

# **Guidelines for Programs Seeking Certification Pursuant to Rule 9 of the Supreme Court's Rules Implementing Mediation In Matters Before the Clerk of Superior Court**

(Adopted by the NC Dispute Resolution Commission 8/25/06)

## **Adult Guardianship and Estate Mediator Certification Training**

These Guidelines are intended to amplify Rules 8 and 9 of *The Rules Implementing Mediation In Matters Before the Clerk of Superior Court (Rules)* as they pertain to certification of adult guardianship and estate mediation training programs. All trainers seeking such certification should read Rules 8 and 9 carefully and review these Guidelines prior to submitting a training package to the Dispute Resolution Commission. Trainers seeking certification must submit a packet containing a detailed agenda identifying topics to be covered and trainers who will cover each topic listed. The agenda should set out 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 ten hours. Trainers must also submit to the Commission all materials they intend to distribute to participants as handouts, including copies of any articles or texts, and copies of any role-play scenarios or ethics case studies to be used. Any questions should be directed to the Commission's office at (919) 890-1415. Packets should be mailed to:

NC Dispute Resolution Commission  
P. O. Box 2448  
Raleigh, NC 27602

- A. **TIME FRAMES.** The training agenda must total at least ten hours in duration, exclusive of breaks and a lunch period, except that a working lunch may count toward the ten-hour total. At least six hours of the training agenda shall address adult guardianship mediation issues and at least four hours shall address estate mediation issues. The training agenda must comply with the detailed curriculum and minimum durations set out in Rule 9 and subsection D of these Guidelines.

The ten-hours of instruction provided for in Rule 9 and discussed in these Guidelines is intended to be a minimum only. Trainers are encouraged, if they believe it is necessary in order to cover all the topics listed in Rule 9 to provide training beyond the 10 hour minimum and to include an open forum, demonstrations and role plays that specifically address situations involving disputes in adult guardianship and estate matters. Trainers may also add additional topics that they wish to cover.

- B. *QUALITY CONTROL.*** In order to assist the Commission in monitoring the effectiveness of this training, certified trainers must agree to provide the Commission with names and addresses of all training program participants within twenty days of completion of a training. Trainers should also advise participants that the Commission will be contacting them at intervals of six and twelve months following their training to seek feedback from them regarding how well their training equipped them to mediate adult guardianship and estate disputes. The information obtained will be used to further refine Rule 9 and these Guidelines. Trainers who have taught courses are invited to contact the Commission with any feedback regarding the Rule 9 requirements, these Guidelines, or any other suggestions for improving adult guardianship and estate mediator training or mediator effectiveness. The Commission reserves the right to have a Commission member or one of its staff in attendance at all or part of any training offered pursuant to these Rules.
- C. *NUMBER OF PARTICIPANTS.*** At no time shall 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 discussion and role plays, if role plays are a part of the training. Trainers must ensure that the training site is spacious enough to accommodate participants and offer an environment substantially free of distractions and other impediments to learning. If role-plays are to be included as part of the program, sufficient space should be provided for break-out sessions. Drinks and snacks should be provided by the trainer or readily available at the training site.
- D. *NATURE OF THE TRAINING.*** Individuals taking Adult Guardianship and Estate Mediator training will have already completed a Commission approved 40-hour course in superior court or family financial mediation. The 40-hour course shall have provided instruction in basic mediation theory and practice and afforded opportunities to observe demonstrations of superior court or family financial mediations and to participate in multiple role-plays. As such, it is expected that adult guardianship and estate training will focus more specifically on information relating to aging, ageism, mental illness, disabilities, family dynamics, principles of guardianship, elder/adult guardianship law, estate/trust law and the other topics listed in Rule 9. Though the focus of this training shall be largely on these substantive areas, trainers are encouraged to exercise their discretion in adding additional time beyond the ten hour minimum for demonstrations, role plays, further exploration of Rule 9 topics, or to add additional topics where trainers believe it is necessary to insure the effectiveness of their training and of the mediators who are attending.

The Commission intends that trainers have some discretion in determining the content of their training program. However, to insure 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 mentioned below in association with each curriculum requirement listed:

- (1) ***Factors Distinguishing Estate and Guardianship Mediations*** -- (at least 10 minutes in duration). Brief discussion of some of the salient differences between adult guardianship and estate mediation and other types of mediation with which participants may be familiar, including superior and district court settlement conferences. Brief discussion of issues particularly relevant to adult guardianship and/or estate mediation: the need to insure that the respondent in an adult guardianship matter or all the heirs in an estate matter are present at the mediation, if possible, and included in discussions; the role of the Guardian *Ad Litem*; the potential need for the mediator to be more proactive relative to intake issues, *e.g.*, exploring accessibility concerns with respondents, making sure that all individuals with needed information are present at the mediation; and the need for the Clerk to approve agreements involving estates or adult guardianships.
- (2) ***The aging process, societal attitudes toward the elderly, mentally ill, and disabled*** -- (at least 45 minutes in duration). Exploration of some of the physical and mental changes typically associated with the aging process; societal attitudes toward aging and the elderly and toward those with mental illnesses or physical disabilities; discrimination against the elderly, mentally ill, or disabled; special problems and concerns of the elderly, mentally ill, or disabled, *e.g.*, fear of loss of autonomy, isolation, exploitation; communicating and working with the elderly, mentally ill, or disabled.
- (3) ***Participation issues*** -- (at least 45 minutes in duration). Discussion of the mediator's responsibility for intake and participation. (Are individuals with necessary information identified and notified of the mediation? Are they present at the mediation?); accessibility issues (identifying physical limitations that participants may have relative to participation, *e.g.*, need for wheel chair ramps, elevators, interpreters, effects of sun-downing); importance of involving respondents in adult guardianship matters in the discussion to the greatest extent possible; role of the guardian *ad litem* (*GAL*).
- (4) ***Medical concerns*** -- (at least 20 minutes in duration). Medical terminology, common diseases and conditions associated with aging, mental illness and disability, disease etiology, manifestations of illness and effects of medication. (It is the expectation of the Commission that prior to the training, participants will be provided with handouts and web site addresses that explore the matters listed above in this subsection. The Commission recognizes that in a ten-hour course it is impossible to go into any level of detail regarding medical issues and students should be advised

that it is the expectation of the Commission and the trainer that they review these materials prior to the course and address any questions they may have to their trainers.)

- (5) ***Financial concerns*** -- (at least 20 minutes in duration). Financial needs associated with aging, mental illness and disability. Costs and fees associated with guardianships, estates, trust maintenance and brief discussion/ handout regarding tax concerns. Consequence of special needs trusts or testamentary trusts. Issues involving the transfer and/or leveraging of real property.
- (6) ***Family dynamics*** -- (at least 30 minutes in duration). Exploration of family dynamics and family stresses particularly as they relate to the care of an elderly, mentally ill, or disabled relative, or to the death of a family member; including undercurrents such as sibling rivalries, the grieving process, and red flags which could indicate neglect or abuse of an elderly, mentally ill or disabled relative. (It is the expectation of the Commission that prior to the training, participants will be provided with handouts, bibliographies and web site addresses that explore the matters listed in this subsection.)
- (7) ***Capacity issues*** -- (at least 60 minutes in duration). Identifying triggers and situations that commonly lead families to petition for guardianship; indicators of self-neglect and of neglect, abuse, and financial exploitation by others; care needs and caregiver issues; activities of daily living (ADLs), *e.g.*, bathing, eating, toileting, dressing, and grooming and independent activities of daily living (IADLs), *e.g.*, shopping, house cleaning, money management, and meal preparation. Discussion of physical capacity and mental capacity as it relates to decision-making and autonomy.
- (8) ***Availability of community resources*** -- (at least 15 minutes in duration). Discussion of community, county, state, and federal resources and programs available to assist the elderly, mentally ill, and disabled; brief overview of relevant state/ federal Medicare and Medicaid provisions; brief discussion of long-term care insurance provisions. Red flags regarding property transfers and use of assets. Handouts are suggested.
- (9) ***Adult guardianship law and procedure*** -- (at least 1 hour in duration). Jurisdictional limitations on the Clerk in adult guardianship matters. Informal alternatives to adult guardianship, *e.g.*, family and community resources, social workers, and visiting nurses. Terminology, relevant statutes, and case law; legal standard for appointment of a guardian; discussion of competency and incompetency hearings; who can/should serve as a guardian or interim guardian; types of guardianships available, including interim and limited guardianships and guardianships of the

person or estate; responsibilities of guardians; accountings; termination of guardianship/restoration of competency.

- (10) ***Estate law and procedure*** -- (at least 2 hours in duration). Jurisdictional limitations on the Clerk in estate matters. Terminology, relevant statutes, and case law. Estate planning documents including formal alternatives to guardianship, *e.g.*, last wills and testaments, trusts, powers of attorney and codicils. Who can serve as a personal representative/trustee; types of estates available, including summary administration and small estates; responsibilities of the personal representative/trustee; discovery of assets; elective share; intestate succession; partition actions; insolvent estates, removal of a personal representative/trustee; closing of estates.
- (11) ***Discussion of program Statutes, Rules, and Forms*** -- (at least 25 minutes in duration).
- (12) ***Ethical and conduct issues*** -- (at least 30 minutes in duration). Discussion of statutes requiring the reporting of abuse, neglect or exploitation; confidentiality concerns; protecting the interests of absent respondents or heirs, need to safeguard against power imbalances during mediation. Inclusion of role-plays or case examples allowable.

***E. ENSURING THE QUALITY OF THE FACULTY.*** An experienced, qualified faculty is essential to the success of any training program. It will not be sufficient for an applicant to provide a list of potential faculty members. Rather, an applicant must specify those individuals who will, in fact, serve as the primary faculty. The application must also include a resume for each primary faculty member.

While it may theoretically be possible for one individual to possess all the training, skills, and knowledge required for the Adult Guardianship and Estate Mediator Training Program, it is strongly encouraged that there be at least two primary trainers presenting the material. At least one member of the faculty should be educated in mediation theory and practice and have significant experience mediating in either North Carolina's superior and/or district court mediated settlement conference programs or equivalent experience mediating in the courts of another State. Another member should have experience as a geriatrician, social worker, or psychologist or have other professional experience working with the elderly, disabled, or mentally ill. This trainer should be knowledgeable about issues relating to the health care and psychological welfare of the elderly, mentally ill, and/or handicapped. There shall also be on the faculty a member(s) of the North Carolina State Bar who has experience practicing elder and estate law in this State or an attorney licensed in another State with experience practicing elder and estate law and who has familiarized him/herself with North Carolina statutes, law, and practice.

- F. ENSURING A NORTH CAROLINA FOCUS.** Applicants must demonstrate that the training will be focused on the particulars of North Carolina’s program, statutes, rules, and Standards of Professional Conduct for Mediators. If role plays are utilized as part of the training, they shall reflect the approach to mediation that has evolved in North Carolina’s courts, *i.e.*, they shall involve active participation of attorneys, the use of caucus sessions, and envision court-ordered participation. Handouts familiarizing attendees with guardianship/elder and estate law shall discuss North Carolina statutes and laws. Trainers who have been certified in North Carolina, but are conducting their training outside North Carolina, must provide those seeking certification in North Carolina with North Carolina handouts and must ensure that the legal portion of the training is taught by an attorney licensed in North Carolina or by an attorney licensed in another State with experience practicing elder and estate law and who has familiarized him/herself with North Carolina statutes, law, and practice.
- G. RESPONSIBILITY TO UPDATE COMMISSION.** Following certification, all trainers shall advise the Commission immediately of any revisions to the agenda, changes in the identity of principal trainers, and any other significant revisions to the content 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 a current agenda for their program yearly. The Commission reserves the right at any time to seek additional information from trainers.
- H. ADVERTISING AND REGISTRATION MATERIALS.** All materials advertising certified training programs to the public must identify the Dispute Resolution Commission as the body responsible for mediator certification in North Carolina. 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 that successful completion of the program alone is not a guarantee of certification. Training taken in another State may be approved if the training is in substantial compliance with Rule 9 and these guidelines.
- I. VIDEO TAPE.** Unlike the 40-hour Mediated Settlement Conference and Family Financial Settlement mediator training programs that are focused primarily on process, this training is focused largely on substantive estate and guardianship law and substantive information relating to issues such as the aging process and family dynamics. This substantive material lends itself more toward a lecture and panel presentation format rather than the demonstration/role-play approach that characterizes 40-hour training programs. Since “hands-on” participation is not a required element of this training, the Commission has determined that it may be offered on video-tape.

Trainers who offer a tape must encourage participants to watch the tape in its entirety and use available technologies in an effort to insure that they do, *e.g.*, imbedding a code at the end of the tape and requiring a viewer to report the code in order to receive credit. Trainers must also advise those purchasing or renting video-tapes that the Commission is very concerned about stale training and anticipates that viewers will watch the tape in its entirety within six months of purchase or rental and that those who apply after that period, may be denied certification. That certification may be denied if the applicant does not apply within six months, must be prominently noted in the material accompanying the tape.

Trainers who elect to offer a tape may only offer it for a two-year period from the date the tape is initially approved by the Commission. In order to offer a tape beyond that time frame, a trainer must apply to the Commission and demonstrate that the tape's content remains current.