

## 1 Rules of Court-Annexed Alternative Dispute Resolution

### 2 Rule 104. Code of ethics for ADR providers.

3 This Code applies to (1) all arbitrators and mediators on the court roster acting pursuant  
4 to these rules and Code of Judicial Administration Rule 4-510.05, and (2) Online Dispute  
5 Resolution (ODR) facilitators acting pursuant to Utah Supreme Court Standing Order  
6 No. 13 and court rules that govern small claim ODR procedures. These arbitrators,  
7 mediators, and ODR facilitators are referred to collectively in this Code as “ADR  
8 providers” or “providers.” A court may impose sanctions against an ADR provider for  
9 violations of this Code which raise a substantial question as to the provider’s partiality ~~of~~  
10 ~~the arbitrator or a member of the majority of a panel,~~ but a violation of ~~other provisions~~  
11 ~~of this Code does not establish~~ provide grounds ~~to~~ or authority for other judicially review  
12 ~~of~~ arbitration awards made under the court-annexed ADR program.

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### 14 Canon I. An ADR Providers ~~Should Uphold~~ tThe Integrity aAnd Fairness oOf tThe 15 ADR Program.

16 (a) Alternative Dispute Resolution, including ODR, is an important and proven method  
17 for resolving disputes. In order for ADR to be effective, there must be broad public  
18 confidence in the integrity and fairness of the process, similar to the confidence the public  
19 has in judges who adjudicate cases in ~~the district court of~~ this state. Like ~~the court’s~~  
20 judges, ADR providers ~~servng under the program~~ must observe high standards of  
21 ethical conduct so that the integrity and fairness of the process will be preserved.  
22 Accordingly, ADR providers should recognize their responsibility to the court, to the  
23 public, to the parties, and to all other participants in the ADR processes. The provisions  
24 of this Code should be construed and applied to advance these objectives.

25 (b) For a case that is referred to arbitration, ~~or~~ mediation, or ODR facilitation, a providers  
26 should accept an appointment only if the provider is ~~are~~ in a position to adhere to the

27 specific time limits for ~~arbitration and mediation~~ the proceedings as provided in ~~preserved~~  
28 ~~by~~ the rules.

29 (c) After accepting appointment to and while serving as provider for a particular case, an  
30 ADR provider should avoid entering into any financial, business, professional, family, or  
31 social relationship, or acquiring any financial or personal interest which (1) is likely to  
32 affect the provider's ~~is~~ impartiality or (2) might reasonably create the appearance of  
33 partiality or bias. For a reasonable time after an ADR proceeding has been concluded, the  
34 provider should avoid entering into any such relationship, or acquiring any such interest,  
35 under circumstances which might reasonably create the appearance that the provider had  
36 been influenced in the proceeding by the anticipation or expectation of the relationship  
37 or interest.

38 (d) An ADR P ~~providers~~ should ~~conduct themselves~~ act in a manner that is fair to all  
39 parties and their counsel; a provider ~~they~~ should not be swayed by outside pressure,  
40 public clamor, fear of criticism, or self-interest.

41 (e) An ADR P ~~providers~~ should neither exceed the authority delegated to the provider ~~m~~  
42 nor do less than is required to exercise that authority.

43 (f) An ADR P ~~providers~~ should make all reasonable efforts to prevent delaying tactics,  
44 harassment of parties or other participants, or other abuse of, or disruption to, the ADR  
45 processes.

46 (g) The ethical objectives of an ADR ~~providers~~ begins prior to acceptance of the  
47 appointment to a particular case and continues throughout all stages of the proceedings.  
48 In addition, wherever specifically set forth in this Code, certain ethical obligations  
49 continue even after the award in the case has been made or after the case has been  
50 successfully resolved.

51 (h) ~~A provider~~ A mediator or arbitrator should not directly contact a party to solicit the  
52 selection of that provider in a particular case if the party is represented by counsel.

53 (i) An ADR provider should refrain from promises and guarantees of results. A provider  
54 should not advertise statistical settlement data or settlement rates.

55 (j) An ADR provider should accurately represent the provider's~~his/her~~ qualifications. In  
56 an advertisement or other communication, a mediator may ~~make reference~~ refer to  
57 meeting state, national, or private organizational qualifications only if the entity referred  
58 to has a procedure for qualifying ~~ADR providers~~mediators and the ~~provider~~ mediator  
59 has been duly granted the requisite status.

60 (k) A ~~provider~~ mediator should have the participants sign a written agreement to mediate  
61 their dispute.

62 (l) A ~~provider~~ mediator should include in the participants' written agreement to mediate  
63 a description of their fee arrangement with the provider.

## 64 **Canon II. Disclosure And Disqualification.**

65 (a) When requested to serve, an ADR providers should carefully consider prior to  
66 accepting a case whether the provider has~~they have~~:

67 (1) any financial or personal interest in the outcome of the proceeding;

68 (2) any existing or past financial, business, professional, family, or social relationships  
69 which are likely to affect their impartiality or which might reasonably create an  
70 appearance of partiality or bias;

71 (3) any existing or past financial, business, professional, family, or social relationship  
72 with a party, the party's lawyer, the lawyer's law firm, or with any individual who  
73 may serve as a witness in the ADR proceeding which are likely to affect their  
74 impartiality or which might reasonably create an appearance of partiality or bias; and  
75 ~~any such relationships which the provider personally has with any party or its~~  
76 ~~lawyer, or with any individual who may serve as a witness; and~~

77 (4) any existing or past financial, business, professional, family, or social relationship  
78 between a party, a party's lawyer, the lawyer's law firm, or a witness in the ADR

79 proceeding and the provider's family, current employer, partner, or significant  
80 business associate which are likely to affect their impartiality or which might  
81 reasonably create an appearance of partiality or bias.

82 ~~(4) any such relationships involving their families, current employers, partners, or~~  
83 ~~significant business associates.~~

84 (b) An ADR providers should make a reasonable effort to be informed ~~themselves~~ of any  
85 interests or relationships of the kind described in paragraph (a).

86 (c) The obligation to consider interests or relationships described in paragraph (a) is a  
87 continuing duty which requires an ADR provider who accepts an appointment to  
88 disclose, at any stage of the ADR proceeding, any such interests or relationships which  
89 may arise, or which are recalled or discovered.

90 (d) If a relationships or interests exists that may create an impression of partiality or bias,  
91 but that, in the judgment of the ADR provider, poses no obstacle to objectively evaluating  
92 the case, making an arbitration award, or facilitating or mediating the matter, ~~then~~ the  
93 provider should disclose ~~that~~ these interests or relationships as early as possible in the  
94 course of the ADR proceedings or withdraw from the appointment. Such disclosure  
95 should be made to all parties and their attorneys and, where the matter is being  
96 arbitrated, to the other arbitrators.

97 (e) ~~If~~ Where any ADR provider determines that existing interests and relationships  
98 preclude participation as a provider and constitute grounds for self-disqualification or  
99 recusal, the ADR provider should recuse ~~and notify the Director of the recusal~~.

100 (f) ~~In the event that~~ If a mediator or ODR facilitator is requested by any party to withdraw,  
101 the mediator or ODR facilitator should do so. ~~If in the event that~~ an arbitrator is requested  
102 to withdraw by ~~fewer than all of the parties~~ any party because of alleged partiality or bias,  
103 ~~absent a showing of good cause to the contrary, the arbitrator need not~~ the arbitrator must  
104 withdraw.

105 **Canon III. An ADR Providers Should Conduct aThe Proceedings Fairly And**  
106 **Diligently.**

107 (a) An ADR providers should conduct athe proceedings in an evenhanded manner and  
108 treat all parties with ~~equality and fairness~~impartiality at all stages of the proceedings.

109 (1) Impartial means free from favoritism or bias in word, action, or appearance, and  
110 includes a commitment to assist all participants as opposed to any one individual.

111 (2) An ADR providers should guard against bias or partiality based on the  
112 participants' personal characteristics, background, or performance at the proceeding.

113 (b) An ADR providers should perform the provider's~~their~~ duties diligently and conclude  
114 the case as promptly and efficiently as the circumstances or court order or rule reasonably  
115 permit, without compromising the interests of justice.

116 (c) An ADR providers should be patient with and courteous to the parties, their attorneys,  
117 and any witnesses. They should encourage similar conduct by all participants in the  
118 proceedings.

119 (d) Unless otherwise agreed by the parties, ~~providers~~mediators and arbitrators should  
120 accord to all parties the right to appear in person and to be heard after due notice in  
121 writing of the date, time, and place of hearing.

122 (e) An ADR providers should not deny any party the opportunity to be represented by  
123 counsel.

124 (f) Where any party fails to appear, an arbitrators may proceed with a scheduled ~~ADR~~  
125 ~~proceedings~~arbitration only after ensuring that appropriate written notice was provided  
126 to the absent party.

127 (g) If a panel is selected for arbitration, the chair should permit and encourage all  
128 arbitrators to participate equally in the arbitration process.

129 (h) Mediators and ODR facilitators ~~shall~~must inform the participants that they may  
130 withdraw from ~~mediation~~the process at any time and are not required to reach an

131 agreement. However, if the mediation or ODR negotiation is conducted pursuant to a  
132 mandatory ~~mediation court directive program~~, the ~~mediator~~ ADR provider ~~shall~~ must  
133 inform the parties of any participation requirements of that program.

134 **Canon IV. An ADR Providers ~~s~~ Should Be Faithful ~~t~~To ~~t~~The Relationship ~~o~~Of Trust**  
135 **a And Confidentiality Inherent i In ~~t~~The a t Appointment.**

136 (a) Maintaining confidentiality encourages candor, a full exploration of issues, and the  
137 integrity of the ADR program. Ethical standards require strict compliance with the  
138 promise of confidentiality as an integral element of the ADR process. Participation as an  
139 ADR provider assumes building a relationship with the parties that is based on trust. At  
140 no time should any ADR provider use confidential information acquired during ADR  
141 proceedings to gain advantage, personal or otherwise, or to adversely affect the interests  
142 of any party or any other individual or entity.

143 (b) The ADR provider should discuss the provider's<sup>l</sup> and the participants' expectations  
144 of confidentiality prior to undertaking the ~~process~~ appointment. Prior to beginning the  
145 proceeding, ~~undertaking the process~~, the provider should inform the participants of  
146 applicable limitations of confidentiality such as statutory, judicial, or ethical reporting  
147 requirements.

148 (c) In mediation, the written agreement to mediate should include provisions concerning  
149 confidentiality.

150 (d) An ADR providers ~~s~~ should not utilize any information disclosed during the ADR  
151 processes for private gain or personal advantage. Neither should a providers ~~s~~ seek  
152 publicity from participation in a particular ADR proceeding to enhance the provider's ~~s~~  
153 personal or professional position or status.

154 (e) Unless otherwise agreed by the parties, an ADR providers ~~s~~ should keep confidential  
155 all matters relating to the proceedings and decisions in which the provider ~~y~~ participates.  
156 This does not include the description and information submitted to the court by an ODR  
157 facilitator pursuant to Utah Supreme Court Standing Order No. 13, court rule or order

158 that establishes small claims ODR procedures, or protocols established for the ODR  
159 program. ~~No information about evidence produced, admissions, or stipulations made,~~  
160 ~~legal positions taken, reasons for the amount or nature of all arbitration award, unless set~~  
161 ~~forth therein, or conclusions as to the credibility of any witness should be disclosed to~~  
162 ~~anyone who is not a party to the arbitration proceeding.~~

163 (f) No arbitrator is at liberty to inform anyone of, or to discuss with anyone other than  
164 the parties and other arbitrators, the award or decision.

165 (g) Mediators and ODR facilitators should preserve and maintain the confidentiality of  
166 all mediation and ODR negotiation proceedings. They should not disclose or discuss any  
167 information about or related to the proceedings to anyone, including the assigned judge  
168 with the exceptions allowed in court orders and/or rules that govern ODR facilitation.  
169 Mediators and ODR facilitators should keep confidential from other parties any  
170 information obtained in individual caucuses unless the party to the caucus permits  
171 disclosure. They should secure and ensure the confidentiality of mediation and ODR  
172 negotiation proceeding those records that they do not destroy. ~~They~~ Mediators should  
173 render anonymous all identifying information when mediation proceeding materials are  
174 used for research, training, or statistical compilations. ODR facilitators should honor the  
175 confidentiality of private information revealed during facilitator training when  
176 reviewing active or archival cases that are used for training or research purposes,  
177 addressing performance concerns or complaints, or to compile statistical information.

178 (h) If subpoenaed or otherwise given notice to testify or to produce documents, the  
179 mediator or ODR facilitator should inform the participants immediately. The mediator  
180 or ODR facilitator should not testify or provide documents in response to a subpoena or  
181 other notice without an court order ~~of the court~~ if the mediator or ODR facilitator  
182 reasonably believes doing so would violate an obligation of confidentiality to the  
183 participants.

184 **Canon V. Prohibition Against Discrimination.**

185 In an ADR provider's ~~their ADR~~ practice, a~~ADR~~ providers should not practice, condone,  
186 facilitate, or promote any form of invidious discrimination. An ADR providers should be  
187 aware of cultural differences and how such differences may affect a party's values and  
188 negotiating style. A ~~p~~Providers should avoid condoning or displaying stereotypical  
189 attitudes toward parties and their attorneys in an ADR proceedings.

190 **Canon VI. An Arbitrator Should Make Decisions i~~n~~ a~~A~~ Just, Independent, a~~A~~  
191 Deliberate Manner.**

192 (a) An arbitrator should decide all matters justly, exercising independent judgment; no  
193 arbitrator should permit outside pressure to affect or bear ~~upon~~ the arbitrator's~~its~~  
194 decision.

195 (b) An~~A~~arbitrators should not delegate the obligation to make an appropriate  
196 determination in the case to any other person or authority.

197 **Canon VII. When Communicating w~~With~~ t~~The~~ Parties, an Arbitrators Should Avoid  
198 Impropriety a~~And~~ t~~The~~ Appearance of Impropriety.**

199 (a) In the absence of a stipulation to the contrary, an arbitrators should not discuss a case  
200 with any party in the absence of any other party, except that the arbitrator~~y~~ may discuss  
201 with a party such matters as setting the time and place of hearings or making other  
202 arrangements for the proceedings.

203 (b) Whenever an arbitrator communicates in writing with one party, that arbitrator ~~or~~  
204 ~~mediator~~ should at the same time transmit a copy of the communication to each other  
205 party and the other arbitrators. Whenever an arbitrator receives from one party any case-  
206 related written communication which has not been served on all other parties, that  
207 arbitrator promptly should provide the same to the other parties and to the other  
208 arbitrators.

209 **Canon VIII. Process a~~And~~ Terms o~~f~~ Settlement i~~n~~ Mediation or ODR Facilitated  
210 Negotiations.**

211 (a) ~~As~~ Since self-determination is a fundamental principle of mediation and ODR  
212 facilitation, the mediator or facilitator recognizes that the primary responsibility for the  
213 resolution of a dispute ~~and the forging of a settlement agreement~~ rests with the parties  
214 and their attorneys if represented. The mediator's or ODR facilitator's obligation is to  
215 assist the ~~parties~~ disputants to reach an informed and voluntary agreement. In mediation,  
216 the primary responsibility for the forging of a settlement agreement rests with the parties  
217 and their attorneys. In ODR negotiation, a facilitator may prepare a settlement agreement  
218 but may finalize the agreement only with authorization of the parties and their attorneys  
219 if represented.

220 (b) ~~Primary responsibility for the resolution of a dispute and the forging of a settlement~~  
221 ~~agreement rests with the parties and their attorneys.~~ The mediator's or ODR facilitator's  
222 obligation is to assist the disputants to reach an informed and voluntary settlement. In  
223 the course of the mediation or ODR negotiation process, no mediator or ODR facilitator  
224 ~~shall~~ may coerce a settlement or otherwise pressure any party or the attorneys for any  
225 party into accepting an agreement. Nor ~~shall~~ may any mediator or ODR facilitator make  
226 ~~for any party~~ a substantive decisions affecting the matter at issue for any party. A  
227 m ~~Mediators~~ and ODR facilitator may make suggestions and may draft proposals for  
228 consideration by the parties and their attorneys if represented, but all decisions are to be  
229 made voluntarily and without duress on the part of the mediator or facilitator by the  
230 parties in consultation with their attorneys if represented.

231 (c) Mediators and ODR facilitators should not attempt to usurp or otherwise assume the  
232 role of counsel for any party.

### 233 Canon IX. Provisions Specific to an ODR Facilitator.

234 (a) An ODR facilitator is encouraged to provide parties with procedural information as  
235 provided in Supreme Court Standing Order No. 13 and court rules that govern small  
236 claims ODR procedures. The purpose of providing information is to ensure parties are  
237 making informed and voluntary decisions. An ODR facilitator should present procedural

238 information using neutral, non-judgmental language and refrain from offering advice  
239 about accepting or rejecting a proposal.

240 (b) An ODR facilitator is permitted to evaluate a claim and defense as provided in  
241 Supreme Court Standing Order No. 13 and court rules that govern small claims ODR  
242 procedures. The purpose for a facilitator evaluating any small claims case is to help  
243 parties better understand possible trial outcomes and make more informed decisions.  
244 Only qualified ODR facilitators should conduct case evaluations and only if they  
245 facilitator can do so in a manner that maintains neutrality. If an ODR facilitator offers an  
246 evaluation of a case, the facilitator should continue to honor the parties' right to self-  
247 determination and avoid any pressure or coercion on any party to resolve a case against  
248 their will.

249 (c) When parties reach agreement in ODR negotiations, either a party or the facilitator  
250 may use the ODR program to prepare a written document that formalizes the provisions  
251 of agreement. When a party prepares the settlement agreement in the ODR platform, the  
252 facilitator should ensure that it reflects the agreements reached between the parties in the  
253 online negotiation and that the parties understand the provisions included in the  
254 settlement agreement. If a party insists that external documents or elements not discussed  
255 in the ODR negotiation be included, then the facilitator should refer the case back to the  
256 court.

257 (d) An ODR facilitator should refer a case back to court when no agreement results from  
258 the online negotiation or when parties elect to enter into a settlement agreement that was  
259 prepared and signed outside of the ODR platform. A facilitator may report to the court  
260 certain information about process and party participation in keeping with established  
261 ODR protocols without obtaining the parties' signatures.

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263 Effective Date: