



Recommended Education/Training and Experience for Professional Mediators

Dated September 22, 2006

Committee Composition:

Chair - Cynthia Savage - CBA-ADR Section;
CBA-ADR Representatives - Dan Himelspach and Sally Ortnor;
CCMO Representatives - June Anglin, Richard Fullerton, and Kristin Thompson

Part 1 – Mission and History of the Committee

This report was prepared by an *ad hoc* committee of members of the Colorado Bar Association's Alternative Dispute Resolution Section (CBA-ADR) and of the Colorado Council of Mediators and Mediation Organizations (CCMO). The Committee's mission was to review the "Report of the Joint CBA-ADR and CCMO Mediator Qualifications Committee" dated September 17, 1992, which recommended guidelines for mediator education and training and was subsequently endorsed by the CBA and CCMO. The current report is the result of the Committee's review; it recognizes and incorporates concepts and language from the 1992 report and reflects the growth and development of the mediation profession since that time. These recommendations are intended to provide guidance to: 1) aspiring and practicing mediators in Colorado; 2) mediation trainers; and 3) consumers and those selecting mediators, such as program administrators, courts and other referral sources.

The Committee convened initially on 6/30/2003, and began to gather information from the Association for Conflict Resolution, CDR Associates, the Colorado Office of Dispute Resolution, the San Diego Mediation Center, the Ontario Association of Family Mediators, Family Mediation Canada, and others. The Committee reviewed the Colorado Dispute Resolution Act ("the Act"). The Act defines mediation as "an intervention in dispute negotiations by a trained neutral third party with the purpose of assisting the parties to reach their own decisions." C.R.S. §13-22-302(2.4) The Act defines a mediator as "a trained individual who assists disputants to reach a mutually acceptable resolution of their disputes by identifying and evaluating alternatives." C.R.S. § 13-22-302(4) The Act does not address mediator training. The Committee also contacted several Colorado mediation agencies to confirm existing levels of mediator training and experience. The Committee circulated a draft report, considered all comments received, and incorporated appropriate changes in this final report.

Part 2 – Definitions

- A. Consultation – A process in which a mediator presents, discusses, and analyzes a mediation with one or more Professional Mediators. Consultation involves the examination of both the process of mediation and the substantive issues. The role of the consultant is to help the mediator examine the case, conceptualize the issues and processes, and offer support, advice, and information. Consultation is not supervision, and the consultant does not assume responsibility for the mediation; however, direct supervision satisfies the objectives and criteria of consultation.
- B. Co-mediation – A process in which two or more mediators work together to provide mediation services.
- C. Direct Supervision – A process in which a Professional Mediator ensures the quality of the process and oversees the practice of another mediator through co-mediation or direct observation (in person or via live, interactive electronic means) in order to intervene, make critical observations, make recommendations, and provide feedback to the mediator.
- D. Peer Review – A group of two or more mediators who meet to discuss specific cases for mutual learning and feedback.
- E. Professional Mediator - A Professional Mediator is one who has achieved the education, training, and experience described in this report and who offers mediation services for compensation.

Part 3 – Recommendations

The ultimate purpose in establishing recommendations for any professional field is to protect the consuming public by identifying what the professional needs in order to demonstrate a minimum level of competency. An important dilemma in the mediation field is how to do so without unnecessarily or inappropriately restricting access to a process and profession that are constantly and rapidly changing. Because there is still no widely accepted mechanism for measuring or assuring mediator competence, the Committee agreed to update the 1992 recommendations concerning education, training, and experience.

The 1992 guidelines established separate recommendations for mediators of Civil and Community matters and Divorce and Child Custody matters. The Committee concluded that there are overarching fundamentals of education, training, and experience applicable to all Professional Mediators when conducting any type of mediation. In these updated recommendations, the Committee decided to focus on those overarching fundamentals and not to include detailed consideration of requirements to mediate in specific subject areas. However, because mediators generally benefit from advanced education and a comprehensive understanding of the practices, knowledge, and terminology used in specialty areas, such efforts are encouraged. It is incumbent on the mediator to determine and achieve those specific qualifications that are important or necessary to mediate competently every dispute before them. All mediators are encouraged to maintain records documenting their mediation education, training, and experience.

These recommendations are intended as a set of standards for mediators to work toward as opposed to barriers that unnecessarily limit who can practice in this field. The Committee recognizes that there are skilled and competent mediators who entered the field before these recommendations were published and who do not meet the recommendations included in Part 3A below. The Committee encourages these mediators to review their education/training and experience to identify any gaps and to fill them as appropriate.

A. Fundamentals of Education/Training and Experience Applicable to all Professional Mediators

1. A 40-hour training program which covers the eight areas of training described in the Appendix, including not less than 6 hours of involvement in mediation role play.
2. Participation as a mediator in a minimum of 60 hours of mediation in 10 or more different mediation cases.
 - a. Not fewer than 5 mediation cases in which the mediator is under the Direct Supervision of a Professional Mediator;
 - b. Not fewer than 5 additional mediation cases in which the mediator conducts the mediation solo while in consultation with a Professional Mediator or acts as lead mediator on a Co-Mediation team with a Professional Mediator.
 - c. Such participation consists of direct involvement in intake interviews, review of pre-mediation documents, other work preparing for the mediation, mediation sessions, consultation, and the preparation of a record of the agreement reached by the parties. Mediation experience does not include time spent in transportation, note transcription, or the filing of reports.

B. – Supplemental Education, Training, and Experience for Specific Subject Areas

Mediation covers such a wide variety of subject areas that it is not feasible to recommend supplemental education/training and experience for each subject area. Some subject areas require understanding of specific practices, knowledge, terminology, and skills to address particular situations. For example, in family disputes, mediators should have an understanding of domestic violence dynamics and skills to determine whether mediation is appropriate and to provide suitable assistance to the parties. It is incumbent on the mediator to determine and achieve the understanding, knowledge, terminology, and skills necessary to mediate competently in any subject area.

C. – Continuing Education – 10 hours per year of continuing education in one or more of the following areas:

1. components described in the Appendix
2. substantive knowledge in relevant subject areas.

Continuing education in mediation could be obtained through:

- workshops
- conferences
- mentors

- lectures
- books, articles, and other publications
- observation of live or video mediations and role plays
- interactive feedback (e.g. peer review, feedback from mediator observers)
- electronic discussion groups
- online training

It is the mediator's responsibility to seek the most relevant continuing education. Mediators are encouraged to take advantage of a variety of educational opportunities, the focus of which may shift over time. For example, beginning mediators may find it helpful to focus more on process education while more experienced mediators may find it useful to focus on substantive knowledge.

D. – Code of Conduct

Subscription to a mediator code or standards of professional conduct sanctioned by a recognized professional organization. A mediator who is a member of another profession is to be guided also by codes or standards applicable to that profession.

E. – Mediation Excellence

These recommendations represent minimal levels necessary for all Professional Mediators. The Committee reached consensus that every mediator, professional or volunteer, has a responsibility to strive for excellence within the profession. Similarly, the mediation community has a responsibility to create affordable, accessible, comprehensive, coordinated methodologies and practices to enable mediators throughout the state to meet these recommendations and to raise the profession to new levels of excellence. Achieving excellence may well require going beyond the measures recommended in this report.

Appendix

Recommended Education/Training and Experience for Professional Mediators

Professional Mediators are expected to have knowledge and skills in at least the following areas and to apply them appropriately within the mediation setting:

1. Prevalent Conflict Theory and Dispute Resolution Processes
 - a. relevant sociological, communication, and psychological concepts
 - b. research on effective negotiation and mediation strategies, processes, and practices
2. Ethics and Values
 - a. neutrality and impartiality
 - b. conflicts of interest
 - c. voluntariness and self-determination
 - d. confidentiality
 - e. ethical dilemmas
 - f. cultural differences
 - g. non-participant stakeholders
 - h. timing and appropriateness of mediation
3. Professional Skills
 - a. contracting for services
 - b. preparing for the mediation
 - c. explaining the process and obtaining commitment to proceed
 - d. managing caseload
 - e. referring cases
 - f. employing community and legal resources
 - g. drafting memoranda
 - h. working with experts
 - i. obtaining, recording, and managing information
 - j. dealing with situational complexities
 - k. defining and differentiating conciliation, mediation, arbitration and other ADR options
 - l. understanding the law related to the mediator's role
 - m. applying mediator standards of conduct
 - n. terminating a mediation session
4. Communication
 - a. listening
 - b. responding
 - c. questioning
 - d. clarifying
 - e. reframing
 - f. guiding
 - g. paraphrasing
 - h. balancing participation
 - i. recognizing non-verbal communication
 - j. using clear, neutral language
 - k. modeling constructive behavior

5. Relationships
 - a. forming relationships
 - b. building rapport
 - c. establishing trust
 - d. setting a cooperative tone
 - e. establishing impartiality
 - f. listening and questioning empathically
 - g. empowering parties
 - h. gauging parties' reactions
 - i. being non-judgmental

6. Information Gathering
 - a. screening parties
 - b. performing needs assessment
 - c. identifying issues
 - d. screening issues
 - e. prioritizing issues
 - f. setting the agenda
 - g. exploring parties' interests and concerns
 - h. recognizing legal context

7. Interaction and Conflict Management
 - a. developing ground rules
 - b. reducing tensions
 - c. addressing safety concerns
 - d. balancing power
 - e. refocusing
 - f. strategizing/orchestrating
 - g. caucusing
 - h. confronting
 - i. empowering parties
 - j. distracting/redirecting
 - k. dealing with strong emotions
 - l. maintaining control of the process
 - m. managing the influence of outside parties

8. Problem Solving
 - a. reframing issues
 - b. narrowing issues
 - c. educating parties
 - d. converting positions into needs and interests
 - e. identifying areas of agreement, consensus, and disagreement
 - f. identifying principles and criteria to assist decision-making
 - g. designing temporary plans
 - h. brainstorming
 - i. developing options
 - j. evaluating options and consequences
 - k. reality testing
 - l. developing an implementation plan
 - m. managing impasse
 - n. assisting parties to identify alternatives to a mediated agreement
 - o. assisting parties to create an enduring agreement