

## **LR2-601. Court-annexed alternative dispute resolution programs generally.**

A. **Purpose.** The purpose of this district's court-annexed alternative dispute resolution programs is the early, fair, efficient, cost-effective, and informal resolution of disputes. Nothing in the rules governing these programs shall be construed to discourage or prohibit parties from stipulating to private alternative dispute resolution.

B. **Administration.** These programs shall be administered by a court alternatives director appointed by the court. The court may appoint standing committees of judges, lawyers, and others to provide guidance and assistance.

C. **Order required.** All referrals to these programs require the filing of a written court order.

D. **Limitation.** The number of cases referred to these programs shall necessarily be limited by the number of attorneys and other professionals available to provide alternative dispute resolution services under court-appointment, and the sufficiency of court resources to administer the programs.

E. **Immunity.** Attorneys and other persons appointed by the court to serve as settlement facilitators, arbitrators, mediators, or in other such roles under the rules governing this district's court-annexed alternative dispute resolution programs, are appointed to serve as arms of the court and as such are immune from liability for conduct within the scope of their appointment.

F. **Forms.** When available, applicable court forms shall be used. Forms shall be available through the court alternatives director.

[As amended by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

## **LR2-602. Settlement facilitation program.**

A. **Scope.** The court may, under Rule [1-016](#) NMRA, refer cases to settlement conferences conducted by court-appointed settlement facilitators on an ad hoc basis throughout the year and during periodic "settlement weeks" scheduled by the court. The court will generally hold a "settlement week" during September every year.

B. **Application.** This rule applies to civil cases, whether jury or non-jury, except for cases within the following categories:

- Appeals
- Extraordinary writs
- Court-annexed arbitration program, pending cases
- Adoption
- Commitment
- Conservatorship
- Guardianship
- Student Loan
- Election
- Tax

This rule does not apply to disputes where a law suit has not yet been filed.

C. **Referral upon request.** Any party at any time may request referral to a settlement conference by motion or letter directed to the assigned judge. The letter may be ex parte. The letter should include the following:

- (1) case number and caption;
- (2) estimated time required for conference;
- (3) whether other parties know request is being made;

- (4) whether other parties agree conference is appropriate;
- (5) brief list of pending issues;
- (6) type of facilitator or facilitator team preferred, *e.g.*, judge, attorney, psychologist, or other professional, judge/attorney, judge/psychologist, attorney/psychologist, attorney/attorney; and
- (7) names of all parties entitled to notice and any other persons who should be present at the conference, along with law firm, address, telephone number, and capacity, *e.g.*, attorney for petitioner, witness for respondent.

The assigned judge will determine whether to grant the request for referral. The assigned judge may refuse to grant a request even if all parties agree to a settlement conference.

**D. Referral upon judge's own motion.** The assigned judge at any time and without agreement of the parties may refer a case to a settlement conference.

**E. Referral order.** In all cases to be referred, whether on party's request or judge's motion, the court will complete and file an order requiring a settlement conference, appointing a settlement facilitator or facilitators, and setting a deadline for the conference, and will mail or deliver endorsed copies to the facilitator(s) and all parties entitled to notice. The order shall not indicate whether the referral was made on a party's request or the judge's motion. The order may be modified only by subsequent written court order.

**F. Time, place, and deadline for settlement conference.** Unless set by the referral order, the time(s) and place(s) of the settlement conference shall be set by the settlement facilitator(s) within a deadline set by the court. Any party or facilitator may request an extension of the deadline by motion directed to the assigned judge.

**G. Attendance.** The following shall attend and be present in person during the entire conference: each party of record including parties represented by counsel; each counsel of record who will be trying the case; and, for each party, the person or persons with complete authority to settle the case including but not limited to insurance company representatives and guardians ad litem. This provision may be waived only by written order of the assigned judge. The court may refuse to grant a motion to waive attendance even if all parties agree to the motion. On motion of any party or its own motion, the court shall impose sanctions for failure to attend the settlement conference or have present all necessary parties or their representatives with settlement authority, except on a showing of good cause.

**H. Settlement conference information.** At least five (5) days prior to the conference, all parties shall provide the facilitator(s) with the information listed below. This information shall not be filed with the court nor in any way be made part of the court record, and at the providing party's discretion, need not be produced to other parties. On motion of any party or its own motion, the court may impose sanctions for failure to provide the information to the facilitator(s):

- (1) case number and caption;
- (2) brief description of the case; in domestic relations cases include date of marriage, separation, and divorce; names, ages, occupations, and current annual incomes of parties; and names and ages of children;
- (3) description of the relief sought;
- (4) list of pending factual issues;
- (5) list of pending legal issues;
- (6) list of all remaining discovery;
- (7) list of any pending dispositive motions;
- (8) estimate of costs and attorney fees through trial;

(9) the last offer made to other parties; and

(10) copies of case law, statutes, pleadings, exhibits, orders, and any other information that would be helpful to the facilitator(s).

I. **Good faith participation.** Parties shall participate in good faith in settlement conferences. Good faith participation includes but is not limited to sufficiently preparing for the conference and engaging in meaningful negotiations during the conference. On motion of any party or its own motion, the court may award attorney fees and costs for failure to participate in good faith.

J. **Cancelling conferences.** Settlement conferences may be cancelled only by written court order. By motion, any party may request that a settlement conference be cancelled. By letter to the assigned judge, the facilitator may request that a conference be cancelled.

K. **Choice of settlement facilitator.** The court will choose the settlement facilitator from a list of facilitators maintained by the court. The court will consider any recommendations made by the parties. The parties may present to the assigned judge a stipulated order appointing any licensed attorney or other qualified person as facilitator. Judges shall not act as facilitators in their own cases.

L. **Replacement of settlement facilitator.** By letter to the assigned judge with a copy to all parties and facilitators, any party or facilitator may request that the facilitator be replaced. The party or the facilitator requesting replacement need not provide an explanation. On approval of the assigned judge, the facilitator will be replaced; the court will choose the replacement facilitator from the court's list and will complete and file an amended referral order and mail or deliver endorsed copies to all parties entitled to notice; or, the parties may present to the assigned judge a stipulated order appointing any licensed attorney or other qualified person.

M. **Compensation to settlement facilitator.** Compensation shall not be required for any settlement facilitator for a settlement conference conducted as part of a settlement week. The court may order the parties to pay reasonable compensation to the facilitator for a settlement conference not conducted as part of a settlement week. Judges shall not receive compensation for serving as settlement facilitators.

[As amended by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]

## **LR2-603. Court-annexed arbitration.**

### **SECTION I: GENERAL PROVISIONS**

A. **Application.** This rule applies to civil cases, whether jury or non-jury, except for cases within the following categories:

- Appeals
- Uniform Arbitration Act
- Extraordinary writs
- Adoption
- Commitment
- Conservatorship
- Guardianship
- Probate
- Children's Code
- Domestic relations
- Workers' compensation

Student loan  
Driver's license  
Election  
Tax

B. **Court hearings.** If a court hearing is required regarding any aspect of arbitration prior to referral or any matter during referral, the court shall set and hear the matter promptly after the matter is brought to the attention of the assigned judge by request for hearing or by the court alternatives director.

C. **"At issue" required.** All cases referred to arbitration must be "at issue" prior to referral. For purposes of this rule, a case is "at issue" when at least one answer to the complaint has been filed. Answers to cross-claims, counterclaims, and third-party complaints need not have been filed. Service on all parties need not have been made.

## **SECTION II: MANDATORY REFERRAL**

A. **Types of cases for mandatory referral.** All cases, jury and non-jury, shall be referred to arbitration where no party seeks relief other than a money judgment and no party seeks an amount in excess of twenty-five thousand dollars (\$25,000.00) from any party or combination of parties, exclusive of punitive damages, interest, costs, and attorney fees.

B. **Mandatory certification.** In all cases filed on or after the effective date of this rule, any party filing a complaint, counterclaim, cross-claim, third-party complaint, or any other pleading in which affirmative relief is requested shall file and serve concurrently with the pleading for affirmative relief, a separate certification indicating whether the party is or is not seeking relief other than a money judgment and whether the amount sought exceeds or does not exceed twenty-five thousand dollars (\$25,000.00) exclusive of punitive damages, interest, costs, and attorney fees. The certification shall be a good faith attempt to state the type and amount of relief to be sought at trial and shall not act as a limitation on relief.

C. **Review of certification; referral order.** Within thirty (30) days after a case is at issue, the court will review the court file, including the certifications filed, to determine whether referral to arbitration is mandated by Section II(A) of this rule. If so mandated, the court will prepare and file an order referring the case to arbitration, and mail or deliver endorsed copies of the order to all parties entitled to notice. The court on its own motion may postpone filing a referral order if it appears from the court file that the case may be resolved on a pending motion for judgment on the pleadings or other pending dispositive motion. If referral is not mandated, no order will be entered.

D. **Failure to file certification.** If a party fails to file a certification, the court after written notice may impose an appropriate sanction including but not limited to dismissing the party's complaint without prejudice. The court in its discretion may impose the sanction without hearing.

E. **Referral on motion.** At any time after a case is at issue and notwithstanding any certifications filed, on a party's motion or the court's own motion, the court may enter an order referring the case to arbitration provided the court finds that the requirements of Section II(A) are met. The court in its discretion may enter the order without hearing.

F. **Denial of referral.** Notwithstanding a finding that the requirements of Section II(A) have been met, at any time prior to referral, on a party's or the court's own motion, the court for good cause may deny referral to arbitration. The court in its discretion may enter the order without hearing.

## **SECTION III: PERMISSIVE REFERRAL**

Any case may be referred to arbitration where the parties stipulate to arbitration. The court may require the parties to stipulate to an arbitrator as set forth in Subsection IV(C)(3) of this rule.

## **SECTION IV: ARBITRATORS**

A. **Arbitrator pool.** The court will maintain a pool from which arbitrators will be appointed. The pool shall include all active members of the State Bar of New Mexico who have been licensed to practice law for five (5) or more years and who are residents of or have an office in Bernalillo County. Other attorneys licensed for five or more years, including inactive attorneys, out-of-Bernalillo County attorneys, and out-of-state attorneys may be included in the pool on written request to the court alternatives director. The chief judge for good cause may remove an attorney from the arbitrator pool either temporarily or permanently. The removal may be on the court's own motion and without notice to the attorney, or on written request to the court alternatives director. The court will periodically review the pool of arbitrators for completeness and accuracy, and may require any member of the State Bar of New Mexico to submit information necessary for this purpose. The court will provide written notice to attorneys as they are added to the pool, either by letter or notice published in the Bar Bulletin.

B. **Training.** The court may require any attorney who is part of the arbitrator pool to attend arbitrator training.

C. **Appointment to case.** After a case is referred to arbitration, an attorney shall be appointed as arbitrator by the filing of a court order on either random selection, court selection, or stipulation. With appointments on random or court selection, the court will file an order appointing the arbitrator and mail or deliver endorsed copies to the arbitrator and all parties entitled to notice. With stipulations, the parties shall file the order of appointment.

(1) ***Random selection.***

(a) *Notice of choices.* Within ten (10) days after a case is referred to arbitration, the court alternatives director will mail to all parties a notice listing three (3) attorneys as choices for arbitrator. The three attorneys shall be selected at random from the arbitrator pool except that none of the three may be employed by the same law firm as any of the other three or as any counsel in the case. The notice of choices shall not be filed with the clerk.

(b) *Peremptory strikes.* Within seven (7) days after the notice of choices is mailed, each party may peremptorily strike one attorney by written notice to the court alternatives director. A maximum of two strikes will be counted altogether; a maximum of one strike will be counted for each side, *e.g.*, all plaintiffs or defendants or third-party defendants; and strikes will be counted in the order received. The first attorney remaining after strikes are counted shall be appointed. The period for making strikes shall not be extended. The notice of strikes shall not be filed with the clerk.

(2) ***Court selection.*** For good cause, the court may select an arbitrator rather than provide the parties with a notice of choices.

(3) ***Stipulation.*** The parties may stipulate to the appointment of any licensed attorney, whether or not part of the pool and with any length of experience, by stipulated order filed within seven (7) days after the notice of choices is mailed, or within seven days after a vacancy is created by order of excusal or otherwise. The stipulated order must be approved by all parties and by the proposed arbitrator. Approval of counsel and the proposed arbitrator may be telephonic; approval of parties pro se must be by signature. The court or the proposed arbitrator may require the parties to pay compensation at the arbitrator's usual hourly fee.

(4) ***Excusal; conflicts check.*** Promptly on appointment, the arbitrator shall attempt to discern any conflicts of interest in hearing the case and shall notify the parties thereof. On discovery of a conflict of interest in hearing a case, an arbitrator shall file a motion for excusal. On a party's, the arbitrator's, or the court's own motion, the court for good cause may order that the

arbitrator be excused from appointment to the case. The court in its discretion may enter the order without hearing.

(5) **Vacancy.** Vacancies caused by excusal or otherwise shall be filled by appointment of the first of the remaining three choices or if none remains, by appointment of an attorney selected by the court, or the parties may stipulate to a replacement as provided in Subsection IV(C)(3) of this rule.

**D. Compensation.** The court shall compensate arbitrators in the amount of one hundred dollars (\$100.00) per case. An arbitrator is entitled to compensation when the arbitrator files an award or the arbitration proceedings are otherwise concluded or when the arbitrator is excused from appointment. The arbitrator shall submit a written request for compensation to the court alternatives director within thirty (30) days after the arbitrator is entitled to compensation. Failure to submit a request shall be deemed a waiver of compensation. Arbitrators compensated by the parties under Subsection IV(C)(3) of this rule shall not be compensated by the court.

## **SECTION V: PROCEDURES DURING REFERRAL**

### **A. General.**

(1) **Court jurisdiction.** The assigned judge continues to have jurisdiction over a case during referral to arbitration. In general, however, the assigned judge should not hear any matters after an arbitrator is appointed except the judge may hear the following:

- (a) motions to excuse the arbitrator;
- (b) motions to withdraw referral to arbitration;
- (c) motions for sanctions under Subsection V(A)(5) of this rule;
- (d) motions for free process;
- (e) motions regarding attorney representation;
- (f) motions to add new parties;
- (g) motions to set aside default or any other judgment;
- (h) motions to compel settlement;
- (i) any post-judgment enforcement and execution matters; and
- (j) requests for settlement conference under Rule [LR2-602](#) NMRA.

After a case is referred to arbitration and before an arbitrator is appointed, the court in its discretion may vacate any pending hearings on matters that may be heard by the arbitrator, and may set hearings on matters needing immediate consideration.

(2) **Arbitrator jurisdiction, powers, and duties.** The arbitrator's jurisdiction begins when the order of appointment is filed and continues until the arbitrator is excused, ten (10) days after an award is filed, or the arbitration proceedings are otherwise concluded, whichever period is shorter. While the arbitrator has jurisdiction, the arbitrator's decisions shall be considered equivalent to court orders. The arbitrator may decide all issues of fact and law unless specifically prohibited by this rule or court order. The arbitrator shall consider the efficient, cost-effective, and informal resolution of the case as a factor in all the arbitrator's decisions and in all aspects of the arbitrator's management of the case. The arbitrator may limit discovery whenever appropriate. The arbitrator may administer oaths. With the exception of contempt, the arbitrator may enter appropriate sanctions including sanctions under Rules [1-016](#), [1-030](#), and [1-037](#) NMRA or any other Supreme Court rule, sanctions for failure to comply with any of the provisions of this rule, and sanctions for failure to comply with any of the arbitrator's decisions. On agreement of the parties, the arbitrator may serve as a mediator or settlement facilitator. The arbitrator's jurisdiction, powers, and duties may not be delegated. The arbitrator must personally conduct the hearings and trial, and must personally sign decisions and the award.

(3) **Supreme Court and local rules.** All Supreme Court rules including rules of civil procedure (including Rule [1-006\(D\)](#) NMRA) and rules of evidence, and all second judicial district local rules apply during referral to arbitration unless specifically waived by written court order or the arbitrator. The arbitrator may waive rules of evidence only on agreement of the parties.

(4) **Good faith participation.** All parties shall participate in good faith in the arbitration proceedings. The arbitrator may enter an award of default or of dismissal against any party failing to participate in good faith or reflect the failure in the award. In any award, the arbitrator shall include a certification that the party failed to participate in good faith. The court shall consider the certification when deciding attorney fees, costs, and interest on appeal, or when considering whether to set aside the default.

(5) **120-day deadline; sanction.** Within one hundred twenty (120) days after the arbitrator is appointed, the arbitrator shall file an award unless the arbitration proceedings have otherwise been concluded. On a party's, the arbitrator's, or the court's own motion, the court for good cause may extend the one hundred twenty (120) day period. The court in its discretion may enter the order without hearing. If the arbitrator or a party fails to comply with this provision, the court after written notice may impose an appropriate sanction including but not limited to requiring the arbitrator or party to pay a penalty into the second judicial district arbitration fund.

(6) **Filing papers.** Any motion or other paper to be heard or otherwise considered by the arbitrator shall not be filed with the court. The arbitrator shall not file any decisions except for the award. On a party's or the court's own motion, the court may order that an inappropriately filed paper be stricken. The court in its discretion may enter the order without hearing. Failure to submit a motion to strike shall be deemed waiver of any prejudice caused by a paper inappropriately filed.

(7) **Court file; review; copy.** The arbitrator may review the court file at any time during regular court hours. The court shall provide the arbitrator a copy of the file or portions of the file at no cost on request; requests shall be made to the court alternatives director.

(8) **Summonses; subpoenae.** The clerk shall issue summonses and subpoenae in cases referred to arbitration in the same manner as with other civil cases. The summonses and subpoenae shall be served and enforceable as provided by law.

(9) **Record of proceeding.** Any party to an arbitration proceeding, at the party's own expense, may engage a certified court reporter to make a record of testimony given at an arbitration proceeding for use as allowed by the rules of evidence. A copy of the record may be obtained by any other party to the arbitration proceeding in the same manner that deposition copies are obtained. Costs associated with making the record or obtaining a copy of it shall not be recoverable.

(10) **Withdrawal of referral.** At any time after a case is referred to arbitration, on a party's, the arbitrator's, or the court's own motion, the court for good cause may order that the referral to arbitration be withdrawn and the case be returned to the court's docket. The court in its discretion may enter the order without hearing.

#### **B. Hearings; trial.**

(1) **Place, date, and time.** The arbitrator shall set an appropriate place, date, and time for all hearings and trial. Hearings shall be set during regular business hours except on agreement of the parties. The arbitrator may conduct hearings by telephone.

(2) **Notice.** The arbitrator shall provide twenty (20) days written notice of trial. The arbitrator shall provide five (5) days notice, in writing or by telephone, of all other hearings. Notice of trial or hearings may be waived by the parties.

(3) **Requests for hearing.** Unless otherwise directed by the arbitrator, parties may request hearings informally, by letter, or by telephone, provided the requesting party notifies all other parties as well as the arbitrator. The arbitrator may decide motions and other preliminary matters on written submissions.

(4) **Statement of witnesses, exhibits.** No later than ten (10) days prior to trial, each party shall serve on all other parties a statement listing all the exhibits and witnesses the party may use and briefly describing the matters about which each witness will be called to testify. The arbitrator may waive this provision.

(5) **Return of exhibits and depositions.** After an award is filed or the arbitration proceedings are otherwise concluded, the arbitrator shall return all exhibits and depositions to the submitting party.

C. **Evidentiary exceptions.** The following exceptions apply during referral to arbitration.

(1) **Depositions.** The arbitrator may hear testimony by deposition.

(2) **Documentary evidence.** The following documents, if relevant, shall be admitted in evidence without further proof provided a copy of said documents is served on all parties no later than ten (10) days prior to the hearing or trial:

(a) estimates and bills for services and products, if dated and itemized;

(b) reports of experts, if dated and signed; and

(c) records and reports as described in Rule [11-803](#)(6), (8), (9), (11), (12), and (14) through (18) NMRA.

D. **Award.**

(1) **Final decision; scope.** The arbitrator's final decision shall be called an "award". The award shall clearly set forth the amount awarded to each party and address all pending claims, attorney fees, costs and interest as allowed by law, including any required award of costs under Rule [1-068](#) NMRA. The award may be an award of default, dismissal, summary judgment, or money damages.

(2) **Amount.** The amount of the award shall be limited only by the evidence and shall not be limited by the circumstances under which the case was referred to arbitration.

(3) **Filing.** Unless the parties agree otherwise, within ten (10) days after the last hearing the arbitrator shall file an award with the clerk and serve copies on all parties entitled to notice. If an arbitrator fails to comply with this provision, the court after written notice may impose an appropriate sanction including but not limited to requiring the arbitrator to pay a penalty into the second judicial district's arbitration fund.

(4) **Amended award.** Within ten (10) days after an award is filed, the arbitrator may file an amended award. Copies shall be served on all parties entitled to notice.

(5) **Binding award.** At any time before the award is filed, the parties may file with the clerk a stipulation that the award will be binding and that the right to appeal the award is waived.

(6) **Judgment on award.** If no appeal is taken and the time for appeal has expired, the right to appeal has been waived, or the appeal has been voluntarily dismissed, the court shall prepare and file a judgment or final order adopting that part of the award not appealed as a judgment or final order of the court, and mail or deliver endorsed copies to all parties entitled to notice. The judgment or final order shall be enforceable and binding as any other judgment or final order.

## SECTION VI: APPEAL

A. **Right to appeal.** Any party of record at the time the arbitrator's award is filed may appeal the award, except that a party may not appeal an award of default, including an award of default

entered under Subsection V(A)(4) of this rule. An award of default shall only be set aside under Rules [1-055](#) and [1-060](#) NMRA.

**B. Procedures to appeal.**

(1) *Notice of appeal.* To exercise the right to appeal, a party must file a “notice of appeal from arbitration” with the clerk within fifteen (15) days after the award or amended award is filed. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within fifteen (15) days after the date on which the first notice of appeal was served. The period for filing the notice shall not be extended. A copy of the notice of appeal shall be served on all parties entitled to notice. Cross-appeals are not required.

(2) *Voluntary dismissal.* At any time after filing a notice of appeal and before trial before the assigned judge, a party may withdraw the appeal by filing a notice of voluntary appeal dismissal. A copy of the notice shall be served on all parties.

**C. Procedures on appeal.**

(1) *Docket status.* After a notice of appeal is filed, the case shall be returned to the same status on the assigned judge’s docket that it had prior to referral to arbitration. Requests for trial must be submitted as required by local rule.

(2) *De novo proceedings.* All appeals shall be in the form of de novo proceedings before the assigned judge. No reference shall be made to any of the arbitrator’s decisions including the award. Neither the arbitrator nor the court alternatives director shall be permitted to testify about the arbitration proceedings. Promptly after the notice of appeal is filed and until disposition of the appeal, the court shall seal the award.

(3) *Discovery.* Any discovery obtained while the case was referred to arbitration may be used in the de novo proceedings.

**D. Award of fees, costs, and interest against appellant.** If the court makes a decision on the merits which is the same as or less favorable to the appellant than the arbitrator’s award, the court shall order that the appellant pay all other parties’ expenses incurred during the appeal including but not limited to reasonable attorney fees, costs, and pre-judgment interest dating from the arbitration award. The court for good cause shown may waive this provision; the court shall state the basis for its good cause finding on the record.

[As amended, effective March 1, 1997; as amended by Supreme Court Order No. 06-8300-026 effective January 15, 2007; as amended by Supreme Court Order No. 16-8300-015, effective for all cases pending or filed on or after December 31, 2016.]