

**IN THE SUPREME COURT OF TEXAS**

Misc. Docket No. 98-9085

---

**APPROVAL OF AMENDMENT TO THE LOCAL RULES OF THE  
DISTRICT COURTS OF TRAVIS COUNTY, TEXAS,  
REGARDING ALTERNATIVE DISPUTE RESOLUTION**

---

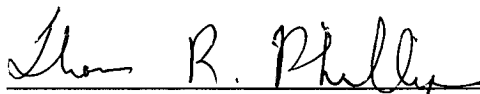
**ORDERED:**

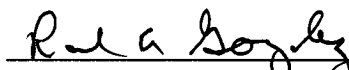
Pursuant to Rule 3a of the Texas Rules of Civil Procedure, the Supreme Court of Texas approves the following local rule:


Amendment to Local Rules of the District Courts of Travis County,  
Texas, regarding alternative dispute resolution.

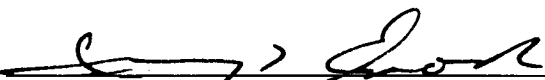
The approval of this rule is temporary, pending further orders of the Court.

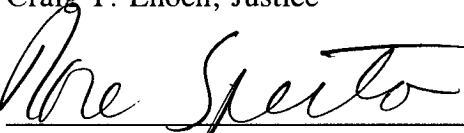
SIGNED AND ENTERED this 29<sup>th</sup> day of May, 1998.


  
Thomas R. Phillips, Chief Justice

  
Raul A. Gonzalez, Justice

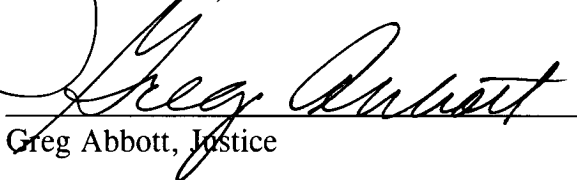
  
Nathan L. Hecht, Justice

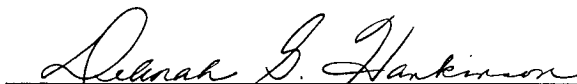
  
Craig T. Enoch, Justice

  
Rose Spector, Justice

  
Priscilla R. Owen, Justice

  
James A. Baker, Justice

  
Greg Abbott, Justice

  
Deborah G. Hankinson, Justice

## CHAPTER 17

**REFERRAL OF CASES TO ADR PROCEDURES****17.1 PURPOSE AND SCOPE**

This chapter shall direct the referral of cases to nonbinding alternative dispute resolution (ADR) procedures in the Travis County District Courts. Where applicable, it shall apply to (a) the mandatory referral to ADR procedures of cases as set forth in this chapter at section 17.4(a) below; (b) the mandatory referral to ADR procedures of dismissal notice cases, as set forth in Chapter 11.3 of these Local Rules; and (c) the discretionary referral of other cases to ADR procedures by a district court, on the court's own motion, on a motion by a party, or by agreement of the parties.

**17.2 AUTHORITY FOR REFERRAL OF CASES TO ADR PROCEDURES**

This chapter and Chapter 11 are based upon the judicial authority of the Travis County District Courts under the Constitution, statutes, and common law of Texas, and in particular upon the authority of (a) the Texas Alternative Dispute Resolution Procedures Act, TEX.CIV.PRAC.& REM. CODE § 154.001, et seq., providing for referral of cases to ADR procedures; and (b) Texas Rule of Civil Procedure 165a, providing for dismissal of cases for want of prosecution.

**17.3 POLICY FOR REFERRAL OF CASES BY DISTRICT COURTS**

It shall be the policy of the Travis County District Courts to encourage the peaceable resolution of disputes and the early settlement of pending litigation by identifying cases appropriate for referral to nonbinding ADR procedures pursuant to the rules set out in this chapter. Of course, parties are encouraged to first attempt to settle their cases without ADR.

**17.4 CASES TO BE REFERRED TO ADR PROCEDURES**

(a) All cases set for trial on the merits on the jury docket or on the more than half day non-jury docket [Local Rule 2.4(a)], including cases set before an associate judge, are automatically referred to pre-trial mediation, except as provided in section 17.5 below.

(b) All cases in which notice of dismissal for want of prosecution has been given as set out in Chapter 11.3 of these rules are automatically referred to ADR procedures.

(c) Any other case deemed appropriate, in the discretion of a district court, may be referred to ADR procedures. In determining whether to refer a case to ADR procedures, the court, may give consideration to such factors as the subject matter of the case, the amount in controversy, the complexity of the case, the number of parties, the interest of the parties in pursuing ADR procedures, the availability of ADR procedures, and the likelihood of settlement by ADR procedures.

(d) Nothing in this chapter shall prevent a case from being submitted to ADR at any time by the agreement of the parties, by motion of one of the parties pursuant to TEX. CIV. PRAC. & REM. CODE § 154.001 *et seq.*, or on the court's own motion.

### **17.5 CASES EXEMPT OR EXCUSED FROM REFERRAL TO ADR PROCEDURES**

(a) The following types of cases are exempt from automatic referral to ADR procedures pursuant to this rule: 1) Administrative appeals challenging an agency order or rule; and 2) cases brought by the Department of Protective and Regulatory Services under the Family Code. In any exempt case a party may still file a motion to refer the case to ADR.

(b) Cases are excused from automatic referral to ADR procedures when counsel for one or more of the parties files notice that the dispute was submitted to mediation or another ADR process prior to the date the setting was obtained.

(c) If any party to a case files a motion objecting to the automatic referral to ADR and the court hearing the motion finds that there is a reasonable basis for the objection, the case will be excused from the referral. If all or most of the parties object to mediation, those objections will be weighed carefully. The court, however, may still require mediation if the judge determines that there is not a reasonable basis for the objection. The ADR Coordinator will carefully track all cases referred to mediation over objection and regularly report those statistics so that the judges can periodically assess the efficacy of referral to mediation over objection. Special consideration may be given to whether or how cases are mediated in which there are allegations of domestic violence.

### **17.6 NOTICE AND OBJECTIONS**

(a) The party requesting the setting that automatically refers the case to ADR procedures shall be responsible for notifying all other parties of the referral. Where the referral is on the court's own motion, the court shall notify the parties of this determination.

(b) Any party may, within ten days after receiving notice of the referral, file a written objection to it. A hearing may be requested by any party or may be set by the court.

(c) A hearing requested pursuant to (b) above must be set and heard before the beginning of the docket announcement period for the date of trial (see Local Rule 3.2) or the objection to the referral is deemed waived.

### **17.7 TYPES OF ADR PROCEDURES**

The following types of ADR procedures authorized by the Texas Alternative Dispute Resolution Procedures Act, as set forth in TEX. CIV. PRAC. & REM. CODE § 154.024, or any appropriate variation of such procedures, may be utilized pursuant to this rule: (a) Mediation, (b) Mini-Trial, (c) Moderated Settlement Conference, (d) Summary Jury Trial, or (e) Arbitration.

## **17.8 DISCOVERY**

The setting of a case and the corresponding referral to pre-trial mediation or other ADR procedure does not automatically stay discovery under the Texas Rules of Civil Procedure. Upon agreement of the parties or order of the court after notice and hearing, discovery may be stayed.

## **17.9 MEDIATION**

### **(a) Selection and Payment of a Mediator**

(1) The ADR Coordinator shall compile and maintain a list of mediators qualified pursuant to the Texas Alternative Dispute Resolution Procedures Act, Tex. Civ. Prac. & Rem. Code § 154.001 et seq.

(2) The parties and their attorneys shall be responsible for contacting the ADR Coordinator and cooperating in the selection of the mediator(s). The parties may select by agreement any mediator who is on the list of mediators maintained by the ADR Coordinator's office or who is otherwise qualified pursuant to the Texas Alternative Dispute Resolution Procedures Act, Tex. Civ. Prac. & Rem. Code § 154.001 et seq. If the parties do not agree on a mediator they must either request the ADR Coordinator to make a random selection of mediators from that list or request the court to assign a mediator.

(3) If the parties request the ADR Coordinator to select the mediator, the ADR Coordinator shall give consideration to the nature of the case and the areas of practice, experience, and expertise of the prospective mediators.

(4) Upon selection of one or more mediators, the ADR Coordinator shall send the name(s) of the mediators to each party or counsel of record in the case. Any party may challenge a mediator for bias, conflict of interest, or other appropriate cause. In the event such challenge cannot be resolved by the ADR Coordinator and the parties by substitution of another mediator or by other agreement, a dissatisfied party may file a motion with the court showing good cause why the mediation should not proceed with the designated mediator(s).

(5) Payment of the mediator shall be by agreement of the parties and the mediator. Failing such an agreement, the court shall set a fee pursuant to statute. If one or more of the parties objects to paying a share of the cost of mediation, and the court finds a reasonable basis for that objection, the court may instruct the ADR Coordinator to assist the parties in the selection of a mediator willing to perform mediations on a nominal fee or pro bono basis. If the parties are unable to obtain a nominal cost or pro bono mediation they will report this fact to the ADR Coordinator and to the court that heard the objection.

### **(b) Authority to Settle at Mediation**

(1) All parties participating in mediation pursuant to this chapter shall be prepared to negotiate openly and knowledgeably in a mutual effort to reach a fair settlement.

(2) Each party, or a person with authority to settle the case on a party's behalf, must be present during mediation, unless upon motion the presence of such a person or party has been excused by order of the court.

(3) If a party is the state or a political subdivision, the party shall have present an agent whose position is commensurate with the premediation demand or offer and whose recommendation to approve a mediated settlement will be meaningful to the person or body whose approval of the mediated settlement is required.

(4) If a party thinks it unreasonable to have a person at the mediation as required by (2) or (3), a premediation conference shall be held with the mediator to negotiate who will be present at the mediation. If a party thinks that some other party has not designated an agent in compliance with this section, a premediation conference shall be held with the mediator to negotiate who will be present at the mediation. If attendance cannot be negotiated, a motion may be filed with the court to resolve the issue.

**(c) Before the Mediation**

(1) The parties and their attorneys shall be responsible for designating a date and time for the mediation. If the parties are unable to agree upon a date, the ADR Coordinator shall set a date and time for the mediation and notify the parties in writing, but the parties shall remain responsible for compliance with the time limits set in Chapter 11 or the requirements or time limits of any court order.

(2) At least 14 days before the mediation, unless otherwise agreed, the Plaintiff shall provide the mediator and all other parties a brief letter outlining their premediation demand and designating their agent for purposes of the ADR procedures, pursuant to section 17.9(b)(2) or (3) of this chapter.

(3) After receiving the premediation demand letter, and at least 7 days before the date of mediation, unless otherwise agreed, all other parties shall provide the mediator and other parties with a brief letter outlining their offer and disclosing their agents pursuant to section 17.9(b)(2) or (3) of this chapter.

(4) The parties shall agree in advance upon the minimum amount of time they will commit to mediation or the parties may agree in advance to place that decision in the hands of the mediator. The minimum amount of time shall be commensurate with the dispute. The court expects all mediators and all parties to commit sufficient time. If the parties cannot agree, a premediation conference will be held with the mediator to negotiate the time. If time cannot be negotiated, a motion may be filed with the court to resolve the issue.

**(d) Termination of the Mediation**

The mediation shall be terminated: 1) by settlement; 2) by declaration of the mediator of an impasse; or 3) by the passage of the time agreed upon in advance for mediation, though the parties can agree to extend the time.

**(e) After the Mediation**

Within five days following the conclusion of the mediation, the mediator shall file the ADR Certification Form promulgated by the ADR Coordinator. The mediator shall not indicate the terms of any settlement or otherwise elaborate on the proceedings.

**17.10 TIMING AND ANNOUNCING OF ADR**

(a) The mediation or other ADR procedure should be completed not less than 45 days prior to the beginning of a jury trial, or 15 days prior to the beginning of a non-jury trial. Upon agreement of the parties or order of the court, the time for completion may be changed. Failure to comply with the time prescribed in this paragraph may result in the case being moved to the bottom of the list of cases set for the same date, as in Local Rule 3.4, or may result in striking the setting or other appropriate order.

(b) When making an announcement for either a jury setting or a more than one-half day setting during the announcement period as set out in Local Rules 3.1 and 3.2, the attorneys representing all parties shall include in their announcement of time a statement as to whether or not mediation or another approved ADR procedure has been completed.

**17.11 CONFIDENTIALITY OF ADR**

As provided in TEX.CIV.PRAC.& REM. CODE § 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 nonbinding decision on the merits or any record made at an ADR procedure is confidential, and the participants or the third party facilitating the procedure may not be required to testify in any proceeding relating to or arising out of the matter in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute. However, an oral communication or written material used in or made a part of an ADR procedure is admissible or discoverable if it is admissible or discoverable independent of the ADR procedure.

**17.12 ADR FILINGS AND DOCKET**

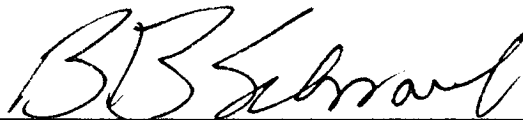
(a) All notices, motions, and reports pertinent to the ADR procedure shall be filed with the District Clerk, with copies sent to the ADR Coordinator.

(b) An ADR docket shall be held each Monday at 8:30 a.m. to hear all motions presented under this chapter. The court administrator shall post the location of the docket with all other assignments.



**CERTIFICATE OF APPROVAL**

The attached Amendment to Local Rule 17 for the District Courts of Travis County is hereby approved and transmitted to the Supreme Court of Texas for final action this 9th day of December, 1997.

A handwritten signature in cursive script, appearing to read "B.B. Schraub", is written above a horizontal line.

**B.B. Schraub, Presiding Judge  
Third Administrative Judicial Region**



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE  
THOMAS R. PHILLIPS

POST OFFICE BOX 12248      AUSTIN, TEXAS 78711

TEL: (512) 463-1312

FAX: (512) 463-1365

CLERK  
JOHN T. ADAMS

EXECUTIVE ASST  
WILLIAM L. WILLIS

ADMINISTRATIVE ASST  
NADINE SCHNEIDER

JUSTICES  
RAUL A. GONZALEZ  
NATHAN L. HECHT  
CRAIG T. ENOCH  
ROSE SPECTOR  
PRISCILLA R. OWEN  
JAMES A. BAKER  
GREG ABBOTT  
DEBORAH G. HANKINSON

May 29, 1998

Hon. B. B. Schraub  
Third Admin. Judicial Rgn.  
101 E. Court Street, Rm. 302  
Seguin, Texas 78155-5742

Dear Judge Schraub,

Please find enclosed, copies of two orders of the Supreme Court that approved amended local rules for the district courts of Travis County.

Sincerely,

**SIGNED**

John T. Adams  
Clerk

Encl.

cc: Hon. Joseph H. Hart  
Lcl. Admin. Judge

District Clerk

County Clerk

Supreme Court Adv Committee

Mr. Jerry Benedict  
Office of Court Admin

State Law Library