

Local Administrative Rules  
Of the  
District Courts/County Courts-at-Law  
Of  
Lubbock County, TX

Updated 11/08/2006

3.60(a) Purpose and Scope

This chapter shall direct the referral of non-family civil cases to Alternative Dispute Resolution (ADR) procedures in the Lubbock County District Courts and County Courts-At-Law. Where applicable it shall apply to mandatory and voluntary referrals to ADR procedures, on the court's own motion, on a motion by a party, or by agreement of the parties. Family law ADR referrals are governed by Rule 4.45.

To enhance case-flow management of litigation and maximize effective use of judicial resources, time standards and goals for disposition of cases are needed. By utilizing alternative dispute resolution (ADR), the Court requires certification that a dispute could not be resolved before a trial is scheduled.

3.60(b) Authority for Referral of Cases to ADR Procedures

This chapter is based upon the judicial authority of the Lubbock County District Courts and County Courts-At-Law under the Constitution, statutes, and common law of Texas, and in particular upon the authority of the Texas Alternative Dispute Resolution Procedures Act, Tex. Civ. Prac. & Rem. Code Chapter 154 and Tex. Fam. Code Section 203, et seq., providing for referral of cases to ADR procedures.

3.60(c) ADR Master

The Board of Judges may appoint a Master to manage the court's ADR activities. The Master shall have such powers and be assigned such duties as authorized by the Board of Judges and Texas law.

Administrative matters related to ADR activities are delegated the Master of Dispute Resolution, subject to review by the referring judge or Lubbock County Board of Judges.

3.60(d) Policy for Referral of Cases by District Courts

It shall be the policy of the Lubbock County Courts to encourage the peaceable resolution of disputes and the early settlement of pending litigation by identifying cases appropriate for referral to ADR procedures pursuant to the guidelines set out in this chapter.

3.60(e) Referrals

The Courts will refer all cases by scheduling order to its Dispute Resolution Department before trial. The Department is authorized by Tex. Civ. Prac. & Rem. Code Section 152.002 to accept referrals from the Court. When a referral is made, copies of the referral will be transmitted to attorneys/representatives and the Department.

An attorney or representative desiring referral prior to a referral by the Court shall file with the court a motion requesting such from the Court. Copies of the motion should be provided to the Master of Dispute Resolution.

#### 3.60(f) Objection

In accordance with Tex. Civ. Prac. & Rem. Code Section Section 154.022, an objection shall be filed with the Court within ten days after referral. An objection should be submitted to the appropriate clerk, judge, and court coordinator, and to the Department. Upon receipt of the written objection specifying why the referral is inappropriate, the Court will grant or deny the motion. If the objection is granted, the judge will notify all parties that the ADR referral is rescinded

#### 3.60(g) Response to Referral

Upon receipt of a referral order, the respective parties are ordered to participate in an ADR process. If an objection has not been filed and accepted, it is the responsibility of the respective attorneys to advise their client(s) about the purposes and intent of the referral. Each party must attend the ADR procedure in accordance with the court's order, unless a party or person has been excused by the court.

The Department shall report to the Court regarding the compliance of attorneys and parties with the court's order. If a party and/or attorney does not comply with an order, the court shall decide what sanctions, if any, will be assessed.

#### 3.60(h) ADR Administrative Guidelines

After the Court has referred the case to the Department, the respective parties are ordered to participate in a scheduled ADR procedure. Attorneys shall advise their client about the purpose and intent of ADR.

Upon receiving notice of an ADR referral, the attorney should consult with the Master of Dispute Resolution to select an appropriate ADR procedure, as set forth in the Texas Civil Practice and Remedies Code, Sections 154.023 - 154.027. Should a procedure not be selected by the attorneys or clients, the Master shall select the procedure.

Cases will automatically be sent to the Department or a Neutral Mediator, selected by the parties, to be set at least 30 days before trial, unless the attorneys agree to an earlier date and that date is available with the Department. The Master may designate a date within the 30 days if it is deemed necessary to accomplish the purpose and goals of the Lubbock County Board of Judges.

Not less than seven (7) days prior to the scheduled ADR procedure, the parties shall serve upon the Master a memorandum as specified by the Master. At the time said information is requested, but at least fifteen (15) days prior to the court-ordered procedure, an attorney of record may request an extension. A request may be granted by the Master or referring judge. Should the request be granted, a new date will automatically be established for the ADR procedure, but not modify the final hearing date.

Should the disputants desire to use a neutral(s) not assigned or selected by the Department, written notice shall be filed with the Master, naming the neutral(s) selected by mutual agreement by the parties. The Master may forward requirements set forth and other administrative information needed to comply with the policies of the Board of Judges for neutrals.

#### 3.60(i) ADR Procedures

Three principal ADR procedures are used by the Department:

**Mediation:** Mediation is a forum in which an impartial person who is trained in ADR procedures facilitates communication between parties to promote reconciliation, settlement, or understanding among them.

**Moderated Settlement Conference (MSC):** The MSC is designed to assist the attorneys of record and clients in obtaining an objective opinion about the merits and value of the dispute. Each evaluation will be conducted by a three-person panel. Panel members are encouraged not to provide professional advice. The evaluation is based solely upon the instant case, as it is presented to the panel. The MSC process typically includes the following: The Rules of Civil Procedure or of Civil Evidence generally do not apply. Demonstrative evidence may be utilized during the presentations. Each side is permitted to call two (2) non-party witnesses. No other live testimony will be heard, unless specifically requested by the panel. A party may submit affidavits as a part of its case in lieu of testimony. Such affidavits shall not be considered as live witnesses. Cross-examination shall be allowed. Parties need not call witnesses; however, and may present summaries of contentions and anticipated testimony through their counsel.

Upon completion of the presentations, the panel will recess for deliberations. The panel's opinion shall be based on the instant presentation and may reflect a unanimous opinion or a divergence of opinion on each issue presented. After expressing its opinion, members may be questioned, not to justify, but for reasoning.

Upon completion of the evaluation, the parties are encouraged to begin negotiations to settle the dispute. If the parties wish to mediate the dispute, the Department will arrange for mediators.

**Arbitration:** The parties can elect to submit a case to binding arbitration. Binding arbitration procedures are contractually agreed to by the parties. In a binding arbitration, the award of the arbitrators cannot be appealed on the merits of the case. The law governing binding arbitrations is set forth in the Texas General Arbitration Act, Chapter 171, Texas Civ. Prac. & Rem. Code.

### 3.60(j) Fees

An administrative as well as an hourly fee will be set by the Board of Judges.

It is the policy of the Lubbock County Board of Judges that no party shall be denied access to ADR because of an inability to pay a fee. Should such a circumstance exist, the attorney and/or client shall notify the Master of Dispute Resolution and provide satisfactory documentation. Payments for services are expected in advance in full or part as announced by the Department.

### 3.60(k) Show Cause and Sanctions

ADR fees are not court costs unless so ordered by the referring court. Participants in a court-ordered ADR procedure are expected to pay all fees assessed by the ADR system or privately selected neutral. The Board of Judges expects fees to be paid in full within forty-five (45) days after an attorney's receipt of an invoice. The Department is authorized to file a show cause motion with the appropriate court should an assessed fee not be paid in a timely manner. The court may then hold a hearing and impose sanctions as warranted. Furthermore, if the party or parties did not submit to ADR after being ordered to do so, the offending party or parties may be subject to sanctions.

### 3.60(l) Qualifications

Persons who serve as neutrals in Lubbock County court referrals must meet qualifications set forth by the Legislature, Texas Supreme Court, and/or other appropriate credentialing entity designated by the

Lubbock County Board of Judges. The Master of Dispute Resolution is responsible for assuring that all mediators comply with qualifications and training required of neutral(s) and the Code of Ethics adopted by the Texas Supreme Court.

#### 3.60(m) Documents

The parties are urged to provide the Department with any documents deemed appropriate by the party or the attorney. The Department does not receive records of court proceedings, orders or petitions prior to implementing an ADR procedure.

As appropriate to protect the involved parties, copies of injunctions or restraining orders should be provided to the Department by the parties or their attorneys. It will be the task of the Department to assure that the involved parties abide with court orders when involved with ADR at the Department.

#### 3.60(n) Attorney Participation

Attorneys may and are encouraged to participate in ADR procedures. Even if one party is represented by counsel and one or more parties are unrepresented, the ADR process will proceed.

#### 3.60(o) Agreements

The attorneys for the respective parties are responsible for communicating the fact of any settlement or partial settlement to the court in accordance with these rules and Rule 11 of the Tex. Rules Civ. Proc.

#### 3.60(p) Report to Court

Following completion of an ADR procedure by the Department or private neutral, certification will be given to the appropriate Court by the Department that the parties have or have not submitted to ADR. Once the parties have submitted to ADR, and upon receipt of the certification, the Court will proceed to trial if the dispute is not resolved.

#### 3.60(q) Discovery

After a motion or scheduling order for referral has been delivered, and until the ADR procedure has been completed, no further discovery under the Texas Rules of Civil Procedure shall be conducted, except by agreement of the parties in writing and filed with the clerk or by specific court order.

#### 3.60(r) Service

No subpoenas, citations, writs or other process shall be served at or near the location of the ADR procedure upon any person entering, leaving or attending the procedure. An arrest warrant shall be executed at the conclusion of the mediation, unless otherwise directed by the court. [Added April 13, 2007]

#### 3.60(s) Confidentiality of ADR Procedures

Any information, communication or activity related to or made during an ADR procedure or relayed to the Department are confidential. That confidentiality begins with a party's first contact with the Department. The only exceptions to confidentiality are those identified in the Texas ADR Procedures Act and the Texas Governmental ADR Procedures Act. Said confidentiality is continuous in nature and does not terminate upon the conclusion of an ADR procedure. In general, records, oral communications, and written communications are not subject to disclosure and may not be used as evidence in any judicial or administrative proceeding. The Department is authorized to seek reimbursement for expenses and attorneys fees in opposing any attempt to require a neutral to testify

relating to or arising out of the matter. All records, reports, or other documents received by the mediator or the Department are confidential and shall be destroyed by the Department, pursuant to Texas Government Code 2009.054(b)(1). Such documents are not “county records” under Texas Government Code 441.091.

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4.45 (a) Policy

In family law matters, it shall be the policy of the Board of Judges of Lubbock County, Texas to encourage the peaceable resolution of disputes and early settlement of pending litigation, including family law litigation, by referral to alternative dispute resolution (ADR) pursuant to the Texas Alternative Dispute Resolution Procedures Act, Texas Civil Practice and Remedies Code, Chapter 154.

4.45 (b) ADR Mandatory

No jury or nonjury trial shall be conducted in any case (except juvenile delinquency cases) until all contested issues have been referred to an ADR procedure and ADR has been unsuccessful, or the Court has determined that ADR is inappropriate for the case. ADR shall be completed no later than 30 days before trial.

4.45 (c) Local Rules for Alternative Dispute Resolution

ADR in family law cases is also subject to Rule 3.60, unless otherwise provided in this Rule.

4.45 (c) Orientation

The Dispute Resolution Department (“The Department”) will conduct a voluntary orientation session for the involved parties in a family dispute prior to the commencement of ADR. Attorneys may attend an orientation. The sessions are intended for the parties so that they may ask questions and obtain a clear understanding about what to expect. All sessions will normally be held at the Department.

4.45 (d) Agreements

The Department and courts will follow the Family Code provisions for settlements of family law disputes reached in ADR proceedings.

Adopted by Lubbock County Board of Judges on August 17, 1990, and amended on July 7, 1997, August 8, 2004, and November 3, 2006. Final approval of the consolidated Local ADR rule is pending.