

September 2002

DISPUTE RESOLUTION IN KANSAS

PROVIDED BY THE:

DISPUTE RESOLUTION ADVISORY COUNCIL

AND THE

**OFFICE OF JUDICIAL ADMINISTRATION
DISPUTE RESOLUTION COORDINATOR**

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**Kansas Supreme Court
Dispute Resolution Advisory Council
Model Local Court Dispute Resolution Procedures**

The following information is provided by the Dispute Resolution Advisory Council for those individuals or organizations that refer others to dispute resolution. These people are in the position to determine the method with the highest potential to resolve a particular dispute.

1) Dispute Resolution

Dispute Resolution “means a process by which the parties involved in a dispute voluntarily agree or are referred or ordered by a court to enter into discussion and negotiation with the assistance of a neutral person.” K.S.A. 5-502: (e)

“Upon finding that alternatives to litigation may provide a more appropriate means to resolve the issues in a case, and that the costs of the dispute resolution process are justified relative to the parties ability to pay such costs, a judge may order the parties to the case to participate in a settlement conference or a non-binding dispute resolution process.”
K.S.A. 5-509: (a)

2) Neutral

“Neutral person” or “neutral” means the impartial third party who intervenes in a dispute at the request of the parties or the court in order to help facilitate settlement or resolution of a dispute. K.S.A. 5-502 (E)

Comment: Mediators, settlement conference officers, neutral evaluators, and arbitrators are all classified as "neutrals." This is a term commonly used in courts across the country to define a dispute resolution provider.

3) Choosing a Neutral

The court or, where appropriate, the Office of Judicial Administration dispute resolution coordinator, will keep a list of approved individuals to conduct mediation, neutral evaluations, settlement conferences, arbitrations or other forms of dispute resolution.

Licensed attorneys who are not on the approved list of mediators are eligible to serve as neutrals.

a. “K.S.A. 5-510. Supreme Court adopts standards; ethics requirements; compensation for services. (a) After reviewing the recommendations of the Advisory Council On Dispute Resolution, the Supreme Court shall adopt rules which establish standards for training and qualifications for neutral persons and which prescribe procedures for registration and approval by the director for training of neutral persons in accordance with such standards. All approved programs and individuals shall satisfy the standards for training and qualifications established by

rules of the Supreme Court.

b. The comment section of Kansas Supreme Court Rule 901, Rules Related to Mediation, outlines how an attorney may act as a mediator. The Judicial Council added section (a) to Supreme Court Rule 901, because the members believed a definition of mediation was necessary to distinguish mediation from other methods of dispute resolution, such as negotiation, arbitration and conciliation.

c. In addition to the requirements of this Rule, an attorney involved in mediation of family disputes must comply with the Kansas Standards of Practice for Lawyer Mediators in Family Disputes, an appendix hereto. K.S.C.R. 901(f).

d. Kansas Supreme Court Rule 903 establishes Ethics Standards for Mediators and requires that: “(d) Competence: A Mediator Shall Mediate Only When the Mediator Has the Necessary Qualifications to Satisfy the Reasonable Expectations of the Parties.”

4) Participation in Dispute Resolution Process

a. “K.S.A. 5-509. Upon finding that alternatives to litigation may provide a more appropriate means to resolve the issues in a case and that the costs of the dispute resolution process are justified relative to the parties ability to pay such costs, a judge may order the parties to the case to participate in a settlement conference or a non-binding dispute resolution process conducted ...”

b. Dispute Resolution Advisory Council Recommendation:

(1) The initial ADR session is mandatory unless otherwise stipulated by the court or statute. Failure of the parties or counsel to appear at a dispute resolution session or to otherwise comply with the court’s order or applicable statutes will result in the neutral submitting a report informing the court of the situation. At the conclusion of the dispute resolution session(s), any party or the neutral may bring the dispute resolution process to an end. No report will be made to the court as to who ended the dispute resolution process unless there has been a noncompliance with the order to mediate or local or state court rules.

(2) The time and place for the dispute resolution meeting shall be scheduled by the Judge or neutral, at the convenience of the parties and the person or persons conducting the mediation/settlement conference. Reasonable notice of the setting shall be given to all parties at least five days in advance of the conference. The notice may be waived by agreement of all parties.

c. Dispute resolution when domestic violence is present.

What is domestic violence in the dispute resolution context?

Dispute Resolution Advisory Council Recommendations: Domestic violence is the occurrence of violence, coercion, or intimidation by a family or household member against

another family or household member. Such actions could include attempting to cause or causing physical or sexual harm to a family or household member, placing a person in fear of physical harm, causing psychological or emotional harm, or causing economic hardship by blocking access to family funds.

The Dispute Resolution Advisory Council encourages neutrals to take great care in working with parties in which violence has been confirmed or alleged.

What types of dispute resolution are appropriate for cases in which domestic violence is occurring or has occurred?

Dispute Resolution Advisory Council Recommendations: Any type of court ordered dispute resolution should attempt to insure the safety of the parties, as well as the neutral and other court personnel involved in the case. Other forms of dispute resolution that may be appropriate include evaluative mediation, case management and arbitration.

Whatever form of dispute resolution is to occur, waiting rooms and meeting places should be secure, and sessions should be scheduled to avoid victim/abuser confrontations before and after meetings. Where security or ability to negotiate face-to-face is in question, mediation sessions can be conducted by teleconference or with the parties in separate rooms. In situations where the safety of the victim is in jeopardy, mediation should be terminated.

How can a court screen cases for domestic violence?

Dispute Resolution Advisory Council Recommendations: Screening for domestic violence should be accomplished early in the case and should be incorporated into the court's regular management system as much as possible. If an in-person screening process is used, the parties should be screened separately. Mediators who have received Supreme Court approval can be expected to have had training in screening for domestic violence.

5) Fees

a. *Dispute Resolution Advisory Council Recommendations:* Any costs associated with the dispute resolution process should be prorated between the parties as determined by the parties or the court. Payment arrangements will be made directly with the neutral or as otherwise stipulated by the court. Neutrals are encouraged to use a sliding scale fee for lower income people.

b. K.S.A. 5-506 provides that: "Director's duties; (6) develop guidelines for a sliding scale of fees that may be charged by approved programs and individuals..." A number of local judicial districts use a sliding scale to encourage services to lower income individuals. The expectation is that the number of lower income versus people who are able to pay the full fee will even out among the providers. For a neutral to be on the court list of providers, they agree to provide services on a sliding fee.

c. *Fees and Non-Participation*

Dispute Resolution Advisory Council Recommendations: In a court-ordered mediation, when one party fails to participate in or cancels a scheduled mediation forty-eight (48) hours in advance, without just cause, that party should be required to pay the mediator the full cost for that scheduled time. The costs to be paid by the nonparticipating party will include the costs of the party(s) who did appear at the scheduled mediation. The mediator shall report such intentional avoidance of mediation to the Court that issued the order. The parties should be notified of such a policy at the time the mediation is ordered and is scheduled.

TYPES OF DISPUTE RESOLUTION PROCESSES

6) Mediation

K.S.A. 5-502 (f) provides that: “mediation” means the intervention into a dispute by a third party who has no decision making authority, is impartial to the issues being discussed, assists the parties in defining the issues in dispute, facilitates communication between the parties and assists the parties in reaching resolution;...”

Dispute Resolution Advisory Council Recommendations: Mediation is a voluntary, confidential process in which a neutral is invited by the parties or assigned by the judge to assist the parties in identifying and discussing issues of mutual concern, exploring various solutions, and developing an agreement which is mutually acceptable to the disputing parties. The process reinforces the self-determination of the parties in a dispute.

Mediation is an appropriate method to use when parties wish to preserve their ongoing relationships or terminate an existing relationship in the least adversarial and most cooperative way. Solutions arrived at in mediation tend to last over time because the people affected by the decisions are the ones making them. Because the parties are responsible for making their own decisions, mediation may not be appropriate if a party is unable to negotiate due to substance abuse, psychological impairment, physical or emotional abuse by the other party, or ignorance.

Comments: All mediators will need to be aware of Kansas Supreme Court Rules 901, 902, 903 and 904.

Dispute Resolution Advisory Council Definitions:

a. Court-annexed vs. Private Mediation: A court-annexed mediation can be mandatory and involves a referral by the court to an approved mediator. Private mediation is conducted prior to filing a petition or motion with the court or in anticipation that a court may order mediation. The mediator voluntarily selected by the parties in a private process does not have to be approved. In Kansas, the legislature has indicated that licensed attorneys do not need to meet any mediation standards.

b. Civil Mediation: In this process the parties’ use or the court orders mediation to assist

the parties in reaching their own settlement agreement. It generally involves more legal and financial issues than domestic mediation and thus lends itself to a more evaluative form of mediation. It is the recommendation of the Kansas Supreme Court's Dispute Resolution Advisory Council that judges should use those approved mediators or licensed attorneys who have the most mediation and case specific experience with the issues in question.

c. Domestic Mediation: The Kansas statutes governing domestic mediation are contained in K.S.A. 23-601, et. seq.

“Mediation defined. Mediation under this section is the process by which a neutral mediator appointed by the court, or by a hearing officer, assists the parties in reaching a mutually acceptable agreement as to issues of child custody, residency, visitation, parenting time, division of property or other issues. The role of the mediator is to aid the parties in identifying the issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and finding points of agreement. An agreement reached by the parties is to be based on the decisions of the parties and not the decisions of the mediator.” K.S.A. 23-601

This process helps parents in custody and/or visitation disputes; focus on the needs of their children, communicate better about their children, have more control over the process, and feel more positive about the outcome of the divorce. The decisions concerning the best interests of the children are made by the parents instead of a judge. It is the recommendation of the Kansas Supreme Court's Dispute Resolution Advisory Council that judges should use those approved mediators who have the most background in family dynamics. Inequality in the ability of the to negotiate may be a reason for the court to consider terminating mediation and referring the case to arbitration or another form of dispute resolution, or bringing the case back to the Court for resolution.

d. Facilitative Mediation: In facilitative mediation, the mediator assists or facilitates the parties in reaching a mutually agreeable resolution to the dispute. The mediator asks questions; validates and normalizes parties points of view; searches for interests which underlie the positions taken by parties; and assists the parties in finding and analyzing options for resolution. The facilitative mediator does not make recommendations to the parties, give his or her own advice or opinion as to the outcome of the case, or predict what a court would do in the case. The mediator is in charge of the process, while the parties are in charge of the outcome. The mediator conducts sessions with all parties present so that the parties can hear each other's points of view, but may also hold caucuses with the individual participants if the parties agree and the mediator believes they will be helpful.

e. Evaluative Mediation: Evaluative mediation is a process modeled on settlement conferences conducted by judges. An evaluative mediator assists the parties in reaching resolution by pointing out the weaknesses in their cases, and predicting what a judge or jury would be likely to do. An evaluative mediator might make formal or informal recommendations to the parties as to the likely outcome of the issues. Evaluative mediators are concerned with the legal rights of the parties as well as the parties' needs and interests, and evaluate the case based on the probable consequences of litigation. Evaluative mediation sessions generally consist of separate meetings between the mediator and the parties and their attorneys, with the mediator practicing shuttle

diplomacy.

f. Transformative Mediation: Transformative mediation is based on the concept that any or all parties or their relationships may be transformed during the mediation. Transformative mediators meet with parties together, since only they can give each other recognition. In transformative mediation, the parties structure both the process and the outcome of mediation, and the mediator follows their lead.

When Confidentiality Does Not Apply:

The Dispute Resolution Advisory Council encourages neutrals to take great care in working with parties in which violence has been confirmed or alleged. The unequal ability to negotiate is reason to consider referring the case back to a court for resolution. Mediators and other dispute resolution providers are required to not use the protection of confidentiality in certain situations. Those situations are:

K.S.A. 5-512 “(b) The confidentiality and privilege requirements of this section shall not apply to:

(1) Information that is reasonably necessary to establish a defense for the neutral person or staff of an approved program conducting the proceeding in the case of an action against the neutral person or staff of an approved program that is filed by a party to the proceeding;

(2) any information that the neutral person conducting the proceeding is required to report under K.S.A. 38-1522, and amendments thereto;

(3) any information that is reasonably necessary to stop the commission of an ongoing crime or fraud or to prevent the commission of a crime or fraud in the future for which there was an expressed intent to commit such crime or fraud; or

(4) any information that the neutral person conducting the proceeding is required to report or communicate under the specific provisions of any statute or in order to comply with orders of a court.”

7) Settlement Conferences

Dispute Resolution Advisory Council Definition:

A settlement conference consists of an informal discussion among the parties to a dispute, their attorneys, and the person or persons conducting the conference, of every aspect of the lawsuit bearing on its settlement value. The person or persons conducting the settlement conference may privately express his/her view concerning the actual dollar settlement value or other reasonable dispositions of the case. A judge may assign a case to an attorney, an expert in the type of case, a panel of attorneys or experts or another judge, for the purpose of conducting a settlement conference with the litigants and counsel. Each of the parties’ attorneys should be prepared to discuss the current position of his or her client with respect to all issues involved in the litigation.

No party will be prejudiced at the trial of the action if settlement negotiations fail.

No statement made during the settlement conference can be used by any party in the trial of the case. The person conducting the settlement conference will not communicate to the trial judge the confidences of the conference, except to advise the judge whether or not the case has been settled. The settlement conference should be attended by the attorney in charge of the case and by the parties or by persons who have authority to settle the case.

Settlement conferences are recommended for cases in which the disputants have strongly held positions about the probable outcome of the case, but are willing to listen to a competent third party's view of their positions and possible trial results. Settlement conferences can help disputants analyze the issues in dispute, review the facts, and evaluate the positions of the parties in their case. The opinion received can and often does facilitate settlement of the dispute before trial.

K.S.A. 5-509 provides that “(a) Upon finding that alternatives to litigation may provide a more appropriate means to resolve the issues in a case and that the costs of the dispute resolution process are justified relative to the parties ability to pay such costs, a judge may order the parties to the case to participate in a settlement conference or a non-binding dispute resolution process conducted by (1) A program or individual approved to rules of the Supreme Court adopted pursuant to the dispute resolution act; or (2) an individual licensed to practice law in the state of Kansas.”

“Settlement” means a proceeding in which someone other than the presiding judge assists the parties in reaching a resolution;” K.S.A. 5-502(h).

8) Neutral Evaluation

Neutral evaluation is a process in which the parties or their attorneys present a summary of their case 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 of the case if adjudicated.

The primary purpose of early neutral evaluation is to assist the court and the parties in developing a discovery plan, narrowing issues or eliminating unnecessary parties. A secondary purpose is to assist with case settlement. The evaluation session is typically held within 60 days after the case is at issue, or even sooner. Early neutral evaluation is used primarily for complex cases that can benefit from case management.

“Neutral evaluation means a proceeding conducted by a neutral person who helps facilitate settlement of a case by giving the parties to the dispute an evaluation of the case;...” K.S.A. 5-502(k).

9) Conciliation

“Conciliation means a proceeding in which a neutral person assists the parties in

reconciliation efforts;....” K.S.A. 5-502(l). In Kansas, several local district courts permit the conciliator to report back to the judge about the issues discussed in the meeting(s) with the parties. There is not a widely accepted definition of conciliation. The Dispute Resolution Coordinator uses the following definition:

Dispute Resolution Advisory Council Definition:

Conciliation is a proceeding in which a neutral person assists the parties in reconciliation efforts. It is a process by which a neutral helps the parties 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, exploring the steps which remain to prepare the case for trial. Generally, conciliation is different from mediation in that it is a less formal process and the conciliator does not need to meet any specific qualifications. The conciliation process can occur at any point in the dispute.

10) Summary Jury Trial

“Summary jury trial means a formal case presentation to a jury and judge which results in a non binding decision;....” K.S.A. 5-502(i).

Dispute Resolution Advisory Council Definition:

A summary jury trial is a formal case presentation to a jury and judge, which results in a non-binding decision. The process includes:

- (a) the parties’ attorneys presenting a summary of the evidence and arguments they expect to offer at trial to a 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 conduct a mediation with the parties following the verdict.

11) Mini-Trial

“Mini trial means a formal case presentation to a party representative and an expert neutral person who makes a non-binding decision;....” K.S.A. 5-502(j).

Dispute Resolution Advisory Council Definition:

A mini-trial is a formal case presentation by each party to an expert neutral person who makes a non-binding decision. It is an abbreviated trial, typically used for corporate disputes where the case of each side is presented to a panel consisting of a neutral lawyer who is experienced in the area of law at issue and to parties involved in the dispute. In a mini-trial, each side's case is presented in a summary form. The lawyer gives his/her opinion of the expected

outcome of the case if actually litigated, and the parties to the dispute attempt to agree on a settlement. Sometimes the lawyer does not give his/her opinion of the outcome unless the parties are unable to reach a settlement.

12) Arbitration

“Arbitration means a proceeding in which a neutral person or panel hears a formal case presentation and makes an award, which can be binding or non-binding upon the parties relative to a prior agreement;....” K.S.A. 5-502(g).

Dispute Resolution Advisory Council Definition:

In arbitration, the parties to the dispute submit their arguments to an independent third party, an arbitrator, who enters an award that may be binding or non-binding. In Kansas, binding arbitration cannot be ordered under the dispute resolution act. The parties may voluntarily agree to submit their dispute to binding arbitration, but in Kansas all domestic disputes must be submitted to a judge and, in general, it is the view that a Court should review any arbitrated agreement before becoming a binding agreement.

K.S.A. 5-509: “(a) indicates that the process to which the court may refer parties to a neutral have to be non-binding. It says, “Upon finding that alternatives to litigation may provide a more appropriate means to resolve the issues in a case and that the costs of the dispute resolution process are justified relative to the parties ability to pay such costs, a judge may order the parties to the case to participate in a settlement conference or a non-binding dispute resolution process....”

When Mediation Changes to Arbitration:

Proposal of the Dispute Resolution Advisory Council’s Standards Committee:

When mediation ends in impasse, Courts may choose to have the parties enter a second process such as arbitration where the parties meet with a neutral who issues a recommendation to the parties, their attorneys, and sometimes the Court. Ordinarily, use of someone other than the original mediator, is most appropriate. When neutral providers are limited in rural areas, or when the parties request the use of the previous mediator for arbitration, however, special consent and record-keeping circumstances exist.

Parties should be fully advised of the confidentiality protections and limits to mediation and arbitration at the time each process is undertaken. When the Court or neutral professional anticipates more than one dispute resolution process could or will be used in a case, the neutral must clearly define to the parties the different processes, the neutral’s role in each, and the consequences of revealing information in any one procedure. The neutral shall obtain written consent to serve in a dual capacity, and shall maintain separate records for the two processes if they have different levels of confidentiality protection.

If parties have completed mediation without settlement or an entirely new dispute arises between the parties later and they choose or are ordered to participate in arbitration, the parties should be given the opportunity to select a second neutral if either so desires. If both parties choose the former mediator, that neutral shall explain to the parties, in writing, the new process, its confidentiality limits, and obtain their written consent to the second proceeding. The neutral shall maintain a separate record of the arbitration if the information obtained does not have the same confidentiality protections present in mediation.

13) Special Master

Dispute Resolution Advisory Council Definition:

Special master means a court-appointed magistrate, auditor, or examiner who, subject to specifications and limitations stated in the court order, shall exercise the power to regulate all proceedings in every hearing before such special master, and to do all acts and take all measures necessary or proper for compliance with the court's order.

The circumstances under which a case may be referred to a master, a description of the master's powers, and the procedure to be followed are all set out in K.S.A. 60-253.

14) Case Valuation

Dispute Resolution Advisory Council Definition:

This process uses one or more attorneys who have experience in a particular case. They provide a written, non-binding assessment of the case's value after a short hearing. The parties can accept the value and settle the case or they can go to trial. This type of process is used primarily for contract disputes, personal injury cases, and civil rights cases.

15) Settlement Week

Dispute Resolution Advisory Council Definition:

During a settlement week a court will use volunteer attorneys from the local bar to conduct mediation sessions to settle the longest pending civil cases. The court will use its courtrooms to schedule the settlement conferences and assign one or more lawyers to a case. Sessions last one to two hours (or as needed) and unresolved cases continue on to trial.

16) Case Management

“Case management under this act is the process by which a neutral case manager appointed by the court, or by a hearing officer in a proceeding pursuant to K.S.A. 23-701, and amendments thereto, or through agreement by the parties, assists the parties by providing a procedure, other than mediation, which facilitates negotiation of a plan for child custody or visitation. In the event that

the parties are unable to reach an agreement, the case manager shall make recommendations to the court". K.S.A. 23-1001.

Dispute Resolution Advisory Council Definition:

Case management may be the most appropriate form of dispute resolution for parties when there are allegations or evidence of domestic violence. However, the manager should not require the parties to meet face-to-face when the safety of the victim is in jeopardy.

For additional information see: K.S.A. 23-1001, et seq.

17) Dispute Resolution Counseling/Limited Case Management:

Dispute Resolution Advisory Council Definition:

Several judicial districts use conflict resolution counseling in cases involving highly volatile family situations. In this process a counselor/limited case manager makes a written recommendation on issues where agreement cannot be reached through other methods. The process is intended to be limited to situations where there is currently pending a motion pertaining to modification of parenting time or residency. It is a distinct and separate process from regular case management. Generally, dispute resolution counseling is ordered only if the Court finds that the mediation process has been attempted and the matter has reached impasse or mediation has been determined to be inappropriate. The dispute resolution counselor/case manager's recommendations will be made available to the Court and the attorneys for the parties. The manager can be authorized to gather information necessary to assist the parties in reaching an agreement or making recommendations. Dispute resolution counseling is performed by persons who have been approved by the Court.

18) Family Group Conferencing

Dispute Resolution Advisory Council Definition:

With the recent changes in child welfare laws and time frames, more and more state and county agencies are searching for alternatives to the traditional lengthy, adversarial proceedings to terminate parental rights. In family group conferencing one or more mediators are used to assist birth parents and caseworkers in creating permanent plans for children. Similar processes are known as dependency and permanency mediation. These processes differ from the current system in that they are cooperative and non-coercive rather than adversarial and coercive; participation is voluntary rather than involuntary; and decisions are made by mutual agreement rather than by a court process. The three major goals of this form of mediation are to: (1) empower parents to make cooperative, permanent plans for their children; (2) reduce the necessity for litigation to terminate parental rights and the related expenditure of state dollars; and (3) reduce the time children spend in foster care awaiting permanent homes. When cases result in a cooperative agreement, mediation not only reduces the trauma for children, but also preserves the integrity and self-esteem of their birth parents. It can also result in monetary savings due to fewer foster care days and fewer lengthy, expensive trials.

19) Peer Mediation:

Dispute Resolution Advisory Council Definition:

Peer mediation is a form of conflict resolution in which trained student leaders help their peers work together to resolve everyday disputes. Participation in peer mediation is voluntary, and with the exception of information that is illegal or life threatening, all matters discussed in mediation sessions remain confidential. Student mediators do not make judgments or offer advice, and they have no power to force decisions upon their peers. In some parts of the country, peer mediation projects work with local juvenile courts to develop diversion programs.

20) Facilitation:

The following description is from: U.S. Office of Personnel Management, “Alternative Dispute Resolution: A Resource Guide.”

“Facilitation involves the use of techniques to improve the flow of information in a meeting between parties to a dispute. The techniques may also be applied to decision-making meetings where a specific outcome is desired (e.g., resolution of a conflict or dispute). The term “facilitator” is often used interchangeably with the term “mediator”, but a facilitator does not typically become as involved in the substantive issues as does a mediator, and the process is usually not confidential. The facilitator focuses more on the process involved in resolving a matter.”

“The facilitator generally works with all of the meeting’s participants at once and provides procedural directions as to how the group can move efficiently through the problem-solving steps of the meeting and arrive at the jointly agreed upon goal. The facilitator may be a member of one of the parties to the dispute or may be an external consultant. Facilitators focus on procedural assistance and remain impartial to the topics or issues under discussion.”

“The method of facilitating is most appropriate when: (1) the intensity of the parties’ emotions about the issues in dispute are low to moderate; (2) the parties or issues are not extremely polarized; (3) the parties have enough trust in each other that they can work together to develop a mutually acceptable solution; or (4) the parties are in a common predicament and they need or will benefit from a jointly-acceptable outcome”.

21) Peer Review:

The following description is taken from: U.S. Office of Personnel Management, “Alternative Dispute Resolution: A Resource Guide”:

“Peer review is a problem-solving process where an employee takes a dispute to a group or panel of fellow employees and managers for a decision. The decision may or may not be binding on the employee and/or the employer, depending on the conditions of the

particular process. If it is not binding on the employee, he or she would be able to seek relief in traditional forums for dispute resolution if dissatisfied with the decision under peer review. The principle objective of the method is to resolve disputes early before they become formal complaints or grievances.”

“Typically, the panel is made up of employees and managers who volunteer for this duty and who are trained in listening, questioning, and problem-solving skills as well as the specific policies and guidelines of the panel. Peer review panels may be standing groups of individuals who are available to address whatever disputes employees might bring to the panel at any given time. Other panels may be formed on an ad hoc basis through some selection process initiated by the employee, e.g., blind selection of a certain number of names from a pool of qualified employees and managers.”

23) Evaluation Forms:

The attached two *evaluation* forms were developed by Bethel College at the request of the Office of Judicial Administration and the Dispute Resolution Advisory Council. These provide an example of how either the client can evaluate the mediator or how the mediator can assess their own performance. The Advisory Council recommends that organizations, which use mediators, use some type of evaluation with new mediators.

Confidential Mediation Questionnaire:

Court Case #: _____ Date of first mediation session: _____

By completing this survey, you can provide information to help evaluate the effectiveness of mediation. Please take a few minutes to answer the following questions regarding your experience with mediation.

Circle the appropriate categories for yourself: Petitioner Respondent Male Female

Below are a number of statements about the mediation process, mediation strategies, and the outcome of mediation.

1 = Strongly Disagree

2 = Somewhat Disagree

3 = Somewhat Agree

4 = Strongly Agree

N = Don't Know, Unable to Determine, or Not Applicable

Mediation Process:

- | | | |
|-----|--|-----------|
| | a. I felt the mediation process was fair. | 1 2 3 |
| 4 N | | |
| | b. I was fully able to present my case. | 1 2 3 |
| 4 N | | |
| | c. I felt safe during the mediation. | 1 2 3 4 N |
| | d. The mediation process was explained well. | 1 2 3 |
| 4 N | | |
| | e. I felt empowered by the mediation process. | 1 2 3 |
| 4 N | | |
| | f. I was satisfied with the scheduling of the mediation. | 1 2 3 |
| 4 N | | |
| | g. This mediation was completed in a timely manner. | 1 2 3 |
| 4 N | | |

Mediation Strategies:

- | | | |
|-----|---|-----------|
| | h. The mediator helped create a positive atmosphere. | 1 2 3 |
| 4 N | | |
| | i. The mediator worked to create a better relationship between the parties. | 1 2 3 4 N |
| | j. The mediator helped me to create various solutions. | 1 2 3 |
| 4 N | | |
| | k. I feel the mediator was unbiased. | 1 2 3 4 N |
| | l. The mediator listened to my interests and concerns. | 1 2 3 |
| 4 N | | |
| | m. I felt pressured to resolve the dispute too quickly. | 1 2 3 |
| 4 N | | |
| | n. Mediator helped me express strong emotions so we could proceed. | 1 2 3 |
| 4 N | | |
| | o. The mediator helped diffuse anger. | 1 2 3 |
| 4 N | | |

- 4 N p. The mediator helped me clarify my interests/needs. 1 2 3
- 4 N q. The mediator understood my issues. 1 2 3
- 4 N r. The mediator explained confidentiality to me. 1 2 3
- s. I was treated with respect. 1 2 3 4 N
- t. The mediator made good use of mediation time. 1 2 3 4 N
- u. The mediator helped me from feeling put down. 1 2 3 4 N
- v. The mediator helped me express my emotions. 1 2 3 4 N
- w. The mediator permitted the mediation process to drag out. 1 2 3

4 N
Mediation Outcome:

- x. My child(ren)'s best interests are better off because of the mediation. 1 2 3 4 N
- y. I was satisfied with the influence I had on the outcome. 1 2 3 4 N
- z. I was able to communicate with the other party during the mediation. 1 2 3

4 N I think direct communication with the other party will improve after this mediation. 1 2 3

4 N The agreement, if any was reached, was fair. 1 2 3 4 N

Overall, the mediation outcome was satisfactory. 1 2 3 4 N

4 N I would use mediation again if a problem developed. 1 2 3

The following is a list of terms that might describe the style and demeanor of the mediator who worked with you.

- | | | |
|-----------------------------|-------------------|---------------------|
| _____ Use of humor | _____ Friendly | _____ Fair |
| _____ Good Communicator | _____ Respectful | _____ Organized |
| _____ Task-orientated | _____ Directive | _____ Calm |
| _____ Emotional Sensitivity | _____ Controlling | _____ Unorganized |
| _____ Free to Give Advice | _____ Unbiased | _____ Good Listener |

Type of agreement resulting from the mediation:
 _____ Full agreement _____ No agreement _____ Partial agreement

Describe any other impact or benefit you felt resulted from the mediation process (e.g., relationship impaired, communication improved, money saved, productivity increased, etc.)

Please state any suggestions you may have to improve the effectiveness of the mediator or the

mediation process.

Please share any other comments or concerns you would like us to know about your mediation experience.

Thank you for taking time to complete this questionnaire. It helps us improve our services.

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Mediator Self Assessment / Questionnaire

Mediator: _____ Case #: _____ Date of first session: _____

Below are a number of statements about the mediation process, strategies you may have used, and the outcome of mediation.

- 1 = Strongly Disagree
- 2 = Somewhat Disagree
- 3 = Somewhat Agree
- 4 = Strongly Agree
- N = Don't Know, Unable to Determine, or Not Applicable

Mediation Process:

- | | |
|---|-----------|
| I avoided taking sides on important issues in joint sessions. | 1 2 3 4 N |
| Neither party seemed particularly intimidated by the mediation process. | 1 2 |
| 3 4 N | |
| I believe the parties felt safe during the mediation. | 1 2 3 4 N |
| I was able to effectively explain the mediation process. | 1 2 |
| 3 4 N | |
| I tried to empower the parties. | 1 2 |
| 3 4 N | |
| I was satisfied with the scheduling of the mediation. | 1 2 |
| 3 4 N | |
| The mediation was completed in a timely manner. | 1 2 3 4 N |

Mediator Strategies:

- | | |
|--|-----------|
| I took time to develop rapport with the parties. | 1 2 |
| 3 4 N | |
| I focused more on settlement than transforming relationships. | 1 2 |
| 3 4 N | |
| I raised potential settlement options with the parties. | 1 2 3 4 N |
| I attempted to move one or both of the parties off a committed position. | 1 2 3 4 N |
| I used specific active listening techniques during this mediation. | 1 2 |
| 3 4 N | |
| I strongly encouraged parties to identify issues early in the mediation process. | 1 2 |
| 3 4 N | |
| I let the parties blow off steam when they wanted. | 1 2 3 4 N |
| I helped the parties express emotions. | 1 2 |
| 3 4 N | |
| I either suggested a particular settlement or made substantive suggestions for compromise. | 1 2 3 4 N |
| I felt I understood the parties issues early in the mediation process. | 1 2 3 4 N |
| I was able to effectively explain confidentiality to the parties. | 1 2 |

- 3 4 N
My initial reaction in this case was that one or both parties was being unreasonable with the positions they presented. 1 2
- 3 4 N
I kept negotiations focused on the issues. 1 2 3 4 N
I took active steps to help at least one of the parties save face. 1 2
- 3 4 N
I intervened quickly in the process after significant increases in intensity levels. 1 2
- 3 4 N
I allowed the parties to initiate and maintain momentum (set the pace). 1 2
- 3 4 N
I suggested to the parties that the child(ren)'s interests should be considered. 1 2
- 3 4 N

Mediation Outcome:

- I was able to create a setting in which the parties could negotiate as equals 1 2 3 4 N
To help evaluate potential settlements, we discussed the costs of continued disagreement. 1 2 3 4 N
I attempted to develop trust between the parties. 1 2 3 4 N
I felt the agreement the parties reached was fair. 1 2 3 4 N
I felt the mediation outcome was satisfactory. 1 2
- 3 4 N
Mediation helped these parties. 1 2
- 3 4 N

The following is a list of terms that might describe the style and demeanor you used during the mediation.

Please check all of the following terms that you believe describe your actions in this mediation.

- | | | |
|--|--------------------------------------|--|
| <input type="checkbox"/> Use of humor | <input type="checkbox"/> Friendly | <input type="checkbox"/> Fair |
| <input type="checkbox"/> Good Communicator | <input type="checkbox"/> Respectful | <input type="checkbox"/> Organized |
| <input type="checkbox"/> Task-orientated | <input type="checkbox"/> Directive | <input type="checkbox"/> Calm |
| <input type="checkbox"/> Emotional Sensitivity | <input type="checkbox"/> Controlling | <input type="checkbox"/> Unorganized |
| <input type="checkbox"/> Free to Give Advice | <input type="checkbox"/> Unbiased | <input type="checkbox"/> Good Listener |

Type of agreement resulting from the mediation:

Full agreement No agreement Partial agreement

At what point in the process did you begin to solicit and process proposals for settlement? Please check one category in each column.

<input type="checkbox"/> early in the process	<input type="checkbox"/> during individual sessions
<input type="checkbox"/> mid-way through the process	<input type="checkbox"/> while issues were being identified
<input type="checkbox"/> late in the process	<input type="checkbox"/> while options were being generated
	<input type="checkbox"/> after options were generated

What would you do differently in this mediation if you could do it over?

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