

ARKANSAS REGISTER

Transmittal Sheet



Sharon Priest
Secretary of State
State Capitol Room 026
Little Rock, Arkansas 72201-1094

For Office

Use Only:

Effective Date

7/19/01

Code Number

187.00.01--002

Name of Agency

Arkansas Alternative Dispute Resolution Commission

Department

Contact

Jennifer Jones Taylor

Phone 501-682-9400

Statutory Authority for Promulgating Rules

Ark. Code Ann. 16-7-104 (3) (A)

Date

Intended Effective Date

Emergency

Legal Notice Published.....

03/03/2001

10 Days After Filing

Final Date for Public Comment.....

04/09/2001

Other

Reviewed by Legislative Council.....

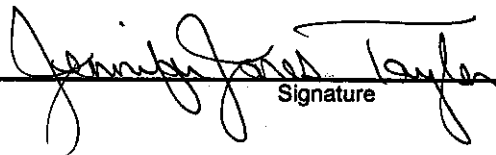
07/05/2001

Adopted by State Agency.....

04/13/2001

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 As Amended.

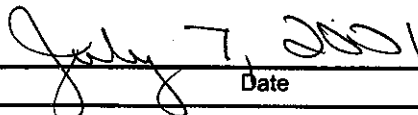

Signature

501-682-9400

Phone Number

Coordinator, ADR Commission

Title


Date

FILED

JUL 09 2001

SHARON PRIEST
SECRETARY OF STATE

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY Administrative Office of the Courts
DIVISION Arkansas Alternative Dispute Resolution
Commission
DIVISION DIRECTOR Jennifer Jones Taylor
CONTACT PERSON Jennifer Jones Taylor
ADDRESS 625 Marshall Street, Little Rock, AR 72201
PHONE NO. (501)682-9400 FAX NO. (501)682-9410

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire attached to the front of two (2) copies of your proposed rule and mail or deliver to:

Donna K. Davis
Subcommittee on Administrative Rules and Regulations
Arkansas Legislative Council
Bureau of Legislative Research
Room 315, State Capitol
Little Rock, AR 72201

1. What is the short title of this rule?
Guidelines for Mediator Skills and Qualifications
2. What is the subject of the proposed rule?
Skills and qualifications that must be met before a person can be placed on the Roster of mediators maintained by the Arkansas Alternative Dispute Resolution Commission.
3. Is this rule required to comply with federal statute or regulations? Yes No
4. Was this rule filed under the emergency provisions of the Administrative Procedures Act? Yes No

If yes, what is the effective date of the emergency rule?

When does the emergency rule expire?

Will this emergency rule be promulgated under the regular provisions of the Administrative Procedure Act?

Yes _____ No _____

5. Is this a new rule? Yes X No _____
6. Cite the state law granting the authority for this proposed rule. If codified, please give Arkansas Code citation.

Ark. Code Ann. § 16-7-104 (3) (A)

7. What is the purpose of this proposed rule? Why is it necessary?
The purpose of the rule is to set forth the skills and qualifications that a person must meet before they may be included on the Commission's statewide Roster of mediators. The Roster is provided to all judges in the state and is available to the general public. Pursuant to Ark. Code Ann. § 16-7-201, the Commission has the authority and responsibility to establish standards and regulations for the training of persons who shall be eligible to serve as compensated mediators in and for state and local courts.

8. Will a public hearing be held on this proposed rule?
Yes ___ No X If yes, please give the date, time, and place of the public hearing.

9. When does the public comment period expire?
April 9, 2001 at 5:00 p.m.

10. What is the proposed effective date of this proposed rule?
June 8, 2001

11. Do you expect this rule to be controversial? Yes ___ No X

12. Please give the names of persons, groups, or organizations that you expect to comment on these rules. Please provide their position (for or against) if known.
None.

DEPARTMENT Administrative Office of the Courts
 DIVISION Arkansas Alternative Dispute Resolution Commission
 PERSON COMPLETING THIS STATEMENT Jennifer Jones Taylor
 TELEPHONE NO. (501)682-9400 FAX NO. (501)682-9410

FINANCIAL IMPACT STATEMENT

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Guidelines for Mediator Skills and Qualifications

1. Does this proposed, amended, or repealed rule or regulation have a financial impact? Yes X No _____
2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.
3. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation.

<u>Current Fiscal Year</u>	<u>Next Fiscal Year</u>	FILED
General Revenue _____	General Revenue _____	JUL 09 2001 SHARON PRIEST SECRETARY OF STATE
Federal Funds _____	Federal Funds _____	
Cash Funds _____	Cash Funds _____	
Special Revenue _____	Special Revenue _____	
Other _____	Other _____	
Total _____	Total _____	

4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation?

<u>Current Fiscal Year</u>	<u>Next Fiscal Year</u>
\$25	\$10

5. What is the total estimated cost by fiscal year to the agency to implement this regulation?
 The cost of implementing this regulation is incidental - employee's time, phone, and copies. However, that cost is included in the agency's budget, and in addition is off-set by the \$25 processing free charged to applicants.

<u>Current Fiscal Year</u>	<u>Next Fiscal Year</u>
\$0	\$0

The Arkansas Alternative Dispute Resolution Commission Guidelines for Mediator Skills and Qualifications

The Arkansas Alternative Dispute Resolution Commission has adopted three guidelines dealing with mediator skills and qualifications.

The first is a general guideline to help the public know what to look for and expect in the way of minimum skills necessary for competent performance as a neutral mediator. There are no specific qualifications that an individual must meet in order to mediate for the public or the free market. This guideline simply advises the public as to the Commission's opinions as to the qualities of a competent neutral and provide information on how to select a mediator.

The second guideline sets out the Requirements that must be met before a mediator can be placed on the Roster of mediators maintained by the ADR Commission. It also sets forth the procedure for being placed on the Roster.

The third guideline is a set of standards that may be used by courts in establishing court-annexed mediation systems or selecting court-referred mediators. These standards cover (1) Small Claims Mediations, (2) Family Mediations, and (3) Circuit or Chancery Mediations in other than family matters. The ADR Commission will provide from its Roster the names of those mediators meeting these guidelines to any Arkansas court creating a court-annexed mediation system or seeking the names of mediators for possible referrals. Courts, mediators, and the public should be aware that, in creating a court-annexed mediation system or making mediation referrals, an Arkansas court is free to use these standards, or to create its own requirements, which may be greater, lesser, or different from the standard suggested here.

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SECRETARY OF STATE

MEDIATOR SKILLS

The following are skills and attributes which the Arkansas Alternative Dispute Resolution Commission recommends for competent performance as a neutral mediator.

- (1) Good moral character;
- (2) Ability to listen actively;
- (3) Ability to understand and analyze complex factual materials;
- (4) Ability to use clear, concise language;
- (5) Ability to recognize and respect gender, ethnic, and cultural differences of disputants;
- (6) Ability to analyze problems, identify and separate the issues involved, and frame these issues for resolution or decision making;
- (7) Ability to screen out non-mediable issues;
- (8) Ability to suggest creative options for resolution of mediable issues;
- (9) Ability to discuss with the parties the process that will be used to resolve the dispute if no agreement is reached;
- (10) Ability to reduce the agreement of the parties to writing;
- (11) Persistence;
- (12) Patience;
- (13) Ability to maintain control of a diverse group of disputants;
- (14) Adherence to the *Arkansas Alternative Dispute Resolution Commission's Requirements for the Conduct of Mediation and Mediators*.

**REQUIREMENTS AND PROCEDURES FOR THE INCLUSION OF
MEDIATORS ON THE ROSTER OF THE
ARKANSAS ALTERNATIVE DISPUTE RESOLUTION COMMISSION**

A. Scope of Requirement

All mediators on the Roster of the Arkansas Alternative Dispute Resolution Commission shall be qualified pursuant to these Requirements, promulgated specifically for this Roster. The public should be aware that inclusion in this Roster is not certification by the Arkansas Alternative Dispute Resolution Commission.

B. Procedures for Inclusion on the Roster of Mediators

1. An applicant for qualification and inclusion on the Commission's Roster shall make application to the Office of the Commission, to the attention of the Coordinator, on a form to be provided by the Commission.
2. An application for qualification and inclusion on the Commission's Roster shall be accompanied by an administrative handling fee of \$25.
3. The application shall contain or be accompanied by the following:
 - a. statement of educational background;
 - b. evidence of successful completion of the appropriate mediation training for the Roster;
 - c. statement of experience/areas of expertise;
 - d. statement of adherence to the *Arkansas Alternative Dispute Resolution Commission's Requirements for the Conduct of Mediation and Mediators*; and
 - e. ~~statement certifying accuracy of information contained in the~~ application.
4. Application for inclusion on the Roster shall be acted upon by the Office of the Coordinator of the Commission. Any applicant denied inclusion shall have the right to request a hearing before the Commission for reconsideration of such a denial.

5. Notification of inclusion shall be made by letter. A letter denying inclusion shall state the grounds for the denial and make reference to the right of the applicant to request a hearing for reconsideration of the denial. Such request by the applicant must be in writing and addressed to the Coordinator of the Commission and must be made within 30 days of receipt of notification of denial. Within 15 days of the reconsideration, and, if requested, a hearing, the Commission shall render a final decision.
6. An applicant denied inclusion may reapply for inclusion six months after the date of denial.
7. In order to continue on the Roster, each mediator must renew annually with the Coordinator on a form supplied by the Commission which must be accompanied by a renewal fee in the amount of \$10. The date for renewal will be September 1 of each year.

C. *Standards for Inclusion on Roster*

To be included on the Roster, all applicants must meet the following qualifications:

1. Must have a bachelor's degree from an accredited college or university;
2. Must submit evidence of successful completion of at least 40 hours of training in basic mediation skills offered by a training program approved by the Commission;
3. Must submit evidence of observation, co-mediation or mediation of at least two complete mediations;
4. Be of good moral character;
5. Accept and follow the *Arkansas Alternative Dispute Resolution Commission's Requirements for the Conduct of Mediation and Mediators*.

**RECOMMENDED GUIDELINES FOR THE TRAINING AND
QUALIFICATION OF COURT-REFERRED MEDIATORS OR
MEDIATORS PARTICIPATING IN COURT-ANNEXED MEDIATION
SYSTEMS**

The Commission recommends the following guidelines as minimum standards for the qualifications of court-referred mediators or for mediators participating in court-annexed systems either in individual jurisdictions or in a statewide program. The Commission recommends guidelines for three types of mediation referrals or court-annexed mediation systems: (1) Small Claims; (2) Family Mediation; (3) Circuit or Chancery Mediation for other than family matters. These guidelines are intended to assist the courts in ensuring that court-referred mediators meet a high standard of competence and ethical responsibility.

Upon request, the ADR Commission will provide from its Roster the names of those mediators meeting these guidelines (along with their statements of training and experience) to any Arkansas court creating a court-annexed mediation system or seeking the names of mediators for possible referrals. Courts, mediators, and the public should be aware that, in creating a court-annexed mediation system or making mediation referrals, an Arkansas court is free to use these standards, or to create its own requirements, which may be greater, lesser, or different from the standards suggested here.

These guidelines may also be useful to administrative agencies and other governmental units establishing mediation programs.

A. *Scope of Guidelines Promulgated by a Court for a Court-annexed system or Court-referred Mediations (if that Court accepts the Arkansas ADR Commission Guidelines)*

The Arkansas Alternative Dispute Resolution Commission recommends that a Court begin its guidelines with the following statement of scope

“All mediators receiving referrals through this Court-annexed program or from this Court should be court approved pursuant to requirements promulgated by

(Fill in name of court or program making referral or establishing Court-annexed system)

The following sets forth these requirements:”

B. *Qualifications for different types of program*

The Court establishing the system or making the referral should choose the appropriate one of the following categories of guidelines:

1. Small Claims Courts

- a. Have completed a minimum of 16 hours training in a training program specifically designated for small claims courts and approved by the Commission, or complete a 40 hour training course as described in Requirements and Procedures for the Inclusion of Mediators on the Roster of the Arkansas Alternative Dispute Resolution Commission [hereinafter Requirements];
- b. Be of good moral character; and
- c. Accept and follow the *Arkansas Alternative Dispute Resolution Commission's Requirements for the Conduct of Mediation and Mediators*.

Please note:

Courts and mediators should note that for court-annexed or referred small claims mediations only, there may be some mediators who meet this small claims guideline by having small claims mediation training, without also meeting the education and training standard of Requirements, Section C(2). These mediators will be qualified for small claims mediations under these standards, even though they will not appear on the Roster of Mediators maintained by the Arkansas Alternative Dispute Resolution Commission.

2. Family Mediators

- a. Have completed a minimum of 40 hours in a family mediation training program approved by the Commission; or have completed 40 hours of basic mediation training with an additional 20 hours of family mediation training in a program devoted entirely to family or parenting mediation and which is approved by the Commission;
- b. Have a bachelor's level degree with at least two years work experience in family and marriage issues; or have a master's degree or higher in social work, mental health, behavioral social science, or communications, or be an attorney;
- c. Have observed, mediated, or co-mediated two family mediations;
- d. Be of good moral character; and
- e. Accept and follow the *Arkansas Alternative Dispute Resolution Commission's Requirements for the Conduct of Mediation and Mediators*.

3. Circuit or Chancery Court Mediators for other than family matters

- a. Have completed a minimum of 40 hours in a mediation training approved by the Commission;
- b. Be a member in good standing of the Arkansas Bar; or have a master's level degree or higher;
- c. Have observed, mediated, or co-mediated two mediations of Circuit or Chancery Court cases other than family matters;
- d. Be of good moral character;
- e. Accept and follow the *Arkansas Alternative Dispute Resolution Commission's Requirements for the Conduct of Mediation and Mediators*.

NOTE

Upon implementation of Amendment 80 to the Arkansas Constitution, references to Chancery, Circuit, or Circuit/Chancery Courts or cases shall apply to Circuit Courts or cases.

Experience gained before the effective date of Amendment 80 in either Circuit or Chancery Court cases shall apply to meeting the Guidelines for Mediators in Circuit Court cases thereafter.

ADOPTED without dissent by the Arkansas Alternative Dispute Resolution Commission at a public meeting April 13, 2001.