



DRC Guidelines Amplifying Rules for Certification of 10-Hour Clerk Mediation Training Programs

(Adopted by the Dispute Resolution Commission on August 25, 2006;

amended on November 19, 2021.)

Adult Guardianship and Estate Mediator Certification Training

These Guidelines are intended to amplify Rules 8 and 9 of The Rules of Mediation for Matters Before the Clerk of Superior Court (Rules) as they pertain to certification of adult guardianship and estate mediation training programs. All trainers seeking such certification should read Rules 8 and 9 carefully and review these Guidelines prior to submitting a training package to the Dispute Resolution Commission. Training packages shall include:

- A. a detailed agenda identifying topics to be covered, and time frames allocated to each topic;
- B. a list of trainers who will cover each topic, with each trainer's resume;
- C. the total number of hours the program will run (training programs must total at least 10 hours);
and
- D. a complete copy of all materials to be distributed to participants as handouts, including copies of any texts, role-play scenarios or ethics case studies to be used.

Any questions should be directed to the Commission's office at (919) 890-1415.

1. IN-PERSON OR REMOTE INSTRUCTION. The training course may be offered in-person or through remote instruction. The platform used to provide remote training shall be at the trainer's discretion. All remote training shall be conducted live and participants must appear by video throughout the entire training. The trainer(s) shall control "host" functions or "maintain control" over platform functions at all times. For both methods of training, participants must be able to interact with the trainer during the presentation, i.e. participants can ask questions and receive answers during the live training session.

2. TIME FRAMES. All training programs must total at least 10-hours., exclusive of breaks and a lunch period, except that a working lunch may count toward the 10-hour total. At least six hours of the training agenda shall address adult guardianship mediation issues and at least four hours shall address estate mediation issues. The training agenda must comply with the detailed curriculum and minimum durations set out in Rule 9 and subsection D of these Guidelines.

The ten-hours of instruction provided for in Rule 9 and discussed in these Guidelines is intended to be a minimum only. Trainers are encouraged, if they believe it is necessary in order to cover all the topics listed in Rule 9 to provide training beyond the 10-hour minimum and to include an open forum, demonstrations and role plays that specifically address situations involving disputes in adult guardianship and estate matters. Trainers may also add additional topics that they wish to cover.

3. CLASS SIZE AND ACCOMMODATION. At no time shall the number of participants exceed 40 for live courses and 15 for remote courses. The number of remote participants is limited to the trainer's ability to see all participants on the same computer screen during the training. Trainers must provide sufficient numbers of faculty and other training staff to ensure that participants have a meaningful training experience, including individual attention and an opportunity to actively participate in discussion and role plays, if role plays are a part of the training. Trainers must ensure that the training site is spacious enough to accommodate participants and offer an environment substantially free of distractions and other impediments to learning. If role-plays are to be included as part of the program, sufficient space should be provided for break-out sessions.

4. PREREQUISITE TRAINING: Individuals taking Adult Guardianship and Estate Mediator training will have already completed a Commission approved 40-hour course in superior court or family financial mediation. The 40-hour course shall have provided instruction in basic mediation theory and practice and afforded opportunities to observe demonstrations of superior court or family financial mediations and to participate in multiple role-plays. As such, it is expected that adult guardianship and estate training will focus more specifically on information relating to aging, ageism, mental illness, disabilities, family dynamics, principles of guardianship, elder/adult guardianship law, estate/trust law and the other topics listed in Rule 9. Though the focus of this training shall be largely on these substantive areas, trainers are encouraged to exercise their discretion in adding additional time beyond the ten-hour minimum for demonstrations, role plays, further exploration of Rule 9 topics, or to add additional topics where trainers believe it is necessary to ensure the effectiveness of their training and of the mediators who are attending.

5. PROGRAM CONTENT: Rule 9 of the Supreme Court rules lists the topics that a training program must cover during the course of this program. Trainers are required to devote at least the following minimum amounts of time to each of the curriculum topics set forth in Rule 9 and to discuss at least the concepts mentioned below in association with each curriculum requirement listed:

A. Factors distinguishing estate and guardianship mediation from other types of mediation. (ten minutes minimum). Brief discussion of some of the salient differences between adult guardianship and estate mediation and other types of mediation with which participants may be familiar, including superior and district court settlement conferences. Brief discussion of issues particularly relevant to adult guardianship and/or estate mediation: the need to ensure that the respondent in an adult guardianship matter or all the heirs in an estate matter are present at the mediation, if possible. Included in discussions the following: the role of the Guardian *Ad Litem*; the potential need for the mediator to be more proactive relative to intake issues, *e.g.*, exploring accessibility concerns with respondents, making sure that all individuals with needed information are present at the mediation; and the need for the clerk to approve agreements involving estates or adult guardianships. Rule 9(a)(1).

B. The aging process and societal attitudes toward the elderly, disabled, and persons with a mental illness. (forty-five minutes minimum). Under this topic, explore some of the physical and mental changes typically associated with the aging process; societal attitudes toward aging and the elderly and toward those with mental illnesses or physical disabilities; discrimination against the elderly, mentally ill, or disabled; special problems and concerns of the elderly, mentally ill, or disabled, *e.g.*, fear of loss of autonomy, isolation, exploitation; and communicating and working with the elderly, mentally ill, or disabled. Rule 9(a)(2).

C. How to ensure full participation of respondents and identifying interested persons and nonparty participants. (forty-five minutes minimum). Under this topic, discuss the mediator's responsibility for intake and participation. (Are individuals with necessary information identified and notified of the mediation? Are they present at the mediation?); accessibility issues (identifying physical limitations that participants may have relative to participation, *e.g.*, need for wheelchair ramps, elevators, interpreters, effects of sun-downing); importance of involving respondents in adult guardianship matters in the discussion to the greatest extent possible; and the role of the guardian *ad litem* (*GAL*). Rule 9(a)(3).

D. Medical concerns of the elderly, disabled, and persons with a mental illness. (twenty minutes minimum). Under this topic, review medical terminology, common diseases and conditions associated with aging, mental illness and disability, disease etiology, manifestations of illness and effects of medication. (It is the expectation of the Commission that prior to the training, participants will be provided with handouts and web site addresses that explore the matters listed above in this subsection. The Commission recognizes that in a ten-hour course it is impossible to go into any level of detail regarding medical issues and students should be advised that it is the expectation of the Commission and the trainer that they review these materials prior to the course and address any questions they may have to their trainers.) Rule 9(a)(4).

E. Financial and accounting concerns in the administration of estates and financial accounting concerns of the elderly, disabled, and persons with a mental illness. (twenty minutes minimum). Trainers should discuss the financial needs associated with aging, mental illness and disability, including costs and fees associated with guardianships, estates, trust maintenance and brief discussion/handout regarding tax concerns. Review the consequence of special needs trusts or testamentary trusts and the issues associated with involving the transfer and/or leveraging of real property. Rule 9(a)(5).

F. Family dynamics relative to the elderly, disabled, and persons with a mental illness, and relative to deceased persons. (thirty minutes minimum). Under this topic, explore the family dynamics and family stresses particularly as they relate to the care of an elderly, mentally ill, or disabled relative, or to the death of a family member. Trainers should include undercurrents such as sibling rivalries, the grieving process, and red flags which could indicate neglect or abuse of an elderly, mentally ill or disabled relative. (It is the expectation of the Commission that prior to the training, participants will be provided with handouts, bibliographies and web site addresses that explore the matters listed in this subsection.) Rule 9(a)(6).

G. How to assess physical and mental capacity. (sixty minutes minimum). Trainers shall identify triggers and situations that commonly lead families to petition for guardianship, including the

following: indicators of self-neglect and of neglect, abuse, and financial exploitation by others; care needs and caregiver issues; activities of daily living (ADLs), *e.g.*, bathing, eating, toileting, dressing, and grooming; and independent activities of daily living (IADLs), *e.g.*, shopping, house cleaning, money management, and meal preparation. Discussion of physical capacity and mental capacity as it relates to decision-making and autonomy. Rule 9(a)(7).

H. The availability of community resources for the elderly, disabled, and persons with a mental illness. (fifteen minutes minimum). Trainers shall discuss community, county, state, and federal resources and programs available to assist the elderly, mentally ill, and disabled, including a brief overview of relevant state/ federal Medicare and Medicaid provisions and brief discussion of long-term care insurance provisions. Red flags regarding property transfers and use of assets. Handouts are suggested. Rule 9(a)(8).

I. Principles of guardianship law and procedure. (one hour minimum). Under this topic, discuss jurisdictional limitations on the clerk in adult guardianship matters. Review informal alternatives to adult guardianship, *e.g.*, family and community resources, social workers, and visiting nurses, terminology, relevant statutes, and case law including the legal standard for appointment of a guardian. Discuss competency and incompetency hearings, who can/should serve as a guardian or interim guardian and the types of guardianships available, including interim and limited guardianships and guardianships of the person or estate. Cover the responsibilities of guardians, accountings, and termination of guardianship/restoration of competency. Rule 9(a)(9).

J. Principles of estate law and procedure. (two hours minimum). Trainers shall provide jurisdictional limitations on the clerk in estate matters. Review terminology, relevant statutes, and case law as well as cover estate planning documents including formal alternatives to guardianship, *e.g.*, last wills and testaments, trusts, powers of attorney and codicils. Trainers shall describe who can serve as a personal representative/trustee, the types of estates available, including summary administration and small estates and the responsibilities of the personal representative/trustee. The two-hour minimum shall include time spent covering the discovery of assets, elective share, intestate succession, partition actions, insolvent estates, removal of a personal representative/trustee, and the closing of estates. Rule 9(a)(10).

K. Statutes, rules, and forms applicable to mediation conducted under these rules. (thirty minutes minimum). The trainers will cover the statute, rules, and forms that apply to clerk mediated settlement conferences.

L. Ethical and conduct issues relevant to mediations conducted under these rules. (thirty minutes minimum). Discussion of statutes requiring the reporting of abuse, neglect or exploitation and confidentiality concerns. The trainers shall cover protecting the interests of absent respondents or heirs and the need to safeguard against power imbalances during mediation. Inclusion of role-plays or case examples allowable.

6. ENSURING THE QUALITY OF THE FACULTY. An experienced, qualified faculty is essential to the success of any training program. An applicant shall specify those individuals who will serve as the primary faculty. The application shall include a resume for each primary faculty member describing in detail the member's experience and education in mediation and other relevant experience. The Commission strongly encourages that there be at least two primary trainers presenting the material. Ideally, one faculty

member should be educated in mediation theory and practice and have significant experience mediating in either North Carolina's superior and/or district court mediated settlement conference programs or equivalent experience mediating in the courts of another state. Another member should have experience as a geriatrician, social worker, or psychologist or have other professional experience working with the elderly, disabled, or mentally ill. This trainer should be knowledgeable about issues relating to the health care and psychological welfare of the elderly, mentally ill, and/or handicapped. There shall also be on the faculty a member(s) of the North Carolina State Bar who has experience practicing elder and estate law in this state or an attorney licensed in another State with experience practicing elder and estate law and who has familiarized him/herself with North Carolina statutes, law, and practice.

7. ENSURING THE QUALITY OF THE COURSE MATERIALS. To be certified, a training program must include quality written materials that adequately cover all aspects of the required curriculum, including materials relating to the North Carolina statutes, rules, and Standards of Conduct. The applicant must submit a final draft of the program materials that will be used in conjunction with the training program.

8. ENSURING A NORTH CAROLINA FOCUS. Applicants must demonstrate that the training will be focused on the particulars of North Carolina's program, statutes, rules, and Standards of Professional Conduct for Mediators. If role plays are utilized as part of the training, they shall reflect the approach to mediation that has evolved in North Carolina's courts, *i.e.*, they shall involve active participation of attorneys, the use of caucus sessions, and envision court-ordered participation. Handouts familiarizing attendees with guardianship/elder and estate law shall discuss North Carolina statutes and laws. Trainers who have been certified in North Carolina, but are conducting their training outside North Carolina, must provide those seeking certification in North Carolina with North Carolina handouts and must ensure that the legal portion of the training is taught by an attorney licensed in North Carolina or by an attorney licensed in another State with experience practicing elder and estate law and who has familiarized him/herself with North Carolina statutes, law, and practice.

9. EVALUATION OF TRAINING PROGRAM. Each training program must include an opportunity for participants to evaluate the program. The DRC may provide a standard evaluation survey to be completed by each participant with the results forwarded to the DRC. In addition, each certified trainer must provide a participant list to permit the DRC to conduct follow-up interviews with participants regarding the program's quality. Upon request, each trainer must also agree to supply copies of completed participant evaluations to the Commission and to permit a DRC representative to attend the program for purposes of quality assurances. All remote training shall be recorded for auditing purposes only. The trainer shall provide the DRC a copy of all recorded training within 10 days of the completion of the course. Upon confirmation of receipt of the course by the DRC, the trainer may delete the recorded material. The recording shall not be replayed for training purposes under any circumstances. The DRC may delete the recording after three months or completion of audit, whichever comes first.

10. RESPONSIBILITY TO KEEP COMMISSION UPDATED. Following certification, all trainers shall advise the Commission immediately of any revisions to the agenda, changes in the identity of principal trainers, and any other significant revisions to the content of course notebooks or other handouts. Trainers shall not conduct any additional training sessions until the Commission has approved any such changes.

Along with their annual certification renewal fees, trainers shall re-submit a current agenda for their program yearly. The Commission reserves the right at any time to seek additional information from trainers.

11. ADVERTISING AND REGISTRATION MATERIALS. All materials advertising certified training programs to the public must identify the Dispute Resolution Commission as the body responsible for mediator certification in North Carolina. In addition, the materials must supply a telephone number for the Commission and direct interested parties to the Commission for further information regarding qualifications for certification. Such materials must also contain a disclaimer that successful completion of the program alone is not a guarantee of certification.

12. RECORDED TRAINING. Unlike the 40-hour Mediated Settlement Conference and Family Financial Settlement mediator training programs that are focused primarily on process, this training is focused largely on substantive estate and guardianship law and substantive information relating to issues such as the aging process and family dynamics. This substantive material lends itself more toward a lecture and panel presentation format rather than the demonstration/role-play approach that characterizes 40-hour training programs. Since “hands-on” participation is not a required element of this training, the Commission has determined that it may be offered by recording.

Trainers who offer a recording must encourage participants to watch the recording in its entirety and use available technologies in an effort to ensure that they do, *e.g.*, imbedding a code at the end of the recording and requiring a viewer to report the code in order to receive credit. Trainers must also advise those purchasing recordings that the Commission is very concerned about stale training and anticipates that viewers will watch the tape in its entirety within six months of purchase or rental and that those who apply after that period, may be denied certification. That certification may be denied if the applicant does not apply within six months, must be prominently noted in the material accompanying the recording.

Trainers who elect to offer a recording may only offer the recording for a two-year period from the date the recording is initially approved by the Commission. For the recording to be offered to potential applicants beyond that time frame, a trainer must apply to the Commission and demonstrate the recording’s content remains current.