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SAMPLE STATEWIDE CIVIL CASE ADR RULE

SOUTH CAROLINA

[Circuit Court Alternative Dispute Resolution Rules](#)

STATEWIDE OR LOCAL

Statewide

PROCESSES

- Mediation
- Arbitration
- Early Neutral Evaluation

ELIGIBLE CASES

All civil actions are subject to ADR, with the exception of actions seeking extraordinary relief, post-conviction relief matters, forfeiture proceedings brought by the state, cases involving mortgage foreclosures, family cases initiated by the Department of Social Services and cases that were mediated by a certified mediator prior to filing.

SUMMARY

Under these rules, mediation is mandatory unless the parties agree to arbitration instead. Parties may also submit to early neutral evaluation at any time. Neutrals for the program must be certified by the Supreme Court's Board of Arbitrator and Mediator Certification to be on the court roster, although the parties may stipulate to a neutral who is not certified. In either case, the parties select the neutral. Both mediators and arbitrators are paid by the parties.

WHAT IS GOOD ABOUT THIS RULE:

- *Good authority and duties of mediators*
This rule specifies the authority and duties of the mediators, including the duty of impartiality, the duty of confidentiality, and specific details regarding the information the mediator must provide. This helps to mold the expectations of the participants and provides quality control for the court.

- *Good authority and duty of arbitrators*
 This rule specifies the authority and duties of the arbitrators, including the duty of impartiality, the immunity of arbitrators, and specific details regarding the information the arbitrator must provide. This helps to mold the expectations of the participants and provides quality control for the court.
- *Good authority and duties of early neutral evaluators*
 This rule specifies the authority and duties of the early neutral evaluator, including the duty of impartiality, the duty of reporting, and specific details regarding the information the evaluator must provide. This helps to mold the expectations of the participants and provides quality control for the court.
- *Good duties of parties and attorneys*
 The rule also specifies the duties of the parties and attorneys. This helps to mold the expectations of the participants and help to make the process run smoothly.
- *Good section on approved training programs*
 It clearly outlines the minimum hours and curriculum requirements for both mediators and arbitrators, and what training programs outside of the state of South Carolina may meet approval for neutrals seeking certification.
 - ⇒ For a detailed outline of a training curriculum, see [Guidelines for Implementation of Qualifications Standards for Neutrals](#), Massachusetts Supreme Judicial Court Standing Committee on Dispute Resolution.
- *Good standards of conduct*
 All programs should require that neutrals abide by a set of ethical standards. This promotes confidence in the program, molds expectations and behaviors, and provides quality control. Standards for mediators are included as [Appendix B](#) to the rules. The code of ethics for arbitrators is included as [Appendix A](#).
 - ⇒ For a discussion of ethical standards for mediators, see [National Standards for Court-Connected Mediation Programs](#), Center for Dispute Settlement.
 - ⇒ See as well, [Model Standards of Conduct for Mediators](#), American Arbitration Association, American Bar Association, Association for Conflict Resolution.
 - ⇒ For family mediation standards, see [Model Standards of Practice for Family and Divorce Mediation](#), The Symposium on Standards of Practice.
 - ⇒ For arbitrator ethics, see [The Code of Ethics for Arbitrators in Commercial Disputes](#), American Arbitration Association, American Bar Association.
- *Good grievance process*
 If a court certifies neutrals, it must have a process for dealing with complaints arising from the misconduct of a neutral. This rule provides a good example of such a process.
- *Provision for indigent cases*
 Since this program relies on party compensation to the neutral, it is essential that there be some exception to this for parties who cannot afford to pay. This ensures that more parties

have access to mediation and arbitration. In this rule, parties may file an application for indigency.

ADDITIONAL POINTS TO NOTE

- Mediation and arbitration must be held within 300 days of filing, but can be deferred if the motion is filed by the 224th day and the judge agrees there is good cause to do so.
- Mediation can only be terminated by permission of the mediator. This is different from most rules, which allow for any party to terminate mediation. While this might work to impede parties from ending a mediation before good faith negotiations have been undertaken, it can also be argued that this violates the principle of self-determination on which mediation stands.
- Family mediation participants are required to participate in three hours of mediation unless agreement is reached earlier. The requirement of parents to participate in a certain number of hours of mediation is not uncommon. The intent is to ensure that the parents make a good faith effort to get past the initial resistance to mediation and attempt true negotiation in the best interest of the children. It can also be argued that this violates the principle of self-determination on which mediation stands.
- To be certified, mediators must have been admitted to the bar. While this requirement is common in civil cases, it is not common for family cases, where those with a behavioral science background are often eligible for certification. There are various arguments against limiting eligibility of mediators to attorneys. First, there is no data demonstrating that attorneys are more successful mediators and some data indicating that there is no difference in success based on a mediator's professional background. Second, this rule would tend to limit the parties' ability to select mediators whose skillset and approach may be more appropriate to their situation. Last, in jurisdictions in which mediators from behavioral health backgrounds charge less than lawyers who mediate, excluding these mediators may limit access to mediation.

FURTHER READING

QUALIFICATIONS

[National Standards for Court-Connected Mediation Programs](#), Center for Dispute Settlement

INTIMATE PARTNER VIOLENCE SCREENING

[Model Court Protocol for Domestic Violence and Child Abuse Screening in Matters Referred to Domestic Relations Mediation](#), Michigan Domestic Violence Prevention and Treatment Board

MONITORING AND EVALUATION

[Monitoring and Evaluating Court-Based Dispute Resolution Programs: A Guide for Judges and Court Managers](#), National Center for State Courts, 1997

Rule 1 Scope of Rules

These rules shall be construed to secure the just, speedy, inexpensive and collaborative resolution in every action to which they apply. These rules govern Alternative Dispute Resolution (ADR) processes in the courts of this State as follows:

(a) With the exceptions stated in Rule 3, these rules govern court-annexed ADR processes in South Carolina Circuit Courts in civil suits, and in South Carolina Family Courts in domestic relations actions:

- (1) in all counties in South Carolina;¹
- (2) as required by statute; or
- (3) as ordered by a court of competent jurisdiction.

(b) With the exception of Rules 3, 4, 5, 6, 7(e) and (f), 9(b) and (d), and Rule 10(a), these rules shall govern ADR processes that are neither court mandated nor required by statute in all cases pending in the courts of this State.

(c) These rules shall govern all mediations in Medical Malpractice actions as required by S.C. Code Ann. § 15-79-120 and S.C. Code Ann. § 15-79-125(C).

Last amended by Order dated April 27, 2016.

[\[1\]](#) See Supreme Court Order dated November 12, 2015.

Rule 2 Definitions

(a) Mediation. An informal process in which a third-party mediator facilitates settlement discussions between parties. Any settlement is voluntary. In the absence of settlement, the parties lose none of their rights to trial.

(b) Mediator. A neutral person who acts to encourage and facilitate the resolution of a dispute. The mediator does not decide the issues in controversy or impose settlement.

(c) Arbitration. An informal process in which a third-party arbitrator issues an award deciding the issues in controversy. The award may be binding or non-binding as specified in these rules.

(d) Arbitrator. A neutral person who acts to decide the issues in controversy of a dispute.

(e) Early Neutral Evaluation. An informal process in which a third-party evaluator provides a non-binding evaluation of the matters in controversy, assists the parties in identifying areas of agreement, offers case planning suggestions, and assists in settlement discussions.

(f) Evaluator. A neutral person who provides an evaluation of the issues in controversy in a dispute as described in these rules.

(g) Neutral. A mediator, arbitrator or evaluator.

(h) Certified. A mediator or arbitrator who is approved by the Board of Arbitrator and Mediator Certification to be eligible for court appointment pursuant to these rules. A certified mediator or arbitrator may refer to himself or herself as a "Supreme Court of South Carolina Certified Mediator" or a "Supreme Court of South Carolina Certified Arbitrator."

(i) Alternative Dispute Resolution (ADR) Conference. A mediation or arbitration. Arbitration conferences may also be referred to as hearings.

(j) Roster. The official list of certified neutrals maintained and published by the South Carolina Supreme Court Board of Arbitrator and Mediator Certification.

(k) Board. The South Carolina Supreme Court Board of Arbitrator and Mediator Certification.

Last amended by Order dated October 26, 2016.

Rule 3 Actions Subject to ADR

(a) Mediation. All civil actions filed in the circuit court, all cases in which a Notice of Intent to File Suit is filed pursuant to the provisions of S.C. Code 15-79-125(A), and all contested issues in domestic relations actions filed in family court, except for cases set forth in Rule 3(b) or (c), are subject to court-ordered mediation under these rules unless the parties agree to conduct an arbitration. The parties may select their own neutral and may mediate, arbitrate or submit to early neutral evaluation at any time.

(b) Exceptions. ADR is not required for:

- (1) special proceedings, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
- (2) requests for temporary relief;
- (3) appeals;
- (4) post-conviction relief (PCR) matters;
- (5) contempt of court proceedings;
- (6) forfeiture proceedings brought by governmental entities;
- (7) mortgage foreclosures;
- (8) family court cases initiated by the South Carolina Department of Social Services; and
- (9) cases that have been previously subjected to an ADR conference, unless otherwise required by this rule or by statute.

(c) Motion to Refer Case to Mediation. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

Last amended by Order dated April 30, 2012.

Rule 4

Selection or Appointment of Neutral

(a) Eligibility. A neutral may be a person who:

(1) is a certified neutral under Rule 19; or

(2) is not a certified neutral but, in the opinion of all the parties is otherwise qualified by training or experience to mediate, arbitrate or evaluate all or some of the issues in the action. If the person is not a certified neutral, he or she must disclose the lack of certification and obtain written consent from all parties to the ADR Conference on a form approved by the Supreme Court or its designee.

(b) Roster of Certified Neutrals. The Board shall maintain a current roster ("Roster") of neutrals certified under Rule 19 who are willing to serve in each county. The Board shall make the Roster available to the clerks of court for each county. A certified neutral shall notify the Supreme Court's Board of Arbitrator and Mediator Certification if the neutral desires to be added to or deleted from the Roster. The Board and clerk of court for each county shall make this roster available to the public.

(c) Appointment of Mediator by Circuit Court. In circuit court cases subject to ADR in which no Proof of ADR has been filed on the 210th day after the filing of the action, the Clerk of Court shall appoint a primary mediator and a secondary mediator from the current Roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed. A Notice of ADR appointing the mediators shall be issued upon a form approved by the Supreme Court or its designee. In the event of a conflict of interest with the primary mediator, the secondary mediator shall serve. In the event of a conflict of interest with the secondary mediator, and if the parties have not agreed to the selection of an alternative mediator, the plaintiff or the plaintiff's attorney shall immediately file with the Clerk of Court a written notice advising the court of this fact and requesting the appointment of two more mediators. In lieu of mediation, the parties may select non-binding arbitration or early neutral evaluation pursuant to these rules.

In medical malpractice cases subject to pre-suit mediation as required by S.C. Code § 15-79-125(C), the Notice of Intent to File Suit shall be filed in accordance with procedures for filing a lis pendens and requires the same filing fee as provided by S.C. Code § 8-21-310(11)(b). The Notice of Intent to File Suit shall contain language directed to the defendant(s) that the dispute is subject to pre-suit mediation within 120 days and must contain a place for the names of the primary and secondary mediators. At the time the Notice of Intent to File Suit is filed, the Clerk of Court shall appoint a primary mediator and a secondary mediator in the manner set forth in the paragraph above. The plaintiff shall serve the defendants with the Notice of Intent to File Suit containing the mediator appointment. Notwithstanding the clerk's appointments, the parties by agreement may choose a different mediator at any time.

(d) Appointment of Mediator by Family Court. In family court cases subject to ADR, early mediation is encouraged.

(1) If there are unresolved issues of custody or visitation, the court may in its discretion order an early mediation of those issues upon motion of a party or upon the court's own motion.

(2) If issues are in dispute and no Proof of ADR has been filed certifying that the issues have been mediated, the parties must mediate those issues prior to the scheduling of a hearing on the merits; provided, however, the parties may submit the issues of property and alimony to binding arbitration in accordance with subparagraph (5). A mediator shall be designated in the following manner:

(A) When the parties file a request for a merits hearing, the request shall include the name of the stipulated mediator or a request for appointment of a mediator. The court shall not schedule a hearing on the merits until a Proof of ADR has been filed.

(B) If a mediator has not been stipulated in the request for merits hearing, the clerk of court shall appoint a primary mediator and a secondary mediator from the current Roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed. A Notice of ADR appointing the mediators shall be issued upon a form approved by the Supreme Court or its designee.

(C) Either party may request the appointment of a mediator at any time by submitting a Request for Appointment of Mediator Form to the Clerk of Court. Upon receipt of a Request for Appointment of Mediator Form, the Clerk of Court shall appoint a primary mediator and a secondary mediator according to the same process set forth in Rule 4(d)(2)(B). A Notice of ADR appointing the mediators shall be issued upon a form approved by the Supreme Court or its designee.

(3) In the event of a conflict of interest with the primary mediator, the secondary mediator shall serve. In the event of a conflict of interest with the secondary mediator, and if the parties have not agreed to the selection of an alternative mediator, the plaintiff or the plaintiff's attorney shall immediately file with the Clerk of Court a written notice advising the court of this fact and requesting the appointment of two more mediators.

(4) An initial mediation conference must occur within thirty (30) days of appointment or selection. The parties must complete mediation and file a Proof of ADR with the clerk's office before a merits hearing can be scheduled.

(5) In lieu of mediation, the parties may elect to submit issues of property and alimony to binding arbitration in accordance with the Uniform Arbitration Act, S.C. Code § 15-48-10 et seq., or submit all issues to early neutral evaluation pursuant to these rules.

(e) By agreement. By agreement, the parties may choose a neutral at any time. In any event, the ADR conference shall be held on or before the deadlines provided for in these rules.

(f) Notice to Neutral. The parties shall notify the selected or appointed neutral to initiate scheduling of the ADR Conference.

Last amended by Order dated April 27, 2016.

Rule 5 The ADR Conference

(a) Location of the Conference. The ADR Conference is to be held within the county where the case is filed at a site designated by the neutral or any other site agreed upon by the parties and the neutral.

(b) Discovery and Motions. The ADR conference shall not be cause for delay of other proceedings in the case, including the completion of discovery, the filing and hearing of motions, or any other matter that would delay preparation of the case for trial, except by order of the court.

(c) Recesses. The neutral may recess the ADR conference at any time and may set times for reconvening.

No further notification is required for persons present at the recessed conference.

(d) Privacy. ADR conferences are private. Other persons may attend only with the permission of the parties, their attorneys and the mediator.

(e) Motion to Defer or Exempt from ADR. A party may file a motion to defer an ADR conference or exempt a case from ADR for case specific reasons. For good cause, the Chief Judge for Administrative Purposes of the circuit may grant the motion. For example, it may be appropriate to defer an ADR conference or completely exempt a case from the requirement of ADR where a party is unable to participate due to incarceration or mental or physical condition.

(f) Deadline for the ADR Conference in Circuit Court. The ADR conference shall be held on or before three hundred (300) days from the date of the filing of the action. The case shall not be on the circuit court trial roster until a Proof of ADR is filed.

Pre-suit medical malpractice mediations required by S.C. Code 15-79-125 shall be held not later than 120 days after all defendants are served with the Notice of Intent to File Suit or as the Court directs.

(g) Scheduling in Family Court. The parties shall contact and cooperate with the mediator to set the schedule for conferences and the mediator may recess a conference at any time and may set times for reconvening. No further notification is required for persons present at the recessed conference. The case shall not be docketed in family court for trial until a Proof of ADR is filed.

Last amended by Order dated May 3, 2007.

Rule 6

Duties of the Parties, Representatives and Attorneys Mediation

(a) Duty to Inform. In cases subject to ADR under these rules, all attorneys should fairly and objectively inform their clients about mediation and arbitration.

(b) Attendance. The following persons shall physically attend a mediation settlement conference unless otherwise agreed to by the mediator and all parties or as ordered or approved by the Chief Judge for Administrative Purposes of the circuit:

(1) The mediator;

(2) All individual parties; or an officer, director or employee having full authority to settle the claim for a corporate party; or in the case of a governmental agency, a representative of that agency with full authority to negotiate on behalf of the agency and recommend a settlement to the appropriate decision-making body of the agency;

(3) The party's counsel of record, if any; and

(4) For any insured party against whom a claim is made, a representative of the insurance carrier who is not the carrier's outside counsel and who has full authority to settle the claim.

(c) Identification of Matters in Dispute. The mediator may require, prior to the scheduled mediation conference, that each party provide a brief memorandum setting forth their position with regard to the issues that need to be resolved. The memorandum should be no more than five (5) pages in length unless permitted by the mediator. With the consent of all parties, such memoranda may be mutually exchanged by the parties.

(d) Cooperation. The parties and their representatives shall cooperate with the mediator.

(e) Confidentiality. Communications during the mediation settlement conference shall be confidential in accordance with Rule 8.

(f) Agreement in Circuit Court. Upon reaching an agreement, the parties shall, before the adjournment of the mediation, reduce the agreement to writing and sign along with their attorneys. If the parties envision a more formal agreement, the mediator shall assign one of the parties' attorneys to prepare the agreement. A consent judgment or voluntary dismissal shall be filed with the court by such persons as may be designated by the mediator.

(g) Agreement in Family Court. Parties must participate in at least three (3) hours of mediation unless an agreement is reached sooner. Upon the parties reaching an agreement, the mediator shall provide a Memorandum of Agreement to the parties, attorneys of record, and guardians ad litem of record. It is the obligation of the parties to seek approval of the agreement by the family court.

Rule 7 Authority and Duties of Mediators

(a) Authority of Mediators. The mediator shall at all times be authorized to control the conference and the procedures to be followed.

(b) Duties. The mediator shall set up the mediation conference. The mediator shall define and describe the following to the parties:

- (1) The mediation process, including the difference between mediation and other forms of conflict resolution;
- (2) The facts that the mediation conference is not a trial; the mediator is not a judge, jury or arbitrator; and the parties retain the right to trial if they do not reach a settlement;
- (3) The inadmissibility of conduct and statements as evidence in any arbitral, judicial or other proceeding;
- (4) The circumstances under which the mediator may meet alone with either of the parties or with any other person;
- (5) Whether and under what conditions communications with the mediator will be held in confidence during the conference;
- (6) The duties and responsibilities of the mediator and the parties;
- (7) The fact that any agreement must be reached by mutual consent of the parties; and
- (8) The costs of the mediation settlement conference.

(c) Confidentiality. The mediator must comply with Rule 8 regarding confidentiality.

(d) Duty of Impartiality/Disclosure. The mediator has a duty to be impartial and to disclose any circumstance likely to affect impartiality or independence, including any bias, prejudice or financial or personal interest in the result of the mediation or any past or present relationship with the parties or their

representatives.

(e) Declaring Impasse. It is the duty of the mediator to timely determine when the mediation is not viable, that an impasse exists, or that the mediation should end. A mediation cannot be unilaterally ended without the permission of the mediator.

(f) Reporting Results of Conference. Within ten (10) days of conclusion of the conference, the mediator shall file with the Clerk of Court a Proof of ADR on a form approved by the Supreme Court or its designee. Any request for a final hearing in a contested case subject to ADR under these rules shall include a copy of a Proof of ADR. South Carolina Court Administration or the South Carolina Commission on Alternative Dispute Resolution may require the mediator to provide additional statistical data for evaluation of the program.

In pre-suit medical malpractice mediations required by S.C. Code 15-79-125, the Clerk of Court shall serve notice of entry of the Proof of ADR by first class mail upon all attorneys and unrepresented parties. The 60-day period in which to file a summons and complaint in accordance with S.C. Code 15-79-125(E)(1) shall commence upon receipt of written notice of entry of the Proof of ADR from the Clerk of Court.

(g) Immunity. The mediator shall have immunity from liability to the same extent afforded judicial officers of this state.

Last amended by Order dated May 3, 2007.

Rule 8 Confidentiality

(a) Confidentiality. Any mediation communication disclosed during a mediation, including, but not limited to, oral, documentary, or electronic information, shall be confidential, and shall not be divulged by anyone in attendance at the mediation or participating in the mediation, except as permitted under this rule or by statute. Additionally, the parties, their attorneys and any other person present or participating in the mediation must execute an Agreement to Mediate that protects the confidentiality of the process. The parties and any other person present or participating shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial or other proceeding, any mediation communication disclosed in the course of a mediation, which shall include, but not be limited to:

- (1) Views expressed or suggestions made by another party or any other person present with respect to a possible settlement of the dispute;
- (2) Admissions made in the course of the mediation proceeding by another party or any other person present;
- (3) Proposals made or views expressed by the mediator;
- (4) The fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator; and
- (5) All records, reports or other documents created solely for use in the mediation or received by a mediator while serving as a mediator.

(b) Waiver of Confidentiality. Upon the signing by the parties of an agreement reached during mediation, confidentiality is waived as to the terms of the agreement, unless otherwise agreed to by the parties.

(c) Limited Exceptions to Confidentiality. There is no confidentiality attached to information that is disclosed during a mediation:

- (1) for which the confidentiality against disclosure has been waived or stipulated to by all parties;
- (2) that is used to plan a crime, commit or attempt to commit a crime, conceal ongoing criminal activity, or threaten violence;
- (3) offered to report, prove, or disprove professional malpractice occurring during the mediation, solely for the purpose of the professional malpractice proceeding;
- (4) offered for the limited purpose in judicial proceedings of establishing, refuting, approving, voiding, or reforming a settlement agreement reached during a mediation;
- (5) offered to report, prove, or disprove professional misconduct occurring during the mediation;
or
- (6) in a report to or an inquiry from the Chief Judge for Administrative Purposes regarding a possible violation of these rules.

(d) Limited disclosures. A mediation communication disclosed under subsections (c)(3), (c)(4), (c)(5), or (c)(6) remains confidential and is not discoverable or admissible for any other purpose, unless otherwise permitted by this rule or by statute.

(e) Private Consultation/Confidentiality. The mediator may meet and consult individually with any party or parties or their counsel during a mediation conference. The mediator without consent shall not divulge confidential information disclosed to a mediator in the course of a private consultation.

(f) No Waiver of Privilege. No communication by a party or attorney to the mediator in private session shall operate to waive any attorney-client privilege.

(g) Mediator Not to be Called as Witness. The mediator shall not be compelled by subpoena or otherwise to divulge any records or to testify in regard to the mediation in any adversary proceeding or judicial forum. All records, reports and other documents received by the mediator while serving in that capacity shall be confidential.

(h) Admissible information. Information that would be admissible or subject to discovery does not become inadmissible or protected from discovery by reason of its disclosure or use in a mediation.

Amended by Order dated May 1, 2018.

Rule 9 Compensation of Neutral

(a) By Agreement. When the parties stipulate the neutral, the parties and the neutral shall agree upon compensation.

(b) By Court Order Mediation. When the mediator is appointed by the court, the mediator shall be compensated by the parties at a rate of \$175 per hour, provided that the court-appointed mediator shall charge no greater than one hour of time in preparing for the initial mediation conference. Travel time shall not be compensated. Reimbursement of expenses to the mediator shall be limited to: (i) mileage costs accrued

by the mediator for travel to and from the mediation conference at a per mile rate that is equal to the standard business mileage rate established by the Internal Revenue Service, as periodically adjusted; and (ii) reasonable costs advanced by the mediator on behalf of the parties to the mediation conference, not to exceed \$150. An appointed mediator may charge no more than \$175 for cancellation of an ADR Conference.

(c) Payment of Compensation by the Parties. Unless otherwise agreed to by the parties or ordered by the court, fees and expenses for the ADR conference shall be paid in equal shares per party. Payment shall be due upon conclusion of the conference unless other arrangements are made with the neutral, or unless a party advises the neutral of his or her intention to file a motion to be exempted from payment of neutral fees and expenses pursuant to Rule 9(d).

(d) Indigent Cases. Where a mediator has been appointed, a party may move before the Chief Judge for Administrative Purposes to be exempted from payment of neutral fees and expenses based upon indigency. Applications for indigency shall be filed no later than ten (10) days after the ADR conference has been concluded. Determination of indigency shall be in the sole discretion of the Chief Judge for Administrative Purposes.

Amended by Order dated April 30, 2012.

Rule 10 Sanctions

(a) Proof of ADR. If by the time required by these rules, no Proof of ADR has been filed with the Office of the Clerk of Court and the case has not been exempted or deferred from ADR by court order, the court may issue a Rule to Show Cause why sanctions should not be imposed, including the dismissal of an action without prejudice or the striking of a pleading. The court may also manage such cases through status conferences and/or scheduling orders.

(b) Sanctions. If any person or entity subject to the ADR Rules violates any provision of the ADR Rules without good cause, the court may, on its own motion or motion by any party, impose upon that party, person or entity, any lawful sanctions, including, but not limited to, the payment of attorney's fees, neutral's fees, and expenses incurred by persons attending the conference; contempt; and any other sanction authorized by Rule 37(b), SCRCP.

Rule 11 Duties of the Parties, Representatives and Attorneys Arbitration

(a) Attendance. The following persons shall physically attend an arbitration unless otherwise agreed to by the arbitrator and all parties or as ordered or approved by the Chief Judge for Administrative Purposes:

- (1) The arbitrator;
- (2) All individual parties; or an officer, director, or employee for a corporate party; or in the case of a governmental agency, a representative of that agency; and
- (3) The party's counsel of record, if any.

(b) Identification of Matters of Dispute. The arbitrator may require, prior to the scheduled arbitration conference, that each party provide a brief memorandum setting forth their position with regard to the issues that need to be resolved. The memorandum should be no more than five (5) pages in length unless permitted by the arbitrator. Such memoranda shall be exchanged by the parties at the same time and in the same

manner as the memoranda are furnished to the arbitrator.

(c) Cooperation. The parties and their representatives shall cooperate with the arbitrator.

Rule 12

Non-Binding Arbitration Hearing and Award

(a) Scope. This rule applies only to non-binding arbitrations. Nothing in this rule shall be construed to apply to binding arbitration pursuant to the Uniform Arbitration Act as adopted in South Carolina. Arbitrations selected by the parties under these rules are deemed non-binding arbitrations unless otherwise expressly agreed by the parties.

(b) Arbitration Hearings. The following shall apply to arbitration hearings, unless otherwise expressly agreed by the parties:

(1) Witnesses may be compelled to testify under oath or affirmation and produce evidence by the same authority and to the same extent as if the hearing were at trial. The arbitrator is empowered and authorized to administer oaths and affirmations.

(2) Rule 45, SCRPC, shall apply to subpoenas for attendance of witnesses and production of documentary evidence at an arbitration hearing under these rules.

(3) The arbitrator shall have the authority of a trial judge to govern the conduct of hearings, except for the power to punish for contempt. The arbitrator shall refer all contempt matters to the Chief Judge for Administrative Purposes.

(4) The South Carolina Rules of Evidence do not apply, except as to privilege, in an arbitration hearing but shall be considered as a guide toward full and fair development of the facts. The arbitrator shall consider all evidence presented and give it the weight and effect the arbitrator determines appropriate.

(5) No ex parte communications between the parties or their counsel and the arbitrator are permitted.

(6) The arbitration hearing shall be limited to two hours unless the arbitrator determines that more time is necessary to insure fairness and justice to the parties. The arbitrator is not required to receive repetitive or cumulative evidence.

(7) No recording or transcript of an arbitration hearing shall be made.

(c) Award. Unless otherwise expressly agreed by the parties:

(1) The award shall be in writing, signed by the arbitrator. Within ten (10) business days after the hearing is concluded, the arbitrator shall serve the original award on the prevailing party, copies of the award on all other parties, and a Proof of ADR with the court, together with a certificate of service. The arbitration hearing is concluded when all the evidence is in and any arguments or post-hearing briefs the arbitrator permits have been completed or received.

(2) The award must resolve all issues raised by the pleadings.

(3) Findings of facts and conclusions of law or opinions supporting an award are not required.

(d) Trial De Novo as a Right. Any party not in default for a reason subjecting that party to judgment by default who is dissatisfied with an arbitrator's award may have a trial de novo of right upon filing a written demand for trial de novo with the court, and service of the demand on all parties on a form approved by the Supreme Court or its designee within thirty (30) days after receipt of the arbitrator's award. No evidence that there has been an arbitration proceeding or any fact concerning the arbitration may be admitted in a trial, or in any subsequent proceeding involving any of the issues in or parties to the arbitration, without the consent of all parties and the court's approval.

(e) Judgment Entered on Award. If the case is not terminated by agreement of the parties, and no party files a demand for trial de novo under Rule 12(d), the prevailing party shall submit to the Chief Judge for Administrative Purposes a proposed order directing the entry of judgment on the award, which when entered, shall have the same effect as a consent judgment in the action and may be enforced accordingly.

Rule 13 Authority and Duties of Arbitrators

(a) Authority of Arbitrators. The arbitrator shall at all times be authorized to control the hearing and the procedures to be followed.

(b) Duties. The arbitrator shall set up the arbitration hearing. The arbitrator shall define and describe the following to the parties:

- (1) The non-binding arbitration process, including the difference between arbitration and other forms of conflict resolution;
- (2) The duties and responsibilities of the arbitrator and the parties; and
- (3) The cost of the arbitration hearing.

(c) Arbitrator Not to be Called as Witness. The arbitrator shall not be compelled by subpoena or otherwise to divulge any records or to testify in regard to the arbitration in any adversary proceeding or judicial forum. All records, reports and other documents received by the arbitrator while serving in that capacity shall be confidential.

(d) Duty of Impartiality/Disclosure. The arbitrator has a duty to be impartial and to disclose any circumstance likely to affect impartiality or independence, including any bias, prejudice or financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives.

(e) Reporting Results of Hearing. Within ten (10) days of conclusion of the hearing as set forth in Rule 12(c), the arbitrator shall file with the Clerk of Court Proof of ADR on a form approved by the Supreme Court or its designee. South Carolina Court Administration or the South Carolina Commission on Alternative Dispute Resolution may require the arbitrator to provide additional statistical data for evaluation of the program.

(f) Immunity. The arbitrator shall have immunity from liability to the same extent afforded judicial officers of this state.

Rule 14 Description of Early Neutral Evaluation (ENE)

In early neutral evaluation, the parties and their counsel, in a confidential session, make compact presentations of their claims and defenses, including applicable evidence as developed at the time of the evaluation, and receive a non-binding evaluation of the matters in controversy by an evaluator. The evaluator also assists in identifying areas of agreement, offers case planning suggestions and assists the parties in settlement discussions.

Added by Order dated April 30, 2012.

Rule 15
Procedure at Early Neutral Evaluation Conference

(a) Components of ENE Session. The evaluator shall to the extent deemed appropriate by the evaluator:

- (1) Permit each party (through counsel or otherwise), orally and through documents or other media, to present its claims or defenses and to describe the principal evidence on which they are based;
- (2) Assist the parties to identify areas of agreement and, where feasible, enter stipulations;
- (3) Assess the relative strength and weakness of the parties' contentions and evidence and provide detailed explanations to support these assessments;
- (4) In a circuit court case, estimate, where feasible, the likelihood of liability and the dollar range of damages;
- (5) In a family court case, evaluate the likely result of a trial of all issues.
- (6) Assist the parties to devise a plan for sharing all relevant information and/or conducting the necessary discovery that will equip them as expeditiously as possible to enter meaningful settlement discussions or to position the case for disposition by other means;
- (7) Assist the parties to assess litigation costs realistically;
- (8) Assist the parties, through private caucusing and otherwise, to explore the possibility of settling the case;
- (9) Determine whether further action after the session would contribute to the case development process or to settlement.

(b) Process Rules. The session shall be informal. Rules of Evidence shall not apply. There shall be no formal examination or cross-examination of witnesses, and no recording of the presentations or discussion shall be made.

(c) Evaluation and Settlement Discussions. The evaluation must be presented orally, and written copies of the evaluation may be provided to the parties at the discretion of the evaluator. The parties should discuss settlement after the evaluation has been presented.

(d) Confidentiality. Rule 8 of the ADR Rules shall apply to early neutral evaluations.

Added by Order dated April 30, 2012.

Rule 16

**Duties of the Parties, Representatives and Attorneys
Early Neutral Evaluation**

(a) Attendance. Attendance shall be required pursuant to Rule 6(b) of these rules.

(b) Identification of Matters in Dispute. The evaluator may require, prior to the scheduled early neutral evaluation conference, that each party provide a brief memorandum setting forth its position with regard to the issues to be resolved. The memorandum should be no more than five (5) pages in length unless otherwise authorized by the evaluator. Such memoranda shall be exchanged by the parties at the same time and in the same manner as the memoranda are furnished to the evaluator.

(c) Cooperation. The parties and their representatives shall cooperate with the evaluator.

Added by Order dated April 30, 2012.

**Rule 17
Authority and Duties of the Evaluator**

(a) The evaluator shall at all times be authorized to control the conference and the procedures to be followed.

(b) Duties. The evaluator shall set up the evaluation conference and shall define and describe the following to the parties:

- (1) The early neutral evaluation process, including the difference between early neutral evaluation and other forms of conflict resolution;
- (2) The duties and responsibilities of the evaluator and the parties; and
- (3) The cost of the early neutral evaluation conference.

(c) Evaluator Not to be Called as a Witness. The evaluator shall not be compelled by subpoena or otherwise to divulge any records or to testify in regard to the early neutral evaluation in any adversary proceeding or judicial forum. All records, reports and other documents received by the evaluator while serving in that capacity shall be confidential.

(d) Duty of Impartiality/Disclosure. The evaluator has a duty to be impartial and to disclose any circumstance likely to affect impartiality or independence, including any bias, prejudice, or financial or personal interest in the result of the evaluation or any past or present relationship with the parties or their representatives.

(e) Reporting Results of the Early Neutral Evaluation. Within ten days of conclusion of the early neutral evaluation, as set forth in Rule 7(f), the evaluator shall file with the clerk of court proof of ADR on a form approved by the Supreme Court or its designee. South Carolina Court Administration or the South Carolina Commission on Alternate Dispute Resolution may require the evaluator to provide additional statistical data for evaluation of the program.

(f) Immunity. The evaluator shall have immunity from liability to the same extent afforded judicial officers of this State.

Added by Order dated April 30, 2012.

Rule 18
Board of Arbitrator and Mediator Certification

There is hereby established a Board of Arbitrator and Mediator Certification. The Board will be composed of five (5) persons appointed by the Supreme Court for a term of three (3) years or until a replacement member is appointed. In the event of a vacancy on the Board, the Supreme Court shall appoint someone to fill the unexpired term. Three members of the Board shall constitute a quorum. In the event that members of the Board disqualify themselves in a pending matter leaving less than a quorum, the Supreme Court may appoint ad hoc members to restore the Board to full membership in that matter.

Renumbered by Order dated April 30, 2012.

Rule 19
Certification of Court-Appointed Neutrals

(a) Applications. The Board of Arbitrator and Mediator Certification ("Board") shall receive and approve applications for certifications of persons to be appointed as mediators or arbitrators. The application shall be on a form approved by the Supreme Court or the Board. Recertification of a neutral who, by virtue of current job restrictions is prohibited from serving under these rules, is allowed if the neutral submits the appropriate recertification paperwork, pays the applicable fee and agrees upon termination of the prohibiting employment to promptly supplement the application to list at least one county for court appointments.

(b) Certification. For circuit court or family court certification, a person must:

(1) Either:

(A) Be admitted to practice law in this State for at least three (3) years and be a member in good standing of the South Carolina Bar, including retired or inactive lawyers. This includes members who may be on retired or inactive status and any person who holds a limited license; or

(B) Be admitted to practice law in the highest court of another state or the District of Columbia for at least three (3) years and:

(i) Be at least 21 years old;

(ii) Have received a juris doctorate degree or its equivalent from a law school approved by the American Bar Association;

(iii) Be a member in good standing in each jurisdiction where he or she is admitted to practice law. This includes persons who may be retired or inactive; and

(iv) Agree to be subject to the Rules of Professional Conduct, Rule 407, SCACR, and the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR, to the same extent as a regular member of the South Carolina Bar.

(2) Be of good moral character;

- (3) Have not, within the last five (5) years, been:
- (A) Disbarred or suspended from the practice of law;
 - (B) Denied admission to a bar for character or ethical reasons; or
 - (C) Publicly reprimanded or publicly disciplined for professional conduct;
- (4) Pay all administrative fees and comply with all procedures established by the Supreme Court, the Board and the Commission on Alternative Dispute Resolution; and
- (5) Agree to provide mediation/arbitration to indigents without pay.
- (6) To be certified as a Circuit Court Mediator, a person must also:
- (A) Have completed a minimum of forty (40) hours in a civil mediation training program approved by the Board, or any other training program attended prior to the promulgation of these rules or attended in other states and approved by the Board; and
 - (B) Demonstrate familiarity with the statutes, rules and practice governing mediation settlement conferences in South Carolina.
- (7) To be certified as a Family Court Mediator, a person must also:
- (A) Have completed a minimum of forty (40) hours in a family court mediation training program approved by the Board, or any other training program attended prior to the promulgation of these rules or attended in other states and approved by the Board;
 - (B) Demonstrate familiarity with the statutes, rules and practice governing mediation settlement conferences in South Carolina.
- (8) To be certified as an Arbitrator, a person must also:
- (A) Have served as a Master-in-Equity, Circuit or Appellate Court Judge; or
 - (B) Have completed a minimum of six (6) hours in a civil arbitration training program approved by the Board, or any other training program attended prior to the promulgation of these rules or attended in other states and approved by the Board; and
 - (C) Demonstrate familiarity with the statutes, rules and practice governing arbitration hearings in South Carolina.

(c) Certification under Prior Versions of Rule 19. Persons who were certified under a prior version of Rule 19 may be recertified in accordance with Section V(B)(7), Appendix G to Part IV, SCACR. However, a certified neutral who is decertified or whose certification lapses due to a failure to seek recertification must file a new application and meet the requirements of paragraph (b) of this rule to be certified.

Last amended by Order dated October 26, 2016.

Rule 20

Approval of Training Programs

A training program, including the trainers to be utilized, must be approved by the Supreme Court or its designee, the Board of Arbitrator and Mediator Certification, before the program can be used for compliance with Rule 19(a)(6)(A) (certification of circuit court mediators), Rule 19(b)(2) (certification of family court mediators), or Rule 19(a)(7)(B) (certification of circuit court arbitrators). Approval need not be given in advance of training attendance. The Supreme Court may set administrative fees, which must be paid in advance of approval.

(a) Approval of Circuit Court Mediator Training Programs

(1) An approved training program for mediators of the Court of Common Pleas civil actions shall consist of a minimum of forty (40) hours of instruction, unless otherwise provided by these rules. The curriculum of such programs shall at a minimum include:

- (A) Conflict resolution and mediation theory;
- (B) Mediation processes and techniques, including the process and techniques of trial court mediation;
- (C) Standards of conduct and ethics for mediators;
- (D) Statutes, rules and practice governing mediation settlement conferences in South Carolina;
- (E) Demonstrations of mediation settlement conferences;
- (F) Simulations of mediation settlement conferences, involving student participation as mediator, attorneys and disputants, which simulations shall be supervised, observed and evaluated by program faculty; and
- (G) Such other requirements as the Supreme Court from time to time may decide are appropriate.

(2) Training programs completed in South Carolina or other states may be approved by the Board if:

- (A) The program consisted of a minimum of 37 hours of instruction;
- (B) The program covered all the topics enumerated in paragraph (a)(1) of this Rule except subparagraph (D) related to South Carolina law; and
- (C) The applicant takes at least three (3) hours of supplemental training pre-approved by the Supreme Court or the Board, covering the South Carolina law topics enumerated in paragraph (a)(1), subparagraph (D) of this Rule.

(b) Approval of Family Court Mediator Training Programs

(1) An approved training program for mediators in the Family Court shall consist of a minimum of forty (40) hours of instruction, unless otherwise provided by these rules. The curriculum of such programs shall at a minimum include:

(A) A minimum of four (4) hours of substantive family law instruction, to include statutes, rules and practice concerning family and related law in South Carolina, including the law regarding custody, visitation, support, division of property and alimony;

(B) Conflict resolution, family dynamics, and mediation theory in general, as well as specific training regarding domestic violence;

(C) Mediation processes and techniques, including the process and techniques of trial court mediation;

(D) Standards of conduct and ethics for mediators;

(E) Statutes, rules and practice governing mediation settlement conferences in South Carolina;

(F) Demonstrations of mediation conferences;

(G) Simulations of mediation settlement conferences, involving student participation as mediator, attorneys and disputants, which simulations shall be supervised, observed and evaluated by program faculty; and

(H) Such other requirements as the Supreme Court from time to time may decide are appropriate for good instruction.

(2) Training programs completed in South Carolina or other states may be approved by the Board if:

(A) The program consisted of a minimum of 37 hours of instruction;

(B) The program covered all the topics enumerated in paragraph (b)(1) of this Rule except subparagraphs (A) and/or (E) related to South Carolina law; and

(C) The applicant takes at least three (3) hours of supplemental training pre-approved by the Supreme Court or the Board, covering the South Carolina law topics enumerated in paragraph (b)(1), subparagraphs (A) and (E) of this Rule.

(c) Approval of Circuit Court Arbitrator Training Programs

(1) An approved training program for arbitrators of the Court of Common Pleas civil actions shall consist of a minimum of six (6) hours of instruction, unless otherwise provided by these rules. The curriculum of such programs shall at a minimum include:

(A) Conflict resolution and arbitration theory;

(B) Arbitration processes and techniques, including the process and techniques of both binding and non-binding arbitration;

(C) Standards of conduct and ethics for arbitrators;

(D) Statutes, rules and practice governing arbitration hearings in South Carolina;

(E) Demonstrations of arbitration hearings; and

(F) Such other requirements as the Supreme Court from time to time may decide are appropriate.

(2) Training programs completed in South Carolina or other states may be approved by the Board if:

(A) The program consisted of a minimum of 6 hours of instruction;

(B) The program covered all the topics enumerated in paragraph (c)(1) of this Rule except subparagraph (D) related to South Carolina law; and

(C) The applicant takes at least three (3) hours of supplemental training pre-approved by the Supreme Court or the Board, covering the South Carolina law topics enumerated in paragraph (c)(1), subparagraph (D) of this Rule.

(d) Approval of ADR Trainers. An experienced, qualified faculty of trainers is essential to the success of any ADR training program. An applicant must specify those individuals who, in fact, will serve as the primary trainers for that training program. The application material shall also include a resume for each primary trainer, and each resume shall describe in detail the trainer's experience and education in ADR, along with other relevant experience.

The Supreme Court or the Board may use the following guidelines, without limitation, in exercising their discretion in approving trainers:

(1) The trainer should meet the equivalent education requirements set out in the corresponding category for certification.

(2) The trainer should have ADR training equivalent to that set out in the corresponding category for certification.

(3) The trainer should have served as a neutral in a minimum of twenty-five (25) ADR conferences since the time of his/her training, and should be actively engaged in the practice or academic instruction of ADR.

(4) In addition to meeting all academic, training and experiential requirements set out in these guidelines, the primary trainer should be knowledgeable in all areas of the training curriculum. If the primary trainer lacks sufficient expertise or knowledge of any part of the required curriculum, he/she must bring in faculty who has expertise in that subject matter.

Last amended by Order dated April 27, 2016.

Rule 21

Standards of Conduct, Decertification and Discipline of Neutrals

(a) Standards of Conduct for Mediators. Any person serving as a mediator, whether certified or not, shall comply with the Standards of Conduct for Mediators, which is attached as Appendix B to these rules.

(b) Standards of Conduct for Arbitrators. Any person serving as an arbitrator, whether certified or not, shall comply with the Code of Ethics for Arbitrators, which is attached as Appendix A to these rules.

(c) Decertification of Neutrals. Certification under Rule 19 may be revoked at any time if it is shown that the neutral no longer meets the requirements to be certified under Rule 19 or that the neutral has failed to faithfully observe these rules, the ethical standards of Rules 21(a) or (b), or has engaged in any conduct showing an unfitness to serve as a neutral.

(d) Discipline of Neutrals. A neutral who violates these rules, the ethical standards of Rules 21(a) or (b), or who has engaged in any conduct showing an unfitness to serve as a neutral may, in addition to decertification under Rule 21(c), be subject to discipline by the Supreme Court. This discipline may include any sanction the Supreme Court determines is appropriate, to include an order publicly reprimanding the neutral for the conduct, an order barring the neutral from serving as a neutral in any court of this State for a definite or indefinite period of time, an order requiring the neutral to complete additional training, and/or the assessment of a fine. The fact that discipline is taken against an attorney under this Rule shall not preclude action against the attorney under Rule 413, SCACR, if the conduct is misconduct under that rule. The fact that discipline is taken under this Rule against a licensed professional shall not preclude action against the professional under the rules or statutes governing that profession, if the conduct is misconduct under that rule or statute.

(e) Processing Complaints of Misconduct by Neutrals. Persons alleging that a neutral has engaged in misconduct may file a complaint with the Board of Arbitrator and Mediator Certification. Misconduct includes any conduct or other circumstances that would warrant decertification or discipline under Rule 21(c) or (d). Complaints of misconduct shall be investigated by the Board and, upon a finding of probable cause, forwarded to the Commission on Alternate Dispute Resolution for a hearing before a Hearing Panel consisting of three (3) members of the Commission. Subject to the requirements of Rule 422(d), SCACR, the Commission shall promulgate regulations governing the processing of these complaints.

Last amended by Order dated June 3, 2015.

Rule 22 Clerks of Court

All circuit and family court Clerks of Court in each county shall perform whatever duties are required pursuant to these rules relating to record keeping, notification to the court, parties, or attorneys, docket control, maintenance of rosters, and service of orders.

Renumbered by Order dated April 30, 2012.

Rule 23 Local Rule-Making

These rules shall be uniform for all counties. Local rules may be allowed only upon approval of the Supreme Court. Unless otherwise specified by these rules, all motions related to ADR or to these rules should be directed to the Chief Judge for Administrative Purposes.

Last amended by Order dated April 27, 2016.

Rule 24 Application of Rules

These rules shall apply to cases filed in circuit or family court on or after the effective date of any Supreme Court order designating that county or court as subject to these rules.

Last amended by Order dated April 27, 2016.