

# TRIAL COURT

STANDING COMMITTEE ON DISPUTE RESOLUTION



UNIFORM RULES ON DISPUTE  
RESOLUTION

JANUARY 2020

*Commonwealth of Massachusetts*

*Supreme Judicial Court Rule 1:18  
The Uniform Rules on Dispute Resolution*

*Including Revised  
Explanatory and Implementation Materials  
(4<sup>th</sup> Printing)*

*January 2020*

*Trial Court Standing Committee on Dispute Resolution*

## **FOREWORD**

The Trial Court Standing Committee on Dispute Resolution is pleased to issue the fourth printing of the Uniform Rules on Dispute Resolution, including revised explanatory materials.

This publication replaces the June 2005 version. The Standing Committee is appointed by the Honorable Paula M. Carey, Chief Justice of the Trial Court, and charged with promoting and implementing the Uniform Rules throughout the seven Trial Court Departments, as well as developing methods by which all seven dispute resolution processes can be sustained as core functions of a state-of-the-art justice system.

The Uniform Rules on Dispute Resolution were initially approved by the Supreme Judicial Court on May 1, 1998 and Rule 8 was adopted in 2005. Rule 8 sets forth qualification standards for neutrals who provide court-connected dispute resolution services, including requirements for training, evaluation, mentoring, and continuing education for the seven categories in which neutrals work under the Uniform Rules; i.e., mediation, arbitration, case evaluation, conciliation, mini-trials, summary jury trials, and dispute intervention.

For this new edition, the Standing Committee on Dispute Resolution updated the Frequently Asked Questions section and added the new Trial Court Policy on Fees for Dispute Resolution Services to the material. The new Trial Court Policy on Fees for Dispute Resolution Services was adopted in 2019. The new Fee policy clarifies the current rules regarding ethical behavior of programs about charging fees after a free service has been provided. This policy allows approved programs to charge fees for continuation or subsequent services for the same case or dispute after a free service as long as the program is approved to charge fees from the Departmental Chief Justice and the fees for continuation or subsequent services are agreed to in writing by the parties prior to the initial free dispute resolution service. The Trial Court Policy on Fees for Dispute Resolution Services can be found on page 71 of this publication.

Over the years, the nomenclature has evolved from the term ADR to Dispute Resolution. The Supreme Judicial Court years in advance predicted this shift when it named the committee “Dispute Resolution.” However, our coordinator’s title has always been “ADR Coordinator.” I view it in this manner. The “A” once stood for Alternative in ADR. With the availability of multiple dispute resolution options under the S.J.C. Rule 1:18 as implemented by the Standing Committee, the “A” has become “Appropriate” dispute resolution as the many choices continue to weave themselves into the fabric of the court system for the benefit of litigants and the Bar.

We invite you to visit the Trial Court’s website to stay abreast of the changing information on dispute resolution in the Trial Court: <https://www.mass.gov/alternative-dispute-resolution-and-mediation>.

Finally, I wish to thank my predecessor Chairs of the Standing Committee on Dispute Resolution, Judge Peter Agnes, Judge John Cratsley, Judge Gail Perlman and Judge Mark Mason, as well as

the ADR Coordinator for the Trial Court, Tim Linnehan, for fostering dispute resolution in the Trial Court.

My tenure as Chair ends with my retirement in January 2020. I will be continuing on the Standing Committee as Vice Chair. I look forward to serving under the leadership of the new Chair, Judge David Donnelly. I wish him well as he further expands on the Standing Committee's work of institutionalizing appropriate dispute resolution options into the judicial system.

If you have any questions about dispute resolution in the Trial Court, please contact the ADR Coordinator for the Trial Court, Attorney Timothy Linnehan at 617-878-0372, or e-mail him at [timothy.linnehan@jud.state.ma.us](mailto:timothy.linnehan@jud.state.ma.us).

Judge David G. Sacks  
Chair, Trial Court Standing Committee on Dispute Resolution  
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**Trial Court  
Standing Committee on Dispute Resolution  
2020**

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**OVERVIEW OF ADR IN THE TRIAL COURT**  
**2020**  
**Court-Connected ADR: An Option in Every Department**

Alternative Dispute Resolution (ADR) is a generic term used to describe certain processes in which an impartial third person assists parties in settling a case without the need for trial. ADR has developed because in some cases a non-adjudicatory result is quicker, less expensive and more satisfying.

**Supreme Judicial Court Rule.** Court-Connected ADR is governed by the **Uniform Rules on Dispute Resolution, Supreme Judicial Court Rule 1:18**, which took effect in 1999 and are designed to offer litigants more options in resolving disputes. There are seven ADR processes defined in the Uniform Rules: arbitration, conciliation, case evaluation, dispute intervention, mediation, mini trial and summary jury trial. The best known and most used ADR process is mediation.

**The Trial Court Standing Committee on Dispute Resolution** advises the Chief Justice of the Trial Court with respect to the implementation and oversight of court-connected dispute resolution services in the Trial Court.

**Each Trial Court Department** has designated a person to be responsible for the administration of ADR services within that department. In addition, each division in every Trial Court Department has designated someone to be the local dispute resolution coordinator to maintain information about ADR and assist the public in using those services. Pursuant to Rule 4(a) of the Uniform Rules, programs are approved by the Chief Justice of each of the Trial Court Departments, and most are approved in more than one department.

There are **68 individual court-approved programs** providing alternative dispute resolution services in the seven Trial Court Departments. Pursuant to Rule 4(a) of the Uniform Rules, programs are approved by the Chief Justice of each of the Trial Court Departments, and most are approved in more than one department. Overall these 68 programs account for 102 program approvals across the seven departments.

Of the 68 programs, 38 operate as primarily free or non-fee-based programs in the Boston Municipal, District and Juvenile Court Departments. Many of these programs are also approved in the Land Court, Superior Court and Probate and Family Court Departments and are allowed to charge fees for services in those Departments. The other 30 programs operate primarily as fee-based programs in the Land Court, Superior Court and Probate and Family Court Departments. Services provided by in-house providers and Bar-sponsored programs are free to litigants except some conciliation programs may be approved to charge administrative fees in the Probate and Family Court Department.

**The Boston Municipal Court Department** has approved **5** free community mediation programs providing free mediation services in civil, small claims, summary process, harassment prevention order, and minor criminal cases in eight divisions.

**The District Court Department** has approved **23** programs providing free mediation services in small claims, summary process and minor criminal cases in 58 of the 62 Court divisions by volunteer mediators. The District Court has 6 conciliation programs that are supplying services in 10 divisions.

**The Housing Court Department** has approved **7** programs, an in-house ADR program (office of the Housing Specialists) and an outside program that provides specific services. The Housing Specialists are approved in all six court divisions to provide free mediation and dispute intervention services; they resolve hundreds of summary process and landlord/tenants disputes weekly. Six fee charging programs have been approved for cases requiring subject matter expertise in the areas of lead paint, mold and asbestos, zoning litigation and environmental litigation.

**The Juvenile Court Department** has **18** approved programs offering free mediation services for Child Requiring Assistance (CRA), delinquency and parent-child cases. Permanency mediation services are available in some counties.

**The Land Court Department** has **5** approved programs providing ADR services. In addition to these court-connected providers, the Land Court has an on-site part-time mediator pilot program. Pursuant to Land Court Standing Order 1-04, through which the court adopted its individual calendar system and time standards, the judge assigned to each case must conduct an “Early Intervention Event” as defined by SJC Uniform Rules on Dispute Resolution not later than at the Case Management Conference, held within 90 days of the filing of the complaint.

**The Probate and Family Court Department** has **31** approved programs offering ADR services. This includes an “in-house” dispute intervention services administered by the Office of the Commissioner of Probation and conducted by probation officers in each of the 14 court divisions. The Probate and Family Court has 11 conciliation programs.

**The Superior Court** has approved **17** private sector programs that offer ADR services. Among these are two programs that provide free conciliation services in civil cases through volunteer attorneys in Essex County and Middlesex County (Lowell). The Superior also has a free in-house mediation program, primarily in Worcester, Middlesex, Norfolk and Suffolk counties, that is staffed by three volunteer retired Superior Court judges and an ADR Officer employed by the court.

**COMMONWEALTH OF MASSACHUSETTS  
MASSACHUSETTS TRIAL COURT**

**POLICY STATEMENT ON DISPUTE RESOLUTION ALTERNATIVES**

Adopted in 1993 by Supreme Judicial Court in consultation with  
Chief Justice for Administration and Management of the Trial Court

**POINT ONE: THE JUDICIAL BRANCH SHOULD MAKE AVAILABLE APPROPRIATE DISPUTE RESOLUTION ALTERNATIVES TO THE TRADITIONAL PROCESS OF ADJUDICATION. THESE ALTERNATIVES INCLUDE, BUT ARE NOT LIMITED TO, MEDIATION, ARBITRATION, MINI OR SUMMARY TRIALS, CASE EVALUATION, AND COMPLEX CASE MANAGEMENT SERVICES. THE AVAILABILITY OF DISPUTE RESOLUTION ALTERNATIVES IN THE COURTS SHOULD NOT DEPEND ON THE FINANCIAL RESOURCES OF THE PARTIES. THE JUDICIAL BRANCH WILL MAKE EVERY EFFORT TO OBTAIN ADEQUATE RESOURCES FOR THESE SERVICES.**

Commentary: There is a large body of evidence that establishes that the use of appropriate dispute resolution methods other than adjudication at an early stage in the process substantially reduces the cost, time, and complexity of litigation in our courts, and promotes greater satisfaction on the part of litigants and their attorneys. In defining a vision of the public justice system of the future, the Chief Justice's Commission on the Future of the Courts made this observation:

Traditional adjudicatory justice - based on the advocacy of opposing positions and judgments by impartial decision makers - may continue to play the central role. But it will be a less utilized and less satisfactory role unless bold measures are taken in the next 30 years to correct what the public views as shortcomings in the process and administration of "conventional" justice....Alternative Dispute Resolution (ADR) has evolved in part because in some cases non-adjudicatory conflict resolution techniques produce more satisfying results, swifter resolutions, and lower costs, both social and personal....Institutionalizing ADR means that the Commonwealth's courts must accelerate the incorporation of alternative dispute resolution into the justice system, even as adjudication is improved.

The Chief Justice's Commission on the Future of the Courts, Reinventing Justice, 2022 (1992).

The addition of Alternative Dispute Resolution to the basic mission of the courts is a fundamental change, which cannot be implemented without additional staff, space and training. The purpose of this statement is to set forth a long-range goal, with the understanding that it will be accomplished as resources are obtained for this purpose.

**POINT TWO: DISPUTE RESOLUTION SERVICES PROVIDED BY THE TRIAL COURT**

**MUST CONFORM TO CONSISTENT, SYSTEMWIDE STANDARDS WITH REGARD TO: THE APPROPRIATENESS OF ALTERNATIVE DISPUTE RESOLUTION AND OF PARTICULAR PROCEDURES IN PARTICULAR TYPES OF CASES; MANDATORY REFERRALS TO ALTERNATIVE DISPUTE RESOLUTION; THE SELECTION AND QUALIFICATIONS OF SERVICE PROVIDERS; THE QUALITY, INTEGRITY, AND COST OF THE SERVICES PROVIDED; AND THE NEED FOR CONFIDENTIALITY (HEREINAFTER “THE STANDARDS”). THE SUPREME JUDICIAL COURT, IN CONSULTATION WITH THE CHIEF JUSTICE FOR ADMINISTRATION AND MANAGEMENT, SHALL APPOINT A STANDING COMMITTEE ON DISPUTE RESOLUTION ALTERNATIVES COMPRISED OF JUDGES, ATTORNEYS, MEMBERS OF THE PUBLIC, ACADEMICS AND DISPUTE RESOLUTION PROFESSIONALS, WHICH SHALL PROVIDE ASSISTANCE WITH THE DEVELOPMENT OF THE STANDARDS AND THE IMPLEMENTATION OF DISPUTE RESOLUTION ALTERNATIVES THROUGHOUT THE TRIAL COURT. THE STANDARDS SHALL BE SUBJECT TO THE APPROVAL OF THE SUPREME JUDICIAL COURT. TRIAL COURT DEPARTMENTS MAY ESTABLISH ADDITIONAL STANDARDS NOT INCONSISTENT WITH THIS POLICY AND THE STANDARDS.**

Commentary: Dispute Resolution Services are considered to be “provided by” the Trial Court under this policy whenever the service, including case screening, evaluation, assessment, or dispute resolution, is (1) provided by a person approved by or under the control of the court, whether a paid employee or volunteer, (2) paid for with funds under the control of the court, or (3) provided by a person or organization independent of the court, but as the result of a specific court referral, whether to a for-profit or not-for-profit provider. Court referrals to private for-profit dispute resolution providers will be subject to regulation under the Standards.

The Chief Justice’s Commission on the Future of the Courts recommended the establishment of a Supreme Judicial Court Standing Committee on Dispute Resolution, to “foster experimentation with and evaluation of dispute resolution methods.” (Reinventing Justice: 2022, p. 21.) The Standing Committee established pursuant to this policy should give advice concerning alternative dispute resolution issues and programs both to the Chief Justice for Administration and Management and to the Supreme Judicial Court.

**POINT THREE: NO PERSON EMPLOYED BY OR PERFORMING SERVICES FOR THE TRIAL COURT SHALL DIRECTLY OR INDIRECTLY REFER A PARTY OR HIS OR HER ATTORNEY TO A PARTICULAR ALTERNATIVE DISPUTE RESOLUTION PROVIDER OTHER THAN IN ACCORDANCE WITH THE STANDARDS. THE RESPONSIBILITY TO REGULATE DISPUTE RESOLUTION SERVICES PROVIDED BY THE COURTS DOES NOT EXTEND TO DISPUTE RESOLUTION SERVICES PROVIDED IN THE PRIVATE MARKETPLACE AND INDEPENDENT OF THE COURTS.**

Commentary: Under this policy, the term “refer” is intended to be interpreted broadly to include an explicit order, a direction, or a suggestion by the court. The term “refer” shall not, however, include any of the following actions by the court which do not amount to providing dispute resolution services under this policy: (1) encouraging the parties or the attorneys to consider alternatives to traditional litigation offered by the courts or in the private marketplace; (2) informing the parties of the existence of a directory of dispute resolution services prepared by a bar association or the like; or (3) taking any step such as granting a continuance to enable the parties to explore or receive dispute resolution services in the private marketplace.

It is not the policy of the Trial Court to suppress or discourage the provision of dispute resolution services in the private marketplace, whether offered by any for-profit or not-for-profit provider. However, it is the policy of the Trial Court to avoid conflicts of interest and the appearance of favoritism in providing or referring litigants to dispute resolution services. For this reason, no court funds or resources may be expended to further the interests of any private dispute resolution provider other than in conformance with the Standards.

Nothing contained in this policy should be interpreted to affect the right of attorneys and parties to contract with or to otherwise arrange for dispute resolution services independent of the courts.

Nothing contained in this policy is designed or to be interpreted to limit the authority of the Supreme Judicial Court to regulate further the conduct of attorneys or retired judges who may seek or obtain employment with private sector dispute resolution providers, or to take other steps to regulate further the practice of law.

## **SUMMARY OF MAJOR PROVISIONS UNIFORM RULES ON DISPUTE RESOLUTION**

**RULE 1. SCOPE, APPLICABILITY AND PURPOSE OF RULES.** The Rules govern court-connected dispute resolution in the Trial Court. Only Rule 9 (the ethical standards) applies to court-connected dispute resolution in the appellate courts. If the Rules conflict with other court rules, the other court rules govern.

**RULE 2. DEFINITIONS.** Defines key terms used in the rules. “Court-connected dispute resolution services” means ADR services provided as a result of a court referral, which includes providing a party with the name of one or more ADR provider or directing a party to a particular ADR provider. “Neutral” means a mediator or other ADR practitioner.

**RULE 3. ADMINISTRATIVE STRUCTURE FOR COURT-CONNECTED DISPUTE RESOLUTION SERVICES.** Provides for the appointment of a Standing Committee on Dispute Resolution, to advise the courts’ leaders about ADR. Each Trial Court department may appoint an ADR advisory committee and designate an ADR director. Each local court is required to designate an ADR coordinator. The Trial Court is to provide ADR advice and consultation if funds are available.

**RULE 4. IMPLEMENTATION OF COURT-CONNECTED DISPUTE RESOLUTION.** Each Trial Court Department Chief Justice is required to approve programs qualified to receive court referrals, and the Trial Court will distribute a combined list of approved programs. Each Trial Court department must prepare an annual ADR plan and seek funds needed for ADR under the plan. Mandatory ADR is limited to approved pilot programs which meet certain criteria. Contracts with ADR programs must be awarded through a competitive process. Contracts may provide funds, provide for a court to refer all or most cases to the program, or both.

**RULE 5. EARLY NOTICE OF COURT-CONNECTED DISPUTE RESOLUTION SERVICES.** Clerks are required to provide information about court-connected dispute resolution services to attorneys and unrepresented parties.

**RULE 6. DUTIES OF COURTS WITH RESPECT TO COURT-CONNECTED DISPUTE RESOLUTION SERVICES.** Courts may refer cases only to approved ADR programs, and must attempt to distribute cases fairly among approved programs, taking into account geographic proximity and other factors. A court may send all or most of its cases to one program if it has a contract with that program under Rule 4. Courts may require parties and/or attorneys to attend ADR screening sessions, may set deadlines for ADR processes, and may provide space for ADR sessions.

**RULE 7. DUTIES OF APPROVED PROGRAMS WITH RESPECT TO COURT-CONNECTED DISPUTE RESOLUTION SERVICES.** Approved programs are required to undergo regular monitoring and evaluation, to develop and comply with written policies and

procedures, to assemble and update rosters of neutrals through fair processes, and to orient and supervise neutrals. Programs may charge fees approved by the Chief Justice of the Trial Court department.

## **RULE 8. QUALIFICATIONS STANDARDS FOR NEUTRALS.**

**Introduction.** Rule 8 defines the qualifications standards for neutrals who provide court-connected dispute resolution services. It establishes training, mentoring and evaluation continuing education and evaluation requirements for seven categories of neutrals – mediators, arbitrators, case evaluators, conciliators, mini-trial neutrals, summary jury trial neutrals, and dispute intervenors. The general qualification requirements are set out in the Rule itself. The details of each qualification requirement are set out in the Guidelines which were promulgated to give trainers and program directors the guidance they need for creating and maintaining rosters of qualified neutrals.

**Standard Requirements.** All neutrals must be trained, mentored and evaluated in accordance with the Rule and the Guidelines in order to provide court-connected dispute resolution services. The exact length of the training for each process is set out in the Rule for that specific process. In addition, to remain qualified most neutrals must perform continuing education and participate in continuing evaluation.

**Alternative Methods.** This section of the Rule provides a substitute way to satisfy the qualification requirements of Rule 8. The alternative method permits previous training, mentoring and evaluation experiences substantially equivalent to the standard requirements. This provision was created to assist neutrals who were trained in another state or received training before the adoption of Rule 8.

**Guidelines.** Rule 8 requires the Chief Justice for Administration and Management to create Guidelines for Implementation of Qualifications Standards for Neutrals. The Guidelines contain specific requirements for each ADR process concerning training, mentoring and evaluation; a skills check list for competency; and a description of the types of prior experience needed to fulfill the alternative method for satisfying the qualifications requirements.

## **RULE 9. ETHICAL STANDARDS**

**Introduction.** If there is a conflict between the Ethical Standards and the Rules of Professional Responsibility, the Rules of Professional Responsibility control. Some of the provisions of the Ethical Standards apply to mediation and other consensual conflict resolution processes and not to arbitration.

**Impartiality.** Impartiality means freedom from favoritism or bias in conduct and appearance. A neutral must be impartial regarding the parties and the subject matter. If a neutral cannot be impartial at any point in the process, he or she must withdraw even if the parties do not object.

**Informed consent.** The neutral must make all reasonable efforts to help each party understand the process and the agreement and to ensure that each party consents to any agreement. If the

neutral thinks a party is unable to participate effectively, the neutral should limit the scope of the process or end it. A neutral should tell a party if the neutral believes the party needs the assistance of a lawyer or other expert information or advice in order to reach an informed agreement. A neutral may give information to the parties but may not give legal advice, counseling or other professional services. The neutral must inform the parties that they may withdraw from the process at any time for any reason. The neutral must not coerce the parties to reach an agreement. In dispute intervention, the neutral must, while remaining impartial, raise questions so the parties may consider whether they have the information they need to reach a fair and fully informed agreement.

**Fees.** The neutral must inform the parties of any fees that will be charged, to whom the fee is paid, and whether the parties may apply for a fee waiver or reduction. Before the process begins, there must be a written agreement between the neutral and the parties regarding the fee and the time and manner of payment. The neutral must not give or receive a fee for a referral. A neutral must not solicit or accept payment above the court-established fee.

**Conflict of interest.** A neutral must disclose all actual or potential conflicts of interest. A neutral should not serve if he or she knows of a conflict except under certain circumstances set out in the rule. A neutral must withdraw if a conflict is significant. A neutral may proceed if a conflict is not significant and the parties all consent. A neutral must avoid even the appearance of conflict.

**Responsibility to non-participating parties.** A neutral should consider and encourage the parties to consider the interests of persons--especially children--who are not participating in the process but who are affected by actual or potential agreements.

**Advertising, soliciting or other communications by neutrals.** Neutrals must be truthful in advertising and must not make claims of specific results or benefits of the process which imply favor of one side over another.

**Confidentiality.** All information obtained in a dispute resolution process is confidential except for limited exceptions detailed in the rule. Also, all information obtained in a private discussion with one party is confidential and will not be revealed to any other party without permission of the party from whom it was obtained. The neutral must inform the parties that he or she will not disclose information voluntarily unless required by law to do so.

**Withdrawal.** A neutral must withdraw if continuing in the process would violate an Ethical Standard or jeopardize the safety of a party or if the neutral cannot provide effective service. The neutral must attempt, while withdrawing, to protect the parties' safety and rights. A neutral may withdraw under certain specific circumstances set out in the rule.



## RULE 1:18 UNIFORM RULES ON DISPUTE RESOLUTION

### RULE 1. COURT-CONNECTED DISPUTE RESOLUTION.

**(a) Scope, Applicability and Purpose of Rules.** These rules govern court-connected dispute resolution services provided in civil and criminal cases in every department of the Trial Court. The Ethical Standards in Rule 9 also apply to neutrals who provide court-connected dispute resolution services in the Supreme Judicial Court and the Appeals Court. The purpose of the rules is to increase access to court-connected dispute resolution services, to ensure that these services meet standards of quality and procedural fairness, and to foster innovation in the delivery of these services. The rules shall be construed so as to secure those ends. To the extent that there is any conflict between these rules and the Massachusetts Rules of Civil Procedure, the Massachusetts Rules of Criminal Procedure, the Massachusetts Rules of Appellate Procedure, the Massachusetts Rules of Domestic Relations Procedure, the Juvenile Court Rules, the Standards and Forms For Probation Offices of the Probate and Family Court Department (hereinafter the "Probation Standards") promulgated by the Office of the Commissioner of Probation effective July 1, 1994, or the Rules of the Supreme Judicial Court and the Appeals Court, then the Massachusetts Rules of Civil, Criminal, Appellate, and Domestic Relations Procedure, the Juvenile Court Rules, the Probation Standards, or the Supreme Judicial Court and Appeals Court rules shall control. The Supreme Judicial Court, the Appeals Court, the Chief Justice for Administration and Management, and each Trial Court department may adopt additional rules or administrative procedures to supplement these rules, provided that they are consistent with these rules.

**(b) Guiding Principles.** The interpretation of these rules shall be guided by the following principles:

(i) *Quality.* The judiciary, collaborating with others experienced in dispute resolution, is responsible for assuring the high quality of the dispute resolution services to which it refers the public.

(ii) *Integrity.* Dispute resolution services should be provided in accordance with ethical standards and with the best interest of the disputants as the paramount criterion.

(iii) *Accessibility.* Dispute resolution services should be available to all members of the public regardless of their ability to pay.

(iv) *Informed choice of process and provider.* Wherever appropriate, people should be given a choice of dispute resolution processes and providers and information upon which to base the choice.

(v) *Self-determination.* Wherever appropriate, people should be allowed to decide upon the issues to be discussed during a dispute resolution process, and to decide the terms of their agreements.

(vi) *Timely services.* Dispute resolution services, to be most effective, should be available early in the course of a dispute.

(vii) *Diversity.* The policies, procedures and providers of dispute resolution services

should reflect the diverse needs and background of the public.

(viii) *Qualification of neutrals.* Dispute resolution services should be performed only by qualified neutrals. There are many ways in which a neutral may become competent, and there are many ways to determine qualifications of neutrals, such as assessing performance and considering a neutral's education, training, experience and subject matter expertise.

**RULE 2. DEFINITIONS.** As used in these rules, the following terms shall have the following meanings:

"Arbitration" means a process in which a neutral renders a binding or non-binding decision after hearing arguments and reviewing evidence.

"Case evaluation" means a process in which the parties or their attorneys present a summary of their cases to a neutral who renders a non-binding opinion of the settlement value of the case and/or a non-binding prediction of the likely outcome if the case is adjudicated.

"Clerk" means the clerk, clerk-magistrate, recorder, or register of a court, or a designated assistant clerk-magistrate, assistant recorder or assistant register of probate.

"Community mediation program" means a non-profit, charitable program whose goals are to promote the use of mediation and related conflict resolution services by volunteers to resolve disputes including those that come to, or might otherwise come to, the courts.

"Conciliation" means a process in which a neutral assists parties to settle a case by clarifying the issues and assessing the strengths and weaknesses of each side of the case, and, if the case is not settled, explores the steps which remain to prepare the case for trial.

"Court" means the Land Court, the Boston Municipal Court, or a division of the District Court, the Superior Court, the Probate and Family Court, the Housing Court or the Juvenile Court. The provisions of these rules addressed to courts shall apply to judges, clerks, probation officers and other employees of these courts. For the purposes of Rule 9, "court" also includes the appellate courts.

"Court-connected dispute resolution services" means dispute resolution services provided as the result of a referral by a court. "To refer," for purposes of this definition, means to provide a party to a case with the name of one or more dispute resolution services providers or to direct a party to a particular dispute resolution service provider.

"Dispute intervention" means a process used in the Probate and Family Court and in the Housing Court in which a neutral identifies the areas of dispute between the parties, and assists in the resolution of differences.

"Dispute resolution service" means any process in which an impartial third party is engaged to assist in the process of settling a case or otherwise disposing of a case without a trial, including arbitration, mediation, case evaluation, conciliation, dispute intervention, early neutral evaluation, mini-trial, summary jury trial, any combination of these processes, and any comparable process determined by the Chief Justice for Administration and Management of the Trial Court or the Supreme Judicial Court to be subject to these rules. The term "dispute resolution service" does not include a pretrial conference, an early intervention event, a screening, a trial, or an investigation.

"Early intervention" means a compulsory, judicially supervised event, early in the life of a case, with multiple objectives relating to both scheduling of litigation and selection of dispute resolution services.

"Early neutral evaluation" means case evaluation which occurs early in the life of a dispute.

"Immediate family" means the individual's spouse, domestic partner, guardian, ward, parents, children, and siblings.

"Mediation" means a voluntary, confidential process in which a neutral is invited or accepted by disputing parties to assist them in identifying and discussing issues of mutual concern, exploring various solutions, and developing a settlement mutually acceptable to the disputing parties.

"Mini-trial" means a two-step process to facilitate settlement in which (a) the parties' attorneys present a summary of the evidence and arguments they expect to offer at trial to a neutral in the presence of individuals with decision-making authority for each party, and (b) the individuals with decision-making authority meet with or without the neutral to discuss settlement of the case.

"Neutral" means an individual engaged as an impartial third party to provide dispute resolution services and includes but is not limited to a mediator, an arbitrator, a case evaluator, and a conciliator. "Neutral" also includes a master, clerk, clerk-magistrate, register, recorder, family service officer, housing specialist, probation officer, and any other court employee when that individual is engaged as an impartial third party to provide dispute resolution services. For purposes of Rule 9, "neutral" also means an administrator of a program providing court-connected dispute resolution services. "Program" means an organization with which neutrals are affiliated, through membership on a roster or a similar relationship, which administers, provides and monitors dispute resolution services. A program may be operated by a court employee or by an organization independent of the court, including a corporation or a governmental agency. A program operated by a court employee may include one or more court employees or non-employees or a combination of court employees and non-employees on its roster.

“Provider” or “provider of dispute resolution services” means a program which provides dispute resolution services or a neutral who provides dispute resolution services.

"Screening" means an orientation session in which parties to a case and/or their attorneys receive information about dispute resolution services. The case is reviewed to determine whether referral to a dispute resolution service is appropriate, and, if so, to which one. In a screening, there may also be discussion to narrow the issues in the case, to set discovery parameters, or to address other case management issues.

"Summary jury trial" means a non-binding determination administered by the court in which (a) the parties' attorneys present a summary of the evidence and arguments they expect to offer at trial to a six-person jury chosen from the court's jury pool, (b) the jury deliberates and returns a non-binding decision on the issues in dispute, (c) the attorneys may discuss with the jurors their reaction to the evidence and reasons for the verdict, and (d) the presiding neutral may be available to conduct a mediation with the parties.

### **RULE 3. ADMINISTRATIVE STRUCTURE FOR COURT-CONNECTED DISPUTE RESOLUTION SERVICES.**

**(a) Appointment of Standing Committee on Dispute Resolution.** There shall be a Standing Committee on Dispute Resolution consisting of up to twenty persons appointed by the Chief Justice for Administration and Management in consultation with the Chief Justices of the Trial Court departments. Each department of the Trial Court shall be represented on the Standing Committee. Members shall be appointed for three-year terms and may be reappointed for additional terms when their terms expire. The Standing Committee shall be composed of: judges; other court personnel; attorneys; members of the public; academics; and providers of dispute resolution services. In order to achieve diversity in the membership of the Standing Committee, the Trial Court shall attempt to make funds available for expenses associated with participation in the Committee.

**(b) Duties of Standing Committee on Dispute Resolution.** The Standing Committee shall advise the Chief Justice for Administration and Management of the Trial Court with respect to standards for court-connected dispute resolution services and the implementation and oversight of court-connected dispute resolution services throughout the Trial Court. The Standing Committee shall work to ensure access to court-connected dispute resolution services, to ensure the quality of the services, and to foster innovation in the delivery of the services.

**(c) Trial Court Departments.** The Chief Justice of each Trial Court department may appoint an advisory committee on that department's court-connected dispute resolution services composed of judges, other court personnel, attorneys, academics, members of the public, and providers of dispute resolution services, including representatives of community mediation programs where they provide services to that court department. In order to achieve diversity in the membership of an advisory committee, the court shall

attempt to make funds available for expenses associated with participation in the committee. An advisory committee shall function so as to avoid conflict of interest or the appearance of conflict of interest. Each such Chief Justice may designate an employee as the department coordinator of court-connected dispute resolution services. Every Trial Court chief justice who approves dispute resolution programs pursuant to Rule 4(a) shall develop written policies and procedures governing program operations and record-keeping that will enable evaluation of the program.

**(d) Local Dispute Resolution Services Coordinator.** The First Justice or the justice with administrative supervision of each court or division within every Trial Court department shall designate one court staff member as the dispute resolution services coordinator for that court or division. By agreement of affected First Justices, one person may be designated as dispute resolution services coordinator for divisions or courts in more than one department which are located in the same or a nearby building. The dispute resolution services coordinator shall maintain information about court-connected dispute resolution services and assist the public in making informed choices about the use of those services. The coordinator, in collaboration with the program or programs to which the court division refers cases, shall develop a system to record and compile data as required by Rule 6(g).

**(e) Technical Assistance for Implementation of Dispute Resolution Services.** The Chief Justice for Administration and Management shall, subject to appropriation, provide advice and consultation to Trial Court departments, courts, advisory committees and designated dispute resolution staff to assist in developing and operating court-connected dispute resolution services in accordance with the rules.

#### **RULE 4. IMPLEMENTATION OF COURT-CONNECTED DISPUTE RESOLUTION**

**(a) Development of List of Approved Programs.** (i) The Chief Justice of each Trial Court department, subject to review for compliance by the Chief Justice for Administration and Management, shall approve programs to receive court referrals in accordance with these rules. In order to be approved, programs must: agree to meet the operations standards in Rule 7; agree to ensure that the neutrals on their roster who provide court-connected dispute resolution services meet the qualifications standards in Rule 8; and agree to ensure that the neutrals on their roster follow the ethical standards in Rule 9 when providing court-connected dispute resolution services. The list of approved programs shall be developed and maintained through an open process which includes at least the following: advertisement of the opportunity to apply to be on the list; fair assessment of programs; efforts to ensure diversity among neutrals as to race, gender, ethnicity, experience, and training; policies about the length and termination of participation on the list; and procedures for removing a program from the list for cause and/or as a result of a complaint filed pursuant to Rule 4(f).

(ii) The Chief Justice for Administration and Management shall distribute a combined list of the programs approved pursuant to subparagraph (i). The list shall

include information as to each program regarding geographic region, fees, and dispute resolution processes; and information as to each program's expertise, including process and subject matter expertise.

**(b) Trial Court Department Plans.** Each Trial Court department shall develop plans each fiscal year for the use of court-connected dispute resolution services by the courts in the department. The Chief Justice shall develop the plan in consultation with the department advisory committee, the department coordinator of court-connected dispute resolution services, and the courts in the department. Services may be provided only by programs on the list developed pursuant to paragraph (a) of Rule 4. The plan shall set forth information about court-connected dispute resolution services in the department, including at least the following: current status, goals and objectives, plans for the coming year, any plans for collaborating with other departments, a budget request, case selection and screening criteria, plans for early intervention, and needs for education programs. Where appropriate, each portion of the plan shall address: plans with respect to access to dispute resolution services, the quality of the services, and efforts to foster innovation in the delivery of services. Plans shall ensure that court-connected dispute resolution services are available to those who lack the financial resources to pay for the services and those who would not otherwise have access to the services. The plans shall be submitted by September 1 of each year to the Chief Justice for Administration and Management for review and approval.

**(c) Pilot Programs for Mandatory Participation in Dispute Resolution Services.** Any Trial Court department may propose to the Chief Justice for Administration and Management for review and approval an experimental pilot program which requires parties in civil cases to participate in non-binding forms of dispute resolution services. No Trial Court department shall administer such a pilot program without the approval of the Chief Justice for Administration and Management. Case types not suitable for dispute resolution services should be identified. The pilot program may provide for the mandatory participation of the parties and shall be assessed regularly to control quality. The minimal requirements for mandatory participation shall be as follows:

(i) each party shall be provided with an opportunity to terminate the dispute resolution services, upon motion to the court for good cause shown, but unwillingness to participate shall not be considered good cause;

(ii) the court shall give preference to a dispute resolution process upon which the parties agree;

(iii) the court shall explicitly inform parties that, although they are required to participate, they are not required to settle the case while participating in dispute resolution services; and

(iv) no fees may be charged for mandatory participation in dispute resolution services, but the court may charge fees for elective dispute resolution services.

**(d) Funding of Court-connected Dispute Resolution Services.** As part of the annual budget requests required by G.L. c. 211B, §10(viii) and (x), the Chief Justice of each Trial

Court department shall include a request for funding for court-connected dispute resolution services. The budget request shall provide for the funding of court-connected dispute resolution services for those parties who lack the financial resources to pay for the services or who would not otherwise have access to the services. Funds may be used for approved programs to provide screening and to provide and/or administer the services. Budget requests shall estimate funds needed to maintain previously funded services provided by approved programs. Additional amounts shall be used for the expansion or improvement of services or for innovative services. Expenditures shall be subject to the approval of the Chief Justice for Administration and Management after consultation with the Standing Committee.

**(e) Contracts for Court-connected Dispute Resolution Services.** (i) If public funds are appropriated or otherwise available and allocated by the Chief Justice for Administration and Management of the Trial Court for contracts with court connected dispute resolution programs, the Chief Justice for Administration and Management, in consultation with First Justices or other justices with administrative responsibility for courts and the Chief Justices of affected departments, shall issue one or more requests for proposals for dispute resolution services to be provided by contracts with approved programs, shall select programs through a competitive bidding process, and shall execute contracts for services on behalf of departments and courts which may extend for no more than three years. These contracts may provide for a program to receive payments approved under paragraph (d) and may provide that a court will refer all or most of its cases requiring dispute resolution services to one or more contracting programs.

(ii) If public funds are not involved, but courts seek an exclusive arrangement with a program or programs for court-connected dispute resolution services, the Chief Justice of the affected department or his or her designee shall, in consultation with the Chief Justice for Administration and Management, issue one or more requests for proposals to be provided by contracts with approved programs, shall select programs through a competitive process, and, with the approval of the Chief Justice for Administration and Management, shall execute contracts for services on behalf of departments and courts which may extend for no more than three years. These contracts may provide that a court will refer all or most of its cases requiring dispute resolution services to one or more contracting programs.

(iii) In selecting programs with which to contract, the Chief Justice for Administration and Management, or the Chief Justice of the department, as applicable, is encouraged to give preference to programs which demonstrate a record of and commitment to maintaining a diverse roster and operating in a manner which is accountable to the community.

(iv) The competitive bidding requirements in this subsection shall not apply to programs in which dispute resolution services are provided exclusively by court employees.

**(f) Complaint Mechanism.** The Chief Justice for Administration and Management, in consultation with the Chief Justices of the departments and with the advice of the

Standing Committee, shall develop a uniform procedure for handling complaints regarding court-connected dispute resolution services.

**RULE 5. EARLY NOTICE OF COURT-CONNECTED DISPUTE RESOLUTION SERVICES.** Clerks shall make information about court-connected dispute resolution services available to attorneys and unrepresented parties. This information should state that selection of court-connected dispute resolution services can occur at the early intervention event or sooner, and that no court may compel parties to mediate any aspect of an abuse prevention proceeding under G.L. c. 209A, §3. Insofar as possible, information should be available in the primary language of the parties. Attorneys shall: provide their clients with this information about court-connected dispute resolution services; discuss with their clients the advantages and disadvantages of the various methods of dispute resolution; and certify their compliance with this requirement on the civil cover sheet or its equivalent.

**RULE 6. DUTIES OF COURTS WITH RESPECT TO COURT-CONNECTED DISPUTE RESOLUTION SERVICES.**

**(a) Referral of Cases.** No court may refer cases to a provider of dispute resolution services unless the provider is an approved program included on the list developed pursuant to Rule 4(a). In all cases, courts shall inform parties that they are free to choose any approved program on the list, subject to such reasonable limitations as the court may impose, or any other provider of dispute resolution services. If the parties are unable or unwilling to choose a program from the list or another provider, a court may make a referral to a specific program on the list in which the court has confidence, whether or not the court has a contract for services with that program. The court shall make a reasonable effort to distribute such specific referrals fairly among programs on the list, taking into consideration geographic proximity, subject matter competence, special needs of the parties, and fee levels. In the alternative, a court may refer all or most of its cases requiring dispute resolution services to one or more approved programs in which the roster consists exclusively of one or more court employees or with which it has a contract for services pursuant to Rule 4(e). Notwithstanding the foregoing, a court may refer a case to a provider that is not on the list in exceptional circumstances, when special needs of the parties cannot be met by a program on the list. The judge shall report any such referral and the exceptional circumstances which required it to the Chief Justice of the department. In a criminal case, the court shall consult with the prosecuting attorney and obtain the approval of the defendant and, where applicable, the victim, before making a referral to a dispute resolution program.

**(b) Screening.** In civil cases, courts may require parties and/or their attorneys to attend a screening session or an early intervention event regarding court-connected dispute resolution services except for good cause shown.

**(c) Time for Dispute Resolution.** A court may establish a deadline for the completion



of a court-connected dispute resolution process, which may be extended by the court upon a showing by the parties that continuation of the process is likely to assist in reaching resolution.

**(d) Choice.** No court shall require parties to participate in dispute resolution services without meeting the minimal requirements set forth in Rule 4(c), except that Probate and Family Courts may require parties to participate in dispute intervention. Except in a case affected by a pilot program under Rule 4(c) or a case involving such a referral to dispute intervention, the court shall inform litigants, both at the time of referral and at the beginning of the dispute resolution process, that the decision to participate in a dispute resolution process is voluntary.

**(e) Space for Dispute Resolution Sessions.** Courts may, subject to guidelines issued by the Chief Justice for Administration and Management of the Trial Court, provide available courthouse space or other resources for court-connected dispute resolution services provided by approved programs. The space provided shall be sufficiently private and readily accessible. Reasonable accommodation shall be made for disabled individuals.

**(f) Communication with Program or Neutral.** (i) The court shall give a program which is providing court-connected dispute resolution services sufficient information to process the case effectively.

(ii) The program shall give the court's administrative staff sufficient case-specific and aggregate information to permit monitoring and evaluation of the services.

(iii) Communication with the court during the dispute resolution process shall be conducted only by the parties or with their consent. The parties may agree, as part of the dispute resolution process, as to the scope of the information which they, the program, or the neutral will provide to the court. Absent an agreement of the parties and subject to the provisions of Rule 9 regarding confidentiality and subparagraph (iv) below, the program or neutral may provide only the following information to the court: a request by the parties for additional time to complete dispute resolution, the neutral's assessment that the case is inappropriate for dispute resolution, and the fact that the dispute resolution process has concluded without parties' having reached agreement.

(iv) At the conclusion of conciliation or dispute intervention, the program or neutral may communicate to the court recommendations, a list of those issues which are and are not resolved, and the program's or neutral's assessment that the case will go to trial or settle, provided that the parties are informed at the initiation of the process that such communication may occur.

**(g) Data Collection.** The court, in collaboration with the approved program or programs to which it refers cases, shall develop a system to record accurately and compile regularly data sufficient to track cases, monitor services, and provide any information required or requested by the applicable Trial Court department chief justice or the Chief Justice for Administration and Management.

**(h) Intake and Selection.** Every court shall evaluate cases to ensure that they are appropriate for dispute resolution based on the case selection criteria of the applicable department developed pursuant to Rule 4(b).

**(i) Inappropriate Pressure to Settle.** Courts shall inform parties that, unless otherwise required by law, they are not required to make offers and concessions or to settle in a court-connected dispute resolution process. Courts shall not impose sanctions for non-settlement by the parties. The court shall give particular attention to the issues presented by unrepresented parties, such as the need for the neutral to memorialize the agreement and the danger of coerced settlement in cases involving an imbalance of power between the parties. In dispute intervention, in cases in which one or more of the parties is not represented by counsel, a neutral has a responsibility, while maintaining impartiality, to raise questions for the parties to consider as to whether they have the information needed to reach a fair and fully informed settlement of the case.

**(j) Sanctions for Failure to Attend Sessions.** A court may impose sanctions for failure without good cause to attend a mandatory screening session, an early intervention event, or a scheduled dispute resolution session.

## **RULE 7. DUTIES OF APPROVED PROGRAMS WITH RESPECT TO COURT-CONNECTED DISPUTE RESOLUTION SERVICES.**

**(a) Program Administration.** Programs shall be monitored and evaluated on a regular basis. Settlement rates shall not be the sole criterion for evaluation. Every program shall evaluate its neutrals on a regular basis. Every program shall develop and comply with written policies and procedures governing program administration and operations, including policies regarding evaluation, facilities, communication with the court, data collection, pressure to settle, and intake and selection, which are consistent with policies developed by Trial Court departments pursuant to Rule 3(c) and with Rules 4(a) and 6(a), (e), (f), (g), (h) and (i). A program may refuse to accept a referral from a court if the case does not meet the program's intake and selection criteria.

**(b) Diversity.** Programs shall be designed with knowledge of and sensitivity to the diversity of the communities served. The design shall take into consideration such factors as the languages, dispute resolution styles, and ethnic traditions of communities likely to use the services. Programs shall not discriminate against staff, neutrals, volunteers, or clients on the basis of race, color, sex, age, religion, national origin, disability, political beliefs or sexual orientation. Programs shall actively strive to achieve diversity among staff, neutrals, and volunteers.

**(c) Rosters.** Programs shall (i) assemble, maintain and administer rosters of qualified neutrals in conformity with these rules; (ii) except in the case of programs in which the roster consists exclusively of court employees, make a reasonable effort to distribute referrals fairly among individuals on the list, taking into consideration geographic

proximity, subject matter competence, special needs of the parties, scheduling, and fee levels; (iii) adopt a fair and reasonable method by which qualified individuals may join the roster at its inception, when vacancies occur, or when the caseload requires additional neutrals; and (iv) adopt a fair and reasonable method by which individuals may be removed from the roster, including a provision for a periodic review of the roster. The methods used by the program for adding and removing neutrals shall be set forth in writing and made available to individuals applying for affiliation.

**(d) Presence of Advisers.** Parties, in consultation with their attorneys, if any, shall be permitted to decide whether their attorney, advocate or other adviser will be present at court-connected dispute resolution sessions.

**(e) Fees.** Programs may charge fees for service. Parties shall not be charged a fee for attendance at a mandatory screening session or an early intervention event, or for dispute resolution services provided by court employees. Fees charged by a provider of court-connected dispute resolution services shall be approved by the Chief Justice of the applicable court department. The fee schedule shall provide for fee waived or reduced fee services to be made available to indigent and low-income litigants. Fees may not be contingent upon the result of the dispute resolution process or the amount of the settlement. Neutrals may assist parties to negotiate an equitable allocation of fees.

**(f) Dispute Resolution Sessions.** The program shall make reasonable efforts to schedule dispute resolution sessions at the convenience of the parties. The program shall allow adequate time in the dispute resolution session to discuss issues and reach settlement.

**(g) Written Agreement.** If a settlement is reached, the agreement shall be prepared in writing and signed by the parties, who shall forward for docketing a notice of the disposition of the case to the clerk of the court in which the case is pending. The neutral may participate in the preparation of the written agreement. At the parties' request, the court may allow an oral agreement instead of a written one.

**(h) Orientation and Supervision of Neutrals.** The program shall ensure that neutrals are familiar with the policies and operations of the court and the program. The program shall supervise its neutrals. During dispute resolution sessions, newly trained neutrals shall have immediate access to an experienced neutral.

**(i) Enforcement of Qualifications Standards and Ethical Standards.** Each approved program shall be responsible for enforcing the qualifications standards in Rule 8 and the ethical standards in Rule 9, and for taking appropriate action if a neutral on its roster fails or ceases to meet the qualifications standards or violates the ethical standards. Appropriate actions include referral for further training, suspension from the roster, or removal from the roster. If the Chief Justice of a Trial Court Department directs a program to take such action as a result of a complaint about the neutral and the program refuses

to act, the Chief Justice may revoke the program's status as a program approved to receive referrals from that department.

## **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 of 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.

**(I) 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.

## **RULE 9. ETHICAL STANDARDS.**

**(a) Introduction.** These Ethical Standards are designed to promote honesty, integrity and impartiality by all neutrals and other individuals involved in providing court-connected dispute resolution services. These standards seek to assure the courts and citizens of the Commonwealth that such services are of the highest quality, and to promote confidence in these dispute resolution services. In addition, these standards are intended as a foundation on which appellate courts and Trial Court departments can build their

dispute resolution policies, programs and procedures to best serve the public. These Standards apply to all neutrals as defined in these Standards when they are providing court-connected dispute resolution services for the Trial Court and the appellate courts, including those who are state or other public employees. State and other public employees are subject to the Massachusetts Conflict of Interest Law, M.G.L. c. 268A, and therefore, to the extent that these standards are in any manner inconsistent with M.G.L. c. 268A, the statute shall govern. In addition, to the extent that these standards are in any manner inconsistent with the Standards and Forms for Probation Offices of the Probate and Family Court Department promulgated by the Office of the Commissioner of Probation effective July 1, 1994, the Probation Standards shall govern. All courts providing dispute resolution services and all court-connected dispute resolution programs shall provide the neutrals with a copy of these Ethical Standards. These Standards shall be made a part of all training and educational programs for approved programs, and shall be available to the public.

**(b) Impartiality.** A neutral shall provide dispute resolution services in an impartial manner. Impartiality means freedom from favoritism and bias in conduct as well as appearance.

(i) A neutral shall provide dispute resolution services only for those disputes where she or he can be impartial with respect to all of the parties and the subject matter of the dispute.

(ii) If at any time prior to or during the dispute resolution process the neutral is unable to conduct the process in an impartial manner, the neutral shall so inform the parties and shall withdraw from providing services, even if the parties express no objection to the neutral continuing to provide services.

(iii) No neutral or any member of the neutral's immediate family or his or her agent shall request, solicit, receive, or accept any in-kind gifts or any type of compensation other than the court-established fee in connection with any matter coming before the neutral.

**(c) Informed Consent.** The neutral shall make every reasonable effort to ensure that each party to the dispute resolution process (a) understands the nature and character of the process, and (b) in consensual processes, understands and voluntarily consents to any agreement reached in the process.

(i) A neutral shall make every reasonable effort to ensure at every stage of the proceedings that each party understands the dispute resolution process in which he or she is participating. The neutral shall explain (aa) the respective responsibilities of the neutral and the parties, and (bb) the policies, procedures and guidelines applicable to the process, including circumstances under which the neutral may engage in private communications with one or more of the parties.

(ii) If at any time the neutral believes that any party to the dispute resolution process is unable to understand the process or participate fully in it -- whether because of mental impairment, emotional disturbance, intoxication, language barriers, or other reasons -- the neutral shall (aa) limit the scope of the dispute resolution process in a manner consistent with the party's ability to participate, and/or recommend that the party

obtain appropriate assistance in order to continue with the process, or (bb) terminate the dispute resolution process.

(iii) Where a party is unrepresented by counsel and where the neutral believes that independent legal counsel and/or independent expert information or advice is needed to reach an informed agreement or to protect the rights of one or more of the parties, the neutral shall so inform the party or parties.

(iv) A neutral may use his or her knowledge to inform the parties' deliberations, but shall not provide legal advice, counseling, or other professional services in connection with the dispute resolution process.

(v) The neutral shall inform the parties of their right to withdraw from the process at any time and for any reason, except as is provided by law or court rule.

(vi) In mediation, case evaluation, and other processes whose outcome depends upon the agreement of the parties, the neutral shall not coerce the parties in any manner to reach agreement.

(vii) In dispute intervention, in cases in which one or more of the parties is not represented by counsel, a neutral has a responsibility, while maintaining impartiality, to raise questions for the parties to consider as to whether they have the information needed to reach a fair and fully informed settlement of the case.

**(d) Fees.** A neutral shall disclose to the parties the fees that will be charged, if any, for the dispute resolution services being provided.

(i) A neutral shall inform each party in a court-connected dispute resolution process in writing, prior to the start of the process, of (aa) the fees, if any, that will be charged for the process, (bb) if there will be a fee, whether it will be paid to the neutral, court, and/or the program, and (cc) whether the parties may apply for a fee-waiver or other reduction of fees.

(ii) If a fee is charged for the dispute resolution process, the neutral shall enter into a written agreement with the parties, before the dispute resolution process begins, stating the fees and time and manner of payment.

(iii) Fee agreements may not be contingent upon the result of the dispute resolution process or amount of the settlement.

(iv) Neutrals shall not accept, provide, or promise a fee or other consideration for giving or receiving a referral of any matter.

(v) If the court has established fees for its dispute resolution services, no neutral shall request, solicit, receive, or accept any payment in any amount greater than the court-established fees when providing court-connected dispute resolution services.

**(e) Conflict of Interest.** A neutral shall disclose to all parties participating in the dispute resolution process all actual or potential conflicts of interest, including circumstances that could give rise to an appearance of conflict. A neutral shall not serve as a neutral in a dispute resolution process after he or she knows of such a conflict, unless the parties, after being informed of the actual or potential conflict, give their consent and the neutral has determined that the conflict is not so significant as to cast doubt on the integrity of the dispute resolution process and/or neutral.

(i) As early as possible and throughout the dispute resolution process, the neutral shall disclose to all parties participating in the process, all actual or potential conflicts of interest, including but not limited to the following:

- (aa) any known current or past personal or professional relationship with any of the parties or their attorneys;
- (bb) any financial interest, direct or indirect in the subject matter of the dispute or a financial relationship (such as a business association or other financial relationship) with the parties, their attorneys, or immediate family member of any party or their attorney, to the dispute resolution proceeding; and
- (cc) any other circumstances that could create an appearance of conflict of interest.

(ii) Where the neutral determines that the conflict is so significant as to cast doubt on the integrity of the dispute resolution process and/or neutral, the neutral shall withdraw from the process, even if the parties express no objection to the neutral continuing to provide services.

(iii) Where the neutral determines that the conflict is not significant, the neutral shall ask the parties whether they wish the neutral to proceed. The neutral shall obtain consent from all parties before proceeding.

(iv) A neutral must avoid even the appearance of a conflict of interest both during and after the provision of services.

(aa) A neutral shall not use the dispute resolution process to solicit, encourage or otherwise procure future service arrangements with any party.

(bb) A neutral may not subsequently act on behalf of any party to the dispute resolution process, nor represent one such party against the other, in any matter related to the subject of the dispute resolution process.

(cc) A neutral may not subsequently act on behalf of any party to the dispute resolution process, nor represent one such party against the other, in any matter unrelated to the subject of the dispute resolution process for a period of one year, unless the parties to the process consent to such action or representation.

(v) A neutral shall avoid conflicts of interest in recommending the services of other professionals.

**(f) Responsibility to Non-Participating Parties.** A neutral should consider, and where appropriate, encourage the parties to consider, the interests of persons affected by actual or potential agreements and not participating or represented in the process.

(i) If a neutral believes that the interests of parties not participating or represented in the process will be affected by actual or potential agreements, the neutral should ask the parties to consider the effects of including or not including the absent parties and/or their representatives in the process. This obligation is particularly important when the interests of children or other individuals who are not able to protect their own interests are involved.

**(g) Advertising, Soliciting, or Other Communications by Neutrals.** Neutrals shall be truthful in advertising, soliciting, or other communications regarding the provision of dispute resolution services.

(i) A neutral shall not make untruthful or exaggerated claims about the dispute resolution process, its costs and benefits, its outcomes, or the neutral's qualifications and abilities.

(ii) A neutral shall not make claims of specific results, benefits, outcomes, or promises which imply favor of one side over another.

**(h) Confidentiality.** A neutral shall maintain the confidentiality of all information disclosed during the course of dispute resolution proceedings, subject only to the exceptions listed in this section.

(i) The information disclosed in dispute resolution proceedings that shall be kept confidential by the neutral includes, but is not limited to: the identity of the parties; the nature and substance of the dispute; the neutral's impressions, opinions, and recommendations; notes made by the neutral; statements, documents or other physical evidence disclosed by any participant in the dispute resolution process; and the terms of any settlement, award, or other resolution of the dispute, unless disclosure is required by law or court rule.

(ii) Confidentiality vis-à-vis nonparties. The neutral shall inform the participants in the dispute resolution process that he or she will not voluntarily disclose to any person not participating in the mediation any of the information obtained through the process, unless such disclosure is required by law.

(iii) Confidentiality within mediation. A neutral shall respect the confidentiality of information received in a private session or discussion with one or more of the parties in a dispute resolution process, and shall not reveal this information to any other party in the mediation without prior permission from the party from whom the information was received.

(iv) Neutrals who are part of a court-connected dispute resolution program may, for purposes of supervising the program, supervising neutrals and monitoring of agreements, discuss confidential information with other neutrals and administrative staff in the program. This permission to discuss confidential information does not extend to individuals outside their program.

(v) Neutrals may, with prior permission from the parties, use information disclosed by the parties in dispute resolution proceedings for research, training, or statistical purposes, provided the materials are adapted so as to remove any identifying information.

**(i) Withdrawing from the Dispute Resolution Process.** A neutral shall withdraw from the dispute resolution process if continuation of the process would violate any of the Ethical Standards, if the safety of any of the parties would be jeopardized, or if the neutral is unable to provide effective service.

(i) Withdrawal must be accomplished in a manner which, to the extent possible, does not prejudice the rights or jeopardize the safety of the parties.

(ii) A neutral may withdraw from the dispute resolution process if the neutral

believes that (aa) one or more of the parties is not acting in good faith; (bb) the parties' agreement would be illegal or involve the commission of a crime; (cc) continuing the dispute resolution process would give rise to an appearance of impropriety; (dd) in a process whose outcome depends upon the agreement of the parties, continuing with the process would cause severe harm to a non-participating party, or the public; and (ee) continuing discussions would not be in the best interest of the parties, their minor children, or the dispute resolution program.

## **CODE OF JUDICIAL CONDUCT**

### **Rule 3:09, Canon 8(A)(2)**

A judge who has retired or resigned from judicial office should not perform court-connected dispute resolution services except on a pro bono publico basis, enter an appearance, nor accept an appointment to represent any party in any court of the Commonwealth for a period of six months following the date of retirement, resignation, or most recent service as a retired judge pursuant to G. L. c. 32, §§ 65E-65G.



## **CODE OF PROFESSIONAL RESPONSIBILITY FOR CLERKS OF THE COURTS**

### **Rule 3:12**

#### **CANON 9. COMPLIANCE WITH THE CODE OF PROFESSIONAL RESPONSIBILITY FOR CLERKS OF THE COURTS**

A Clerk-Magistrate who has retired or resigned from the judicial branch shall not perform court-connected dispute resolution services except on a pro bono publico basis in any court of the Commonwealth for a period of six months following the date of retirement or resignation.

## **COMMENTARY**

### **UNIFORM RULES ON DISPUTE RESOLUTION**

#### **RULE 2. DEFINITIONS.**

"Court-connected dispute resolution services". *This definition does not alter the fact that parties are free on their own initiative to obtain dispute resolution services which are not court-connected.*

"Neutral". *Judges are not included under the term "neutral" in this section because there are other provisions and rules which apply to the functions of judges.*

"Program". *To be considered a program, an organization must consist of a group of people. The required monitoring function cannot be performed by the same neutral who is providing the dispute resolution services. A person cannot supervise himself or herself. Monitoring by another neutral is important for quality control. Moreover, the wording used in the definition - "neutrals" - means that a program roster should include more than one neutral. The definition makes an exception for a roster consisting of one court employee, because the administrative apparatus of the court itself monitors court employees. At this stage in the development of court-connected dispute resolution, the courts do not have the capacity to oversee the services of individual practitioners who are not court employees. Finally, the dictionary definition of the term "organization" leads to the same conclusion: "a group of persons organized for a particular purpose; an association.... [or] a structure through which individuals cooperate systematically to conduct business." American Heritage Dictionary of the English Language, Third Edition, Houghton Mifflin Company, 1992 (emphasis added).*

#### **RULE 4. IMPLEMENTATION OF COURT-CONNECTED DISPUTE RESOLUTION**

**(a) Development of List of Approved Programs.** *Two Supreme Judicial Court Commissions have recommended measures like those contained in this paragraph and Rule 6(a) to ensure fair access to court appointments. See, Gender Bias Study of the Massachusetts Court System, Supreme Judicial Court, (1989), p.168 and Equal Justice, Commission to Study Racial and Ethnic Bias in the Courts, Supreme Judicial Court, (1994), p.128 - 129.*

**(b) Trial Court Department Plans.** *The department plans are expected to be incremental, starting in the first year with a simple description of current and planned services and funding needs, and becoming gradually more extensive in future years. One desirable feature of department plans would be to aim for a consistent level in the quality and quantity of services in all courts across the state.*

*The criteria governing case selection should identify any categories of case which the department determines should be routinely excluded from dispute resolution as a matter of policy. For example, some commentators believe that courts should not, without a compelling countervailing reason, refer cases to dispute resolution services when there is a need for public sanctioning of conduct or a public declaration of rights, when repetitive violations of statutes or regulations need to be dealt with collectively and uniformly, or when a party or parties are not able to negotiate effectively themselves or with assistance of counsel.*

*Trial Court department chief justices should gather sufficient information from courts within the department to oversee the courts' use of dispute resolution services pursuant to the Uniform Rules on Dispute Resolution, and, in addition to or as part of the plans required by this section, should submit reports each year to the Chief Justice for Administration and Management about that department's use of court-connected dispute resolution services. The reports should contain information requested by the Chief Justice for Administration and Management, including (i) a narrative of significant program developments and activities; and (ii) case record information. Program developments and activities should be described with reference to stated goals and objectives, including: accessibility, quality, collaborative activities, new initiatives, unexpected outcomes, and early intervention initiatives. The Chief Justice for Administration and Management should request case record information needed to plan and oversee court-connected dispute resolution services under these rules, including case record information by type of dispute resolution process, such as total numbers of: cases screened, pretrial referrals, types of cases, cases referred, cases which entered a dispute resolution process, cases in which agreement was reached and not reached, cases in which resolution is pending, referrals made by each court to each approved program, referrals accepted by each program, and cases reviewed by early intervention processes. Each court and program would need to keep records on case record information in order to comply with any such request. See Rule 6(g).*

**(c) Pilot Programs for Mandatory Participation in Dispute Resolution Services.** *In designing pilot programs, courts will comply with G.L. c. 209A, §3, which provides that in abuse prevention proceedings, "No court may compel parties to mediate any aspect of their case."*

**(e) Contracts for Court-connected Dispute Resolution Services.** *Decisions in the awarding of contracts should not be based solely on cost, but should also reflect values and goals such as responsiveness to the community, the availability of a diverse pool of neutrals, outreach abilities, and the need for variety in referrals. See Rules 6(a) and 7(c) for referral rules affecting programs which are awarded contracts.*

**(f) Complaint Mechanism.** *The complaint mechanism should be designed to be accessible and user-friendly. Information about the complaint mechanism should be posted in every courthouse and included in the written information prepared pursuant to*

Rule 5.

**RULE 5. EARLY NOTICE OF COURT-CONNECTED DISPUTE RESOLUTION SERVICES.** *Information about the availability of court-connected dispute resolution services should be added to the standard summons form. Although the rule is limited to civil cases, courts are encouraged to distribute information about court-connected dispute resolution services in appropriate criminal matters, including delinquency cases and hearings on applications for criminal complaints pursuant to G.L. c. 218, §35A.*

*The information made available by clerks should include a general description of dispute resolution services, an explanation of reasons for choosing whether or not to use these services in different kinds of cases, an enumeration of the services available by referral from the court where the complaint is filed, information designed to ensure that pro se litigants make informed choices about the use of these services, information about the process for filing complaints regarding court-connected dispute resolution services, notice of the right to bring an adviser of one's own choice to a dispute resolution session pursuant to Rule 7(d), and information about the right to an interpreter's services throughout a legal proceeding pursuant to G.L. c. 221C. To the extent possible, courts should also provide pro se litigants with written information containing answers to frequently asked questions (regarding statutory rights, for example).*

**RULE 6. DUTIES OF COURTS WITH RESPECT TO COURT-CONNECTED DISPUTE RESOLUTION SERVICES.**

**(a) Referral of Cases.** *Parties who are interested in dispute resolution services should be referred to the court's dispute resolution coordinator for assistance in those courts which neither offer a program operated by a court employee nor have a contract with any program, or which have contracts with more than one program.*

*This paragraph governs court referrals and does not alter the fact that parties may obtain dispute resolution services on their own initiative from a neutral or organization not on the list, consistent with the schedule established by the court.*

*Courts are encouraged to provide neutrals with information about counsel for indigent persons in civil cases, including information about legal services, lawyer referral services, or volunteer programs such as "lawyer of the day."*

*ADR has been used successfully by the courts in a wide range of both civil and criminal cases, and in matters that might otherwise become the subject of civil or criminal litigation. The courts should undertake further exploration of the use of ADR in both civil and criminal matters. There are, however, policy reasons which make the use of ADR inappropriate in some cases. See Commentary to Rule 4(b). This paragraph does not limit the discretion of the prosecuting attorney in a criminal case to commence or proceed with the prosecution of the case, nor does it enlarge the limited authority of the court to*

*dismiss a criminal case.*

**(f) Communication with Program or Neutral.** *This rule is not intended to remove the evidentiary bar against the admissibility of settlement discussions. In appropriate cases, the court should make the case file available to the neutral. Subparagraph (iv) applies only to the processes of conciliation and dispute intervention, and does not affect other dispute resolution processes.*

**(g) Data Collection.** *The court shall make available to the neutral, upon request, information as to whether a case has been referred to the neutral by the court.*

**(i) Inappropriate Pressure to Settle.** *Courts and programs should consider the use of checklists or other forms for the gathering of information by the neutral in dispute intervention, in order to aid the neutral in discussing with unrepresented parties relevant factual circumstances and issues which might go unaddressed without such tools. In addition, courts should make their facilities available to “lawyer of the day” programs, to which neutrals or the court can refer unrepresented parties for legal advice.*

**(j) Sanctions for Failure to Attend Sessions.** *Sanctions should be imposed only by order of a judge and only in the case of willful failure to attend an event or session.*

#### **RULE 7. DUTIES OF APPROVED PROGRAMS WITH RESPECT TO COURT-CONNECTED DISPUTE RESOLUTION SERVICES.**

**(a) Program Administration.** *Evaluation methods should be designed to incorporate the experiences of disputants.*

#### **RULE 8. QUALIFICATIONS STANDARDS FOR NEUTRALS**

**(b)(ii) Additional Qualifications and (iii) Competence.** *A guiding principle for the interpretation of the Uniform Rules on Dispute Resolution is informed choice of process and provider. An equally important principle is that dispute resolution providers should reflect the diverse needs and backgrounds of the public. Therefore, this rule allows parties to select and approved programs to recommend a mediator or arbitrator with specific qualifications to meet the unique needs of a particular case and its participants.*

**(c)(iii) Continuing Education.** *Mediators are required to participate in annual continuing education programs for the purpose of building skills, sharing best practices, and keeping current on alternative dispute resolution issues and trends. While respecting the discretion of programs to determine the amount and content of continuing educational programs their mediators attend, it is recommended that each approved program’s mediators complete a minimum of six hours of continuing education per year. Approved programs may conduct their own continuing programs or send their neutrals to another program to fulfill this requirement.*

**(e) Conciliators.** *When a neutral acts as a conciliator, he or she provides to the parties involved in the civil litigation questions, comments, and feedback concerning the status of the litigation as well as the strengths and weaknesses faced by each party. The conciliator shall address with the parties both the substantive issues at stake in the litigation and the actions the parties will need to undertake to prepare for trial. The conciliator may, where he or she has sufficient expertise or experience to do so, provide the parties with an opinion as to specific issues in the case, potential appropriate resolutions of the case, proper future steps to take in the litigation, or the reasonable settlement value of the case, taking into account the costs, risks, and potential outcomes of the litigation.*

**(f) Case Evaluators.** *When a neutral acts as a case evaluator, he or she provides to the parties involved in a dispute formal or informal feedback on his or her analysis and opinion of the merits of the case as well as its likely outcome as to the liability and damage issues if it were to proceed to trial. The neutral also provides the parties his or her opinion of the reasonable settlement value of a case which takes into account an analysis of the costs and risks involved in proceeding to judgment or verdict. The qualifications set forth in Rule 8(f) are those necessary for an individual to perform these functions competently.*

**(f)(i) Professional Qualifications.** *A case evaluator should possess subject matter expertise in the area of law of the case to be evaluated. Individuals who act as case evaluators should provide to the parties seeking a case evaluation detailed information with respect to their experience in the field of the dispute.*

**(g) Mini-Trial Neutrals.** *The mini-trial combines elements of negotiation, mediation, and adjudication. It is a non-binding mediatory process in which a neutral third party helps the disputants try to resolve their differences by mutual agreement. Mini-trials are usually employed when the parties recognize that the barriers to settlement include a good faith disagreement on the merits of the case, instead of, or in addition to, barriers created by communication, emotional or other negotiating problems. The mini-trial neutral is expected to help the parties by providing some form of nonbinding evaluation of the merits of the dispute and the fair settlement range. In addition, the mini-trial neutral is generally expected to perform facilitative functions in helping the parties explore and reach agreement. Thus, mini-trial neutrals need excellent mediation skills, the ability to evaluate the type of matter in dispute, and the experience and process knowledge to combine effectively these two sometimes disparate functions.*

*A mini-trial neutral should be able to demonstrate to the parties' satisfaction that he or she has the experience, skill, and training to provide a meaningful evaluation of the matter at issue. Specific subject matter expertise is not necessarily required, but may be desired by the parties in some cases, and such desires should be seriously considered by the appointing program. A program should make every possible effort to assign a case to the mini-trial neutral on its roster who is selected by the parties.*

**(h) Summary Jury Trial Neutrals.** *The summary jury trial is an adaptation of the mini-trial used when the parties will be assisted in evaluating the settlement value of a case by a non-binding, advisory jury verdict. In the summary jury trial, the lawyers present concise summaries of their case to a non-binding jury chosen from the regular jury pool, or, sometimes, hired by the parties, an alternative dispute resolution program, or a jury research agency. The jury deliberates for a short time and then returns a consensus verdict responsive to interrogatories on liability and damages. The lawyers may then question the jury about their verdict and deliberations. The essential role for the neutral in a summary jury trial is to convene the process, preside over the lawyers' presentations to the jury, instruct the jury appropriately, take the jury's non-binding verdict, and oversee the lawyers' questioning of the jury. Many parties desire and expect a neutral to assist the parties to negotiate a settlement after the summary jury trial is finished.*

**(i) Dispute Intervention Neutrals.** *Dispute intervention is a process in which court employees meet with litigants and their attorneys, as appropriate, to identify the issues and areas of dispute between the parties, explore resolution, and provide accurate and relevant information and recommendations as requested or ordered by the court. In the Probate and Family Court Department, the process is mandatory (except where domestic violence is an issue) and is not confidential. In the Housing Court Department, the process is voluntary and not confidential.*

*Providers of dispute intervention practice this method under special circumstances due to the nature of their employment with the court. Court employees practicing dispute intervention are subject to particular conditions of employment, such as the Trial Court Personnel Policies and Procedures and collective bargaining agreements. In addition, they are subject to supervisory structures within the relevant department of the Trial Court and, in some circumstances, supervisory structures imposed by the Commissioner of Probation pursuant to the Standards of the Massachusetts Probation Services and/or local office policies.*

**(k) Limited Exemption from Training, Mentoring and Evaluation Requirements.** *Section 8(k) sets forth a limited exemption to the training, mentoring and evaluation requirements in this Rule for mediators, arbitrators, case evaluators and conciliators only. Neutrals providing dispute intervention are not included in the exemption because, as court employees, they are subject to mandatory training requirements established by the Commissioner of Probation or by the Administrative Office of the Trial Court Department in which they serve. Mini-trial neutrals are not specifically named in the exemption provision because they are required to complete the training for mediators and the training for case evaluators and may qualify for the limited exemption as mediators and case evaluators. Summary Jury Trial neutrals have no need for the exemption because summary jury trials may be conducted only by judges or certain attorneys who are not required under Rule 8 to have any additional training (and therefore have no need for the exemption) or by qualified arbitrators who may qualify for the exemption as arbitrators.*

## **RULE 9. ETHICAL STANDARDS.**

**(b) Impartiality.** *A neutral's obligation is to act on the basis of what he or she subjectively believes may be the appearance of favoritism or bias and also on the basis of what the neutral reasonably believes others would think.*

**(c) Informed Consent.** *(i) In arbitration, private communications involving the neutral and less than all of the parties and/or their attorneys concerning the substance of the dispute would be improper unless all parties agree otherwise in advance.*

*(ii) In making a recommendation that a party obtain assistance, the neutral shall avoid making any disclosure to other parties in the dispute resolution process which would (a) compromise the confidentiality of communications between the neutral and the party in need of assistance, (b) detrimentally affect the interests of the party in need of assistance, or (c) impair the impartiality (or perceived impartiality) of the neutral. In seeking appropriate assistance, neutrals should be aware of parties' right, pursuant to G.L. c. 221C, to interpreter's services throughout a legal proceeding.*

*(iii) This Standard is ordinarily not applicable in arbitration. See also commentary to previous section.*

*Courts are encouraged to develop and foster innovative approaches to serving unrepresented parties, such as "lawyers of the day," pro bono panels, lay advocates, information rooms inside the court, assignment of counsel, mediation assistants, substantive written information, the use of volunteer mediators to supplement court employees in busy sessions such as the Boston Housing Court, the use of a different ADR process, substantive checklists, and judicial participation in the review of agreements.*

*(iv) The provision in this Standard permitting a neutral to use his or her knowledge to inform the parties' deliberations is ordinarily not applicable in arbitration.*

*(v) In arbitration, the parties may not have the right to withdraw from the proceedings.*

**(d) Fees.** *For purposes of this subsection, fees may include the neutral's fees, administrative fees, and related expenses.*

*(iv) This provision is not intended to prohibit neutrals from paying an administrative or panel membership fee.*

**(e) Conflict of Interest.** *(i) Individuals are not prohibited from serving as neutrals for parties for whom they or members of their firm have provided services or are currently providing services as long as full disclosure of the relationship is made and (i) after*



disclosure (ii) the parties consent to the neutral's serving in the case and (iii) the neutral determines that the conflict is not significant enough to cast doubt on the integrity of the process and the neutral. However, neutrals should be particularly sensitive to the fact that circumstances may arise while serving as a neutral for a party who is currently a client of his or her firm which can give rise to a conflict requiring withdrawal, especially when it involves a matter related to the dispute to which the neutral has been assigned.

(iv) The provisions in this subparagraph do not apply to other individuals with whom the neutral is in business, such as other lawyers in the neutral's firm, or other mental health professionals in a neutral's group practice, nor do they apply to situations where the neutral has served in the past as a neutral in a dispute resolution process involving any party to the current dispute resolution process. Consent is not waivable in advance of the dispute resolution process, but may be waived after the dispute resolution process. A dispute should be considered "related to" another matter if the facts involved in the dispute resolution process are so germane to the later matter that (a) a party in the earlier matter would be unfairly disadvantaged by the neutral's involvement in the later matter or (b) a party in the later matter would be unfairly disadvantaged by the neutral's involvement in the earlier matter.

**(h) Confidentiality.** (i) This rule is not applicable to arbitration, in which private communications involving the neutral and less than all of the parties and/or their attorneys would be improper unless all parties agree otherwise in advance.

(iv) Individuals who administer court-connected dispute resolution programs are also bound by these standards. See definition of "neutral" in Rule 2.

(v) Ethical vs. statutory obligations: The provisions in this section concerning confidentiality govern the ethical obligations of the neutral but may not bar compelled disclosure of confidential communications, by means of subpoena or other court process. G. L. c.233, §23C, which governs mediation, may prohibit disclosure of communications made in the course of a mediation (as defined in the statute) even if those communications relate to child abuse or neglect or life threatening situations. Other statutes, such as c.119, §51A (the mandated reporter statute) may also govern the obligation to disclose, or maintain confidentiality of, communications relating to child abuse and neglect.

Agreements: In some cases, the confidentiality protection afforded by G. L. c.233, §23C, requires an agreement to mediate. In other dispute resolution processes (such as arbitration, case evaluation, and conciliation), where there is no statutory protection for confidentiality, it may be desirable for the parties to execute an agreement which provides for confidentiality of the process.

**COMMONWEALTH OF MASSACHUSETTS  
STANDING COMMITTEE ON DISPUTE RESOLUTION  
c/o Executive Office of the Trial Court  
One Pemberton Square  
Boston, MA 02108**

**Honorable David G. Sacks  
Chair**

**UNIFORM RULES ON DISPUTE RESOLUTION**

Frequently Asked Questions

January 15, 2020

- (1) What is the purpose of the Uniform Rules on Dispute Resolution?

Answer: To create a court approved system to offer and provide dispute resolution services for civil cases in the Trial Court. The Uniform Rules provides a system of dispute resolutions options for pending cases in the Trial Court Departments, beyond traditional adjudication.

The Uniform Rules were designed to implement the Policy Statement on Dispute Resolution Alternatives adopted in 1993 by the Supreme Judicial Court (“SJC”). The 1993 Policy Statement states that the court is responsible for ensuring the quality of court-connected alternative dispute resolution services, that there should be consistent standards governing these services that alternative dispute resolution should be available throughout the court system, and that access to these services should not depend on the financial resources of the parties.

- (2) What activity is covered by the Uniform Rules? What are “court-connected” dispute resolution services?

Answer: The Uniform Rules regulate how the Trial Court refers cases to court approved programs for court-connected dispute resolution services. Under the Uniform Rules, courts can only refer cases to approved programs. Cases referred to court approved programs are court-connected dispute resolution services. A court referral takes place whenever a judge or other court employee provides a party to a case with the name of one or more approved dispute resolution providers or directs a party to a particular approved dispute resolution provider.

- (3) What “dispute resolution services” are covered?

Answer: The Uniform Rules govern referrals to the seven approved dispute resolution processes. The seven ADR processes are defined as: arbitration, conciliation, case evaluation, dispute intervention, mediation, mini trial and summary jury trial. The best known and most used ADR processes in the Trial Court are mediation, conciliation and dispute intervention. Under the Uniform Rules, “dispute resolution services” refer to processes in which a neutral third party is engaged to assist in settling a case or otherwise disposing of a case without a trial. The Uniform Rules specifically exclude pretrial conferences, early intervention events, screenings, and trials from the definition of dispute resolution services. Therefore, these activities are not governed by the Uniform Rules.

- (4) What constitutes a program under the Uniform Rules? Can an individual be a program?

Answer: Under the Uniform Rules, a “program” is defined as an organization with which neutrals are affiliated, through membership on a roster or similar relationship, which administers, provides, and monitors dispute resolution services. A program may be operated by a court employee or by an organization independent of the court, including a corporation or governmental agency. A program operated by a court employee may include one or more court employees or non-court employees, or a combination of court employees and non-court employees on its roster. The Standing Committee has adopted commentary to Rule 2 which clarifies that a program must consist of a group of people.

- (5) Why do the Uniform Rules allow the approval only of programs, rather than individual neutrals to provide court-connected dispute resolution services?

Answer: The Uniform Rules on Dispute Resolution were designed to provide the greatest amount of ADR service to the Trial Court with the least amount of centralized administrative bureaucracy. Many programs that serve the Trial Court have had long experience in overseeing rosters of neutrals, and the model adopted by the Uniform Rules recognizes and builds on that expertise.

- (6) Are judges, other court employees and lawyers considered “neutrals” under the Uniform Rules when they are providing dispute resolution services?

Answer: Under the Uniform Rules, sitting judges are not included in the definition of a “neutral” even when they are engaged in activities that otherwise would be considered court-connected dispute resolution services, such as mediating a case during a settlement conference with counsel. However, other court employees such as Clerks and their assistants, Registrars and their assistants, Probation Officers and Housing Specialists, as well as retired judges who are not sitting as recall judges, are considered “neutrals” when they are providing court-connected dispute resolution services. Likewise, lawyers are considered “neutrals” for purposes of the Uniform Rules when they are providing court-connected dispute resolution

services.

- (7) How do programs become eligible to receive court referrals?

Answer: The Uniform Rules require court referrals for dispute resolution services to be made only to court approved programs. Programs are approved by the Chief Justice of a Trial Court Department in order to be eligible to receive referrals from a court in that department. The Trial Court has established uniform application forms, procedures and time periods which are to be used by all programs seeking approval from any of the court departments. Approvals last for three years and new programs may apply during any uniform application period. A list of current approved programs and the application materials can be found on the Trial Court website <https://www.mass.gov/alternative-dispute-resolution-and-mediation>.

- (8) What requirements must ADR programs meet to be approved under the Uniform Rules?

Answer: In order to qualify for approval, a program must meet standards of operation set forth in Rule 7 of the Uniform Rules, and certify that neutrals on its roster meet the qualification standards set forth in Rule 8 and the Guidelines and comply with the ethical standards contained in Rule 9 of the Uniform Rules.

- (9) How does a person become associated with a program in order to be eligible to receive court referrals under the rules?

Answer: Individuals who are unaffiliated with a specific program have two options. First, they may apply to join the panel or roster of an existing approved program. Second, they may organize a new program outside the court and, when the application process is open, that program may apply for approval to the Chief Justice of the appropriate department of the Trial Court. Under Rule 7(c), any program providing court-connected dispute resolution services must adopt a fair and reasonable method to permit qualified individuals to join its roster.

- (10) What qualifications must a person meet in order to serve as a neutral and perform court-connected dispute resolution services?

Answer: The qualifications for neutrals providing court-connected dispute resolution services are described in Rule 8. The Rule establishes requirements for training, mentoring and evaluation, continuing education and evaluation for the following seven categories of neutrals: mediators, arbitrators, case evaluators, conciliators, mini-trial neutrals, summary jury trial neutrals, and dispute intervenors. In addition, Rule 8 provides for an alternative method for meeting these qualification requirements. Further, to be eligible to serve as a neutral under the Uniform Rules, a person must be affiliated with a program that is approved to provide dispute resolution services to the Trial Court, must observe the program's

requirements, must meet the requirements of Rule 8 and the accompanying Guidelines, and must observe the Ethical Standards contained in Rule 9 of the Uniform Rules.

- (11) What is the Alternative Method for training, mentoring and evaluation in Rule 8?

Answer: The Alternative Method allows a neutral to satisfy the qualification requirements of Rule 8 by showing prior training, mentoring and evaluation experiences which is the substantial equivalent to the standard qualification requirement. This method was created to assist neutrals who were trained in another state or before the adoption of Rule 8 to satisfy the requirements of Rule 8. See Rule 8(j) and the Guidelines for Implementation of Qualifications Standards.

- (12) Have the training requirements changed for conciliators?

Answer: Yes. With the convergence of the mediation and conciliation training requirements, and the proliferation of court-connected conciliation programs and attorney mediators in the Trial Court over the past several years, the guidelines implementing the training requirements for conciliators have been modified.

The amendment to the guidelines permits licensed Massachusetts attorneys, who have completed an approved 30-hour mediation training program, to serve as a conciliator in a court-connected approved program. This authority is subject to the approval of the program and the completion of the necessary court orientation session. Please see the Guidelines for Implementation of Qualification Standards for Neutrals, Alternative Methods for Conciliators in Section III on page 82 of this publication. The change to the alternative training method for conciliators became effective on March 1, 2013. However, conciliators still must be a member of the Massachusetts Bar, be in good standing with the Board of Bar Overseers and have practiced law in Massachusetts for at least three years.

- (13) Are there continuing education requirements for neutrals?

Answer: Yes. A neutral is required to participate in continuing education as directed by the approved program with which the neutral is affiliated or by the court department in which the neutral is providing services. Approved programs are responsible for enforcing the qualifications standards in Rule 8. Each program has certified in its application that it has implemented a continuing education policy for all neutrals on its roster. The continuing education requirement is designed to build skills, share best practices, and keep current on alternative dispute resolution issues and trends. The amount and content of continuing education is left to the discretion of the approved program. See the Commentary to Rule 8(c)(iii).

- (14) Are any neutrals exempt from the training requirements of Rule 8?

Answer: No. All neutrals must be trained in order to provide service to the Trial Court, as the application of the Limited Exemption from Training, Mentoring and Evaluation Requirements found in Rule 8(k) has expired.

- (15) Are there different categories of court-connected approved programs?

Answer: Yes. Under the Uniform Rules, courts have several choices about how to offer court-connected dispute resolution services. Courts may approve programs consisting exclusively of court employees, programs consisting exclusively of non-court employees, programs containing a combination of both court employees and non-court employees, or one or more of each.

- (16) How do courts decide which program should receive a referral?

Answer: Where there is more than one approved program serving a court, parties must be given a choice among approved programs. Otherwise, cases should be distributed by the courts fairly between court approved providers. In practice, where multiple providers are approved for a specific court division, they often organize a system of rotation that allows for fair allocation of cases between themselves, or are approved based on the type of dispute resolution services offered (mediation or conciliation), or on the case type being serviced (small claims or summary process).

- (17) Do the Uniform Rules regulate the fees charged by programs?

Answer: Yes. Fees charged by approved providers of court-connected dispute resolution services are approved by the Departmental Chief Justice of the Trial Court in which the services are provided. The Boston Municipal Court, the District Court and the Juvenile Court Departments have not approved programs in their departments that charge fees to litigants. The services of approved programs in the Land Court, the Probate and Family Court and the Superior Court Departments are predominately fee-based. Dispute resolution services by Housing Specialists in the Housing Court Department and dispute intervention services by Probation Officers in the Probate and Family Court Department are “in-house” programs and do not charge fees to litigants.

In addition, parties may not be charged a fee for attendance at a mandatory screening session or an early intervention event, or for dispute resolution services provided by court employees. In no case may the fee for court-connected dispute resolution services be made contingent on the outcome of the dispute resolution process.

- (18) Who pays for court-connected dispute resolution services?

Answer: Some dispute resolution services are free as outlined above, because they are provided by court employees, by community mediation programs in the Boston Municipal Court and District Court Departments, or by conciliation programs run by bar associations. Other dispute resolution services are fee-based. When there is a charge for the dispute resolution service, it may be lower than you would pay elsewhere. The fees charged are often determined by the party's ability to pay. See Rule 7(e), which requires approved programs to provide reduced fee or fee waivers for indigent litigants as part of their fee schedule.

- (19) How does the new Trial Court Policy on Fees for Dispute Resolution Services operate?

Answer: The new Fee Policy provides guidance on fees for court-connected dispute resolution services provided in the Trial Court in accordance with Rules 7(e), 9(d), and 9(e)(iv). The new policy clarifies the rules regarding ethical behavior of approved programs regarding charging fees after a free service has been provided. This policy allows approved programs to charge fees for continuation or subsequent services for the same case or dispute after a free service, as long as the program is approved to charge fees from the Departmental Chief Justice, and the fees for continuation or subsequent services are agreed to in writing by the parties prior to the initial free dispute resolution service. The new Trial Court Policy on Fees for Dispute Resolution can be found on page ## of this publication.

- (20) Do the Uniform Rules impact the activities of non-court-approved neutrals or programs in the private marketplace?

Answer: No. The Uniform Rules, including the ethical standards, only regulate activities which are both a) provided by programs approved under the rules, and b) provided in disputes referred to the program by a Massachusetts Trial Court. The Uniform Rules do not regulate the conduct or activities of persons or organizations involved in providing dispute resolution services where there has been no court referral. Only "court-connected dispute resolution services" are regulated by the Uniform Rules. For example, a lawyer in private practice who is on a conciliation panel for a court approved bar association program is governed by the Uniform Rules. But if that lawyer acts as a neutral in a case privately received, the Uniform Rules do not apply.

- (21) Can a party in a court case be ordered to participate in alternative dispute resolution under the Uniform Rules?

Answer: Generally, no. The consent of the parties is necessary before a court may refer or order a party to attend or to participate in any dispute resolution service. There are, however, two exceptions to this rule. First, the Probate and Family Court may order parties to participate in dispute intervention conducted by Probation

Officers in the Probate and Family Court Department. Second, the Uniform Rules do recognize the authority of the Chief Justice of the Trial Court (as set forth in G.L. c. 211B, § 19) to approve experimental, pilot programs for mandatory, non-binding dispute resolution.

In addition, parties can be ordered to attend screening conferences, early intervention events and pretrial conferences, where the use of ADR may be discussed. Furthermore, the Uniform Rules require that, except in the case of dispute intervention and any pilot programs for mandatory ADR, parties must be informed that participation in court-connected ADR is voluntary.

- (22) If a party before the court decides to use alternative dispute resolution, is that party required to use a court-approved program?

Answer: No. The Uniform Rules recognize that parties have a right to choose dispute resolution services completely outside the court system in the private marketplace. However, as noted above, the Probate and Family Court may order parties to participate in a non-binding ADR process provided by probation officers known as dispute intervention. Following the dispute intervention, parties in such cases may pursue other dispute resolution options outside the court in the private marketplace or at a community mediation center subject to reasonable requirements relating to scheduling that may be imposed by the Probate Court.

- (23) Is court-connected ADR a confidential process?

Answer: In general, yes. The Uniform Rules establish an ethical obligation that requires neutrals in all court-connected ADR processes to observe standards of confidentiality that are spelled out in detail in Rule 9(h). Under the Uniform Rules, however, neutrals in conciliation and dispute intervention may communicate to the court a list of resolved and unresolved issues, and an assessment of whether the case will go to trial. Also, parties must be informed in advance about this communication. For other processes, unless the parties consent, no communication with the court is allowed other than a request for additional time, an assessment that the case is inappropriate for ADR, or the fact that the process has concluded without agreement. While the processes are confidential, any agreement reached that is filed with the court becomes part of the court record. The Uniform Rules do not change current Massachusetts law regarding confidentiality in mediation. There is a statutory privilege which makes mediation a confidential process under certain conditions. See G.L. c. 233, § 23C. The ethical rule is consistent with the statute.

- (24) What is the relationship between the Uniform Rules and other court rules?

Answer: The rules were designed to complement and to be consistent with existing court rules. However, in the event it is discovered that there are conflicts, the



Uniform Rules provide that other court rules will govern. As a result if, for example, there are conflicts between the ethical standards in the Uniform Rules and the professional canons of ethics for clerks or attorneys under other court rules, the professional canons govern the situation. In addition, each department of the Trial Court can adopt additional rules regarding dispute resolution that go beyond the Uniform Rules, so long as they are consistent with the Uniform Rules.

- (25) How is an agreement reached through ADR enforced?

Answer: The Uniform Rules state that an agreement reached through court-connected ADR must be reduced to writing and signed by the parties, and that the clerk must be informed of the disposition. Such an agreement is thus enforceable in the same manner as any other agreement, according to contract law. However, in certain courts, including the Probate and Family Court Department and some divisions of the Housing Court and Juvenile Court Departments, the court must approve any agreement reached through ADR.

- (26) If there is no approved program for a particular court, may that court refer litigants to a program approved for a neighboring court?

Answer: Yes. A court may inform the parties that they can seek services at an approved program in a neighboring court. The court may also provide parties with the list of approved programs to assist them in finding high quality ADR services.

- (27) Will data be kept on court referrals to court-approved ADR programs?

Answer: Yes. Approved programs are required by Rule 6(g) to compile data on cases referred to them for dispute resolution services on a regular basis and report caseload data to the particular court department. See the Trial Court Policy on Data Collection, the Dispute Resolution Program Report Form and the Guidelines for the Dispute Resolution Program Report Form. These documents are all included in this publication.

- (28) What is Rule 5?

Answer: Rule 5 of the Uniform Rules requires courts to make information about ADR available to attorneys and unrepresented litigants. Attorneys must provide information to their clients, discuss the advantages and disadvantages of ADR, and certify their compliance with this requirement. The Standing Committee created “A Guide to Court-Connected Alternative Dispute Resolution Services” to assist in the implementation of Rule 5. The Guide can be found on the Trial Court’s website at <https://www.mass.gov/alternative-dispute-resolution-and-mediation>.

In addition, the Trial Court has created a Policy on Rule 5, a Uniform Counsel

Certification Form and Department specific Exemptions to the Counsel Certification form. These documents are found in this publication of the Uniform Rules and on the Trial Court website link shown above.

###

## **TRIAL COURT POLICY ON DATA COLLECTION AND RECORD KEEPING**

It is the policy of the Trial Court that courts must, in each case, keep a record of each referral for court connected dispute resolution services under SJC Rule 1:18, Uniform Rules on Dispute Resolution. Approved programs must, in addition to any other requirements established by the Chief Justice of a Trial Court Department, maintain records of cases referred to them to enable the appropriate Department or Departments of the Trial Court to evaluate the program. See Uniform Rules 3(c), 3(d), Commentary to 4(b), and 6(g).

At a minimum, approved programs must maintain for at least three years a written record of each case referred by each particular court using a form prescribed by the Chief Justice for Administration and Management.

Every approved program shall file a report within 60 days following the end of the fiscal year (July 1 to June 30) with the Chief Justice of each department from which they have received a referral using a uniform data form prescribed by the Chief Justice for Administration and Management. This annual report shall include a summary of the dispute resolution services provided to the department during the previous fiscal year including a summary of the case record information and the number and nature of written complaints about court connected dispute resolution services received, if any. Reports shall be prepared consistent with the confidentiality requirements of the Uniform Rules on Dispute Resolution.

## **ADR Referral Form**

### **Part I: Case Information**

Case Name: \_\_\_\_\_

Docket #: \_\_\_\_\_

Case Type/Issue(s): \_\_\_\_\_

Names & Telephone #'s of Parties/Attorneys: \_\_\_\_\_

### **Part II: Referral Information**

Referral Date: \_\_\_\_\_ Referral Source & Case Status (Person & Event): \_\_\_\_\_

Program(s) Referral to: \_\_\_\_\_

Referral to:

a. ☐ ADR Screening

b. ☐ Dispute Resolution: ☐ mediation ☐ arbitration ☐ conciliation ☐ dispute intervention  
☐ case evaluation ☐ mini-trial ☐ summary jury trial

Comments/Directions: \_\_\_\_\_

Next Court Date & Event (or other deadlines): \_\_\_\_\_

### **Part III: Report Back to Court & Next Event Date**

**Program Report:** Please report back to the court with the following information before the next court date or within any other time frames indicated below:

#### ***a. Information on Status of Referral:***

☐ Parties elected / **declined** to participate in dispute resolution through the Program.

☐ Program is waiting to hear back from parties after initial screening.

☐ Parties did not contact program.

☐ Other (please specify): \_\_\_\_\_

#### ***Information on Dispute Resolution Services provided:***

☐ Type of dispute resolution selected: \_\_\_\_\_

☐ Dates of dispute resolution session(s): \_\_\_\_\_

Outcome of dispute resolution process: ☐ pending ☐ settled ☐ not settled  
☐ on-going ☐ partial settlement

Signature of Reporting Program Coordinator: \_\_\_\_\_ Date: \_\_\_\_\_

(Sign & Print Name)

**Commonwealth of Massachusetts  
TRIAL COURT**

\_\_\_\_\_ **Court Department**

\_\_\_\_\_ **Division**

**DISPUTE RESOLUTION PROGRAM REPORT**

**Reporting Period:** \_\_\_\_\_

**Date Submitted:** \_\_\_\_\_

\_\_Monthly \_\_Quarterly: \_\_ 3 Months \_\_ 6 Months \_\_ 9 Months \_\_ 12 Months (Annual)

**Program Name:** \_\_\_\_\_

**CASES REFERRED**

Cases Screened \_\_\_\_\_

Cases Not Screened \_\_\_\_\_

**TOTAL** \_\_\_\_\_

**REFERRAL OUTCOME**

Entered Process \_\_\_\_\_

Did Not Enter Process \_\_\_\_\_

Pending Entry \_\_\_\_\_

**TOTAL** \_\_\_\_\_

**ADR PROCESS OUTCOME: MEDIATION**

Settled \_\_\_\_\_

Not Settled \_\_\_\_\_

Partial Settlement \_\_\_\_\_

Pending Final Outcome \_\_\_\_\_

**TOTAL** \_\_\_\_\_

**Other ADR Process** (please specify): \_\_\_\_\_

Settled \_\_\_\_\_

Not Settled \_\_\_\_\_

Partial Settlement \_\_\_\_\_

Pending Final Outcome \_\_\_\_\_

**TOTAL** \_\_\_\_\_

**FEES**

Full Fee Assessed \_\_\_\_\_

Fee Waiver/Reduction Granted \_\_\_\_\_

**TOTAL** \_\_\_\_\_

**REFERRAL SOURCE**

Judge \_\_\_\_\_

Clerk/Register and Assistant \_\_\_\_\_

Self (Party and/or Attorney) \_\_\_\_\_

Local ADR Coordinator \_\_\_\_\_

Court Personnel (please specify) \_\_\_\_\_

ADR Program Screener \_\_\_\_\_

**TOTAL** \_\_\_\_\_

**REFERRAL EVENT**

Complaint Filing \_\_\_\_\_

ADR Screening \_\_\_\_\_

Show Cause Hearing \_\_\_\_\_

Pre-Trial Conference \_\_\_\_\_

Other Pre-Trial Event (please specify) \_\_\_\_\_

Trial \_\_\_\_\_

**TOTAL** \_\_\_\_\_

**CASE TYPES** (please specify)

Contract \_\_\_\_\_

Tort \_\_\_\_\_

Real Property \_\_\_\_\_

Equitable Remedies \_\_\_\_\_

Criminal \_\_\_\_\_

Small Claims \_\_\_\_\_

Summary Process \_\_\_\_\_

CHINS \_\_\_\_\_

Care & Protection \_\_\_\_\_

Delinquency \_\_\_\_\_

Termination of Parental Rights \_\_\_\_\_

Separate Support \_\_\_\_\_

Divorce \_\_\_\_\_

Paternity \_\_\_\_\_

Guardianship \_\_\_\_\_

Will Contest \_\_\_\_\_

Petition to Partition \_\_\_\_\_

Misc. /Real Property \_\_\_\_\_

Zoning \_\_\_\_\_

Registration/Confirmation \_\_\_\_\_

Tax Liens \_\_\_\_\_

Other \_\_\_\_\_

**TOTAL** \_\_\_\_\_

**WRITTEN COMPLAINTS**

Resolved Complaints \_\_\_\_\_

Pending Complaints \_\_\_\_\_

**TOTAL** \_\_\_\_\_**NATURE OF COMPLAINTS**

Complaints about Program \_\_\_\_\_

Complaints about Neutrals \_\_\_\_\_

Other Complaints (please specify): \_\_\_\_\_

**TOTAL** \_\_\_\_\_

Date Submitted: \_\_\_\_\_

Program Director: \_\_\_\_\_  
(Print Name)

(Please Sign) \_\_\_\_\_



## **Guidelines for Dispute Resolution Program Report Form**

### **Introduction**

**Policy:** Approved ADR programs shall compile data on cases referred by the court on a monthly basis and shall submit caseload data to the court on a quarterly and annual basis.

**Reporting Procedures:** Programs shall use the approved Dispute Resolution Program Report Form to compile caseload data on a monthly basis and to create quarterly and annual reports. Quarterly and annual reports shall be submitted to the court's Local Dispute Resolution Services Coordinator. The Local Coordinator shall provide programs with the Report Forms.

**Reports:** Reports shall be prepared and submitted to the court by approved ADR programs on a **quarterly** basis each fiscal year. (The fiscal year runs from July 1 to June 30.) The caseload data contained in the reports shall be **cumulative**. Quarterly reports shall cover the following periods and be due on the following dates: *Three Month Report*, July 1-Sept 30 (due Oct. 31); *Six Month Report*, July 1 – Dec. 31 (due Jan 31); *Nine Month Report*, July 1 – March 31 (due April 30); and *Twelve Month Report/Annual Report*, July 1 – June 30 (due July 31).

**Carry-overs:** If there are cases pending entry or pending final outcome in the fiscal year-end/Annual Report that are carried over into the next fiscal year, the program may submit a Revised Annual Report in September (along with the first quarterly report of the new fiscal year) in order to provide updated information on the outcome of the carryover cases.

### **Definitions and Guidelines for Completing the Report Form**

**Department/Division/Program:** Programs shall file separate reports for each of the Trial Court Divisions (local court) in which the program has been approved to handle court referrals.

**Reporting Period:** Indicate the applicable month(s) and year covered by the report and check off the type of report submitted (3, 6, 9, or 12 months).

### **CASES REFERRED**

**CASES REFERRED:** A court referral is when one of the following happens:

1. Judge/Clerk/Local Coordinator/other court personnel give the ADR program name to the parties and ask the parties to contact the program;
2. Judge/Clerk/Local Coordinator/other court personnel give case information to the ADR program and ask the program to contact the parties;
3. Parties are required to attend an ADR screening pursuant to a standing order, directive or policy of the court.

Programs shall track each court referral based on the date that the case is referred to the program. The number indicated in “Cases Referred” on the Report Form should be the total number of cases referred to the program during the reporting period.

**Cases Screened:** The number indicated in “Cases Screened” on the Report Form should be the total number of cases referred during the reporting period that participated in an ADR screening with the program. “Screening” means an orientation session in which parties to a case and/or their attorneys receive information about dispute resolution services and decide whether or not to participate in dispute resolution.

**Cases Not Screened:** The number indicated in “Cases Not Screened” on the Report Form should be the total number of cases referred during the reporting period that did not participate in an ADR screening with the program.

NB: Numbers indicated for “Cases Screened” and “Cases Not Screened” should add up to the total number of “Cases Referred.” (In some instances, the number referred may equal the total number of cases screened.)

## **REFERRAL OUTCOMES**

**REFERRAL OUTCOME:** For each case referred during the reporting period, programs shall track whether or not the case agreed to participate in an ADR process.

**Entered Process:** The number indicated in “Entered Process” on the Report Form should be the total number of referred cases during the reporting period that chose to participate in a dispute resolution process.

**Did Not Enter Process:** The number indicated in “Did Not Enter Process” on the Report Form should be the total number of referred cases during the reporting period that chose not to participate in a dispute resolution process.

**Pending Entry:** The number indicated in “Pending Entry” on the Report Form should be the total number of referred cases during the reporting period that have not yet decided whether or not to enter a dispute resolution process.

NB: Numbers indicated for “Entered Process,” “Did Not Enter Process” and “Pending Entry” should add up to the total number of “Cases Referred” and/or the total number of “Cases Screened.”

## **ADR PROCESS OUTCOME**

**ADR PROCESS OUTCOME:** Programs shall report on the total number of cases that chose to participate in (entered) a dispute resolution process during the reporting period.

**Mediation and Other ADR Processes:** For programs offering more than one type of dispute resolution process to a particular court, the program shall report ADR Process Outcomes for each ADR process provided during the reporting period (e.g., mediation, arbitration, case evaluation, etc.). Please be sure to specify the type of ADR process under the section “Other ADR Process.” If more than four processes were provided, please submit additional pages as needed of the report form page 2.

**Settled:** The number indicated in “Settled” on the Report Form should be the total number of entered cases that completed a dispute resolution process and were settled through dispute resolution.

**Not Settled:** The number indicated in “Not Settled” on the Report Form should be the total number of entered cases that completed a dispute resolution process and were not settled through dispute resolution.

**Partial Settlement:** The number indicated in “Partial Settlement” on the Report Form should be the total number of entered cases that completed a dispute resolution process and in which some issues, claims, complaints, counts but not all, were settled through dispute resolution (e.g., only one of two consolidated cases was settled; only the claims against one of the parties were settled; only the liability issue or damages issue was settled; only visitation was agreed upon but not custody, etc.). Programs should report partial settlements where they have the ability to track such information accurately. Otherwise, cases that completed a dispute resolution process but were not fully settled should be listed under “Not Settled.” Please make sure to list only completed cases that settled fully under “Settled.”

**Pending Final Outcome:** The number indicated in “Pending Final Outcome” on the Report Form should be the total number of entered cases that have not yet completed the dispute resolution process.

NB: Numbers indicated for “Settled,” “Not Settled,” “Partial Settlement” and “Pending Final Outcome” listed separately for each ADR Process provided should add up to the total number of cases that “Entered Process” above.

## **FEES**

**FEES:** Programs shall report on the total number of cases that entered a dispute resolution process during the reporting period in which fees applied.

**Full Fee Assessed:** The number indicated in “Full Fee Assessed” on the Report Form should be the total number of entered cases in which full fees were applied to all parties.

**Fee Waiver/Reduction Granted:** The number indicated in “Fee Waiver/Reduction Granted” on the Report Form should be the total number of entered cases in which a fee waiver or partial fee reduction was applied to one or more parties.

NB: Numbers indicated for “Full Fee Assessed” and “Fee Waiver/Reduction Granted” should add up to the total number of cases that “Entered Process” above in which fees applied. Be sure to report each case in only one category.

### **REFERRAL SOURCE**

**REFERRAL SOURCE:** Programs shall report on the referral source for the total number of cases referred during the reporting period. Each case referred shall be assigned one referral source. Programs should track the source of every referred case under the categories listed on the Report Form: Judge, Clerk and Assistant Clerk Magistrates, Registers/Assistant Registers, Self (Party and/or Attorney), ADR Screener/Coordinator, and Other Court Personnel. Each Report Form should only reflect Self-referrals from the Department and Division in which the Program is approved.

If referral source information is not possible to determine, please add “Unknown” as a category. There should be only a few, if any, entries in this category.

NB: Numbers indicated for each of the referral source categories should add up to the total number of “Cases Referred.”

### **REFERRAL EVENT**

**REFERRAL EVENT:** Programs shall report on the referral event for the total number of cases referred during the reporting period. Each case referred shall be assigned one referral event. Programs should track the referral event of every referred case under the categories listed on the Report Form: Complaint Filing, ADR Screening, Show Cause Hearing, Pre-Trial Conference, Other Pre-Trial Event, and Trial Date. If referral event information is not possible to determine, please add “Unknown” as a category. There should be only a few, if any, entries in this category.

**NB:** Numbers indicated for each of the referral event categories should add up to the total number of “Cases Referred.”

### **CASE TYPES**

**CASE TYPES:** Programs shall report on the case types for the total number of cases referred during the reporting period. Each case referred shall be assigned one case type. Programs should track the case type of every referred case under the categories listed on the Report Form: Contract, Tort, Real Property, Equitable Remedies, Criminal, Small Claims, Summary Process, CHINS, Care & Protection, Delinquency, Termination of Parental Rights, Separate Support, Divorce, Paternity, Guardianship, Will Contest, Petition to Partition, Misc./Real Property, Zoning, Registration/Confirmation, Tax Liens, and Other.

**NB:** Numbers indicated for each of the case type categories should add up to the total number of

“Cases Referred.”

### **WRITTEN COMPLAINTS**

**WRITTEN COMPLAINTS:** The program shall report on the number of written complaints relating to ADR services which the program received during the reporting period. Each complaint shall be listed only under one category. If it appears to be about the neutral and the program, it should be reported as a complaint about the program.

**Resolved Complaints:** The number indicated in “Resolved Complaints” on the Report Form should be the total number of written complaints that the program received during the reporting period which have been resolved by the program at the local level.

**Pending Complaints:** The number indicated in “Pending Complaints” on the Report Form should be the total number of written complaints that the program received during the reporting period which are pending final resolution.

NB: Numbers indicated for “Resolved Complaints” and “Pending Complaints” should add up to the total number of “Written Complaints.”

**NATURE OF COMPLAINTS:** The program shall report on the nature of the written complaints relating to ADR services which the program received during the reporting period. Each complaint shall be listed only under one category. If it appears to be about the neutral and the program, it should be reported as a complaint about the program.

**Complaints about Program:** The number indicated in “Complaints about Program” on the Report Form should be the total number of written complaints that the program received during the reporting period which related to program staff actions or the program’s compliance with court ADR policies and procedures, including ethical standards.

**Complaints about Neutrals:** The number indicated in “Complaints about Neutrals” on the Report Form should be the total number of written complaints that the program received during the reporting period which related to the neutral’s actions, performance and/or compliance with program and court ADR policies and procedures, including ethical standards.

**Other Complaints:** The number indicated in “Other Complaints” on the Report Form should be the total number of written complaints that the program received during the reporting period which were not directly related to the program or the neutral.

NB: Numbers indicated for “Complaints about Program,” “Complaints about Neutrals” and “Other Complaints” should add up to the total number of “Written Complaints.”

**Date:** The date indicated here should be the date the program submitted the report to the court.

**Program Director:** Indicate the name of the Program Director and/or the name of the person who prepared the report. Have this person both sign and print his/her name. The Program may be contacted by the court with questions and/or comments about the report.

## **TRIAL COURT POLICY ON COMPLAINTS**

### **1. FILING:**

Any individual wishing to make a complaint regarding court-connected dispute resolution services may do so by filing a written complaint with any of the following individuals: the director of the dispute resolution program that provided the services; the person appointed by the local court to be its dispute resolution coordinator or the applicable the First Justice, the Regional Administrative Justice or the Chief Justice of the Court Department and/or their designee from where the complaint arose. All complaints are to be resolved at the local level if possible.

### **2. CONTENT OF COMPLAINT:**

The complaint should identify the court or program where the alleged violation took place, and the specific conduct that forms the basis of the complaint.

### **3. DISPOSITION OF COMPLAINT:**

Before a neutral is deemed no longer qualified to provide court-connected dispute resolution services or a program is removed from the department's list of approved programs, said neutral or program has a right to a formal hearing at a time and manner to be decided by the Chief Justice of the Department of the Trial Court from which the complaint arose. A formal hearing is not required unless a neutral is deemed no longer qualified to provide court-connected dispute resolution services or a program is disapproved from a department's list of programs to provide court-connected dispute resolution services.

### **4. ALTERNATIVE DISPUTE RESOLUTION:**

In all cases, alternative dispute resolution services should be made available to the parties for the resolution of complaints.

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**Note:** Court personnel administering this policy should direct any inquiries they have about the resolution of complaints to the Coordinator of ADR Services for the Trial Court.

## **TRIAL COURT POLICY ON EVALUATION OF DISPUTE RESOLUTION SERVICES**

The evaluations conducted by approved dispute resolution programs pursuant to Rule 7(a), SJC. Rule 1:18, Uniform Rules on Dispute Resolution, must produce records capable of being audited. Programs shall retain these records for at least three-years. Each approved program should either occasionally or regularly administer evaluations in which all or a bona fide sample of parties and/or their lawyers are provided with an evaluation form and an opportunity at the conclusion of the dispute resolution service to submit a written assessment of the program and the neutrals.



**TRIAL COURT POLICY**  
**REGARDING RULE 5 OF THE UNIFORM RULES ON DISPUTE RESOLUTION**

The following policy shall govern the implementation of the final sentence of Rule 5 of the Uniform Rules on Dispute Resolution:

- (1) The “Uniform Counsel Certification for Civil Cases” form (attached hereto) shall be promulgated for each Department of the Trial Court to use as is, or to be incorporated, as Rule 5 states, “on the civil cover sheet or its equivalent.”
- (2) Plaintiff’s/Petitioner’s counsel shall file this certification or its equivalent at the time his/her initial pleading is filed. All other counsel shall file it within thirty (30) days of his/her initial entry into the case, whether by answer, motion, appearance slip or other pleading.
- (3) Each Department of the Trial Court may establish exemptions to this rule for cases for which dispute resolution is inappropriate or unavailable.

**Commonwealth of Massachusetts  
Trial Court**

\_\_\_\_\_ **Department**

**UNIFORM COUNSEL CERTIFICATION  
FOR CIVIL CASES**

**CASE NAME:** \_\_\_\_\_ **DOCKET #** \_\_\_\_\_

I am attorney-of-record for: \_\_\_\_\_  
plaintiff/defendant/petitioner in the above-entitled matter.

In accordance with Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) which states in part: “. . . Attorneys shall: provide their clients with this information about court-connected dispute resolution services; discuss with their clients the advantages and disadvantages of the various methods of dispute resolution; and certify their compliance with this requirement on the civil cover sheet or its equivalent . . . ,” I hereby certify that I have complied with this requirement.

\_\_\_\_\_  
**Signature of Attorney-of-Record**

\_\_\_\_\_  
**Print Name**

**B.B.O. #** \_\_\_\_\_

**Date:** \_\_\_\_\_

This certification may be filed by counsel as is, or this text may be incorporated into a form currently in use at the initiation of a case (e.g., civil cover sheet, appearance form, etc.), as determined to be appropriate in each department of the Trial Court. Plaintiff's/Petitioner's counsel shall file this document at the time his/her initial pleading is filed. All other counsel shall file it within thirty (30) days of his/her initial entry into the case whether by answer, motion, appearance slip or other pleading.

## **EXEMPTIONS TO THE RULE FIVE COUNSEL CERTIFICATION FORM**

### **THE BOSTON MUNICIPAL COURT DEPARTMENT**

- (1) The Uniform Counsel Certification form will be required only when counsel files an appearance in a case type for which the particular division in which counsel is appearing has an approved program.
- (2) The case types available for referral to court-connected services are Civil, Small Claims, Summary Process and Harassment Prevention Orders.

### **THE DISTRICT COURT DEPARTMENT**

- (1) The Uniform Counsel Certification form will be required only when counsel files an appearance in a case type for which the particular division in which counsel is appearing has an approved program.
- (2) In no instance shall counsel be required to file a Uniform Counsel Certification form when appearing in a G.L. c. 209A matter.

### **THE HOUSING COURT DEPARTMENT**

No cases will be exempt from completion of the Uniform Counsel Certification forms.

### **THE JUVENILE COURT DEPARTMENT**

The Uniform Counsel Certification form will be required only when counsel files an appearance in a case type for which the particular division in which counsel is appearing has an approved program.

### **THE LAND COURT DEPARTMENT**

The following cases will be exempt from the filing of Uniform Counsel Certification forms:

- (1) Tax Lien Foreclosures
- (2) Mortgage Foreclosures under the Soldiers' and Sailors' Civil Relief Act
- (3) Zoning and subdivision cases involving a remand to a local public authority for further public hearing and action.
- (4) All cases related to original and subsequent registration under G.L. c. 185, §1.

## **THE PROBATE AND FAMILY COURT DEPARTMENT**

The following cases will be exempt from the filing of Uniform Counsel Certification forms:

- (1) Petitions filed pursuant to G.L. c. 209A (protection from abuse)
- (2) Any case in which the petition or complaint includes a prayer for protection from abuse (i.e. elderly abuse, paternity, divorce), until there is a judicial determination that Alternative Dispute Resolution Services would be appropriate.

## **THE SUPERIOR COURT DEPARTMENT**

The following cases will be exempt from completion of the Uniform Counsel Certification forms:

- (1) Petition to Dispense With Approval For Abortion
- (2) Sexually Dangerous Person Hearing
- (3) 209A Restraining Order

## **TRIAL COURT POLICY ON FEES FOR DISPUTE RESOLUTION SERVICES**

1. This Policy provides guidance for the charging of fees for court-connected dispute resolution services provided to any trial court department in accordance with of Rules 7(e), 9(d), and 9(e)(iv) of the Uniform Rules on Dispute Resolution (Supreme Judicial Court Rule 1:18).
2. For the purpose of this Policy, a “program” is an organization that has been approved to provide court-connected dispute resolution services to a trial court department. A “neutral” is an individual who provides dispute resolution services under the auspices of an approved program through membership on the program’s roster. A neutral may provide only services approved and allowed by the program.
3. In accordance with Rule 7(e) of the Uniform Rules on Dispute Resolution, a program may charge fees for dispute resolution services, if such fees are approved by the Chief Justice of the court department.
4. In cases where a program provides free court-connected dispute resolution services, the Chief Justice of the court department may authorize the program to charge a fee for continuation of a service or for subsequent services for the same case or dispute. In such cases, before the free court-connected dispute resolution service begins, the program or neutral must fully disclose any fees that will be charged by the program for continued or subsequent service, and must obtain written agreement of all parties to pay for any continued or subsequent service.
5. If a continued or subsequent service is provided for which a fee is charged, the program may provide the same dispute or any other dispute resolution process the program is approved to provide as long as the neutral is qualified to provide that dispute resolution service resolution process (e.g., arbitration, conciliation, mediation) that the program originally provided.
6. A program authorized to charge fees for the continuation of a service or for subsequent services for the same case or dispute may charge such fees for services provided in any location.

# **GUIDELINES FOR IMPLEMENTATION OF QUALIFICATIONS STANDARDS FOR NEUTRALS**

**ADOPTED JANUARY 24, 2004**

**PURSUANT TO RULE 8 OF THE UNIFORM RULES OF DISPUTE RESOLUTION**

## **MEDIATORS<sup>1</sup>**

### **I. Guidelines for Training Mediators, Including Curriculum Outline**

*Philosophy: Basic mediation training emphasizes interactive participation and encourage “learning by doing” in a constructive and supportive atmosphere. It includes a mixture of theory and practice that enhances the performance of trainees and provides a variety of learning techniques that reflects a sensitivity to individual learning styles. Lecture and role-play content covers basic considerations in the types of disputes addressed by the mediation program.*

Training of mediators pursuant to Rule 8 shall substantially comply with these Guidelines.

#### **A. Basic Training**

##### **1. The training program shall include:**

- a. Minimum of thirty hours; thirty-six to forty hours recommended;
- b. Minimum of three coached role-plays with trainee as mediator, including a minimum of one complete role-play session (from introduction to conclusion of session); and
- c. One coach for each small group during role-play (a maximum of six trainees).

##### **2. Curriculum Outline shall include:**

- a. Lecture/discussion/exercises
  - i. Overview of program
    - (aa) Explanation of training, apprenticeship and evaluation format
    - (bb) Role of program
    - (cc) Ethical Standards

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<sup>1</sup>These Guidelines are an adaptation of the Training Standards of the Massachusetts Association of Mediation Programs and Practitioners.

- ii. Overview of ADR
  - (aa) ADR processes
  - (bb) Nature of conflict/behaviors in conflict
  - (cc) Steps of mediation process
  - (dd) Role of mediator
- iii. Mediation skills/strategies
  - (aa) Listening
  - (bb) Using neutral language
  - (cc) Rephrasing
  - (dd) Asking follow-up questions
  - (ee) Re-framing
  - (ff) Summarizing
  - (gg) Identifying issues
  - (hh) Overcoming barriers to agreement
  - (ii) Negotiating agreement
  - (jj) Note taking
  - (kk) Agreement writing
- iv. Critical issues
  - (aa) Values, bias awareness
  - (bb) Personally sensitive issues
  - (cc) Physical/substance abuse
  - (dd) Power imbalance
  - (ee) Cultural diversity
  - (ff) Ethical and other dilemmas for the mediator
- b. Mediation demonstration
- c. Coached role-plays

### 3. Evaluation in a Role-Play Situation:

- a. Shall occur at the end, or after completion, of a minimum of thirty hours of basic training;
- b. Shall be provided by the training team during the training or within a reasonable time after the conclusion of the basic training, or separately by a mediation program or independent evaluator;
- c. Shall apply criteria for successful completion of required evaluation, using the

Mediation Skills Checklist set forth in section III;

4. A prospective mediator may be given more than one opportunity to achieve a successful evaluation.

**B. Court Orientation**

Court orientation shall prepare mediators to conduct mediation within the judicial system, and shall include:

1. An explanation of the structure and processes of the courts;
2. An overview of the Uniform Rules on Dispute Resolution, with special emphasis on the guiding principles, the ethical and qualification standards for neutrals, and the administrative responsibilities of neutrals, programs and courts, under the rules; and,
3. When feasible, an introduction to the particular court or courts for which the mediator will be providing services.

**II. Guidelines for Mentoring and Evaluating Mediators**

***Philosophy:** Mediators learn to mediate well by practicing mediation in a supportive atmosphere. Evaluation of mediators is based primarily on competency as demonstrated in coached role-plays. Mediation mentoring allows the candidate to demonstrate his/her competency to integrate the lessons from training into actual practice.*

Mentoring and evaluating mediators pursuant to Rule 8 of the Uniform Rules shall substantially comply with this Guideline.

**A. The mentoring and evaluation process shall include:**

1. Successful completion of a minimum of thirty hours of basic training and successful evaluation in a role-play situation;
2. Observing a minimum of one actual mediation conducted by a skilled mediator who conducts a debriefing session with the mediator candidate;
3. Performing a minimum of one actual mediation with or observed by a skilled mediator who conducts a debriefing session with the mediator candidate and provides the program with an evaluation of the competency of the mediator candidate using the Mediation Skills Checklist set forth in Guideline III;
4. Assessing the progress of the mediator, recommending next steps, and determining



when the mentoring and evaluation requirement has been successfully completed. The requirement shall be satisfied when the mentor determines that the mediator demonstrates competence using the skills evaluation checklist.

- B. The mentoring and evaluation process may be conducted by a training program, mediation program, or independent mentor/evaluator.

### **III. Mediator Skills Checklist**

***Philosophy:*** Mediators have an obligation to the public and the profession to conduct their practice in a competent and ethical manner. Central to the code of behavior required of mediators is a commitment to and respect for the parties and the mediation process. Central also is the personal integrity with which each mediator enhances the quality of the process.

The following list of observable behaviors is not intended as an exhaustive list, but as a reflection of the minimum requirements for basic mediator competency. The skills evaluation checklist should be used to evaluate mediators during training, mentoring, and evaluation:

#### **A. Managing the Process**

The mediator:

1. Is able to explain the mediation process and role of mediator
2. Sets a tone that helps to put people at ease
3. Guides transitions between stages
4. Has a good sense of timing
5. Is flexible in tailoring the process to the needs of the parties
6. Respects the parties' rights to make their own decisions
7. Upholds the parameters of confidentiality

#### **B. Managing Interactions**

The mediator:

1. Maintains an open, honest and supportive atmosphere
2. Treats parties with respect and affirmation
3. Maintains neutrality
4. Demonstrates effective active listening skills
5. Uses clear language
6. Maintains composure when challenged
7. Avoids appearance of bias or favoritism
8. Handles conflict and strong emotions effectively
9. Helps parties to see things positively
10. Helps parties to see problems from the others' point of view

11. Is able to ask tough questions in a non-threatening manner
12. Avoids giving opinions or making judgments
13. Works cooperatively with co-mediator
14. Keeps discussions focused on issues relevant to the negotiations
15. Demonstrates patience and persistence

#### C. Managing Information

The mediator:

1. Asks relevant and open-ended questions
2. Presents and re-frames information clearly
3. Seeks understanding of underlying needs
4. Determines areas of flexibility
5. Keeps track of new information and changing perspectives
6. Develops strategic direction
7. Introduces brainstorming or role reversal to encourage re-evaluation of positions and development of options and development of options
8. Encourages parties to develop new solution
9. Identifies common interests
10. Encourages collaborative efforts between parties
11. Recognizes potential areas of agreement
12. Summarizes at appropriate times
13. Supports parties' control of the outcome
14. Helps to frame a clear, balanced, specific and future-oriented agreement

#### IV. Alternative Methods for Mediators

Mediators may meet the requirements of Rule 8 by the alternative methods set forth in this section.

A. Training Requirements. A mediator may meet the training requirement by providing an approved program with satisfactory evidence that he or she has:

1. Completed a basic mediation training of at least thirty hours, which is substantially equivalent to a course that meets the standards set forth in Rule 8 and these Guidelines, in another state or before the qualifications standards became effective, or taught such a course as a lead trainer;
2. Taken or taught a training course in the ethical standards set forth in Rule 9 of the Uniform Rules or substantially similar standards, and taken or taught a court orientation course substantially similar to the orientation required by Rule 8, before the Uniform Rules became effective; and
3. Either taken or taught a specialized training course as required by any Trial Court

Department in which he or she is practicing.

A. Evaluation and Mentoring Requirements. A mediator may meet the mentoring or evaluation requirement or both by submitting to an approved program satisfactory evidence that he or she:

1. In a substantially equivalent process, was mentored or evaluated, or served as a mentor or evaluator, as applicable, before the qualifications standards became effective; and
2. Formally mediated at least five cases in the three years preceding the date of application.

## **ARBITRATORS**

### **I. Guidelines for Training Arbitrators, Including Curriculum Outline**

***Philosophy:** Arbitration training emphasizes the need to focus on decision-making and case management skills by neutrals. The exercises utilized provide diverse scenarios to develop the arbitrators' decision-making skills to handle substantive and procedural issues.*

Training of arbitrators pursuant to Rule 8 shall substantially comply with these Guidelines.

#### **A. Basic Training**

1. The training program shall include:
  - a. Minimum of eight hours;
  - b. Participation in one role-play as arbitrator;
  - c. No more than 24 participants, to allow for efficient and adequate evaluation of participants;
  - d. Maximum of four participants per evaluator; maximum of twelve participants per trainer.
2. Curriculum Outline shall include:
  - a. Disclosure and ethics
  - b. Pre-hearing case management
  - c. Managing the hearing
  - d. Award deliberation, preparation, and review
  - e. Role of administering agency

- f. Interaction between court, approved program, and arbitrator
- 3. Evaluation in a role-play situation:
  - a. Shall occur at the end, or after completion, of a minimum of eight hours of training;
  - b. Shall be provided by the training team during the training or within a reasonable time after the conclusion of the basic training, or separately by an arbitration program or independent evaluator;
  - c. Shall apply explicit criteria for successful completion of required evaluation, using the Arbitrator Skills Checklist set forth in section III;
- 5. A prospective arbitrator may be given more than one opportunity to achieve a successful evaluation.

#### B. Court orientation

Court orientation shall prepare arbitrators to conduct arbitration within the judicial system, and shall include:

- 1. An explanation of the structure and processes of the courts;
- 2. An overview of the Uniform Rules on Dispute Resolution, with special emphasis on the guiding principles, the ethical and qualification standards for neutrals, and the administrative responsibilities of neutrals, programs and courts, under the rules; and,
- 3. When feasible, an introduction to the particular court or courts for which the arbitrator will be providing services.

## II. Guidelines for Mentoring and Evaluation

**Philosophy:** *Evaluation of arbitrators is based primarily on interaction at the training through interactive exercises and review of awards as well as observation during one role-play as an arbitrator. The role-play allows evaluators to determine if the arbitrator has integrated the training with their established expertise in a field. Through mentoring, new arbitrators will have an opportunity to observe seasoned professionals and to become familiar with the actual arbitration process. New arbitrators will be able to observe the flow of arbitration, learn effective and appropriate arbitration styles, watch case management techniques in action, and develop an appreciation for proper arbitration temper and deportment. In addition, through the experience of being a mentor, mentors will refresh their thinking about arbitration, refine their skills and be reminded of the practical and philosophical issues confronting new arbitrators.*

Mentoring and evaluating arbitrators pursuant to Rule 8 shall substantially comply with this Guideline.

- A. The mentoring and evaluation process shall include:
  - 1. Successful completion of a minimum of eight hours of basic training and successful evaluation in a role-play situation;
  - 2. Observing a minimum of two actual arbitration cases conducted by an experienced arbitrator and discussing the arbitrations with the mentor;
  - 3. Being observed arbitrating a minimum of one actual arbitration case and discussing the arbitration with the mentor; and
  - 4. Assessing the progress of the arbitrator, recommend next steps, and determine when the mentoring requirement has been successfully completed. The requirement shall be satisfied when the mentor determines that the arbitrator demonstrates competence using the standardized skill evaluation checklist.
- B. The mentoring and evaluation process may be conducted by a training program, arbitration program, or independent mentor/evaluator.

### **III. Arbitrator Skills Checklist**

The following list of observable behaviors is not intended as an exhaustive list, but as a reflection of the minimum requirements for basic arbitrator competency. The skills evaluation checklist should be used to evaluate arbitrators during training, evaluation or mentoring:

- 1. Introduces and explains process to all in attendance at hearings
- 2. Reviews arbitration clause and determines extent and limitations of authority as arbitrator
- 3. Conducts a fair and efficient hearing
  - a. Parties present all relevant evidence
  - b. Parties allowed to ask questions
  - c. Arbitrator asks clarifying questions and does not act as an advocate
- 4. Reviews all documents submitted and shares with all parties in attendance
- 5. Manages process to prevent unnecessary delays
- 6. Maintains neutrality during process
- 7. Communicates with parties utilizing language that parties could comprehend and answer accordingly
- 8. Is attentive to parties during hearing
- 9. Is objective and does not have any appearance of bias
- 10. Is evenhanded and allows parties an equal opportunity to present their positions on any issue

11. Is on time for hearing and punctual from return from breaks and lunch, and schedules a full day of hearing
12. Inquires of all parties whether they have any further information to offer or witnesses
13. Declares the hearings closed and set deadlines for briefs, if any
14. Sets specific date for the delivery of the award

#### **IV. Alternative Methods for Arbitrators**

Arbitrators may meet the requirements of Rule 8 by the alternative methods set forth in this section.

A. **Training Requirements.** An arbitrator may meet the training requirement by providing an approved program with satisfactory evidence that he or she has:

1. Completed a basic arbitration training of at least eight hours, which is substantially equivalent to a course that meets the standards set forth in Rule 8 and these Guidelines, in another state or before the qualifications standards became effective, or taught such a course as a lead trainer;
2. Taken or taught a training course in the ethical standards set forth in Rule 9 of the Uniform Rules or substantially similar standards, and taken or taught a court orientation course substantially similar to the orientation required by Rule 8, before the Uniform Rules became effective; and
3. Either taken or taught a specialized training course as required by any Trial Court Department in which he or she is practicing.

B. **Mentoring and Evaluation Requirements.** An arbitrator may meet the mentoring or evaluation requirement or both by submitting to an approved program satisfactory evidence that he or she:

1. In a substantially equivalent process, was evaluated or mentored, or served as an evaluator or mentor, as applicable, before the qualifications standards became effective; and
2. Formally arbitrated at least three substantial disputes in the three years preceding the date of application.

#### **CONCILIATORS**

##### **I. Guidelines for Training Conciliators, Including Curriculum Outline**

Training of conciliators pursuant to Rule 8 shall substantially comply with these Guidelines.

A. Basic Training

1. The training program shall include a minimum of eight hours.
2. The Curriculum Outline shall include:
  - a. Program processes and procedures
  - b. The Uniform Rules on Dispute Resolution, with an emphasis on the ethical standards
  - c. Court and program guidelines for conducting conciliations
  - d. Dispute resolution techniques and the application of those techniques to the conciliation program
  - e. ADR processes and procedures
  - f. Roles of the parties, conciliator, court and approved program in the conciliation process, including potential interactions between the conciliator and the Court in the conciliation process
  - g. Common procedural and substantive issues that conciliators in particular courts may face, including but not limited to such areas as common evidentiary problems or questions concerning damages

B. Court Orientation

Court orientation shall prepare conciliators to conduct conciliations within the judicial system, and shall include:

1. An explanation of the structure and processes of the courts;
2. An overview of the Uniform Rules on Dispute Resolution, with special emphasis on the guiding principles, the ethical and qualification standards for neutrals, and the administrative responsibilities of neutrals, programs and courts, under the rules; and,
3. When feasible, an introduction to the particular court or courts for which the conciliator will be providing services.

**II. Conciliator Skills Checklist**

The following list of observable behaviors is not intended as an exhaustive list but as a reflection of the minimum requirements for basic conciliator competency. The skills evaluation checklist should be used to evaluate conciliators during training and continued evaluation of performance by the program.

1. Introduces and explains conciliation process and conciliator's role to the parties

2. Discloses any prior contacts or relationships with parties and/or counsel and any prior knowledge of the facts of the case
3. Explains any reporting requirements of the court regarding the outcome of the conciliation process
4. Demonstrates knowledge of litigation process and procedure
5. Investigates facts impartially
6. Is evenhanded and allows parties an equal opportunity to present their positions
7. Shows effective questioning style that draws out information without putting parties on the defensive
8. Listens carefully and clarifies parties interests and
9. Analyzes and understands the issues involved in the case
10. Assesses the strengths and weaknesses of each side of the case
11. Explores prospects for settlement and helps parties generate realistic
12. Provides suggestions on future steps to take in the litigation of the case and preparation for trial
13. Explains the basis of his or her opinions and suggestions
14. Uses neutral and professional language, tone, demeanor and body language
15. Maintains neutrality and impartiality
16. Manages the interaction between the parties patiently, respectfully and effectively
17. Administers and manages a fair and efficient conciliation proceeding
18. Demonstrates effective time management and prevents unnecessary delays

### **III. Alternative Methods for Conciliators**

A conciliator may meet the training requirements of Rule 8 by providing an approved program with satisfactory evidence that he or she has:

1. Completed a basic conciliator training of at least eight hours, which is substantially equivalent to a course that meets the standards set forth in Rule 8 and these Guidelines, in another state or before the qualifications standards became effective, or taught such a course as a lead trainer;
2. Taken or taught a training course in the ethical standards set forth in Rule 9 of the Uniform Rules or substantially similar standards, and taken or taught a court orientation course substantially similar to the orientation required by Rule 8, before the Uniform Rules became effective; and
3. Either taken or taught a specialized training course as required by any Trial Court Department in which he or she is practicing.
4. Completed the training requirements for a Mediator as set forth in Rule 8(c) in addition to a court orientation as an approved conciliation program requires.<sup>2</sup>

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<sup>2</sup> Paragraph 4, Alternative Method for Conciliators amended on March 1, 2013.



## CASE EVALUATORS

### I. Guidelines for Training Case Evaluators, Including Curriculum Outline

***Philosophy:*** *The qualification standards for a case evaluator require bar membership and trial experience either as an attorney or judge for specified periods of time. In order for a case evaluation to be effective the individual evaluator must have sufficient experience to gain the respect of the parties and their attorneys. The training of case evaluators assumes that the individual being trained has the substantive expertise and experience necessary to perform an evaluation. The training curriculum should concentrate on the procedures to be followed in a case evaluation. The training program should also address various techniques used by skilled evaluators in arriving at an evaluation of a case.*

Training of case evaluators pursuant to Rule 8 shall substantially comply with these Guidelines.

#### A. Basic Training

1. The training program shall include:
  - a. Minimum of eight hours; and
  - b. Minimum of two evaluation role-plays with trainer as observer
2. The curriculum outline shall include:
  - a. Discussion of disclosure requirements and ethical considerations
  - b. Pre-evaluation case management
  - c. Managing the case evaluation process
  - d. Evaluation preparation and content requirements for evaluation
  - e. Review of evaluation by trainer
3. Evaluation in a role-play situation:
  - a. Shall occur at the end, or after completion, of a minimum of eight hours of basic evaluation training and shall be based upon the performance of the case evaluator;
  - b. Shall be provided by the training team during the training or within a reasonable time after the conclusion of the basic training or separately by a program approved to provide case evaluation services;
  - c. Shall apply criteria for successful completion of required evaluation using the Case Evaluator Skills Checklist set forth in section III;

- d. A prospective case evaluator may be given more than one opportunity to achieve a successful evaluation

**B. Court orientation**

Court orientation shall prepare case evaluators to conduct case evaluation within the judicial system, and shall include:

1. An explanation of the structure and processes of the courts;
2. An overview of the Uniform Rules on Dispute Resolution, with special emphasis on the guiding principles, the ethical and qualification standards for neutrals, and the administrative responsibilities of neutrals, programs and courts, under the rules; and,
3. When feasible, an introduction to the particular court or courts for which the case evaluator will be providing services.

**II. Guidelines for Mentoring and Evaluation**

***Philosophy:** Case evaluators learn their skills by practicing in a supportive atmosphere. Evaluation of case evaluators is based primarily on competency as demonstrated in coached role-plays. Case evaluation mentoring allows the trainee to demonstrate his/her competency to integrate the lessons from his/her training into actual practice.*

Mentoring and evaluation pursuant to Rule 8 of the Uniform Rules shall substantially comply with this guideline.

**A. The mentoring and evaluation process shall include:**

1. Successful completion of a minimum of eight hours of basic training and successful evaluation;
2. Observing a minimum of one actual case evaluation conducted by a skilled case evaluator who conducts a debriefing session with the case evaluator candidate;
3. Performing one actual case evaluation, with or observed by a skilled case evaluator who conducts one debriefing session with the case evaluator candidate and provides the program with an evaluation of the competency of the case evaluator using the Case Evaluator Skills check list set forth in section III; and
4. Assessing the progress of the case evaluator, recommending next steps, and determining when the mentoring and evaluation requirement has been successfully completed. The requirement shall be satisfied when the mentor determines that the

case evaluator demonstrates competence using the skills evaluation checklist.

- B. The mentoring and evaluation process may be provided by a training program, a program approved to provide case evaluator services or by an independent mentor.

### **III. Case Evaluator Skills Checklist**

***Philosophy:** Case evaluators have an obligation to the public and the profession to conduct their practice in a competent and ethical manner. Central to the code of behavior required of case evaluators is a commitment to and respect for the parties and the case evaluation process. Central also is the personal integrity with which each mediator and mini-trial neutral enhances the quality of the process. The following list of observable behaviors is not intended as an exhaustive list, but as the minimum requirement for case evaluator competency.*

At a minimum in order to be qualified, a case evaluator should demonstrate the following skills:

1. The ability to introduce and explain the case evaluation process to all participants in the process
2. The ability to conduct an evaluation fairly and efficiently allowing parties to present all relevant evidence
3. The ability to ask clarifying questions without acting as an advocate for either party
4. The ability to manage the process to prevent unnecessary delays
5. The ability to maintain neutrality during the process
6. The ability to be evenhanded and to allow parties an equal opportunity to present their positions on any issue
7. The ability to fairly and efficiently manage a case evaluation proceeding
8. The ability to hear parties presentations and review the evidence presented and render an evaluation of the case on the merits, which includes either a prediction of the outcome if the case were tried on the merits or an opinion as to the reasonable settlement value of the case
9. Familiarity with the case evaluation process and civil procedure in general
10. Familiarity with the litigation process

### **IV. Alternative Methods for Case Evaluators**

Case evaluators may meet the requirements of Rule 8 by the alternative methods set forth in this section.

- A. **Training Requirements.** A case evaluator may meet the training requirement by providing an approved program with satisfactory evidence that he or she has:
  1. Completed a basic training course which is substantially equivalent to a course that meets the standards set forth in Rule 8 and these Guidelines, in another state or before the qualifications standards became effective, or

taught such a course as a lead trainer;

2. Taken or taught a training course in the ethical standards set forth in Rule 9 of the Uniform Rules or substantially similar standards, and taken or taught a court orientation course substantially similar to the orientation required by Rule 8, before the Uniform Rules became effective; and
3. Either taken or taught a specialized training course as required by any Trial Court Department.

B. Evaluation and Mentoring Requirements. A case evaluator may meet the mentoring or evaluation requirement or both by submitting to an approved program satisfactory evidence that he or she:

1. In a substantially equivalent process, was mentored or evaluated by a court program, or served as a mentor or evaluator, before the qualifications standards became effective; and
2. Formally evaluated at least five substantial disputes in the three years preceding the date of application.

## **MINI-TRIAL NEUTRALS**

### **I. Guidelines for Training Mini-Trial Neutrals**

***Philosophy:** Basic mediation and mini-trial training emphasizes interactive participation and encourages “learning by doing” in a constructive and supportive atmosphere. It includes a mixture of theory and practice that enhances the performance of trainees and provides a variety of learning techniques that reflects a sensitivity to individual learning styles. Lecture and role-play content covers basic considerations in the types of disputes addressed by the mini-trial program.*

Mini-trial neutrals are required by Rule 8(g) to successfully complete the training required for mediators and the training required for case evaluators.

- A. The mediation training shall substantially comply with the requirements set forth in Rule 8(c)(i) and section I of the Guidelines for Implementation of Qualification Standards for Mediators.
- B. The case evaluator training shall substantially comply with the requirements set forth in Rule 8(f)(ii), and section I of the Guidelines for Implementation of Qualifications Standards for Case Evaluators.

### **II. Guidelines for Mentoring and Evaluation**

***Philosophy:*** Mediators and mini-trial neutrals learn their skills by practicing in a supportive atmosphere. Evaluation of mediators and mini-trial neutrals is based primarily on competency as demonstrated in coached role-plays. Mediation and mini-trial mentoring allows the candidate to demonstrate his/her competency to integrate the lessons from training into actual practice.

- A. The mentoring and evaluation process for mini-trial neutrals shall include:
  - 1. Successful completion of a minimum of thirty hours of basic mediation training, eight hours of basic case evaluator training, and successful evaluation;
  - 2. Observing one actual mini-trial conducted by an experienced mini trial neutral who conducts a debriefing session with the mini-trial neutral candidate;
  - 3. Performing one actual mini-trial with or observed by a skilled mini-trial neutral who conducts a debriefing session with the mini-trial neutral candidate and provides the program with an evaluation of the competency of the mediator candidate using the Mini-Trial Skills Checklist set forth in section III; and
  - 4. Assessing the progress of the mini-trial neutral, recommending next steps, and determining when the mentoring and evaluation requirement has been successfully completed. The requirement shall be satisfied when the mentor determines that the mini-trial neutral demonstrates competence using the skills evaluation checklist.
- B. The mentoring and evaluation process may be provided by a training program, a program approved to provide mini-trial services or by an independent mentor.

### **III. Mini-Trial Neutrals Skills Checklist**

***Philosophy:*** Mediators and mini-trial neutrals have an obligation to the public and the profession to conduct their practice in a competent and ethical manner. Central to the code of behavior required of mediators and mini-trial neutrals is a commitment to and respect for the parties and the mediation and mini-trial processes. Central also is the personal integrity with which each mediator and mini-trial neutral enhances the quality of the process.

The following list of observable behaviors is not intended as an exhaustive list but as a reflection of the minimum requirements for basic mini-trial neutral competency. The skills evaluation checklist should be used to evaluate mini-trial neutrals during training, mentoring and evaluation, and continuing evaluation by the program.

- 1. Introduces and explains the mini-trial process, including his/her role and the roles of individuals in attendance at mini-trial
- 2. Works with the parties to structure the mini-trial process to meet the needs of the case
- 3. Moderates the exchange of information, such as briefs, documents, and exhibits,

- between the parties effectively
- 4. Ensure that parties are able to fully present their interests and positions
- 5. Is attentive to parties and management representatives during mini-trial
- 6. Provides an oral or written opinion as to the likely outcome at trial of the issues raised during the mini-trial
- 7. Ability to manage the interaction between the parties patiently, respectfully and effectively
- 8. Ability to maintain neutrality and impartiality during mini-trial process
- 9. Ability to manage the mini-trial process fairly and efficiently
- 10. Exhibits effective mediation skills throughout the process (see Mediator Skills Checklist)

#### **IV Alternative Methods for Mini-Trial Neutrals**

Mini-trial neutrals may meet the requirements of Rule 8 by the alternative methods set forth in this section.

- A. Training Requirements. A mini trial neutral may meet the training requirement by providing an approved program with satisfactory evidence that he or she has:
  - 1. Completed a basic mediation training of at least thirty hours, and a basic case evaluation training of at least eight hours, both of which are substantially equivalent to a course that meets the standards set forth in Rule 8 and these Guidelines, in another state or before the qualifications standards became effective, or taught such courses as a lead trainer;
  - 2. Taken or taught a training course in the ethical standards set forth in Rule 9 of the Uniform Rules or substantially similar standards, and taken or taught a court orientation course substantially similar to the orientation required by Rule 8, before the Uniform Rules became effective; and
  - 3. Either taken or taught a specialized training course as required by any Trial Court Department in which he or she is practicing.
- B. Evaluation and Mentoring Requirements. A mini-trial neutral may meet the mentoring or evaluation requirement or both by submitting to an approved program satisfactory evidence that he or she:
  - 1. In a substantially equivalent process, was mentored or evaluated, or served as a mentor or evaluator, as applicable, before the qualifications standards became effective; and
  - 2. Formally presided over at least five cases in the three years preceding the date of application as a mini-trial neutral.

## **SUMMARY JURY TRIAL NEUTRALS**

### **I. Summary Jury Trial Neutral Skills Checklist**

The following list of observable behaviors is not intended as an exhaustive list but as a reflection of the minimum requirements for basic Summary Jury Trial Neutral competency. The skills evaluation checklist should be used to evaluate summary jury trial neutrals during continuing evaluation by the program.

1. Convenes, introduces and explains the summary jury trial process, including his/her role, the role of the jury and of others in attendance at summary jury trial
2. Demonstrates knowledge of summary jury trial process and procedure
3. Demonstrates knowledge of litigation and trial process and procedures
4. Works with the parties to structure the summary jury trial to meet the needs of the case
5. Moderates the exchange of information between parties, such as briefs, documents, and exhibits
6. Introduces party presentations to the jury
7. Ensure that each party is able to fully present their case to the jury without interruption
8. Crafts jury instruction with the parties effectively
9. Instructs the jury on the law relevant to the case on trial in a clear and understandable manner
10. Receives and relates the jury's non-binding verdict to the parties
11. Facilitates communication between the parties and jurors effectively
12. Is attentive to parties and jurors during the summary jury trial
13. Ability to manage the interaction between the parties patiently, respectfully and effectively
14. Ability to maintain neutrality and impartiality during summary jury trial process
15. Ability to manage the summary jury trial process fairly and efficiently
16. Exhibits effective mediation skills during the mediation phase of the summary jury trial if the parties opt for mediation. (See Mediator Skills Checklist)

### **DISPUTE INTERVENORS: RESERVED**

## **A GUIDE TO THE QUALIFICATION REQUIREMENTS PURSUANT TO RULE 8 AND GUIDELINES**

Rule 8(b)(v) requires that a program attest in its application that it will only assign cases referred by a court to neutrals who meet the qualification standards. At the time the program submits its application, neutrals who are to participate in court-connected ADR programs must meet the training, mentoring and evaluation requirements in one of the following two ways: 1) comply with the standard requirements for training, mentoring and evaluation set forth in the Rule 8 of the Uniform Rules on Dispute Resolution and the Guidelines (“standard requirements”); or 2) meet the alternative methods specified in the Guidelines for Implementation of Qualifications Standards for Neutrals (“Guidelines”).<sup>1</sup>

Once a program is approved, it may add neutrals to its roster at any time, so long as the neutral meets all of the relevant qualification requirements. The details of the standard requirements and the alternative methods are explained below.

### **I. STANDARD REQUIREMENTS: TRAINING, MENTORING AND EVALUATION.**

A neutral must meet the training, mentoring and evaluation standards before being placed on the roster, unless he or she meets the standards of the alternative methods, described below. The requirements for each process are set forth in Rule 8 and the Guidelines.

A. A program is responsible for ensuring that neutrals on its roster meet the standards set forth in Rule 8 and the Guidelines.

B. Neutral must:

1. Except for summary jury trial neutrals, successfully complete a basic training course for the process.
  - i. The required minimum length for a basic training course is set forth in the section of the Rule covering each process;
  - ii. Specific guidance for each type of basic training course, including a curriculum outline, requirements for role plays (except for conciliators), and court orientation is set forth in the Guidelines.
2. Except for conciliators and summary jury trial neutrals, successfully comply with mentoring and evaluation requirements as set forth in

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1. Rule 8 includes an additional limited exemption from the training, mentoring and evaluation requirements for mediators, arbitrators, case evaluators, and conciliators. That exemption was available only for the first application process following adoption of Rule 8, and is no longer available.



the Guidelines, including observing a minimum number of matters that utilize the specific process, conducting one actual matter utilizing the specific process, and being evaluated for competency in the specific ADR process.

3. The required mentoring and evaluation may be conducted by a training program, ADR program, or independent mentor/evaluator;
  4. The Guidelines include skills checklists to assist in the evaluation of neutrals during training, mentoring and evaluation.
- C. A program determines if the neutral's training, mentoring and evaluation complies with the standards set forth in Rule 8 and the Guidelines.
- D. A program must submit to the Trial Court with its Application a list of neutrals on their roster who have complied with the training, mentoring and evaluation requirements. A program is not required to submit detailed information demonstrating that the neutral meets the requirements, but must maintain such documentation and make it available to the courts upon request, pursuant to Rule 8(b)(v).

## **II ALTERNATIVE METHODS [RULE 8(j) and GUIDELINES].**

- A. A program is responsible for ensuring that any alternative methods relied upon by a neutral to meet the standards are in compliance with Rule 8(j) and the Guidelines.
- B. Generally, to meet the alternative methods, a neutral must meet the following requirements, and provide the program with documentation of compliance:
1. Training. Taken or taught (as lead trainer):
    - i. A training course that is substantially equivalent to the standards set forth in Rule 8 and the Guidelines in another state or in Massachusetts before the Rule 8 standards became effective on January 1, 2005 (Training requirements for each ADR process are set forth more fully in the "Alternative Methods" section in the Guidelines);
    - ii. Course(s) in the ethical standards set forth in Rule 9 or substantially similar standards, and court orientation substantially similar to the orientation required by Rule 8, before the Rule 8 standards became effective on January 1, 2005;

- iii. Any specialized training required by the Trial Court Department in which the neutral wishes to practice.
- 2. Mentoring and Evaluation.
  - i. Been mentored and evaluated, or served as mentor or evaluator, before the Rule 8 standards became effective on January 1, 2005;
  - ii. Served as neutral in minimum number of matters in preceding three years (the minimum number of matters for each process is set forth in the “Alternative Methods” section of the Guidelines for each process).
- 3. Mediators, arbitrators, case evaluators, and mini trial neutrals must comply with the requirements for the alternative methods for both training and mentoring and evaluation; conciliators must comply with the alternative methods for the training requirement.
- C. A program determines whether the neutral’s prior training, mentoring and evaluation experience is substantially similar to the requirements set forth in Rule 8.
- D. A program must submit to the Trial Court Department with its Application a list of neutrals on their roster who they have determined to meet the alternative methods. A program is not required to submit detailed information demonstrating that the neutral meets the requirements, but must maintain such documentation and make it available to the courts upon request, pursuant to Rule 8(b)(v).

### **Additional Qualification Requirements**

Notwithstanding the way in which the neutral meets the training, mentoring and evaluation requirements, all neutrals who wish to practice in a court approved program in a process that has professional qualifications (conciliators, case evaluators, mini-trial neutrals, summary jury trial neutrals) must meet those qualifications.

The specific professional qualifications listed in the Rule for the enumerated processes are preclusive criteria for qualifying for those processes. And, while academic degrees and professional licensure may be among the factors considered, they cannot be used as preclusive criteria for approved programs in qualifying mediators and arbitrators for inclusion in court panels. In addition, all neutrals must comply with any continuing education and continuing evaluation requirements.

### **Documentation Requirements for Programs**

Approved programs must maintain documentation for the tenure of the neutral's association with the program, and for three years thereafter, that demonstrates that neutral meets qualification requirements. The specific documentation required is set forth in Rule 8(b)(v).