

## **REQUIREMENTS AND PROCEDURES FOR INCLUSION ON THE ROSTER OF CERTIFIED MEDIATORS FOR CIRCUIT COURTS**

### **A. *Scope of Requirements***

All mediators on the Roster of Certified Mediators for Circuit Courts shall be qualified pursuant to these Requirements. Persons included on this Roster are eligible to serve as compensated mediators in and for circuit courts pursuant to Ark. Code Ann. ' 16-7-104 (3). The Roster will indicate in which divisions of circuit court the mediator is qualified to serve, depending on the mediator=s qualifications as set forth in part C below.

### **B. *Procedures for Inclusion on the Roster of Certified Mediators***

1. A mediator seeking certification shall make application on a form to be provided by the Commission.
1. The application for certification shall be accompanied by a fee which is set annually by the Commission.
1. The application shall contain or be accompanied by the following:
  - a. Statement of educational background;
  - a. Evidence of successful completion of the appropriate mediation training for the Roster;
  - a. Statement of experience/areas of expertise;
  - a. Statement of adherence to the *Arkansas Alternative Dispute Resolution Commission=s Requirements for the Conduct of Mediation and Mediators*; and
  - a. Statement certifying accuracy of information contained in the application and a statement of adherence in which the applicant agrees to submit to the jurisdiction of Arkansas Courts and the ADR Commission.
4. Application for certification shall be acted upon by the Coordinator of the Commission. Any applicant denied certification shall have the right to request reconsideration of such a denial by the Commission.
5. Applicants may request a waiver of one or more requirements. Such waiver is to be made in writing and addressed to the Coordinator of the Commission. The Commission, at its discretion, may waive any of the certification requirements set forth in Section C of these standards.
6. Notification of certification shall be made by letter and shall indicate in which

categories the person is certified: Domestic Relations matters, Juvenile matters, and/or Civil and Probate matters. A letter denying certification, or certification as to one class of case, shall state the grounds for the denial and make reference to the right of the applicant to request 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, the Commission shall render a final decision.

7. An applicant denied certification may reapply six months after the date of denial.
8. In order to maintain certification, each mediator must renew annually on a form supplied by the Commission which must be accompanied by a renewal fee. The renewal fee is set by the Commission annually. Recertification applications must be received by the Commission office by August 31<sup>st</sup> of each year. The date for renewal will be September 1<sup>st</sup> of each year.
9. Applicants who reside outside the state of Arkansas must agree to submit to the jurisdiction of Arkansas courts and designate an agent of service in Arkansas.

C. *Standards for Inclusion on Roster of Certified Mediators*

1. ~~Civil/Probate~~ Division Mediators

a. Training

1. Have completed a minimum of 40 hours in a mediation training approved by the Commission;
2. Applicants who complete a mediation training course outside of Arkansas must also complete the Commission's course on Arkansas Law for Mediators.
3. Applicants must complete the certification process within five years of completing basic mediation training. If a complete certification application has not been submitted to the Commission within the five year period, the applicant must retake all training required for certification in the civil division. If the applicant can demonstrate that they have actively mediated since receiving the basic mediation training, this requirement may be waived at the Commission's discretion.

b. Education

1. Have a master's level degree or higher; or
2. Have a bachelor's degree plus a graduate level certificate in conflict resolution or mediation from an accredited college, university, or law school that has been approved by the Commission; or
3. Have a juris doctorate or equivalent; or
4. Have substantial, demonstrated, and satisfactory knowledge, skills, abilities, and experience as a mediator in the applicable field of mediation

- c. Practical Experience
  - 1. Have observed, mediated, or co-mediated two mediations involving issues that would be heard in circuit court, other than domestic relations or juvenile matters;
  - 2. Observations and co-mediations must be of a case that is, or would be, filed in the civil division of the Arkansas Circuit Courts. Observations and co-mediations must be completed ~~in Arkansas~~ with a mediator who is certified by the Arkansas ADR Commission .
- d. Ethics
  - 1. Be of good moral character; and
  - 2. Accept and follow the Arkansas Alternative Dispute Resolution Commission=s *Requirements for the Conduct of Mediation and Mediators*
- e. Examination
  - 1. Prior to granting certification, the Commission may require applicants to successfully complete an examination on mediation concepts, ethics, and other topics relevant to mediation in the Arkansas Circuit Court system.

## 2. Domestic Relations

- a. Training
  - 1. Have completed a minimum of 40 hours in a family mediation training program approved by the Commission; or
  - 2. 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 which is approved by the Commission;
  - 3. Applicants who complete a basic or family mediation training course outside of Arkansas must also complete the Commission=s course on Arkansas Law for Mediators.
  - 4. Applicants must complete the certification process within five years of completing basic mediation training. If a complete certification application has not been submitted to the Commission within the five year period, the applicant must retake all training required for certification in the domestic relations division. If the applicant can demonstrate that they have actively mediated since receiving the basic mediation training, this requirement may be waived at the Commission's discretion.
- b. Education
  - 1. Have a bachelor=s level degree with at least two years work experience in family and marriage issues; or
  - 2. Have a master=s degree or higher; or
  - 3. Have a bachelor=s degree plus a graduate level certificate in conflict resolution from an accredited college, university, or law school that has been approved by the Commission; or

4. Have a juris doctorate or equivalent; or
5. Have substantial, demonstrated, and satisfactory knowledge, skills, abilities, and experience as a mediator in the applicable field of mediation

c. Practical Experience

1. Have observed, mediated, or co-mediated two domestic relations mediations;
2. Observations and co-mediations must be of a case that is, or would be, filed in the domestic relations division of the Arkansas Circuit Courts. Observations and co-mediations must be completed ~~in Arkansas~~ with a mediator who is certified by the Arkansas ADR Commission.

d. Ethics

1. Be of good moral character; and
2. Accept and follow the Arkansas Alternative Dispute Resolution Commission=s *Requirements for the Conduct of Mediation and Mediators.*

e. Examination

1. Prior to granting certification, the Commission may require applicants to successfully complete an examination on mediation concepts, ethics, and other topics relevant to mediation in the Arkansas Circuit Court system.

**3. Probate Division**

- a. Any mediator who is certified in, or meets the certification requirements of either the civil division or the domestic relations division is eligible for certification in the probate division.

4. Juvenile Division Mediators

a. Training

1. Have completed a minimum of 40 hours in a family mediation training program approved by the Commission; or
2. 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 which is approved by the Commission; and
3. Have completed a course on the Arkansas juvenile court system approved by the Commission.
4. Applicants who complete a basic or family mediation training course outside of Arkansas must also complete the Commission=s course on Arkansas Law for Mediators.
5. Applicants must complete the certification process within five years of completing basic mediation training. If a complete certification application has not been submitted to the Commission within the five

year period, the applicant must retake all training required for certification in the juvenile division. If the applicant can demonstrate that they have actively mediated since receiving the basic mediation training, this requirement may be waived at the Commission's discretion.

b. Education

1. Have a bachelor=s level degree with at least two years work experience in family issues; or
2. Have a master=s degree or higher; or
3. Have a bachelor=s degree plus a graduate level certificate in conflict resolution from an accredited college, university, or law school that has been approved by the Commission; or
4. Have a juris doctorate or equivalent; or
5. Have substantial, demonstrated, and satisfactory knowledge, skills, abilities, and experience as a mediator in the applicable field of mediation

c. Practical Experience

1. Have mediated at least five Arkansas circuit court cases with the past three years
2. Have ~~observed, mediated, or co-mediated two juvenile mediations~~ two dependency-neglect cases, one Families in Need of Services case, and one delinquency case;
2. ~~Observations and co-mediations~~ must be completed in Arkansas with a mediator who is certified by the Arkansas ADR Commission and designated as a juvenile mediation mentor, and the applicant must received acceptable evaluation by the mentor.

d. Ethics

1. Be of good moral character; and
2. Accept and follow the Arkansas Alternative Dispute Resolution Commission=s *Requirements for the Conduct of Mediation and Mediators.*

e. Examination

1. Prior to granting certification, the Commission may require applicants to successfully complete an examination on mediation concepts, ethics, and other topics relevant to mediation in the Arkansas Circuit Court system.

Note: all degrees must have been obtained at an accredited college, university or law school.

D. *Requirements for Annual Renewal*

1. In order to maintain certification, each mediator must renew annually. Certified

mediators will receive a renewal packet each year from the Commission. The date for renewal is September 1 of each year.

2. In order to qualify for certification renewal, each mediator must provide the following to the Coordinator of the Commission:
  - a. Completed and signed renewal form
  - b. Evidence of completion of 6 hours of continuing mediation education (CME)
  - c. Mediation statistical reports (provided by the Commission)
  - d. Updated profile form
  - e. Renewal fee
3. *Continuing Mediation Education:* Certified Mediators must receive 6 hours each year of continuing mediation education. This CME requirement may be met by attending a CME program conducted by the Commission, or by attending some other mediation related program which is approved by the Commission to qualify for CME.
4. *Mediation Statistical Reports:* All certified mediators are required to maintain certain information on each court ordered case they mediate. The information is to be recorded on a form provided by the Commission. All such forms must be submitted to the Commission when the mediator applies for renewal of certification. None of the information required will violate the terms of confidentiality. The information will be used to generate a statistical report that will be distributed to the circuit courts, and available to anyone who requests it.

Statistical reports should be submitted to the Commission at the conclusion of each court ordered mediation. Any reports not submitted by the time of renewal must be included with the renewal application.
5. *Mediator Profiles:* The Commission maintains a profile of each certified mediator. The profiles are provided to circuit court judges, attorneys, and parties who would like additional information when selecting a mediator. At renewal each year, mediators are given an opportunity to update information on their profiles.
6. *Active Status:* Completion of all renewal requirements and submission of the recertification application in a timely manner maintains active certification status.
7. *Suspended Status:* Failure to provide proof of continuing mediation education hours or submit recertification fees with the renewal application, or for other good

cause shown, may result in suspended certification status. If suspended for failure to submit CME or fees, the mediator is not eligible for active status until the following September 1<sup>st</sup>. If suspended for good cause shown, the suspension remains in effect until the date specified by the Commission.

8. *Lapsed Certification:* Failure to renew certification will result in a mediator being placed in lapsed certification status. To renew certification, the mediator must submit a renewal application, proof of continuing mediation education hours for the lapsed period, and certification fees and late fees for the lapsed period. Lapsed status may last for no more than three years. After three years, the Commission will review the recertification application to determine if the mediator will be required to complete the application process as a new applicant. Completing the application process includes retaking the required mediation training and completing new mediation observations, as well as all other certification requirements.
9. *Inactive Status:* A mediator desiring to be placed on inactive status for personal or professional reasons may petition the Commission. The Commission may grant inactive status for good cause shown. When inactive status is granted, the mediator is not required to complete continuing mediation education or pay certification fees.

Note: If anything in these requirements and procedures conflict with previous publications promulgated by the Arkansas Alternative Dispute Resolution Commission, the requirements and procedures in this document override the previously promulgated publications.

~~Any mediator certified in the family/juvenile category prior to the finalization of these revised standards will be grand fathered in under the new requirements for certification in the juvenile category.~~

## Procedures for the Discipline of Mediators

### Disciplinary Action

The Commission may take disciplinary, adverse, or other action against any applicant or mediator included on the Commission's Roster of Certified Mediators for any of the following:

1. Fraud, deceit, material misrepresentation or omission, in application to the Commission's Roster of Mediators or any other information provided to the Commission whenever discovered.
2. Any gross negligence, incompetence, or misconduct in the practice of mediation.
3. Any felony; or any misdemeanor involving violence, threatened violence or moral turpitude or adversely affecting the practice of mediation.
4. Any violation of the Commission's *Requirements for the Certification of Mediators for Circuit Courts*.
5. Any violation of the *Requirements for the Conduct of Mediations and Mediators*.
6. A violation of the policies or procedures of any program administered by the Commission.

### Method for Hearings

*Complaints/Allegations*-- Complaints or allegations made against any person shall be in writing, and signed by the person or persons making them, and shall be filed with the Coordinator for the Commission. Reports, complaints, or allegations may also be made to the Commission by the Coordinator or Commission members.

Unless dismissed by the Commission as unfounded or trivial, all charges shall be heard by the Commission within a reasonable time.

*Investigation* - The Commission may appoint an investigation committee. The Committee may include one member of the Commission, the Coordinator, Assistant Coordinator for the Commission, and may be advised by the Assistant Attorney General assigned to advise the Commission. The Committee may serve in the following capacities: 1) to gather information to determine if a complaint or allegation is founded or legitimate; and 2) to provide evidence to be used in presenting the case; and 3) such other capacities as permitted or not prohibited by law or regulation.

*Notice*- All parties shall be given an opportunity for hearing after reasonable notice consistent with the Administrative Procedures Act codified at Ark. Code Ann. § 25-15-201 et seq.

*Continuances*-- A continuance shall be granted only for good cause. Requests for continuances must be made to the Commission in writing and received no less than 10 working days prior to the scheduled hearing.

*Hearing*--Opportunity shall be given to all parties to respond and present evidence and argument



on all issues involved.

1. at any hearing, the party shall have the right to appear in person. The party may also be represented by counsel.
2. to cross examine witnesses and evidence in his or her defense

*Failure to Appear*-- If, after being served notice, the party fails to appear and has not been granted a continuance, the Commission may conduct the proceedings without the party's presence.

*Panel to Hear Case* - Four of the seven Commission members must be present to conduct a hearing. Any member of the Commission who has served on the investigation committee for the case, or who initiated the complaint, is prohibited from sitting on the panel.

*Presiding Officer* – The Chair of the Commission may be the presiding officer at hearings, or the Commission may elect to have a hearing officer preside over any hearing. If the Chair is unavailable, a majority of the Commission members present may select a presiding officer from among the Commission members present or elect to have a hearing officer preside over the hearing.

The presiding officer shall have the power to maintain order and generally regulate and guide the course of the pending proceeding.

*Legal Assistance* - The Attorney General of the State of Arkansas or one of his or her assistants may act as legal advisor to the Commission and render legal assistance needed in fulfilling the provisions of the Commission's Rules

## **Decisions**

If, after hearing the evidence, a majority of the Commission members present and participating sustain the disciplinary, adverse, or other action the Commission may reprimand, suspend, revoke, limit or otherwise condition the mediator's certificate, remove or refuse to include his or her name on the Commission's Roster of Certified Mediators.

A final decision will be made in writing within 15 days of the hearing. A final decision shall include findings of fact and conclusions made in the hearing. Findings of fact shall include a concise and explicit statement of the underlying facts supporting the findings. A copy of the findings shall be served to the party by registered mail.

## **Appeal**

The decision of the Commission may be appealed within 30 days of service of the same upon respondent as specified in the Administrative Procedures Act codified at Ark. Code Ann. § 25-15-201 et seq.

### **Informal Disposition of Complaints**

Nothing contained herein shall prohibit informal disposition of complaints or allegations by settlement, consent or agreement of parties.

### **Amendments to the Procedures**

These rules, regulations, and definitions may be modified, added to, or deleted as deemed appropriate by the Arkansas Alternative Dispute Resolution Commission in the method prescribed for such changes by the laws of the State of Arkansas.

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