

MINIMUM STANDARDS
for
BASIC MEDIATION TRAINING
by
THE ARKANSAS ALTERNATIVE DISPUTE RESOLUTION
COMMISSION
2001

INTRODUCTION

The Arkansas Alternative Dispute Resolution Commission understands that nationally accepted standards for mediation training do not exist at this time. The Commission has accumulated 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 guidelines as the mediation field matures and the Commission sees fit.

These minimum standards are designed as a guide for a beginning mediator. As with other professions, 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 has issued the following curriculum guidelines 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 40 hour family mediation course. Small Claims mediation training consists of fewer hours. However the following topics, as they relate to small claims disputes, should be addressed in that training as well.

The Arkansas Alternative Dispute Resolution Commission understands that mediators may receive training outside of Arkansas that does not include discussion of Arkansas law (see page 2, point 2; and page 4, Family Law, point c). Such programs may nonetheless be approved if they otherwise meet these standards. However, mediators trained outside the state of Arkansas should be aware of relevant Arkansas law pertaining to mediation. It is the mediator's responsibility to maintain knowledge of current laws relevant to mediation and the field of dispute resolution. The Arkansas Alternative Dispute Resolution Commission may in the future propose specific programs to meet the need for knowledge of Arkansas law for those trained out of state.

There are eight minimum areas of information which should 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 should 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 should help trainees differentiate between mediation and other forms of dispute resolution.

Topics which should 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 should understand a full range of mediation models in order to serve the parties most effectively.

Topics which should 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, mediators, and arbitrators
- e. Range of styles, types of mediators and mediations

5. **Court Process**. Rationale: 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 should be included in this area are:

- a. The route and manner in which a case is referred to mediation
- b. The consequences of a mediated agreement as well as failure to reach an agreement
- c. State rules, statutes, and local procedures governing a particular type of mediation program
- d. Knowledge of the various types of disputes which may arise in a particular type of mediation program
- e. The difference between post-filing and pre-filing mediation.

6. **Mediation Process and Techniques**. Rationale: Trainees should 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 should 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 should 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. Guidelines for the Conduct of Mediation and Mediators.
- 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 should 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 should 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
7. Drafting the agreement

TRAINING METHODOLOGY

Training methods should be designed to help trainees learn, integrate, and apply the knowledge and skills covered in course materials. A variety of training methods is essential in order to maintain attention levels and to address differences in learning styles.

1. Programs must include a variety of training methods. The following are essential to all training programs:
 - lecture
 - group discussion
 - mediation simulations
 - role plays

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 should be organized in a way that guarantees that trainees 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 should be administered in a way that encourages completion of the entire course and documents only the actual hours attended. Finally, trainers should be responsive to the needs of trainees.

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 will observe role plays and provide feedback
3. Trainers will solicit evaluation comments from trainees.
4. Trainers will provide written documentation attesting to trainees' attendance at the training.
5. Trainers should indicate in training materials whether their program meets specific published standards of a professional organization.