

# The Supreme Court of Ohio

COMMISSION ON DISPUTE RESOLUTION & DISPUTE RESOLUTION SECTION

## TRAINING PROGRAM STANDARDS – FUNDAMENTALS OF MEDIATION

The Fundamentals of Mediation Training Program Standards (hereafter “Fundamentals Standards”) have been approved by the Supreme Court of Ohio’s Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution.

### I. Purpose

To set forth fundamentals of mediation standards for Rule 16.23 of the Rules of Superintendence for the Courts of Ohio.

*(Training program sponsors may apply for Rule 16 training program approval by submitting the “Application for Training Program Approval” located on the [Dispute Resolution Section’s website](#))*

### II. General Requirements

A fundamentals of mediation training program shall last a minimum of 16 hours, not including welcoming remarks, introduction, breaks, and closing remarks.

Course materials (written or electronic) shall be distributed to all participants prior to the training program. Nothing in this provision precludes faculty from sharing activities, exercises, and supplemental materials throughout the course, so long as such materials meet the Fundamentals Standards set forth herein and are approved in advance by the Dispute Resolution Section in accordance with standards established by the Commission on Dispute Resolution.

### III. Faculty Qualifications

Faculty shall be qualified by education, or have the necessary practical skills to conduct the program effectively in accordance with standards set forth herein. A training program sponsor shall have an ongoing duty to report any activity, criminal or otherwise, that would adversely affect the faculty’s ability to perform the functions of faculty delivering a training program.

### IV. Training Program Methodology

Both of the following techniques shall be used:

- A. Mediation Role Play – at least 5 hours must be devoted to supervised role play. It is strongly recommended, but not required, that the role play be conducted in small groups of 3-4 participants per role play coach; and
- B. A combination of at least three of the following techniques, shall be used:

1. Lecture
2. Group discussion
3. Written exercises/activities (e.g., drafting mediation documents, such as confidentiality, agreements, a memorandum of understanding, a mediator's introductory remarks, agreements to mediate, etc.)
4. Mediation demonstration

## **V. Training Program, Minimum Requirements**

The following categories shall be addressed for the minimum time specified for each subject (a non-exhaustive list of examples of topics that meet the requirement are listed in each category)

### **A. Conflict Theory (minimum of 45 minutes)**

1. What is conflict?
2. The Conflict Triangle – people, process and problem
3. Conflict styles – adapted from the Thomas Kilmann Model
  - Competing
  - Avoiding
  - Accommodating
  - Compromising
  - Collaborating
4. Causes and characteristics of conflict

### **B. Dispute Resolution Processes (minimum of 10 minutes)**

1. Court-connected continuum
  - Litigation
  - Arbitration (binding)
  - Administrative Hearing
  - Parenting Coordination
  - Elder-caring Coordination
  - Collaborative Law
  - Early Neutral Evaluation
  - Arbitration (non-binding)
  - Mediation
  - Conciliation
  - Settlement Conference
  - Negotiation
2. Taxonomy of dispute resolution processes
  - Adjudicatory
  - Non-adjudicatory
3. Characteristics of processes
  - Party Control v. Court/Third Party control

C. Negotiation & Power (minimum of 45 minutes)

1. Power sources (position, task, personal, knowledge, relationship)
2. Positions v Interests
3. Needs and Interests
  - a. Emotional/psychological needs
  - b. Substantive needs
  - c. Procedural needs
4. Barriers to Negotiation

D. Communication (minimum of 60 minutes)

1. Characteristics of Effective Communication
2. Strategies and techniques for effective communication
  - a. Active Listening (both for content and feelings)
  - b. Check perceptions
  - c. Empathize
  - d. Invite discussion
  - e. Ask questions (open-ended, closed-ended, clarifying)
  - f. Paraphrase
  - g. Summarize
  - h. Moment of silence
  - i. Framing and Reframing
  - j. Dealing with strong emotions

E. Skill Development (minimum of 550 minutes/minimum of 500 minutes if using eLearning)

1. The Stage Mediation Model

Within this structure, the mediator must be able to explain each stage of mediation, including the role of the mediator in each stage, and the core values that provide a foundation for mediation.

Stage One: Pre-Mediation. Includes case development and preparation, initial safety and screening.

Stage Two: Introduction. Includes beginning the session, building rapport, explaining the process and roles, establishing ground rules, and answering questions.

Stage Three: Parties explain the dispute. Includes sharing perspectives and listening to each other's perspectives as they relate to interests to be met in the mediation.

Stage Four: Identifying, Clarifying Issues and Interests. Includes reframing and gaining agreement on interests/issues to be resolved in mediation. Includes a discussion of emotional/psychological, substantive and procedural needs.

Stage Five: Generating and Selecting Solutions. Includes brainstorming and a discussion of possible solutions, gaining agreement, building consensus and reframing suggestions neutrally.

Stage Six: Concluding Mediation. Includes documenting any agreement, a discussion of the mediator's role as scrivener in writing any agreement, thanking the participants, discussing next steps and completing any required outcome reports.

2. Mediation Styles
  - a. Facilitative
  - b. Evaluative and the use of evaluation in mediation
  - c. Transformative
3. Co-Mediation
4. Techniques and strategies for an effective mediation
  - a. Take a break
  - b. Moment of silence
  - c. Schedule another mediation
  - d. Use demonstrative tools such as Flip charts, graphics
  - e. Use experts
  - f. Caucus
  - g. Change mediation styles
  - h. Refer to other agencies
  - i. Co-mediate
  - j. Start over

F. Screening & Safety (minimum of 45 minutes)

1. Explain screening – what it is, when to use it and why it is needed
2. Demonstrate how to screen
3. Mediation Room safety
4. Office protocols
5. Volatility indicators
6. 3-tiered screening (court records, written questions, confidential interviews)
7. Assessing capacity/safety
8. Structuring the mediation process
9. Terminating mediation safely

G. Appreciating Differences (minimum of 30 minutes)

1. Communication styles (formality, clarity, intensity, certainty)
2. Habits and practices (times, space, eye contact, physical contact, food, negotiating styles, decision-making styles, hierarchies, parenting styles)
3. Transformation Model-adapted from the Embrace Consulting LLC Model
  - a. Avoidance
  - b. Tolerance
  - c. Acceptance
  - d. Appreciation
4. Are differences relevant to the mediation?
5. Avoid assumptions
6. Build rapport

H. Implicit Bias (minimum of 30 minutes)

1. What is bias?
2. Unconscious Bias vs. Implicit Bias
3. Effect on the mediation process
4. Effect on individuals
5. Managing bias

I. Impasse & Caucus (minimum of 30 minutes)

1. Reasons a case may not settle
  - a. Too early in process
  - b. Time constraints
  - c. Incomplete information
  - d. Not all parties present with authority
  - e. New information learned
  - f. Used the wrong mediator
  - g. Dispositive motion pending or needed
  - h. Time ran out
2. Techniques to address impasse
  - a. BATNA/WATNA
  - b. Recognize and identify specific barriers
  - c. Encourage creativity
  - d. Change mediation styles
  - e. Take a break
  - f. Consider a partial settlement
  - g. Consider other dispute resolution processes
  - h. Suggest termination to test reaction
3. Caucus
  - a. What is caucus
  - b. When to use caucus
  - c. Who can request caucus

J. Statutes, Rules, Standards & Ethics (minimum of 100 minutes/minimum of 25 minutes if using eLearning)

1. Statutes
  - a. The Uniform Mediation Act
  - b. Reporting Requirements
  - c. Other
2. Rules
  - a. Rules of Superintendence for the Courts of Ohio
    - i. Rule 16 Mediation
    - ii. Rule 80 Ancillary Court Services, including Foreign Language Interpreters
    - iii. Rules 90-90.12 Parenting Coordination
  - b. Local Rules – the impact of

### 3. Standards and Ethics

a. Core Values of Mediation approved by the Dispute Resolution Section based on standards established by the Commission on Dispute Resolution:

1. Self-determination
2. Impartiality
3. Neutrality
4. Fairness of Process
5. Flexibility and Informality
6. Competence
7. Confidentiality/Privilege
8. Voluntary Resolution
9. Cooperation
10. No Conflicts of Interest

b. Model Standards of Conduct for Mediators (adopted by the American Arbitration Association and the American Bar Association in 2005, and amended for online dispute resolution August 2016)

c. Unauthorized Practice of Law (Legal Information vs. Legal Advice)

K. Mediator Self-Care, Compassion Fatigue/ Vicarious Trauma (minimum of 15 minutes)

1. Signs of compassion fatigue
2. Ways to address compassion fatigue

## VI. eLearning

The Supreme Court of Ohio offers Fundamentals of Mediation training to court-connected mediators through a blended learning curriculum that contains a 2.25-hour eLearning course followed by a two-day (14-hour) live interactive classroom training program. The eLearning course can be accessed through The Ohio Judicial College course registration and online course portal to OhioCourtEDU (formerly Judicial eCademy), by creating an account using the following link <http://sc.ohio.gov/OhioCourtEDU/register/>.

Programs that choose to incorporate the eLearning course into their curriculum shall note this fact on their Application for Program Approval.

For purposes of calculating the training program minimum requirements, the eLearning course provides 60 minutes of instruction on Skill Development, with 45 minutes of instruction on the Stage Mediation Model and 15 minutes of instruction on Mediation Styles, as well as 75 minutes of instruction on Statutes, Rules, Standards, and Ethics, with 60 minutes of instruction on Statutes and 15 minutes of instruction on Core Values.

## **VII. Approval**

Any mediation training program approved by the Supreme Court of Ohio Dispute Resolution Section as meeting these standards, is approved for a period of two calendar years. The training program sponsor, however, shall submit a listing of scheduled courses as least 45 days before each course, giving the date, time, location, and cost, if applicable, of the training program. Any material change in the course (such as a change in a primary faculty member, expert, or the curriculum) requires a new application to the Supreme Court of Ohio Dispute Resolution Section.

## **VIII. Revocation of Approval**

The Supreme Court of Ohio Dispute Resolution Section has the right to audit approved training programs during the period for which the training program has been approved. Such an audit may include, but is not limited to: attendance of any part of the course, examination of evaluation forms, examination of curriculum and written materials, and interviewing participants. Approval of programs that are determined to no longer comply with these standards and/or the “*Obligations and Responsibilities for Sponsors*” outlined in the “*Instructions, Obligations, and Responsibilities for the Approval of Required Dispute Resolution Trainings under the Supreme Court of Ohio Rules of Superintendence for the Courts of Ohio,*” located on the Dispute Resolution Section web site, will be revoked.