

**MINIMUM STANDARDS
for
MEDIATION TRAINING
by
THE ARKANSAS ALTERNATIVE DISPUTE RESOLUTION
COMMISSION
2009**

INTRODUCTION

The Arkansas Alternative Dispute Resolution Commission has issued the following curriculum standards to help insure consistent, quality training for mediators in Arkansas. These guidelines apply to a basic 40 hour mediation course. Additional topic and skills areas apply to a 20 or 40 hour family mediation course.

The primary purpose of these standards is to assure that training courses approved by the Commission train mediators for a specific purpose: to handle cases referred to mediation from the Circuit Courts of Arkansas. As such, role plays should be geared to issues that would be heard in the Courts and special consideration should be given to working within that context.

Training courses meeting these minimum standards are the starting point for a beginning mediator. As in other fields, ongoing training and mediation experience are necessary components to becoming a truly competent mediator. A mediator who has completed a course offering these beginning and minimum standards should not automatically be considered a competent mediator.

The Arkansas Alternative Dispute Resolution Commission understands that nationally accepted standards for mediation training do not exist at this time. The Commission has accumulated and evaluated commonly used training guidelines regarding mediation theory, knowledge, and skills in order to compile these standards. The Commission retains the right and expectation to update these standards as the mediation field matures and the Commission sees fit.

MEDIATION TRAINER QUALIFICATIONS

1. Academic Background/Education
 - a. The trainer must meet the equivalent education requirement set out in the corresponding category for certification. For example, a basic civil mediation program trainer must have a master's degree or higher as set out in the civil certification requirements.
2. Mediation Training
 - a. The trainer must have training equivalent to that set out in the corresponding category for certification. For example, a trainer conducting a family mediation course, must have completed a 40 hour family mediation course or a 40 hour basic course with an additional 20 hour family mediation course.
3. Mediation Experience
 - a. The trainer must have completed 25 mediations since the time of their initial training, and must be actively engaged in the practice of mediation.
4. Training Delivery Expertise
 - a. The trainer must have four years of relevant teaching experience, or have conducted or co-conducted a minimum of five training courses.
5. Subject Matter Expertise
 - a. In addition to meeting all academic, training and experiential requirements set out in these standards, the primary trainer must be knowledgeable in all areas of the training curriculum.
 - b. If the trainer lacks sufficient expertise or knowledge of any part of the required curriculum, they must bring in faculty who is an expert in that subject matter. For example, they may bring in an Arkansas attorney who practices family law to teach the component covering Arkansas law in domestic relations.
6. Waiver
 - a. The Commission reserves the right to waive any of the above trainer qualification requirements upon demonstration by the trainer that skill requirements are met by some alternative format.
 - b. The Commission reserves the right to observe and evaluate the trainer in a teaching or training setting prior to granting a waiver of any of the requirements.

COURSE CONTENT

There are eight minimum areas of information which must be covered in a basic 40-hour training program:

1. **History of Mediation.** Rationale: Mediation has evolved over time and continues to evolve today, trainees need an understanding of the historical perspective.
2. **Overview of ADR Legislation in Arkansas.** Rationale: Trainees must be introduced to the key aspects of legislation that have relevance to the practice of mediation in order to be able to comply with relevant legal requirements.
3. **Conflict Resolution Theory.** Rationale: This information must help trainees differentiate between mediation and other forms of dispute resolution.

Topics which must be included in this area are:

- a. Definition, types of, and responses to conflict
- b. Dispute resolution continuum
- c. Win/win collaborative problem solving

4. **Mediation Theory and Practice.** Rationale: Trainees need a theoretical grounding to understand the process fully. Trainees must understand a full range of mediation models in order to serve the parties most effectively.

Topics which must be included in this area are:

- a. Definition of mediation and characteristics of mediators
- b. Theory of Mediation
- c. Benefits of mediation process
- d. Differences in the roles: judges, arbitrators, attorneys, and mediators
- e. Range of styles, types of mediators and mediations

5. **Arkansas Legal System and Court Process** - Rationale: Trainees must have a basic understanding of the Arkansas legal system and processes. Knowledge of the court process will help a trainee serve parties more effectively by being able to help parties more effectively evaluate options.

Topics which must be included in this area are:

- a. Overview of the Arkansas court system.
 1. Structure of court system; must include explanation of the role and organization of district courts, circuit courts, and appellate courts.
- b. Basic overview of the initiation and resolution of lawsuits.
 1. Explanation of fundamental concepts and terms such as complaint, answer, discovery.
 2. Identification of court personnel, attorneys, parties, and others who may play some role in a lawsuit.
 3. The route and manner in which a case is referred to mediation
 4. The consequences of a mediated agreement as well as failure to reach an agreement

5. State rules, statutes, and local procedures governing mediation
 6. Knowledge of the various types of disputes which may arise in a particular type of mediation program
 7. The difference between post-filing and pre-filing mediation.
 - c. ADR statutes and case law.
 1. Where no case law exists, examples will be given of how other states have addressed issues
 - d. Compare and contrast the state and federal court systems as it pertains to mediation.
 1. Clarify the different use of terms that are used for both state and federal courts, but may have different meanings.
6. **Mediation Process and Techniques.** Rationale: Trainees must have a conceptual framework for conducting the session. Trainees must also be taught key techniques to assist in managing participation, structuring the session and establishing a cooperative problem-solving environment.

Topics to be included in this area are:

- a. Mediation Process
 - Preliminary arrangements
 - Opening and structuring the mediation session
 - Introduction/orientation of disputants/attorneys
 - Gathering and exchanging information
(presentation of situation by each party)
 - Issue and problem clarification
 - Generating options
 - Bargaining and negotiation
 - Agreement writing/enforceability
 - Closure
 - b. Techniques
 - Trust building
 - Restating and clarifying
 - Keeping on track, following agenda, managing process
 - Focusing on interests vs. Positions
 - Building on partial agreements
 - Caucusing
 - Reality testing
 - Working with third parties
 - Managing difficult people or strong emotions
 - c. Confidentiality
7. **Self-Awareness of Trainee.** Rationale: Trainees must understand personal characteristics or biases that might influence their ability to perform effectively as a mediator.

Topics to be addressed include:

- a. Diversity/cultural awareness (personal biases)
 - b. Language differences
 - c. Conflict style
 - d. How the trainee responds to conflict
8. **Ethics**. Rationale: Trainees must understand ethical principles with which to make informed choices which support the effectiveness and credibility of the mediation process.

Topics to be addressed include:

- a. *Requirements for the Conduct of Mediation and Mediators* (Arkansas standards)
- b. Power imbalances
- c. Liability

Family Mediation- Additional Topics- Rationale: To be effective mediators for persons experiencing divorce, a mediator must have knowledge and skill regarding specific family issues.

Topics to be included are:

- a. Psychological issues in separation and divorce and family dynamics
- b. The needs of children in divorce
- c. Arkansas Family Law as it relates to family mediation
- d. Family Economics
- e. Awareness of tax issues relating to divorce
- f. Domestic violence, substance abuse, child abuse and neglect, screening and reporting, and legal issues

TRAINING CONTENT: COMMUNICATION SKILLS

Trainees must be have an opportunity to practice selected written and oral communication skills which will enable the mediator to foster understanding and trust, elicit relevant information and accurately track and record key areas of agreement.

The following skills must be introduced and practiced throughout the mediation training:

1. Listening
2. Note taking
3. Questioning
4. Nonverbal communication (i.e. eye contact, body language)
5. Restating and clarifying
6. Use of neutral language
5. Drafting the agreement

TRAINING METHODOLOGY

Training methods must be designed to help trainees learn, integrate, and apply the knowledge and skills covered in course materials.

1. Programs must include the following essential training methods:
 - lecture
 - group discussion
 - mediation simulations
 - role plays involving a variety of types of disputes

Trainers are also encouraged to include:

- readings
 - written exercises
 - video tapes
 - participation in actual mediations
2. Trainees must be given an opportunity to participate in at least three role plays as a mediator and two role plays as a disputant under the supervision of a trainer or training assistant.
 3. Trainees must have an opportunity to observe at least one simulated or actual mediation.
 4. A minimum of 40% of training hours shall be spent in participatory activities. Participatory activities shall be defined as supervised, structured activities that require interaction among two or more people, which relates to training.

TRAINING ADMINISTRATION

Mediation training must be organized in a way that allows trainees to receive individualized attention and feedback on their skills. This is important if trainees are to leave with a realistic understanding of their abilities. The training must be administered in a way that requires completion of the entire course and documents only the actual hours attended.

1. It is important that trainees get individual feedback from experienced mediators/trainers on their performance in training practice sessions. Generally, it is recommended that the trainer/trainee ratio be 1:6 for role plays (there may be some circumstances such as multi-party disputes which require larger role play groups.)
2. Trainers must observe role plays and provide feedback
3. Trainers must solicit evaluation comments from trainees each time the course is conducted. The evaluations must be on a form provided by the Commission, and once completed must be submitted to the Commission. The trainer must complete

- a cover sheet for the evaluations stating the number of attendees in the course and attesting that no evaluations were omitted.
4. Trainers must provide written documentation attesting to trainees' attendance at the training.
 5. Trainers must indicate in training materials whether their program meets specific published standards of a professional organization.

EXAMINATION

At the conclusion of the training course, the trainer may be required to administer an exam provided by the Commission.

COURSE APPROVAL

Once approved by the Commission as satisfying these standards, the course may be offered repeatedly for a period of three years. Three years from the date of the approval letter, approval expires and the trainer must re-apply to the Commission to determine if the course meets existing training standards.

During the three year approval period, the trainer must notify the Commission each time the course is offered. This allows the Commission to notify interested parties of training opportunities and to notify the trainer of any changes to the training requirements.

The Commission reserves the right to revoke current approval or deny re-application for approval of a course based on participant evaluations and other relevant factors.