11 (b) above, a court shall neither inquire into nor receive information about the positions of the parties taken in mediation proceedings; the facts elicited or presented in mediation proceedings; or the cause or responsibility for termination or failure of the mediation process.

(d) A mediator shall not be compelled in any adversary proceeding or judicial forum, including, but not limited to, a hearing on sanctions brought by one party against another party, to divulge the contents of documents received, viewed, or drafted during mediation or the fact that such documents exist nor shall the mediator be otherwise compelled to testify in regard to statements made, actions taken, or positions stated by a party during the mediation.

[Adopted effective August 1, 1992; amended effective June 26, 2002; September 15, 2003.]

Comment to Amendment Effective June 26, 2002

Confidentiality is the backbone of mediation. The freedom to discuss issues privately with a mediator and in joint session with another party, without fear of disclosure outside the mediation, allows parties to safely explore potential alternative solutions to the dispute. Rule 11 is also designed

to protect the mediator from later becoming embroiled in the parties' dispute by being called as a witness in later proceedings between the parties.

Several changes were made in Rule 11 to help clarify the intent of the Rule and to provide some exceptions to better facilitate the intentions of parties and to conform to public-policy norms. First, Rule 11(b)(1) was added to permit disclosure when the parties to the mediation and the mediator all agree that disclosure is appropriate. Second, the use of information during a mediation was never intended to shield that information from future discovery during litigation if that information was otherwise subject to discovery. Paragraph 11(b)(2) was added to explicitly so state.

The exceptions in Rule 11(b)(3) are consistent with confidentiality provisions in other states and similar to the requirements of the Alabama Rules of Professional Conduct for lawyers. Rule 11 is not intended to shield a party or a mediator from threats to cause injury to a person or to the property of another nor to shield evidence of an intent to commit a crime. Mediators may wish to advise parties to a mediation about this Rule before beginning a mediation. The exception in Rule 11(b)(3)(iii) also is similar to provision in other states. In the event a claim of professional misconduct is levied against a mediator, the mediator should not be barred from a reasonable defense to such allegations, including the use of statements made during a mediation. Any review of mediation proceedings as allowed under Rule 11(b)(3) should be conducted in an in camera inspection.

Rule 11(d) is designed to explicitly state that courts cannot compel a mediator to disclose confidential information obtained during a mediation. In a situation where one party brings an action for sanctions against another party, as authorized by §6-6-20 it is possible that the only way for the court to determine a factual basis upon which to decide whether sanctions should be imposed would be through the testimony of the mediator. The value of preserving confidentiality was deemed to be more vital to the mediation process than aiding in determining the outcome of a sanctions hearing. Thus, mediators cannot, and should not, testify unless all parties to the mediation and the mediator consent to the testimony.

Comment to Amendment to Rule11(c) Effective Sept. 15, 2003

The amendment removes any confusion about whether a court could ever receive or hear information regarding a matter being mediated. The pre-amendment language of Rule 11(c) seemed to conflict with Rule11(b), which provides exceptions to the general rule, while subparagraph (c) expressed, in what appeared absolute terms, the rule that a court could never receive information about what occurred during a mediation. This amendment does not intend to fully 'open the door' to inquiries by judges, but opens the door only so much as necessary to give effect to the limited exceptions provided in Rule11(b).

RULE 12. NO RECORD

There shall be no record made of the mediation proceedings.
[Adopted effective August 1, 1992; amended effective June 26, 2002]

RULE 13. TERMINATION OF MEDIATION

(a) The mediation process may be terminated at any time after the initial mediation session by any party to the mediation. It also may be terminated by the mediator. Court- ordered mediations shall be terminated by filing with the court one of the following:

(1) Notice that the parties concerned have executed a settlement agreement. Such a notice shall be signed by all parties concerned or by their attorney; or

(2) A written declaration signed by the mediator stating that in the mediator's

judgment further efforts at mediation will not contribute to a resolution of the dispute among the parties (see Rule 9).

(b) Mediation also shall be terminated by the expiration of the period of any court-ordered stay provided by Rule 2.

(c) The fact that mediation has once been terminated as to a particular dispute shall not bar the entry of a late order to mediate that dispute.
[Adopted effective August 1, 1992; amended effective June 26, 2002].

Committee Comment to Rule 13

1) Notification through subsection (2) assures confidentiality as to the party requesting termination.

(2) Notification through subsection (3) will allow either party to terminate the mediation process before a mediator is appointed, or, once a mediator has been appointed, will allow a party to terminate the process without further communicating with the mediator.

Comment to Amendment, Effective June 26, 2002

Notification through subsection (a)(2) assures confidentiality as to the party requesting termination.

The adoption of §6-6-20, Ala. Code 1975, removed the possibility of parties' terminating the mediation process before at least one mediation session as subsection (a)(3) of the former Rule 13 envisioned. Because the statute provides for the imposition of sanctions against a party failing to comply with a mediation order, parties are presumed to have the responsibility to appear at least one mediation session. The first sentence of Rule 13(a) has been revised to include the language requiring at least one mediation session before the process is terminated. Subsection (a)(2) has been revised to clearly permit the parties to terminate the mediation after one session while maintaining anonymity as to which party terminated the process. Former subsection (a)(3) has been deleted.

RULE 14. INTERPRETATION AND APPLICATION OF RULES

The mediator shall interpret and apply these rules insofar as they relate to the mediator's duties and responsibilities. In other respects, they shall be interpreted and applied by the Court.

[Adopted effective August 1, 1992; amended effective June 26, 2002].

RULE 15. EXPENSES, MEDIATOR'S FEE, AND DEPOSITS

(a) Expenses. The expenses of a witness for a party shall be paid by the party producing the witness. All other expenses of the mediation, including necessary travel and other expenses of the mediator, the expenses of any witnesses called by the mediator and the cost of any evidence or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless the parties agree otherwise, or unless the court directs otherwise.

(b) Mediator's Fee. A mediator shall be compensated at a reasonable rate, agreed to by the parties, or as set by the court. The mediator's fee shall be borne equally by the parties, unless they agree otherwise, or unless the court directs otherwise pursuant to Rule 2.

(c) Deposits. Before the mediation process begins, each party to the process shall deposit with the mediator such an amount of the anticipated expenses and fees as the court shall direct or the mediator reasonably requires. When the mediation process has been terminated, the mediator shall render an accounting, requiring payment of additional expenses and fees by the appropriate parties, or returning any unexpended balance to the appropriate parties.
[Adopted effective August 1, 1992; amended effective June 26, 2002].

Comment to Amendment, Effective June 26, 2002

Most mediators deal directly with parties on matters of fees and expenses. The added language specifically provides for the mediator to make financial arrangements directly with the parties rather than depending upon the court. This promotes efficient use of judicial time as well as the time of the parties and mediator.

EXAMPLE – FORM NO. 1

IN THE CIRCUIT COURT FOR THE
JUDICIAL CIRCUIT OF ALABAMA

Plaintiff(s).

v.

Civil Action No. _____

Defendant(s)

JOINT REQUEST FOR REFERRAL TO MEDIATION

Pursuant to Rule 16(c)(7) of the Ala. R. Civil Proc., and Ala. Code 6-6-20 (1975) plaintiff(s) and defendant(s) jointly request the Court to enter an order referring this civil action to mediation pursuant to the Alabama Civil Court Mediation Rules.

1. This civil action is not presently set for trial [or this civil action is set for trial on (date _____)].
2. The parties are prepared to commence mediation on or before (date _____).
3. The parties agree the fees and expenses of the Mediation shall be paid [equally by the parties] [by the plaintiff(s)] [by the defendant(s)], and in the manner required by the Mediator.
4. (a) The parties request that (name of mediator with address and telephone number) be appointed the Mediator in this case, and that the mediation proceedings be conducted at (location).
5. The attorneys agree to have present during the mediation proceedings a representative of each party involved in the mediation process who shall have full settlement authority for the claims in this civil action.

Attorney for Defendant(s)

Attorney for Plaintiff(s)

(Name of Attorney)
(Address)
(Telephone Number)

(Name of Attorney)
(Address)
(Telephone Number)

[CERTIFICATE OF SERVICE]

EXAMPLE – FORM NO. 2

IN THE CIRCUIT COURT FOR THE
JUDICIAL CIRCUIT OF ALABAMA

Plaintiff(s)

v.

Civil Action No. _____

Defendant(s)

REQUEST FOR REFERRAL TO MEDIATION BY

PLAINTIFF(S) OR [DEFENDANT(S)]

Pursuant to Rule 16(c)(7) of the Ala. R. Civil Proc., and Ala. Code 6-6-20 (1975), plaintiff(s) [or defendant(s)] request(s) the Court to enter an order referring this civil action to mediation pursuant to the Alabama Civil Court Mediation Rules.

1. This civil action is not presently set for trial. [or this civil action is set for trial on (date _____).]
2. The dispute in this civil action is appropriate for the mediation process.

Attorney for Plaintiff(s) or Defendant(s)

(Name of Attorney _____)

(Address _____)

(Telephone number _____)

[CERTIFICATE OF SERVICE]

EXAMPLE – FORM NO. 3

IN THE CIRCUIT COURT FOR THE
JUDICIAL CIRCUIT OF ALABAMA

Plaintiff(s)
v. _____ Civil Action No. _____

Defendant(s)

ORDER OF REFERRAL TO MEDIATION

Plaintiff(s) and/or defendant(s) _____, (hereafter the ‘parties’) through their undersigned counsel, have [has] requested [have agreed to the suggestion of the Court] that the Court enter an order referring this civil action to mediation. The Court concludes this matter is appropriate for mediation pursuant to the Alabama Civil Court Mediation Rules. [This cause is before the Court upon motion for mediation filed by plaintiff(s)/ defendant(s) pursuant to Ala. Code 6-6-20 (1975). Having considered said motion, the Court concludes that this matter is appropriate for mediation pursuant to the Alabama Civil Court Mediation Rules.]

Accordingly, it is ORDERED as follows:

- (1) By agreement of the parties [At the discretion of the Court] [The motion for mediation filed by plaintiffs/defendants is hereby GRANTED, and] (Name of Mediator _____) of (Address _____) is appointed as Mediator in this matter. (or parties will select a Mediator).
- (2) The fees and expenses of the Mediator shall be paid [equally by the parties] [by plaintiff(s)] [by defendant(s), and in the manner required by the Mediator.
- (3) The first mediation session shall commence within (Number _____) days from the date of this order. The Mediator shall set the initial mediation session with due regard to the schedules and other commitments of the parties and counsel, and may continue or adjourn a mediation session in his or her discretion, so long as such continuance or adjournment is within the time constraints set out herein.
- (4) A representative of each party, which may be counsel, having full authority to settle the entire case for the party must attend the mediation sessions.
- (5) At least ten (10) days before the initial mediation session, the parties shall deliver to the Mediator all materials requested by the Mediator relating to the parties’ respective claims and defenses.

- (6) The Mediator shall have the authority to control the procedures to be followed in mediation; may adjourn a mediation session and set times for reconvening; and may suspend or terminate the mediation whenever, in the opinion of the Mediator; the matter is not appropriate for further mediation.
- (7) The Mediator may meet and consult privately with any party with its counsel, or privately with counsel, at any time. (The mediator should not consult with any party without the presence of the party's counsel without the knowledge of counsel.) Counsel may consult privately with counsel's client at any time during mediation.
- (8) All discussions, representations, and statements made at the mediation conferences, or with the Mediator privately, shall be confidential and deemed privileged by both the Mediator and all parties as settlement negotiations and thus inadmissible in a court of law. Each party shall have the right to instruct the Mediator not to disclose to the other parties certain information or facts furnished by the party to the Mediator. The mediation proceedings shall not be recorded by a court reporter or by an electronic recording device, except as necessary to memorialize any settlement reached. The Mediator shall not be called as a witness, nor shall the Mediator's records be subpoenaed or used as evidence in any adversary proceeding or judicial forum.
- (9) The pre-trial schedule currently set in this case is rescheduled as follows:
().
- (10) The parties are encouraged to resolve as many issues as possible during mediation. Partial or complete settlements should be immediately reduced to writing in the presence of the Mediator and should be signed by all parties or their counsel.

The parties shall provide a joint status report concerning the progress of mediation on or before (). Within ten (10) days of the termination of mediation, either by settlement or otherwise, the Mediator shall file a final status report, with copies to all parties, stating that mediation is completed and whether settlement was reached.

--OPTIONAL STAY--

- (12) All proceedings in this civil action with respect to the mediating parties which pertain to the dispute in mediation are stayed during the pendency of the mediation process which process shall terminate upon the filing of the Mediator's final status report or upon the filing of any party's notice of termination as provided for by Rules 13 of the Alabama Civil Court Mediation Rules.

ORDERED this ___ day of _____, 20 ____.

Circuit Judge

[CERTIFICATE OF SERVICE]

EXAMPLE – FORM NO. 4

IN THE CIRCUIT COURT FOR THE
JUDICIAL CIRCUIT OF ALABAMA

Plaintiff(s)
v. Civil Action No. _____

Defendant(s)

REPORT OF MEDIATOR

To: Judge _____, Circuit Court for the _____ Judicial Circuit.

1. The above civil action was mediated by the undersigned, commencing on the ____ day of _____, 20____.
2. This civil action was settled by mediation.
3. (IF applicable) Attorneys for the parties will file with the Court within the next ten (10) days appropriate settlement documents for the Court's approval and appropriate order, with a request that the civil action be dismissed.
or, alternatively
2. This civil action was not settled by mediation.

(Name of Mediator _____)
(Address _____)
(Telephone No. _____)

[CERTIFICATE OF SERVICE]

I hereby certify that a true and correct copy of the foregoing Report of Mediation was served by U.S. Mail, First Class postage prepaid, upon the attorneys for the parties to the mediation proceedings, on this ____ day of _____, 20____.

(Name of Mediator)

**APPENDIX D
APPELLATE MEDIATON**

**SUPREME COURT ORDER OF JULY 17, 2003
WITH RULE 55 APPENDIX A AND APPENDIX B
APPELLATE MEDIATION RULES,
FORMS, ROSTER**

IN THE SUPREME COURT OF ALABAMA
July 17, 2003

ORDER

WHEREAS, this Court's Standing Committee on the Alabama Rules of Appellate Procedure recommended the adoption of a rule that allows mediation in cases at the appellate level; and

WHEREAS, this Court has considered the proposed rules;

NOW, THEREFORE, IT IS ORDERED that Rule 55, Alabama Rules of Appellate Procedure, be adopted to read in accordance with Appendix A attached to this order;

IT IS FURTHER ORDERED that a court comment to that rule be adopted to read in accordance with Appendix B attached to this order;

IT IS FURTHER ORDERED that the adoption of this rule and the comment shall be effective October 6, 2003;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 55:

“Note from the reporter of decisions: The order adopting Rule 55, effective October 6, 2003, is published in that volume of the Alabama Reporter that contains Alabama cases from _ So. 2d.”

Moore, C.J., and Houston, See, Lyons, Brown, Johnstone, Harwood, Woodall, and Stuart, JJ., concur.

APPENDIX A

RULE 55. APPELLATE MEDIATION

- (a) **Introduction.** An appellate court may direct the attorneys for the parties and the parties to appear before an approved mediator, who may be designated by the Court.
- (b) **Attendance at Sessions.** Parties with full settlement authority and parties' counsel are required to attend mediation, unless excused from attendance by the mediator.
- (c) **Privileged Discussions.** The content of mediation discussions and proceedings, including any statement made or documents prepared by any party, attorney, mediator, or other participant, is privileged and shall not be construed for any purpose as an admission against interest.
- (d) **Confidentiality.** Statements and comments made during mediation conferences and in related discussions are confidential and shall not be disclosed to the appellate court. Appellate mediators shall not be called as witnesses, and the information from the mediation, except for failure of a party or counsel to comply with this rule, shall not be disclosed to judges, staff, or employees of any court; provided, however, that it shall not be a violation of this subsection (d) to disclose to the appropriate person or entity such information as may be necessary to track the mediation and appeal process. The purposes of disclosing such information are to maintain status records and statistics, to ensure orderly compliance with this rule, and to provide a mechanism for returning the case to the ordinary appeal process where mediation has not resolved the case. Notwithstanding the foregoing, the bare fact that a settlement has or has not been reached as a result of mediation shall not be considered confidential.
- (e) **Mediation Not Binding.** No party shall be bound by anything said or done at a mediation session unless a settlement is reached and the agreement is reduced to writing.
- (f) **Noncompliance.** Failure to comply with this rule may result in the imposition of sanctions, including dismissal of the appeal.

APPENDIX B

Court Comment to Adoption of Rule 55 Effective October 6, 2003

At the time of the adoption of this rule, the Supreme Court was considering the adoption of Appellate Mediation Rules to facilitate the mediation process; however, those rules had not yet been drafted. The intent of this rule is to permit and encourage mediation at the appellate level. The rule contemplates that statements and comments made during the mediation process shall be privileged and confidential, but it recognizes that it may be necessary to divulge certain information to the person appointed by the court to track the mediation, who may be an employee of the court. The Judges or Justices of the court in which the appeal is pending may be advised of whether the parties have reached a tentative agreement but need more time to reduce the agreement to writing, or whether the parties need more time to continue mediation, or whether the mediator has determined that additional time for mediation would not be productive. No other information about the mediation shall be conveyed to the Judges or Justices.

Link to Appellate Mediation Website

www.judicial.alabama.gov and select Quick Links “Appellate Mediation” for rules, forms, appellate mediator roster.

APPENDIX E
ALABAMA ABRITRATION STANDARDS AND
REGISTRATION PROCEDURES

Arbitration Standards & Registration Procedures

Effective January 1, 2003

I. State Court Arbitration Roster: The Alabama Center for Dispute Resolution (“Center”) shall maintain a State Court Arbitrator Roster (“Roster”) which consists of those arbitrators who meet the arbitrator registration standards and procedures herein. This Roster shall be maintained geographically by counties and shall be made available to all state court judges, attorneys and the general public.

II. Definition of Registration: For the purpose of these provisions, the term “registration” and the related forms of this word shall mean only that the standards and procedures set forth herein have been met to the satisfaction of the Center. This term does not imply any degree of arbitration skills or competency on behalf of any arbitrator subject to the provisions.

III. Arbitrator Registration Standards: To be registered on the Roster, an arbitrator must meet the following minimum requirements:

1. Be of good character.
2. Be licensed as an attorney by one of the fifty states of the United States or the District of Columbia and in good standing, with eight years experience in the practice of law; or have served professionally as the arbitrator in at least four arbitrations within the three years immediately preceding submission of an application for registration; or be currently listed as an approved arbitrator for a neutral administrator for dispute resolution, which is recognized by the Center for maintaining high standards for members of its roster.
3. Agree to abide by the American Arbitration Association Code of Ethics for Arbitrators in Commercial Cases as adopted by the Alabama Supreme Court Commission on Dispute Resolution for those members of this Roster. A copy of that Code of Ethics is found at <http://www.adr.org/si.asp?id=3514>.

IV. Procedure for Registration: Individuals who seek to be registered on the Roster shall submit to the Center a completed application form. Should the individual meet the required standards and pay all applicable fees, his or her name shall be registered on the Roster as an arbitrator. To remain on the Roster, the arbitrator must meet such additional or different standards which may be hereafter imposed for registration. Registration decisions are made by the Alabama Center for Dispute Resolution. Applicants who are denied registration for any reason may appeal within thirty days of that denial to the Committee on Standards for Neutrals of the Alabama Supreme Court Commission on Dispute Resolution, which Committee may grant a hearing to the applicant. The Committee on Standards for Neutrals will make a determination of whether the applicant should be registered. An adverse decision of the Committee on Standards for Neutrals may be appealed to the full Alabama Supreme Court Commission on Dispute Resolution within thirty days of the date of such decisions. The Commission shall grant a hearing, if requested, to the applicant.

V. Fees: Individuals applying for arbitrator registration by the Center shall pay a \$20 application fee. If registration is approved, an annual fee of \$125 for registration will be assessed; provided, the annual registration fee for an individual listed on the mediator and arbitrator rosters maintained by the Center shall be a total of \$200 for both. Failure to pay the annual assessment, or failure to meet the standards effective at the time of renewal will result in the individual being removed from the roster.

APPENDIX F
ALABAMA CODE OF ETHICS
FOR ARBITRATORS

Code of Ethics for Arbitrators

“On March 4, 2005, the Alabama Supreme Court Commission on Dispute Resolution adopted the following code of ethics as the code to be followed by the arbitrators registered on the Alabama Arbitrator Roster of the Alabama Center for Dispute Resolution.”

The Code of Ethics for Arbitrators in Commercial Disputes
Effective March 1, 2004

The Code of Ethics for Arbitrators in Commercial Disputes was originally prepared in 1977 by a joint committee consisting of a special committee of the American Arbitration Association and a special committee of the American Bar Association. The Code was revised in 2003 by an ABA Task Force and special committee of the AAA.

Preamble

The use of arbitration to resolve a wide variety of disputes has grown extensively and forms a significant part of the system of justice on which our society relies for a fair determination of legal rights. Persons who act as arbitrators therefore undertake serious responsibilities to the public, as well as to the parties. Those responsibilities include important ethical obligations.

Few cases of unethical behavior by commercial arbitrators have arisen. Nevertheless, this Code sets forth generally accepted standards of ethical conduct for the guidance of arbitrators and parties in commercial disputes, in the hope of contributing to the maintenance of high standards and continued confidence in the process of arbitration.

This Code provides ethical guidelines for many types of arbitration but does not apply to labor arbitration, which is generally conducted under the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes.

There are many different types of commercial arbitration. Some proceedings are conducted under arbitration rules established by various organizations and trade associations, while others are conducted without such rules. Although most proceedings are arbitrated pursuant to voluntary agreement of the parties, certain types of disputes are submitted to arbitration by reason of particular laws. This Code is intended to apply to all such proceedings in which disputes or claims are submitted for decision to one or more arbitrators appointed in a manner provided by an agreement of the parties, by applicable arbitration rules, or by law. In all such cases, the persons who have the power to decide should observe fundamental standards of ethical conduct. In this Code, all such persons are called “arbitrators,” although in some types of proceeding they might be called “umpires,” “referees,” “neutrals,” or have some other title.

Arbitrators, like judges, have the power to decide cases. However, unlike full-time judges, arbitrators are usually engaged in other occupations before, during, and after the time that they serve as arbitrators. Often, arbitrators are purposely chosen from the same trade or industry as the parties in order to bring special knowledge to the task of deciding. This Code recognizes these fundamental differences between arbitrators and judges.

In those instances where this Code has been approved and recommended by organizations that provide, coordinate, or administer services of arbitrators, it provides ethical standards for the members of their respective panels of arbitrators. However, this Code does not form a part of the arbitration rules of any such organization unless its rules so provide.

Note on Neutrality

In some types of commercial arbitration, the parties or the administering institution provide for three or more arbitrators. In some such proceedings, it is the practice for each party, acting alone, to appoint one arbitrator (a “party-appointed arbitrator”) and for one additional arbitrator to be designated by the party-appointed arbitrators, or by the parties, or by an independent institution or individual. The sponsors of this Code believe that it is preferable for all arbitrators including any party-appointed arbitrators to be neutral, that is, independent and impartial, and to comply with the same ethical standards. This expectation generally is essential in arbitrations where the parties, the nature of the dispute, or the enforcement of any resulting award may have international aspects. However, parties in certain domestic arbitrations in the United States may prefer that party-appointed arbitrators be non-neutral and governed by special ethical considerations. These special ethical considerations appear in Canon X of this Code.

This Code establishes a presumption of neutrality for all arbitrators, including party-appointed arbitrators, which applies unless the parties’ agreement, the arbitration rules agreed to by the parties or applicable laws provide otherwise. This Code requires all party-appointed arbitrators, whether neutral or not, to make pre-appointment disclosures of any facts which might affect their neutrality, independence, or impartiality. This Code also requires all party-appointed arbitrators to ascertain and disclose as soon as practicable whether the parties intended for them to serve as neutral or not. If any doubt or uncertainty exists, the party-appointed arbitrators should serve as neutrals unless and until such doubt or uncertainty is resolved in accordance with Canon IX. This Code expects all arbitrators, including those serving under Canon X, to preserve the integrity and fairness of the process.

Note on Construction

Various aspects of the conduct of arbitrators, including some matters covered by this Code, may also be governed by agreements of the parties, arbitration rules to which the parties have agreed, applicable law, or other applicable ethics rules, all of which should be consulted by the arbitrators. This Code does not take the place of or supersede such laws, agreements, or arbitration rules to which the parties have agreed and should be read in conjunction with other rules of ethics. It does not establish new or additional grounds for

judicial review of arbitration awards.

All provisions of this Code should therefore be read as subject to contrary provisions of applicable law and arbitration rules. They should also be read as subject to contrary agreements of the parties. Nevertheless, this Code imposes no obligation on any arbitrator to act in a manner inconsistent with the arbitrator's fundamental duty to preserve the integrity and fairness of the arbitral process.

Canons I through VIII of this Code apply to all arbitrators. Canon IX applies to all party-appointed arbitrators, except that certain party-appointed arbitrators are exempted by Canon X from compliance with certain provisions of Canons I-IX related to impartiality and independence, as specified in Canon X.

CANON I. AN ARBITRATOR SHOULD UPHOLD THE INTEGRITY AND FAIRNESS OF THE ARBITRATION PROCESS.

A. An arbitrator has a responsibility not only to the parties but also to the process of arbitration itself, and must observe high standards of conduct so that the integrity and fairness of the process will be preserved. Accordingly, an arbitrator should recognize a responsibility to the public, to the parties whose rights will be decided, and to all other participants in the proceeding. This responsibility may include pro bono service as an arbitrator where appropriate.

B. One should accept appointment as an arbitrator only if fully satisfied:

- (1) that he or she can serve impartially;
- (2) that he or she can serve independently from the parties, potential witnesses, and the other arbitrators;
- (3) that he or she is competent to serve; and
- (4) that he or she can be available to commence the arbitration in accordance with the requirements of the proceeding and thereafter to devote the time and attention to its completion that the parties are reasonably entitled to expect.

C. After accepting appointment and while serving as an arbitrator, a person should avoid entering into any business, professional, or personal relationship, or acquiring any financial or personal interest, which is likely to affect impartiality or which might reasonably create the appearance of partiality. For a reasonable period of time after the decision of a case, persons who have served as arbitrators should avoid entering into any such relationship, or acquiring any such interest, in circumstances which might reasonably create the appearance that they had been influenced in the arbitration by the anticipation or expectation of the relationship or interest. Existence of any of the matters or circumstances described in this paragraph C does not render it unethical for one to serve as an arbitrator where the

parties have consented to the arbitrator's appointment or continued services following full disclosure of the relevant facts in accordance with Canon II.

D. Arbitrators should conduct themselves in a way that is fair to all parties and should not be swayed by outside pressure, public clamor, and fear of criticism or self-interest. They should avoid conduct and statements that give the appearance of partiality toward or against any party.

E. When an arbitrator's authority is derived from the agreement of the parties, an arbitrator should neither exceed that authority nor do less than is required to exercise that authority completely. Where the agreement of the parties sets forth procedures to be followed in conducting the arbitration or refers to rules to be followed, it is the obligation of the arbitrator to comply with such procedures or rules. An arbitrator has no ethical obligation to comply with any agreement, procedures or rules that are unlawful or that, in the arbitrator's judgment, would be inconsistent with this Code.

F. An arbitrator should conduct the arbitration process so as to advance the fair and efficient resolution of the matters submitted for decision. An arbitrator should make all reasonable efforts to prevent delaying tactics, harassment of parties or other participants, or other abuse or disruption of the arbitration process.

G. The ethical obligations of an arbitrator begin upon acceptance of the appointment and continue throughout all stages of the proceeding. In addition, as set forth in this Code, certain ethical obligations begin as soon as a person is requested to serve as an arbitrator and certain ethical obligations continue after the decision in the proceeding has been given to the parties.

H. Once an arbitrator has accepted an appointment, the arbitrator should not withdraw or abandon the appointment unless compelled to do so by unanticipated circumstances that would render it impossible or impracticable to continue. When an arbitrator is to be compensated for his or her services, the arbitrator may withdraw if the parties fail or refuse to provide for payment of the compensation as agreed.

I. An arbitrator who withdraws prior to the completion of the arbitration, whether upon the arbitrator's initiative or upon the request of one or more of the parties, should take reasonable steps to protect the interests of the parties in the arbitration, including return of evidentiary materials and protection of confidentiality.

Comment to Canon I

A prospective arbitrator is not necessarily partial or prejudiced by having acquired knowledge of the parties, the applicable law or the customs and practices of the business involved. Arbitrators may also have special experience or expertise in the areas of business, commerce, or technology which are involved in the arbitration. Arbitrators do not contravene this Canon if, by virtue of such experience or expertise, they have views

on certain general issues likely to arise in the arbitration, but an arbitrator may not have prejudged any of the specific factual or legal determinations to be addressed during the arbitration.

During an arbitration, the arbitrator may engage in discourse with the parties or their counsel, draw out arguments or contentions, comment on the law or evidence, make interim rulings, and otherwise control or direct the arbitration. These activities are integral parts of an arbitration. Paragraph D of Canon I is not intended to preclude or limit either full discussion of the issues during the course of the arbitration or the arbitrator's management of the proceeding.

CANON II. AN ARBITRATOR SHOULD DISCLOSE ANY INTEREST OR RELATIONSHIP LIKELY TO AFFECT IMPARTIALITY OR WHICH MIGHT CREATE AN APPEARANCE OF PARTIALITY.

A. Persons who are requested to serve as arbitrators should, before accepting, disclose:

- (1) any known direct or indirect financial or personal interest in the outcome of the arbitration;
- (2) any known existing or past financial, business, professional or personal relationships which might reasonably affect impartiality or lack of independence in the eyes of any of the parties. For example, prospective arbitrators should disclose any such relationships which they personally have with any party or its lawyer, with any co-arbitrator, or with any individual whom they have been told will be a witness. They should also disclose any such relationships involving their families or household members or their current employers, partners, or professional or business associates that can be ascertained by reasonable efforts;
- (3) the nature and extent of any prior knowledge they may have of the dispute; and
- (4) any other matters, relationships, or interests which they are obligated to disclose by the agreement of the parties, the rules or practices of an institution, or applicable law regulating arbitrator disclosure.

B. Persons who are requested to accept appointment as arbitrators should make a reasonable effort to inform themselves of any interests or relationships described in paragraph A.

C. The obligation to disclose interests or relationships described in paragraph A is a continuing duty which requires a person who accepts appointment as an arbitrator to disclose, as soon as practicable, at any stage of the arbitration, any such interests or relationships which may arise, or which are recalled or discovered.

D. Any doubt as to whether or not disclosure is to be made should be resolved in favor of disclosure.

E. Disclosure should be made to all parties unless other procedures for disclosure are provided in the agreement of the parties, applicable rules or practices of an institution, or by law. Where more than one arbitrator has been appointed, each should inform the others of all matters disclosed.

F. When parties, with knowledge of a person's interests and relationships, nevertheless desire that person to serve as an arbitrator, that person may properly serve.

G. If an arbitrator is requested by all parties to withdraw, the arbitrator must do so. If an arbitrator is requested to withdraw by less than all of the parties because of alleged partiality, the arbitrator should withdraw unless either of the following circumstances exists:

- (1) An agreement of the parties, or arbitration rules agreed to by the parties, or applicable law establishes procedures for determining challenges to arbitrators, in which case those procedures should be followed; or
- (2) In the absence of applicable procedures, if the arbitrator, after carefully considering the matter, determines that the reason for the challenge is not substantial, and that he or she can nevertheless act and decide the case impartially and fairly.

H. If compliance by a prospective arbitrator with any provision of this Code would require disclosure of confidential or privileged information, the prospective arbitrator should either:

- (1) Secure the consent to the disclosure from the person who furnished the information or the holder of the privilege; or
- (2) Withdraw.

CANON III. AN ARBITRATOR SHOULD AVOID IMPROPRIETY OR THE APPEARANCE OF IMPROPRIETY IN COMMUNICATING WITH PARTIES.

A. If an agreement of the parties or applicable arbitration rules establishes the manner or content of communications between the arbitrator and the parties, the arbitrator should follow those procedures notwithstanding any contrary provision of paragraphs B and C.

B. An arbitrator or prospective arbitrator should not discuss a proceeding with any party in the absence of any other party, except in any of the following circumstances:

- (1) When the appointment of a prospective arbitrator is being considered, the prospective arbitrator:
 - (a) may ask about the identities of the parties, counsel, or witnesses and the general nature of the case; and

- (b) may respond to inquiries from a party or its counsel designed to determine his or her suitability and availability for the appointment. In any such dialogue, the prospective arbitrator may receive information from a party or its counsel disclosing the general nature of the dispute but should not permit them to discuss the merits of the case.
- (2) In an arbitration in which the two party-appointed arbitrators are expected to appoint the third arbitrator, each party-appointed arbitrator may consult with the party who appointed the arbitrator concerning the choice of the third arbitrator;
- (3) In an arbitration involving party-appointed arbitrators, each party-appointed arbitrator may consult with the party who appointed the arbitrator concerning arrangements for any compensation to be paid to the party-appointed arbitrator. Submission of routine written requests for payment of compensation and expenses in accordance with such arrangements and written communications pertaining solely to such requests need not be sent to the other party;
- (4) In an arbitration involving party-appointed arbitrators, each party-appointed arbitrator may consult with the party who appointed the arbitrator concerning the status of the arbitrator (i.e., neutral or non-neutral), as contemplated by paragraph C of Canon IX;
- (5) Discussions may be had with a party concerning such logistical matters as setting the time and place of hearings or making other arrangements for the conduct of the proceedings. However, the arbitrator should promptly inform each other party of the discussion and should not make any final determination concerning the matter discussed before giving each absent party an opportunity to express the party's views; or
- (6) If a party fails to be present at a hearing after having been given due notice, or if all parties expressly consent, the arbitrator may discuss the case with any party who is present.

C. Unless otherwise provided in this Canon, in applicable arbitration rules or in an agreement of the parties, whenever an arbitrator communicates in writing with one party, the arbitrator should at the same time send a copy of the communication to every other party, and whenever the arbitrator receives any written communication concerning the case from one party which has not already been sent to every other party, the arbitrator should send or cause it to be sent to the other parties.

CANON IV. AN ARBITRATOR SHOULD CONDUCT THE PROCEEDINGS FAIRLY AND DILIGENTLY.

- A. An arbitrator should conduct the proceedings in an even-handed manner. The arbitrator should be patient and courteous to the parties, their representatives, and the witnesses and should encourage similar conduct by all participants.
- B. The arbitrator should afford to all parties the right to be heard and due notice of the time and place of any hearing. The arbitrator should allow each party a fair opportunity to present its evidence and arguments.
- C. The arbitrator should not deny any party the opportunity to be represented by counsel or by any other person chosen by the party.
- D. If a party fails to appear after due notice, the arbitrator should proceed with the arbitration when authorized to do so, but only after receiving assurance that appropriate notice has been given to the absent party.
- E. When the arbitrator determines that more information than has been presented by the parties is required to decide the case, it is not improper for the arbitrator to ask questions, call witnesses, and request documents or other evidence, including expert testimony.
- F. Although it is not improper for an arbitrator to suggest to the parties that they discuss the possibility of settlement or the use of mediation, or other dispute resolution processes, an arbitrator should not exert pressure on any party to settle or to utilize other dispute resolution processes. An arbitrator should not be present or otherwise participate in settlement discussions or act as a mediator unless requested to do so by all parties.
- G. Co-arbitrators should afford each other full opportunity to participate in all aspects of the proceedings.

Comment to paragraph G

Paragraph G of Canon IV is not intended to preclude one arbitrator from acting in limited circumstances (e.g., ruling on discovery issues) where authorized by the agreement of the parties, applicable rules or law, nor does it preclude a majority of the arbitrators from proceeding with any aspect of the arbitration if an arbitrator is unable or unwilling to participate and such action is authorized by the agreement of the parties or applicable rules or law. It also does not preclude ex parte requests for interim relief.

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

- A. The arbitrator should, after careful deliberation, decide all issues submitted for determination. An arbitrator should decide no other issues.
- B. An arbitrator should decide all matters justly, exercising independent judgment, and should not permit outside pressure to affect the decision.
- C. An arbitrator should not delegate the duty to decide to any other person.
- D. In the event that all parties agree upon a settlement of issues in dispute and request

the arbitrator to embody that agreement in an award, the arbitrator may do so, but is not required to do so unless satisfied with the propriety of the terms of settlement. Whenever an arbitrator embodies a settlement by the parties in an award, the arbitrator should state in the award that it is based on an agreement of the parties.

CANON VI. AN ARBITRATOR SHOULD BE FAITHFUL TO THE RELATIONSHIP OF TRUST AND CONFIDENTIALITY INHERENT IN THAT OFFICE.

A. An arbitrator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the arbitration proceeding to gain personal advantage or advantage for others, or to affect adversely the interest of another.

B. The arbitrator should keep confidential all matters relating to the arbitration proceedings and decision. An arbitrator may obtain help from an associate, a research assistant or other persons in connection with reaching his or her decision if the arbitrator informs the parties of the use of such assistance and such persons agree to be bound by the provisions of this Canon.

C. It is not proper at any time for an arbitrator to inform anyone of any decision in advance of the time it is given to all parties. In a proceeding in which there is more than one arbitrator, it is not proper at any time for an arbitrator to inform anyone about the substance of the deliberations of the arbitrators. After an arbitration award has been made, it is not proper for an arbitrator to assist in proceedings to enforce or challenge the award.

D. Unless the parties so request, an arbitrator should not appoint himself or herself to a separate office related to the subject matter of the dispute, such as receiver or trustee, nor should a panel of arbitrators appoint one of their number to such an office.

CANON VII. AN ARBITRATOR SHOULD ADHERE TO STANDARDS OF INTEGRITY AND FAIRNESS WHEN MAKING ARRANGEMENTS FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES.

A. Arbitrators who are to be compensated for their services or reimbursed for their expenses shall adhere to standards of integrity and fairness in making arrangements for such payments.

B. Certain practices relating to payments are generally recognized as tending to preserve the integrity and fairness of the arbitration process. These practices include:

- (1) Before the arbitrator finally accepts appointment, the basis of payment, including any cancellation fee, compensation in the event of withdrawal and compensation for study and preparation time, and all other charges, should be established. Except for arrangements for the compensation of party-appointed arbitrators, all parties should be informed in writing of the terms established;
- (2) In proceedings conducted under the rules or administration of an institution that is available to assist in making arrangements for payments, communication related to compensation should be made through the institution. In proceedings where no institution has been engaged by the parties to administer the arbitration, any communication with arbitrators (other than party appointed arbitrators) concerning payments should be in the presence of all parties; and

- (3) Arbitrators should not, absent extraordinary circumstances, request increases in the basis of their compensation during the course of a proceeding.

CANON VIII. AN ARBITRATOR MAY ENGAGE IN ADVERTISING OR PROMOTION OF ARBITRAL SERVICES WHICH IS TRUTHFUL AND ACCURATE.

A. Advertising or promotion of an individual's willingness or availability to serve as an arbitrator must be accurate and unlikely to mislead. Any statements about the quality of the arbitrator's work or the success of the arbitrator's practice must be truthful.

B. Advertising and promotion must not imply any willingness to accept an appointment otherwise than in accordance with this Code.

Comment to Canon VIII

This Canon does not preclude an arbitrator from printing, publishing, or disseminating advertisements conforming to these standards in any electronic or print medium, from making personal presentations to prospective users of arbitral services conforming to such standards or from responding to inquiries concerning the arbitrator's availability, qualifications, experience, or fee arrangements.

CANON IX. ARBITRATORS APPOINTED BY ONE PARTY HAVE A DUTY TO DETERMINE AND DISCLOSE THEIR STATUS AND TO COMPLY WITH THIS CODE, EXCEPT AS EXEMPTED BY CANON X.

A. In some types of arbitration in which there are three arbitrators, it is customary for each party, acting alone, to appoint one arbitrator. The third arbitrator is then appointed by agreement either of the parties or of the two arbitrators, or failing such agreement, by an independent institution or individual. In tripartite arbitrations to which this Code applies, all three arbitrators are presumed to be neutral and are expected to observe the same standards as the third arbitrator.

B. Notwithstanding this presumption, there are certain types of tripartite arbitration in which it is expected by all parties that the two arbitrators appointed by the parties may be predisposed toward the party appointing them. Those arbitrators, referred to in this Code as “Canon X arbitrators,” are not to be held to the standards of neutrality and independence applicable to other arbitrators. Canon X describes the special ethical obligations of party-appointed arbitrators who are not expected to meet the standard of neutrality.

C. A party-appointed arbitrator has an obligation to ascertain, as early as possible but not later than the first meeting of the arbitrators and parties, whether the parties have agreed that the party-appointed arbitrators will serve as neutrals or whether they shall be subject to Canon X, and to provide a timely report of their conclusions to the parties and other arbitrators:

- (1) Party-appointed arbitrators should review the agreement of the parties, the applicable rules and any applicable law bearing upon arbitrator neutrality. In reviewing the agreement of the parties, party-appointed arbitrators should consult any relevant express terms of the written or oral arbitration agreement. It may also be appropriate for them to inquire into agreements that have not been expressly set forth, but which may be implied from an established course of dealings of the parties or well-recognized custom and usage in their trade or profession;
- (2) Where party-appointed arbitrators conclude that the parties intended for the party-appointed arbitrators not to serve as neutrals, they should so inform the parties and the other arbitrators. The arbitrators may then act as provided in Canon X unless or until a different determination of their status is made by the parties, any administering institution or the arbitral panel; and
- (3) Until party-appointed arbitrators conclude that the party-appointed arbitrators were not intended by the parties to serve as neutrals, or if the party-appointed arbitrators are unable to form a reasonable belief of their status from the foregoing sources and no decision in this regard has yet been made by the parties, any administering institution, or the arbitral panel, they should observe all of the obligations of neutral arbitrators set forth in this Code.

D. Party-appointed arbitrators not governed by Canon X shall observe all of the obligations of Canons I through VIII unless otherwise required by agreement of the parties, any applicable rules, or applicable law.

CANON X. EXEMPTIONS FOR ARBITRATORS APPOINTED BY ONE PARTY WHO ARE NOT SUBJECT TO RULES OF NEUTRALITY.

Canon X arbitrators are expected to observe all of the ethical obligations prescribed by this Code except those from which they are specifically excused by Canon X.

A. Obligations under Canon I

Canon X arbitrators should observe all of the obligations of Canon I subject only to the following provisions:

- (1) Canon X arbitrators may be predisposed toward the party who appointed them but in all other respects are obligated to act in good faith and with integrity and fairness. For example, Canon X arbitrators should not engage in delaying tactics or harassment of any party or witness and should not knowingly make untrue or misleading statements to the other arbitrators; and
- (2) The provisions of subparagraphs B(1), B(2), and paragraphs C and D of Canon I, insofar as they relate to partiality, relationships, and interests are not applicable to Canon X arbitrators.

B. Obligations under Canon II

- (1) Canon X arbitrators should disclose to all parties, and to the other arbitrators, all interests and relationships which Canon II requires be disclosed. Disclosure as required by Canon II is for the benefit not only of the party who appointed the arbitrator, but also for the benefit of the other parties and arbitrators so that they may know of any partiality which may exist or appear to exist; and
- (2) Canon X arbitrators are not obliged to withdraw under paragraph G of Canon II if requested to do so only by the party who did not appoint them.

C. Obligations under Canon III

Canon X arbitrators should observe all of the obligations of Canon III subject only to the following provisions:

- (1) Like neutral party-appointed arbitrators, Canon X arbitrators may consult with the party who appointed them to the extent permitted in paragraph B of Canon III;
- (2) Canon X arbitrators shall, at the earliest practicable time, disclose to the other arbitrators and to the parties whether or not they intend to communicate with their appointing parties. If they have disclosed the intention to engage in such communications, they may thereafter communicate with their appointing parties concerning any other aspect of the case, except as provided in paragraph (3);
- (3) If such communication occurred prior to the time they were appointed as arbitrators, or prior to the first hearing or other meeting of the parties with the arbitrators, the Canon X arbitrator should, at or before the first hearing or meeting of the arbitrators with the parties, disclose the fact that such communication has taken place. In complying with the provisions of this subparagraph, it is sufficient that there be disclosure of the fact that such communication has occurred without disclosing the content of the communication. A single timely disclosure of the Canon X arbitrator's intention to participate in such communications in the future is sufficient;

- (4) Canon X arbitrators may not at any time during the arbitration:
- (a) disclose any deliberations by the arbitrators on any matter or issue submitted to them for decision;
 - (b) communicate with the parties that appointed them concerning any matter or issue taken under consideration by the panel after the record is closed or such matter or issue has been submitted for decision; or
 - (c) disclose any final decision or interim decision in advance of the time that it is disclosed to all parties.
- (5) Unless otherwise agreed by the arbitrators and the parties, a Canon X arbitrator may not communicate orally with the neutral arbitrator concerning any matter or issue arising or expected to arise in the arbitration in the absence of the other Canon X arbitrator. If a Canon X arbitrator communicates in writing with the neutral arbitrator, he or she shall simultaneously provide a copy of the written communication to the other Canon X arbitrator;
- (6) When Canon X arbitrators communicate orally with the parties that appointed them concerning any matter on which communication is permitted under this Code, they are not obligated to disclose the contents of such oral communications to any other party or arbitrator; and
- (7) When Canon X arbitrators communicate in writing with the party who appointed them concerning any matter on which communication is permitted under this Code, they are not required to send copies of any such written communication to any other party or arbitrator.

D. Obligations under Canon IV

Canon X arbitrators should observe all of the obligations of Canon IV.

E. Obligations under Canon V

Canon X arbitrators should observe all of the obligations of Canon V, except that they may be predisposed toward deciding in favor of the party who appointed them.

F. Obligations under Canon VI

Canon X arbitrators should observe all of the obligations of Canon VI.

G . Obligations Under Canon VII

Canon X arbitrators should observe all of the obligations of Canon VII.

H. Obligations Under Canon VIII

Canon X arbitrators should observe all of the obligations of Canon VIII.

I. Obligations Under Canon IX

The provisions of paragraph D of Canon IX are inapplicable to Canon X arbitrators, except insofar as the obligations are also set forth in this Canon.

APPENDIX G
FEDERAL ARBITRATION ACT

UNITED STATES ARBITRATION ACT, GENERAL PROVISIONS

(9 U.S.C. §§ 1-16)

Chapter 1. GENERAL PROVISIONS

Section

1. Maritime transactions and commerce defined; exceptions to operation of title
2. Validity, irrevocability, and enforcement of agreements to arbitrate
3. Stay of proceedings where issue therein referable to arbitrate
4. Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination
5. Appointment of arbitrators or umpire
6. Application heard as motion
7. Witnesses before arbitrators; fees; compelling attendance
8. Proceedings begun by libel in admiralty and seizure of vessel or property
9. Award of arbitrators; confirmation; jurisdiction; procedure
10. Same; vacation; grounds; rehearing
11. Same; modification or correction; grounds; order
12. Notice of motions to vacate or modify; service; stay of proceedings
13. Papers filed with order on motions; judgment; docketing; force and effect; enforcement
14. Contracts not affected
15. Inapplicability of the Act of State doctrine
16. Appeals

§ 1. “Maritime transactions” and “commerce” defined; exceptions to operation of title

“Maritime transaction,” as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; “commerce,” as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

§ 2. Validity, irrevocability, and enforcement of agreements to arbitrate

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an

agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

§ 3. Stay of proceedings where issue therein referable to arbitration

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the courts in which suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

§4. Failure to arbitrate under agreement; petition to United State court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determinations

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

§ 5. Appointment of arbitrators or umpire

If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided

therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the name of an arbitrator or arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided in the agreement the arbitration shall be by a single arbitrators.

§ 6. Application heard as motion

Any application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided.

§ 7. Witnesses before arbitrators; fee; compelling attendance

The arbitrators selected either as prescribed in this title, or otherwise, or a majority of them, may summon in writing any person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case. The fees for such attendance shall be the same as the fees of witnesses before master of the United States courts. Said summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subpoenas to appear and testify before the court; if any person or persons so summoned to testify shall refuse or neglect to obey said summons, upon petition the United States district court for the district in which such arbitrators, or a majority of them, are sitting may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of the United States.

§ 8. Proceedings begun by libel is admiralty and seizure of vessel or property

If the basis of jurisdiction be a cause of action otherwise justifiable in admiralty, then, notwithstanding anything therein to the contrary, the party claiming to be aggrieved may begin his proceeding hereunder the libel and seizure of the vessel or other property of the other party according to the usual course of admiralty proceedings, and the court shall then have jurisdiction to direct the parties to proceed with the arbitration and shall retain jurisdiction to enter its decree upon the award.

§ 9. Award of arbitrators; confirmation; jurisdiction; procedure

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant

such an order unless the award is vacated, modified, or corrected as prescribed in section 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

§ 10. Same; vacation; grounds; rehearing

- (a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—
 - (1) Where the award was procured by corruption, fraud, or undue means.
 - (2) Where there was evident partiality or corruption in the arbitrators, or either of them.
 - (3) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.
 - (4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.
 - (5) Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators.
- (b) The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

§11 Same; modification or correction; grounds; order

In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration –

- (a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.
- (b) Where the arbitrators have awarded upon a matter not submitted to them, unless

it is a matter not affecting the merits of the decision upon the matter submitted.

- (c) Where the award is imperfect in matter of form not affecting the merits of the controversy. The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

§12. Notice of motions to vacate or modify; service; stay of proceedings

Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court. For the purpose of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

§ 13. Papers filed with order on motions; judgment; docketing; force and effect; enforcement

The party moving for an order confirming, modifying, or correcting an award shall, at the time such order is filed with the clerk for the entry of judgment thereon, also file the following papers with the clerk:

- (a) The agreement; the selection or appointment, if any, of an additional arbitrator or umpire; and each written extension of the time, if any, within which to make the award.
- (b) The award.
- (c) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application.

The judgment shall be docketed as if it was rendered in an action

The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

§ 14. Contracts not affected

This title shall not apply to contracts made prior to January 1, 1926.

§ 15. Inapplicability of the Act of State doctrine

Enforcement of arbitral agreements, confirmation of arbitral awards, and execution upon judgments based on orders confirming such awards shall not be refused on the basis of the Act of State doctrine.

§16. Appeals

- (a) An appeal may be taken from –
 - (1) an order –
 - (A) refusing a stay of any action under section 3 of this title,
 - (B) denying a petition under section 4 of this title to order arbitration to proceed,
 - (C) denying an application under section 206 of this title to compel arbitration,
 - (D) confirming or denying confirmation of an award or partial award, or
 - (E) modifying, correcting, or vacating an award
 - (2) an interlocutory order granting, continuing or modifying an injunction against an arbitration that is subject to this title; or
 - (3) a final decision with respect to an arbitration that is subject to this title.
- (b) Except as otherwise provided in section 1292(b) of title 28, an appeal may not be taken from an interlocutory order –
 - (1) granting a stay of any action under section 3 of this title;
 - (2) directing arbitration to proceed under section 4 of this title;
 - (3) compelling arbitration under section 206 of this title; or
 - (4) refusing to enjoin an arbitration that is subject to this title.

APPENDIX H
AAA COMMERCIAL ARBITRATION RULES

AAA COMMERCIAL ARBITRATION RULES

The AAA Commercial Arbitration Rules appear on the American Arbitration Association's website at www.adr.org. A thorough review of this website will enable the user to find many resources including the Consumer Arbitration Rules and Mediation Procedures.

APPENDIX I
SELECTED REFERENCES

ARBITRATION

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APPENDIX J
ADR ORGANIZATIONS AND WEBSITES

ADR ORGANIZATIONS AND PROVIDERS

ADA Mediation Program

U.S. Department of Justice
950 Pennsylvania Avenue, NW
Civil Rights Division
Disability Rights Section - NYA
Washington, D.C. 20530
Phone: (800) 514-0301
Phone (800) 514-0383
www.ada.gov/mediation

AL. Academy of Attorney Mediators, Inc.

Charles L. Denaburg
2125 Morris Avenue
Birmingham, AL. 35203

Alabama Center for Dispute Resolution

415 Dexter Avenue
P.O. Box 671
Montgomery, AL 36010
Phone: (334) 269-0409
Phone: (334) 269-1515
Fax: (334) 261-6312
Email: adr@alabar.org
www.alabamaadr.org
www.alabamamediators.org
www.alabamaarbitrators.org
www.alabamaprivatejudges.org

American Arbitration Association

120 Broadway, 21th Floor
New York, NY 10271
Phone: (212) 716-3978
www.adr.org
www.mediation.org

American Arbitration Association Atlanta Office

2200 Century Pkwy NE, Suite 300
Atlanta, GA 30345
Phone: (404) 325-0101
www.adr.org

American Bar Association Association Section of Dispute Resolution

1050 Connecticut, N.W., Suite 400
Washington, DC 20036
Phone: (202) 662-1680
Fax: (202) 662-1683
www.americanbar.org/dispute

Association for Conflict Resolution

Cheryl L. Jamison, J.D., Executive Director
1639 Bradley Park Dr., Suite 500-142
Columbus, GA 31904
Phone: (202) 780-5999
www.acrnet.org

Association of Attorney-Mediators

P. O. Box 741955
Dallas, TX 75374-1955
Toll free: 1-800-280-1368
Phone: (972) 669-8101
Fax: (972) 669-8180
www.attorney-mediators.org/

Association of Family & Conciliation Courts

6525 Grand Teton Plaza
Madison, WI 53719
Phone: (608) 664-3750
Fax: (608) 664-3751
afcc@afccnet.org
www.afccnet.org

Better Business Bureau - Birmingham

P.O. Box 55268
Birmingham, AL. 35255-5268
(800) 824-5274 (Only in Alabama)
Phone: (205) 558-2222
Fax: (205) 558-2239
www.bbb.org/cs/al/

Better Business Bureau - Huntsville

P.O. Box 383
Huntsville, AL. 35804
Phone: (256) 533-1640
Fax: (256) 533-1177
www.bbb.org/northern-alabama/

Better Business Bureau - Mobile

3 Dauphin Street, Suite 2
Mobile, AL. 36602
Phone: (251) 433-2227
Fax: (251) 438-3191
www.bbb.org/CSAL/

Birmingham Collaborative Alliance

P.O. Box 124
Birmingham, AL. 35201
E-mail: info@birminghamcollaborative.com

CPR, International Institute for Conflict Prevention & Resolution

575 Lexington Avenue, 21st Floor
New York, NY 10022
Phone: (212) 949-6490
Fax: (212) 949-8859
Web: www.cpradr.org

FMCS - Federal Mediation and Conciliation Service

2100 K Street N.W.
Washington DC 20427
Phone: (202) 606-8100
Fax: (202) 606-4251
www.fmcs.gov

Financial Industry Regulatory Authority (FINRA) Dispute Resolution

1735 K. Street
Washington, DC 20006
Phone: (301) 590-6500
www.finra.org

Southeast Region of FINRA

Boca Center Tower 1
5200 Town Center Circle
Boca Raton, FL 33486
Phone: (561) 416-0277
Fax: (301) 527-4868
www.finra.org

Global Collaborative Law Council, Inc.

7557 Rambler Road, Suite 850
Dallas, Texas 75231-2304
Phone: (214) 739-8900 Ext 113
Fax: (214) 739-8959
www.collaborativelaw.us/

International Academy of Collaborative Professionals

4201 N. 24th Street, Suite 240
Phoenix, Az. 85016
Phone: (480) 696-6075
Fax: (440) 240-9068
www.collaborativepractice.com

JAMS

1920 Main Street
Suite 300
Irvine, CA 92614
Phone: (949) 224-1810
Fax: (949) 224-1818
www.jamsadr.com

Key Bridge Foundation for ADA Mediation

5335 Wisconsin Avenue NW, Suite 440
Washington, DC 20015
(800)-346-7643
Phone: (202) 274-1822
Fax: (202) 274-1824
www.keybridge.org

National Arbitration Forum

P.O. Box 50191
Minneapolis, MN 55426-0191
Phone: (952) 516-6400
Fax: (952) 345-1160
www.adrforum.com

National Association for Community Mediation

1959 South Power Road, Suite 103-279
Mesa, AZ 85206
(602) 633-4213
www.nafcm.org

National Council of Juvenile and Family Court Judges

P.O. Box 8970
Reno, NV 89507
Phone: (775) 784-6012
Fax: (775) 784-6628
www.ncjfcj.org

National Policy Consensus Center

720 Urban Center
506 SW Mill Street
P.O. Box 751
Portland, OR 97207-0751
Phone: (503) 725-9079
Fax: (503) 725-9099
www.pdx.edu/npcc

Peacemaker Ministries

5550 Tech Center Drive #311
Colorado Springs, CO. 80919
Phone: (719) 358-4900
www.peacemaker.net

Udall Foundation - U.S. Institute for Environmental Conflict Resolution

130 South Scott Avenue
Tucson, AZ 85701-1922
Phone: (520) 901-8500
Fax: (520) 670-5530
www.ucall.gov

