DOWNLOAD PDF COURT-ANNEXED ALTERNATIVES

Chapter 1 : Court-Annexed Arbitration Law and Legal Definition | USLegal, Inc.

As a result, Kenya's judiciary has a massive backlog of civil cases, prompting it to explore alternatives. Enter the Court Annexed Mediation Project (CAMP), an initiative introduced in April, Court Annexed Mediation is supported by the World Bank's Judiciary Performance Improvement Project (JPIP).

As used in these rules: It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decision-making authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives. Forms of court annexed alternative dispute resolution. A For certain civil cases commenced in judicial districts that include a county whose population is , or more, there shall be made available the following forms of court annexed alternative dispute resolution: B Judicial districts having a lesser population may adopt local rules implementing all or part of these forms of alternative dispute resolution. C Each district may appoint an alternative dispute resolution commissioner to serve at the pleasure of the court. The alternative dispute resolution commissioner hereafter the commissioner may be an arbitration commissioner, discovery commissioner, short trial commissioner, other special master, or any qualified and licensed Nevada attorney appointed by the court. The appointment shall be made in accordance with local rules. The commissioner so appointed shall have the responsibilities and powers conferred by these Alternative Dispute Resolution Rules and any local rules. The court annexed arbitration program. The Court Annexed Arbitration Program the program is a mandatory, non-binding arbitration program, as hereinafter described, for certain civil cases commenced in judicial districts that include a county whose population is , or more. Judicial districts having a lesser population may adopt local rules implementing all or part of the program. Intent of program and application of rules. A The purpose of the program is to provide a simplified procedure for obtaining a prompt and equitable resolution of certain civil matters. B These rules shall apply to all arbitration proceedings commenced in the program. C These arbitration rules are not intended, nor should they be construed, to address every issue which may arise during the arbitration process. The intent of these rules is to give considerable discretion to the arbitrator, the commissioner and the district judge. Arbitration hearings are intended to be informal, expeditious and consistent with the purposes and intent of these rules. Matters subject to arbitration. B Any civil case, regardless of the monetary value, the amount in controversy, or the relief sought, may be submitted to the program upon the agreement of all parties and the approval of the district judge to whom the case is assigned. C While a case is in the program, the parties may, with the approval of the district judge to whom the case is assigned, stipulate, or the court may order that a settlement conference, mediation proceeding, or other appropriate settlement technique be conducted by another district judge, a senior judge, or a special master. The settlement procedure conducted pursuant to this subdivision will extend by no more than 30 days the timetable set forth in these rules for resolving cases in the program. D Parties to cases submitted or ordered to the program may agree at any time to be bound by any arbitration ruling or award. If the parties agree to be bound by the decision of the arbitrator, the procedures set forth in these rules governing trials de novo will not apply to the case. The parties may, however, either confirm, vacate or modify the decision of the arbitrator in the manner authorized by NRS Relationship to district court jurisdiction and rules. A Cases filed in the district court shall remain under the jurisdiction of that court for all phases of the proceedings, including arbitration. B The district court having jurisdiction over a case has the authority to act on or interpret these rules. C Before a case is submitted or ordered to the program, and after a request for trial de novo is filed, and except as hereinafter stated, all applicable rules of the district court, the Nevada Short Trial Rules, and the Nevada Rules of Civil Procedure apply. After a case is submitted or ordered to the program, and before a request for trial de novo is filed, or until the case is removed from the program, these rules apply. Except as stated elsewhere herein, once a case is accepted or remanded into the program, the requirements of N. D The calculation of time and the requirements of service of pleadings and documents under these rules are the same as under the Nevada Rules of Civil Procedure. E During the pendency of arbitration proceedings conducted

pursuant to these rules, no motion may be filed in the district court by any party, except motions that are dispositive of the action, or any portion thereof, motions to amend, consolidate, withdraw, intervene, or motions made pursuant to Rule 3 C , requesting a settlement conference, mediation proceeding or other appropriate settlement technique. A copy of all motions and orders resulting therefrom shall be served upon the arbitrator. F Once a case is submitted or ordered to the program all parties subsequently joined in the action shall be parties to the arbitration unless dismissed by the district judge to whom the case is assigned. G Except as otherwise provided in these rules, all disputed issues arising under these rules must be resolved in the manner set forth in Rule 8 B. A A party claiming an exemption from the program pursuant to Rule 3 A on grounds other than the amount in controversy, the presentation of significant issues of public policy, or the presentation of unusual circumstances that constitute good cause for removal from the program will not be required to file a request for exemption if the initial pleading specifically designates the category of claimed exemption in the caption. Otherwise, if a party believes that a case should not be in the program, that party must file with the commissioner a request to exempt the case from the program and serve the request on any party who has appeared in the action. The request for exemption must be filed within 20 days after the filing of an answer by the first answering defendant, and the party requesting the exemption must certify that his or her case is included in one of the categories of exempt cases listed in Rule 3. For good cause shown, an appropriate case may be removed from the program upon the filing of an untimely request for exemption; however, such filing may subject the requesting party to sanctions by the commissioner. B Any opposition to a request for exemption from arbitration must be filed with the commissioner and served upon all appearing parties within 5 days of service of the request for exemption. C The parties may file a joint request for exemption. D Where requests for exemptions from arbitration are filed, the commissioner shall review the contentions, facts and evidence available and determine whether an exemption is warranted. E The district judge to whom a case is assigned shall make all final determinations regarding the arbitrability of a case and may hold a hearing on the issue of arbitrability, if necessary. F The district judge to whom a case is assigned may impose any sanction authorized by N. G Any party to any action has standing to seek alternative dispute resolution under these rules. A Parties may stipulate to use a private arbitrator or arbitrators who are not on the panel of arbitrators assigned to the program, or who are on the panel but who have agreed to serve on a private basis. Such stipulations must be made and filed with the commissioner no later than the date set for the return of the arbitration selection list and may require the use of any alternative dispute resolution procedure to resolve the dispute. The stipulation must include an affidavit that is signed and verified by the arbitrator expressing his or her willingness to comply with the timetables set forth in these rules. Failure to file a timely stipulation shall not preclude the use of a private arbitrator, but may subject the dilatory parties to sanctions by the commissioner. B Any and all fees or expenses related to the use of a private arbitrator, or the use of any other alternative dispute resolution procedure, shall be borne by the parties. C Unless a request for exemption is filed, the commissioner shall serve the two adverse appearing parties with identical lists of 5 arbitrators selected at random from the panel of arbitrators assigned to the program. For purposes of this rule, if several parties are represented by one attorney, they shall be considered as one party. Objections must be in writing, state specific grounds, be served on all other appearing parties and filed with the commissioner, who will review the objections and render a decision. This decision may be appealed to the district judge to whom the case is assigned. The commissioner shall then notify the district judge of the appeal. F If the selection process outlined above fails for any reason, including a recusal by the arbitrator, the commissioner shall repeat the process set forth in subdivision C of this rule to select an alternate arbitrator. A Each commissioner shall create and maintain a panel of arbitrators consisting of attorneys licensed to practice law in Nevada and a separate panel of non-attorney arbitrators. The state bar may charge applicants for the non-lawyer panel of arbitrators an appropriate fee to cover the expense of its investigation. B Non-attorney arbitrators must: Attorney arbitrators must be licensed to practice law in Nevada and shall have practiced law a minimum of 8 years in any jurisdiction. C Arbitrators shall be required to complete an arbitrator training program in conjunction with their selection to the panel. The court may also require arbitrators to complete additional training sessions or classes. D Arbitrators shall be sworn or affirmed to uphold these rules of the program, and

the laws of the State of Nevada by any person authorized to administer the official oath under NRS F Any issue concerning the participation or disqualification of a person on the panel of arbitrators shall be referred to the commissioner for a final determination. A Arbitrators hear cases admitted to the program and shall render awards in accordance with these rules. The powers of the arbitrators shall include, but not be limited to, the powers: B Any challenge to the authority or action of an arbitrator shall be filed with the commissioner and served upon the other parties and the arbitrator within 10 days of the date of the challenged decision or action. Any opposition to the challenge must be filed with the commissioner and served upon the other parties within 5 days of service of the challenge. The commissioner shall rule on the issue in due course. The commissioner shall then notify the district judge to whom the case is assigned of the petition and may enter an appropriate stay pending review by the district judge. Stipulations and other documents. During the course of arbitration proceedings commenced under these rules, no document other than the motions permitted by Rule 4 may be filed with the district court. All stipulations, motions and other documents relevant to the arbitration proceeding must be lodged with the arbitrator. A Neither counsel nor parties may communicate directly with the arbitrator regarding the merits of the case, except in the presence of, or with reasonable notice to, all of the other parties. B Unless otherwise agreed in writing by all parties, no offer or demand of settlement made by any party shall be disclosed to the arbitrator prior to the filing of an award. A Within 30 days after the appointment of the arbitrator, the parties must meet with the arbitrator to confer, exchange documents, identify witnesses known to the parties which would otherwise be required pursuant to N. The conference may be held by telephone in the discretion of the arbitrator. The extent to which discovery is allowed, if at all, is in the discretion of the arbitrator, who must make every effort to ensure that the discovery, if any, is neither costly nor burdensome. Types of discovery shall be those permitted by the Nevada Rules of Civil Procedure, but may be modified in the discretion of the arbitrator to save time and expense. B It is the obligation of the plaintiff to notify the arbitrator prior to the conference, if other parties have appeared in the action subsequent to the appointment of the arbitrator. Scheduling of hearings; pre-hearing conferences. Arbitrators shall set the time and date of the hearing within this period. B The arbitration hearing date may be advanced or continued by the arbitrator for good cause upon written request from either party. Any such request for permission for an extension beyond the 9-month period must be made in writing to the commissioner by the arbitrator. The commissioner may permit such an extension upon a showing of unusual circumstances. All arbitration hearings must take place within one year of the date on which the arbitrator is appointed. C Consolidated actions shall be heard on the date assigned to the latest case involved, to be heard by the earliest appointed arbitrator. D Arbitrators or the commissioner may, at their discretion, conduct pre-arbitration hearings or conferences. However, the pre-hearing conference required by Rule 11 must be conducted within 30 days from the date a case is assigned to an arbitrator. E The arbitrator shall give immediate written notification to the commissioner of the arbitration date and any change thereof, any settlement or any change of counsel. A At least 10 days prior to the date of the arbitration hearing, each party shall furnish the arbitrator and serve upon all other parties a statement containing a final list of witnesses whom the party intends to call at the arbitration hearing, and a list of exhibits and documentary evidence anticipated to be introduced. The statement shall contain a brief description of the matters about which each witness will be called to testify. Each party shall, simultaneously with the submission of the final list of witnesses described above, make all exhibits and documentary evidence available for inspection and copying by other parties. B A party failing to comply with this rule, or failing to comply with any discovery order, may not present at the arbitration hearing a witness or exhibit not previously furnished pursuant to this rule, except with the permission of the arbitrator upon a showing of unforeseen and unusual circumstance. C Each party shall furnish to the arbitrator at least 10 days prior to the arbitration hearing copies of any pleadings and other documents contained in the court file which that party deems relevant. Conduct of the hearing.

Chapter 2 : ADR Processes | Northern District of Ohio | United States District Court

The Utah State Courts mission is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law. Page Last Modified: 4/1/ Return to Top.

The Judicial Branch offers a variety of ADR methods such as mediation, arbitration and settlement conferences which usually take less time, are less formal and less expensive than a trial. The Judicial Branch is committed to providing only those ADR programs which consist of a procedurally fair, cost effective and ethical process designed to timely resolve the type of dispute at hand, taking into account the needs of all the involved stakeholders, conducted by trained neutrals applying best practices, which leads to an outcome or a change in position the stakeholders find satisfactory, even if the case itself does not settle. For attorneys wishing to serve as an attorney trial referee, fact finder or arbitrator, see Application for Designation as a Non-Judicial Officer. The parties have a right to a trial if the arbitration is not successful.. Section u through aa of the Connecticut General Statutes. Attorney Trial Referees Can be used for: Any civil, non-jury case, if the parties consent. No jurisdictional limit on the amount in controversy. The decision imust be reviewed and approved by the court. Section a 4 of the Connecticut General Statutes. Civil cases in which the parties wish to have a judicially conducted conference with a Judge, Senior Judge or Judge Trial Referee for no less than half a day. Section a of the Connecticut General Statutes. Fact-Finding Program Can be used for: The decision is subject to court review. Section n through t of the Connecticut General Statutes. Foreclosure Mediation Program The Foreclosure Mediation Program has been set up to help certain homeowners and lenders come to an agreement about a mortgage foreclosure. Currently, the program terminates when mediation has ended with respect to any foreclosure action with a return date from July 1, through June 30, Any housing matter as defined in Section 47a of the Connecticut General Statutes, including contested or uncontested summary process and all actions regarding forcible entry and detainer, back rent, damages, and return of security deposits. Section 47a of the Connecticut General Statutes. The definitions are taken from Kimberlee K. Kovach, Mediation Principles and Practices 3d ed. Can be used for: Dissolution divorce cases on the limited contested and contested case lists. May address child custody, visitation, property and financial issues. Statements by the parties during the mediation are confidential and may not be used as evidence in court. Special Masters -Family Matters Can be used for: Family cases on the limited contested or contested case lists may be referred for settlement conferences.

Chapter 3 : Alternative Dispute Resolution Reports & Resources - news_and_reference

This is the main page for Alternative Dispute Resolution - ADR for the State of Connecticut Judicial Branch. - Formerly Court-Annexed Mediation.

A Guide to Alternative Dispute Resolution Settling your dispute out of court could help you avoid high costs and long delays. Alternative Dispute Resolution may be more desirable than going to court. The American legal system is widely regarded as model for impartial dispute resolution. But, while the conventional trial remains the workhorse of the American judicial system, the system is oversubscribed, both at the federal and the state levels. Thus, getting a civil case to trial can take time, sometimes measured in years. Getting through the process can also cost a lot of money without any guarantee of success. The outcome of the case rests in the hands of people who may know nothing about the business or industry involved in the dispute; because of this, many people are not satisfied with the ability to gauge the likelihood of success. These two shortcomings-the time it takes to closure and knowledgeable decision makers-are what alternative dispute resolution "ADR" methods are aimed at. While there are minor variations, we will discuss the two most important ADR processes in this pamphlet: Contrary to popular misconception, these terms are not synonymous: Arbitration is an informal yet adversarial proceeding similar to, but simpler than, a conventional trial, where an arbitrator takes evidence and makes a decision binding on both parties. Mediation is the attempt of a mediator to fashion resolution of the dispute through agreement between the parties; the mediator is not a judge, but more of a facilitator. Arbitration Arbitration is sometimes described as "private trial," where the process is paid for by the parties, rather than by the taxpayers, and the resulting award is usually confidential, unlike the public verdicts of trials paid for by taxes and possible costs to a party. Arbitration Is Less Formal Arbitration is a lot more informal. The hearing is usually conducted in an ordinary meeting room, rather than a fancy courtroom. Sometimes there will be only one arbitrator, sometimes a panel of three. Witnesses are sworn as in a conventional courthouse trial, and the parties or their attorneys take turns presenting their evidence, as in a regular trial. The rules of evidence and civil procedure that strictly govern traditional courthouse litigation are relaxed and serve as only guidelines for the arbitrator. Arbitrators Are Not Always Lawyers In fact, one of the advantages of arbitration is that the parties can seek an arbitrator who is versed in the nature of the dispute. Thus, it is not uncommon for a contractor or an architect to serve as an arbitrator in a construction dispute; likewise, an accountant may be chosen to hear a dispute concerning a tax dispute or a financing dispute. Arbitration Is Final The award of the arbitrator is final; there can be no appeal, except in a few, rare circumstances. The parties agree to this finality when they agree to arbitrate their dispute. However, mandatory court-annexed arbitration, held as part of courthouse litigation procedural rules, for the smaller civil cases in the courts, allows for an appeal. Arbitrators Are Paid Like the public court system, where judges are paid by taxes, arbitrators are paid by the parties and usually charge by the hour. Their rates are normally set out in their biographies but, if not, you should not hesitate to ask about costs. How Long Does It Take? The length of an arbitration hearing depends entirely on the complexity of the dispute. Simple landlord-tenant arbitrations might take less than half a day. Hearings in complicated commercial or construction arbitrations may run for weeks. Usually, the time from commencement of arbitration to entry of a final award is much shorter than the time from filing a Complaint in courthouse litigation to a final determination. Mandatory Arbitration All counties have a mandatory arbitration process. The threshold amount for mandatory arbitration varies from county to county, as determined by that county. These mandatory arbitrations are conducted by practicing lawyers who volunteer their time; there is no charge to the parties. Mediation The public often confuses mediation with arbitration, and it is common for people to believe they are the same thing. The mediator is not a judge; the mediator is a facilitator whose job is to build consensus by helping the parties fashion solutions they both can live with instead of having a third party-either an arbitrator in the private system or a judge in the public system-deciding the outcome for them. No Regulation Mediation is not regulated by any state laws or by any mandatory industry standards although there is one Arizona statute that provides for confidentiality related to mediation. Thus, any person can hang up a sign and become a mediator,

and it is this fact that can result in mediations that leave the parties dissatisfied. It is important, if you decide that mediation might be worth a try, that you check as to the experience of the mediators you are considering or choose a mediator from a professional ADR organization whose mediators are both trained and experienced, and whose biographies are given to you as part of the selection process. Such organizations often have an ethical code for their members. In fact, many mediators are professionals in various industries whose personalities and "people skills" have proven valuable in bringing together people with divergent views. Skills such as understanding the psychologies of anger, fear and revenge; the ability to listen objectively; knowledge of a particular business or industry; creativity in developing solutions; and the ability to act as a calming influence in inflamed settings are key ingredients to a successful mediator. Mediators Are Also Paid Like arbitrators, mediators are paid, usually by the hour. Their hourly rates are usually set forth in their biographies. As you can imagine, how long a mediation takes-and whether it is even successful-depends on the good faith willingness of the parties and the extent to which they really want the mediation to work; that is, to really want to resolve the dispute. If one party is not of that mind, the mediation will certainly take longer and its chances of success are diminished. Mandatory Mediation Many of the Justice Courts in Arizona require the mediation of small claim lawsuits before the suit is ever allowed to be heard by the judge. In the Superior Court, divorce cases also must go through mediation before the judge will hear the case. The mediators in these cases are volunteers and, thus, the parties are not charged. Most judges in civil cases in the Superior Court will press the parties to go through mediation before a trial date will be set. There is a process in civil cases whereby a Superior Court judge can be tasked to convene a "settlement conference," which conference is similar to a mediation. There are many ADR organizations that provide mediation and arbitration services and that actually manage the entire process for the parties. They charge fees for these services, but often this cost is well worth it, especially if you are not accustomed to arranging phone conferences, setting hearing dates, and exchanging documents with the other party before the hearing. Keep in mind that some arbitrators and mediators also choose to operate independently of ADR organizations or may do cases obtained from both sources. For independent ADR professionals, word of mouth may be the way you hear about them, so check around locally; the internet can also be helpful.

Chapter 4 : TEAM DESIGN v. GOTTLIEB | S.W.3d () | sw3d | blog.quintoapp.com

Joint Commission on Alternative Dispute Resolution in the fall of for the purpose of studying and experimenting with the use of courtÂ- annexed or court-referred alternative dispute resolution (ADR).

Court of Original Jurisdiction: A court of original jurisdiction is the first place one brings a claim. This is the court which must hear the case first. Court-annexed arbitration, sometimes referred to as judicial arbitration or court mandated arbitration, is a process by which courts divert certain cases to arbitration rather than trial. Most court systems today have such programs in place. In some such systems the arbitration is optional. Regardless, in most respects, in such systems, the arbitration proceedings themselves are not unique or apart from any other arbitration proceeding. There are, however, some important differences. Jeb sues Harry claiming Harry was negligent in leaving the rake in his driveway which Jeb tripped over, injuring his pinky finger. As they are both residents of Cassedigit County, Jeb sues in the local county court. Note, that these systems must be careful not to deprive parties of their right to a trial by jury. One way this is achieved is by offering a party the right to a trial de novo following the conclusion of arbitration. Various disincentives must be in place to prevent every party who loses in arbitration from later seeking trial. In In re Smith Case, Pa. The law did not dictate that all courts must institute a court-mandated arbitration system, but simply made it permissible to do so in this manner by adopting the appropriate rule of the court. At issue was whether by establishing rules of court requiring arbitration the court was depriving litigants of the right to trial by jury as guaranteed by Article I, section 6 of the Constitution. The court also noted that the 14th Amendment Due Process clause might also be threatened by compulsory arbitration. This would be true, however, only if the arbitrators were to make the ultimate and final determination of the rights of the parties, but because the parties in this case were given the right to appeal following arbitration, no Constitutional rights were trampled. The court describes this process in detail: Each of the parties was given the right to appeal from the [arbitration] award to the court in which the cause was pending â€¦but such appeal was subject to certain restrictions, one of which was that the party appealing should pay all the costs that had accrued in the action [absent a showing of poverty and inability to pay]. Another condition of the right of appeal was that â€¦ if the plaintiff were the appellant, that if he did not recover a greater sum than the award of the arbitrators he would pay the costs that would accrue in consequence of the appeal and also one dollar for every day lost by the defendant in attending on the appeal; if the defendant were the appellant the condition of the recognizance was that, if the plaintiff obtained a judgment for a sum equal to or greater than the award of the arbitrators, he would pay the costs that would accrue in consequence of the appeal and also one dollar for every day lost by the plaintiff in attending on the appeal. While the system as described by the court is not necessarily easily understood, what is most important is this: If, however, a party is simply seeking to pay a little less, or be awarded just a bit more, he would certainly think twice before appealing the award. Arbitration proceedings are beginning to look more and more like trials, with formal discovery rules, rules of evidence, and complex mechanism to address the various issues which naturally arise during the arbitration process. In addition to the increasing resemblance between arbitration and litigation, arbitration is increasingly leading parties to litigate matters other than the substantive issue which gave rise to the conflict in the first place. In Chapter 8, we move on to a number of recent court cases involving arbitration proceedings which have raised precisely such further legal issues. As you read these cases, you might want to ask yourself whether the level of sophistication involved in modern arbitration, combined with the likelihood that parties now run to the court with issues stemming from arbitrations, might warrant another look at the extent to which court-annexed arbitration actually saved litigants time, and whether it saves anyone including the taxpayers!

Chapter 5 : State Bar of Arizona :: Info about Alternatives to Trial - State Bar of Arizona

Court-annexed arbitration is a form of adjudicatory dispute-resolution (ADR) process in which a judge acts as an arbitrator and the arbitration follows the same procedures as followed in a regular civil case.

Court of Appeals of Tennessee, at Nashville. Attorney s appearing for the Case S. Published in Accordance with Tenn. OPINION This appeal raises important issues regarding the permissible range of court-annexed alternative dispute resolution procedures available under Tenn. The case began in the Davidson County General Sessions Court as a dispute over payment for artwork and graphic design for a country music album. One of the parties filed a Tenn. After the trial court denied its motion, the moving party perfected this appeal. Accordingly, we vacate the final order. Bonagura and Kathie Baillie Bonagura perform country music in a group known as "Baillie and the Boys. This agreement obligated Intersound to be responsible for the artwork and graphic design for the Baillie and the Boys albums. However, unbeknownst to the Bonaguras, Mr. Gottlieb had delivered a letter to Intersound agreeing that the Bonaguras would be responsible for paying for the artwork and graphic design for this album. Gottlieb seeking payment and an injunction against the use of their work until they were paid. The general sessions court later permitted Harris Graphics and Team Design to add the Bonaguras as defendants. All the parties perfected de novo appeals to the Circuit Court for Davidson County. They also filed a cross-claim against Mr. However, before the depositions could be taken, Mr. Gottlieb changed his mind and insisted that the Bonaguras be present at the trial. On January 21, , the Bonaguras filed a motion seeking a continuance and an order enforcing the agreement permitting them to present their testimony by deposition. Team Design and Harris Graphics agreed to the use of the depositions at trial but objected to another continuance. During this discussion, the trial court offered the alternative of "binding mediation" and stated that it would be available to conduct the mediation on March 11, The record contains no indication that the trial court informed the parties of the specific procedures that would be used for this mediation or the legal consequences of their agreement to participate in the mediation. Thereafter, the trial court directed the parties to submit confidential statements outlining their respective positions. When the parties returned to court on March 14, , 3 a clerk explained the procedure the trial court intended to follow which consisted of separate meetings with each of the parties and their lawyers in chambers. Over the next four hours, the trial court met separately with each of the parties and their lawyer. According to one of the lawyers, the trial court "made no attempt to seek a mutual agreement as to a resolution of the issues among the parties, but, after the final interview, announced that she would make a decision and enter an [o]rder reflecting her decision. The trial court also awarded Intersound a judgment against Mr. On March 31, , Intersound filed a Tenn. He also asserted that he never would have agreed to mediation had he understood the procedure that the court planned to follow. Team Design, Harris Graphics, and Mr. Gottlieb opposed the motion. They argued 1 that all the parties had agreed to "binding mediation," 2 that Intersound had not objected to the procedure prior to the entry of the March 19, order, and 3 that it would be unfair to permit Intersound to object to the proceeding at this point. Intersound has perfected this appeal. Gottlieb assert that the parties and the trial court may, by agreement, agree upon an alternative dispute procedure that does not meet all the requirements of Tenn. We have determined that all court-annexed alternative dispute resolution procedures must be consistent with Tenn. Public policy strongly favors resolving disputes between private parties by agreement. Private parties may, of course, decide to submit their disputes to the courts for resolution; however, a broad range of other formal and informal alternatives are available before they resort to litigation. Judicial proceedings must be conducted in accordance with the ancient common-law rules, applicable constitutional principles, statutes, and court rules. In Tennessee prior to , traditional litigation was the only procedure available to parties who turned to the courts for resolution of their disputes. The trial courts lacked express authority to provide judicial oversight over pending cases other than the sort of oversight traditionally provided by American judges. This changed on July 1, , when amendments to Tenn. These changes were to come five months later. Like the amendments to Tenn. The original version of the rule represented an incremental approach 10 to court-annexed alternative dispute resolution. The procedures permitted by Tenn. They were not intended to

require the parties to relinquish their decision-making right to any third party who would make the decision for them. The fact that all proposed alternative dispute resolution methods are non-binding is an essential attribute of the court-annexed procedures permitted by Tenn. Utah noting that the success of mediation depends largely on the ability of the mediator to maintain a neutral position while carefully preserving the confidences that have been revealed ; Howard v. All parties in a mediation proceeding trust that the proceeding will be confidential because these proceedings permit them to "bare their soul" to the mediator and provide them the opportunity to vent which, in some instances, is all that stands in the way of a negotiated settlement. If participants cannot rely on the confidential treatment of everything that transpires during [mediation] sessions then counsel of necessity will feel constrained to conduct themselves in a cautious, tight-lipped, non-committal manner more suitable to poker players in a high-stakes game than to adversaries attempting to arrive at a just resolution of a civil dispute. This atmosphere if allowed to exist would surely destroy the effectiveness of a program which has led to settlements Lake Utopia Paper Ltd. Accordingly, a vast majority of the proponents of alternative dispute resolution view confidentiality of the proceedings as a central issue. Principles and Practice 3 2d ed. Engelhart, Note, Federal Mediation Privilege: S5, S29 ; Cheryl L. The Tennessee Supreme Court recognized the importance of confidentiality when it first authorized court-annexed alternative dispute resolution. First, the court permitted trial judges to participate only in judicial settlement conferences. All other proceedings must be presided over by a "neutral person" or a "neutral panel. The definition of "judicial settlement conference" makes it clear that these proceedings must be "conducted by a judicial officer other than the judge before whom the case will be tried. A judge who presides over a judicial settlement conference is not acting as a judge but as a neutral. May 4, No Tenn. The success of the settlement "depends largely on the willingness of the parties to freely disclose their intentions, desires, and the strengths and weaknesses of their case" with the neutral. Thus, a judge conducting a settlement conference becomes a confidant of the parties, In re County of Los Angeles, F. Generally, knowledge gained in a prior judicial proceeding is not a sufficient ground to require the recusal or disqualification of a trial judge in a later judicial proceeding. United States, U. However, much of the information imparted during a mediation is not the sort of information that would normally be disclosed to the other parties or the court. Accordingly, should the judge who conducts the judicial settlement conference later be called upon to decide the issues of liability or damages, it is impossible to avoid questions as to whether he or she can disregard the matters disclosed during the conference or put aside any opinions or judgments already formed based on this information. The court added a provision to the rule stating: A person serving as a Rule 31 dispute resolution neutral in an alternative dispute resolution proceeding shall not participate as attorney, advisor, judge, guardian ad litem, master or in any other judicial or quasi-judicial capacity in the matter in which the alternative dispute resolution proceeding was conducted. This provision now appears in Tenn. The "binding mediation" proceeding at issue in this case did not comply with Tenn. These departures are not just minor deviations from Tenn. Each of them is inconsistent with one or more of the fundamental principles that impelled the Tennessee Supreme Court to authorize court-annexed alternative dispute resolution in the first place. They also raised the specter of possible repercussions for the parties who objected to referring the case to alternative dispute resolution or who objected to its outcome. Accordingly, we have concluded that these deviations are substantive and material and that they affected the outcome of this proceeding. A judgment is considered void if the record demonstrates that the court entering it lacked jurisdiction over either the subject matter or the person, or did not have the authority to make the challenged judgment. A void judgment lacks validity anywhere and is subject to attack from any angle. A trial court cannot exercise authority it has not been granted expressly or by necessary implication. At the time of this proceeding, Tenn. Instead, they assert that Intersound agreed to the procedure and, therefore, that Intersound waived its rights to insist on compliance with Tenn. We find this argument without merit for two reasons. Second, even if the parties could waive their compliance with Tenn. One of the most fundamental principles upon which our society is based is that all persons have a right to seek judicial redress for injuries or to protect rights and interests recognized elsewhere in the law. Like thirty-seven other states, Tennessee has preserved this right in its constitution. That all courts shall be open; and every man, for an injury done him in his lands, goods, person or reputation, shall have

remedy by due course of law, and right and justice administered without sale, denial, or delay. This provision traces its ancestry back to Magna Carta and shares common roots with the Law of the Land Clause in Tenn. Thus, the right to a judicial remedy appropriately takes its place with the right to due process and the right to trial by jury in the foundation of our legal system. It preserves the right of access to the courts. Accordingly, the Tennessee Supreme Court has explained that all persons have a remedy by due course of law to enforce their legal rights, Harrison v. We must avoid placing court-annexed alternative dispute procedures on a collision course with the Tennessee Constitution by interpreting and applying Tenn. We can accomplish this task by keeping in mind that both the Tennessee Supreme Court and its Commission on Dispute Resolution envisioned 1 that the proceedings authorized in Tenn. Accordingly, we conclude, as have the courts in other jurisdictions, that while the courts may require or compel the litigants to sit down and talk with each other, they cannot force them to resolve their differences using alternative dispute resolution in lieu of their judicial remedies. State, 93 Ohio St. Gottlieb presupposes that the rights being waived can, in fact, be waived. In judicial proceedings, unlike life, not everything is subject to negotiation. Circumstances arise when the courts must tell the litigants no, even if they have agreed to, or have even proposed, a particular course of proceeding. The courts have declined to permit the parties to alter procedures in a number of circumstances. For example, the parties cannot agree to permit a trial court to try a case when it lacks subject matter jurisdiction.

Chapter 6 : Rule - General Provisions | Middle District of Florida | United States District Court

We would like to show you a description here but the site won't allow us.

Chapter 7 : Alternative Dispute Resolution (ADR) Programs - CT Judicial Branch

Court-annexed ADR is now a settled fixture in federal courts and in many state courts in the United States, as well as in courts in countries around the world. 4 However, just because a.

Chapter 8 : Mediation â€“ Eighth Judicial District Court

This course surveys the most common types of alternative dispute resolution processes: negotiation, mediation, arbitration, and court-annexed and governmental-agency ADR -all of which have gained wide-spread use as alternatives to traditional litigation. The survey encompasses three perspectives.

Chapter 9 : State of Mississippi Judiciary

Court-annexed arbitration, sometimes referred to as judicial arbitration or court mandated arbitration, is a process by which courts divert certain cases to arbitration rather than trial.