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States' Alternative Dispute Resolution Statutes

State of Mississippi

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States' Alternative Dispute Resolution Statutes

STATE OF MISSISSIPPI

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Arbitration and Award

Title 11, Chapter 15.

Current through the end of the 2008 Regular Session

§ 11-15-1. Eligibility

All persons, except infants and persons of unsound mind, may, by instrument of writing, submit to the decision of one or more arbitrators any controversy which may be existing between them, which might be the subject of an action, and may, in such submission, agree that the court having jurisdiction of the subject matter shall render judgment on the award made pursuant to such submission. In such case, however, should the parties agree upon a court without jurisdiction of the subject matters of the award, the judgment shall be rendered by the court having jurisdiction in the county of the residence of the party, or some one of them, against whom the award shall be made.

§ 11-15-3. Arbitrators disqualified for interest

A person shall not act as an arbitrator where he is interested in the subject matter in dispute, nor where he is related, by consanguinity or affinity, to any of the parties to the arbitration.

§ 11-15-5. Role of arbitrators

The arbitrators selected by agreement of the parties shall appoint a time and place for the hearing, and notify the parties thereof, and shall adjourn the hearing from time to time, as may be necessary, and on the application of either party, and for good cause may postpone the hearing to a time not extending beyond the day fixed in the submission, if a day be fixed, for rendering the award.

§ 11-15-7. Notice to parties

The notice which the arbitrators shall give to the parties of the time and place of the hearing of the controversy shall be in writing, and may be in the following form, viz:

"To _____ and _____ and _____ [naming all of the parties]

"You are notified that the undersigned arbitrators, agreed upon by you to determine the controversy mentioned in your articles of submission, of date the ___ day of _____ A.D. _____, have fixed upon and will hear and consider your said controversy on the ___ day of _____ A.D.
_____, at _____

"
"
"
"

"Arbitrators."

Such notice shall be served by delivering to each of the parties a copy thereof at least one whole day before the hearing, and shall be given to the parties by one of the arbitrators, who shall indorse on said notice that he has served the same by giving the party or parties so served a true copy thereof; but, if the parties appear, the want of notice shall not affect the proceedings.

§ 11-15-9. Oath of arbitrators

Before proceeding to hear any testimony in relation to the matter, the arbitrators shall be sworn, by some officer authorized to administer an oath, to faithfully and impartially hear and determine the matters submitted to them, according to the evidence and the manifest justice and equity of the case, to the best of their judgment, without favor or affection.

§ 11-15-11. Hearing procedure

All arbitrators must meet together and hear all of the allegations and evidence of the parties pertinent or material to the cause; but the parties may mutually waive, in writing, the appearance of all of the arbitrators named in the articles of submission and consent for those present to proceed, or they may, in like manner, substitute other persons for the absent one. An award made, and every other act done, by a majority of the arbitrators shall be valid, unless the concurrence of all or a certain number of the arbitrators to the award or acts be expressly required in the submission.

§ 11-15-13. Witnesses

All witnesses before arbitrators shall be sworn as if before a court, and the parties shall have the benefit of legal process to compel the attendance of witnesses, which may be issued by the clerk of any court or a justice of the peace, and shall require the witness to attend before the arbitrators on a day and at a place certain to be named in the subpoena.

§ 11-15-15. Service of process

Process returnable to the arbitrators may be served as provided for in the Mississippi Rules of Civil Procedure.

§ 11-15-17. Contempt

If any person duly subpoenaed to appear before arbitrators and testify, shall fail to do so, he shall be guilty of contempt of the court from which, or by whose clerk, the process issued, and upon complaint thereto of the party injured, the court or justice may punish the person for such contempt as in other like cases.

§ 11-15-19. Form of award

To entitle an award to be enforced according to the provisions of this chapter, it must be made in writing, and be signed by the arbitrators making the same and who concur therein. The arbitrators shall attach to the award the articles of submission, the notice served on the parties, with indorsements of service, and, if the parties appear, that fact should be noted in the award itself; and they shall give a duplicate of the whole to each of the parties to the controversy, and the duplicates shall each be treated as originals.

§ 11-15-21. Confirmation by court

Upon presentation of the articles of submission and the award to the court designated in the submission or the court having jurisdiction of the subject matter of the award, the court shall, upon motion, confirm the award, unless the same be vacated or modified, or a decision thereon be postponed, as hereinafter provided. An award shall not be confirmed unless notice in writing of such motion shall have been served on the adverse party at least five days before the hearing, to be served as other process; but such motion shall not be made after the expiration of one year from the making and publication of the award.

§ 11-15-23. Grounds for vacation

Any party complaining of an award may move the court to vacate the same upon any of the following grounds:

- (a) That such award was procured by corruption, fraud, or undue means;
- (b) That there was evident partiality or corruption on the part of the arbitrators, or any one of them;
- (c) That the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent or material to the controversy, or other misbehavior by which the rights of the party shall have been prejudiced;
- (d) That the arbitrators exceeded their powers, or that they so imperfectly executed them that a mutual, final, and definite award on the subject matter was not made.

§ 11-15-25. Amendment

Any party to the submission may also move the court to modify or correct the award in the following cases:

- (a) Where there is an evident miscalculation of figures, or an evident mistake in the description of any person, thing, or property referred to in such award;
- (b) Where the arbitrators shall have awarded upon some matter not submitted to them, nor affecting the merits of the decision of the matter submitted;
- (c) Where the award shall be imperfect in some matter of form, not affecting the merits of the controversy, and when, if it had been a verdict of a jury rendered in such court, the defect could have been amended or disregarded by the court.

§ 11-15-27. Vacation or modification, time

An application to vacate or modify an award shall be made to the court at the term next after the making and publication of the award, upon at least five days' notice, in writing, being given to the adverse party, if there be time for that purpose; and if there be not time, such court, or the judge thereof, may, upon good cause shown, order a stay of proceedings upon the award, either absolutely or upon such terms as shall appear just, until the next succeeding term of court.

§ 11-15-29. Vacation, new hearing, amendment

On application as provided for in section 11-15-27, the court may vacate the award in any of the cases specified in section 11-15-23, and if the time in which the award shall have been required to be made by the articles of submission has not expired, may, in its discretion, direct a new hearing by the arbitrators; and, in the cases specified in section 11-15-25, the court may modify and correct the award so as to effect the intent thereof, and to promote justice between the parties.

§ 11-15-31. Rendering of judgment

Upon such award being confirmed or modified, the court shall render such judgment therein in favor of the party entitled to the same, as would be rendered in such case in the circuit or chancery court.

§ 11-15-33. Costs

The costs of the proceedings, after an application to the court for its action upon the award, and the fees allowed by law to the arbitrators, where no provision for payment is made thereof in the award, shall be taxed and collected as in other suits.

§ 11-15-35. Pending suits

In all suits or actions in any court, it shall be lawful for the plaintiff and defendant to consent to a rule of court referring all matters in controversy between them in such suit or action to the arbitrament of any person or persons who may be mutually chosen by them; and the award of such arbitrators being made and returned according to the rule of submission of the parties, approved by the court and entered of record, shall have the same effect as the final judgment or decree of the court into which such award may be returned, and execution may issue thereon accordingly; and like proceedings may be had, where applicable, as is provided in other cases.

§ 11-15-37. Construction

This chapter shall not be construed to take away from the courts of equity their power over awards, nor

to make invalid any award good at common law. It shall be liberally construed for the encouragement of the settlement of disputes and the prevention of litigation.

Agricultural Seeds
Title 69, Chapter 3, Article 1.

Current through the end of the 2008 Regular Session

§ 69-3-20. Arbitration council and proceedings

(1) The commissioner shall appoint an arbitration council composed of six (6) members to hear and decide each complaint. The Director of the Mississippi Agricultural and Forestry Experiment Station, the Director of the Mississippi Cooperative Extension Service, the President of the Mississippi Seedsmen's Association, the President of the Mississippi Farm Bureau Federation, and the Alcorn State University Divisional Director of Agriculture and Applied Sciences shall supply to the commissioner a list of four (4) candidates from their respective organizations. The commissioner shall choose one (1) candidate from each organization's list in selecting a council to hear each complaint. On or before January 1 of each year the respective recommending organizations shall submit member recommendations if they want to make changes from their previous recommendations. The commissioner, or his designee, shall be a member of and serve as chairman of the council and he may appoint a secretary for the council. It shall be the duty of the chairman to call the council into session to conduct all meetings and deliberations and to direct all other activities of the council. It shall be the duty of the secretary to keep accurate and correct records of all meetings and deliberations and perform such other duties for the council as directed by the chairman. The commissioner shall prescribe and adopt reasonable rules and regulations governing the arbitration process to include conditions and circumstances associated with seed to which arbitration is applicable.

(2) The purpose of the arbitration council is to assist consumers and seedsmen in determining the validity of complaints made by consumers against seedsmen and recommend cost damages resulting from failure of the seed to properly perform or produce, whether related to specific representations on the label or the labeling, other information on the seed container or conditions attributed to the quality of the seed.

(3)(a) When the department refers a complaint made by a consumer against a seedsman to the arbitration council, the council shall make a full and complete investigation of the matters complained of, and at the conclusion of the investigation, report its findings and make its recommendations of cost damages and file them with the department. Council findings and recommendations may be admissible as evidence in a court of law. When a complaint involving transgenic seeds is filed for arbitration, the seedsman shall furnish the commissioner the technology and procedures necessary to conduct any test to determine whether the seeds will perform as represented by the seedsman. The commissioner shall ensure that all technology and procedural information submitted to the department by the seedsman shall be kept confidential to ensure the proprietary rights of the seedsman. After a final disposition of all judicial proceedings or expiration of any applicable statute of limitation, the commissioner shall return all technology, records, test data or procedural information to the seedsman. In addition, remedies for misappropriation of a trade secret shall be governed by the Mississippi Uniform Trade Secrets Act in Sections 75-26-1 through 75-26-19.

- (b) In conducting its investigation the arbitration council or any member or members shall be authorized to examine the consumer on his farming operation of which he complains; to examine the seedsman on his packaging, labeling and selling operation of the seed alleged to be faulty; to conduct an appropriate test of a representative sample of the alleged faulty seed through the facilities of the state and under the supervision of the department when such action is deemed to be necessary; and to hold informal hearings at a time and place designated by the chairman upon reasonable notice to the consumer and the seedsman.
- (c) Any investigation made by less than the entire membership of the council shall be made by authority of a written directive by the chairman and the investigation shall be summarized in writing and considered by the council in its findings and in making its recommendations.
- (d) If the council holds an informal hearing to allow each party an opportunity to present their side of the dispute, attorneys may be present at the hearings to confer with their clients. However, no attorney may participate directly in the proceedings.
- (4) A majority of the six-member council shall constitute a quorum and action by a majority of a quorum shall be the official act of the council.
- (5) The commissioner may issue subpoenas to require the attendance of witnesses and the production of documents. Any court of general jurisdiction in this state may enforce compliance with such subpoenas.
- (6) The deliberations of the council at which the merits of a seed arbitration claim are under consideration shall not be subject to Section 25-41-1 et seq.
- (7) The members of the council shall receive no compensation for the performance of their duties but shall be reimbursed for travel expenses in the manner and amount provided in Section 25-3-41, Mississippi Code of 1972.
- (8) In lieu of a hearing by the council, informal hearings for arbitration may be conducted by an independent arbitrator appointed by the commissioner. The consumer filing a complaint or the seedsmen named in the complaint may request arbitration by an independent arbitrator. When a request is made, both parties shall be notified and consent to arbitration by an independent arbitrator. The commissioner shall appoint the arbitrator from a list of six (6) persons who shall be qualified to conduct arbitration proceedings. The commissioner shall publish the lists of qualified arbitrators every other year. The arbitrator appointed by the commissioner shall conduct all proceedings and hearings as provided in Section 69-3-20 and applicable rules and regulations and shall report the findings and recommendations to the commissioner.

COURT ANNEXED MEDIATION RULES FOR CIVIL LITIGATION

Current with amendments received through May 2008

EXHIBIT "A"

These rules shall govern the referral of cases by the Circuit, Chancery and County courts of this state to mediation.

I. POLICY

It shall be the policy of the courts of the State of Mississippi (1) to encourage the peaceable resolution of disputes and early settlement of pending litigation by voluntary action of the parties, and (2) to identify cases appropriate for referral to mediation pursuant to the guidelines set out in these rules.

II. CASES APPROPRIATE FOR REFERRAL TO MEDIATION

All Civil cases shall be considered appropriate for referral to mediation in the discretion of the court, giving consideration to such facts as the subject matter of the case, the amount in controversy, the complexity of the case, the number of parties, the interest of the parties in pursuing mediation, the availability of mediation, and the likelihood of settlement by mediation.

III. REFERRAL OF CIVIL CASES

Civil Cases may be referred to mediation in the following manner:

- A. Any circuit, chancery and county court in this state may, either on its own motion or on the motion of any party, determine that a case is appropriate for mediation. A court may not order a case to mediation more than one time.
- B. If the court on its own motion determines that a pending dispute is appropriate for referral to mediation, the court shall enter its order which shall direct the clerk or court administrator to notify the parties to complete a mediation as set forth in this rule within a time period as the court may specify. Any party, within 10 days of the date of entry of the court's order, may file written objection to the referral order and request a hearing by the court.
- C. Any party may apply to the courts of this state for referral of a case to mediation by motion upon giving notice to all other parties. A hearing may be conducted on the motion at which the court shall make a determination as to whether mediation is appropriate and if the case is referred shall enter its appropriate order.
- D. Upon the court entering its final order referring a case to mediation all objections having been heard by the court, the parties shall have a period of 20 days from the date of entry of the court's final order to schedule the mediation. If the parties are unable to agree on a convenient date and mediator, the clerk or administrator of the court shall assign a date, time, location and mediator to conduct the mediation procedure, which assignment will be binding on the parties upon their being notified by the clerk or court administrator of the court. Any objections any party may have with regard to the date, time or location assigned for the mediation or the selection of the mediator shall be filed with the court in writing within 10 days of entry of the notice of the clerk or court administrator.

IV. AUTHORITY TO SETTLE

The attorneys for all parties must appear at the mediation unless otherwise ordered by the court. Each party including a person with authority to settle the case on the party's behalf shall be present during the mediation unless otherwise ordered by the court.

V. MEDIATION

A. Mediation is a forum in which an impartial person, the mediator, facilitates communications between parties to promote reconciliation, settlement or understanding among them.

B. A mediator may not impose his or her own judgment on the issues for that of the parties.

VI. SANCTIONS

If a party or a party's attorney fails to obey an order made pursuant to this rule, fails to appear at the scheduled mediation, or fails to participate, the other party shall report such circumstances to the court. The court may make such orders with regard thereto as are just within the discretion of the court, including requiring the party, or the attorney representing the party, or both, to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's and mediator's fees; provided; however, the mediator shall not be called as a witness or otherwise be required to give evidence at a sanctions hearing.

VII. CONFIDENTIALITY OF COMMUNICATIONS IN MEDIATION

A. Except as provided by subsections C and D below, a communication relating to the subject matter of any civil dispute made by a participant in a mediation is confidential, is not subject to disclosure, and may not be used as evidence against the participant in any judicial or administrative proceeding.

B. Mediation is confidential and no record shall be made. The participants or the mediator may not be required to testify in any proceedings relating to matters occurring during the mediation session, nor shall they be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

C. Any oral communication or written material used in or made a part of a mediation is admissible or discoverable only if it is admissible or discoverable independent of the mediation.

D. If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to the court having jurisdiction of the proceedings to determine, in camera, whether the facts, circumstances and context of the communications or materials sought to be disclosed warrant a protective order of the court or whether the communications or materials are subject to disclosure.

VIII. EFFECT OF WRITTEN SETTLEMENT AGREEMENT

A. If the parties reach a settlement and execute a written agreement disposing of the dispute or any part thereof; the agreement is enforceable in the same manner as any other written contract.

B. The court in its discretion may incorporate the terms of the agreement in the court's final order

disposing of the case.

IX. COST OF MEDIATION

The fees and expenses of the mediation shall be established by agreement between the mediator and the parties charged with those fees and expenses. Unless otherwise agreed to by the parties or ordered by the court, the party seeking mediation shall pay the fees and expenses of the mediation. When mediation is ordered by the court on its own motion, the court shall allocate the fees and expenses of the mediation, or such fees and expenses may be taxed as costs of the litigation. The attorney's fees of the parties shall not be included in the fees and expenses of mediation.

X. ADMINISTRATION FUNCTIONS CONCERNING MEDIATION

The following procedures will be utilized for the conduct of administrative functions necessary to make mediators available as needed for the referral of cases.

A. The Mississippi Supreme Court assisted by the Mississippi Bar will establish qualifications for inclusion on a list of mediators and prepare such list. The list shall be distributed to all circuit, county and chancery court clerks. The Mississippi Bar staff will provide administrative assistance. An administration fee for inclusion on the list may be established and charged to the approved mediators. Courts and parties are encouraged, but not required, to select mediators from the list.

B. Administration will be conducted through a committee designated the Court Annexed Mediation Committee which will be composed of members appointed by the Supreme Court. The number of members shall be at the discretion of the Court. Three members shall be nominated by the Mississippi Bar. The members will serve three year terms, expiring on December 31 of third year of service.

C. The Court Annexed Mediation Committee, with the advice of the Supreme Court, shall determine, on at least a semi-annual basis, whether there is an adequate number of qualified mediators to meet the demands of this Plan. If there is a determination that there is a need for training of additional mediators, The Mississippi Bar shall train or provide training to persons to serve as mediators. Persons receiving training elsewhere may qualify for inclusion on the list if said training meets the qualifications established by the Mississippi Supreme Court.

D. Within 60 days following the adoption of this plan, the Mississippi Bar shall submit to the Supreme Court proposed qualifications for mediators and administrative procedures for the implementation of the plan. Within 60 days following the appointment of members to the Annexed Mediation Committee, the committee will report to the Supreme Court the names, addresses and qualifications of mediators, and will update the list from time to time as needed.

XI. EFFECTIVE DATE OF PLAN

This mediation plan shall become effective upon adoption by the Supreme Court of the qualifications for mediators and the administrative procedures identified in Part X above.

XII. TERMINATION OF EXISTING PILOT MEDIATION PROGRAM

The pilot mediation program adopted by the Supreme Court on June 20, 1996 by order dated June 12, 1996 will terminate on its existing expiration date or upon the effective date of the plan herein adopted, which ever is the earlier.

XIII. SUSPENSION AND TERMINATION OF THE PLAN

The plan may be suspended or terminated by the Supreme Court upon a determination by the Court that there is an inadequate number of qualified mediators available to meet the demand without undue delay in the disposition of cases, or for such other reason as the Court may deem appropriate.

XIV. REPORTING REQUIREMENTS

The following procedures will be utilized to gather information concerning cases ordered to mediation pursuant to these Rules.

A. Each circuit and chancery court clerk shall file, on a monthly basis, a written report with the Administrative Office of Courts reporting the hereafter specified information concerning cases ordered to mediation by an order of that court entered pursuant to these rules. The report shall be filed no later than the last day of each month following the month for which activity is being reported. The report shall state (a) the number of cases ordered to mediation; (b) the general subject matter of the cases; and (c) the information obtained from mediators concerning those cases pursuant to paragraph B of this Rule. Reports concerning county court cases ordered to mediation shall be filed by the circuit court clerk in like manner.

B. Each mediator selected by the parties in a matter ordered to mediation or appointed by the Court pursuant to Rule 3D shall, within 10 days of the conclusion of the mediation, report to the clerk of the court whether the case was settled. The report shall not disclose any particulars of the settlement.

EXHIBIT "B"

XV. STANDARDS OF CONDUCT FOR MEDIATORS

The following standards shall apply to and govern the conduct of mediators conducting mediation pursuant to these Rules.

COMMENT

These standards are drawn from Model Standards of Conduct for Mediators promulgated by the American Arbitration Association and the Alternate Dispute Resolution Section of the American Bar Association. Certain adjustments have been made in the Model Standards to conform this Rule XV to the text and practices set forth in the other sections of these Court Annexed Mediation Rules for Civil Litigation.

A. Self-Determination: A Mediator Shall Recognize that Mediation is Based on the Principle of Self-Determination by the Parties.

Self-determination is the fundamental principle of mediation. It requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement. Having complied in good faith with any order entered under Rule III, any party may withdraw from mediation at any time.

COMMENT

The mediator may provide information about the process, raise issues, and help parties explore options. The primary role of the mediator is to facilitate a voluntary resolution of a dispute. Parties shall be given the opportunity to consider all proposed options.

A mediator cannot personally ensure that each party has made a fully informed choice to reach a particular agreement, but it is a good practice for the mediator to make the parties aware of the importance of consulting other professionals, where appropriate, to help them make informed decisions.

Mediation under these rules is conducted in association with proceedings pending in the courts of the state, pursuant to orders of the courts in which the subject cases are pending as described in Rule III. Mediation is commenced by an order of the assigning court, which must be complied with in good faith. Failure to abide by such an order is subject to sanctions under

Rule VI. Therefore, prior to withdrawing from or terminating a mediation, the parties must have fully performed her or his obligation under such an order and under the rules.

B. Impartiality: A Mediator shall Conduct the Mediation in an Impartial Manner.

The concept of mediator impartiality is central to the mediation process. A mediator shall mediate only those matters in which she or he can remain impartial and evenhanded. If at any time the mediator is unable to conduct the process in an impartial manner, the mediator is obligated to withdraw.

COMMENT

A mediator shall avoid conduct that gives the appearance of partiality toward one of the parties. The quality of the mediation process is enhanced when the parties have confidence in the impartiality of the mediator. When mediators are appointed by a court, the appointing court shall make reasonable efforts to ensure that mediators serve impartially.

A mediator should guard against partiality or prejudice based on the parties' personal characteristics, background or performance at the mediation.

C. Conflicts of Interest: A Mediator shall Disclose All Actual and Potential Conflicts of Interest Reasonably Known to the Mediator.

After disclosure, the mediator shall decline to mediate unless all parties the mediator, or the court has assigned the mediator by order. The need to protect against conflicts of interest also governs conduct that occurs during and after the mediation.

A conflict of interest is a dealing or relationship that might create an impression of possible bias. The

basic approach to questions of conflict of interest is consistent with the concept of self-determination. The mediator has a responsibility to disclose all actual and potential conflicts that are reasonably known to the mediator and could reasonably be seen as raising a question about impartiality. If all parties agree to mediate after being informed of conflicts, the mediator may proceed with the mediation. If, however, the conflict of interest casts serious doubt on the integrity of the process, the mediator shall decline to proceed, and the parties shall immediately notify the court that the mediator has so declined.

A mediator must avoid the appearance of conflict of interest both during and after the mediation. Without the consent of all parties, a mediator shall not subsequently establish a professional relationship with one of the parties in a related matter, or in an unrelated matter under circumstances which would raise legitimate questions about the integrity of the mediation process.

COMMENT

A mediator shall avoid conflicts of interest in recommending the services of other professionals. A mediator may make reference to professional referral services or associations which maintain rosters of qualified professionals.

Potential conflicts of interest may arise between administrators of mediation programs and mediators and there may be strong pressures on the mediator to settle a particular case or cases. The mediator's commitment must be to the parties and the process. Pressure from outside of the mediation process should never influence the mediator to coerce parties to settle.

Although it is desirable that all parties accept the mediator, when the mediator is designated by order of the court under Rule III, the mediator shall conduct the mediation, unless she or he has a conflict of interest, or is relieved by the court.

D. Competence: A Mediator shall Mediate Only When the Mediator has the Necessary Qualifications to Satisfy the Reasonable Expectations of the Parties.

Any person may be selected as a mediator, provided that the parties are satisfied with the mediator's qualifications. Training and experience in mediation, however, are often necessary for effective mediation. A person who offers herself or himself as available to serve as a mediator gives parties and the public the expectation that she or he has the competency to mediate effectively. In court-connected or other forms of mandated mediation, it is essential that mediators assigned to the parties have the requisite training and experience.

COMMENT

Mediators should have information available for the parties regarding their relevant training, education and experience.

The requirements for appearing on the list of mediators must be made public and available to interested persons.

When mediators are appointed by a court, the appointing court shall make reasonable efforts to ensure

that each mediator is qualified for the particular mediation.

E. Confidentiality: A Mediator shall Maintain the Reasonable Expectations of the Parties with Regard to Confidentiality.

The mediator shall follow the requirements of Rule VII regarding confidentiality. The reasonable expectations of the parties with regard to confidentiality shall be met by the mediator. The parties' expectations of confidentiality depend on the provisions of Rule VII, the circumstances of the mediation and any agreements they may make. The mediator shall not disclose any matter that a party expects to be confidential unless given permission by all parties or unless required by rule, law or other public policy.

COMMENT

Within the limitations of Rule VII, the parties may make their own rules with respect to confidentiality, or other accepted practice of an individual mediator, or the appointing court may dictate a particular set of expectations. Since the parties' expectations regarding confidentiality are important, the mediator should discuss these expectations with the parties.

If the mediator holds private sessions with a party, the nature of these sessions with regard to confidentiality should be discussed prior to undertaking such sessions.

In order to protect the integrity of the mediation, a mediator should avoid communicating information about how the parties acted in the mediation process, the merits of the case, or settlement offers. The mediator may report, if required, whether parties appeared at a scheduled mediation.

Where the parties have agreed that all or a portion of the information disclosed during a mediation is confidential, the parties' agreement should be respected by the mediator.

Confidentiality should not be construed to limit or prohibit the effective monitoring, research, or evaluation of mediation programs by responsible persons. Under appropriate circumstances, researchers may be permitted to obtain access to the statistical data and, with the permission of the parties, to individual case files, observations of live mediation, and interviews with participants.

F. Quality of the Process: A Mediator shall Conduct the Mediation Fairly, Diligently, and in a Manner Consistent with the Principle of Self-Determination by the Parties.

A mediator shall work to ensure a quality process and to encourage mutual respect among the parties. A quality process requires a commitment by the mediator to diligence and procedural fairness. There should be adequate opportunity for each party in the mediation to participate in the discussions. The parties decide when they will reach an agreement or terminate a mediation.

COMMENT

A mediator may agree to mediate only when he or she is prepared to commit the attention essential to an effective mediation.

Mediators should only accept cases when they can satisfy the reasonable expectations of the parties concerning the timing of the process. A mediator should not allow a mediation to be unduly delayed by the parties or their representatives.

The presence or absence of persons at a mediation depends on the agreement of the parties and the mediator. The parties and mediator may agree that others may be excluded from particular sessions or from the entire mediation process.

The primary purpose of a mediator is to facilitate the parties' voluntary agreement. This role differs substantially from other professional-client relationships. Mixing the role of a mediator and the role of a professional advising a client is problematic, and mediators must strive to distinguish between the roles. A mediator should, therefore, refrain from providing professional advice. Where appropriate, a mediator should recommend that parties seek outside professional advice, or consider resolving their dispute through arbitration, counseling, neutral evaluation, or other processes. A mediator who undertakes, at the request of the parties, an additional dispute resolution role in the same matter assumes increased responsibilities and obligations that may be governed by the standards of other processes.

A mediator shall withdraw from a mediation when incapable of serving or when unable to remain impartial. If a mediator withdraws, the parties shall immediately report her or his withdrawal to the appointing court.

A mediator shall withdraw from a mediation or postpone a session if the mediation is being used to further illegal conduct, or if a party is unable to participate due to drug, alcohol, or other physical or mental incapacity.

Mediators should not permit their behavior in the mediation process to be guided by a desire for a high settlement rate.

G. Advertising and Solicitation: A Mediator shall be Truthful in Advertising and Solicitation for Mediation

Advertising or any other communication with the public concerning services offered or regarding the education, training, and expertise of the mediator shall be truthful. Mediators shall refrain from promises and guarantees of results. Further, advertising or other communications with the public by attorneys who offer themselves as mediators are governed by the Rules of Professional Conduct.

COMMENT

It is imperative that communication with the public educate and instill confidence in the process.

In an advertisement or other communication to the public, a mediator may make reference to meeting state, national, or private organization qualifications only if the entity referred to has a procedure for qualifying mediators and the mediator has been duly granted the requisite status.

H. Fees: A Mediator shall fully Disclose and Explain the Basis of Compensation, Fees, and Charges to

the Parties.

The parties should be provided sufficient information about fees at the outset of a mediation to determine if they wish to retain the services of a mediator. If a mediator charges fees, the fees shall be reasonable, considering among other things, the mediation service, the type and complexity of the matter, the expertise of the mediator, the time required, and the rates customary in the community. The better practice in reaching an understanding about fees is to set down the arrangements in a written agreement.

COMMENT

A mediator who withdraws from a mediation should return any unearned fee to the parties.

A mediator should not enter into a fee agreement which is contingent upon the result of the mediation or amount of the settlement.

Co-mediators who share a fee should hold to standards of reasonableness in determining the allocation of fees.

A mediator should not accept a fee for referral of a matter to another mediator or to any other person.

I. Obligations to the Mediation Process: Mediators have a Duty to Improve the Practice of Mediation.

COMMENT

Mediators are regarded as knowledgeable in the process of mediation. They have an obligation to use their knowledge to help educate the public about mediation; to make mediation accessible to those who would like to use it; to correct abuses; and to improve their professional skills and abilities.