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11-1-04 J*

FILED

2004 SC 78

2004 NOV -1 P 4: 30

IN THE SUPREME COURT OF KANSAS

CLAYTON G. GREEN
CLERK OF APPELLATE COURTS

RULES RELATING TO MEDIATION

RULE 902

MEDIATOR and MEDIATOR-TRAINER QUALIFICATIONS
QUALIFICATIONS OF DISPUTE RESOLUTION PROVIDERS
UNDER THE
DISPUTE RESOLUTION ACT

Supreme Court Rule 902 is hereby amended, effective the 7th day of October,
2004:

(a) The qualifications for ~~mediators and trainers~~ dispute resolution providers and trainers apply to individuals who handle cases referred by the state courts or under the Dispute Resolution Act, K.S.A. 5-501 et seq. No standards or qualifications should be imposed upon any person chosen and agreed to by the parties. These qualifications should not prevent parties having free choice of process, program and the individual neutral.

(A) Definitions:

- (1) "mediation" means the intervention into a dispute by a third party who has no decision-making authority, is impartial to the issues being discussed, assists the parties in defining the issues in dispute, facilitates communication between the parties and assists the parties in reaching resolution. The agreement reached by the parties shall be based on the decisions of the parties and not on the decisions of the mediator;
- (2) "arbitration" means a proceeding in which a neutral person or panel hears a formal case presentation and makes an award, which can be binding or nonbinding upon the parties relative to a prior agreement;
- (3) "neutral evaluation" means a proceeding conducted by a neutral person who helps facilitate settlement of a case by giving the parties to the dispute an evaluation of the case;
- (4) "summary jury trial" means a formal case presentation to a jury and judge which results in a nonbinding decision;
- (5) "mini trial" means a formal case presentation to a party representative and an expert neutral person who makes a nonbinding decision
- (6) "settlement" means a proceeding in which someone other than the presiding judge assists the parties in reaching a resolution;
- (7) "conciliation" means a proceeding in which a neutral person assists the parties in reconciliation efforts;
- (8) "neutral person" or "neutral" means the impartial third party who intervenes in a dispute at the request of the parties or the court in order to help facilitate settlement or resolution of a dispute.

~~(b) "Mediators" are defined as persons specifically trained in the process of mediation who assist parties in dispute to reach a mutually acceptable resolution of their conflict. The role of the mediator is to aid parties in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, and finding points of agreement. The agreement reached by the parties shall be based on the decisions of the parties and not on the decisions of the mediator.~~

(B) Mediation:

~~(e) (1) The director of dispute resolution shall keep a list of approved mediators, trainers, and trainings, and shall review any requests for approval within 60 days of the receipt of the written application and materials required by the director.~~

~~(d) (2) To be approved as a mediator, an applicant must:~~

~~(1) (a) Complete the required training for the types of cases the applicant wishes to receive approval to mediate, and~~

~~(2) (b) Sign an agreement to follow the ethical standards of Supreme Court Rule 903, and~~

~~(3) (c) Co-mediate with or be supervised by an approved mentor mediator for three cases ~~or 15 hours~~ during the first year of approved mediation practice with cases in the area the trainee took his/her training after completing core training, and receive an acknowledgement from the mentor mediator that the applicant has demonstrated the basic skills and knowledge as outlined in the statute.~~

~~(4) (d) Comply with Supreme Court Rule 904 concerning continuing mediator education: and~~

~~(e) Be of good moral character and be mentally and emotionally fit to engage in the active and continuous practice of mediation.~~

(3) (e) All approved mediators shall have participated in core mediation training of 16 hours. Training components must include conflict resolution techniques, neutrality, agreement writing, ethics, role playing, communication skills, evaluation of cases, and the laws governing mediation. Initial training must be done in a continuous manner within a 120-day period. Core training enables the applicant to mediate disputes which may include, but are not limited to, neighborhood, community, victim/offenders, small claims, education, or farmer-lender problems, ~~or public policy problems~~. In addition, applicants wishing to mediate certain types of cases must have additional training as specified below or as established by the director of dispute resolution:

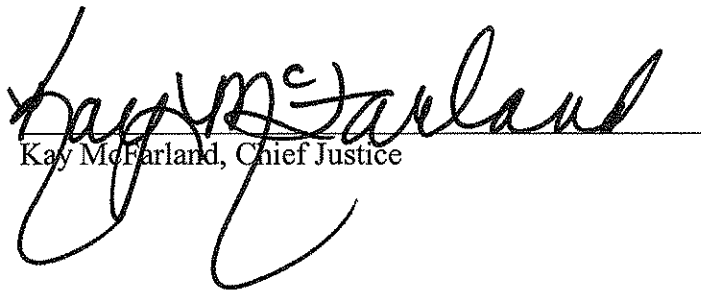
- (a)1. To mediate domestic disputes child custody or parenting cases, the applicant must have 14 hours of mediation skill training and 10 hours of training in child development, family systems, psychological aspects of divorce, domestic violence, or related substantive areas in addition to core training.
- (b)2. To mediate parent/adolescent disputes, an applicant must have 4 hours of mediation skill training and 10 hours of training in child and adolescent development, family psychology, the parent-adolescent relationship, or related substantive areas in addition to core training.
- (c)3. To mediate general civil (Chapter 60) cases of a ~~non-domestic~~ nature, the applicant must have 14 hours of mediation skill training and 10 hours of training related to the subject being mediated or the civil litigation system in addition to core training.
- (d) To mediate juvenile dependency cases the mediator must have 24 hours of dependency mediation training and have one of the following: a Bachelor's degree or higher in psychology, social work, marriage and family therapy, conflict resolution, or other behavioral science substantially related to family relationships; a Juris Doctor degree with experience in the field of juvenile law or family law; be an approved domestic and parent/adolescent mediator with at least three years of experience in mediation, counseling, psychotherapy, social work or any combination thereof, preferably in a setting related to juvenile dependency court or domestic relations; status as a judicial officer, practicing in juvenile dependency court; or have the training and/or experience acceptable to the court to be served;
- (e) To be approved as a mentor mediator the applicant must have 40 hours or more of training, must already be an approved mediator, must have completed 10 mediation cases, and must have two references from referral sources. Mediators who meet these requirements will be approved for co-mediation supervision. The director of dispute resolution has the discretion to change the number of required mediation cases.
- (f) In addition to requirements set forth in (B)(1)(2)(3), a trainer of an approved course must have the following experience:
1. Three years' practice of mediation,
 2. One year's substantive experience in the subject area of the mediation training,
 3. Serving Serve as an assistant or coach in three trainings with an approved trainer.

- (g) Any training being conducted by an approved trainer may be monitored and evaluated by the director of dispute resolution.
- (h) If an applicant has specialized experience or training but does not specifically meet the requirements set forth above, the applicant may apply to the director of dispute resolution for special approval. Role-play cases or other comparable simulations can be substituted for the co-mediation experience required in (B)(2)(c) with the approval of the director of dispute resolution.
- ~~(i) Mediator and trainer qualifications shall be reviewed by the director of dispute resolution and the advisory council on dispute resolution on an annual basis. Any modifications shall be presented to the Supreme Court by December 31 of each year.~~
- ~~(j)(i) The director of dispute resolution will develop and implement the following:
 - (1) An appeals process for a person to use in appealing a mediator application denial; and
 - (2) Procedures for processing complaints regarding a mediator or a mediator trainer.~~
- ~~(j) Mediator and trainer qualifications shall go into full force and effect on July 1, 1996.~~
- ~~(j) The Director of Dispute Resolution, for purposes of character and complaint investigations, may obtain such information as bears upon the character, fitness and general qualifications of the candidate, or may investigate a complaint about a mediator or a mediation trainer.~~
- ~~(k) Complaints, reports, or testimony in the course of disciplinary proceedings or the appeals process under the Office of Judicial Administration procedures shall be deemed to be made in the course of judicial proceedings. All participants shall be entitled to judicial immunity and all rights, privileges and immunities afforded public officials and other participants in actions filed in the courts of this state.~~

COMMENT

- The qualifications for mediators and trainers are the result of over five years of study. Recommendations and suggestions were received from members of the Supreme Court ADR Committee, Heartland Mediators Association, Kansas Bar Association, National Institute for Dispute Resolution, Society for Professionals in Dispute Resolution, American Bar Association, Academy of Family Mediators, State Justice Institute, judges, mediators, therapists and various representatives from other states. These recommendations and suggestions were collated and modified to encompass the statutory mandates of K.S.A. 5-501, current mediator training occurring in Kansas, national trends for minimum requirements, and future needs.
- Conditions, including the availability of individuals with mediation training and experience, will vary between rural and urban areas. The minimum qualifications are listed to give judges and approved centers a beginning point to establish local policy. Judges and centers are encouraged to add requirements as necessary for the type of case to be mediated and the availability of individuals with additional qualifications.

By order of the Court, this 22nd day of October, 2004.



Kay McFarland, Chief Justice