

**State of Maine
Judicial Branch**

**Court Alternative Dispute Resolution Service
Operational Rules**

Adopted 11/26/96, as amended 1/28/97, 2/26/98, 9/13/99, 10/30/01

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**COURT ALTERNATIVE DISPUTE RESOLUTION SERVICE
OPERATIONAL RULES**

Adopted 11/26/96, as amended 1/28/97, 2/26/98, 9/13/99, 10/30/01

I. PURPOSE, AUTHORITY, SCOPE, AND DEFINITIONS

A. The Court Alternative Dispute Resolution Service (CADRES) Committee adopts these Rules pursuant to 4 M.R.S.A. § 18-(6) and Rule 16B of the Maine Rules of Civil Procedure. They govern the operations of CADRES, including the placement of an ADR provider on and the removal of an ADR provider from one or more CADRES Rosters. These Rules shall govern the administrative operations of CADRES and the selection, oversight, and evaluation of CADRES ADR providers.

B. As used in these Rules, the following terms have the following definitions:

i. ADR means Alternative Dispute Resolution, and includes, but is not limited to, mediation, nonbinding arbitration, early neutral evaluation and other ADR processes that may be provided for or undertaken pursuant to statute, court rule or Rule 16B of the Maine Rules of Civil Procedure;

ii. ADR provider means a person on the CADRES providers Roster(s);

iii. AOC means the Administrative Office of the Courts;

- iv. CADRES means the Court Alternative Dispute Resolution Service;
- v. Committee means the Court Alternative Dispute Resolution Service Committee;
- vi. Director means the Director of CADRES;
- vii. Roster means one or more of the approved Rosters of ADR providers for CADRES.

II. ADR PROVIDERS

1. Application, Selection and Placement of ADR Providers

A. Application

i. Form

An ADR provider application shall be submitted on the form approved by the Committee and circulated by the Director. The Director may accept an application filed on a substitute form if the Director determines that substantially all of the information required on an approved form has been furnished. The Director may reject an application that is incomplete or does not meet applicable criteria, or the Director may require an applicant to provide additional information or explanation.

ii. Application Periods

The Director will accept applications at all times whenever submitted and will hold them for the next periodic screening of applications, which shall be held at least semi-annually (e.g., in January and July).

B. Selection

The Director shall screen applications utilizing the approved criteria attached as appendices to these Rules. The Director may recommend to the Committee a waiver of one or more of the particular criterion for a specific applicant. Based on the screening and any applicable waivers, the Director will accept or reject applicants to the Rosters. Any acceptance of an ADR provider to a Roster by the Director is conditional pending the outcome of a background investigation conducted through the Administrative Office of the Courts.

C. Placement on Roster(s)

The Director shall notify applicants of the results of the selection process. Applicants who have not been accepted may request a review of the Director's decision under Section 3, Paragraph C. Applicants who are accepted conditionally shall, where appropriate, be provided with an *ADR Provider Agreement* in the form approved by the Committee and circulated by the Director. To be included on a Roster, an ADR provider must be available for a minimum of four (4) scheduled matters per year.

Upon receipt of the executed agreement from the ADR provider and the completion of any required CADRES orientation and training course, the ADR provider shall be placed on the appropriate Roster(s), and the Director shall notify the court(s) in which the ADR provider will serve. The Director shall ascertain the geographic availability of each ADR provider and designate an

assigned court or courts for each ADR provider. The Committee may establish numerical limits on the number of courts that an ADR provider may serve based on management considerations.

D. Provider Resignation or Leave of Absence

An ADR provider may resign from a Roster at any time. An ADR provider may request a leave of absence from a Roster from the Director who may accept the request, reject it, or condition acceptance on such terms as the Director believes are in the best interests of CADRES.

2. Oversight

A. Standards of Conduct

An ADR provider shall comply with the CADRES Code of Conduct and all other applicable rules, policies, and procedures. For cases in which it is relevant, this includes but is not limited to, the protocols for screening of domestic violence cases and requiring a safe environment for the provision of ADR services.

B. Duties

An ADR provider shall offer ADR services to the courts and to litigants in a timely and effective manner. In small claims matters, the Director shall assign ADR providers to small claims sessions. In domestic relations matters, a clerk shall schedule mediation at a court facility unless the Director authorizes an exception. In other types of matters, ADR services shall be offered at a time and place mutually agreeable to the participants and to the ADR provider. At the conclusion of each ADR session or proceeding, an ADR provider shall promptly submit a written report on the form provided to the CADRES office or to the court, as appropriate, to state the outcome of the proceeding and other such

information requested. If payment for ADR services furnished is to be made through CADRES, an ADR provider shall submit monthly invoices to CADRES.

C. Ongoing Evaluations, Reports and Oversight

CADRES and its ADR providers are subject to ongoing evaluation. As required by policies adopted by the Committee or when requested by the Director, an ADR provider shall provide a copy of any evaluation material supplied by CADRES, to each participant in an ADR proceeding. The Director shall review periodically all evaluations returned. Periodically the Director shall, either personally or through an agent, observe ADR providers conduct an ADR session.

The Director may initiate a review of an ADR provider based upon the Director's review of the evaluation forms, the ADR provider's reports, complaints submitted pursuant to Section 3, Paragraph A, an observation, or any combination of these sources.

D. Continuing Professional Education and Development

Continuing professional education requirements applicable to each Roster are established as follows: 8 hours per year for the Small Claims Mediation Roster, and 15 hours per year for other Rosters. Unless excused for good cause, ADR providers must annually participate in continuing professional education programs offered by CADRES or other providers of training and education programs to remain active on a Roster.

3. Complaints, Reviews, and Appeals

A. Response to Complaints

The Director shall maintain a docket of all complaints filed concerning the performance of ADR providers. When a complaint is received the Director shall screen the complaint and may discuss the complaint with the ADR provider or other participants in confidence. The Director shall then consider all information available and may dismiss the complaint without further action or review the complaint further. Review procedures are set out in Paragraph B. Director shall respond to the complainant and may inform the complainant about the outcome of the complaint.

B. Review Procedures

If the Director initiates a review of an ADR provider for any reason(s), the Director shall notify the ADR provider of the pending review in writing. The Director shall review all pertinent information, including interviews with or written statements from the ADR provider, disputants' counsel and court personnel. The ADR provider may review the complaint and other information developed by the Director. Thereafter the Director may terminate the review without action or may notify the ADR provider in writing of any proposed action and the method by which an ADR provider may appeal the decision as set forth in Paragraph C.

C. Appeals Procedures

The ADR provider may, within 14 days from the date of the Director's proposed action letter, file an appeal with the Committee to review the proposed action. If no such appeal is received by the Chair of the Committee within 14 days of the date of the Director's proposed action letter, then the proposed action becomes final. If an appeal is made in a timely manner, either party may request mediation of the proposed action. If mediation is not requested or does not

result in resolution of the dispute, then the Committee shall conduct a review of the Director's proposed action. On completion of the review, the Committee may affirm, reject, or modify the proposed action and shall notify the ADR provider and the Director in writing of its decision and the reasons for that decision.

4. Removal

The Director may remove or suspend an ADR provider from one or more of the Rosters prior to completion of the review procedure set forth in Section 3, Paragraph B upon the Director's determination that it is in the best interests of CADRES to do so.

III. CADRES ADMINISTRATIVE OPERATIONS

1. Referral of Cases to CADRES and Its ADR Providers

CADRES and its ADR providers shall accept cases specified in the Referral Rules adopted by the Supreme Judicial Court and Rule 16B of the Maine Rules of Civil Procedure in accordance with 4 M.R.S.A. § 18-B. Cases may be referred by the court to CADRES in the following ways:

- i. When ADR is requested by all parties;
- ii. When ADR is required by statute or rule;
- iii. After a party makes a motion for ADR; or
- iv. On the court's own motion.

Unless otherwise directed by statute or rule, on referral to ADR, an order shall be entered and docketed by the clerk of the court from which the case is

referred, and the shall be parties ordered to pay the appropriate fee or face sanctions as may be determined by the Court.

Parties to a case may arrange for ADR privately outside of the CADRES process at market rates, at any time. In domestic relations cases, if the parties have engaged in mediation outside the CADRES process and failed to reach a complete settlement, if the ADR provider is listed on the CADRES Domestic Relations Roster the mediation will satisfy the requirements of Title 19-A.

2. Assignment of ADR Provider

A. Domestic Relations

On payment of the fee, the court shall assign an ADR provider from the CADRES Domestic Relations Mediation Roster, ordinarily by rotation. An ADR provider shall notify the Director and each court the ADR provider serves of any changes in the limitations the ADR provider places on CADRES referrals from that court. The Director may notify clerks that certain types of matters will be referred to an ADR provider through the CADRES office rather than directly by the courts. The Director shall periodically review the utilization of ADR providers in order to ensure an appropriate and equitable distribution of referrals.

The court shall assign the case from the list of ADR providers serving that court in a manner that achieves a generally equitable rotation among providers over time. If any party requests that one specific ADR provider not be assigned, the court shall honor the request, and inform the Director of the request. If all parties request that a specific ADR provider be assigned, prior to acting thereon the court shall consider the request, in light of any applicable time constraints,

the provider's availability, the equitable rotation of referrals among ADR providers and other operational considerations.

B. Small Claims

The Director or the Director's designee shall assign ADR providers from the CADRES Small Claims Mediation Roster to appear at small claims sessions to achieve a generally equitable rotation among providers over time.

C. Environmental, Land Use and Natural Gas Pipeline

Parties shall be given the opportunity to select their own ADR provider from among the providers on the CADRES Environmental, Land Use and Natural Gas Pipeline Mediation Roster. The Director may offer assistance to the parties in selecting a provider, including but not limited to providing information about the professional background, experience and training of the providers, as well as the providers' willingness to provide services on a pro bono basis. If the parties fail to timely select a mediator, the Director may appoint one.

D. General Civil Litigation and Superior Court ADR Processes

Parties shall be given the opportunity to select their own ADR provider from among the providers on the CADRES General Civil Litigation Mediation Roster, the Superior Court Mediation Roster, the Superior Court Arbitration Roster and the Superior Court Early Neutral Evaluation Roster. The Director may offer assistance to the parties in selecting an ADR provider, including but not limited to providing information about the professional background, experience and training of the ADR providers, as well as the ADR providers' fees or willingness to provide services on a pro bono basis. If the parties fail to timely select an ADR provider, the court or the Director may appoint one. When

all parties to a case are granted in forma pauperis status by the court, the Director will obtain an ADR provider.

IV. IMMUNITY

ADR providers under contract with the Judicial Branch and the Director are immune from liability for actions undertaken in connection with these Rules pursuant to 4 M.R.S.A. § 18-B, and the Committee is immune from liability for such actions pursuant to 14 M.R.S.A. §§ 8101, 8102.

Appendix A

Criteria for Listing on the Domestic Relations Roster

A. A combination of 100 hours of training and experience which shall include a minimum of:

1. At least 40 hours of mediation process training involving lectures, role plays, and mediation theory, with at least 15 hours completed within two years of application;
2. At least 20 hours of experience as a mediator or a co-mediator;
3. At least 10 hours of training or experience in the substance of domestic relations law; and
4. At least 8 hours of training relating to domestic abuse issues.

B. Effective January 1, 1999, a minimum, annual level of continuing professional education and development of 15 hours in either mediation process training, domestic relations law, domestic abuse issues or standards of ethical conduct in mediation is required to remain active on this Roster (see Part II, Section 2, Paragraph C).

The Director may, pursuant to Part II, Section 1, Paragraph C, recommend a waiver of a particular criterion for a particular applicant.

Appendix B

Criteria for Listing on the Small Claims Roster

A. A combination of 50 hours of training and experience which shall include a minimum of:

1. At least 20 hours of mediation process training involving lectures, role plays, and mediation theory, with at least 8 hours completed within two years of application;
2. At least 15 hours of experience as a mediator or a co-mediator;
3. At least 3 hours of training or experience in the substance of consumer or debtor/creditor law.

B. Effective January 1, 1999, a minimum, annual level of continuing professional education and development of 8 hours in either mediation process training, the substance of consumer or debtor/creditor law or standards of ethical conduct in mediation is required to remain active on this Roster (see Part II, Section 2, Paragraph C).

The Director may, pursuant to Part II, Section 1, Paragraph C, recommend a waiver of a particular criterion for a particular applicant.

Appendix C

Criteria for Listing on the Environmental, Land Use and Natural Gas Pipeline

Mediation Roster

A. A combination of 110 hours of training and experience which shall include a minimum of:

1. At least 40 hours of mediation process training involving lectures, role plays, and mediation theory, with at least 15 hours completed within two years of application;
2. At least 20 hours of experience as a mediator, a facilitator of multi-party contested issues, or a co-mediator; and
3. At least 20 hours of work experience in a land use or environmental field, or 20 hours of substantive training in a land use or environmental field, or some combination of work experience and substantive training, the adequacy of which for fulfilling this requirement shall be subject to the final determination of the Director.

B. Successful completion of the land use mediation training offered by CADRES, which shall include both process and substantive training.

C. Effective January 1, 1999, a minimum, annual level of continuing professional education and development of 15 hours in either mediation process training, land use or environmental issues or standards of ethical conduct in mediation is required to remain active on this Roster (see Part II, Section 2, Paragraph C).

For complex multi-party disputes, mediators shall have additional training and/or experience in the mediation/facilitation of such disputes. The choice of a mediator for such cases and the decision to assign co-mediators will be at the discretion of the Director with input of the parties.

The Director may, pursuant to Part II, Section 1, Paragraph C, recommend a waiver of a particular criterion for a particular applicant.

Appendix D

Criteria for Listing on the General Civil Litigation Roster

A. A combination of 100 hours of training and experience which shall include a minimum of:

1. At least 40 hours of mediation process training, involving lectures, role plays and mediation theory, with at least 15 hours completed within two years of application;
2. At least 20 hours of experience as a mediator or a co-mediator; and
3. At least 10 hours of training or experience in general civil law and court procedure.

B. Effective January 1, 1999, a minimum, annual level of continuing professional education and development of 15 hours in either mediation process training, general civil law or court procedure or standards of ethical conduct in mediation is required to remain active on this Roster (see Part II, Section 2, Paragraph C).

The Director may, pursuant to Part II, Section 1, Paragraph C, recommend a waiver of a particular criterion for a particular applicant.

Appendix E

Criteria for Listing on the Superior Court Mediation Roster

I. An applicant shall:

- A. be on the CADRES General Civil Litigation Roster, or
- B. (1) have a combination of 100 hours of training and experience in the following areas, which shall include a minimum of:
 - a. at least 40 hours of mediation process training, involving lectures, role plays and mediation theory, with at least 15 hours completed within two years of application; and
 - b. at least 20 hours of experience either as a mediator or as a co-mediator; and
 - c. at least 10 hours of training or experience in general civil law and court procedure; and
- (2) have the ability to conduct mediation; and
- (3) receive a satisfactory criminal background check by the Administrative Office of the Courts.
- C. Complete a half-day orientation and training program offered by CADRES on the process of mediation and procedures to be followed in the Superior Court ADR program.

II. Continued Active Status. To remain active on this Roster an ADR Provider shall complete annually a total of 15 hours of continuing professional education in some or all of the following subject areas: ADR processes, general civil law, court procedure, and standards of ethical conduct in mediation.

III. Waiver. The Director may, pursuant to Part II, Section 1, Paragraph B, of the CADRES Operational Rules recommend a waiver of criteria for a particular applicant.

IV. CADRES Operational Rules. ADR Providers on this Roster are subject to the provisions of the CADRES Operational Rules.

Appendix F

Criteria for Listing on the Arbitration Roster

I. An applicant shall:

A. (1) be a lawyer for at least eight years (including at least the last three in the State of Maine) and have substantial recent experience in the subject matter of the type of case to be referred; or

(2) have at least eight years of substantial recent experience (including at least the last three in the State of Maine) in the subject matter of the type of case to be referred (for instance, as a contractor for a contracting dispute, an accountant for a business dispute, or a doctor for a medical dispute); or

(3) be a member of an arbitration panel of the American Arbitration Association or an equivalent organization for the type of case to be referred; and

B. have completed at least 6 hours of training in the arbitration process; and

C. have the ability to conduct an evidentiary hearing; and

D. receive a satisfactory criminal background check from the Administrative Office of the Courts; and

E. complete a half-day orientation and training program offered by CADRES on the process of arbitration and procedures to be followed in the Superior Court ADR program.

II. Continued Active Status. To remain active on this Roster an ADR Provider shall annually complete a total of 15 hours of continuing professional education in some or all of the following subject areas: ADR processes, general civil law, court procedure, and standards of ethical conduct in ADR.

III. Waiver. The Director, may pursuant to Part II, Section 1, Paragraph B. of the CADRES Operational Rules, recommend a waiver of criteria for a particular applicant.

IV. CADRES Operational Rules. ADR Providers on this Roster are subject to the provisions of the CADRES Operational Rules.

Appendix G

Criteria for Listing on the Early Neutral Evaluation Roster

I. An applicant shall:

A. (1) be a lawyer for at least eight years (at least the last three of which in the State of Maine) and have substantial recent experience in the subject matter of the type of case to be referred; or

(2) have at least eight years of substantial recent experience (at least the last three of which in the State of Maine) in the subject matter of the type of case to be referred (for instance, as a contractor for a construction dispute, an accountant for a business dispute, or a doctor for a medical dispute); or

(3) have served on the Volunteer Conference Neutral Roster in the four-county ADR Superior Court Pilot Project (1995-97); and

B. have the ability to conduct a case evaluation proceeding; and

C. receive a satisfactory criminal background check from the Administrative Office of the Courts; and

D. complete a half-day orientation and training program offered by CADRES on the process of early neutral evaluation and procedures to be followed in the Superior Court ADR program.

II. **Continued Active Status.** To remain active on this Roster an ADR Provider shall annually complete a total of 15 hours of continuing professional

education in some or all of the following subject areas: ADR processes, general civil law, court procedure, and standards of ethical conduct in ADR.

III. Waiver. The Director, may pursuant to Part II, Section 1, Paragraph B of the CADRES Operational Rules, recommend a waiver of criteria for a particular applicant.

IV. CADRES Operational Rules. ADR Providers on this Roster are subject to the provisions of the CADRES Operational Rules.