

Proposed Amendments to the Rules for Alternative Dispute Resolution (October 2024)

* The Civil Litigation Taskforce recommended amendments to the Rules for Alternative Dispute Resolution in its report to the Indiana Supreme Court. The proposed amendments encourage the use of a wide variety of ADR methods and encourage mediators to provide their services pro bono by receiving one hour of Continuing Mediation Education credit per year if they complete at least one pro bono mediation during that year. (Registered mediators are required to complete six hours of CME per three-year cycle to maintain their registration under Indiana ADR Rule 2.5, so mediators would be able to satisfy half of their required CME through pro bono services.) Other proposed amendments include limiting the rules to non-binding forms of ADR and adding judicial review/approval of arbitration agreements involving the care, support, and/or assets of children or incapacitated adults.

Rules for Alternative Dispute Resolution

Rule 1.1. ~~Scope of These Rules~~ ~~Recognized Alternative Dispute Resolution Methods~~

~~These rules apply to all non-binding methods of alternative dispute resolution. Alternative dispute resolution methods which are recognized include settlement negotiations, non-binding arbitration, mediation, conciliation, facilitation, mini-trials, summary jury trials, private judges and judging, convening or conflict assessment, neutral evaluation and fact-finding, multi-door case allocations, and negotiated rulemaking.~~

Rule 1.2. ~~Scope of These Rules~~ (vacated)

~~Alternative dispute resolution methods which are governed by these rules are (1) Mediation, (2) Arbitration, (3) Mini-Trials, (4) Summary Jury Trials, and (5) Private Judges.~~

Rule 1.3. ~~Alternative Dispute Resolution Methods~~ ~~Governed by These Rules~~ ~~Described~~

(A) Mediation. This method is a process in which a neutral third person, called a mediator, acts to encourage and to assist in the resolution of a dispute between two ~~(2)~~ or more parties. ~~It~~This is an informal and non-adversarial process. The objective is to help the disputing parties reach a mutually acceptable agreement between or among themselves on all or any part of the issues in dispute. Decision-making authority rests with the parties, not the mediator. The mediator assists the parties in identifying issues, fostering joint problem-solving, exploring settlement alternatives, and in other ways consistent with these activities.

(B) Non-binding Arbitration. This method is a process in which a neutral third person or a panel, called an arbitrator or an arbitration panel, considers the facts and arguments which

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are presented by the parties and renders a decision. The decision ~~of the arbitrator is may be binding or non-binding. Only non-binding arbitration is governed by these rules.~~

(C) Mini-Trials. A mini-trial is a settlement ~~method~~process in which each side presents a highly abbreviated summary of its case to senior officials who are authorized to settle the case. A neutral advisor may preside over the proceeding and give advisory opinions or rulings if invited to do so. Following the presentation, the officials seek a negotiated settlement of the dispute.

(D) Summary Jury Trials. This method is an abbreviated trial with a jury in which the litigants present their evidence in an expedited fashion. The litigants and the jury are guided by a neutral who acts as a presiding official who sits as ~~if a~~ the judge. After an advisory verdict from the jury, the presiding official may assist the litigants in a negotiated settlement of their controversy.

(E) Private Judges. This method is a process in which litigants employ a private judge, who is a former judge, to resolve a pending lawsuit. The parties are responsible for all expenses involved in these matters, and they may agree upon their allocation.

(F) Other Forms of Non-binding Alternative Dispute Resolution. Any other non-binding method of alternative dispute resolution which allows the parties to resolve their disputes is encouraged by these rules.

Rule 1.4. Application of Alternative Dispute Resolution

These rules ~~shall~~ apply in all civil and domestic relations ~~cases~~litigation filed in all Circuit, Superior, County, Municipal, and Probate Courts in the state.

Rule 1.5. Immunity for Persons Acting Under This Rule

A registered or court approved mediator,~~;~~ arbitrator,~~;~~ private judge, person acting as an neutral advisor, or person conducting, directing, or assisting in any form of non-binding alternative dispute resolution acting under these rules~~a mini-trial; a presiding person conducting a summary jury trial and the members of its advisory jury; and a private judge;~~ ~~shall each have~~ has immunity in the same manner and to the same extent as a judge in the State of Indiana.

Rule 1.6. Judicial Discretion in Use of Rules

Except as herein provided, in any civil or domestic relations case, a presiding judge may order non-binding alternative dispute resolution for the entire case or select issues in the case~~any civil or domestic relations proceeding or selected issues in such proceedings referred to mediation, non-binding arbitration or mini-trial.~~ ~~The selection criteria which~~

~~should be used by the court are defined under these rules. Binding arbitration and a summary jury trial~~ Such cases may only be ordered to a binding alternative dispute resolution process only upon the agreement of the parties as consistent with provisions in these rules which address each method.

Rule 1.7. Jurisdiction of Proceeding

~~At all times during the course of any alternative dispute resolution proceeding, the case remains within the jurisdiction of t~~The court ~~that which ordered referred the litigation to alternative dispute resolution retains jurisdiction of the case~~the process. For good cause shown and after upon a hearing on this issue, the court at any time may terminate the alternative dispute resolution process.

Rule 1.8. Recordkeeping

When a case has been referred ~~for to non-binding~~ alternative dispute resolution, the Clerk of the court must shall note the referral and subsequent entries of record in the Chronological Case Summary under the case number initially assigned. The case file maintained under the case number initially assigned ~~shall~~ serves as the repository for papers and other materials submitted for consideration during the alternative dispute resolution process. The court must shall report on the Quarterly Case Status Report the number of cases resolved through alternative dispute resolution processes.

Rule 1.9. Service of Papers and Orders

The parties must shall comply with ~~Trial~~ Rule 5 of the Rules of Trial Procedure in serving papers and other pleadings on parties during ~~the course of~~ the non-binding alternative dispute resolution process. The Clerk of the Circuit Court must shall serve all orders, notices, and rulings under the procedure set forth in Trial Rule 72(D).

Rule 1.10. Other Methods of Dispute Resolution (vacated)

~~These rules shall not preclude a court from ordering any other reasonable method or technique to resolve disputes.~~

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Rule 2.3. Listing of Mediators: Commission Registry of Mediators

Any person who wishes to serve as a registered mediator pursuant to these rules must register with the Indiana Supreme Court Commission for Continuing Legal Education (hereinafter "Commission") on forms supplied by the Commission. The registrants must meet qualifications as required in counties or court districts (as set out in Ind. Administrative Rule 3(A)) in which they desire to mediate and identify the types of litigation

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which they desire to mediate. All professional licenses must be disclosed and identified in the form which the Commission requires.

The registration form ~~must~~ shall be accompanied by a fee of \$50.00 for each registered area (Civil or Domestic). An annual fee of \$50.00 ~~is shall be~~ due the second December 31st following initial registration. Registered mediators will be billed at the time their annual statements are sent. No fee ~~is shall be~~ required of a full-time, sitting judge.

The Commission ~~must~~ shall maintain a list of registered mediators including the following information: (1) whether the person qualified under A.D.R. Rule 2.5 to mediate domestic relations and/or civil cases; (2) the counties or court districts in which the person desires to mediate; (3) the type of litigation the person desires to mediate; and (4) whether the person is a full-time judge.

The Commission may remove a registered mediator from its registry for failure to meet or to maintain the requirements of A.D.R. Rule 2.5 for non-payment of fees. A registered mediator must maintain a current business and residential address and telephone number with the Commission. Failure to maintain current information required by these rules may result in removal from the registry.

~~For the billing of calendar year 2011, when this Rule becomes effective, rRegistered mediators must pay atthe \$50.00 annual fee and a one-time fee of \$25.00 for the time period July 1, 2011-December 31, 2011, for a total of \$75.00 per registration area. The annual fee shall be \$50.00 per calendar year per registration area thereafter.~~

On or before October 31 of each year, each registered mediator will be sent an annual statement showing the mediator's educational activities that have been approved for mediator credit by the Commission.

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Rule 2.5. Qualifications of Mediators

(A) Civil Cases: Educational Qualifications.

(1) Subject to approval by the court in which the case is pending, the parties may agree upon any qualified person to serve as a mediator.

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(B) Domestic Relations Cases: Educational Qualifications.

(1) Subject to approval of the court, in which the case is pending, the parties may agree upon any qualified person to serve as a mediator.

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(D) Continuing Mediation Education (“CME”) Requirements for All Registered Mediators. A registered mediator must complete a minimum of six hours of Commission approved continuing mediation education anytime during a three-year educational period. A mediator's initial educational period commences January 1 of the first full year of registration and ends December 31 of the third full year. Educational periods ~~are~~shall be sequential, in that once a mediator's particular three-year period terminates, a new three-year period and six-hour minimum ~~shall~~commences. Mediators registered before the effective date of this rule ~~shall~~begin their first three-year educational period January 1, 2004. Registered mediators may receive one hour of continuing mediation education credit for performing pro bono mediation.

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Rule 2.7. Mediation Procedure

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(D) Termination of Mediation.

(1) The mediator ~~must~~shall terminate or decline mediation whenever the mediator believes:

(a) ~~that of~~ the meditation process would harm or prejudice one or more of the parties or the children;

(b) the ability or willingness of any party to participate meaningfully in mediation is so lacking that a reasonable agreement is unlikely;

(c) due to conflict of interest or bias on the part of the mediator; or

(d) ~~or~~ mediation is inappropriate for other reasons.

(2) At any time after two ~~(2)~~ sessions have been completed, any party may terminate mediation.

(3) The mediator ~~must~~shall not state the reason for terminating or declining mediation except to report to the court, without further comment, that the mediator is terminating or declining mediation.

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(F) Mediator’s Preparation and Filing of Documents in Domestic Relations Cases.

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The Mediator may prepare or assist in the preparation of only the following documents:

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(3) A summary decree of dissolution or legal separation, with the caption in the case, so long as the decree is in the form of a document that has been adopted or accepted by the court in which the document is to be filed and the summary decree reflects the terms of the mediated agreement;

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Notwithstanding the other provisions of this rule, in matters involving the care, support, and/or assets of children or incapacitated adults, mediated agreements put in writing and signed by all participants may be binding on the participants but are only enforceable after review and approval by the appropriate court that would have jurisdiction over the care, support, and/or assets of the children or incapacitated adults.

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RULE 3. NON-BINDING ARBITRATION

Rule 3.1. Agreement to Arbitrate

At any time fifteen ~~(15)~~ days or more after the period allowed for a peremptory change of venue under Trial Rule 76(B) has expired, the parties may file with the court a request for an order for non-binding arbitration agreement to arbitrate wherein they stipulate whether the arbitration is to be binding or nonbinding, whether the agreement extends to all of the case or is limited as to the issues in the case, subject to arbitration; and any agreed upon the procedural rules to be followed during the arbitration process. The parties' written agreement may specify arbitration procedures that vary from those below. Upon approval, the court must issue an arbitration order to agreement to arbitrate shall be noted on the Chronological Case Summary of the Case and placed in the Record of Judgments and Orders for the court.

Rule 3.2. Case Status During Arbitration

During arbitration, the case shall remains on the regular docket and trial calendar of the court. In the event the parties agree to be bound by the arbitration decision on all issues, the case shall be removed from the trial calendar. During arbitration tThe court shall remains available to hear and determine any pretrial matters. rule and assist in any discovery or pre-arbitration matters or motions.

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Rule 3.3. Assignment of Arbitrators

(A) Arbitrator Selection. ~~Each court shall maintain a listing of lawyers engaged in the practice of law in the State of Indiana who are willing to serve as arbitrators. Upon assignment of a case to arbitration, the plaintiff and the defendant shall, pursuant to their stipulation, select one or more arbitrators from the court listing or the listing of another court in the state. The parties may select their own arbitrator within fifteen days following assignment. If the parties are unable to agree on the arbitrator, that the case should be presented to one arbitrator and the parties do not agree on the arbitrator, then the court must shall~~ designate three ~~(3)~~ arbitrators for alternate striking by each side. The party initiating the lawsuit shall strike first and each party has five days to strike.

(B) Arbitrator Panel. If the parties agree to an arbitration panel, it ~~must shall~~ be limited to three ~~(3)~~ persons. If the parties ~~cannot fail to~~ agree on who should serve as members of the arbitration panel, then each side ~~shall~~ selects one arbitrator and the two arbitratorseourt must shall select ~~the a~~ third by unanimous vote. ~~When there is more than one arbitrator, t~~he arbitrators must shall select ~~among themselves~~ a Chair of the arbitration panel.

(C) Arbitrator Compensation. Unless otherwise agreed ~~amongbetween~~ the parties, and the arbitrator(s) selected under this provision, the Court ~~must shall~~ set the rate of compensation for the arbitrator(s). Unless the parties agree otherwise, Costs of arbitration are to be divided equally ~~amongbetween~~ the parties and paid within thirty ~~(30)~~ days after the arbitration is concludedevaluation, regardless of the outcome.

(D) Refusal to Serve. Any arbitrator selected may refuse to serve without showing cause for such refusal.

Rule 3.4. Non-binding Arbitration Procedure

(A) Notice of Hearing. Except as provided in subdivision (F), Upon accepting the appointment to serve, the arbitrator or ~~the~~ Chair of an arbitration panel ~~shall meet with all attorneys of record to must~~ set a time and place for an arbitration hearing. ~~(Courts are encouraged to provide the use of their facilities for purposes of the arbitration hearing on a regular basis during times when use is not anticipated, i.e. jury deliberation room every Friday morning.) Parties will be notified of the hearing's date, time, and location.~~

(B) Submission of Materials. Unless otherwise agreed, the parties must submit to the arbitrator or Chair all documents and lists of witnesses the parties desire to be considered in the arbitration process ~~shall be filed with the arbitrator or Chair and exchanged among all attorneys of record~~ no later than fifteen ~~(15)~~ days prior to any hearing relating to the

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matters set forth in the submission. ~~The listing of witnesses and documentary evidence is binding upon the parties for purposes of the arbitration hearing only. The listing of witnesses must designate those to be called in person, by deposition, and/or written report. Each party may submit a pre-arbitration brief, setting forth factual and legal positions as to the issues, with the arbitrator or chair, and provide to all parties, no later than five days prior to the hearing. The parties may agree to alter these deadlines. Documents may include medical records, bills, records, photographs, and other material supporting the claim of a party. In the event of binding arbitration, any party may object to the admissibility of these documentary matters under traditional rules of evidence; however, the parties are encouraged to waive such objections and, unless objection is filed at least five (5) days prior to hearing, objections shall be deemed waived. In addition, no later than five (5) days prior to hearing, each party may file with the arbitrator or Chair a pre-arbitration brief setting forth factual and legal positions as to the issues being arbitrated; if filed, pre-arbitration briefs shall be served upon the opposing party or parties. The parties may in their Arbitration Agreement alter the filing deadlines. They are encouraged to use the provisions of Indiana's Arbitration Act (IC 34-57-1-1 et seq.) and the Uniform Arbitration Act (IC 34-57-2-1 et seq.) to the extent possible and appropriate under the circumstances.~~

(C) — Discovery. Rules of discovery shall apply. Thirty (30) days before an arbitration hearing, each party shall file a listing of witnesses and documentary evidence to be considered. ~~The listing of witnesses and documentary evidence shall be binding upon the parties for purposes of the arbitration hearing only. The listing of witnesses shall designate those to be called in person, by deposition and/or by written report.~~

(CD) Hearing. ~~Rules of discovery apply. However, traditional rules of evidence do need not apply with regard to the presentation of testimony unless agreed to by the parties.~~ As permitted by the arbitrator(s) or arbitrators, witnesses may be called. Attorneys may make oral presentation of the facts supporting a party's position and arbitrators are permitted to engage in critical questioning or dialogue with representatives of the parties. ~~In this presentation, the representatives of the respective parties must be able to substantiate their statements or representations to the arbitrator or arbitrators as required by~~ comply with the Rules of Professional Conduct. The parties may be permitted to demonstrate scars, disfigurement, or other evidence of physical disability. Arbitration proceedings ~~are shall~~ not ~~be~~ open to the public.

(D) Documents-Only Arbitration. ~~The parties may elect to forego an arbitration hearing and have a documents-only arbitration, where the arbitration is conducted based solely upon written materials and documents submitted by the parties. The parties may elect to have some but not all issues within an arbitration addressed through this method. Any~~

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agreement for a documents-only arbitration must be included in an order signed by the arbitrator(s) and indicate that the parties have waived their right to a hearing regarding all issues or some specific issues in the arbitration. The arbitrator(s)'s order must include detailed directions as to the actions to be taken by each party and the corresponding deadlines. If discovery is requested, the order must include a timetable for the exchange of documents. The taking of depositions and/or site inspections may be ordered for good cause but are generally discouraged in documents-only arbitration. Upon the submission of all documents, the arbitrator(s) must declare the record of the proceedings closed and issue a written determination in accordance with Rule 3.4(G).

(E) Confidentiality. Arbitration proceedings ~~must~~**shall** be considered as settlement negotiations ~~and~~**as** governed by Ind. Evidence Rule 408. ~~For purposes of reference, Evid.R. 408 provides as follows:~~

Rule 408. Compromise and Offers to Compromise

~~Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise a claim, which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution. Compromise negotiations encompass alternative dispute resolution.~~

(F) Arbitration Determination. ~~Unless otherwise agreed, Ww~~**within** twenty ~~(20)~~ days after the hearing, the arbitrator or Chair ~~must~~**shall** file a written determination of the arbitration proceeding in the pending litigation and serve a copy of this determination on all parties participating in the arbitration. ~~If the parties had submitted this matter to binding arbitration on all issues, the court shall enter judgment on the determination. If the parties had submitted this matter to binding arbitration on fewer than all issues, the court shall accept the determination as a joint stipulation by the parties and proceed with the litigation. If the parties had submitted the matter to nonbinding arbitration on any or all issues, they shall~~The parties have twenty ~~(20)~~ days from the filing of the written determination to affirmatively reject in writing the arbitration determination. If ~~thea~~**thea** ~~nonbinding~~ arbitration determination is not rejected ~~by any of the parties~~, the determination ~~must~~**shall** be entered as the judgment or accepted as a joint stipulation as appropriate. In the event ~~thea nonbinding arbitration~~ determination is rejected, all documentary evidence will be returned to the parties and the determination and all

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acceptances and rejections ~~must~~ be sealed and placed in the case file.

Notwithstanding the other provisions of this rule, in matters involving the care, support, and/or assets of children or incapacitated adults, arbitration agreements put in writing and signed by all participants may be binding on the participants but are only enforceable after review and approval by the appropriate court that would have jurisdiction over the care, support, and/or assets of the children or incapacitated adults.

Rule 3.5. Sanctions

Upon motion by either party or recommendation by the arbitrator(s) and after conducting a hearing, the court may impose sanctions against any party or attorney who fails to comply with the arbitration rules, limited to the assessment of arbitration costs and/or attorney fees relevant to the arbitration process.

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Rule 7.0. Purpose

This rule establishes standards of conduct for persons conducting an alternative dispute resolution (“ADR”) process governed pursuant to ADR Rule 1.12, hereinafter referred to as “neutrals.”

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Rule 7.3. Disclosure and Other Communications

(A) A neutral has a continuing duty to communicate with the parties and their attorneys as follows:

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(2) describe the applicable ADR process or, when multiple processes are contemplated, each of the processes, including the possibility in non-binding processes that the neutral may conduct private sessions;

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Rule 8.6. Settlement Agreement.

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(B) Notwithstanding the other provisions of ~~this~~ Rule 8, in matters involving the care, ~~and/or~~ support, and/or assets of children or incapacitated adults, mediated agreements put in writing and signed by all participants may be binding on the participants, but are only

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enforceable after review and approval by the appropriate court that would have jurisdiction over the care, ~~and/or~~ support, and/or assets of the children or incapacitated adults.

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Rule 8.8. Deadlines Not Changed Absent a Tolling Agreement.

WARNING: Participation in optional early mediation under this Rule does not change the deadlines for beginning a legal action as provided in any applicable statute of limitations or in any requirement for advance notice of intent to make a claim (for example, for claims against governmental units under the Indiana Tort Claims Act). Parties concerned about the expiration or running of a statute of limitations are encouraged to obtain an agreement to toll the running of the statute of limitations when considering pre-suit mediation.