

Dispute Resolution Commission

Guidelines Amplifying Rules for Certification of 40-Hour Superior Court Mediation Training Programs

These Guidelines are intended to amplify Rules 8 and 9 of the Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions. All trainers seeking the Commission's certification of a 40-hour superior court mediation training program, should read Rules 8 and 9 carefully and review these guidelines prior to submitting their training package to the Dispute Resolution Commission. Trainers must submit a detailed agenda identifying both topics to be covered and trainers who will cover each topic included. The agenda should also set forth time frames so that the Commission may determine the amount of time allocated to each topic as well as the number of hours for the total program. Training programs must total at least 40 hours. Trainers must also submit to the Commission all materials they intend to distribute to participants as handouts, including copies of any texts; copies of role-play scenarios to be used; and a copy of the exam to be administered pursuant to Rule 9.A.(7). Any questions should be directed to the Commission's office at (919) 890-1415.

1. **TIME FRAMES.** All training programs must total at least 40-hours. Because the materials presented will be new to most participants and because the pace of training is intensive, a training day should not exceed nine hours, not including lunch. There may be a short (10 to 15 minute) break each morning and each afternoon. Additional breaks or breaks of a longer length may not be included as a part of a 40-hour calculation. The lunch break may not be included as a part of the 40-hour program unless training continues through lunch. While breaks are optional, they must be used each half day or are lost. If a trainer elects to skip breaks, that does not mean that the time which could have been allotted to breaks may be deducted from the requirement for a 40-hour program. That is, if a trainer elects to skip breaks, a program may not conclude 30 minutes short of eight hours each day or 2.5 hours short of forty hours the last day.

The time frame over which a 40-hour training program is offered must not exceed thirty days from start to finish. The Commission believes that momentum builds during training and the closer together that sessions are held, the more likely it is that dialogue will carry forward and that participants will be able to build on the previous day's material. Conversely, the farther apart sessions are held, the less continuity there will be. The only exceptions made to this 30-day deadline for completion, will be for 40-hour programs offered through an accredited college or law school. College or law school programs approved must include at least forty hours of classroom instruction and must demonstrate that continuity will be ensured by virtue of the fact

that the course meets on a regular basis, usually once or twice per week, and involves significant reading, research and writing that occurs throughout the semester.

2. **NUMBER OF PARTICIPANTS.** At no time should the number of participants exceed 40. Trainers must provide sufficient numbers of faculty and other training staff to ensure that participants have a meaningful training experience, including individual attention and an opportunity to actively participate in discussions and role plays. Trainers must ensure that the training site is spacious enough to accommodate participants and offers an environment substantially free of distractions or other impediments to learning. Sufficient space for role play and other break out sessions should be readily accessible.

3. **NATURE OF THE PROGRAM OFFERING.** In Rule 9 the Supreme Court lists the topics that a training program must cover during the course of a 40-hour program. The DRC will require full compliance with that Rule. The wide array of topics is intended to ensure participants full exposure to the mediation process. All or almost all of the 40 hours should be used to cover the curriculum listed in Rule 9. In considering a program for approval, the Commission prefers that the applicant be committed to the endeavor primarily as an educational program and not as a means of developing other business.

The Commission intends that trainers have some discretion in determining the content of their training program. However, to ensure that the Rule 9 curriculum is fully covered, trainers are required to devote at least the following minimum amounts of time to each of the curriculum topics set forth in Rule 9 and to discuss at least the concepts set forth below in association with each curriculum requirement:

- a) **Conflict resolution, negotiation, and mediation theory.** (one hour minimum) Under this topic, define and note the differences among the various dispute resolution alternatives and explain when it may be effective to mediate and when not.

- b) **Mediation process and techniques, including the process and techniques of trial court mediation.** (ten hours minimum) Under this topic, cover the stages of mediation, negotiation, communications skills; provide participants with a "tool box" of strategies and techniques for moving the mediation forward; cover logistics issues, including scheduling, intake, reporting, collecting fees, and evaluation; and discuss ways to identify and handle potentially volatile situations.

- c) **Standards of conduct for mediators including, but not limited to Standards of Professional Conduct adopted by the NC Supreme Court.** (two hours minimum) Under this topic, cover the North Carolina Standards of Professional Conduct for Mediators, discuss the interplay between the NC

Standards and other professional standards to which the mediator may be accountable, discuss mediator dilemmas, and discuss the Commission's Advisory Opinion Policy.

- d) **Statutes, rules, and practice governing mediated settlement conferences in North Carolina.** (three hours minimum) The trainers will ensure that their program has a North Carolina focus. The particular characteristics and dynamics of mediated settlement conferences set forth in Guideline 6 below shall be discussed and explored with participants. The three hour minimum shall include time spent covering the statute, rules, and practice governing mediated settlement conferences as well as time spent taking and discussing the exam mandated in Rule 9.A.(7).
 - e) **Demonstrations of mediated settlement conferences.** (one hour minimum) Any live or videotaped demonstrations shall essentially portray a NC mediated settlement conference.
 - f) **Simulations of mediated settlement conferences, involving student participation as mediator, attorneys, and disputants, which simulations shall be supervised, observed and evaluated by program faculty.** (ten hours minimum, including set-up, role play and debriefing time) A certified program will be expected to include at least five simulations during the 40 hours with each participant playing the various roles of mediator, disputant, and attorney at least once. Participants may be an observer in no more than one role play. It is expected that there will be variety among the fact situations and disputes presented in the simulations.
 - g) **Satisfactory completion of an exam by all students testing their familiarity with the statutes, rules and practice governing mediated settlement conferences in North Carolina.** Trainers shall supply the Commission with a copy of their exam and an answer key, administer the exam to the participants and discuss the answers with them.
4. **ENSURING THE QUALITY OF THE FACULTY.** An experienced, qualified faculty is essential to the success of any training program. In general it will not be sufficient for an applicant to provide a list of potential faculty members. Rather, an applicant should specify those individuals who will, in fact, serve as the primary faculty. The application material should also include a resume for each primary faculty member. Resumes for each faculty member shall describe in detail the member's experience and education in mediation and other relevant experience.

While it may theoretically possible that one individual could possess all the various training, skills, and knowledge required for the 40-hour presentation, applicants are strongly encouraged to develop a multi-faculty presentation. Specifically, there are three areas of expertise that should be represented: First, at least one member of the

faculty must have significant experience conducting civil case mediations. Second, at least one member of the faculty must possess demonstrated expertise in dispute resolution theory. Third, at least one faculty member must have significant experience litigating civil cases in the superior courts of North Carolina as well as a detailed understanding of the mediated settlement conference statute and rules as adopted in North Carolina. Trainers are encouraged to have faculty members with a background in communication theory, human dynamics, or other related disciplines.

The application should also demonstrate that sufficient faculty or other trained observers will be present to ensure that participants receive individual feedback during and after simulations. Ideally, one faculty member or observer should be available for each group participating in a simulation. At a minimum, at least one faculty member or observer must be present for every two groups participating in a simulated mediation. Resumes need not be supplied for those who provide such observation and feedback if they are not also primary trainers.

5. **ENSURING THE QUALITY OF THE COURSE MATERIALS.** To be certified, a training program must include quality written materials that adequately cover all aspects of the required curriculum, including materials relating to the North Carolina statutes, rules, and Standards of Conduct. Training programs will not be certified on the basis of an outline or agenda summarizing the presentation. Rather, the applicant must submit at least a final working draft of the program materials that will be used in conjunction with the training program. This requirement is not intended to foreclose continued updating or supplementation of materials, which is encouraged. The materials submitted should also include (1) the role play scenarios that will be used in the simulated mediations; and (2) the exam required under Rule 9.A.(7).

6. **ENSURING A NORTH CAROLINA FOCUS.** Applicants must demonstrate that training will be focused on the particulars of North Carolina's program, statute, rules, and Standards of Conduct. Trainers who are based in other states or who have conducted training in other states, must be mindful of the specific provisions of the North Carolina rules, statutes and Standards and tailor their North Carolina efforts accordingly. North Carolina has several unique requirements that must be highlighted and discussed with participants.

The MSC Program has now been operating in North Carolina for a number of years and mediated settlement conferences are characterized certain, now well-known dynamics. Forty-hour training programs are expected to recognize these dynamics and to familiarize participants with them. In particular, the following dynamics and characteristics of mediated settlement conferences should be identified and experienced in training:

- a) The active participation of attorneys. (Rule 4.A. mandates attorney attendance at settlement conferences.)

- b) Private caucusing on the part of parties and their attorneys.
- c) Court-ordered participation. (Parties or their attorneys may not be willing participants or may not cooperate in looking for ways to settle their disputes.
- d) NC attorneys may want to draft the agreement.
- e) Performance of a case management function by mediators, as in scheduling the conference and reporting the results to the court.
- f) Since the program is court ordered and parties are not participating voluntarily, the mediator should be sensitive to the need to economize on the length and number of sessions.
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Simulations should offer opportunities to experience and to practice the above dynamics and demonstrations of mediations provided by trainers should mirror them.

7. **EVALUATION OF TRAINING PROGRAM.** Each training program must include an opportunity for participants to evaluate the program. The DRC may provide a standard evaluation form to be completed by each participant with the results forwarded to the DRC. In addition, each certified trainer must provide a participant list to permit the DRC to conduct follow-up interviews with participants regarding the program's quality. Upon request, each trainer must also agree to supply copies of completed participant evaluation forms to the Commission and to permit a DRC representative to attend the program for purposes of quality assurances.
8. **RESPONSIBILITY TO KEEP COMMISSION UPDATED.** Following certification, all trainers shall advise the Commission immediately of any revisions to the agenda, changes in the identity of principal trainers, and any significant revisions to the contents of course notebooks or other handouts. Trainers shall not conduct any additional training sessions until the Commission has approved any such changes. Along with their annual certification renewal fees, trainers shall re-submit their current agenda. The Commission reserves the right to at any time seek additional information from trainers.

9. ADVERTISING AND REGISTRATION MATERIALS. A trainer may not commence a training program until such time as the program has, in fact, been certified by the Commission. (The Commission's office cannot always process an application immediately, so a trainer should be careful about scheduling and advertising training dates prior to a program's certification.)

All materials advertising certified mediator training programs to the public must identify the Dispute Resolution Commission as the body responsible for mediator certification in North Carolina; and provide a telephone number for the Commission. In addition, the materials must supply a telephone number for the Commission and direct interested parties to the Commission for further information regarding qualifications for certification. Such materials must also contain a disclaimer noting that successful completion of the program alone is not a guarantee of certification there are additional requirements for certification beyond completion of a 40-hour mediator training program, including possession of a college degree and work experience; that successful completion of the program is not a guarantee of certification; and that those interested in training may contact the Commission's office to learn more about certification requirements before registering. Any promotional or registration materials published prior to a training program's certification by the Commission shall contain the following admonition: "WARNING: Although certification of this program is expected, [Provider] cannot guarantee that the training program will be certified. [Provider] agrees to utilize all reasonable efforts to obtain certification and, if the program is not certified, will return all payments made or provide additional training as required by the Commission free of charge." Failure to include the above warning may result in the program being denied certification. The Commission reserves the right to require a trainer to submit copies of a program's promotional or registration materials for review at any time either prior to or following certification.

The Commission expects that trainers and staff affiliated with certified training programs will be familiar with certification criteria and that they will make an effort to identify prospective attendees who may not possess the threshold academic degree and years of experience required for certification. Trainers and staff shall advise those they have identified of the requirements or refer them to the Commission's office.

Revised and approved by Dispute Resolution Commission on August 10, 2007.