



DRC Guidelines for Interpreting Mediated Settlement Conference Rule 8(a)(2)b.3.

(Adopted by the Dispute Resolution Commission on December 20, 1998;
revised on May 30, 2006; May 17, 2013; March 1, 2020.)

The following guidelines are intended to clarify requirements established by Mediated Settlement Conference Rule 8.(a)(2)b.3 and to assist non-attorney applicants in assembling their materials and completing the mediator certification process. The non-attorney applicant for certification must complete the requirements established by **either MSC Rule 8(a)(2)b.3.i. or MSC Rule 8(a)(2)b.3.ii.** Additional certification requirements are set forth in other provisions of MSC Rule 8.

I. MSC Rule 8(a)(2)b.3.i.

A. Mediation Training Required

MSC Rule 8(a)(2)b.3.i. provides for a non-attorney to be certified by completing a minimum of 20 hours basic mediation training and after completing that training mediating at least 30 disputes over the course of at least three years. In meeting the 20-hour training requirement, the applicant shall submit to the Commission's office a list of all courses, workshops, seminars or other programs the applicant completed and wishes to have considered for purposes of the 20-hour training requirement and the dates each submission was attended. In addition, if devoted entirely to mediation, the applicant shall state the approximate duration in hours and minutes of the training(s). If not devoted exclusively to mediation, the applicant shall state the duration in hours and minutes of that portion of the training(s) which pertained to mediation theory and practice. *If requested*, the applicant shall provide the following additional information for each entry on his or her list:

- The name and if available, an address, and telephone number for the sponsor of the training;
- If the training was not primarily focused on mediation theory and practice, a brief description of the primary purpose or topic of the training;

- A description or outline of the information presented during the training which pertained to mediation theory and practice. If you have available a syllabus, agenda or course outline from the training, please duplicate and submit them to the Commission; and
- The names of the trainers and if available, contact information for trainers. Resumes or other biographical information describing the experience and education of the trainers should be included if available to the applicant.

To comply with MSC Rule 8(a)(2)b.3.i., an applicant's supporting documentation must demonstrate the applicant's course(s) covered basic mediation theory, techniques, and practice and was presented by trainers qualified, in the judgment of the Commission, to present the material. The course or course(s) or that portion of them which addressed mediation theory and practice, must be at least twenty hours in duration.

B. Mediation Experience Required

MSC Rule 8(a)(2)b.3.i. also provides for applicants, after completing the 20-hour course, to mediate at least 30 disputes over the course of at least three years, or to demonstrate equivalent experience. Applicants must indicate on the Commission's Application for Certification the name of the agency, office or practice where the experience was gained, the years in which the experience has gained, and the number of cases mediated in each year listed. **If requested**, the applicant shall submit to the Commission the following information regarding the experience submitted:

1. Describe the mediation experience which you wish the Commission to consider:
 - Identify each corporation, agency, or practice for whom you conducted mediations.
 - Identify, in a general sense, the clients for whom you mediated at each entity listed above, e.g., divorcing couples, neighbors, creditors/debtors;
 - Identify the types of disputes you typically mediated.
2. Did those whose disputes you mediated understand that you were serving as their mediator?
 - Did you specifically identify yourself as a mediator? If so, how did you define the role of mediator?
 - Did you explain the mediation process to the disputants prior to mediation? If so, how did you define and explain it?
 - If your practice or the office or agency which employed you or for which you served as a volunteer has published any promotional or informational materials on mediation and they are available to you, please attach them.
3. Briefly describe a typical session you mediated:

- Describe the role you played as mediator, including describing techniques you employed to help resolve dispute.
- Describe the grand rules for mediation, if any, you established prior to your sessions.
- Describe the role the disputants played in the process.
- Did you render a decision for the disputants at the end of the mediation?
- Describe what, if any, efforts you undertook to keep your mediation practice separate from any counseling, pastoral, personnel or other professional services you offered:
 - i. Are mediation sessions scheduled and held separately from counseling, therapy or other sessions?
 - ii. If you bill for mediations services, are billings or insurance claims for mediation services segregated from billings or claims for other non-mediation services you performed?

To comply with MSC Rule 8(a)(2)b.3.i., the applicant's supporting documentation shall demonstrate that the applicant was engaged in the practice of mediation for at least three years, having conducted at least 30 disputes during that period. Mediations must have been conducted according to commonly accepted principles for the conduct of mediation.

In particular, the mediator shall have specifically identified him or herself to the disputants as a mediator, explained the mediation process to the disputants and served only as a neutral facilitator and not a decision-maker. The applicant's supporting documentation shall also demonstrate that the applicant did not combine the delivery of mediation services with the delivery of an therapy, pastoral counseling, personnel or other services also provided by the mediator, i.e., the applicant has drawn a bright line between his/her mediation practice and the delivery of any other services. If an applicant delivered mediation services as an employee or volunteer, he or she may be asked to provide a letter from the individual responsible for supervising his or her work. The Commission will construe the "equivalent experience" requirement in MSC Rule 8B(2)(c)(i) narrowly. Service as a hearing officer, arbitrator, magistrate, or grievance committee member will be construed as the equivalent of mediation for purposes of this rule.

C. Education and Additional Experience Required

MSC Rule 8(a)(2)b.3.i. also provides for applicants to possess a four-year college or university degree and four year's professional, managerial, or administrative experience with a professional, business, or governmental entity. The four-year college degree must have been awarded by an accredited institution and the applicant must submit a copy of a diploma, transcript or other document verifying graduation. It is anticipated that any professional, management, or administrative experience offered pursuant to subsection (i), will be high or relatively high-level experience of an executive nature. The experience cited must be verifiable by Commission staff and have occurred within the context of an

overall stable employment history. The applicant must list or attach a resume of his/her full employment history, highlighting the specific four year's managerial, professional, or administrative experience the applicant wishes the Commission to consider. The applicant shall provide Commission staff with any information necessary to verify employment.

The Commission may consider the following indicia among others in evaluating whether the experience submitted is high or relatively high-level experience of an executive nature that the applicant('s):

- owned or managed a viable, substantial business;
- was required to hold a degree to obtain the position(s) cited;
- employer(s) considered the position(s) held to be managerial position(s);
- holds a license if s/he characterizes him/herself as a professional;
- supervised others; and
- was in charge of a department or function.

The position(s) held should have provided the applicant an opportunity to develop and use traits and skills which would be beneficial in the context of superior court mediation. Specifically, the professional, administrative, or managerial experience possessed by the applicant should have afforded an opportunity to develop and refine: listening and verbal communication skills, conflict management skills, the ability to quickly grasp complicated factual situations or abstractions, creativity, a facility for problem solving, and the ability to interface effectively as a peer with professionals, including attorneys.

Gaps in employment history must be explained as well as numerous or frequent job changes as these may indicate a lack of problem solving skills and an inability to cooperate and work productively with others. Applicants may be requested to provide specific information about responsibilities associated with each entry on their employment history/resume. The applicant's four-year college degree must have been awarded by an accredited institution and the applicant must submit a copy of a diploma, transcript, or other document verifying *graduation*.

II. MSC Rule 8(a)(2)b.3.ii.

MSC Rule 8(a)(2)b.3.ii provides that, though possessing no mediation experience, an applicant may be certified if he or she has ten years professional, managerial, or administrative experience with a professional, business, or governmental entity and possesses a four-year college or university degree. The applicant must list or attach a resume of his/her employment history, highlighting the specific ten year's managerial, professional, or administrative experience the applicant wishes the Commission to consider. The experience cited must be verifiable by Commission staff, have occurred within the context

of an overall stable employment history, and be high or relatively high-level experience of an executive nature. The applicant shall provide Commission staff with any information necessary to verify employment.

The Commission may consider the following indicia among others in evaluating whether the experience submitted is high or relatively high-level experience of an executive nature:

- That the applicant owned or managed a viable, substantial business;
- That the applicant holds a license if s/he characterizes him/herself as a professional;
- That the applicant was required to hold a degree to obtain the position(s) cited;
- That the applicant's employer considered the position held to be a management level position;
- That the applicant supervised others; and
- That the applicant was in charge of a department or function.

The position(s) held should have provided the applicant an opportunity to develop and use traits and skills which would be beneficial in the context of superior court mediation. Specifically, the professional, administrative, or managerial experience possessed by the applicant should have afforded the opportunity to develop and refine: listening and verbal communication skills, conflict management skills, the ability to quickly grasp complicated factual situations or abstractions, creativity, a facility for problem solving, and the ability to interface effectively as a peer with professionals, including attorneys.

Gaps in employment history must be explained as well as numerous or frequent job changes as these may indicate a lack of problem-solving skills and an inability to cooperate and work productively with others. Applicants may be requested to provide specific information about responsibilities associated with each entry on their employment history/resume. The applicant's four-year college degree must have been awarded by an accredited institution and the applicant must submit a copy of a diploma, transcript, or other document verifying graduation.

Applicants with questions about any of the above should contact the Commission's office at (919) 890-1415.