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## **I. CERTIFICATION REQUIREMENTS FOR MEDIATORS**

### **A. Initial Certification of Mediators by Local Centers**

#### *1. Initial Training of Mediators*

To obtain certification by a local center after January 1, 2003, every mediator must complete an initial community mediation training (“Initial Training”) that is at least 30 hours in duration and conducted by a trainer who has been certified by the New York State Unified Court System’s Office of ADR Programs (hereinafter “Office of ADR Programs”). The Office of ADR Programs considers a training to be conducted by a certified trainer as long as the certified trainer presents more than half of the training agenda and is present for at least 90% of training. Mediators who have completed at least 30 hours of comparable training conducted by a non-certified trainer (e.g., a trainer from another state or as part of a course at a college, university, graduate school or other educational institution) may request a waiver of the Initial Training requirement (see § (I)(A)(2), *below*).

Program Directors whose centers will offer an Initial Training must notify the Office of ADR Programs in writing no later than 30 days before the proposed training of the dates and times of the training and the name(s) of the certified trainer(s) who will conduct the training. The notification must include a copy of the proposed agenda.

#### *2. Waiver of Initial Training Requirement*

A prospective volunteer mediator who has completed mediation training that was conducted by a non-certified trainer may be deemed eligible to begin an apprenticeship (see § (I)(A)(3), *below*) after providing the Program Director with: (1) documentation indicating that the mediator completed the training; (2) a copy of the curriculum; (3) a full description of the training; and (4) the resume of the trainer. The training must have been at least 30 hours in duration.

Upon receipt of the above documentation, the Program Director must screen the prospective mediator before accepting the mediator into an apprenticeship. During this screening, the Program Director should evaluate the mediator’s training and any relevant mediation experience to ascertain whether the mediator possesses the necessary skills and knowledge to mediate at the center. The Program Director should compare the mediator’s prior training with the Training Curriculum Guidelines (see § (III), *below*) and the local center’s performance standards.

After the screening, the Program Director must contact the Office of ADR Programs to discuss the curriculum of the mediator’s prior training, as well as any subsequent mediation experience. The Program Director is also required to send the Office of ADR Programs written certification either that the mediator’s training and experience satisfies the goals of each of the Training Curriculum Guidelines or that the local center has provided supplementary training to the extent that the mediator’s prior

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training and experience did not satisfy the goals of one or more of the Training Curriculum Guidelines. For example, if a previous mediation training did not discuss Article 21-A of the New York State Judiciary Law, the prospective volunteer mediator is ineligible to begin an apprenticeship until the local center trains the prospective mediator on this subject and certifies to the Office of ADR Programs that it has done so. Program Directors must submit with the certification a copy of the prior training's curriculum or detailed summary of the curriculum if a copy is not available.

Staff from the Office of ADR Programs will review the curriculum and certification. Upon written approval by the Office of ADR Programs, the prospective mediator will be eligible to enter an apprenticeship.

### 3. *Apprenticeship*

To obtain certification by a local center after January 1, 2003, every mediator (including those whose Initial Training requirement has been waived) must participate in an apprenticeship. Each local center is required to develop and submit for approval to the Office of ADR Programs an apprenticeship plan that enables the center to monitor the development of its newest mediators and ensure that mediators are providing effective mediation services consistent with the criteria in the local center's performance standards (see § (I)(A)(4), *below*).

At a minimum, each center's apprenticeship plan shall require all mediators seeking certification to:

- a) Mediate or co-mediate at least two structured role-plays (The role-plays may be conducted as part of the Initial Training—and the duration of the role-plays may be applied towards the 30-hour requirement—provided that the apprentice is given a sufficient opportunity to: deliver an opening statement; help parties exchange information, identify negotiable issues and explore options for resolution; and draft a written agreement that incorporates the terms of the parties' resolution);
- b) Observe at least one mediation session involving an actual controversy between actual parties;
- c) Mediate or co-mediate at least five cases involving actual controversies between actual parties under the direct supervision of a coach, mentor, or staff-person; and
- d) Mediate or co-mediate at least one case and either debrief with staff or complete a self-evaluation instrument at the conclusion of the case.

A local center may submit an apprenticeship plan that deviates from the minimum requirements set forth above; however, approval by the Office of ADR Programs will depend significantly on the extent to which the local center explains why its apprenticeship deviates from the minimum requirements set forth above and demonstrates that its apprenticeship meets the interests of monitoring the

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development of its newest mediators and ensuring that mediators are providing effective mediation services.

#### 4. *Performance Standards and Assessment*

Mediators are certified by their local centers; it is the responsibility of the Program Director to certify to the Office of ADR Programs that each mediator is adequately prepared to mediate. Local centers must establish performance standards for mediators that are consistent with the Training Curriculum Guidelines (see § (III), *below*), that delineate the center's apprenticeship plan as approved by the Office of ADR Programs, and that include locally adopted standards of conduct. The Office of ADR Programs strongly encourages Program Directors to develop performance standards in cooperation with staff, volunteer mediators, and members of the board of directors for the local center.

Local centers are encouraged to adopt as a performance standard for their mediators a minimum number of cases mediated or years' experience as a certified mediator that each mediator must attain before the center will assign the mediator to a Special Case Type mediation (see § (I)(A)(5), *below*); however, the local center may waive this standard for mediators whose initial training occurs in a Combined Initial and Special Case Type Training (see § (I)(A)(6), *below*).

At the conclusion of each mediator's apprenticeship, the Program Director or his or her designee(s) must observe each apprentice mediate and provide a written assessment to each mediator, and the Program Director or his or her designee(s) shall not certify any mediator unless that mediator demonstrates that he or she is adequately prepared to mediate pursuant to the criteria in the local center's performance standards.

#### 5. *Advanced Training for Special Case Types*

Mediators assigned to one of the following Special Case Types must have been certified by the local center after completing the Initial Training (see §§ (I)(A)(1)-(4), *above*) and must complete additional training as outlined below:

- a) The local center shall not assign a mediator to a case referred from Family Court unless the mediator has completed the Initial Training as well as the following training:
  - (1) Parenting Disputes Involving Child Custody and Visitation\*—minimum 12 hours additional training;
  - (2) Child Support Matters\*—must have completed the 12 hours of training for Parenting Disputes Involving Child Custody and Visitation and additional training as approved by the Office of ADR Programs;

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\* This requirement applies to child custody, visitation or support disputes referred from Supreme Court, as well.

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- (3) Parent / Child or PINS (Persons In Need of Supervision) Matters—minimum 12 hours additional training; or
- (4) Child Permanency Matters—minimum 12 hours additional training
- b) Except for cases referred from the New York City Criminal Court Dispute Referral Center, the local center shall not assign a mediator to a case referred from a City, Civil or District Court unless the mediator has completed the Initial Training as well as six hours of additional training to mediate cases referred from that court, including training to satisfy the agreement-drafting needs of the local court.

Program Directors whose centers will offer training for a Special Case Type must notify the Office of ADR Programs in writing no later than 30 days before the proposed training of the dates and times of the training and the name(s) of the trainer(s) who will conduct the training. The notification must include a copy of the proposed agenda.

6. *Combined Initial and Special-Case-Type Trainings*

Trainings that combine content of the Initial Training and content of an Advanced Training for Special Case Types (see § (I)(A)(5), *above*) must be approved in advance by the Office of ADR Programs. Program Directors whose centers will offer a Combined Training shall notify the Office of ADR Programs no later than 60 days before the proposed training of the dates and times of the training, as well as the name of the certified trainer who will conduct the training. A Program Director shall not offer a Combined Training unless the Office of ADR Programs approves in writing the agenda, apprenticeship and assessment plan for that particular Combined Training.

Program Directors are encouraged to develop an enhanced apprenticeship plan specifically for mediators who complete a Combined Training.

7. *Mediators Certified Prior to January 1, 2003*

Each local center is encouraged to ensure that mediators certified prior to January 1, 2003 have not only completed training substantially equivalent to the training set forth in the Training Curriculum Guidelines, but also have participated in an apprenticeship substantially similar to the apprenticeship set forth in § (I)(A)(3), *above*.

Program Directors may exercise their discretion to waive additional training for mediators certified prior to January 1, 2003 in light of an individual mediator's experience and attendance at in-services and other training opportunities. However, Program Directors are expressly authorized to require additional training for mediators as needed.

**B. Requirements to Continue Active Status as a Certified Mediator**

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Mediators must annually complete at least six hours of continuing education in order to maintain their certification. This may include, at the discretion of the local Program Director, in-services scheduled by the local center, attendance at in-services conducted by other centers, or attendance at conferences or trainings that meet the needs of the local center. Mediators who attend trainings that are sponsored by the Office of ADR Programs shall receive credit toward their continuing education requirement.

In addition, mediators must conduct—as lead or co-mediators—a minimum of three (3) mediation sessions per year.

### C. Recordkeeping

From time to time, the Office of ADR Programs mails newsletters, brochures, surveys and other information directly to volunteer mediators. Upon request, the Program Director of each local center shall forward to the Office of ADR Programs each mediator’s name, contact information, certification status, and such other information as may be necessary. Mediators may notify the center in writing that they do not wish to be contacted directly by the Office of ADR Programs, in which case the Program Director shall maintain that notice on file and shall notify the Office of ADR Programs of the mediator’s request within 30 days of receiving that written request.

## II. CERTIFICATION REQUIREMENTS FOR MEDIATION TRAINERS

The Office of ADR Programs only certifies trainers who conduct Initial Trainings (see § (I)(A)(1), *above*) or trainings for Parenting Disputes Involving Child Custody and Visitation (see § (I)(A)(5), *above*). Accordingly, Program Directors whose centers offer trainings for one of the other Special Case Types (see § (I)(A)(5), *above*) or other trainings (*e.g.*, in-services) need not utilize the services of a certified trainer for those trainings.

Trainers seeking certification must apply for participation in the trainer certification process. This demanding process is intended to provide trainers with an appropriate level of support and guidance that will result in a successful training for volunteer mediators. The overriding goal of the process, regardless of final outcome, is to provide a learning experience that expands the trainer’s skills and knowledge of teaching volunteer mediators. Details about applying to participate in the process are included below.

Certified trainers and trainers seeking certification are encouraged to include presentations by individuals other than the primary trainer. Certified trainers and trainers seeking certification are deemed primarily responsible for developing the philosophical framework of the training, coordinating the presentations of co-trainers and bridging their material, and ensuring that mediators receive the necessary skills and knowledge for a given training. Although already certified trainers are required to present at least half the training materials, trainers who are being observed for certification by a staff member from the Office of ADR Programs are expected to attend the entire training and present at least three-quarters of the material in the training.

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Certified trainers are expected to train mediators on behalf of one or more Community Dispute Resolution Centers. A trainer's failure to train mediators on behalf of a local center within a three-year period may result in the removal of the trainer's name from the roster of mediation trainers certified by the Office of ADR Programs.

## A. Application Procedures for Trainers Seeking Certification by the Office of ADR Programs

### 1. *Application for the Trainer Certification Process*

The Office of ADR Programs will review applications twice a year: on April 1<sup>st</sup> for trainings to be conducted from October to February; and on September 1<sup>st</sup> for trainings to be conducted from March to September. A panel of Office of ADR staff and currently certified trainers will accept up to 6 applicants, up to three for each review period, each year to participate in the certification process. Applications are available at the Office of ADR web-site and from the Office of ADR Training Coordinator. Prior to completing an application, individuals are strongly encouraged to contact the Training Coordinator to learn more about the process.

### 2. *Office of ADR Programs Point-Person*

Once an individual has been accepted into the pre-work phase of the certification process, they will be assigned a point-person from the Office of ADR. The point person will serve a number of different roles during the process, including but not limited to:

- a) guide to the various stages of the process
- b) resource to help link you to other trainers and training materials
- c) coach/mentor with whom to discuss training/agenda development ideas, debrief training experiences, and explore professional development as a trainer
- d) lead observer during your training

### 3. *Between the time an applicant is accepted into the trainer certification process, and the date of their training, the trainer will work with his/her point person to create the following:*

- a) An agenda for the training. The agenda must identify the subject and duration of each component of the training. Moreover, the agenda must identify the individual who will conduct a given component of the training if that person is someone other than the proposed trainer. If the training is an Initial Training or a Combined Initial and Special-Case-Type Training, the agenda must comply with the Training Curriculum Standards set forth in § (III), *below*.
- b) A description of the exercises that will be used during the training
- c) The proposed manual for the training. Individuals seeking certification to conduct Initial Trainings must submit a copy of the manual that the trainer will use during the training. Each prospective trainer must either:

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- i) Author his or her own manual (trainers must comply with all copyright laws and are encouraged to obtain and keep on file permission to reproduce any materials used in the training); or
- ii) Utilize a previously-written manual that:
  - a) A currently certified Initial Trainer wrote; and
  - b) Adequately reflects the necessary skills, knowledge and standards of practice for the local center where the training will be held (the Program Director must notify the Office of ADR Programs in writing that the manual meets this requirement).
- d) A plan developed in consultation with the Program Director for apprenticing, observing and certifying training participants.
- e) The evaluation form that the trainer will distribute to the trainees at the conclusion of the training and forward to the Office of ADR Programs within 30 days thereafter.

## B. Requirements to Maintain Active Status as a Certified Trainer

### 1. *Professional Development*

Every certified trainer must:

- a) Conduct at least 20 hours of training each year. Aside from his/her area of certification, in-service trainings to mediations and trainings to various community groups can be included when calculating these hours.
- b) Receive a minimum of 7 hours of continuing education each year. Continuing education can include mediation related or training related in-service training, formal training, or attendance at conferences.
- c) Participate in a minimum of three mediations per year as lead or co-mediator.

### 2. *Administrative Requirements*

Every certified trainer must:

- a) Indicate in writing on an annual basis whether the trainer has:
  - (1) Complied with the Professional Development requirements set forth above, and
  - (2) Trained mediators on behalf of a Community Dispute Resolution Center within the past three years
- b) Notify the Office of ADR Programs of a change of address within 30 days of moving.
- c) Forward copies of completed evaluation forms to the Office of ADR Programs and the local center within 30 days of the conclusion of all trainings for which the

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trainer is certified (*i.e.*, Initial Training or training for Parenting Disputes Involving Child Custody and Visitation).

### 3. *Observation*

- a) Approximately once every six years, staff from the Office of ADR Programs will contact each certified trainer to schedule an observation of the trainer during an upcoming training. Following this observation, which will encompass a portion of the training, staff from the Office of ADR Programs will discuss the observation with the trainer. If significant concerns are raised at this time, the Office of ADR Programs will schedule an observation which will encompass the entire duration of a future training. If, after this second observation, significant concerns remain, a trainer's certification may be revoked.
- b) Certified trainers are encouraged to observe other trainers to enhance their own skills and methods. The Office of ADR Programs strongly encourages certified trainers to permit prospective trainers and other certified trainers to observe their trainings.

## III. TRAINING CURRICULUM GUIDELINES FOR INITIAL MEDIATION TRAINING

### 1. *The Initial Training Curriculum for the Community Dispute Resolution Centers Program shall include a history of dispute resolution.*

This material should define and distinguish the various dispute resolution processes—including negotiation, conciliation, facilitation, mediation, neutral evaluation, arbitration and litigation—and provide a historical context for the role that these processes have played internationally, nationally, statewide and at the local level.

### 2. *The Initial Training Curriculum for the Community Dispute Resolution Centers Program shall include a review of Chapter 847, Laws of 1981 (Article 21-A of the Judiciary Law).*

All details of Article 21-A must be discussed with specific emphasis on confidentiality, restitution, and adjournment in contemplation of dismissal. A review of the due-process rights (*e.g.*, right to call witnesses, etc.) set forth in Article 21-A should be given. The scope of the final and binding nature of any settlement should be discussed, as should the availability of any written settlement agreement to a referring court.

### 3. *The Initial Training Curriculum for the Community Dispute Resolution Centers Program shall include a description of the justice system as it relates to the local dispute resolution center.*

This material should explain the roles of the local dispute resolution center and the Unified Court System of the State of New York in providing dispute resolution services to individuals. It should describe the referral process between the local center and the courts, district attorney's office, law enforcement and other referral

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agencies. The material should help mediators distinguish between providing information and rendering legal advice.

*4. The Initial Training Curriculum for the Community Dispute Resolution Centers Program shall help mediators understand the dynamics of conflict.*

The material should help mediators recognize that conflict has inherently positive and negative consequences. The material should help mediators understand how various factors—including emotional, psychological, and economic factors, as well as conflict management styles and approaches to conflict—may affect and be affected by conflict, including how these factors promote conflict, impede the resolution of conflict, and facilitate the resolution of conflict. In particular, mediators should learn how to recognize and acknowledge the emotions of parties in conflict, and they should be trained to help parties constructively discuss the emotional components of their conflict.

*5. The Initial Training Curriculum for the Community Dispute Resolution Centers Program shall include a description of the goals and purposes of the mediation process.*

This material should explain how mediators can create opportunities for party empowerment and help mediators understand the importance of party self-determination in controlling the mediation process and resolving the parties' dispute (to the degree consistent with the standards of practice for each center). The material should convey that a mediator's "success" is measured by the degree to which he or she affords parties an opportunity to communicate consistent with the standards of practice for the local center, not by the frequency with which he or she helps parties draft agreements.

The material should help mediators understand that parties' responses to conflict and their communication skills may be enhanced during the mediation session and in the future as a result of the parties' experience in mediation.

*6. The Initial Training Curriculum for the Community Dispute Resolution Centers Program shall include a description of the limits of mediation.*

The material should help mediators identify power imbalances that may preclude the commencement or continuation of mediation and give them skills to bring mediation to closure safely when necessary. It should contain definitions for domestic violence and child abuse, and the CDRCP and local program guidelines for these issues must be reviewed.

*7. The Initial Training Curriculum for the Community Dispute Resolution Centers Program shall include a description of the local center's intake and referral procedures.*

The material should include all written forms used by staff to determine whether a given dispute is appropriate for mediation and a compilation of community resources available to parties upon referral from the local center. The material should also include any data collection procedures and copies of the most recent CDRCP Annual

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Report should be made available to trainees to demonstrate how that information is compiled.

*8. The Initial Training Curriculum for the Community Dispute Resolution Centers Program shall help mediators create a reasonably private, safe and supportive environment in which to conduct a mediation session and prepare them to deliver an opening statement.*

The material should help mediators effectively configure furniture and seat parties in the mediation room for the safety and comfort of the mediator(s) and parties. It should also advise mediators to review in advance any necessary paperwork and advise co-mediators to meet in advance of the session. The material should discuss appropriate dress for mediators and advise mediators to anticipate the needs of parties, including refreshment and breaks.

The material should include a sample opening statement that explains the confidentiality (and any exceptions thereto) of communications made during the session, the use of notes, the role of the mediator, the roles of any support people (including witnesses and attorneys), the decision-making authority of the parties, the voluntary nature of the process, and the potential use of private sessions.

*9. The Initial Training Curriculum for the Community Dispute Resolution Centers Program shall describe skills that mediators may use to help parties exchange information.*

The material should help mediators develop effective listening and questioning skills, including learning how to: reflect parties' statements; ask clarifying questions; use silence; identify negotiable issues in language that invites discussion; identify the values, needs, interests and other factors that motivate the parties' stated positions; and help parties recognize and develop common ground. The material should guide mediators on the benefits and limits of these techniques, as well as when and how to use these skills.

The material should also help mediators identify whether and when to utilize private sessions, and it should identify the particular confidentiality and parity concerns that are intrinsic to private sessions.

*10. The Initial Training Curriculum for the Community Dispute Resolution Centers Program shall describe techniques that can help parties organize their discussion in mediation.*

The material should explain how mediators and parties can organize and prioritize information for discussion. Moreover, the material should review techniques for working with parties to recognize and overcome impasse.

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*11. The Initial Training Curriculum for the Community Dispute Resolution Centers Program shall describe techniques for mediators that help parties develop and choose options for resolution.*

The material should discourage mediators from proposing and choosing solutions for parties. The material should help mediators develop parties' option-generation and option-selection skills. It should also explain how mediators can ask parties whether proposed solutions meet the parties' stated values, needs, interests and other factors that motivate the parties' stated positions.

*12. The Initial Training Curriculum for the Community Dispute Resolution Centers Program shall identify techniques for mediators that help them draft agreements for parties.*

The material should distinguish between verbal and written agreements. The material should also help mediators distinguish agreements from contracts. It should encourage mediators to use language supplied and agreed to by the parties that also satisfies the needs of any referring institution. It should also encourage mediators to draft specific, balanced agreements. The material should also discuss the potential consequences of including parties' apologies.

*13. The Initial Training Curriculum for the Community Dispute Resolution Centers Program shall include a summary of the local center's standards of practice.*

The material should help mediators identify key ethical obligations and distinguish between those ethical obligations and legal rights and responsibilities. Mediators should also be instructed to consult staff as necessary and given the skills to do so in a manner that disrupts the mediation process as little as possible.

The material should highlight the mediators' ongoing continuing education requirements and explain the certification requirements, including participation in an apprenticeship.

*14. The Initial Training Curriculum for the Community Dispute Resolution Centers Program shall include a discussion of cultural diversity.*

The material should prepare mediators to help people from different backgrounds reach consensus. Centers must provide services to individuals without regard to age, gender, race, sexual orientation, religion, national origin, or physical ability. Mediators should learn how and why conflict often results from clashes in cultural norms.

*15. The Initial Training Curriculum for the Community Dispute Resolution Centers Program shall afford opportunities for experiential learning.*

The agenda should include exercises that permit trainees to practice skills. The material should include specific instructions to guide role-players, as well as guidelines for observers and other participants.