Rule 25. Civil Alternative Dispute Resolution (ADR) Program

I. Authority.

Pursuant to Minnesota Statutes, sections 484.73 and 484.74, subdivision 4, the Second Judicial District has authorized the establishment of a system of Alternative Dispute Resolution (ADR) for civil cases. In this instance, ADR specifically refers to arbitration and/or mediation.

II. Initiation.

A. The court shall review all civil cases to determine current status and possible referral to arbitration or mediation. If appropriate, the court shall mail to all parties to a civil action information concerning arbitration and mediation as alternatives to litigation.

1. Plaintiff(s) shall be responsible for reporting to the court the following:

a. The current status of the case.

b. Whether or not the parties have discussed an ADR option and which form of ADR they have chosen.

c. If the parties decide NOT to enter ADR, written reason for this decision.

2. Status conference:

a. If no response is received within 30 days from the date of the court letter, the court shall set a status conference.

b. The parties may request a status conference to discuss ADR and other case-related issues.

c. The court may set a status conference on its own motion to discuss ADR and other case-related issues.

3. Attorneys/parties shall discuss ADR options and, by filing an informational statement, inform the court of the result of said discussions.

4. Upon motion by any party, by stipulation of the parties, at the case status conference, or within the scheduling order, the court may issue an order for arbitration or mediation.

III. Selection of Arbitrators and/or Mediators.

Once the parties or the court have selected an ADR process, the court will send all parties a list of a minimum of five court-approved arbitrators or court-approved private dispute resolution organizations or private mediators.

A. Within 15 days thereafter, the parties:

1. Shall jointly file with the court a stipulation as to the arbitrator and/or mediator drawn from the list.

2. If no agreement as to the selection of the arbitrator and/or mediator, shall separately file with the court a list with two neutrals stricken and others ranked in order of preference. The court shall, within five days, designate the arbitrator and/or mediator from those persons not stricken.

3. May request in writing an arbitrator and/or mediator from outside the court-approved list. Prior to issuing an order for either arbitration or mediation, the court may request a written

statement of the arbitrator's and/or mediator's qualifications, including educational background and relevant training and experience in the field.

B. The court shall issue and serve an order designating the arbitrator and/or mediator chosen by the parties.

IV. Qualifications of the Arbitrator and/or Mediator.

The Second Judicial District Bench and the Ramsey County Bar Association Rules and Procedures Committee shall cooperatively determine the qualifications of arbitrators and/or mediators.

V. ADR Proceedings.

A. Within 14 days after the order designating the arbitrator and/or mediator, they/he/she shall inform the court of the initial arbitration hearing or mediation session which shall be scheduled no more than 60 days from the date of the court order.

B. ADR proceedings shall be completed no later than 90 days after the order is issued by the court.

C. Only the court may grant a continuance of the ADR proceedings beyond the time limits set forth above.

D. The arbitrator and/or mediator shall determine a suitable time and place for the ADR proceedings.

E. Pursuant to Minn. R. Civ. P. 16 and 37, failure to appear or refusal to participate in good faith and in a meaningful manner in a court-ordered ADR proceeding may result in sanctions.

VI. Ex Parte Communication.

A. Neither parties nor their counsel shall communicate ex parte with the arbitrator.

B. Parties or their counsel may communicate with the mediator so long as such communication encourages the facilitates settlement.

VII. Fees.

A. At the end of the proceeding, the parties shall divide equally and pay directly to the arbitrator and/or mediator a fee of $125 per hour. No later than at the time the final report is made to the court, other related costs, such as administrative fees and preparation costs, will be payable to the neutral as requested by the arbitrator and/or mediator.

B. If the arbitrator and/or mediator is someone outside the court-approved list, the arbitrator and/or mediator and the parties will determine an agreeable fee.

VIII. Report or Decision to the Court.

A. Arbitration.

1. No later than ten days from the date of the arbitration hearing or receipt of post-hearing memorandum, the arbitrator shall file with the court the decision together with proof of service by first-class mail to all parties.

2. Upon the expiration of 20 days after the award is filed, if no party has during that time period filed a request for trial as provided in these rules, the court administrator shall enter the decision as a judgment. Promptly upon entry of the decision as judgment, the court administrator

shall mail notice of entry to the parties. The judgment so entered shall have the same force and effect as and is subject to all provisions of the law relating to a judgment in a civil action or proceeding, except that it is not subject to appeal and, except as provided in Sect. 4 below, may not be attacked or set aside. The judgment so entered may be enforced as if it had been rendered by the court in which it is entered.

3. No findings of fact and conclusions of law or opinions supporting an arbitrator's decision are required.

4. Within six months after its entry, a party against whom a judgment is entered pursuant to an arbitration award may move to vacate the judgment on the grounds set forth in the Uniform Arbitration Act, Minnesota Statutes, chapter 572, and upon no other ground.

B. Mediation.

In the case of mediation, the only report to the court shall be a letter indicating whether or not the parties have settled.

1. If the case has settled, the attorneys shall cooperate in completing the appropriate court documents to bring the case to a final disposition.

2. If there has been no settlement, the parties may request that the matter be placed on the trial calendar on the first available date. If not so placed, the case shall be restored to the civil calendar in the same position as it would have had there been no ADR.

IX. Trial De Novo (for Arbitration Only).

A. Within 20 days after the arbitrator files the decision with the court, any party may request a trial by filing with the court a request for trial with proof of service upon all other parties. This 20-day period shall not be extended.

B. If discovery is complete, the court will set the matter for trial on the first available date. If not so set, the case shall be restored to the civil calendar in the same position as it would have had there been no ADR.

C. Upon request for a trial de novo, the decision of the arbitrator shall be sealed and placed in the court file.

D. If the party filing a demand for trial de novo does not improve his/her position, the prevailing party may move the court for payment of costs and disbursements, including payment of the arbitrator's fees.

E. A trial de novo shall be conducted as if there had been no arbitration. Without the consent of all parties and the approval of the court, no reference in the presence of the jury shall be made to prior arbitration proceedings.

X. Confidentiality.

A. Without the consent of all parties and an order of the court, no evidence that there has been ADR proceedings or any fact concerning them may be admitted in a trial de novo or in any subsequent proceeding involving any of the issues in or parties to the proceeding.

B. Arbitrators and attorneys for the parties cannot be called to testify as to their participation in the ADR proceeding in the trial de novo or in any subsequent trial or motion.

C. Without the agreement of the parties, there shall be no record made other than the report or decision of issues which are resolved.

D. Mediation proceedings under these rules are privileged, not subject to discovery, and without the written consent of both parties, inadmissible as evidence in any subsequent trial or motion.

XI. Rules of Evidence at Arbitration Proceeding.

A. Except where any of the parties has waived the right to be present or is absent after due notice of the hearing, the arbitrator and all parties shall be present at the taking of all evidence.

B. The Rules of Evidence apply to the conduct of the arbitration hearing and shall be construed liberally in favor of admission except:

1. Any party may offer and the arbitrator shall receive in evidence written medical and hospital reports, records and bills (including physiotherapy, nursing and prescription bills), documentary evidence of loss of income, property damage, repair bills or estimate, and police reports concerning an accident which gave rise to the case, if copies have been delivered to all other parties at least ten days prior to the hearing. Any other party may subpoena as a witness the author of a report, bill or estimate, and examine that person as if under cross-examination. Any repair estimate offered as an exhibit as well as copies delivered to other parties shall be accompanied by a statement indicating whether or not the property was repaired and, if it was, whether the estimated repairs were made in full or in part, and by copy of the receipted bill showing the items of repair made and the amount paid. The arbitrator shall not consider any police report opinion as to ultimate fault.

2. The written statement of any other witness, including written reports of expert witnesses not enumerated above, and including statements of opinion which the witness would be qualified to express if testifying in person, may be offered and shall be received in evidence if:

a. it is made by affidavit or by declaration under penalty of perjury;

b. copies have been delivered to all other parties at least ten days prior to the hearing; and

c. no other party has, at least five days before the hearing, delivered to the proponent of the evidence a written demand that the witness be produced in person to testify at the hearing. The arbitrator shall disregard any portion of a statement received pursuant to this rule that would be inadmissible if the witness were testifying in person, but the inclusion of inadmissible matter does not render the entire statement inadmissible.

3. Subject to objections, the deposition of any witness may be offered by any party and shall be received in evidence, notwithstanding that the deponent is not "unavailable as a witness" and no exceptional circumstances exist if:

a. the deposition was taken in the manner provided for by law or by stipulation of the parties and within the time provided for in these rules; and

b. not less than ten days prior to the hearing, the proponent of the deposition serves on all other parties notice of his/her intention to offer the deposition in evidence. Upon receiving the notice, the other party may subpoena the deponent and the arbitrator may admit or exclude the deposition into evidence. The party who subpoenaed the deponent may further cross-examine him or her. These limitations are not applicable to a deposition admissible under the terms of Minn. R. Civ. P. 32.01.

C. As provided in Minn. R. Civ. P. 45, subpoena shall issue for the attendance of witnesses at the arbitration hearings. It shall be the duty of the party requesting the subpoena to modify the

form of subpoena to show that the appearance is before the arbitrator and to give the time and place set for the arbitration hearing. At the discretion of the arbitrator, nonappearance of a properly subpoenaed witness may be grounds for an adjournment or continuance of the hearing. If any witness properly served with a subpoena fails to appear at the arbitration hearing or, having appeared, refuses to be sworn or to answer, the court may conduct proceedings to compel compliance.

D. Notwithstanding any other provisions in these rules, a party offering opinion testimony in the form of an affidavit or other statement or a deposition, shall have the right to withdraw such testimony and the attendance of the witness at the hearing shall not then be required.

XII. Conduct of the Arbitration Hearing.

The arbitrator shall have the following powers:

A. to administer oaths or affirmations to witnesses;

B. upon the request of a party or upon his/her own initiative, to take adjournments;

C. to permit testimony to be offered by deposition;

D. to permit evidence to be offered and introduced as provided by these rules;

E. to rule upon the admissibility and relevance of the evidence offered;

F. on reasonable notice, to invite the parties to submit prehearing or posthearing briefs or prehearing statements of evidence;

G. to decide the law and facts of the case and make an award accordingly;

H. to award costs, within limits of statutory costs of the action;

I. to view any site or object relevant to the case; and

J. any other powers agreed upon by the parties.

The arbitrator may make a record of the proceedings. Any record so made is deemed the arbitrator's personal notes and is not subject to discovery. The arbitrator shall not deliver the record to any party to the case or to any other person except to an employee using the record under the arbitrator's supervision or pursuant to a subpoena issued in a criminal investigation or prosecution for perjury. Except as expressly permitted by this rule, no other record shall be made. At the hearing, the arbitrator shall not permit the presence of a stenographer or court reporter or the use of any recording device.

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