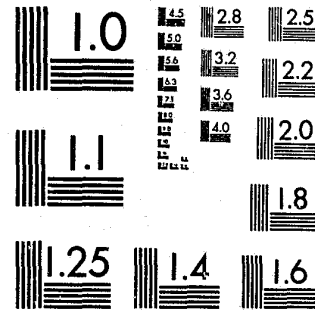


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OKLAHOMA

RULES, REGULATIONS AND GUIDELINES
FOR THE
DISPUTE RESOLUTION ACT

PREPARED BY

ADMINISTRATIVE OFFICE OF THE JUDICIARY

Tom J. McDaniel,
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OCTOBER 1983

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RULE VIII

Code of Professional Conduct for Mediators

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 - b. When it is improper to be mediator
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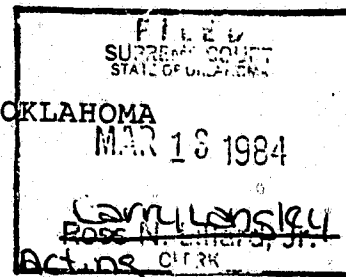
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IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

ORDER



The proposed Rules and Regulations to effectuate the purpose of the dispute Resolution Act, prepared by the Administrative Director of the courts in compliance with the provisions of House Bill No. 1136 are approved as to form.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE
this 16th day of January, 1984.

Don Barnes
CHIEF JUSTICE

Barnes, C.J., Hodges, Lavender, Doolin, Wilson, JJ., concur.
Hargrave, J., concur as to form only.

RULES, REGULATIONS AND GUIDELINES
FOR THE
DISPUTE RESOLUTION ACT

RULE I.

PURPOSE

The purpose of the rules, regulations and guidelines cited herein is to implement and effectuate Enrolled House Bill No. 1136 which establishes the "Dispute Resolution Act", effective July 1, 1983, codified in the Oklahoma Statutes as Sections 1801 through 1806 of Title 12. The statutorily expressed purpose of the Dispute Resolution Act (hereinafter referred to as "the Act") is to provide all citizens of the State of Oklahoma with convenient access to dispute resolution proceedings which are fair, effective, inexpensive, and expeditious. Therefore, the rules, regulations and guidelines cited herein will satisfy the administrative and supervisory obligations imposed upon the Supreme Court of Oklahoma and the Administrative Director of the Courts (hereinafter referred to as "the Director"). Further, said rules, regulations and guidelines will carry out the legislative intention to afford the state's citizens with reasonable mediation services within the confines of the legislative enactment.

RULE II.

DISPUTE RESOLUTION ADVISORY BOARD

- A. The Director will establish a Dispute Resolution Advisory Board, which shall:
1. Advise the Director with respect to the policy development and administration of the Act.
 2. Assist the Director in providing technical assistance to jurisdictions requesting the study and/or development of dispute resolution programs.
 3. Consult with appropriate and necessary state agencies and offices to promote a cooperative and comprehensive implementation of the Act.
 4. Advise the Director with respect to any financial assistance program which may become part of the Act.
 5. Assist the Director with the review, supervision, and evaluation of dispute resolution programs.
 6. Make recommendations to the Director pertaining to legislation affecting dispute resolution.
- B. The Advisory Board shall consist of no more than fifteen (15) members appointed by the Director, one (1) of whom shall be designated as Chairperson. The Advisory Board shall be composed of persons from state government, local government, business organizations, the academic community, the law enforcement field, the legal profession, the judiciary, the field of corrections which shall be represented by the Director of the

Oklahoma Department of Corrections or his designee, retired citizen organizations, the District Attorney profession, consumer organizations, social service agencies, and three (3) members at large.

- C. The term of office of each member shall be for one year and end on June 30, of each year, but all members shall hold office until their successors are appointed and qualified. A member who has served three (3) successive terms shall not be eligible for reappointment for a period of two (2) years.
- D. The Advisory Board may appoint advisors and create and fill such committees as it may determine are necessary for the performance of its functions. It shall hold at least one regular meeting each month. It shall hold meetings with the Director and/or additional personnel of the Supreme Court to review issues when deemed necessary.
- E. The Advisory Board shall adopt rules for the transactions of business and shall keep a record of its resolutions, transactions, findings, and determinations in the form of minutes.
- F. The Director and/or his/her designee shall serve as a non-voting, ex officio member of the Advisory Board.
- G. The members of the Advisory Board shall receive no compensation for their services, but shall be entitled to any reimbursements to which they may otherwise be entitled from sources other than the Administrative Office of the Judiciary.

RULE III.

AMENDMENT OF RULES, REGULATIONS, AND GUIDELINES

These rules, regulations and guidelines may be amended, altered, changed or repealed at any time by a vote of the majority of the members of the Advisory Board created by Rule II, at any regular meeting of said board or at any special meeting of said board called for that purpose. Procedurally, the majority vote will propose an amendment, alteration, change, or repeal of an existing rule, regulation or guideline. The proposal will be submitted to the Director for approval or rejection. If the proposal is initially approved, it will be submitted to the Supreme Court for final approval. If all required approval is received, the proposal will become effective on the date reflected in the statement of approval.

RULE IV.

QUALIFYING AS MEDIATOR

A. Mediator Qualification Through Agency Sponsorship

1. Qualification as a mediator may be obtained through sponsorship by an agency that files annual reports with the Director.

B. Agency Credentials

1. Each agency that offers mediation services within a county or municipality in Oklahoma shall file a written report with the Director. See also Rule X infra.

2. Agency reports shall be filed no later than August 1 of each year, and contain a summary of activities of the immediately preceding fiscal year.
3. Each report shall contain a list of the mediators which the agency sponsors and who meet minimum State credentialing requirements. The requirements include, for each individual named:
 - a. at least 20 hours of initial mediator training, which shall include instruction and practice in the introduction to mediation, calming techniques, listening skills, negotiations, holding private meetings within mediation, working toward an agreement, specifying terms in an agreement, and other requirements specified by the agency;
 - b. observation as mediator by a more-experienced mediator, following the initial training, then practice as a mediator while observed by a more-experienced mediator, before assignment as an independent mediator;
 - c. service as a mediator or co-mediator within the period of the report, or initial training or refresher training within the period of the report;
 - d. participation during the reporting period in continuing education activities, which may include coursework at a college or professional school, conference attendance, additional or refresher mediator training, or group supervision provided by the agency; and
 - e. an agency evaluation of "satisfactory" as a mediator, or satisfactory completion of training during the period of the report, intended to assure performance as a competent and impartial mediator.
4. Agency and mediator credentials are open for inspection in the office of the Director.

C. Failure to Qualify

1. An individual without satisfactory credentials on file in the office of the Director is not eligible to receive the benefits and protections of the Act, but is subject to all regulations of the Act.

RULE V.

REFERRAL

- A. Each Dispute Resolution Program operating under the authority of the Act and these rules shall develop a referral policy. The program's referral policy shall include procedures for accepting referrals from other agencies and making referrals to other agencies.

- B. Depending upon the program's purpose or area of concentration, cases can be received from a number of different referral sources including, but not limited to:

1. Law enforcement
2. District Attorney
3. City Attorney
4. Legal Aid
5. News Media
6. Consumer Protection Agencies
7. Judges
8. Attorneys
9. Social Service Agencies

- C. If a program encounters disputes which, or parties who, require attention beyond the scope of the services provided by the program, the Dispute

Resolution Program can serve the alternate role of a referral agency, making referrals to such agencies as:

1. Marital/Family Counseling
2. Alcohol Program
3. Consumer Protection
4. Battered Women's Association
5. Youth Services
6. Mental Health Programs

RULE VI.

INITIAL INTERVIEW/JURISDICTION

- A. An initial interview will be conducted on every dispute referred to Dispute Resolution Programs that operate under the authority of the Act and these rules. The interview is for the purpose of determining if the matter is appropriate for mediation.

- B. All interviews should be conducted in person if at all possible. However, exceptions can be made for parties with health or transportation problems.

- C. The interview criteria each program adopts can be tailored to that program's specific purpose. However, the interview criteria must involve, at a minimum, consideration of the following factors:

1. Identity and personality of the parties.
2. Relationship of the parties.

Note: Disputes between parties who do not know each other or who do not have one of the following relationships should be referred to some other more appropriate agency.

- a. Landlord-Tenant
- b. Neighbors
- c. Family Relations
- d. Merchant-Customer
- e. Employer-Employee
- f. Roommates-Friends
- g. Victim-Offender.

D. The types of disputes which may be subject to mediation under the Act include:

- 1. Criminal matters such as misdemeanors and non-violent felonies, e.g., embezzlement.
- 2. Civil matters coming under the Small Claims jurisdictional requirements, as set forth in 12 O.S. 1981, § 1751.
- 3. Consumer matters such as consumer complaints involving goods and services provided by business.
- 4. Domestic matters such as divorce, legal separation, child custody, visitation, spousal maintenance, family crisis intervention and family violence.
- 5. Housing matters such as Landlord-Tenant and Neighbor Problems.
- 6. Employment matters such as compensation, working conditions and termination disputes.

E. Inappropriate Types of Disputes. If the dispute is of a serious or complex nature, which does not lend itself to mediation, it should be referred to some more appropriate agency. Examples of such disputes include:

- 1. Violent felonies involving substantial damage to person or property, or criminal activity for which society would require formal prosecution and punishment of the offender.
- 2. Consumer or contractual complaints involving large sums of money or very complex issues which can only be redressed through litigation.
- 3. Disputes where the complainant's desired outcome would be impossible to negotiate through mediation such as:
 - a. Revenge;
 - b. Retribution; or
 - c. Punishment.

RULE VII.

RULES OF PRACTICE FOR ATTORNEYS

- A. When a party in a mediation hearing requires the assistance of counsel, the following three (3) rules must be outlined and agreed to by the attorney prior to initiating the mediation hearing.
 - 1. The mediation hearing is totally confidential, and the attorney agrees to maintain that privilege.
 - 2. The attorney may advise his/her client. The attorney will speak with only the mediator and cannot interrogate the opposing party during the mediation hearing.
 - 3. The party without an attorney present must consent to allowing the opposing party's attorney in the mediation hearing, or be given an opportunity to secure his/her own attorney to be present during the mediation hearing.

- B. If a party who is without counsel refuses to participate in mediation due to the presence of an attorney assisting the opposing party, no mediation hearing will be conducted.

RULE VIII.

CODE OF PROFESSIONAL CONDUCT FOR MEDIATORS

A. Preamble

1. A mediator is an impartial third party certified according to the provisions of the Act who enters a dispute with the consent of the parties, to aid and assist them in reaching a mutually satisfactory settlement to the issues in dispute.
2. Mediation is an informal process of resolving a dispute with the assistance of a mediator. Mediation carries ethical responsibilities and duties. Those who act as mediators must be dedicated to the principle that all disputants have a right to negotiate and attempt to determine the outcomes of their own conflicts. In addition, mediators are bound by the ethical guidelines of this code, which specify their duties and obligations to parties who engage their services, to the mediation process, to other mediators, to the agencies which administer the practice of mediation, and to the general public.
3. This is a personal code for the conduct of the individual mediator and is intended to establish principles applicable to all mediators. It is not intended to override or supersede any laws, government regulations, or other ethical codes to which professionals are bound in their vocational capacities outside of the mediation process.

B. The Code

1. The Responsibility of the Mediator to the Parties

a. Initiating Mediation

- (1) The mediator or any other agency or person may initiate intervention through recommendations, suggestions, or urgings, but the decision to engage in mediation is made solely by the disputing parties themselves, unless mediation is mandated by legislation, by court order, or by contract.

b. Involvement of Parties

- (1) The mediator informs parties of their procedural options to enable them to make wise choices among the various procedures available for dispute processing.
- (2) The mediator urges that all interested parties take an active role in the mediation process.

c. Mediation Fees

- (1) The mediator informs all parties, before mediation begins, of the costs, if any apply, that the parties must pay for mediation.
- (2) The mediator avoids misunderstandings by helping parties agree, before mediation begins, as to how they will share the full payment for their costs of mediation, if a mediation fee is involved.

d. Parties' Mutual Agreement on the Mediator

- (1) The mediator begins mediation only with mutual assent by the parties, as acceptability of the mediator as a person of integrity, objectivity, and fairness by all parties is important for the effective performance of mediation procedures.

e. Responsibility of the Parties in Mediation

- (1) The parties, not the mediator, are responsible for decisions made during mediation, as they are not being represented independently by the mediator.
- (2) The mediator never forces parties into reaching a settlement.
- (3) The mediator never makes decisions for parties.
- (4) The mediator does not change nor try to influence a decision made by the parties.

f. Mediator's Disagreement with a Settlement

- (1) The mediator may pursue one or more of the following alternatives when the parties reach an agreement that the mediator perceives as: 1) illegal, 2) grossly inequitable to the parties, 3) the result of bad-faith bargaining, 4) impossible to enforce, or 5) unlikely to hold over time:

[a] inform parties of the difficulties in the agreement;

[b] inform parties of the difficulties and make suggestions that could remedy the problem(s);

[c] withdraw as mediator without disclosing to parties the reason(s) for withdrawal;

[d] withdraw as mediator, but disclose in writing to the parties the reason(s) for withdrawal.

g. Termination of Mediation

- (1) The mediator suspends or terminates mediation when it appears that continuation would harm or prejudice any party.
- (2) The mediator terminates mediation when it appears that a party is unable or unwilling to make an effort to meaningfully participate in mediation.
- (3) The mediator terminates mediation when it appears that mediation is not productive, and its continuation would increase costs in time, emotions, and/or money.

2. The Responsibility of the Mediator to the Mediation Process

a. Mediator's Expertise

- (1) The mediator performs services only where qualified to do so by experience or training, and does not attempt to mediate with inadequate knowledge, when to do so would risk psychological, financial, legal, or physical damage to any party.
- (2) The mediator who lacks needed training or skills seeks assistance from a properly trained co-mediator or consultant, or makes referrals to a mediator who has the needed skills.

- (3) The mediator makes appropriate referrals when parties need additional information in order for mediation to continue.

b. When it is Improper to be Mediator

- (1) The mediator who has represented or counseled a client beforehand does not accept the role of mediator, unless the subject matter of the earlier representation or counseling is sufficiently different from the current matter that the current parties, when informed about the prior representation or counseling, mutually agree in writing that the mediator should conduct the mediation.
- (2) The mediator who has prior acquaintance with a party does not accept the role of mediator, unless the current parties, when informed of the prior acquaintance, mutually agree in writing that the mediator should conduct the mediation.
- (3) The mediator who has biases or prejudices about certain possible outcomes of mediation does not accept the role of mediator.

c. Mediator's Impartiality

- (1) The mediator does not advance the interests of any party over those of another party.
- (2) The mediator does not represent a party of mediation in court.

d. Mediator's Neutrality

- (1) The mediator is always impartial as to the parties but is not neutral to reasonableness; the mediator should say so when a proposed resolution appears unreasonable, and discuss its terms with the parties.

e. Mediation and Psychology

- (1) The mediator makes appropriate referrals to therapy or professional counseling to reach a settlement in emotion-laden cases, when a party appears to be irrational, or when any party expressly needs psychological help either prior to or during mediation.
- (2) The mediator does not proceed when a party is intoxicated or has psychological disorders that impair judgment.

f. Mediation and the Law

- (1) The mediator never offers legal advice to parties.
- (2) The mediator recommends the assistance of an attorney in cases where there is a question as to the legality of a proposed settlement, or allows parties to independently assess their legal position before reaching a settlement.

3. The Responsibility of the Mediator Toward Other Mediators

a. Joining Mediation in Progress

- (1) The mediator does not enter a case already in progress without first conferring with the other mediator.

b. Working with Other Mediators

- (1) The co-mediator keeps the other mediator(s) fully informed of developments during the course of mediation.
- (2) The co-mediator does not show disagreement with nor criticism of the other mediator(s).

4. The Responsibility of the Mediator to the Sponsoring Agency and to the Profession

a. Mediator's Role During Mediation

- (1) The mediator accepts full responsibility for the honesty and merit of interventions or proposals initiated by the mediator.
- (2) The mediator withdraws as intermediary when requested to by the parties, or upon discovering an inability to fulfill the requirements of this code of ethics.
- (3) The mediator represents the sponsoring or employing agency, and avoids improper conduct, professional shortcomings that would damage the effectiveness of that agency or the acceptability of the mediation process, and the appearance of professional impropriety.
- (4) The mediator does not use the third-party role for personal gain or advantage.
- (5) The mediator does not accept money nor anything of value for the performance of services, other than a conventional fee, salary, or stipend that may apply.

- (6) The mediator does not voluntarily incur obligations or perform professional services that might interfere with the ability to act as an impartial mediator.

5. The Responsibility of the Mediator to the General Public

a. Confidentiality of Mediation

- (1) The mediator normally does not reveal, outside the negotiations, information gathered during mediation.
- (2) The mediator may disclose information from mediation after obtaining the expressed, written permission of all pertinent parties to do so.
- (3) The mediator shall disclose information to the proper agencies upon learning that a child under the age of eighteen (18) years has had physical injury or injuries inflicted upon him or her, by other than accidental means, where the injury appears to have been caused as a result of physical abuse or neglect.

6. Consequences of Failure to Observe the Terms of the Code

a. Determining Whether a Violation has Occurred

- (1) Any complaint involving an allegation against a mediator shall be investigated by an ad hoc, five-member investigating committee. At least three members of each investigating committee shall be members of the Oklahoma Dispute Resolution Advisory Board and shall be selected by the Chairperson of the Advisory

Board. Both the complainant and the mediator under investigation shall each be entitled to designate a member of the committee. If either the complainant or the mediator under investigation, or both, fail to designate a member, the three members of the committee selected by the Chairperson shall designate the member(s) needed to complete the committee.

- (2) The investigating committee shall conduct inquiries as needed.
- (3) The investigating committee shall be responsible for determining whether a violation of the Act has occurred.

b. Consequences of a Violation

- (1) Disciplinary measures are left to the discretion of the investigating committee, and may consist of private reprimand, temporary suspension of privileges, revocation of registration as a mediator, or other sanctions determined by the investigating committee.

RULE IX.

CONTINUANCE

- A. A trial court may continue a criminal or a civil action at any stage of the proceedings to allow the parties to the action to pursue mediation pursuant to the Act. The continuance may be granted by the court in contemplation of dismissing the action; provided, the defendant in a criminal action or both the plaintiff and the defendant in a civil action execute a written agreement for participation in mediation, actually participate in mediation, and reach a resolution.

- B. No motion, hearing or trial shall be continued upon the stipulation of counsel alone that mediation is appropriate and should be considered. The court will not be obligated to automatically grant a motion for continuance simply because it is a joint application of all counsel. A continuance to pursue mediation may be allowed only by written order of the court. If all parties join in a written motion for a continuance so that mediation can be pursued and the same is filed in the case, the court should consider the requirement of good cause shown for continuance to have been met.
- C. A party seeking a continuance must make a direct application to the court by written motion, attach a fully executed Agreement to Mediate to the motion, and comply with all necessary formal requisites applicable to motions. The motion shall be entered by the court clerk upon the next appropriate motion docket relevant to the particular type of case involved. The motion should indicate that pursuit of mediation is the basis for the application, reveal the probable duration of the continuance, and may state the date upon which the action can be resumed if no resolution is reached through mediation. In criminal cases, the motion should reflect the fact that the defendant has given his written consent to the continuance sought. The motion does not require a brief in support thereof, unless the court directs otherwise.
- D. The court will consider all factors normally considered in entertaining a motion for continuance and, in granting the motion, may make the continuance contingent upon satisfaction of certain terms and conditions. The action may be continued only for such time as is necessary to conclude the mediation process. A motion for continuance that is uncontested may be disposed of by the announcement of one party without the necessity of all counsel appearing.

RULE X.

REPORTS

- A. Each county and municipality of this state which establishes dispute resolution/mediation programs under the authority of the Act, or any subsequent amended versions of the same, is directed to submit a report to the Director. The report shall be submitted to the Director no later than August 1 of each year. See also Rule IV supra.
- B. The report may be identical to any report that the entity providing mediation services is required to submit to its sponsoring agency; provided, the report includes the following subjects:
 1. The number of matters heard on their merits by mediators during the reporting period.
 2. The various types of cases that were heard during the reporting period, including the following categorizations:
 - a. Landlord-Tenant
 - b. Neighbors
 - c. Family Relations
 - d. Merchant-Customer
 - e. Employer-Employee
 - f. Roommates-Friends
 - g. Victim-Offender
 3. The number of matters resolved by mediation during the reporting period.

4. The types of sources from which referrals were received.
5. Any other information required by a sponsoring agency.
6. Nature of the sponsoring agency.
7. List of qualified mediators.

RULE XI.

DEFINITIONS

- A. Advisory Board - The Dispute Resolution Advisory Board established by the Director to oversee House Bill 1136 as set out in Rule II.
- B. Agency mediators - Mediators offering services within a county or municipality in Oklahoma under the sponsorship of an established agency.
- C. Civil matter - All disputes involving private rights where no possible governmental sanction or penalty can be imposed.
- D. Credentials - The minimum requirements for mediator certification set out in Rule IV.
- E. Criminal matter - Any dispute between parties involving a public wrong where a possible violation of a state statute or municipal ordinance has occurred.
- F. Initiating party - The party who first seeks mediation.
- G. Initial Interview - The screening process used by mediation programs to determine if a dispute could best be handled by mediation.
- H. Mediation - The process of resolving a dispute with the assistance of a mediator outside of a formal court proceeding.

- I. Mediator - Any person certified pursuant to the provisions of the Act to assist in the resolution of a dispute.
- J. Party - An individual person, company, or governmental agency, involved in a dispute resolution process as an initiating or responding party.
- K. Referral - The process by which agencies or individuals direct parties to a mediation program or, if mediation is inappropriate, to more appropriate forums for resolution of their disputes.
- L. Resolution - The final determination of the dispute, arrived at by the parties upon their own initiative, or by anyone authorized in writing to act in their behalf or with the help of a mediator.
- M. Responding party - The party who is named by the initiating party as the other party in a dispute where mediation is sought.
- N. Sponsoring Agency - The agency within a county or municipality in Oklahoma responsible for sponsoring the operation of a mediation program.

END