

OMA MODEL GUIDELINES FOR PRIVATE PRACTITIONER MEDIATOR EDUCATION, TRAINING, AND EXPERIENCE

Approved 12-15-2010

I. Introduction

- A) This voluntary model provides guidance to mediators, programs, and consumers that use private practice mediators about minimum education, training, and experience. They should be read in conjunction to OMA's Core Standards of Mediation Practice. (<http://www.omediate.org/pg61.cfm>)
- B) Meeting these Guidelines is not proof of competency. Users of private mediators must carefully consider other relevant factors in their selection process. See Consumer Guide to Mediation on the OMA website for information about selecting a mediator. (<http://www.omediate.org/pg25.cfm>)
- C) These Guidelines are a beginning – not an end to OMA's efforts to promote the provision and use of quality mediation services.
- D) Meeting these Guidelines is not a condition of OMA membership.

II. Basis

Board Action – initial authorization to develop guidelines and subsequent approval at December 2009 and December 2010 board meetings.

III. Formal Education Or Degree

None required

IV. Number Of Mediations

Participation in 20 Actual Completed Cases as Mediator or Co-Mediator

V. Training (See Experience For Alternative Criteria)

- A) Basic mediation training course of 30 hours
- B) A six hour court system course comparable to that described at (<http://www.ojd.state.or.us/Web/OJDPublications.nsf/Mediation?OpenView&count=1000>)

- C) Study ORS Chapter 36 (<http://landru.leg.state.or.us/ors/036.html>) and take OMA Confidentiality Quiz (<http://www.surveymonkey.com/s/2QL72RY>)
- D) Study OMA Core Standards of Mediation Practice (<http://www.omediate.org/pg61.cfm>) and take OMA Standards Quiz (<http://www.surveymonkey.com/s.asp?u=832042804463>)

VI. Curriculum

- A) Detailed curriculum for Basic Mediation, Court System and Continuing Education training under these guidelines can be found in the Curriculum Appendix at the end of this document
- B) Basic mediation training curriculum as described here means a program designed and delivered by experienced mediation trainers to achieve a minimum competency. While this type of training has advantages, OMA recognizes that other methods can also produce satisfactory mediation skills. Members may represent that their training is comparable to or more than these guidelines describe so long as each component's criteria are met.

VII. Experience (See Training for Alternative Criteria)

- A) 200 hours of mediation experience as an observer, co-mediator, or mediator
- B) Of the 200 hours, 50 must be in context and subject matter of mediator's primary focus
- C) Hours of actual mediation spent in the 20 cases required for the Number of Mediations (Section IV) shall also count toward Experience hours required in A and B above.
- D) 50 hours of additional mediation experience every 2 years

VIII. Test

None required

IX. Supervision or Mentoring

Mentoring or Apprenticeship relationship recommended

X. Context

Sufficient context familiarity to satisfy the reasonable expectations of the participants demonstrated by education, training, and/or experience

XI. Subject Matter Familiarity

Sufficient subject matter familiarity to satisfy the reasonable expectations of the participants demonstrated by education, training and/or experience.

XII. Standards of Practice

OMA's Core Standards of Mediation Practice and any required by mediator's profession of origin

XIII. Quality Feedback Loop

A) Participant evaluations encouraged.

B) OMA to work with interested stakeholders on a participant evaluation system

XIV. Continuing Mediator Education

A) 24 hrs every 2 years with one credit on confidentiality and one on ethics

B) See Curriculum Appendix for continuing education criteria

XV. Member Certification and Advertising

A) Since OMA does not certify, license or qualify mediators, members may assert that they meet OMA guidelines for training and education. They may not say or imply that OMA has certified, qualified or, licensed them for any activity.

B) OMA will develop a web mechanism where members can self-certify, and that mechanism will cross-reference these Guidelines so the consumer knows the basis for the representation.

XVI. Ongoing Monitoring and Evaluation

A) OMA Standards and Practices Committee is authorized to:

- 1) Conduct random reviews to determine if a mediator's advertising and representations are consistent with these Guidelines and the Core Standards. It may also respond to inquiries made through the OMA Voluntary Mediation Process for Resolving Disputes With OMA Mediators. (<http://www.omediate.org/pg77.cfm>.) It may educate members, the membership, and Board if issues are found.
 - 2) Answer questions and interpret these Guidelines.
 - 3) Conduct surveys to assess the effectiveness of the Guidelines.
 - 4) Work with stakeholders to monitor and evaluate Guidelines, and
 - 5) Recommend improvements to the Board for OMA's "Quality Enhancement Initiative"
- B) Such authorized ongoing activities of the Standards and Practices Committee shall be exercised in reasonable and appropriate consultation and coordination with other OMA committees, e.g., Member Services, under the continuing supervision and direction of the OMA Board.

OMA TRAINING CURRICULUM
APPENDIX TO GUIDELINES FOR PRIVATE PRACTITIONERS

MEDIATION TRAINING

Element	Basic Mediator Skills Curriculum
I. Basis	Based on Statute and Chief Justice Order (CJO) http://www.ojd.state.or.us/Web/OJDPublications.nsf/Mediation?OpenView&count=1000
I. Understanding of Conflict Resolution and Mediation Theory	<ul style="list-style-type: none"> A) Conflict theory; B) Dispute resolution systems; C) The evolution of mediation as a practice; and D) Theories regarding the steps or phases of a mediation and transitions from one phase to another.
II. Preparing for Mediation	<ul style="list-style-type: none"> A) Case management models so that the trainee might gain a general awareness of the ways that mediations are handled in various courts and programs that the trainee might encounter; B) Assessing disputants and conflicts to ensure that the matter is within the mediator's skill and ability; C) Structuring the process to ensure that it is appropriate for that particular matter; D) The use of joint session and caucus-based models of mediation; E) Helping parties, via pre-mediation communications, understand the mediation process including its potential benefits and its limitations; F) Helping parties understand the mediator's role and the value of parties obtaining independent legal or other professional advice; G) Use of pre-mediation agreements; and H) The mediator's role in ensuring party self-determination with respect to both the process and the outcome of the mediation. Self-determination is the act of coming to a voluntary, un-coerced decision in which each party makes a free and informed choice to agree or not agree.

<p style="text-align: center;">III. Creating a Safe and Comfortable Environment for the Mediation</p>	<p>A) Making opening statements, setting the tone, and explaining the process; and</p> <p>B) Establishing trust and respect.</p>
<p style="text-align: center;">V. Facilitating Effective Communication Between the Parties and Between the Mediator and the Parties</p>	<p>A) Techniques that encourage effective listening, such as active listening, clarifying, reframing, paraphrasing, body language, open-ended questions, empathy, and validation;</p> <p>B) Legal and practical aspects of candor and confidentiality in mediation;</p> <p>C) Cross-cultural and diversity awareness; and</p> <p>D) Dealing with strong emotions and interpersonal conflict.</p>
<p style="text-align: center;">VI. Techniques That Help the Parties Solve Problems and Seek Agreement</p>	<p>A) Creating a climate conducive to resolution or problem solving;</p> <p>B) Identifying and distinguishing between positions and underlying interests;</p> <p>C) Identifying, prioritizing, and assessing options including BATNA analysis; and</p> <p>D) Techniques for breaking an impasse</p>
<p style="text-align: center;">VII. Conducting the Mediation in a Fair and Impartial Manner</p>	<p>A) Maintaining mediator impartiality;</p> <p>B) Mediator confidentiality;</p> <p>C) Impartial regard; and</p> <p>D) The mediator's duties with respect to assessing and responding to any potential conflicts of interest.</p>
<p style="text-align: center;">VIII. Understanding Mediator Confidentiality and Ethical Standards for Mediator Conduct</p>	<p>A) Standards adopted by Oregon and national organizations</p>
<p style="text-align: center;">IX. Concluding a Mediation and Memorialize Understandings and Agreements</p>	<p>A) Elements of an agreement;</p> <p>B) Instruction on the mediators' appropriate role in these activities;</p> <p>C) The mechanics of agreement writing and</p> <p>D) Any post-mediation follow-up.</p>
<p style="text-align: center;">X. Experiential Learning</p>	<p>A) At least six hours participation by each trainee in role plays with trainer feedback to the trainee and trainee self-assessment</p>
<p style="text-align: center;">XI. Trainer Qualifications</p>	<p>A) Meets the OMA Guidelines for Mediator Education and Experience.;</p> <p>B) Mediated at least 35 cases to conclusion or completed at least 350 hours of mediation experience beyond the experience required of a mediation practitioner and either</p> <p>C) Served as a trainer or an assistant trainer for the basic</p>

	<p>mediation curriculum outlined in this section at least three times; or</p> <p>D) Have experience in adult education and mediation as follows:</p> <ul style="list-style-type: none"> (i) Served as a teacher for at least 1000 hours of accredited education or training for adults, and (ii) Completed the basic mediation curriculum outlined under this section <p>E) Have widely read in the mediation literature, including books on processes, styles, applications, psychology, communication, and more</p> <p>F) Have practiced in more than one area of mediation so as to be able to compare experiences.</p> <p>G) Have been involved in the writing and editing and running of mediation simulations (as an assistant to an experienced writer/trainer)</p> <p>H) Have experience in running multi-day, day-long workshops (usually by participating as an assistant at a prior training) involving such activities as:</p> <ul style="list-style-type: none"> • -preparation • -exercises • -other materials • -Power Points • -lectures • -demonstrations • -simulation writing • -simulation debriefing <p>I) Have experience teaching modules in a prior mediation training under the supervision of a trainer who meets these guidelines.</p> <p>J) Have learned about adult learning styles</p> <p>K) Have learned about giving and orchestrating feedback on performance of mediators in the workshop</p> <p>L) Is committed to staying up to date on relevant laws and regulations about such matters as confidentiality and court rules affecting mediation</p>

COURT-SYSTEM TRAINING

A) At least six hours including, but not limited to, the following subject areas

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Element	Court Curriculum
<p style="text-align: center;">I. Court System</p>	<p>Including but not limited to:</p> <ul style="list-style-type: none"> A) Basic legal vocabulary B) How to read a court file C) Confidentiality and disclosure D) Availability of jury trials E) Burdens of proof F) Basic trial procedure G) The effect of a mediated agreement on the case including, but not limited to, finality, appeal rights, remedies, and enforceability H) Agreement writing I) Working with interpreters J) Obligations under the Americans with Disabilities Act
<p style="text-align: center;">II. Dispute resolution processes</p>	<ul style="list-style-type: none"> A) Information on the range of available administrative and other dispute resolution processes. B) Information on the process that will be used to resolve the dispute if no agreement is reached, such as judicial or administrative adjudication or arbitration, including entitlement to jury trial and appeal, where applicable. C) How the legal information described in this subsection is appropriately used by a mediator in mediation, including avoidance of the unauthorized practice of law.
<p style="text-align: center;">III. For mediators working in contexts other than small claims court</p>	<ul style="list-style-type: none"> A) At least two additional hours including, but not limited to, all of the following: <ul style="list-style-type: none"> a) working with unrepresented parties, including <ul style="list-style-type: none"> (i) The role of litigants' lawyers in the mediation process; (ii) Attorney-client relationships, including privileges; (iii) Working with lawyers, including understanding of Oregon State Bar disciplinary rules; and (iii) Attorney fee issues. (b) Understanding motions, discovery, and other court rules and procedures; (c) Basic rules of evidence; and (d) Basic rules of contract and tort law.

CONTINUING MEDIATOR EDUCATION

<p style="text-align: center;">I. Of the continuing education hours required of mediators every two calendar years:</p>	<p>a) If the mediator is a general civil mediator:</p> <ul style="list-style-type: none"> (i) One hour must relate to confidentiality (ii) One hour must relate to mediator ethics, and (iii) Six additional hours can be satisfied by his or her licensure unless such licensure is not reasonably related to the practice of mediation <p>(b) If the mediator is an approved domestic relations custody and parenting or domestic relations financial mediator:</p> <ul style="list-style-type: none"> (i) Two hours must relate to confidentiality; (ii) Two hours must relate to mediator ethics; (iii) Twelve hours must be on the subject of either custody and parenting issues or financial issues, respectively; (iv) Twelve hours can be satisfied by the mediator taking the continuing education classes required by his or her licensure unless such licensure is not reasonably related to the practice of mediation; and (v) the hours required in subparagraphs (i) and (ii) can be met in the hours required in subparagraph (iii) if confidentiality or mediator ethics is covered in the context of domestic relations
<p style="text-align: center;">II. Continuing education topics may include but are not limited to the following examples</p>	<ul style="list-style-type: none"> (a) Those topics outlined in the basic mediation curriculum described above; (b) Practical skills-based training in mediation or facilitation; (c) Court processes; (d) Confidentiality laws and rules; (e) Changes in the subject matter areas of law in which the mediator practices; (f) Mediation ethics; (g) Domestic violence; (h) Sexual assault; (i) Child abuse and elder abuse; (j) Gender, ethnic, and cultural diversity; (k) Psychology and psychopathology; (l) Organizational development;

	<ul style="list-style-type: none"> (m) Communication; (n) Crisis intervention; (n) Program administration and service delivery; (o) Practices and procedures of state and local social service agencies; and (q) Safety issues for mediators.
<p style="text-align: center;">III. Continuing education structure</p>	<p>A. Continuing education shall be provided by an individual or group qualified by practical or academic experience, For purposes of this section, an hour is defined as 60 minutes of instructional time or activity and may be completed in a variety of formats, including but not limited to:</p> <ul style="list-style-type: none"> (a) Attendance at a live lecture or seminar; (b) Attendance at an audio or video playback of a lecture or seminar with a group where the group discusses the materials presented; (c) Listening or viewing audio, video, or internet presentations; (d) Receiving supervision as part of a training mentorship; (e) Formally debriefing mediation cases with mediator supervisors and colleagues following the mediation; (f) Lecturing or teaching in qualified continuing education courses; and (g) Reading, authoring, or editing written materials submitted for publication that have significant intellectual or practical content directly related to the practice of mediation.
<p style="text-align: center;">IV. Enhancing mediator skills</p>	<p>Continuing education should enhance the participant's competence as a mediator and provide opportunities for mediators to expand existing skills and explore new areas of practice or interest. To the extent that the mediator's prior training and experience do not include the topics listed above, the mediator should emphasize those listed areas relevant to the mediator's practice.</p>
<p style="text-align: center;">V. Recording/reporting hours</p>	<p>Mediators will maintain records of their participation in continuing education activities. Mediators will make those records available for reasonable inspection by OMA's Standards and Practices Committee in order to facilitate the Committee's carrying on of its monitoring function under these Guidelines</p>