

A SUMMARY OF THE QUALIFICATION REQUIREMENTS OF RULE 8 AND THE GUIDELINES FOR PROGRAM APPROVAL

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”).¹ 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 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.

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.

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.² In addition, all neutrals must comply with any continuing education and continuing evaluation requirements.

Documentation Requirements for Programs

Also, 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).³

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- 2. 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.
 - 3. Programs are required to certify annually to AOTC that the neutrals on their roster meet the requirements set forth in the Rule and Guidelines, and must make the documentation demonstrating a neutral’s qualifications available to the AOTC and the Trial Court Chief Justices upon request.