

RULE 8. QUALIFICATIONS STANDARDS FOR NEUTRALS

(a) Purpose and applicability. The purpose of setting qualifications standards for neutrals who receive court referrals is to foster high quality dispute resolution services. This rule shall apply to neutrals who provide mediation, arbitration, conciliation, case evaluation, dispute intervention, mini-trials or summary jury trials in court-connected programs.

(b) General Provisions.

(i) General Qualifications Requirements. To be qualified to provide dispute resolution services for cases referred by a court to an approved program, a neutral shall satisfy the requirements specified in this rule for the particular process which he or she provides unless exempted pursuant to Rule 8(k). A neutral may meet one or all of these requirements using the alternative method, if any, specified for the particular process, pursuant to Rule 8(j). To remain qualified, neutrals shall satisfy the continuing education and continuing evaluation requirements, if any, specified in this rule for the particular process.

(ii) Additional Qualifications. Trial Court Departments may establish additional qualifications for neutrals in approved programs in addition to those set forth in this rule provided they are consistent with these rules. In establishing such additional standards, court departments may provide for consideration of such factors as an individual's experience as a neutral, educational background, work experience, or subject matter expertise, and may also require such neutrals to complete specialized training or demonstrate subject matter expertise. Academic degrees and professional licensure may be among the factors considered but cannot be used as preclusive criteria by court departments in establishing additional qualifications for mediators or arbitrators participating in approved programs.

(iii) Competence. In qualifying mediators and arbitrators to handle court referrals, approved programs may consider such factors as an individual's experience as a mediator or arbitrator, educational background, work experience and subject matter expertise. Academic degrees and professional licensure may be among the factors considered but cannot be used as preclusive criteria by approved programs in qualifying mediators and arbitrators for inclusion in court panels. Academic degrees and professional licensure may be used as preclusive criteria for qualifying conciliators, case evaluators, mini-trial neutrals and summary jury trial neutrals.

(iv) Duties of the Chief Justice for Administration and Management. The Chief Justice for Administration and Management (CJAM) shall oversee and monitor the implementation of this rule, and suggest changes as needed. The CJAM shall, in consultation with the Standing Committee, develop guidelines for implementing the provisions of this rule. The CJAM shall collect, publish and distribute to approved programs any changes in the guidelines, and shall maintain the annual certifications submitted by approved programs as to the training, evaluation, mentoring and continuing education of neutrals.

(v) Duties of Approved Programs. Each approved program shall ensure that the neutrals on its

roster meet the applicable training, mentoring, evaluation, continuing education, continuing evaluation, professional and experience requirements set forth in this rule and the guidelines adopted pursuant to Rule 8(b)(iv), and any additional qualification requirements adopted by a Trial Court Department. Each approved program shall ensure that the neutrals meet the standards set forth in the rule and guidelines, that any alternative method relied upon by a neutral to meet the standards is in compliance with Rule 8(j) and the guidelines, and that reliance upon the limited exemption is in compliance with Rule 8(k). To carry out these duties, each program shall take the following specific actions:

(a) Attest in its application for program approval that it will assign cases referred by a court only to neutrals who meet the qualifications standards;

(b) Maintain for the tenure of the neutral's association with the program, and for three years thereafter, documentation which demonstrates that the neutral meets the qualifications standards. Such documentation shall include, without limitation, the following:

- (i) Name of the neutral;
- (ii) Name of the training organization where the neutral satisfactorily completed any required training (or documentation of the neutral's compliance with the alternative method of meeting any training requirement pursuant to Rule 8(j));
- (iii) Outcome of any required mentoring and evaluation for each neutral (or documentation of the neutral's compliance with the alternative method of meeting any evaluation requirement pursuant to Rule 8(j));
- (iv) Documentation of the neutral's participation in any required continuing education and in any required continuing evaluation;
- (v) Documentation demonstrating that the neutral meets any applicable requirements as to professional licensure, experience or subject matter expertise; and
- (vi) Documentation demonstrating that the neutral qualifies for the limited exemption set forth in Rule 8(k).

(c) Certify annually to the AOTC that the neutrals on its roster meet the requirements for training, mentoring and evaluation, and continuing education set forth in this rule and the guidelines.

(d) Make the documentation demonstrating a neutral's qualification and the documentation demonstrating the program's compliance with the rules and the guidelines available to the AOTC and to the Chief Justices of the Trial Court Departments for inspection and copying upon request.

(c) Mediators.

(i) Training Requirement. A mediator shall successfully complete a basic mediation training course of at least thirty hours and a court orientation, both of which comply with the guidelines

adopted pursuant to Rule 8(b)(iv). A mediator shall also complete any additional, specialized training required by a Trial Court Department.

(ii) Mentoring and Evaluation Requirement. A mediator shall complete the mentoring and evaluation requirements contained in the Guidelines adopted pursuant to Rule 8(b)(iv).

(iii) Continuing Education. A mediator shall participate in any continuing education required by the approved program with which he or she is affiliated or by the court department in which he or she is providing services.

(iv) Continuing Evaluation. A mediator shall participate in regular evaluation as required by Rule 7.

(d) Arbitrators.

(i) Training Requirement. An arbitrator shall successfully complete a basic arbitration training course of at least eight hours and a court orientation, both of which comply with the guidelines adopted pursuant to Rule 8 (b)(iv). An arbitrator shall also complete any additional, specialized training required by a Trial Court Department.

(ii) Mentoring and Evaluation Requirement. An arbitrator shall complete the mentoring and evaluation requirements contained in the guidelines adopted pursuant to Rule 8(b)(iv).

(iii) Continuing Education. An arbitrator shall participate in any continuing education required by the approved program with which he or she is affiliated or by the court department in which he or she is providing services.

(iv) Continuing Evaluation. An arbitrator shall participate in regular evaluation as required by Rule 7.

(e) Conciliators.

(i) Professional Qualifications. A conciliator must be admitted to the bar of the Commonwealth of Massachusetts, be in good standing with the Board of Bar Overseers, and have engaged in the practice of law within the Commonwealth of Massachusetts for at least three years.

(ii) Training Requirement. A conciliator shall successfully complete a conciliation training course of at least eight hours and a court orientation, both of which comply with the guidelines adopted pursuant to Rule 8(b)(iv). A conciliator shall also complete any additional, specialized training required by a trial court department.

(iii) Mentoring and Evaluation Requirement. A conciliator shall, if required to do so at the discretion of the approved program with which he or she is affiliated, complete the mentoring and evaluation requirements of that program contained in the guidelines adopted pursuant to Rule 8(b)(iv).

(iv) *Continuing Education.* A conciliator shall participate in any continuing education required by the approved program with which he or she is affiliated or by the court department in which he or she is providing services.

(v) *Continuing Evaluation.* A conciliator shall participate in regular evaluation as required by Rule 7.

(f) Case Evaluators.

(i) *Professional Qualifications.* A case evaluator must be admitted to the bar of the Commonwealth of Massachusetts, be in good standing with the Board of Bar Overseers, and must have seven years of trial experience within the Commonwealth of Massachusetts as an attorney or judge.

(ii) *Training Requirement.* A case evaluator shall successfully complete a basic case evaluation training of at least eight hours and a court orientation, both of which comply with the guidelines adopted pursuant to Rule 8(b)(iv). A case evaluator shall also complete any additional, specialized training required by a Trial Court Department for case evaluators.

(iii) *Mentoring and Evaluation Requirement.* A case evaluator shall complete the mentoring and evaluation requirements contained in the guidelines adopted pursuant to Rule 8(b)(iv).

(iv) *Continuing Education.* A case evaluator shall participate in any continuing education required by the approved program with which he or she is affiliated or by the court department in which he or she is providing services.

(v) *Continuing Evaluation.* A case evaluator shall participate in regular evaluation as required by Rule 7.

(g) Mini-Trial Neutrals.

(i) *Professional Qualifications.* A mini-trial neutral shall have at least ten years experience evaluating legal disputes as a judge, arbitrator, attorney, or executive level decision-maker.

(ii) *Training Requirements.* A mini-trial neutral shall successfully complete the training required for mediators in Rule 8(c)(i), and the training required for case evaluators in Rule 8(f)(ii).

(iii) *Mentoring and Evaluation Requirement.* A mini-trial neutral shall complete the mentoring and evaluation requirements contained in the guidelines adopted pursuant to Rule 8(b)(iv).

(iv) *Continuing Education.* A mini-trial neutral shall participate in any continuing education required by the approved program with which he or she is affiliated or by the court department in which he or she is providing services.

(v) *Continuing Evaluation.* A mini-trial neutral shall participate in regular evaluation as required

by Rule 7.

(h) Summary Jury Trial Neutrals.

(i) Professional Qualifications. A summary jury trial neutral shall be an arbitrator qualified under this rule, an attorney, or a former judge, with at least ten years of experience as an arbitrator, trial attorney, or judge. The summary jury trial neutral must be in good standing in any jurisdiction in which he or she is licensed to practice law.

(ii) Continuing Education. A summary jury trial neutral shall participate in any continuing education required by the approved program with which he or she is affiliated or by the court department in which he or she is providing services.

(iii) Continuing Evaluation. A summary jury trial neutral shall participate in regular evaluation as required by Rule 7.

(i) Dispute Intervention Neutrals.

(i) Training Requirement. A provider of dispute intervention services shall successfully complete a training course and a court orientation, both of which comply with the guidelines adopted pursuant to Rule 8(b)(iv). A provider of dispute resolution services shall also complete any additional specialized training required by the Trial Court Department in which he or she is providing dispute intervention services.

(ii) Mentoring and Evaluation Requirement. A provider of dispute intervention services shall complete the mentoring and evaluation requirements set forth in the guidelines adopted pursuant to Rule 8(b)(iv).

(iii) Continuing Education. A provider of dispute resolution services shall participate in any continuing education required by the approved program with which he or she is affiliated or by the court department in which he or she is providing services.

(iv) Continuing Evaluation. A provider of dispute resolution services shall participate in regular evaluation as may be required by the relevant Trial Court Department.

(j) Alternative Methods of Satisfying Requirements. A neutral may be qualified by a program to handle cases referred by a court by demonstrating that he or she meets the alternative methods set forth in the guidelines of satisfying the training, mentoring and evaluation requirements set forth in this rule and the guidelines. Programs that seek to qualify neutrals through the alternative methods provision are required to compile necessary documentation pursuant to Rule 8(b)(v) and applicable guidelines.

(k) Limited Exemption from Training, Mentoring and Evaluation Requirements. As a general rule, all neutrals in approved programs shall satisfy the training, mentoring and evaluation requirements set forth in Rule 8. However, the Chief Justice of any Trial Court

Department may elect, as a one-time exception to this rule, to exempt mediators, arbitrators, case evaluators, and conciliators from those requirements, subject to the provisions set forth below. The Chief Justice for Administration and Management shall establish a process for notification and a deadline for submission by departmental Chief Justices of their decision to utilize the exemption, and for programs to apply for the exemption.

(i) One Time Exemption of Certain Neutrals. This exemption will be a one-time option available only to those mediators, arbitrators, case evaluators and conciliators who meet the requirements set forth in Rule 8(k). No other neutral shall be exempted from the training, mentoring or evaluation requirements of Rule 8.

(ii) Designation of Neutrals. Each program approved on or before July 1, 2002, by a Department in which this exemption is available pursuant to this Rule and which continues as an approved program on the date on which Rule 8 becomes effective shall submit to the Chief Justice of that Department pursuant to the process established by the Chief Justice for Administration and Management, a list of any mediators, arbitrators, case evaluators and conciliators who qualify for the exemption. The program shall include a complete and detailed description of the qualifications of each such mediator, arbitrator, case evaluator or conciliator as evidence of his or her eligibility.

(iii) Requirements for Exemption. A program may consider a neutral eligible for this exemption only if he or she was serving as of July 1, 2002, on a panel of a program approved on or before that date which continues as an approved program on the date on which Rule 8 becomes effective. In addition, a program shall consider the neutral's overall experience and other factors under Rule 8 (e.g. prior training, mentoring, evaluation, the recency of his or her experience

and the number and types of cases handled). An eligible individual must have served in the process for which he or she is seeking exemption for five years during the last six years prior to July 1, 2002, and meet the following additional requirement:

(a) *Mediators*. Must have provided at least 300 hours of mediation during that period.

(b) *Arbitrators*. Must have provided at least 150 hours of arbitration during that period.

(c) *Case Evaluators*. Must have provided at least 100 hours of case evaluation during that period.

(d) *Conciliators*. Must have provided at least 100 hours of conciliation during that period.

(iv) *Transferability of Exemption*. A mediator, arbitrator, case evaluator or conciliator who qualifies for this exemption in a Trial Court Department shall be qualified to provide services in the process in which he or she is exempted in another approved program within that Department subject to the approval of the other program. A mediator, arbitrator, case evaluator or conciliator who seeks exemption in another Department must meet the exemption through a program approved in that other Department.

(v) *Limitations on Exemption*. This provision does not exempt any mediator, arbitrator, case evaluator or conciliator from complying with the continuing education and continuing evaluation requirements of Rule 8.

(l) Effective Date. The effective date of this rule shall be January 1, 2005, except that to be qualified to provide dispute intervention, individuals employed by the courts on the effective date of this rule shall have until January 1, 2007 to demonstrate compliance with the requirements set forth in this rule. Employees hired to provide dispute intervention after the effective date of this rule must satisfy all the requirements of this rule within thirty-six (36) months of the date of hire.