Anatomy of Court-Annexed Arbitration
Second Judicial District

I. INTRODUCTION
II. COURT-ANNEXED ARBITRATION PROGRAM
III. MANAGING THE PROCESS
IV. APPENDICES: LOCAL RULES & FORMS

PURPOSE: "Anatomy" is the structure, the bare bones. It is designed as:

- a basic primer for novice arbitrators who may not have extensive litigation or arbitration experience;
- a reference for those unfamiliar with court-annexed arbitration as compared to traditional, private, binding arbitration; and
- a refresher for those already familiar with the program.

This outline is not a substitute for reading the entire Local Rule 2-603, which governs court-annexed arbitration in the Second Judicial District. Contact Court Alternatives or a Mentor for additional information.

NOTE: *This outline is generic. Adjustments for the circumstances of a specific case are reasonable and necessary. "Anatomy" picks up once a case has been ordered to arbitration and an arbitrator has been appointed. "You" is used in this outline to refer to the Arbitrator. "We" refers to Court Alternatives. Sections and headings are for convenience only; some information may apply to more than one section or heading.*

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I. INTRODUCTION

SECOND JUDICIAL DISTRICT COURT
ALTERNATIVE DISPUTE RESOLUTION PROGRAMS

An Alternative Dispute Resolution ("ADR") process is an alternative to a decision by trial. ADR is in addition to negotiations between the litigants, and involves the services of a neutral party. By Local Rule, the Second Judicial District established two (2) core ADR programs:

1. Settlement Facilitation and Mediation, LR2-602; and
2. Court-Annexed Arbitration, LR2-603.

The purpose of both ADR programs **is the early, efficient, cost-effective and informal resolution of disputes.** (emphasis added). LR2-601.A.

ADR PROCESS DESCRIPTIONS

Mediation: A confidential process in which a neutral third party assists disputing parties in reaching a negotiated settlement. The mediator's role is to assist parties to find their own resolution to the dispute. Unlike a judge or arbitrator, a mediator has no authority to impose a resolution on the parties.

Settlement Facilitation: A confidential process, generally after a lawsuit has been filed, where the parties, along with their attorneys and other representatives, attend a settlement conference conducted by a settlement facilitator. The facilitator helps the parties realistically evaluate the strengths and weaknesses of their positions and their risks at trial, with the goal of achieving a fair settlement or at least progress toward a negotiated settlement.

Court-Annexed Arbitration: An adjudicatory dispute resolution process in which a neutral third party, the arbitrator, issues an advisory or non-binding decision or award on the merits after an expedited, adversarial hearing. The process is established and governed by court rule.

Private, Out-of-Court Arbitration: A private adversarial process in which disputing parties select a neutral third party to hear their dispute and render a final and binding decision or award. The process is less formal than litigation and the parties may craft their own procedures. Unless there has been fraud or other defect in the arbitration procedure, binding arbitration awards are generally enforceable by courts and not subject to appellate review.

Mediation v. Arbitration: In mediation, the neutral party guides the parties' discussion to discover whether a mutually acceptable resolution is possible. In arbitration, the neutral party conducts a hearing and makes an award.

Settlement Facilitation v. Arbitration: In settlement facilitation, the neutral party may do more than guide discussion. A settlement facilitator may be evaluative, may offer a "reality

check" for each party regarding the strengths and weaknesses of their case, and may make recommendations for resolution. Similar to mediation, there is no hearing and no award. In arbitration, the neutral party conducts a hearing and makes an award.

Court-Annexed Arbitration vs. Private Out-of-Court Arbitration: In court-annexed arbitration, the arbitrator's award is not final and binding, but rather advisory. Any party may appeal (with limited exceptions) the arbitrator's award to the court and demand a trial *de novo* without stating any grounds. If there is no appeal, then the award becomes final and binding. In contrast, the arbitrator's award in a private out-of-court arbitration is final and binding, not advisory (unless the parties have agreed otherwise) and the grounds for appeal are strictly limited by federal and state law.

QUALITIES OF AN EFFECTIVE ARBITRATOR

- Maintaining neutrality and impartiality
- Good listening and communication skills
- Patience
- Common sense
- Ability to make a decision with an open mind
- Firmness to control proceedings
- Sense of Humor

CONDUCT OF THE ARBITRATOR

The arbitrator is obligated to conduct himself/herself in a manner consistent with the Code of Judicial Conduct. See the following for guidance:

- Canon 21-200 (Avoidance of Impropriety)
- Canon 21-300 (Impartial and Diligent Performance of Duties)
- Canon 21-400 (Disqualification)

See Appendix.

PUBLIC SERVICE

Attorneys serving as arbitrators in the Second Judicial District's Court-Annexed Arbitration program provide a public service. Compensation of arbitrators is generally $100 per case. The Court and the litigants truly benefit from their contribution.

STANDING COMMITTEE ON ARBITRATION

An Arbitration Standing Committee has been established pursuant to LR 2- 601(B), where "the court may appoint standing committees of judges, lawyers and others to provide guidance and assistance" for the court-annexed alternative dispute resolution programs which are administered by Court Alternatives.

For more information, or to convey concerns or suggestions regarding the arbitration program, please contact John "Pat" Massey, Committee Chair, 268-6707, mlollc@qwest.net.

II. COURT-ANNEXED ARBITRATION PROGRAM DESCRIPTION

BACKGROUND

In June 1988, the Second Judicial District Court initiated a pilot court-annexed arbitration project aimed at improving the quality of justice for small civil cases and conserving judicial resources. In April 1989, based on the success of the pilot project, the Court instituted a permanent program. The arbitration program is designed to speed the resolution of small cases, saving litigants time and money, thereby improving satisfaction with the judicial process.

THE ARBITRATORS

Arbitrators are appointed from a pool of attorneys which includes all active members of the State Bar of New Mexico who have been licensed for five (5) or more years, and who are residents of, or have an office in, Bernalillo County. After the case has been referred to arbitration, the arbitrator is appointed by the court. The parties may also stipulate to an arbitrator, provided the selected attorney approves the stipulation, and provided the court or the proposed arbitrator may require the parties to pay compensation at the arbitrator's usual hourly fee. LR2-603.C.

HOW IT WORKS

Pursuant to LR2-603, the “small” civil cases are referred to an arbitrator for resolution. LR2-603 defines “small” cases as those where:

1. the parties are only asking for monetary relief; and
2. no party is asking for more than $25,000 in damages, exclusive of attorneys fees, costs, interest and punitive damages.

Typically, these cases involve automobile accidents, minor personal injuries and unpaid debts. Parties involved in other types of cases may opt into court-annexed arbitration by stipulation.

The arbitrator becomes the judge for that case. The arbitrator hears the motions, conducts the trial and issues a ruling (an “award”) in the case within 120 days after appointment. Any party dissatisfied with the arbitrator’s decision may appeal the decision. However, failure to appear is not grounds upon which an appeal may be taken.

On appeal, the arbitrator’s decision is sealed and the parties are given a new trial before the District Court Judge initially assigned to the case. If there is no appeal, the Court adopts the arbitrator’s award as its own, making it a final judgment which can be executed upon just like any other judgment.

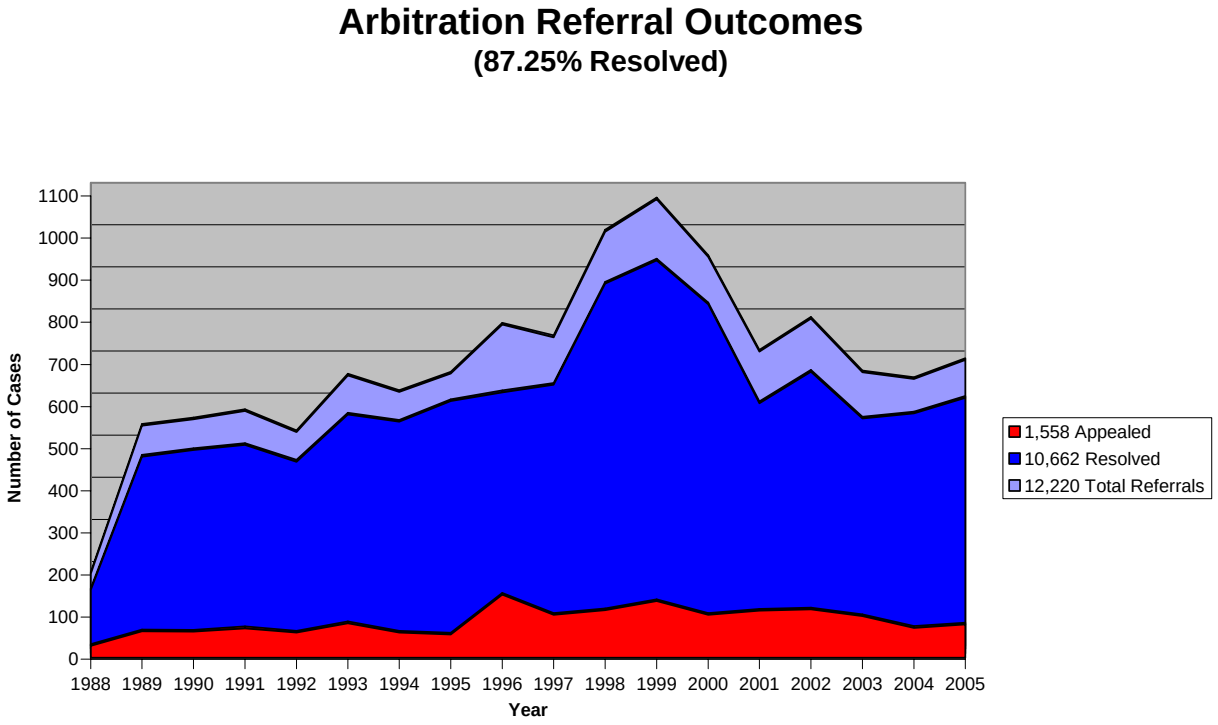
WHY IT WORKS

Several aspects of the court-annexed arbitration process make it quicker and less costly than traditional litigation. Local Rule directs the arbitrator to consider **"the efficient, cost-effective and informal resolution of the case as a factor"** in the arbitrator's decision(s) and management of the case. (emphasis added). LR2-603.V.A.(2).

- First, the award must be issued within 120 days from the date the arbitrator is appointed.
- Second, the arbitrator may limit discovery whenever appropriate.
- Third, evidentiary requirements are relaxed; parties can present most evidence by document rather than by witness.
- Fourth, hearings are conducted informally, either in the arbitrator's office or by telephone.

ARBITRATION REFERRAL OUTCOMES

With the inception of the program in June 1988 and through 2005, more than 12,000 cases were referred to court-annexed arbitration per Local Rule. Only 13 percent of the cases (1,558 cases) were appealed and returned to the Court docket for adjudication.



III. MANAGING THE ARBITRATION PROCESS

As a starting point, read the Local Rule. It answers most questions which occur to arbitrators conducting, or parties participating, in the arbitration process.

Note: Throughout the process, the arbitrator has a duty to consider "the efficient, cost-effective and informal resolution of the case as a factor" in the management of the case. LR2-603.V.A.

STAGES OF THE PROCESS

Initiation

1. Lawsuit filed in District Court
2. Certification to arbitration
3. Case removed from Court calendar and sent to Court Alternatives
4. Court appoints arbitrator

Preparation

1. Conduct conflicts check on all parties and counsel
2. Review Local Rule
3. Review Court Alternatives packet; contact a Mentor, if needed
3. Learn basics of case from selected pleadings in court file
4. Notify parties of appointment; seek additional disclosures from parties
5. Request/schedule preliminary [telephone] conference

Preliminary Conference

Hearing

Decision-making and Award

FOUNDATION OF THE PROCESS

Court Jurisdiction -- Section V.A.(1)

- After a case is referred to arbitration, and until an award is issued, the assigned judge does not hear any matters except in those limited circumstances listed in the Local Rule.

- *Note: Motions practice is before the arbitrator, except for the listed exceptions, which may be on written submissions. See also Section V.B.(3).*

- After a case has been referred to arbitration, and a party files for bankruptcy protection, the case reverts to the assigned judge who issues an order staying the arbitration and dismissing the arbitrator. See Appendix.

Procedural Rules – Section V.A.(3)

- Rules of Civil Procedure, Rules of Evidence and Second Judicial District local rules apply to the arbitration proceeding.
- Arbitrator may waive the Rules of Evidence, with the parties concurrence.

Arbitrator Powers and Duties -- Section V.A.(2)

- Arbitrator decisions are considered equivalent to court orders.
- Arbitrator decides all issues of fact and law.
- Arbitrator must consider the efficient, cost-effective and informal resolution as a factor in his/her decision(s) and management of the case.
- Arbitrator may limit discovery when appropriate.
- Arbitrator may administer oaths.
- Other than contempt, the arbitrator may impose appropriate sanctions, including costs.

Good Faith Participation -- Section V.A.(2)

- Parties are required to participate in good faith in the arbitration proceeding.
- Arbitrator may enter an award of default or dismissal against any party failing to participate in good faith or reflect that failure in the award.

120-day Deadline – Section V.A.(5)

- Arbitrator must file an award within 120 days of appointment, subject to sanctions. For good cause, the court may extend the 120 day period.
- *Note: This is the critical deadline. Court Alternatives tracks compliance with the 120 day deadline and is required to inform the Court if the deadline is not met. The Court, on its own motion, may take appropriate action to enforce the deadline.*

Filing Papers – Section V.A.(6)

- Do not file any motion or other matter to be heard by the arbitrator with the court.
- Arbitrator shall not file any decision(s), except for the award.
- *Note: Other filings may prejudice a party's trial de novo.*

Summonses and Subpoenas – Section V.A.(8)

- In an arbitration, the court clerk issues summonses and subpoenas in the same manner as with other civil cases. These will be served and enforceable as provided by law.

Record of Proceeding – Section V.A.(9)

- Any party may engage a certified court reporter to make a record of testimony. A copy may be obtained by any other party in the same manner that deposition copies are obtained. The cost of making the record or obtaining a copy is not recoverable.

STARTING THE PROCESS

Preliminary Conference

- *Note: Though not mandated by Local Rule, it is helpful to conduct a preliminary conference to organize the proceedings. This conference is usually conducted by telephone.* This conference allows the parties to:
    - streamline discovery issues, such as the exchange of documents, identification of witnesses, depositions;
    - address procedural matters, such as stipulations, affidavits, pre-hearing motions, evidentiary rulings; use of deposition testimony; determining admissibility of documentary evidence; pre-trial submissions;
    - discuss other matters, such as, narrowing of issues, clarification of claims and defenses, hearing ground rules;
    - schedule the date, time and location of the arbitration.

Date, Time and Place of Hearing(s) and Trial – Section V.B.(1)

- Arbitrator sets the date, time and place for any hearing(s) and trial. Hearings may be conducted by telephone.

Notice and Requests for Hearing – Sections V.B.(2) and (3)

- Notice: Arbitrator shall provide 20 days written notice of trial. For all other proceedings, Arbitrator shall provide 5 days notice, in writing or by telephone.
- Requests for Hearings**:** Parties may request hearings informally, by letter or telephone unless otherwise directed by the arbitrator. The requesting party must notify all other

parties. Arbitrator may decide motions and other preliminary matters on written submissions.

Statement of Witnesses and Exhibits – Section V.B.(4)

- No later than ten (10) days prior to trial, each party serves upon all other parties a list of exhibits and witnesses the party may use with a brief description of witness testimony.

Evidentiary Exceptions – Section V.C.(1) and (2)

- Depositions*:* The arbitrator may hear testimony by deposition.

- Documentary evidence*:* The rule lists documents which may be admitted in evidence without further proof provided a copy is served upon all parties no later than ten (10) days prior to the hearing or trial, such as reports of experts, estimates and bills for services and products, business and public records per Rule 11-803.

THE AWARD

Final Decision -- Section V.D.(1)

- The arbitrator's final decision is an "award."

- Clearly set forth the amount awarded to each party. Address all pending claims, including any claims for attorney fees, costs and interest as allowed by law.

- The award may be an award of default, dismissal, summary judgment or money damages.

- *Note: If you are entering an award of default for failure of a party to appear, you should take evidence of liability and damages, unless damages are liquidated.*

Amount – Section V.D.(2)

- The amount of the award shall be limited only by the evidence.

- *Note: The award may be more than the $25,000 mandatory limit, if the amount is supported by the evidence.*

Filing the Award – Section V.D.(3)

- Within ten (10) days of the trial, the arbitrator must file an award with the court clerk, with a copy to *Court Alternatives,* and serve copies on all parties entitled to notice.

- An arbitrator may be subject to an appropriate sanction if he/she fails to comply.

Amended Award – Section V.D.(4)

- Within ten (10) days after an award is filed, the arbitrator may file an amended award.

- *Note*: *Court Alternatives reviews all awards for accuracy. If a party is missing or some other aspect of the award is incomplete, the legal assistant or director may ask the arbitrator to amend the award.*

Judgment on the Award – Section V.D.(6)

- If no appeal is taken and time for appeal is expired, the court prepares and files a judgment or final order adopting the award.

- This judgment or final order is enforceable and binding as any other judgment or final order.

APPEAL PROCEDURES – Section VI

- Any party of record has a *right to appeal* the arbitrator's award by filing a notice of appeal within fifteen (15) days after the award or amended award is filed.

- After appeal, the case is returned to the same status on assigned judge's docket that it had prior to referral to arbitration.

- All appeals are *de novo* proceedings. When the notice of appeal is filed, the court seals the award until there is a disposition on the appeal.

- Arbitrator may not be called to testify about the arbitration proceeding.

- If the court's decision on the merits is equal to or less favorable to the appellant than the arbitrator's award, the court may order the appellant to pay all other parties' expenses incurred during the appeal, including reasonable attorney fees, costs and pre-judgment interest.

APPENDICES

Appendix A — **LR2-601 and LR-603**

Appendix B — **Judicial Code of Conduct, Rules 21-200, 21-300 and 21-400.**

Appendix C — **Forms**

1. Certification to Arbitration
2. Court Order to Arbitration
3. Form Letter to Parties
   - Advising of appointment;
   - Scheduling preliminary hearing; and
   - Items covered by preliminary hearing
4. Pre-Hearing Order Form
5. Arbitration Award
6. Arbitration Award of Default for Failure to Appear
7. Arbitration Award of Default for Failure to Participate in Good Faith
8. Arbitration Award of Dismissal Due to Settlement
9. Compensation Request

Appendix D — **Time Line**

Appendix E — **Additional Information**

1. Getting Help
2. Information & Suggestions

Appendix F — **Bankruptcy Memorandum**

APPENDIX A – LR2-601 and LR-603

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 pursuant to 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.

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 upon 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 such sanction without hearing.

E. **Referral upon motion.** At any time after a case is at issue and notwithstanding any certifications filed, upon 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 such an 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, upon 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 such an 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 upon 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. Such removal may be upon the court's own motion and without notice to the attorney, or upon 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 upon either random selection, court selection or stipulation. With appointments upon 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; 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 upon appointment, the arbitrator shall attempt to discern any conflicts of interest in hearing the case and shall notify the parties

thereof. Upon discovery of a conflict of interest in hearing a case, an arbitrator shall file a motion for excusal. Upon 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 such an 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).

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 pursuant to Subsection IV(C)(3) 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:

Motions to excuse the arbitrator
Motions to withdraw referral to arbitration
Motions for sanctions pursuant to Subsection V(A)(5)
Motions for free process
Motions regarding attorney representation
Motions to add new parties
Motions to set aside default or any other judgment
Motions to compel settlement
Any post-judgment enforcement and execution matters
Requests for settlement conference pursuant to Second Judicial District Local Rules, Rule LR2-602.

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 which may be heard by the arbitrator, and may set hearings on matters needing immediate consideration.

(2) **Arbitrator jurisdiction, powers, duties.** The arbitrator's jurisdiction begins when the order of appointment is filed and continues until the arbitrator is excused or until

ten (10) days after an award is filed or until 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 pursuant to 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. Upon 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 upon 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 such award, the arbitrator shall include a certification that the party failed to participate in good faith. The court shall consider such 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. Upon 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 such an 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. Upon 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 such an 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 upon 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. Such 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 New Mexico 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, upon 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 such an 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 upon 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 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 upon 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 upon 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.

©) Records and reports as described in Rule 11-803, Paragraphs (F), (H), (I), (K), (L), and (N) through (R) 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 pursuant to 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 or 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. Such 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 pursuant to Section V(A)(4) of this rule. An award of default shall only be set aside pursuant to 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 an amended award, is filed. 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.~~ See revision on next page.

(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.

Alert - Rule Change!

EVERY CO-PARTY MUST FILE A NOTICE OF APPEAL.

Example: notice by one defendant does <u>not</u> apply to other defendants.

No notice filed, not included in appeal!

LR 2-603, SECTION VI: APPEAL

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 an 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. (Emphasis added.)

Effective for cases referred to arbitration
on or after January 15, 2007.

Before, local practice was contrary to local rule-- notice by one plaintiff/defendant was deemed sufficient for all plaintiff/defendants. -- *usually applied to cases with multiple defendants.*

Now, where multiple plaintiffs or defendants, each plaintiff/defendant must file own notice of appeal. **And,** if one plaintiff/defendant files notice on last possible day, time is extended for other parties. **Note:** cross-appeals are still not required.

Court Alternatives

APPENDIX B – CODE OF JUDICIAL CONDUCT

RULE 21-200. A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL THE JUDGE'S ACTIVITIES

A. Respect for the Law. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. Impartiality. A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interest of the judge or others; nor should a judge convey or permit others subject to the judge's direction and control to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

C. Membership in Organizations. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin.

RULE 21-300. A JUDGE SHALL PERFORM THE DUTIES OF OFFICE IMPARTIALLY AND DILIGENTLY

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(3) A judge shall maintain order and decorum in judicial proceedings.

(4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in the judge's official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, marital status, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

(6) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, marital status, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This subparagraph does not preclude legitimate advocacy or consideration by the court when race, sex, religion, national origin, disability, age, marital status, sexual orientation or socioeconomic status, or other similar factors, are issues in or relevant to the proceeding.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, *ex parte* communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the *ex parte* communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the *ex parte* communication if it might reasonably be perceived that the party contacting the judge may have gained a tactical advantage.

(b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(c) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(d) A judge may, with the consent of the parties, confer with the parties and their lawyers in an effort to mediate or settle matters pending before the judge. Ordinarily the judge will meet jointly with the parties.

(e) A judge may initiate or consider any *ex parte* communications when expressly authorized by law to do so.

(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(9) All cases decided by an opinion of an appellate court shall be by a collegial opinion. Before an opinion is placed in final form, the participating justices or judges shall attempt to reconcile any differences between them. Each justice or judge on each panel is charged with the duty of carefully reading and analyzing the pertinent submitted material on each case in which the justice or judge participates.

(10) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This subparagraph does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This subparagraph does not apply to proceedings in which the judge is a litigant in a personal capacity.

(11) A judge shall not, with respect to cases, controversies or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

(12) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

(13) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

C. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice, maintain professional competence in judicial administration and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall inform and require the judge's staff, court officials and others subject to the judge's direction and control to observe the standards of confidentiality, fidelity and diligence that apply to the judge and to refrain from manifesting bias and prejudice in the performance of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

D. Disciplinary Responsibilities.

(1) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as

to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.

(3) The requirements of Subparagraphs (1) and (2) of this paragraph do not apply to any communication concerning alcohol or substance abuse by a judge or attorney that is:

(a) intended to be confidential;

(b) made for the purpose of reporting substance abuse or recommending, seeking or furthering the diagnosis, counseling or treatment of a judge or an attorney for alcohol or substance abuse; and

(c) made to, by or among members or representatives of a lawyers support group, Alcoholics Anonymous, Narcotics Anonymous or other support group recognized by the Judicial Standards Commission or the Disciplinary Board. Recognition of any additional support group by the Judicial Standards Commission or Disciplinary Board shall be published in the *Bar Bulletin*. This exception does not apply to information that is required by law to be reported or to disclosures or threats of future criminal acts or violations of these rules.

(4) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Subparagraphs (1) and (2) of Paragraph D of this rule are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

E. Definition. As used in this rule, "court personnel" does not include the lawyers in a proceeding before a judge.

RULE 21-400. DISQUALIFICATION

A. Recusal. A judge is disqualified and shall recuse himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(1) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) the judge served as lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a witness concerning it;

(3) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household has an economic interest in the subject matter of the controversy or in a party to the proceeding or has any other more than *de minimis* interest that could be substantially affected by the proceeding;

(4) the judge acted in an official capacity in any inferior court;

(5) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(a) is a party to the proceeding, or an officer, director or trustee of a party;

(b) is acting as a lawyer in the proceeding;

(c) is known by the judge to have a more than *de minimis* interest that could be substantially affected by the proceeding; or

(d) is to the judge's knowledge likely to be a material witness in the proceeding;

(6) the judge, while a judge or a candidate for judicial office, has made a public statement that commits, or appears to commit, the judge with respect to:

(a) an issue in the proceeding; or

(b) the controversy in the proceeding.

B. Duty to be Informed. A judge shall use reasonable efforts to keep informed about the judge's personal and fiduciary economic interests, and make reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household. In keeping informed about the judge's personal economic and fiduciary interests, the judge may rely on representations of professional investment or financial advisors.

C. **Remittal of Disqualification.** A judge disqualified by the terms of Paragraph A of this rule may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

D. **Definitions.** As used in this rule:

(1) "*de minimis*" means an insignificant interest that could not raise reasonable question as to a judge's impartiality;

(2) *"economic interest"* means ownership of a more than *de minimis* legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:

(a) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(b) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;

(c) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(d) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities; and

(3) *"third degree of relationship"* means the following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece.

APPENDIX C – FORMS

1. CERTIFICATION TO ARBITRATION

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

D-0202-CV-

Plaintiff(s),

vs.

Defendant(s).

COURT-ANNEXED ARBITRATION CERTIFICATION

(Party and Attorney) _____, pursuant to Second Judicial District Local Rule 2-603, certifies as follows:

_____ This party seeks **only a money judgment and the amount sought does not exceed** twenty-five thousand dollars ($25,000.00) exclusive of punitive damages, interest, costs and attorney fees.

_____ This party seeks relief **other than a money judgment and/or seeks relief in excess** of twenty-five thousand dollars ($25,000.00) exclusive of punitive damages, interest, costs and attorney fees.

Signature: _____

Printed Name: _____

Law Firm: _____

Address: _____

City/Zip: _____

Phone/Fax: _____

I hereby certify that an endorsed copy of the foregoing pleading was mailed or delivered to all parties entitled to notice on this _____ day of _____, 20_____.

Signature: _____

2. COURT ORDER TO ARBITRATION

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

D-202-CV-xxxx

xxxx,
Plaintiff(s),
vs.

Xxxx,
Defendant(s).

ORDER OF REFERRAL TO COURT-ANNEXED ARBITRATION
(7020)

This matter having come before the Court upon a review of the court file by the Arbitration Legal Assistant, which review included any arbitration certifications filed, the Legal Assistant having advised the Court that based on this review no party seeks relief other than a money judgment or seeks an amount in excess of $25,000 exclusive of punitive damages, interest, costs and attorney fees, the Court finds that Court-Annexed Arbitration is mandated and therefore orders that this case be referred to Court-Annexed Arbitration.

_____
THE HONORABLE xxx
District Judge, Div. ---

Submitted by Court Alternatives Paralegal
Endorsed copy mailed by the Court on the date of filing to parties and other persons listed below:

ATTORNEY FOR PLAINTIFFS: XXX

ATTORNEYS FOR DEFENDANTS: XXX

3. FORM LETTER TO PARTIES
(Based upon form of Bill Slease, Esq.)

Your firm letterhead

DATE

COUNSEL

Re: ***CASE CAPTION***

Dear Counsel:

This will acknowledge my appointment by Judge _____ as the arbitrator for the above referenced matter. I have performed a conflict check and it does not appear that I have a conflict in serving in the capacity as the arbitrator for this case. However, if either of you are aware of any potential or perceived conflict, please notify me immediately.

At this time, I would like to conduct a **telephonic pre-arbitration conference** with counsel at **DATE AND TIME.** The purpose of this conference is to determine a date and time for the Arbitration, and generally to discuss any other issues and procedures including the identification of relevant exhibits and witnesses. This conference call should last no more than one-half hour and I will initiate the call. Please notify me immediately if the date and time are unavailable for you so that we may reschedule.

I would like to conduct the Arbitration itself sometime in _____. At our telephonic conference, please have your calendars available and an estimate of the time required to present the matter.

Thank you each for your attention to this matter. I look forward to speaking with each of you on _____. Please note, **this is the only Notice of the Pre-arbitration Conference that you will receive**.

Very truly yours,

4. PRE-HEARING ORDER FORM
(Based upon form of Bill Slease, Esq.)

Your firm letterhead

DATE

COUNSEL

Re: ***CASE CAPTION***

Dear Counsel:

Pursuant to our telephone pre-arbitration conversation on today's date, this will confirm the following:

1. The **Arbitration** of this matter shall be held on **_____ , beginning at _____ at _____, Albuquerque, N.M.**.

   THIS IS THE ONLY NOTICE OF THE ARBITRATION HEARING THAT YOU WILL RECEIVE UNLESS THE ARBITRATION IS RESCHEDULED

2. The parties, through counsel, shall exchange **witness and exhibit lists and provide each other with copies of proposed exhibits** on or before **_____.** A brief summary of each witness's testimony should be included with the identification of the witnesses.

3. On or before _____, the parties, through counsel, shall provide to me any **dispositive motions** that they wish for me to consider. **Responses** shall be due on or before**_____.** No replies will be allowed absent good cause.

   a. On or before _____, the parties, through counsel, shall **provide me** with a copy of their respective **witness and exhibit lists** and a copy of any **exhibits that the parties have stipulated are admissible** at the Arbitration. Please also **identify any exhibits that are in dispute** as to their admissibility, if any, and a brief statement as to why you think each exhibit in dispute is/is not admissible.

   b. Discovery disputes shall be brought to the attention of the Arbitrator by way of a letter from either counsel, briefly stating the dispute. We will then hold a telephonic hearing to resolve the dispute. (Of course, for purposes of creating a record, the parties may also file a formal Motion to Compel).

   c. Each side will have an opportunity to make an opening statement, call witnesses, cross examine the other side's witnesses, introduce documentary evidence and make a closing statement. Rebuttal evidence will be allowed if necessary.

Thank each of you for your attention to this matter. Of course, if you have any questions, please do not hesitate to contact me.

Very truly, yours,

5. ARBITRATION AWARD

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

CV-[CASE NUMBER]

[PLAINTIFF'S NAME]
Plaintiff(s),

vs.

[DEFENDANT'S NAME],
Defendant(s).

ARBITRATION AWARD
(8312)

THIS MATTER having been referred by the court to the undersigned Arbitrator pursuant to local rule, the Arbitrator having heard the evidence, the Arbitrator makes the following award:

In favor of _____

and against _____

in the amount of _____,

plus pre-judgment interest of _____,

plus costs of _____,

plus attorney fees of _____,

for a total award of _____.

_____

_____

_____

[Arbitrator's signature & address block]

I hereby certify an endorsed copy was mailed or delivered to all parties of record on _____ day of _____, 20_ .

_____

6. ARBITRATION AWARD OF DEFAULT FOR FAILURE TO APPEAR

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

CV-[CASE NUMBER]

[PLAINTIFF'S NAME],
Plaintiff(s),

vs.

[DEFENDANT'S NAME],
Defendant(s).

ARBITRATION AWARD OF DEFAULT
FOR FAILURE TO APPEAR
(8312)

THIS MATTER having been referred by the Court to the undersigned Arbitrator and pursuant to local rule, _____ (Plaintiff(s)/Defendant(s)) having failed to appear for trial, _____ (Plaintiff(s)/Defendant(s)) having presented evidence as to damages, the Arbitrator makes the following award:

In favor of _____ and against _____, in the amount of _____, plus pre-judgment interest of _____, plus costs of _____, plus attorney fees of _____, for a total award of _____.

_____

_____

_____

_____

[Arbitrator's signature & address block]

I hereby certify that an endorsed copy was mailed or delivered to all parties of record on the _____ day of _____, 20__.

_____

7. ARBITRATION AWARD OF DEFAULT FOR FAILURE TO PARTICIPATE IN GOOD FAITH

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

CV-[CASE NUMBER]

[PLAINTIFF'S NAME],
Plaintiff(s),

vs.

[DEFENDANT'S NAME],
Defendant(s).

ARBITRATION AWARD OF DEFAULT FOR
FAILURE TO PARTICIPATE IN GOOD FAITH
(8312)

THIS MATTER having been referred by the Court to the undersigned Arbitrator, pursuant to local rule, the Arbitrator hereby certifying to the Court that _____ (Plaintiff(s)/Defendant(s)) failed to participate in good faith, and _____(Plaintiff(s)/Defendant(s)) having presented evidence as to damages, the Arbitrator makes the following award:

In favor of _____ and against _____ in the amount of _____, plus pre-judgment interest of _____, plus costs of _____, plus attorney fees of _____, for a total award of _____.

_____
_____
_____
_____
[Arbitrator's signature & address block]

I hereby certify an endorsed copy was mailed or delivered to all parties of record on _____ day of _____, 20____.

_____

8. ARBITRATION AWARD OF DISMISSAL DUE TO SETTLEMENT

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

CV-(CASE NUMBER)

[PLAINTIFF'S NAME],
Plaintiff(s),
vs.

[DEFENDANT'S NAME],
Defendant(s).

ARBITRATION AWARD OF DISMISSAL DUE TO SETTLEMENT
(7014)

THIS MATTER having been referred by the Court to the undersigned Arbitrator, the Arbitrator having been advised by the undersigned parties that all matters between the parties have been settled, the Arbitrator makes the following award:

This case is dismissed with prejudice with respect to the undersigned parties.

_____
_____
_____
_____
[Arbitrator's signature & address block]

APPROVED:

_____
[Signature block for party]

_____
[Signature block for party] **(Please note Pro Se must sign,according to rules, no approval)**

I hereby certify an endorsed copy was mailed or delivered to all parties of record on _____ day of _____, 2006.

_____

9. COMPENSATION REQUEST

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

TO: COURT ALTERNATIVES
Arbitration Legal Assistant
Second Judicial District Court
PO Box 488
Albuquerque, NM 87103

RE: (case # and case name)

ARBITRATOR'S COMPENSATION REQUEST/WAIVER

Initial appropriate paragraph.

____ Pursuant to local rule, I request compensation of $100.00 for my services as a Court-appointed arbitrator in the above-referenced case, to be mailed to the address below.

____ I waive compensation authorized by local rule for my services as a Court-appointed arbitrator in the above-referenced case.

Optional, collected for statistical purposes.

I spent _____ hours providing notice, reviewing the file and other preparation;
_____ hours in motions hearings and other pre-trial hearings;
_____ hours in hearings on the merits or trial;
_____ hours making my decision and preparing the award;
= _____ TOTAL HOURS on the case.

I held a total of _____ hearing. My usual hourly rate is $_____.

Signature _____ _____
Name typed / printed _____
Address & Phone _____

Please note: If this is the first time you have billed the Court for service of any kind, you also will need to complete an IRS Form W-9 before the Court can begin to process this request for compensation. We will provide you with a Form W-9 upon request. Please call 841-7412.

ARBITRATION CLERK'S VERIFICATION
ENTITLEMENT DATE _____ EVENT _____
DATE _____ LEGAL ASSISTANT'S INITIALS ____
STATISTICAL DATA ENTERED _____ DATE _____ LEGAL ASSISTANT'S INITIALS _____
APPT. DATE _____

APPENDIX D – TIME LINE

Arbitrator Time Line & Checklist

You may calculate and fill in dates, or look in your packet from Court Alternatives where a time line & checklist with the dates generated will be included.

\

	Day #	Date Due	Action	Date Done
	0		Order of Appointment Entered	_____
By	14	_____	Conflicts check & take any required action.	_____
By	14	_____	Set pre-aarbitration conference.	_____
By	14	_____	Request copy of Court file.	_____
By	21	_____	Review Court file.	
By	30	_____	Conduct pre-arbitration conference	_____
By	30	_____	Set arbitration hearing date, (to be held preferably 90 days from appointment), & discovery deadlines. (Confirm by letter)	
By	120	_____	File Arbitration Award **(120 day deadline)**	_____
By	130	_____	File Amended Arbitration Award If necessary. (No later than ten days from Award.)	_____
By	160	_____	Submit Request for Compensation Form, within 30 days after arbitrator is entitled to compensation. (If Amended Award, tens from Amended Award.)	_____

Note: Checklist provides only general information. Please see LR 2-603. Deadlines for award, amended award, and compensation form are fixed by local rule; other deadlines are suggestions.

APPENDIX E– ADDITIONAL INFORMATION

1. GETTING HELP

These attorneys have agreed to be mentors for arbitrators. If you have a substantive law question call:

Alan Malott 268-6500
Daymon Ely 248-0370
Randy Roberts 298-9400
Jake Vigil 243-1706
Lisa Vigil 243-1706
Dan O'Brien 883-8181
Bill Slease 247-9488
Bob Thorson 341-0110

2. INFORMATION & SUGGESTIONS

SECOND JUDICIAL DISTRICT COURT
COURT ALTERNATIVES

ARBITRATION PROGRAM

INFORMATION & SUGGESTIONS
FOR ARBITRATORS AND SUPPORT STAFF

PLEASE READ THIS DOCUMENT

A. GENERAL

1. Local Rule LR2-603 outlines the Court-annexed Arbitration Program. This rule, effective September 1,1992, should answer most questions regarding your role as an arbitrator. If you do not have a copy of Local Rule LR2-603, please call Court Alternatives office (841-7412) and request a copy. A copy can also be sent to you via e-mail (WordPerfect 6.1 for Windows format).

2. If you have support staff, talk with them about the course of the arbitration and your obligation to conduct yourself in a manner consistent with the Code of Judicial Conduct. In particular, use Canons 21-200 (avoidance of impropriety), 21-300 (impartial and diligent performance of duties) and 21-400 (disqualification) for guidance.

B. TIMELINES

1. You have **120 days** in which to complete your case and file an Arbitration Award. If it appears that you will not complete the case within 120 days, contact the Court Alternatives office or have the parties submit a stipulated order to the assigned Judge for extension of the 120-day deadline.

2. **Do a conflicts check immediately.** Early conflicts checks are necessary so a replacement arbitrator can be appointed in a timely manner should a conflict arise. Conflicts are addressed in Section (IV) (C)(4) of Local Rule LR2-603.

If a possible or actual conflict is found, disclose such immediately to the parties, and if necessary, call Court Alternatives. Court Alternatives will prepare a proposed order to excuse you if appropriate.

3. Please provide copies of all correspondence to Court Alternatives.

C. COURT FILE DOCUMENTS

1. The court docket sheet for your case is enclosed with your arbitration packet. It lists all documents filed as of the date of your appointment.

2. You should review significant documents from the file. **You may request copies of any documents in the court file by calling Civil Clerk (841-7451).** Copies will be provided to you at no cost and you may request they be mailed to you. You should allow at least two days for copies to be prepared and mailed. If you have any problems getting copies from the Civil Clerk's office, contact the

Court Alternatives office (841-7412) for assistance.

D. PRE-HEARING PROCEDURES

1. Pre-trial conference

a. Conduct a telephonic pre-trial conference with the parties to discuss the course of the arbitration. Among other things, determine how pre-trial matters will be handled, when the trial will be held and how much time will be allowed. (The average trial is expected to take no longer that two to three hours.) Use Rule 1-016, NMRA, for guidance in conducting the pre-trial conference. At the conference, remind the parties to review the arbitration rule and note the special arbitration procedures.

b. Set a date, time and place for the trial, in writing. A letter is sufficient.

2. Motions

a. Resolve motions by telephone conference whenever possible. You may require a party to make arrangements for the call and later consider this expense as a cost when awarding costs.

b. Grant continuances only when absolutely necessary. Please note that hearings before a Second Judicial District Court Judge do not necessarily take precedence over your hearings. (See Local Rule LR2-106).

c. You are not required to endorse copies of motions or other documents submitted to you. Motions and your rulings should not be filed with the court.

d. If you are considering entering sanctions against a party, give that party a written deadline for compliance along with the threat of default for failure to meet the deadline. The Court recommends imposing a fine on an attorney only when absolutely required by the circumstances.

3. Discovery

a. Allow sufficient time for discovery, for example, a minimum of 60 days in a recently filed tort case. Limit discovery whenever appropriate pursuant to V(A) (2) of LR2-603.

E. TRIAL PROCEDURES

1. The trial and other hearings may be held in your office or any other suitable location. If you are in need of space, call the Court Alternatives office (841-7412) and we can help arrange space for you.

2. Find out whether any special considerations exist which need to be addressed during trial or other hearings, such as security, access for persons with disabilities, or interpreters. If any special considerations exist, discuss with the parties what accommodations should be made and which party will be responsible.
(See Local Rule LR2-112).

3. Determine how you are going to conduct the trial, e.g., the level of formality or informality, whether you want opening and closing statements, how much time you are going to allow for each party, whether you will require witnesses to take an oath, how you will handle claims for attorneys fees, costs, interest, etc. Advise the parties as to these procedures.

4. Determine what you need to know (facts, law) to make a decision in the case and advise the parties. Require briefs only when absolutely necessary.

5. Remind the parties to serve witness and exhibit statements 10 days prior to trial, or notify the parties that you have waived the requirement.

6. Remind the parties that certain documentary evidence can be admitted without foundational witnesses provided copies are served at least 10 days prior to trial and no objections are made. As the Arbitrator, you still weigh the value and credibility of any evidence.

7. The oath used for witnesses in civil cases is in Instruction 13-211 of the Uniform Jury Instructions-Civil (Recomp. 1986):

Do you (and each of you) solemnly swear or affirm under penalty of law that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

8. You may allow others, e.g., law students, to watch hearings and the trial for educational purposes. You may receive requests to observe from law students enrolled in Alternative Dispute Resolution classes.

9. You must return exhibits and depositions to the submitting party. You are not required to save any other documents presented to you. You should not file with the Court any evidence presented to you.

F. ARBITRATION AWARD

1. Enclosed in your packet are sample award forms. **Do not use these samples (double- sided pleading not allowed to be filed) make copies as needed.** You may modify the sample awards in any way you wish. Because your award may be adopted by the Court as its judgment and thus be used as the basis of a transcript of judgment or writ of execution, be specific as to the parties for whom and against whom you make the award and as to any amount you award. Name all the parties in the caption; do not use "et al." **Your award should be entitled "Award"; do not use "Order", "Judgment", etc. or it will not be accepted for filing.**

While you may explain your award orally or by letter to the parties, you are discouraged from setting out your rationale in your award. The basis of your award has no effect on appeal and setting out the basis in the award may mislead the parties.

2. You may award an amount greater than $25,000 based upon the evidence presented to you.

3. Your award must address all parties (all Plaintiffs and all Defendants who have filed an Answer).
Do not rule against parties who have not filed an Answer, it is up to the Plaintiff to seek a Default Judgment against such parties.

4. If your award includes costs, be specific as to the amount.

5. If you are entering an award of **default** for a failure of a party to appear before you, you must take evidence on damages, unless the damages are liquidated.

6. If the parties **settle** during the arbitration process, the case may be disposed of in either of the

following ways, whichever you and the parties prefer:

(a) File an Award of Dismissal Upon Settlement (suggested form enclosed). This Award of Dismissal must be approved by the parties. The Court Alternatives Legal Assistant will prepare and file a judgment adopting this award which will close the case.

OR

(b) The parties may submit to the assigned Judge any form of stipulated dismissal or judgment or stipulation to judgment. The parties should provide you with an endorsed copy to confirm that the case has been settled.

If one of these two procedures is not completed, you will remain responsible for the arbitration until it is finished. If parties tell you they have settled and that they are going to prepare settlement documents, follow up with them to make sure this step is completed.

G. COMPENSATION

1. After you have finished the arbitration, please submit, within thirty days of filing the Award, your Request for Compensation form to the Court Alternatives office. We will complete our portion of the form and forward it to the Court Accountant. Payment is normally mailed to you within four weeks from the time we submit the Request for Compensation form.

2. The information requested on the form regarding hours spent on the case, the number of hearings and your usual fee is not required for compensation. However, this information is extremely helpful to the court. We appreciate your providing the information requested.

H. COURT ALTERNATIVES STAFF:

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APPENDIX F – BANKRUPTCY MEMORANDUM

MEMORANDUM - September 17, 2006

FROM: David Levin, Director, Court Alternatives

SUBJECT: Bankruptcy & Arbitration

Bankruptcy and its impact on our Arbitration Program is a recurring issue. Court Alternatives has worked with the Bankruptcy Court, our Civil Judges, and others to find guidance. *In all cases, an individual analysis is required by the litigants and possibly the Court*. This memorandum presents the general administrative approach of the Second Judicial District Court.

ISSUE: A bankruptcy filing by a defendant in a case referred to court annexed arbitration with multiple defendants causes significant ambiguity regarding the status of the case.

DECISION: On January 5, 2006, the Judges of the Civil Division decided:

Court Alternatives should prepare the following order for every case subject to a bankruptcy. The order clarifies case status for all concerned: parties, arbitrator, civil clerk, Court Alternatives, and the Court. A subsequent reopen order would be required, which would again clarify case status.

ORDER STAYING ARBITRATION PENDING BANKRUPTCY

THIS MATTER coming before the Court upon its own motion, the Court FINDS:

A. This cause of action has been referred to court-annexed arbitration pursuant to LR2-603.

B. This cause of action is subject to a bankruptcy stay.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. This cause of action is removed from court-annexed arbitration during the pendency of the stay and the assigned arbitrator is discharged.

2. Any party may move the Court to return this cause of action to court-annexed arbitration upon the lifting of the stay or upon such other grounds as that party deems appropriate.

ADDITIONAL BANKRUPTCY BACKGROUND FOR ARBITRATORS (Extracted and complied from previous memorandums):

1. There is concurrent jurisdiction between bankruptcy courts and state district courts to determine whether a bankruptcy stay is applicable to a particular case before a judge in either court. However, only a bankruptcy court may modify the stay.

2. The question presented is whether the stay stops the state court action in its entirety or solely as to the bankrupt defendant.

3. There is precedent to allow either result:

   a. A tribunal may elect to stop the entire case;

   b. A tribunal may elect to apply the stay solely as to the bankrupt defendant and proceed with the remaining parties.

4. A practical consideration is whether the claims of the non-bankrupt parties may be completely adjudicated without the active presence of the bankrupt party i.e., how severable are the "cases?"

5. A policy consideration is found in LR2-601:

   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...

6. The ramifications of deciding whether or not to proceed against the non-bankrupt defendant may be significant and substantial. *Therefore, it may not be appropriate for a attorney who is "drafted" into the arbitration program and who may only handle one arbitration case a year, to make this decision.*

7. The answer regarding a stay and the non-bankrupt defendants is that "it depends". Therefore, the judge should make a determination of how to apply the stay to a particular case upon the application of the party desiring to proceed.

8. To stay the entire case by entering the above order has the following practical effect:

   a. If a party wants to exercise the option to proceed with the non-bankrupt parties, then that party needs to initiate that action;

   b. If a party wants to so proceed, then the assigned judge, not the arbitrator should determine whether or not it is appropriate to proceed;

   c. Thus, the Court by entering the proposed order would err on the side of not violating the stay, and the burden to proceed would rest with the party desiring to go forward.