



DRC Guidelines Amplifying Rules for Certification of 40-Hour Family Financial Mediation Training Programs

(Adopted by the Dispute Resolution Commission on May 11, 2012.)

These Guidelines are intended to amplify Rules 8 and 9 of the Rules Implementing Settlement Procedures in Family Financial Cases (Rules). All trainers seeking the Commission's certification of a 40-hour family and divorce mediation training program, should read Rules 8 and 9 carefully and review these guidelines prior to submitting their training package to the NC Dispute Resolution Commission. Trainers must submit a detailed agenda identifying both topics to be covered and trainers who will cover each topic included. Resumes must be provided for all trainers identified on the agenda. The agenda should also set forth time frames so that the Commission may determine the amount of time allocated to each topic as well as the number of hours for the total program. Training programs must total at least 40 hours. Trainers must also submit to the Commission all materials they intend to distribute to participants as handouts, including copies of any texts; copies of role-play scenarios to be used; and a copy of the exam to be administered pursuant to Rule 9.A(11). Any questions should be directed to the Commission's office at (919) 890-1415.

I. Time Frames

All training programs must total at least 40 hours. Because the materials presented will be new to most participants and because the pace of training is intensive, the Commission has determined that a training day should not exceed nine hours, not including lunch. There may be a short (10 to 15 minute) break each morning and each afternoon. Additional breaks or breaks of a longer length may not be included as a part of a 40-hour calculation. The lunch break may not be included as a part of the 40-hour program unless training continues through lunch. The time frame over which a 40-hour training program is offered must not exceed thirty days from start to finish. The Commission believes that momentum builds during training and the closer together that sessions are held, the more likely it is that dialogue will carry forward and that participants will be able to build on the previous day's material. Conversely, the farther apart sessions are held, the less continuity there will be. The only exceptions made to this 30-day deadline for completion, will be for 40-hour programs offered through an accredited college or law school. College or law school programs approved must include at least forty hours of classroom instruction and must demonstrate that continuity will be ensured by virtue of the fact that the course meets on a regular basis, usually once or twice per week, and involves significant reading, research and writing that occurs throughout the semester.

II. Faculty

A. Faculty Qualifications

It is preferable that members of the faculty be of diverse professional backgrounds. Faculty shall include a seasoned dispute resolution professional who has studied dispute resolution theory and practice. At least one faculty member should have considerable experience conducting mediations and preferably conducting family financial mediated settlement conferences ordered in North Carolina. Faculty must also include a North Carolina licensed attorney with family law expertise. Lastly, faculty should include an individual who has studied communications theory or has experience in a related discipline. It is anticipated that the family law portion of the program will be taught by a licensed North Carolina attorney with family law experience. Resumes need not be supplied for additional staff present for the purpose of role-play critique only, but those individuals should be experienced mediators familiar with family financial mediated settlement conferences. Sufficient numbers of faculty and other trainers must be available throughout the program to answer questions, to give participants individual attention when necessary, and to provide feedback during and after role-plays sessions.

B. Out-of-State Faculty

The Commission understands that trainers may come from out-of-state to present a 40-hour training program and it welcomes the fresh perspectives such individuals may bring. The Commission also recognizes that such trainers may not be familiar with family financial mediated settlement conferences or court-based dispute resolution programs in North Carolina. Prior to conducting training, it is anticipated that all principal trainers who are not familiar with mediated settlement conference dynamics (see 3. Program Content below) will make an effort to familiarize themselves with such conferences and with court-based mediation programs in

North Carolina. For example, trainers unfamiliar with family financial mediated settlement conferences may want to observe conferences prior to training and to talk with experienced North Carolina mediators. If it is not practicable for out-of-state trainers to make this effort, then it is expected they will augment their faculty by adding as a principal trainer a North Carolina mediator with extensive experience conducting family financial mediated settlement conferences.

III. Program Content

A. Mediated Settlement Conference Dynamics to be Described, Discussed, and Role-Played.

During the course of our State's superior court program, certain dynamics have characterized mediated settlement conferences. It is the Commission's expectation that these same dynamics will also appear in family financial settlement conferences. Forty-hour training programs are expected to recognize these dynamics and to familiarize participants with them. In particular, the following should be identified and experienced in training:

- 1.** The active participation of attorneys (Rule 4.A mandates attorney attendance at the initial session of the family financial mediated settlement conference.)
- 2.** The desire for caucusing on the part of parties and their attorneys.
- 3.** The differences between and the effective use of position and interest-based bargaining and money negotiations.

4. Court-ordered participation (parties or their attorneys may not be willing participants or may not cooperate in looking for ways to settle their disputes.
5. Attorney drafting of summary memoranda and final agreements (It is not being suggested here that drafting should not be discussed during training, but rather that that participants should understand that in North Carolina attorneys usually do the drafting.)
6. Performance of a case management function by mediators, as in scheduling the conference and reporting the results to the court.
7. The desire on the part of attorneys and/or parties to economize on the length and number of sessions.
8. The need for a contract when a mediator has been selected by the parties.

It is expected that N.C. Gen. Stat. 7A-38.4, the legislation establishing the Program, and the Rules implementing the Family Financial Settlement Program will be discussed during training (See Rule 9.A(5)). Moreover, participants are to be given an opportunity to view demonstrations of family financial mediated settlement conferences (Rule 9.A(6)) and to participate in role plays of family financial mediated settlement conferences (Rule 9.A(7)). Though trainers may teach different models or approaches to mediation, the dynamics described above are to be discussed and integrated into the 40-hour program. A trainer may not conduct a 40-hour program and then simply provide information on the Rules. Participants must be given an opportunity to experience these dynamics in at least some of the role-play opportunities offered during the program.

B. North Carolina Family Law Segment

Rule 9.A(8) provides that the 40-hour training program will include an overview of North Carolina law as it pertains to custody and visitation, equitable distribution, alimony, child support and post separation support. Trainers must include handouts on North Carolina family law and allocate time during the program to actively discuss North Carolina family law. The fact that some or even a majority of the participants attending may reside or practice outside North Carolina, does not excuse the trainer from this obligation.

C. Emphasis on Court-Ordered Nature of Program

The Commission appreciates that the length of or number of sessions involved in a conference will vary given: the level of emotions, the number and complexity of issues in dispute, the amount of property at stake, the willingness of the parties to cooperate, etc. However, given that this is a court-ordered Program in which parties must participate and must compensate the mediator, the Commission asks that all trainers be mindful that parties may not be able to afford multiple or long mediation sessions. Moreover, trainers should be mindful that if parties are required to attend three or four custody sessions (an orientation, one to two mediation sessions, and a signing session), more than one or two financial sessions, and then appear in court as well, it could be very burdensome for employed participants or those with young children and child care responsibilities.

D. Emphasis on Financial Disputes

The focus of the Family Financial Settlement Program is on settlement of disputes involving equitable distribution and, with the parties' consent, other financial matters including child support

and alimony. In those districts which have established a Custody and Visitation Mediation Program pursuant to G.S. 7A-494, issues of custody and visitation will be addressed at a separate mediation unless the parties agree to include them in their family financial mediation and obtain an exemption from participating in the Custody and Visitation Mediation Program. In those districts which have not established a Custody and Visitation Mediation Program, parties may elect to discuss custody and visitation at their family financial mediation.

E. Standards of Conduct

Rule 9.A(4) provides that standards of conduct are to be discussed with participants. The North Carolina Supreme Court has adopted Standards of Professional Conduct for Mediators which regulate the conduct of family financial mediators. It is expected that trainers will discuss the Supreme Courts' Standards with participants. Copies of the Standards are available through the Commission's office. Trainers may also discuss other standards or ethical codes as they see fit. It is also expected that trainers will discuss the Commission's Advisory Opinion Policy and Advisory Opinions adopted under that Policy.

F. Role Plays

Role-play opportunities are critical to the training of mediators. It is the expectation of the Commission that each 40-hour program will include at least five opportunities for participants to engage in role play activity, including role plays of opening statements and mediation of parenting, property, and financial disputes. Opportunities to caucus should be provided in at least some of the sessions. Role-play participants should be given opportunities to play the roles of disputant, attorney, and mediator. Copies of all role-play scenarios to be used are to be supplied to the Commission.

IV. Class Size and Accommodations

At no time should the number of participants exceed 40. It is the responsibility of trainers to provide sufficient numbers of faculty and other training staff to ensure that participants have a meaningful training experience. The number attending should not be so large that participants cannot receive individual attention when necessary or have an opportunity to actively participate in discussions and role plays. It is also the responsibility of the trainer to ensure that the training site is spacious enough to accommodate participants and offers an environment substantially free of distractions or other impediments to learning. Sufficient space for role play and other break-out sessions and food and drink vendors should be readily accessible.

V. Advertising and Registration Materials

A trainer may **not** commence a training program until such time as the program has, in fact, been certified by the Commission. (The Commission's office cannot always process an application immediately, so a trainer should be careful about scheduling and advertising training dates prior to a program's certification.) All materials advertising certified mediator training programs to the public must identify the Dispute Resolution Commission as the body responsible for mediator certification in North Carolina and provide a telephone number for the Commission. 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 noting that successful completion of the program alone is not a guarantee of certification there are additional requirements for certification beyond completion of a 40-hour

mediator training program, including possession of a college degree; that successful completion of the program is not a guarantee of certification; and that those interested in training may contact the Commission's office to learn more about certification requirements before registering. Any promotional or registration materials published prior to a training program's certification by the Commission shall contain the following admonition: "WARNING: Although certification of this program is expected, [Provider] cannot guarantee that the training program will be certified. [Provider] agrees to utilize all reasonable efforts to obtain certification and, if the program is not certified, will return all payments made or provide additional training as required by the Commission free of charge."

Failure to include the above warning may result in the program being denied certification. The Commission reserves the right to require a trainer to submit copies of a program's promotional or registration materials for review at any time either prior to or following certification. The Commission expects that trainers and staff affiliated with certified training programs will be familiar with certification criteria and that they will make an effort to identify prospective attendees who may not possess the threshold academic degree and years of experience required for certification. Trainers and staff shall advise those they have identified of the requirements or refer them to the Commission's office.

VI. Responsibility to Update Commission

Following certification all trainers shall advise the Commission immediately of any revisions to the agenda, changes in the identity of principal trainers, and any significant revisions to the contents 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 their current agenda. The Commission reserves the right to at any time seek additional information from trainers.