

95-000266

IN THE SUPREME COURT OF TEXAS

Dec 30 9 22 AM '98
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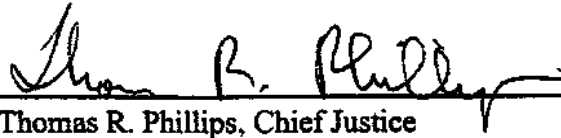
Misc. Docket No. 98- 9217

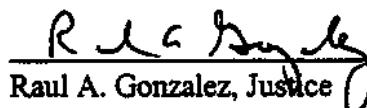
**APPROVAL OF LOCAL RULES FOR
MANDATORY ALTERNATIVE DISPUTE RESOLUTION
FOR CIVIL LITIGATION IN THE COURTS OF LUBBOCK COUNTY**

ORDERED that:

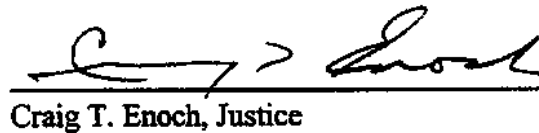
Pursuant to Texas Rule of Civil Procedure 3a, the Supreme Court of Texas approves the following Local Rules for Mandatory Alternative Dispute Resolution for Civil Litigation in the Courts of Lubbock County. The approval of these rules is temporary pending further orders of the Court.

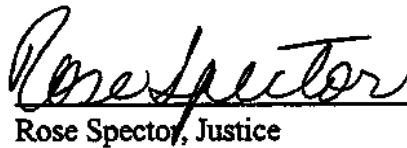
SIGNED AND ENTERED this 22nd day of December, 1998.


Thomas R. Phillips, Chief Justice


Raul A. Gonzalez, Justice

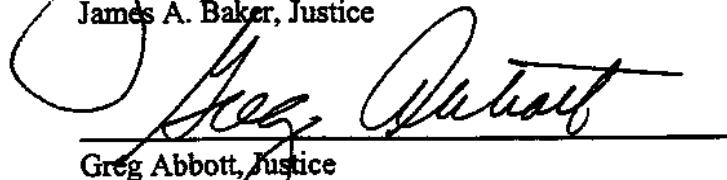

Nathan L. Hecht, Justice

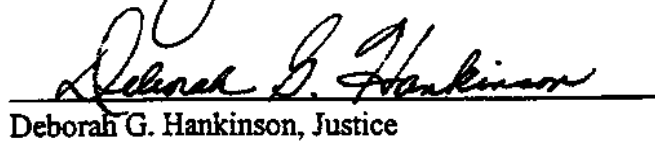

Craig T. Enoch, Justice


Rose Spector, Justice


Priscilla R. Owen, Justice


James A. Baker, Justice


Greg Abbott, Justice


Deborah G. Hankinson, Justice

Rules for Mandatory Alternate Dispute Resolution For Civil Litigation in the Courts of Lubbock County

1. Purpose

To enhance case-flow management of non-family litigation and maximize effective use of judicial resources, time standards and goals for disposition of cases are needed. By utilizing alternate dispute resolution (ADR), the Court will henceforth require certification that a dispute could not be resolved before a trial is scheduled. Administrative matters related to this activity are delegated to the South Plains Association of Government's Director of Dispute Resolution and Master of Dispute Resolution, subject to review by the referring judge or Lubbock County Board of Judges. These rules do not apply to: Family Law, Tax, Eminent Domain, and Workers' Compensation.

2. Authority for Referral of Cases to ADR Procedures

This chapter is based upon the judicial authority of the Courts under the Constitution, statutes, and common law of Texas, and in particular upon the authority of the Texas Alternate Dispute Resolution Procedures Act, TEX. CIV. PRAC. & REM. CODE Section 154.001, et seq., providing for referral of cases to ADR procedures.

3. Policy for Referral of Cases by the Courts

It shall be the policy of the Courts to encourage the peaceable resolution of disputes and the early settlement of pending litigation.

4. Referrals

The Courts will refer all civil (excluding: Family Law, Tax, Eminent Domain, and Workers' Compensation) cases to the South Plains Dispute Resolution Center (DRC) upon receipt of an original answer to a petition. The DRC 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 mailed to attorneys/representatives and the DRC.

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

5. Objection

In accordance with TEX. CIV. PRAC. & REM. CODE Section 154.022, an objection shall be filed with the Court within ten days after referral. Upon receiving 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.

6. ADR Administrative Guidelines

After litigation has begun and an original answer is filed, the Court will set a date for Alternative Dispute Resolution (ADR). The Alternative Dispute Resolution procedure shall be docketed two hundred ten (210) days from the day an original answer is filed. Upon receipt of the referral, the respective parties are ordered to participate in a scheduled ADR procedure. Attorneys shall advise their client about the purpose and intent of ADR. If an objection is not filed within the prescribed time, attorneys of record should continue their discovery activities until five days prior to a scheduled ADR activity.

Upon receiving notice of a mandatory ADR referral, the attorney should consult with the Master of Dispute Resolution to select an appropriate ADR procedure. The options are 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.

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 thirty (30) days prior to the court-ordered procedure, an attorney of record may request an extension. A request for extension may be granted by the master or referring judge. Should said request be granted, a new date will automatically be established for the ADR procedure by the court.

If a cancellation or postponement of said ADR occurs more than seventy-two (72) hours but less than thirty (30) days before the scheduled conference, a processing fee of fifty dollars (\$50) will be assessed. If the cancellation or postponement occurs less than seventy-two (72) hours prior to the scheduled activity, an administrative fee of one hundred dollars (\$100) will be assessed, unless the case is resolved and removed from the trial docket.

Should the disputants desire to use a neutral(s) not assigned or selected by the ADR system, a motion shall be filed with the Master, naming the neutral(s) selected by mutual agreement by the parties. Upon approval of an order by the master naming the neutral(s), the Master shall forward requirements set forth and other administrative information needed to comply with the policies of the Board of Judges.

The three principal ADR procedures used by the ADR system are:

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 Procedures

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 not encouraged to provide professional advice. The evaluation is based solely upon the instant case, as it is presented to the panel. The following format will generally be used for each MSC:

- Panel introductory statement
- Plaintiff's presentation
- Defendant's presentation
- Panel questions/answers
- Plaintiff's summation
- Defendant's summation
- Panel deliberates
- Panel issues an opinion

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 deliberation. 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 being 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 Dispute Resolution Center will arrange for mediators at the rates listed below.

Arbitration

The parties can elect to submit a case to binding arbitration. Binding arbitration procedures are contractually agreed to by the parties to resolve disputes. In a binding arbitration, the award of the arbitrators cannot be appealed on the merits of the case. The grounds for vacating an award are provided for in the Texas General Arbitration Act.

7. Fees

Fees for these services are as follows:

MEDIATION

Administrative Fee \$50 + procedure fee

Level:	III	II	I
	\$150 p/h	\$100 p/h	\$0 p/h

MODERATED SETTLEMENT CONFERENCE

MSC \$350

ARBITRATION

Arbitration \$350 (minimum) (2 hrs.) and \$150 p/h thereafter

PRE-LITIGATION

Pre-Litigation \$350

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. Payments for services are expected in advance in full or part as announced by the Dispute Resolution Center.

8. 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 the qualifications and training required of neutral(s) and that neutrals comply with the selected Code of Ethics.

9. Report to Court


Following completion of an ADR procedure, certification will be given to the appropriate Court by the DRC 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 set the case for trial if the dispute is not resolved. If the party or parties did not submit to ADR, the offending party or parties may be subject to sanctions under Rule 215, TRCP.


10. Confidentiality of ADR Procedures

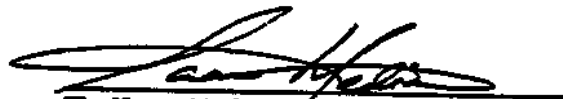
As provided in TEX. CIV. PRAC. & REM. CODE Section 154.073, a communication relating to the subject matter of any civil or criminal dispute made by a participant in an ADR procedure is confidential, is not subject to disclosure, and may not be used as evidence against the participant in any judicial or administrative proceeding. Likewise, any decision on the merits or any record made at an ADR procedure is confidential, and the participants may not be required to testify in any proceeding relating to or arising out of the matter in dispute.


As approved by the Lubbock County Board of Judges.



The Honorable Blair Cherry, Judge
72nd District Court

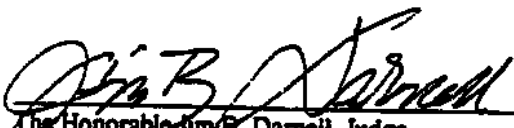

The Honorable Bradley Underwood, Judge
364th District Court



The Honorable Mackey Hancock, Judge
99th District Court



The Honorable Sam Medina, Judge
County Court at Law No. 1


The Honorable Cecil G. Puryear, Judge
137th District Court


The Honorable G. Thomas Cannon, Judge
County Court at Law No. 2


The Honorable James Darnell, Judge
140th District Court


The Honorable Paula Lanehart, Judge
County Court at Law No. 3


The Honorable John R. McFall, Judge
237th District Court

Effective August 1, 1998.

