



TEXAS MEDIATOR CREDENTIALING ASSOCIATION

MEDIATION BENCHBOOK

WWW.TXMCA.ORG



Promoting
Quality
Mediation
Throughout
Texas



TEXAS MEDIATOR
CREDENTIALING
ASSOCIATION

2011 TMCA
CREDENTIAL HOLDERS

**CREDENTIALLED
DISTINGUISHED
MEDIATORS**

Bexar

Ernesto Escobedo, Jr., SPHR
Margaret Leeds
William H. Lemons
M. Scott Magers
Donald R. Philbin, Jr.
Patricia Porter

Brazos

John M. Delaney
John M. Duncum
Joan Hazelwood
Tom McDonald
Linda McLain

Collin

Deborah Jean Schmidt

Dallas

Hon. Ted M. Akin
Mike Amis
Tena Bracy, SPHR, GPHR
George A. Butler
Suzanne Mann Duvall
Nancy K. Ferrell, PhD
Ray Green
Melanie E. Grimes
Joe B. Hewitt
Sheikha Susie Hobeiche
B. Adam McGough
H. Wayne Meachum
Cecilia H. Morgan
Sharon A. Parisi
Maribeth (Betsy)
Schlobohm
Maxel Silverberg
Jane A. Stephenson
John Q. Stilwell
Ross W. Stoddard, III
Melvin H. Wolovits

Denton

Dianne Salvagno Costa

Fort Bend

Jacqueline Blankenship
Shelly Hudson

Galveston

Jeff Kilgore
Christine A. Turner
Margaret Walker

Harris

Sharon K. Bayus, MA, LPC
Edward Bergman, III
Will Cannon
Michael K. Clann
Bryan D. Coleman
Diana C. Dale
Terry G. Fry
Clara I. Gomez
James Greenwood, III
J.L. "Larry" Hinojosa
Franklin Holcomb
W. Jerry Hoover
Robert Hughes, Jr.
Raymond Kerr
Jon E. King
Tracy Leissner
Barbara Sunderland
Manouso
Joal Lynn McDonald
Jane McEldowney
Jeffrey Newport
Michele O'Brien
W. Thomas Proctor
Susan Soussan
Ronald Wardell
Michael S. Wilk
Douglas B. Wilson
Alvin L. Zimmerman

Hays

Kathleen Dial

Jefferson

Kip Glasscock
Nancy N. Kirchmer, MD

Kerr

Ed Reaves

Lubbock

Layton Z. Woodul, Sr.

McLennan

Michael J. Kopp
John Phillip Palmer

Montgomery

Dayna Harper

Morris

Mardi Winder-Adams

Nueces

Romeo M. Flores

Smith

James W. Knowles

Tarrant

Coye Conner, Jr.
Kay Elkins-Elliott
James L. Greenstone

Travis

Gregory T. Bourgeois
Ben J. Cunningham
Michael Curry
Eric R. Galton
Samuel Graham
Jeff Jury
Dean Kilgore
Ron W. Murray, SPHR
Steven D. Nelson
Lynn E. Rubinett
Michael J. Schless
Mark W. Sims
Larry V. Smith
Walter A. Wright

Victoria

Paul D. Perry

Williamson

Stevann Wilson

**CREDENTIALLED
ADVANCED
MEDIATORS**

Bexar

Catalina Gallardo
Melynda Z. Gulley
Chriss Lloyd
Marlene M. Martin
Karen Waldron

Brazoria

Graylon L. Walch

Brazos

Howard M. Bleekman
Cindy Donaway
Marvin Martin

Burnet

Trouba Teaff Derrick

Cherokee

Edward Hunter Carrette, Jr.

Collin

Denise Coggiola

Dallas

W. Michael Bonesio
Dale F. Crowder
George Dean Dickens
Al Ellis
Dawn E. Fowler
Norberto Kanner
Shannon R. Lynch
Lawrence R. Maxwell, Jr.
Robert (Robin) Pou
Robert C. Prather, Sr.
William B. Short, Jr.
William Lancaster Smith, Jr.
Dr. Ralph Steele
James L. Young
Sheila Younger-Halliman
Irene P. Zucker

Fort Bend

Damon Meeks
Grace N. Nwanguma

Galveston

Phillip L. Emmite, PhD

Harris

John R. Barnett, MA, LPC
Patricia Barrett
Paul D. Clote
Lucretia Dillard
Gerri Dorsett
Jennifer Hamlin
John Kenyon
Elizabeth Kilbride

Ronald D. Pogue
Lawrence A. Wheeler

Hays

Anna Bartkowski
Milena Christopher
Barbara L. Stroud

Hildago

Federico Hinojosa

Kendall

Stephen J. Schechter

Liberty

C. Bruce Stratton

McLennan

L. Hayes Fuller, III

Montgomery

Portia K. Brown
N.J. (Jim) Farrell
George W. Nami
Miriam Palm Devlin
Chuck Rowe

Nueces

Walter DeVille

Robertson

Mark Hollas

Smith

Hal B. Cameron, Jr.

Tarrant

Thomas Edward Attebery, Sr.
John Allen Chalk, Sr.
Lisbett Christensen
Robert D. Courtney
Karen Davis
Robert L. Harmon
Wallace T. Keller
Theodore Mack
Jeffrey Poster

TMCA credential holders provide mediation services throughout the state of Texas. The counties listed in this Benchbook correspond with the contact addresses of credential holders as of the date of publication of the Benchbook. Credentials are good for one year only and must be renewed annually. An updated roster may be found on the TMCA website, www.txmca.org.

Travis

Julia Benkoski
Margaret Borden
Charles B. Cannon
Karin Crump
Tricia Heil Davis
David L. Garza
Belinda Herrera
Suzanne Schwartz

Uvalde

John S. Blades

Van Zandt

Richard Dewey Davis

Victoria

Cheryl D. Miller

Williamson

Christina S. Schroer

**CREDENTIALIALED
MEDIATORS**

Bastrop

Frank G. Evans

Bee

Bonnie Ryder

Bell

Terrell Simmons

Bexar

Reese L. Harrison, Jr.
Ronald Hornberger
Ron H. Mata
Carolyn Shannon Maurin
Laura Norton
Rosalie Rodriguez

Collin

Dianne S. Deck
Kimberly Holton
Edward van der Woude

Comal

Alfred E. Vaughan

Dallas

Hon. Anne Ashby
Jennifer Goldman
William E. Hartsfield
Charles Howard
Akbar A. Kabani
Douglas Mitchell
Patrick Payne
Anne Shuttee
Cynthia Tari

Denton

Mike Gregory
Shirin Habib
Nadir Meharali

Fort Bend

Kim Burkley Milstead
Sandra L. Dasigenis
Samuel Stewart

Harris

Frank J. Berrier, Jr., PhD
Fran Brochstein
Brenda Sue Bucklen
Elizabeth F. Burleigh
Alicia Garcia
Angela D. Johnson
Derek Lisk
Michael Martin
Lisa McNeill
J. Kevin Oncken
Vernon M. Stockton, Sr.
Diane L. Thomas
Griffin D. Vance
Craig von Sternberg

Hays

Ken Christopher
Walter L. Krudop
Clark G. Nichols

Hilalگو

Karey R. Barnes
David N. Calvillo

Jefferson

James W. Mehaffy

Kendall

Horace F. Brown, Jr.

Kerr

Thomas W. Pollard

Montgomery

Francis J. Bourgeois
Kenneth Smith

Nueces

Dolores C. Saldana

Parker

Dennis V. Thompson

Tarrant

Owen Anderson
John V. Dowdy, Jr.
Betty S. Green
Hafiz A. Hakam
Farida A. Noorali
Priscilla Kim Park
Tom Quinones
Austin R. Robinson

Taylor

Joe L. Cope

Travis

Archie A. Alexander
Arturo Aviles
S. Craig Bell
Janice K. Berger
Erich Birch
Paul F. Blanke
Charles Campbell
Diane M. Harvey
Candace E. Hunter
David M. Moore
Sandra Serna
Rae Ann Shanley
Karen Smithson
Mary Thompson
Nancy J. Wise

Williamson

Lisa S. Richardson

**CANDIDATES FOR
CREDENTIALIALED
MEDIATOR**

Bexar

Laurence Gonzalez
James Patterson

Blanco

John A. Seib, Jr.

Burnet

Warren A. Goff

Collin

Sandra K. Warstler

Comal

Sheila Meadows

Dallas

George B. Flint
Kara Maiella
Carlos E. Rodriguez

Ellis

Patricia Lowrey

Fort Bend

Lee Ann Cis
Louis N. Murray

Grayson

Karen Netzer, Esq.

Harris

Johanna Bonnet
Jessica Deshotel
Dal Fenton
S.A. Gregg, CFE
Diana Huntress
Donna Jubert
Cassidy McGowan
Dr. Richard P. Palazzolo
Elizabeth Preston
Mark A. Salvato
Roy W. Smith
Louis Stoler
Geric Tipsword

Hays

Jean E. Avera
Nicholas B.
Icossipentarios
Zygmunt Maksymowicz
Marilyn G. Miller

McLennan

Charles Alfred Mackenzie

Montgomery

David Dewhurst
Kevin Forsberg
Lois Voth
George Watson

Nueces

Karon Connelly

Panola

Janell Birmingham

Tarrant

John Denny
Donna Phillips
Nikki Roblow
Barbara Ward
Lance White

Travis

Thomas Albright
James W. Boeckman
Matthew Brown
Carla Daws
Hans Dersch
Robert Durch
R. Carson Fisk
Olatunde Gbolahan
Cecile Hanna
Camille Jobe
Karen Kay
Bruce R. Kravitz
Mark Henry Miller
Abigail Ryan
Clayton Utkov
Valerina Walters

Williamson

Sage Bortin
Erin Lawler

☪☪☪ *Compiler's Note* ☪☪☪

This Mediation Benchbook is a compilation of relevant statutes, ethical guidelines, orders and other materials for Judges to use in their day-to-day rulings relating to mediations.

An electronic version of this Benchbook (and any updates) is available online at www.txmca.org.

*Cecilia H. Morgan
cmorgan@jamsadr.com
Published July 2011*



TEXAS MEDIATOR CREDENTIALING ASSOCIATION

MEDIATION BENCHBOOK

WWW.TXMCA.ORG

TABLE OF CONTENTS

2011 Credential Holders	<i>Inside Front Cover</i>
<i>Court Appointed Mediator Qualifications and Credentialing by Judge John Coselli</i>	1-4
Sample Mediation Order and Rules.....	5-6
Relevant Statutes:	
Texas Civil Practice & Remedies Code, Sections 154.001, 154.002, 154.003, 154.021, 154.022, 154.023, 154.027, 154.051, 154.052, 154.053, 154.054, 154.055, 154.071, 154.073	7-12
Texas Family Code Sections 6.601, 6.602, 6.604 and 153.0071.....	13-16
Texas Mediator Credentialing Association Credentialing Criteria.....	17-18
Protection of the Quality of Mediation Through Enforcement of Ethical Standards	19
Supreme Court Order: Approval of Amendments to the Ethical Guidelines for Mediators (with Ethical Guidelines for Mediators attached) signed April 11, 2011 (changes to take effect June 1, 2011).....	20-25
Supreme Court: Approval of Ethical Guidelines for Mediators (Ethical Guidelines for Mediators attached) signed June 13, 2005.....	26-31
Significant Mediation Case Law.....	32-34
Texas Mediator Credentialing Association Board of Directors.....	<i>Inside Back Cover</i>

DEDICATION

This Benchbook is dedicated to the memory of James W. Gibson, J.D.. Jim was one of the founding members of the Board of Directors of the Texas Mediator Credentialing Association, and served as TMCA's first secretary until the year before his death. A tireless proponent of mediator professionalism, Jim assumed an active role in the creation and leadership of TMCA.

Jim Gibson was also a dedicated educator. A member of the faculty and staff of Sam Houston State University, Jim was able to combine his love of mediation with his love for teaching young people, especially in the field of victim-offender mediation and mediation in the criminal justice field. Jim was also an accomplished author of numerous articles and a respected conference speaker on the topic of mediation and criminal law.

More than what he did, however, it is who Jim Gibson was as a person that will cause Jim to be remembered by all who knew him. Jim was a big man with a big heart and strong principles. A smart person would know better than to invite Jim to betray his ethics or his faith. And a person in need could always count on Jim for a helping and guiding hand. It is for that reason, more than any other, that the James W. Gibson Endowed Scholarship Fund was created by the TMCA. Donations to the Fund may be made by check to "TMCA Jim W. Gibson Fund" at 211 Houston Street, Richmond, Texas 77469. It is that Fund that has made the publication of this Benchbook possible.

**COURT APPOINTED MEDIATOR QUALIFICATIONS AND
CREDENTIALING
By Judge John Coselli**

Texas law requires that State trial Courts be active in promoting alternative dispute resolution, and authorizes the Courts to refer cases to mediation and appoint mediators. Issues regarding mediator qualifications and ethics have finally resulted in mediator credentialing in Texas in a effort to assist the Courts, attorneys and the public in identifying mediators who have accomplished a meaningful level of mediator training and experience, and who have committed themselves to practice standards and rules of ethics for mediators enforceable through a grievance procedure.

This paper will provide Judges with the following important information about the significance of mediator credentialing to the work of the Courts in referring cases to mediation:

1. The Court's statutory obligations in making referrals to mediation.
2. The statutory criteria the Court must consider in making referrals of cases to qualified mediators.
3. The nature and significance of mediator credentialing to the Court in making referrals of cases to mediators.
4. Identifying credentialed mediators.

1. The Court's statutory obligations in making referrals to mediation.

While the Texas legislature has required the Courts to encourage the use of ADR, mediation has become a significant part of the resolution of litigation and the administration of justice in Texas. Judges have been appointing mediators and referring cases to mediation and for many years. Although the Courts have broad discretion in the matter, the Texas legislature has established criteria in the Texas Alternative Dispute Resolution Procedures Act (Chapter 154 of the Civil Practices and Remedies Code) for the Court to consider in making such referrals and appointments.

Texas law provides that it is the policy of the State to promote ADR (Sec.154.002 of Title 7 of the Act), that the courts should implement the policy (Sec. 154.003 of the Act), that the Courts may refer cases to mediation and appoint mediators in implementing the policy (Sec. 154.021 of the Act), that mediators appointed by the Courts must be qualified (Sec. 154.052 and Sec. 154.053 of the Act), that the Court may set reasonable mediator fees (Sec. 154.054 of the Act), and that volunteer mediators appointed by the Court are immune from liability under certain circumstances when the Court appoints a mediator (Sec. 154.055 of the Act).

2. Statutory criteria in appointing a mediator.

A mediator appointed by the Court must be impartial and qualified under the Act (Sec. 154.051 of the Act).

To be qualified the mediator must have completed a minimum of 40 classroom hours of training in dispute resolution techniques in a course approved by the statute, or have legal or other professional training or experience in mediation approved by the Court. To be qualified for

appointment in a case involving the parent-child relationship, the mediator must have completed an additional 24 hours of training in the fields of family dynamics, child development and family law, or have legal or other professional training or experience in mediation approved by the Court (Sec. 154.052 of the Act).

The statute also establishes standards for mediator conduct that the Court should attempt to protect by appointing only qualified mediators. Mediators must be neutral and impartial in the matter being mediated, must assist the parties in reaching a resolution of their dispute in an appropriate manner, may not compel or coerce the parties, must protect the parties confidential information shared with the mediator, and must report child and elder abuse (Sec. 154.053 of the Act).

3. The nature and significance of mediator credentialing to the Court in making referrals of cases to mediators.

The State of Texas does not license, certify or credential mediators. With the exception of the statutory criteria the Courts should use in appointing mediators, mediators and mediation in Texas is unregulated. The only mechanism for policing mediator conduct in cases where the Courts appoint mediators is the diligence of the Courts in appointing qualified mediators.

With an ever increasing number of the attorneys and others seeking selection by the parties and appointment by the Courts to mediate cases, there has been a corresponding number of questions about the qualifications, experience and reputation of mediators. It has generally been only by word of mouth, personal experience or mediator advertising that attorneys, the Courts and the litigants have been able to identify what appear to be qualified mediators.

Mediators appointed by the Court have the authority of the Court to be trusted with and handle the parties' most sensitive and confidential information during mediation. The Court's appointment charges the mediator with the responsibility of neutral and impartial conduct and with the responsibility of conducting themselves in a manner that will not only protect the confidences of the parties, but in a manner that will protect and enhance the opportunity of the parties to resolve their litigation at the time of the mediation. The importance of the Court placing this authority only in qualified mediators cannot be overstated. When a Court appoints a mediator, the appointment carries with it a representation by the Court that the mediator is qualified for the appointment.

The trust and confidence of attorneys and their clients in the capabilities and ethics of Court appointed mediators must be protected by the judiciary.

It is reasonable to believe that the level of a mediator's training and experience has a meaningful relationship to the mediator's qualifications. It is also reasonable to believe that mediators who are accountable for their conduct through some grievance process would be perceived as having a greater level of commitment to their work and accountability for their conduct.

If mediators held credentials that were recognized in connection with specific levels of training, experience and commitment, such credentials would be helpful to the Courts in identifying qualified mediators for appointment to cases referred to mediation informally or by Court order.

With the Texas legislature having mandated that the Courts should promote ADR, the Texas Supreme Court has expressed concern about the qualifications, conduct and ethics of mediators who are appointed to mediate pending litigation. On May 7, 1996 the Supreme Court signed an order creating an Advisory Committee on court-connected mediation. In that Order the Court expressed its intent by writing that:

The Court has determined that, at a minimum, ethical rules governing court-annexed mediations and mediators should be implemented and enforced. The Court is also considering whether some level of credentialing is necessary and appropriate.

Accordingly, the Court hereby creates an Advisory Committee to examine these issues and to make recommendations to the Court.

The Advisory Committee made its recommendations to the Court that the Court adopt specific rules of ethics for mediator conduct and a procedure for enforcing compliance with the rules.

While the Court was considering the Advisory Committee's recommendations the Court was also aware of the work of the Texas Mediator Credentialing Association ("TMCA") in addressing mediator qualifications and ethics through credentialing. After meetings of TMCA representatives with Chief Justice Tom Phillips, Justice Priscilla Owens, and members of the Advisory Committee, the Court decided not to implement and enforce rules for mediator ethics or to credential mediators, but adopted as aspirational the Ethical Guidelines for Mediators published by the Alternative Dispute Resolution Section of the State Bar of Texas in 1994.

On June 13, 2005 the Texas Supreme Court wrote in Misc. Docket No. 05-9107 ("Approval of Ethical Guidelines for Mediators"):

Thus the Court promulgates and adopts the attached Ethical Guidelines for Mediators. These rules are aspirational and voluntary. Compliance with the rules depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer pressure and public opinion, and finally when necessary by enforcement by the courts through their inherent powers and rules already in existence.

The Ethical Guidelines for Mediators published by the Alternative Dispute Resolution Section of the State Bar of Texas in 1994 (those adopted by the Supreme Court) were adopted by the Texas Mediator Credentialing Association ("TMCA") in 2003 as mandatory rules of ethics for mediators who are credentialed by the TMCA. The TMCA began issuing credentials to mediators in 2004. The TMCA is a Texas non-profit, non-governmental corporation with a Sec. 503.c (6) designation under the U.S. Internal Revenue Code that issues credentials to mediators who meet training, experience and commitment qualifications for the credentials. Credential holders must also meet annual continuing education and experience requirements in order to maintain a credential.

The TMCA is uniquely appropriate to issue credentials to mediators, in that its ten member Board of Directors is composed of the representatives of major mediation organizations (the Texas Dispute Resolution Centers funded through the ADR Act, the Texas Association of Mediators, the ADR Section of the State Bar of Texas, the Association of Attorney Mediators, the Center for Public Policy Resolution, and the Texas Mediators Trainers Roundtable) who are appointed by each such organization to the Board, and representatives of education, consumers, mediator trainers and the judiciary who are nominated and elected to the Board by the organizational members of the Board.

The work of the TMCA represents an historic collaboration by mediators and their leaders to take professional responsibility for the quality of mediators in Texas and to provide to the Courts and the public credentials through which they could identify mediators who have accomplished and maintain specific levels of training and experience identified with the credentials.

The work of the Supreme Court and the Texas Mediator Credentialing Association has provided significant support to counsel, their clients, and the trial and appellate Courts in selecting and appointing qualified mediators. Although credentials do not ensure quality, the enhanced ability to identify and select qualified mediators improves and protects the public's confidence in mediator competency, mediator ethics, and the administration of justice through Court ordered mediation. More information about the TMCA may be found at www.txmca.org.

Sample Mediation Order and Rules¹

§
§
§
§

MEDIATION ORDER

This case is appropriate for mediation pursuant to Section 154.001 et seq. of the Texas Civil Practice and Remedies Code. (NAMED MEDIATOR) is appointed mediator in the above case and all counsel are directed to contact mediator to arrange the logistics of mediation within 7 days from the date of this Order. Any objection to this Order must be filed and served upon all parties and the mediator, and a hearing must be requested, within 10 days from the date of receipt of this Order; an objection that is neither timely filed nor ruled upon before the scheduled mediation may be waived.

Mediation is a mandatory but non-binding settlement conference, conducted with the assistance of the mediator. Mediation is private, confidential and privileged from process and discovery. After mediation, the court will be advised by the mediator, parties and counsel, only that the case did or did not settle. The mediator shall not be a witness nor may the mediator's records be subpoenaed or used as evidence. No subpoenas, citations, writs, or other process shall be served at or near the location of any mediation session, upon any person entering, leaving or attending any mediation session.

The mediator will negotiate a reasonable fee with the parties which shall be divided and borne equally by the parties unless agreed otherwise, paid by the parties directly to the mediator, and taxed as costs. If the parties do not agree upon the fee requested by the mediator, the court will set a reasonable fee, which shall be taxed as costs. Each party and their counsel will be bound by the rules for mediation printed on the reverse hereof, and shall complete the information forms as are furnished by the mediator.

Named parties shall be present during the entire mediation process and each corporate party must be represented by an executive officer with authority to negotiate a settlement. Counsel, the parties and the mediator shall agree upon a mediation date within 20 days from the date of this order. If no date can be agreed upon within the 20 day period, the mediator shall select a date for the mediation and all parties shall appear as directed by the mediator.

The date scheduled by the mediator is incorporated in this Order as the date upon which the mediation shall occur. In any event, the mediation shall be conducted no later than _____.

Failure or refusal to attend the mediation as scheduled may result in the imposition of sanctions, as permitted by law, which may include dismissal or default judgment. Failure to mediate will not be considered cause for continuance of the trial date. Referral to mediation is neither a substitute for nor a cause for delay of trial, and the case will be tried if not settled.

A report regarding the outcome of the mediation session is to be mailed by the mediator to the court, with a copy to the ADR Coordinator, immediately after the mediation session.

Presiding Judge

cc: Counsel of Record
Mediator

¹ This is the Dallas County Standard Mediation Order and this form is used by several other counties.

RULES FOR MEDIATION

1. **DEFINITION OF MEDIATION.** MEDIATION IS A PROCESS UNDER WHICH AN IMPARTIAL PERSON, THE MEDIATOR, FACILITATES COMMUNICATION BETWEEN PARTIES TO PROMOTE RECONCILIATION, SETTLEMENT OR UNDERSTANDING AMONG THEM. THE MEDIATOR MAY SUGGEST WAYS OF RESOLVING THE DISPUTE, BUT MAY NOT IMPOSE HIS OWN JUDGMENT ON THE ISSUES FOR THAT OF THE PARTIES.
2. **CONDITIONS PRECEDENT TO SERVING AS MEDIATOR.** THE MEDIATOR SHALL NOT SERVE AS A MEDIATOR IN ANY DISPUTE IN WHICH HE HAS ANY FINANCIAL OR PERSONAL INTEREST IN THE RESULT OF THE MEDIATION. PRIOR TO ACCEPTING AN APPOINTMENT, THE MEDIATOR SHALL DISCLOSE ANY CIRCUMSTANCE LIKELY TO CREATE A PRESUMPTION OF BIAS OR PREVENT A PROMPT MEETING WITH THE PARTIES.
3. **AUTHORITY OF MEDIATOR.** THE MEDIATOR DOES NOT HAVE THE AUTHORITY TO DECIDE ANY ISSUE FOR THE PARTIES, BUT WILL ATTEMPT TO FACILITATE THE VOLUNTARY RESOLUTION OF THE DISPUTE BY THE PARTIES. THE MEDIATOR IS AUTHORIZED TO CONDUCT A JOINT AND SEPARATE MEETING WITH THE PARTIES AND TO OFFER SUGGESTIONS TO ASSIST THE PARTIES TO ACHIEVE SETTLEMENT. IF NECESSARY, THE MEDIATOR MAY ALSO OBTAIN EXPERT ADVICE CONCERNING TECHNICAL ASPECTS OF THE DISPUTE, PROVIDED THAT THE PARTIES AGREE AND ASSUME THE EXPENSES OF OBTAINING SUCH ADVICE. ARRANGEMENTS FOR OBTAINING SUCH ADVICE SHALL BE MADE BY THE MEDIATOR OR THE PARTIES, AS THE MEDIATOR SHALL DETERMINE.
4. **PARTIES RESPONSIBLE FOR NEGOTIATING THEIR OWN SETTLEMENT.** THE PARTIES UNDERSTAND THAT THE MEDIATOR WILL NOT AND CANNOT IMPOSE A SETTLEMENT IN THEIR CASE. THE MEDIATOR, AS AN ADVOCATE FOR SETTLEMENT, WILL USE EVERY EFFORT TO FACILITATE THE NEGOTIATIONS OF THE PARTIES. THE MEDIATOR DOES NOT WARRANT OR REPRESENT THAT SETTLEMENT WILL RESULT FROM THE MEDIATION PROCESS.
5. **AUTHORITY OF REPRESENTATIVES.** PARTY REPRESENTATIVES MUST HAVE AUTHORITY TO SETTLE AND ALL PERSONS NECESSARY TO THE DECISION TO SETTLE SHALL BE PRESENT. THE NAMES AND ADDRESSES OF SUCH PERSONS SHALL BE COMMUNICATED IN WRITING TO ALL PARTIES AND THE MEDIATOR.
6. **TIME AND PLACE OF MEDIATION.** THE MEDIATOR SHALL FIX THE TIME OF EACH MEDIATION SESSION. THE MEDIATION SHALL BE HELD AT THE OFFICE OF THE MEDIATOR, OR AT ANY OTHER CONVENIENT LOCATION AGREEABLE TO THE MEDIATOR AND THE PARTIES, AS THE MEDIATOR SHALL DETERMINE.
7. **IDENTIFICATION OF MATTERS IN DISPUTE.** PRIOR TO THE FIRST SCHEDULED MEDIATION SESSION, EACH PARTY SHALL PROVIDE THE MEDIATOR AND ALL ATTORNEYS OF RECORD WITH AN INFORMATION SHEET AND REQUEST FOR MEDIATION ON THE FORM PROVIDED BY THE MEDIATOR SETTING FORTH ITS POSITION WITH REGARD TO THE ISSUES THAT NEED TO BE RESOLVED. AT OR BEFORE THE FIRST SESSION, THE PARTIES WILL BE EXPECTED TO PRODUCE ALL INFORMATION REASONABLY REQUIRED FOR THE MEDIATOR TO UNDERSTAND THE ISSUES PRESENTED. THE MEDIATOR MAY REQUIRE ANY PARTY TO SUPPLEMENT SUCH INFORMATION.
8. **PRIVACY. MEDIATION SESSIONS ARE PRIVATE.** THE PARTIES AND THEIR REPRESENTATIVES MAY ATTEND MEDIATION SESSIONS. OTHER PERSONS MAY ATTEND ONLY WITH THE PERMISSION OF THE PARTIES AND WITH THE CONSENT OF THE MEDIATOR.
9. **CONFIDENTIALITY.** CONFIDENTIAL INFORMATION DISCLOSED TO A MEDIATOR BY THE PARTIES OR BY WITNESSES IN THE COURSE OF THE MEDIATION SHALL NOT BE DIVULGED BY THE MEDIATOR. ALL RECORDS, REPORTS OR OTHER DOCUMENTS RECEIVED BY A MEDIATOR WHILE SERVING IN THAT CAPACITY SHALL BE CONFIDENTIAL. THE MEDIATOR SHALL NOT BE COMPELLED TO DIVULGE SUCH RECORDS OR TO TESTIFY IN REGARD TO THE MEDIATION IN ANY ADVERSARY PROCEEDING OR JUDICIAL FORUM. ANY PARTY THAT VIOLATES THIS ORDER SHALL PAY ALL REASONABLE FEES AND EXPENSES OF THE MEDIATOR AND OTHER PARTIES, INCLUDING REASONABLE ATTORNEYS' FEES, INCURRED IN OPPOSING THE EFFORTS TO COMPEL TESTIMONY OR RECORDS FROM THE MEDIATOR.
10. **NO STENOGRAPHIC RECORD.** THERE SHALL BE NO STENOGRAPHIC RECORD OF THE MEDIATION PROCESS AND NO PERSON SHALL TAPE RECORD ANY PORTION OF THE MEDIATION SESSION.
11. **NO SERVICE OF PROCESS AT OR NEAR THE SITE OF THE MEDIATION SESSION.** NO SUBPOENAS, SUMMONS, COMPLAINTS, CITATIONS, WRITS OR OTHER PROCESS MAY BE SERVED UPON ANY PERSON AT OR NEAR THE SITE OF ANY MEDIATION SESSION UPON ANY PERSON ENTERING, ATTENDING OR LEAVING THE SESSION.
12. **TERMINATION OF MEDIATION. THE MEDIATION SHALL BE TERMINATED:** A) BY THE EXECUTION OF A SETTLEMENT AGREEMENT BY THE PARTIES; B) BY DECLARATION OF THE MEDIATOR TO THE EFFECT THAT FURTHER EFFORTS AT THE MEDIATION ARE NO LONGER WORTHWHILE; OR C) AFTER THE COMPLETION OF ONE FULL MEDIATION SESSION, BY A WRITTEN DECLARATION OF A PARTY OR PARTIES TO THE EFFECT THAT THE MEDIATION PROCEEDINGS ARE TERMINATED.
13. **INTERPRETATION AND APPLICATION OF RULES.** THE MEDIATOR SHALL INTERPRET AND APPLY THESE RULES.
14. **FEES AND EXPENSES.** THE MEDIATOR'S DAILY FEE, IF AGREED UPON PRIOR TO MEDIATION, SHALL BE PAID IN ADVANCE OF EACH MEDIATION DAY. THE EXPENSES OF WITNESSES FOR EITHER SIDE SHALL BE PAID BY THE PARTIES PRODUCING SUCH WITNESSES. ALL OTHER EXPENSES OF THE MEDIATION, INCLUDING FEES AND EXPENSES OF THE MEDIATOR, AND THE EXPENSES OF ANY WITNESS AND THE COST OF ANY PROOFS OR EXPERT ADVICE PRODUCED AT THE DIRECT REQUEST OF THE MEDIATOR, SHALL BE BORNE EQUALLY BY THE PARTIES UNLESS THEY AGREE OTHERWISE.

CIVIL PRACTICE AND REMEDIES CODE
TITLE 7. ALTERNATE METHODS OF DISPUTE RESOLUTION
CHAPTER 154. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 154.001. DEFINITIONS. In this chapter:

(1) "Court" includes an appellate court, district court, constitutional county court, statutory county court, family law court, probate court, municipal court, or justice of the peace court.

(2) "Dispute resolution organization" means a private profit or nonprofit corporation, political subdivision, or public corporation, or a combination of these, that offers alternative dispute resolution services to the public.

Added by Acts 1987, 70th Leg., ch. 1121, Sec. 1, eff. June 20, 1987.



Sec. 154.002. POLICY. It is the policy of this state to encourage the peaceable resolution of disputes, with special consideration given to disputes involving the parent-child relationship, including the mediation of issues involving conservatorship, possession, and support of children, and the early settlement of pending litigation through voluntary settlement procedures.

Added by Acts 1987, 70th Leg., ch. 1121, Sec. 1, eff. June 20, 1987.



Sec. 154.003. RESPONSIBILITY OF COURTS AND COURT ADMINISTRATORS. It is the responsibility of all trial and appellate courts and their court administrators to carry out the policy under Section 154.002.

Added by Acts 1987, 70th Leg., ch. 1121, Sec. 1, eff. June 20, 1987.



SUBCHAPTER B. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

Sec. 154.021. REFERRAL OF PENDING DISPUTES FOR ALTERNATIVE DISPUTE RESOLUTION PROCEDURE. (a) A court may, on its own motion or the motion of a party, refer a pending dispute for resolution by an alternative dispute resolution procedure including:

(1) an alternative dispute resolution system established under Chapter 26, Acts of the 68th Legislature, Regular Session, 1983 (Article 2372aa, Vernon's Texas Civil Statutes);

(2) a dispute resolution organization; or

(3) a nonjudicial and informally conducted forum for the voluntary settlement of citizens' disputes through the intervention of an impartial third party, including those alternative dispute resolution procedures described under this subchapter.

(b) The court shall confer with the parties in the determination of the most appropriate alternative dispute resolution procedure.

(c) Except as provided by agreement of the parties, a court may not order mediation in an action that is subject to the Federal Arbitration Act (9 U.S.C. Sections 1-16).

Added by Acts 1987, 70th Leg., ch. 1121, Sec. 1, eff. June 20, 1987.

Amended by: Acts 2009, 81st Leg., R.S., Ch. 621, Sec. 1, eff. June 19, 2009.



Sec. 154.022. NOTIFICATION AND OBJECTION. (a) If a court determines that a pending dispute is appropriate for referral under Section 154.021, the court shall notify the parties of its determination.

(b) Any party may, within 10 days after receiving the notice under Subsection (a), file a written objection to the referral.

(c) If the court finds that there is a reasonable basis for an objection filed under Subsection (b), the court may not refer the dispute under Section 154.021.

Added by Acts 1987, 70th Leg., ch. 1121, Sec. 1, eff. June 20, 1987.



Sec. 154.023. MEDIATION. (a) Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them.

(b) A mediator may not impose his own judgment on the issues for that of the parties.

(c) Mediation includes victim-offender mediation by the Texas Department of Criminal Justice described in Article 56.13, Code of Criminal Procedure.

Added by Acts 1987, 70th Leg., ch. 1121, Sec. 1, eff. June 20, 1987. Amended by Acts 2001, 77th Leg., ch. 1034, Sec. 12, eff. Sept. 1, 2001.



Sec. 154.027. ARBITRATION. (a) Nonbinding arbitration is a forum in which each party and counsel for the party present the position of the party before an impartial third party, who renders a specific award.

(b) If the parties stipulate in advance, the award is binding and is enforceable in the same manner as any contract obligation. If the parties do not stipulate in advance that the award is binding, the award is not binding and serves only as a basis for the parties' further settlement negotiations.

Added by Acts 1987, 70th Leg., ch. 1121, Sec. 1, eff. June 20, 1987.



SUBCHAPTER C. IMPARTIAL THIRD PARTIES

Sec. 154.051. APPOINTMENT OF IMPARTIAL THIRD PARTIES. (a) If a court refers a pending dispute for resolution by an alternative dispute resolution procedure under Section 154.021, the court may appoint an impartial third party to facilitate the procedure.

(b) The court may appoint a third party who is agreed on by the parties if the person qualifies for appointment under this subchapter.

(c) The court may appoint more than one third party under this section.

Added by Acts 1987, 70th Leg., ch. 1121, Sec. 1, eff. June 20, 1987.



Sec. 154.052. QUALIFICATIONS OF IMPARTIAL THIRD PARTY. (a) Except as provided by Subsections (b) and (c), to qualify for an appointment as an impartial third party under this subchapter a person must have completed a minimum of 40 classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution system or other dispute resolution organization approved by the court making the appointment.

(b) To qualify for an appointment as an impartial third party under this subchapter in a dispute relating to the parent-child relationship, a person must complete the training required by Subsection (a) and an additional 24 hours of training in the fields of family dynamics, child development, and family law.

(c) In appropriate circumstances, a court may in its discretion appoint a person as an impartial third party who does not qualify under Subsection (a) or (b) if the court bases its appointment on legal or other professional training or experience in particular dispute resolution processes.

Added by Acts 1987, 70th Leg., ch. 1121, Sec. 1, eff. June 20, 1987.



Sec. 154.053. STANDARDS AND DUTIES OF IMPARTIAL THIRD PARTIES. (a) A person appointed to facilitate an alternative dispute resolution procedure under this subchapter shall encourage and assist the parties in reaching a settlement of their dispute but may not compel or coerce the parties to enter into a settlement agreement.

(b) Unless expressly authorized by the disclosing party, the impartial third party may not disclose to either party information given in confidence by the other and shall at all times maintain confidentiality with respect to communications relating to the subject matter of the dispute.

(c) Unless the parties agree otherwise, all matters, including the conduct and demeanor of the parties and their counsel during the settlement process, are confidential and may never be disclosed to anyone, including the appointing court.

(d) Each participant, including the impartial third party, to an alternative dispute resolution procedure is subject to the requirements of Subchapter B, Chapter 261, Family Code, and Subchapter C, Chapter 48, Human Resources Code.

Added by Acts 1987, 70th Leg., ch. 1121, Sec. 1, eff. June 20, 1987. Amended by Acts 1999, 76th Leg., ch. 1150, Sec. 29, eff. Sept. 1, 1999.



Sec. 154.054. COMPENSATION OF IMPARTIAL THIRD PARTIES. (a) The court may set a reasonable fee for the services of an impartial third party appointed under this subchapter.

(b) Unless the parties agree to a method of payment, the court shall tax the fee for the services of an impartial third party as other costs of suit.

Added by Acts 1987, 70th Leg., ch. 1121, Sec. 1, eff. June 20, 1987.



Sec. 154.055. QUALIFIED IMMUNITY OF IMPARTIAL THIRD PARTIES. (a) A person appointed to facilitate an alternative dispute resolution procedure under this subchapter or under Chapter 152 relating to an alternative dispute resolution system established by counties, or appointed by the parties whether before or after the institution of formal judicial proceedings, who is a volunteer and who does not act with wanton and wilful disregard of the rights, safety, or property of another, is immune from civil liability for any act or omission within the course and scope of his or her duties or functions as an impartial third party. For purposes of this section, a volunteer impartial third party is a person who does not receive compensation in excess of reimbursement for expenses incurred or a stipend intended as reimbursement for expenses incurred.

(b) This section neither applies to nor is it intended to enlarge or diminish any rights or immunities enjoyed by an arbitrator participating in a binding arbitration pursuant to any applicable statute or treaty.

Added by Acts 1993, 73rd Leg., ch. 875, Sec. 1, eff. Sept. 1, 1993.



SUBCHAPTER D. MISCELLANEOUS PROVISIONS

Sec. 154.071. EFFECT OF WRITTEN SETTLEMENT AGREEMENT. (a) If the parties reach a settlement and execute a written agreement disposing of the dispute, 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 decree disposing of the case.

(c) A settlement agreement does not affect an outstanding court order unless the terms of the agreement are incorporated into a subsequent decree.

Added by Acts 1987, 70th Leg., ch. 1121, Sec. 1, eff. June 20, 1987.



Sec. 154.073. CONFIDENTIALITY OF CERTAIN RECORDS AND COMMUNICATIONS. (a) Except as provided by Subsections (c), (d), (e), and (f), a communication relating to the subject matter of any civil or criminal dispute made by a participant in an alternative dispute resolution

procedure, whether before or after the institution of formal judicial proceedings, is confidential, is not subject to disclosure, and may not be used as evidence against the participant in any judicial or administrative proceeding.

(b) Any record made at an alternative dispute resolution procedure is confidential, and the participants or the third party facilitating the procedure may not be required to testify in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

(c) An oral communication or written material used in or made a part of an alternative dispute resolution procedure is admissible or discoverable if it is admissible or discoverable independent of the procedure.

(d) A final written agreement to which a governmental body, as defined by Section 552.003, Government Code, is a signatory that is reached as a result of a dispute resolution procedure conducted under this chapter is subject to or excepted from required disclosure in accordance with Chapter 552, Government Code.

(e) If this section conflicts with other legal requirements for disclosure of communications, records, 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.

(f) This section does not affect the duty to report abuse or neglect under Subchapter B, Chapter 261, Family Code, and abuse, exploitation, or neglect under Subchapter C, Chapter 48, Human Resources Code.

(g) This section applies to a victim-offender mediation by the Texas Department of Criminal Justice as described in Article 56.13, Code of Criminal Procedure.

Added by Acts 1987, 70th Leg., ch. 1121, Sec. 1, eff. June 20, 1987. Amended by Acts 1999, 76th Leg., ch. 1150, Sec. 30, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1352, Sec. 6, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1034, Sec. 13, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(6), 21.002(3), eff. Sept. 1, 2001.



FAMILY CODE
TITLE 1. THE MARRIAGE RELATIONSHIP
SUBTITLE C. DISSOLUTION OF MARRIAGE
CHAPTER 6. SUIT FOR DISSOLUTION OF MARRIAGE
SUBCHAPTER G. ALTERNATIVE DISPUTE RESOLUTION

Sec. 6.601. ARBITRATION PROCEDURES. (a) On written agreement of the parties, the court may refer a suit for dissolution of a marriage to arbitration. The agreement must state whether the arbitration is binding or nonbinding.

(b) If the parties agree to binding arbitration, the court shall render an order reflecting the arbitrator's award.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.



Sec. 6.602. MEDIATION PROCEDURES. (a) On the written agreement of the parties or on the court's own motion, the court may refer a suit for dissolution of a marriage to mediation.

(b) A mediated settlement agreement is binding on the parties if the agreement:

- (1) provides, in a prominently displayed statement that is in boldfaced type or capital letters or underlined, that the agreement is not subject to revocation;
- (2) is signed by each party to the agreement; and
- (3) is signed by the party's attorney, if any, who is present at the time the agreement is signed.

(c) If a mediated settlement agreement meets the requirements of this section, a party is entitled to judgment on the mediated settlement agreement notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule of law.

(d) A party may at any time prior to the final mediation order file a written objection to the referral of a suit for dissolution of a marriage to mediation on the basis of family violence having been committed against the objecting party by the other party. After an objection is filed, the suit may not be referred to mediation unless, on the request of the other party, a hearing is held and the court finds that a preponderance of the evidence does not support the objection. If the suit is referred to mediation, the court shall order appropriate measures be taken to ensure the physical and emotional safety of the party who filed the objection. The order shall provide that the parties

not be required to have face-to-face contact and that the parties be placed in separate rooms during mediation.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 1999, 76th Leg., ch. 178, Sec. 2, eff. Aug. 30, 1999; Acts 1999, 76th Leg., ch. 1351, Sec. 1, eff. Sept. 1, 1999.



Sec. 6.604. INFORMAL SETTLEMENT CONFERENCE. (a) The parties to a suit for dissolution of a marriage may agree to one or more informal settlement conferences and may agree that the settlement conferences may be conducted with or without the presence of the parties' attorneys, if any.

(b) A written settlement agreement reached at an informal settlement conference is binding on the parties if the agreement:

(1) provides, in a prominently displayed statement that is in boldfaced type or in capital letters or underlined, that the agreement is not subject to revocation;

(2) is signed by each party to the agreement; and

(3) is signed by the party's attorney, if any, who is present at the time the agreement is signed.

(c) If a written settlement agreement meets the requirements of Subsection (b), a party is entitled to judgment on the settlement agreement notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule of law.

(d) If the court finds that the terms of the written informal settlement agreement are just and right, those terms are binding on the court. If the court approves the agreement, the court may set forth the agreement in full or incorporate the agreement by reference in the final decree.

(e) If the court finds that the terms of the written informal settlement agreement are not just and right, the court may request the parties to submit a revised agreement or set the case for a contested hearing.

Added by Acts 2005, 79th Leg., Ch. [477](#), Sec. 3, eff. September 1, 2005.



FAMILY CODE
TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE
PARENT-CHILD RELATIONSHIP

SUBTITLE B. SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP
CHAPTER 153. CONSERVATORSHIP, POSSESSION, AND ACCESS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 153.0071. ALTERNATE DISPUTE RESOLUTION PROCEDURES. (a) On written agreement of the parties, the court may refer a suit affecting the parent-child relationship to arbitration. The agreement must state whether the arbitration is binding or non-binding.

(b) If the parties agree to binding arbitration, the court shall render an order reflecting the arbitrator's award unless the court determines at a non-jury hearing that the award is not in the best interest of the child. The burden of proof at a hearing under this subsection is on the party seeking to avoid rendition of an order based on the arbitrator's award.

(c) On the written agreement of the parties or on the court's own motion, the court may refer a suit affecting the parent-child relationship to mediation.

(d) A mediated settlement agreement is binding on the parties if the agreement:

(1) provides, in a prominently displayed statement that is in boldfaced type or capital letters or underlined, that the agreement is not subject to revocation;

(2) is signed by each party to the agreement; and

(3) is signed by the party's attorney, if any, who is present at the time the agreement is signed.

(e) If a mediated settlement agreement meets the requirements of Subsection (d), a party is entitled to judgment on the mediated settlement agreement notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule of law.

(e-1) Notwithstanding Subsections (d) and (e), a court may decline to enter a judgment on a mediated settlement agreement if the court finds that:

(1) a party to the agreement was a victim of family violence, and that circumstance impaired the party's ability to make decisions; and

(2) the agreement is not in the child's best interest.

(f) A party may at any time prior to the final mediation order file a written objection to the

referral of a suit affecting the parent-child relationship to mediation on the basis of family violence having been committed by another party against the objecting party or a child who is the subject of the suit. After an objection is filed, the suit may not be referred to mediation unless, on the request of a party, a hearing is held and the court finds that a preponderance of the evidence does not support the objection. If the suit is referred to mediation, the court shall order appropriate measures be taken to ensure the physical and emotional safety of the party who filed the objection. The order shall provide that the parties not be required to have face-to-face contact and that the parties be placed in separate rooms during mediation. This subsection does not apply to suits filed under Chapter 262.

(g) The provisions for confidentiality of alternative dispute resolution procedures under Chapter 154, Civil Practice and Remedies Code, apply equally to the work of a parenting coordinator, as defined by Section 153.601, and to the parties and any other person who participates in the parenting coordination. This subsection does not affect the duty of a person to report abuse or neglect under Section 261.101.

Added by Acts 1995, 74th Leg., ch. 751, Sec. 27, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 937, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 178, Sec. 7, eff. Aug. 30, 1999; Acts 1999, 76th Leg., ch. 1351, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. [916](#), Sec. 7, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. [1181](#), Sec. 2, eff. September 1, 2007.

TMCA CREDENTIALING CRITERIA

Criteria for Credentials

Definitions

For the purposes of credential designation requirements, the following definitions shall apply:

1. Annual - a calendar year that begins on the first day of January.
2. Basic 40 hour training - completion of a minimum of 40 classroom hours of training pursuant to Chapter 154.052 (a) Texas Civil Practice and Remedies Code. For those applications submitted after July 1, 2004, all candidates must also attest that their training meets or exceeds the standards of the Texas Mediation Trainer Roundtable.
3. Conducted mediation – a process during which the mediator communicates with the parties to a conflict either together or separately to identify with each known party the issues in dispute and possible solutions, and to encourage and facilitate communication, reconciliation, settlement and understanding between the parties.
4. Mediation or Hours of mediation - refers to ‘conducted mediation’ as defined above.
5. Observation of a mediation - that the person observed all of the work of a mediator during a conducted mediation without having any other role in that mediation.
6. Training or Continuing education - any training or continuing education approved by the TMCA. The topics of continuing education must relate to the practice of mediation. Each course must involve study of mediation, negotiation, conflict management techniques or theory, or conflict-related topics from communications, psychology and other related disciplines.

Designation/ Level	CREDENTIALLED DISTINGUISH MEDIATOR	CREDENTIALLED ADVANCED MEDIATOR	CREDENTIALLED MEDIATOR	CANDIDATE FOR CREDENTIALLED MEDIATOR
Annual Dues	\$150	\$125	\$100	\$50
Training	Candidate must meet all requirements for Credentialed Mediator and, in addition, must have completed an additional 40 hours advanced course work in mediation theory, practice or skills building pursuant to the standards for TMCA Credentialed Mediator.	Candidate must meet all requirements for Credentialed Mediator and, in addition, must have completed an additional 20 hours advanced course work in mediation theory, practice, or skills building pursuant to the standards for TMCA Credentialed Mediator.	The candidate must have completed a minimum of 40 classroom hours of training pursuant to Chapter 154.052 (a) Texas Civil Practice and Remedies Code and the standards of the Texas Mediator Trainer’s Roundtable.	The candidate must have completed a minimum of 40 classroom hours of mediation training pursuant to Chapter 154.052 (a) Texas Civil Practice and Remedies Code and the standards of the Texas Mediation Trainer’s Roundtable.

Experience	Candidate must meet all requirements for Credentialed Mediator and, in addition, must have conducted an additional minimum of 180 mediations or an additional 875 hours in mediation.	Candidate must meet all requirements for Credentialed Mediator and, in addition, must have conducted an additional minimum of 30 mediations or an additional 175 hours in mediation.	The candidate must have completed 20 mediations or 125 hours in mediation after the basic 40-hour training, which can include observing a Credentialed Mediator for 5 mediations or 30 hours.	Candidates who have completed less than 20 mediations or 125 hours in mediation after the basic 40-hour training are eligible for the designation of candidate for credentialed mediator.
Adherence to TMCA Standards, Rules and Procedures	Regardless of level, all candidates must affirm that they have read, understand and will adhere to the TMCA Standards of Practice and Code of Ethics as well as the TMCA Grievance Rules and Procedures.			
Maintenance of TMCA Credential, to maintain a credential, a credential holder must meet the following standards on an annual basis:				
Annual experience	Conduct a minimum of 25 mediations or 150 hours mediation experience per year.	Conduct a minimum of 10 mediations or 60 hours mediation experience per year.	Conduct a minimum of 3 mediations or 15 hours of mediation per year.	N/A
Continuing Education	Complete 15 hours of continuing education per year of which 3 hours must consist of an approved ethics course. Five hours may be substantive course material. Three hours of the total 15 hours may be self-study and/or up to 5 hours by serving as an instructor of mediation training.	Complete 15 hours of continuing education per year of which 3 hours must consist of an approved ethics course. Five hours may be substantive course material. Three hours of the total 15 hours may be self-study and/or up to 5 hours by serving as an instructor of mediation training.	Complete 15 hours of continuing education per year of which 3 hours must consist of an approved ethics course. Five hours may be substantive course material. Three hours of the total 15 hours may be self-study and/or up to 5 hours by serving as an instructor of mediation training.	Complete 10 hours of continuing education annually of which 3 hours must consist of an approved ethics course. This requirement may be partially satisfied by 3 hours of self-study and/or by serving as an instructor for up to 5 hours of mediation training.
Other	Make him/herself available to the courts and/or to the public to conduct 5 pro-bono mediations per year.	Make him/herself available to the courts and/or to the public to conduct 2 pro-bono mediations per year.	N/A	Candidate status may be maintained for a maximum of four years in order to allow the candidate time to complete the requirements for TMCA Credentialed Mediator.
Renewal fee	\$150	\$125	\$100	\$50

Volunteer Mediator: (Dues \$25.00 annually)

A mediator that meets the definition stated below and signs the certification as a volunteer mediator is entitled to pay a reduced application fee of \$25.00 for any credentialing level.

A volunteer mediator is defined as a pro bono mediator who receives NO compensation or consideration of any kind in the form of, but not limited to, fees, salary, trading, barter, gift, exchange of goods or services, benefits, perquisites, tokens, or cash.

**PROTECTION OF THE QUALITY OF MEDIATION
TRHOUGH ENFORCEMENT OF ETHICAL STANDARDS**

The quality of mediation in Texas is promoted and protected through the issuance of Texas Mediator Credentialing Association (“TMCA”) credentials to mediators who meet training and experience requirements. All mediators who are issued a TMCA credential must comply with the “Texas Mediator Credentialing Association Standards of Practice and Code of Ethics” (“TMCA Ethical Standards”) and must submit to a grievance procedure to ensure such compliance. The TMCA Ethical Standards are derived from the Texas Supreme Court’s “Ethical Guidelines for Mediators” (the “Guidelines”) originally adopted on June 13, 2005, and amended as of June 1, 2011. The TMCA Ethical Standards are almost identical to the Texas Supreme Court’s Guidelines; generally, the word “should” (permissive) in the Guidelines is replaced with the word “shall” (mandatory) in the TMCA Ethical Standards. The TMCA Ethical Standards and the grievance procedure may be found at www.TXMCA.org.

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 11- **9062**

APPROVAL OF AMENDMENTS TO THE ETHICAL GUIDELINES FOR MEDIATORS

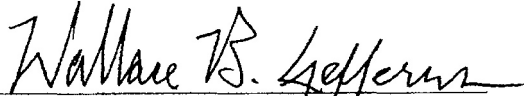
ORDERED that:


1. The Supreme Court of Texas adopted the Ethical Guidelines for Mediators by Order dated June 13, 2005, in Misc. Docket No. 05-9107. The State Bar of Texas Alternative Dispute Resolution Section Council has proposed three changes to the Ethical Guidelines. The proposals were published for public comment, approved by the ADR Section Council, and presented to the Court for approval.
2. The following amendments to the Ethical Guidelines for Mediators are hereby approved:
 - Section 2. Mediator Conduct.
Comment (f). A mediator should not simultaneously conduct more than one mediation session unless all parties agree to do so.
 - Section 4. Disclosure of Possible Conflicts.
Prior to commencing the mediation, the mediator should make full disclosure of any interest the mediator has in the subject matter of the dispute and of any known relationships with the parties or their counsel that may affect or give the appearance of affecting the mediator's neutrality.
 - Section 10. Disclosure and Exchange of Information.
Comment. A mediator should not knowingly misrepresent any material fact or circumstance in the course of mediation.
2. The Ethical Guidelines for Mediators are aspirational. Compliance with the rules depends primarily upon understanding and voluntary compliance, secondarily upon

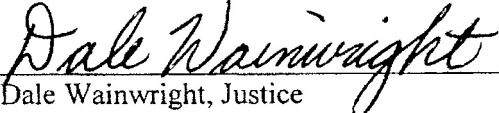
reenforcement by peer pressure and public opinion, and finally when necessary by enforcement by the courts through their inherent powers and rules already in existence.

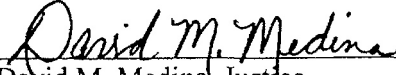
3. These changes take effect June 1, 2011.


SIGNED AND ENTERED, this 11th day of April, 2011.



Wallace B. Jefferson, Chief Justice

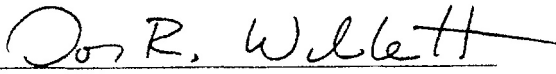

Nathan L. Hecht, Justice

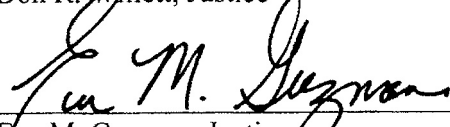

Dale Wainwright, Justice



David M. Medina, Justice


Paul W. Green, Justice


Phil Johnson, Justice


Don R. Willett, Justice


Eva M. Guzman, Justice


Debra H. Lehrmann, Justice

Names and signatures reproduced from original document.

ETHICAL GUIDELINES FOR MEDIATORS

PREAMBLE

These Ethical Guidelines are intended to promote public confidence in the mediation process and to be a general guide for mediator conduct. They are not intended to be disciplinary rules or a code of conduct. Mediators should be responsible to the parties, the courts and the public, and should conduct themselves accordingly. These Ethical Guidelines are intended to apply to mediators conducting mediations in connection with all civil, criminal, administrative and appellate matters, whether the mediation is pre-suit or court-annexed and whether the mediation is court-ordered or voluntary.

GUIDELINES

1. Mediation Defined. Mediation is a private process in which an impartial person, a mediator, encourages and facilitates communications between parties to a conflict and strives to promote reconciliation, settlement, or understanding. A mediator should not render a decision on the issues in dispute. The primary responsibility for the resolution of a dispute rests with the parties.

Comment. A mediator's obligation is to assist the parties in reaching a voluntary settlement. The mediator should not coerce a party in any way. A mediator may make suggestions, but all settlement decisions are to be made voluntarily by the parties themselves.

2. Mediator Conduct. A mediator should protect the integrity and confidentiality of the mediation process. The duty to protect the integrity and confidentiality of the mediation process commences with the first communication to the mediator, is continuous in nature, and does not terminate upon the conclusion of the mediation.

Comment (a). A mediator should not use information obtained during the mediation for personal gain or advantage.

Comment (b). The interests of the parties should always be placed above the personal interests of the mediator.

Comment (c). A mediator should not accept mediations which cannot be completed in a timely manner or as directed by a court.

Comment (d). Although a mediator may advertise the mediator's qualifications and availability to mediate, the mediator should not solicit a specific case or matter.

Comment (e). A mediator should not mediate a dispute when the mediator has knowledge that another mediator has been appointed or selected without first consulting with the other mediator or the parties unless the previous mediation has been concluded.

Comment (f). A mediator should not simultaneously conduct more than one mediation session unless all parties agree to do so.

3. Mediation Costs. As early as practical, and before the mediation session begins, a mediator should explain all fees and other expenses to be charged for the mediation. A mediator should not charge a contingent fee or a fee based upon the outcome of the mediation. In appropriate cases, a mediator should perform mediation services at a reduced fee or without compensation.

Comment (a). A mediator should avoid the appearance of impropriety in regard to possible negative perceptions regarding the amount of the mediator's fee in court-ordered mediations.

Comment (b). If a party and the mediator have a dispute that cannot be resolved before commencement of the mediation as to the mediator's fee, the mediator should decline to serve so that the parties may obtain another mediator.

4. Disclosure of Possible Conflicts. Prior to commencing the mediation, the mediator should make full disclosure of any interest the mediator has in the subject matter of the dispute and of any known relationships with the parties or their counsel that may affect or give the appearance of affecting the mediator's neutrality. A mediator should not serve in the matter if a party makes an objection to the mediator based upon a conflict or perceived conflict.

Comment (a). A mediator should withdraw from a mediation if it is inappropriate to serve.

Comment (b). If after commencement of the mediation the mediator discovers that such a relationship exists, the mediator should make full disclosure as soon as practicable.

5. Mediator Qualifications. A mediator should inform the participants of the mediator's qualifications and experience.

Comment (a). A mediator's qualifications and experience constitute the foundation upon which the mediation process depends; therefore, if there is any objection to the mediator's qualifications to mediate the dispute, the mediator should withdraw from the mediation. Likewise, the mediator should decline to serve if the mediator feels unqualified to do so.

6. The Mediation Process. A mediator should inform and discuss with the participants the rules and procedures pertaining to the mediation process.

Comment (a). A mediator should inform the parties about the mediation process no later than the opening session.

Comment (b). At a minimum, the mediator should inform the parties of the following: (1) the mediation is private (Unless otherwise agreed by the participants, only the mediator, the parties and their representatives are allowed to attend.); (2) the mediation is informal (There are no court reporters present, no record is made of the proceedings, no subpoena or other service of process is allowed, and no rulings are made on the issues or the merits of the case.); and (3) the mediation is confidential to the extent provided by law. (See, e.g., §§154.053 and 154.073, Tex. Civ. Prac. & Rem. Code.)

7. Convening the Mediation. Unless the parties agree otherwise, the mediator should not convene a mediation session unless all parties and their representatives ordered by the court have appeared, corporate parties are represented by officers or agents who have represented to the mediator that they possess adequate authority to negotiate a settlement, and an adequate amount of time has been reserved by all parties to the mediation to allow the mediation process to be productive.

Comment. A mediator should not convene the mediation if the mediator has reason to believe that a *pro se* party fails to understand that the mediator is not providing legal representation for the *pro se* party. In connection with *pro se* parties, see also Guideline #9, 11 and 13 and associated comments below.

8. Confidentiality. A mediator should not reveal information made available in the mediation process, which information is privileged and confidential, unless the affected parties agree otherwise or as may be required by law.

Comment (a). A mediator should not permit recordings or transcripts to be made of mediation proceedings.

Comment (b). A mediator should maintain confidentiality in the storage and disposal of records and should render anonymous all identifying information when materials are used for research, educational or other informational purposes.

Comment (c). Unless authorized by the disclosing party, a mediator should not disclose to the other parties information given in confidence by the disclosing party and should maintain confidentiality with respect to communications relating to the subject matter of the dispute. The mediator should report to the court whether or not the mediation occurred, and that the mediation either resulted in a settlement or an impasse, or that the mediation was either recessed or rescheduled.

Comment (d). In certain instances, applicable law may require disclosure of information revealed in the mediation process. For example, the Texas Family Code may require a mediator to disclose child abuse or neglect to the appropriate authorities. If confidential information is disclosed, the mediator should advise the parties that disclosure is required and will be made.

9. Impartiality. A mediator should be impartial toward all parties.

Comment. If a mediator or the parties find that the mediator's impartiality has been compromised, the mediator should offer to withdraw from the mediation process. Impartiality means freedom from favoritism or bias in word, action, and appearance; it implies a commitment to aid all parties in reaching a settlement.

10. Disclosure and Exchange of Information. A mediator should encourage the disclosure of information and should assist the parties in considering the benefits, risks, and the alternatives available to them.

Comment. A mediator should not knowingly misrepresent any material fact or circumstance in the course of mediation.

11. Professional Advice. A mediator should not give legal or other professional advice to the parties.

Comment (a). In appropriate circumstances, a mediator should encourage the parties to seek legal, financial, tax or other professional advice before, during or after the mediation process.

Comment (b). A mediator should explain generally to *pro se* parties that there may be risks in proceeding without independent counsel or other professional advisors.

12. No Judicial Action Taken. A person serving as a mediator generally should not subsequently serve as a judge, master, guardian ad litem, or in any other judicial or quasi-judicial capacity in matters that are the subject of the mediation.

Comment. It is generally inappropriate for a mediator to serve in a judicial or quasi-judicial capacity in a matter in which the mediator has had communications with one or more parties without all other parties present. For example, an attorney-mediator who has served as a mediator in a pending litigation should not subsequently serve in the same case as a special master, guardian ad litem, or in any other judicial or quasi-judicial capacity with binding decision-making authority. Notwithstanding the foregoing, where an impasse has been declared at the conclusion of a mediation, the mediator if requested and agreed to by all parties, may serve as the arbitrator in a binding arbitration of the dispute, or as a third-party neutral in any other alternative dispute proceeding, so long as the mediator believes nothing learned during private conferences with any party to the mediation will bias the mediator or will unfairly influence the mediator's decisions while acting in the mediator's subsequent capacity.

13. Termination of Mediation Session. A mediator should postpone, recess, or terminate the mediation process if it is apparent to the mediator that the case is inappropriate for mediation or one or more of the parties is unwilling or unable to participate meaningfully in the mediation process.

14. Agreements in Writing. A mediator should encourage the parties to reduce all settlement agreements to writing.

15. Mediator's Relationship with the Judiciary. A mediator should avoid the appearance of impropriety in the mediator's relationship with a member of the judiciary or the court staff with regard to appointments or referrals to mediation.

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 05- **9107**

APPROVAL OF ETHICAL GUIDELINES FOR MEDIATORS

The Supreme Court of Texas has long recognized the need for oversight of the quality of mediation in Texas. During the initial public debate of the issue, some mediation practitioners proposed adopting ethical rules of mediators to enhance the quality of Texas mediation and mediators. Others advocated mediation licensing or credentialing.

The Court determined that, at minimum, ethical rules should be implemented and enforced. Thus, the Court created the Advisory Committee on Court-Annexed Mediations to formulate mediation ethics rules that address, among other things, the avoidance and disclosure of conflicts of interest and the timely disclosure of fees.¹ The Court also instructed the Advisory Committee to study whether further oversight, such as licensing or credentialing, was warranted.

The Committee began its work by gathering relevant materials from various organizations throughout the country, including organizations unrelated to the practice of law and the justice system. These voluminous materials were reviewed by individual members and subcommittees for presentation to the full Committee. The Committee met formally numerous times, and, as a result of this work, the Committee proposed several recommendations to the Court.

Ultimately, the Committee concluded that there currently was no consensus within the mediation profession in Texas as to whether the Supreme Court should become involved in credentialing and/or registration of mediators. Therefore, the committee

¹ Order Creating Advisory Committee on Court-Annexed Mediations, Misc. Docket No. 96-9125 (May 7, 1996). Members of the Committee were Tony Alvarado, Karl Bayer, Gary Condra, Herb Cook, Hon. Suzanne Covington, Clause Ducloux, Suzanne Duvall, John Estes, Hon. Frank Evans, Hon. Charles Gonzalez, Carol Hoffman, Dr. Lou Lasher, Bill Low, Hon. Tom McDonald, Hon. Margaret Mirabal, Lanelle Montgomery, William M. Morris, Hon. Jay Patterson, Ross Rommel, Michael J. Schless, Maxel “Bud” Silverberg, Rena Silverberg, Sid Stahl, Bruce Stratton, and Michael Wolf.

recommended that the Court take no action with regard to credentialing.

The Committee, however, concluded that there currently is consensus within the Texas mediation profession that the Court should promulgate ethical rules. Therefore, the committee recommended the Court adopt as its own aspirational guidelines those guidelines that the Alternative Dispute Resolution section of the State Bar of Texas has adopted.


The Court accepts this recommendation. The Court is committed to ensuring the continued quality of mediators and mediation services in Texas. Thus, the Court promulgates and adopts the attached Ethical Guidelines for Mediators.

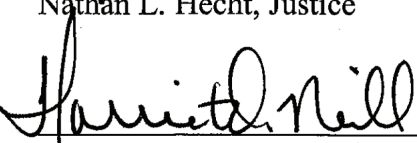
These rules are aspirational. Compliance with the rules depends primarily upon understanding and voluntary compliance, secondarily upon reenforcement by peer pressure and public opinion, and finally when necessary by enforcement by the courts through their inherent powers and rules already in existence.

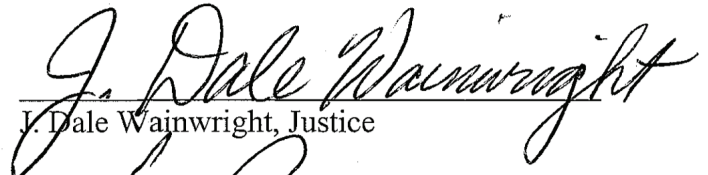
Moreover, counsel representing parties in the mediation of a pending case remain officers of the court in the same manner as if appearing in court. They are subject to the Texas Disciplinary Rules for Lawyers and any local rules or orders of the court regarding the mediation of pending cases. They should aspire during mediation to follow The Texas Lawyer's Creed---A Mandate for Professionalism. Counsel shall cooperate with the court and the mediator in the initiation and conduct of the mediation.

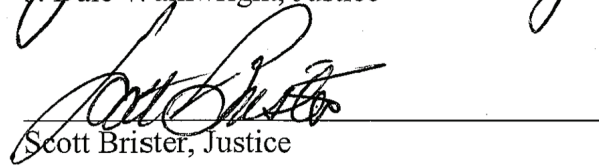
In Chambers, this 13th day of June, 2005.

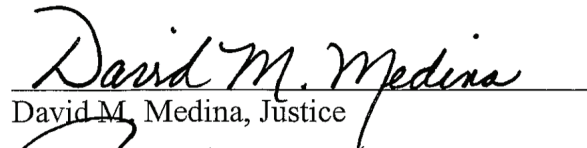

Wallace B. Jefferson, Chief Justice

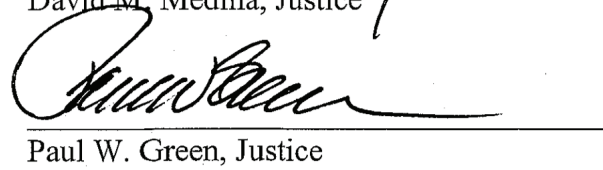

Nathan L. Hecht, Justice

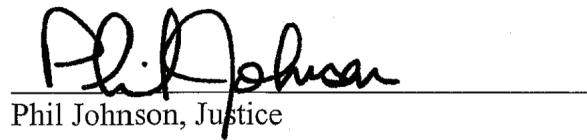

Harriet O'Neill, Justice


J. Dale Wainwright, Justice


Scott Brister, Justice


David M. Medina, Justice


Paul W. Green, Justice


Phil Johnson, Justice

Names and signatures reproduced from original document.

ETHICAL GUIDELINES FOR MEDIATORS

PREAMBLE

These Ethical Guidelines are intended to promote public confidence in the mediation process and to be a general guide for mediator conduct. They are not intended to be disciplinary rules or a code of conduct. Mediators should be responsible to the parties, the courts and the public, and should conduct themselves accordingly. These Ethical Guidelines are intended to apply to mediators conducting mediations in connection with all civil, criminal, administrative and appellate matters, whether the mediation is pre-suit or court-annexed and whether the mediation is court-ordered or voluntary.

GUIDELINES

1. Mediation Defined. Mediation is a private process in which an impartial person, a mediator, encourages and facilitates communications between parties to a conflict and strives to promote reconciliation, settlement, or understanding. A mediator should not render a decision on the issues in dispute. The primary responsibility for the resolution of a dispute rests with the parties.

Comment. A mediator's obligation is to assist the parties in reaching a voluntary settlement. The mediator should not coerce a party in any way. A mediator may make suggestions, but all settlement decisions are to be made voluntarily by the parties themselves.

2. Mediator Conduct. A mediator should protect the integrity and confidentiality of the mediation process. The duty to protect the integrity and confidentiality of the mediation process commences with the first communication to the mediator, is continuous in nature, and does not terminate upon the conclusion of the mediation.

Comment (a). A mediator should not use information obtained during the mediation for personal gain or advantage.

Comment (b). The interests of the parties should always be placed above the personal interests of the mediator.

Comment (c). A mediator should not accept mediations which cannot be completed in a timely manner or as directed by a court.

Comment (d). Although a mediator may advertise the mediator's qualifications and availability to mediate, the mediator should not solicit a specific case or matter.

Comment (e). A mediator should not mediate a dispute when the mediator has knowledge that another mediator has been appointed or selected without first consulting with the other mediator or the parties unless the previous mediation has been concluded.

3. Mediation Costs. As early as practical, and before the mediation session begins, a mediator should explain all fees and other expenses to be charged for the mediation. A mediator should not charge a contingent fee or a fee based upon the outcome of the mediation. In appropriate cases, a mediator should perform mediation services at a reduced fee or without compensation.

Comment (a). A mediator should avoid the appearance of impropriety in regard to possible negative perceptions regarding the amount of the mediator's fee in court-ordered mediations.

Comment (b). If a party and the mediator have a dispute that cannot be resolved before commencement of the mediation as to the mediator's fee, the mediator should decline to serve so that the parties may obtain another mediator.

4. Disclosure of Possible Conflicts. Prior to commencing the mediation, the mediator should make full disclosure of any known relationships with the parties or their counsel that may affect or give the appearance of

affecting the mediator's neutrality. A mediator should not serve in the matter if a party makes an objection to the mediator based upon a conflict or perceived conflict.

Comment (a). A mediator should withdraw from a mediation if it is inappropriate to serve.

Comment (b). If after commencement of the mediation the mediator discovers that such a relationship exists, the mediator should make full disclosure as soon as practicable.

5. Mediator Qualifications. A mediator should inform the participants of the mediator's qualifications and experience.

Comment (a). A mediator's qualifications and experience constitute the foundation upon which the mediation process depends; therefore, if there is any objection to the mediator's qualifications to mediate the dispute, the mediator should withdraw from the mediation. Likewise, the mediator should decline to serve if the mediator feels unqualified to do so.

6. The Mediation Process. A mediator should inform and discuss with the participants the rules and procedures pertaining to the mediation process.

Comment (a). A mediator should inform the parties about the mediation process no later than the opening session.

Comment (b). At a minimum, the mediator should inform the parties of the following: (1) the mediation is private (Unless otherwise agreed by the participants, only the mediator, the parties and their representatives are allowed to attend.); (2) the mediation is informal (There are no court reporters present, no record is made of the proceedings, no subpoena or other service of process is allowed, and no rulings are made on the issues or the merits of the case.); and (3) the mediation is confidential to the extent provided by law. (See, e.g., §§154.053 and 154.073, Tex. Civ. Prac. & Rem. Code.)

7. Convening the Mediation. Unless the parties agree otherwise, the mediator should not convene a mediation session unless all parties and their representatives ordered by the court have appeared, corporate parties are represented by officers or agents who have represented to the mediator that they possess adequate authority to negotiate a settlement, and an adequate amount of time has been reserved by all parties to the mediation to allow the mediation process to be productive.

Comment. A mediator should not convene the mediation if the mediator has reason to believe that a *pro se* party fails to understand that the mediator is not providing legal representation for the *pro se* party. In connection with *pro se* parties, see also Guideline #9, 11 and 13 and associated comments below.

8. Confidentiality. A mediator should not reveal information made available in the mediation process, which information is privileged and confidential, unless the affected parties agree otherwise or as may be required by law.

Comment (a). A mediator should not permit recordings or transcripts to be made of mediation proceedings.

Comment (b). A mediator should maintain confidentiality in the storage and disposal of records and should render anonymous all identifying information when materials are used for research, educational or other informational purposes.

Comment (c). Unless authorized by the disclosing party, a mediator should not disclose to the other parties information given in confidence by the disclosing party and should maintain confidentiality with respect to communications relating to the subject matter of the dispute. The mediator should report to the court whether or not the mediation occurred, and that the mediation either resulted in a settlement or an impasse, or that the mediation was either recessed or rescheduled.

Comment (d). In certain instances, applicable law may require disclosure of information revealed in the mediation process. For example, the Texas Family Code may require a mediator to disclose child abuse or neglect to the appropriate authorities. If confidential information is disclosed, the mediator should advise the parties that disclosure is required and will be made.

9. Impartiality. A mediator should be impartial toward all parties.

Comment. If a mediator or the parties find that the mediator's impartiality has been compromised, the mediator should offer to withdraw from the mediation process. Impartiality means freedom from favoritism or bias in word, action, and appearance; it implies a commitment to aid all parties in reaching a settlement.

10. Disclosure and Exchange of Information. A mediator should encourage the disclosure of information and should assist the parties in considering the benefits, risks, and the alternatives available to them.

11. Professional Advice. A mediator should not give legal or other professional advice to the parties.

Comment (a). In appropriate circumstances, a mediator should encourage the parties to seek legal, financial, tax or other professional advice before, during or after the mediation process.

Comment (b). A mediator should explain generally to *pro se* parties that there may be risks in proceeding without independent counsel or other professional advisors.

12. No Judicial Action Taken. A person serving as a mediator generally should not subsequently serve as a judge, master, guardian ad litem, or in any other judicial or quasi-judicial capacity in matters that are the subject of the mediation.

Comment. It is generally inappropriate for a mediator to serve in a judicial or quasi-judicial capacity in a matter in which the mediator has had communications with one or more parties without all other parties present. For example, an attorney-mediator who has served as a mediator in a pending litigation should not subsequently serve in the same case as a special master, guardian ad litem, or in any other judicial or quasi-judicial capacity with binding decision-making authority. Notwithstanding the foregoing, where an impasse has been declared at the conclusion of a mediation, the mediator if requested and agreed to by all parties, may serve as the arbitrator in a binding arbitration of the dispute, or as a third-party neutral in any other alternative dispute proceeding, so long as the mediator believes nothing learned during private conferences with any party to the mediation will bias the mediator or will unfairly influence the mediator's decisions while acting in the mediator's subsequent capacity.

13. Termination of Mediation Session. A mediator should postpone, recess, or terminate the mediation process if it is apparent to the mediator that the case is inappropriate for mediation or one or more of the parties is unwilling or unable to participate meaningfully in the mediation process.

14. Agreements in Writing. A mediator should encourage the parties to reduce all settlement agreements to writing.

15. Mediator's Relationship with the Judiciary. A mediator should avoid the appearance of impropriety in the mediator's relationship with a member of the judiciary or the court staff with regard to appointments or referrals to mediation.

SIGNIFICANT MEDIATION CASE LAW

This compilation of significant mediation case law is not comprehensive. It addresses the two most commonly reported areas of dispute in mediation. A comprehensive collection of the case law is addressed in “The Law of Mediation in Texas” through 2006, prepared by L. Wayne Scott, Professor of Law and Director of Conflict Resolution Studies, St. Mary’s University School of Law, and may be found through Westlaw at 37 STMLJ 325 or 37 St. Mary’s L.J. 325. Additionally, an excellent article addressing “Twenty Years of Confidentiality Under the Texas ADR Act” prepared by Brian Shannon, Charles B. Thornton Professor of Law (since 1988), Texas Tech University Faculty Athletics Representative and Former Associate Dean, Academic Affairs, Texas Tech University School of Law, may be found in the State Bar of Texas Alternative Dispute Resolution Section newsletter “Alternative Resolutions” Special Edition 2007, Vol. 16, No 3-4 or at www.texasadr.org/2007_special_edition2.pdf.

Obligation to Mediate in Good Faith

Compiled by Walter Wright¹

Decker v. Lindsay, 824 S.W.2d 247 (Tex. App.—Houston [1st Dist.] 1992, no writ). A trial court ordered parties to “proceed [to mediation] in a good faith effort to try to resolve [the] case.” *Id.* at 248. The mediation rules attached to the court’s order also required the parties to “commit to participate in the proceedings in good faith with the intention to settle, if at all possible.” *Id.* at 249. The Deckers objected to the order, but the trial court overruled their objection. The appellate court held that Section 154.021 of the Civil Practice and Remedies Code authorizes a trial court to order parties to mediation, but it does not authorize the court to require the parties to mediate in good faith.

Gleason v. Lawson, 850 S.W.2d 714 (Tex App.—Corpus Christi 1993, no writ). The trial court assessed court costs against Gleason for her refusal to enter into good faith settlement negotiations, but the court had never ordered Gleason to negotiate. The court of appeals held the trial court could not use failure to negotiate as a reason for assessing court costs if the court had never ordered the parties to mediate or enter into other settlement negotiations.

Hansen v. Sullivan, 886 S.W.2d 467 (Tex. App.—Houston [1st Dist.] 1994, no writ). The plaintiff in a medical malpractice case filed a motion to require the parties to mediate, which the trial judge (Sullivan) granted. Hansen did not object to the mediation order. He claimed he attended mediation for over three hours, but the parties failed to reach an agreement and the mediator declared an impasse. Following the mediation, the plaintiff requested sanctions against Hansen for refusing to negotiate in good faith, which the trial court granted. The court of appeals found that Hansen had attended mediation and, citing *Decker*, held the trial court could not sanction Hansen for failing to negotiate in good faith.

¹ Walter Wright is an Associate Professor in the Legal Studies Program, Department of Political Science at Texas State University in San Marcos, Texas

Texas Department of Transportation v. Pirtle, 977 S.W.2d 657 (Tex. App.—Fort Worth 1998, pet. denied). The trial court ordered the parties to mediation. The Texas Department of Transportation, citing its policy of not settling disputed liability cases, did not object to the order, it did attend mediation, but it refused to negotiate. The trial court assessed court costs against the agency for failing to negotiate in good faith. Distinguishing this case’s facts from the facts of *Decker*, *Gleason*, and *Hansen*, the court of appeals held, “it is not an abuse of discretion for a trial court to assess costs when a party does not file a written objection to a court’s order to mediate, but nevertheless refuses to mediate in good faith.” *Id.* at 658.

Texas Parks and Wildlife Department v. Davis, 988 S.W.2d 370 (Tex. App.—Austin 1999, no pet.). The trial court awarded court costs against the Texas Parks and Wildlife Department for failure to negotiate in good faith during court-ordered mediation. The agency had objected to the trial court’s mediation order, but the court had overruled the objection. The appellate court found that the agency had attended mediation and had made an offer, so it could not be said the agency had not participated in mediation. The appellate court reversed the award of court costs against the agency.

In re Daley, 29 S.W.3d 915 (Tex. App.—Beaumont 2000, orig. proceeding). Daley, a non-party, admitted he was a mediation participant who attended on behalf of his employer. He had not objected to a mediation order that required participants to remain in attendance until the mediator declared the mediation concluded. He left the mediation before the mediator made such a declaration. The appellate court held Daley had voluntarily submitted himself to the trial court’s jurisdiction in its administrative regulation of the mediation.

Confidentiality *Compiled by Sid Stahl²*

Avary v. Bank of America, 72 S.W.3d 779 (Tex.App.Dallas, 2002, pet. denied). A settlement agreement was reached in a court-ordered mediation. Subsequently, suit was filed to enforce the settlement agreement. A Summary Judgment was sought on the ground that no evidence could be offered to support the claim of a settlement because all communications would be barred by the confidentiality provision of Section 154, Tex.Civ.Prac. & Rem. Code. On appeal, one of the parties complained that the Judge abused his discretion by prohibiting certain discovery relating to the mediation session. The Court of Appeals held that, where a claim is based on a new and independent tort that allegedly occurred during the course of a mediation proceeding, evidence that was factually and legally unrelated to the underlying case that was mediated, a party could seek such evidence. The Court stated: “First, if the communication does not relate to the subject matter of the dispute, or does not relate to or arise out of the matter in dispute, it may not be confidential under subsections (a) and (b) [of Section 154.073, Tex.Civ.Prac. & Rem. Code].”

² Sid Stahl is an Adjunct Faculty member at the SMU Dedman School of Law teaching Alternative Dispute Resolution

Alford v. Bryant, 137 S.W.3d 916 (2004), Court of Appeals, Dallas. This involved a suit by a client against her attorney for alleged legal malpractice in connection with a settlement agreement reached in mediation. This is a case in which the owner of a residence filed suit against her roofing contractor, and the case settled at mediation. The issue of legal fees and court costs was left to the trial court. The trial court decided that each party should bear their own expenses. This resulted in the client suing her attorney for malpractice for allegedly failing to disclose the risks and benefits of settlement. When the client attempted to call her attorney to testify to the substance of his disclosure, the trial court refused to allow the mediator to testify on the basis of the confidentiality provisions of the Texas ADR statute. The Court of Appeals noted the *Avary* case but distinguished it in that in *Avary*, the claim was based on a new and independent tort committed in the course of the mediation, and not the underlying matter that was brought to mediation.

Merlyn Knapp v. the Wilson N. Jones Memorial Hospital, 281 S.W.3d 163 (2009), Court of Appeals, Dallas. This was a suit filed by a former employee against their former employer for denial of severance pay. The court was petitioned to allow discovery as in a prior ADR proceeding (arbitration), the Court held it is the policy of this State to encourage the peaceable resolution of disputes and the early settlement of pending litigation through voluntary settlement procedures. Proponents of alternative dispute resolution stress that confidentiality is critical to the success of the process.

In re Empire Pipeline Corporation, 323 S.W.3d 308 (2010), Court of Appeals, Dallas. The Dallas Court of Appeals conditionally granted a writ of mandamus in this case in which Empire sought relief from the trial court's order that granted, in part, a motion to compel discovery relating to a mediation. The Court conditionally granted the writ after concluding that the trial court abused its discretion leaving the relators with no adequate remedy. While concluding that the relator lacked an adequate remedy, the Court addressed and upheld the confidentiality of mediation based upon Tex.Civ.Prac. & Rem. Code Sec. 154.073, and its earlier rulings in the *Avary*, *Alford* and *Knapp* cases.

TMCA BOARD OF DIRECTORS



TEXAS MEDIATOR
CREDENTIALING
ASSOCIATION

John Coselli, Chair

Judiciary

4637 Wild Indigo, #490
Houston, Texas 77027
(713) 724-2392
johncoselli@gmail.com

Michael J. Schless, Vice Chair

Association of Attorney Mediators

1301 West 25th Street, Suite 550
Austin, Texas 78705
(512) 476-5507
(512) 476-4026 fax
mjschless@cs.com

John Palmer, Secretary

Consumer
c/o Naman, Howell, Smith & Lee, PLLC

P.O. Box 1470
Waco, Texas 76703
(254)755-4100
(254)754-6331 fax
palmer@namanhowell.com

Shelly Hudson, Treasurer

Dispute Resolution Centers Directors Council

211 Houston Street
Richmond, Texas 77469
(281) 342-5000
(281) 232-6443 fax
fortbenddrc@aol.com
(Fort Bend County DRC)

Suzanne Mann Duvall

Trainers

Burdin Mediation
4080 Stanford Avenue
Dallas, Texas 75225
(214) 361-0802
(214) 368-7258 fax
(No email)

Kay Elkins-Elliott

Education

1609 Sunset Terrace
Fort Worth, Texas 76102
(817) 878-2589
(817) 878-2647 fax
k4mede8@swbell.net

Melanie E. Grimes

Texas Association of Mediators

Turley Law Center
6440 N. Central Expressway, Suite 702
Dallas, Texas 75206
(214) 369-3690
(214) 369-3936 fax
mgrimes@mgmediation.com

Margaret Leeds

Texas Mediator Trainers Roundtable

308 King William
San Antonio, Texas 78204
(214) 281-9628
(214) 281-9628 fax
(219) 393-5223 cell
maleeds@me.com

Cecilia H. Morgan

State Bar of Texas ADR Section

JAMS the Resolution Experts
8401 N. Central Expressway, Suite 610
Dallas, Texas 75225
(214) 744-5267
(214) 720-6010 fax
cmorgan@jamsadr.com

Suzanne Schwartz

*Center for Public Policy Dispute Resolution,
The University of Texas Law School*

727 E. Dean Keeton Drive
Austin, Texas 78705
(512) 471-3507
(512) 232-1191 fax
sschwartz@law.utexas.edu



**TEXAS MEDIATOR
CREDENTIALING
ASSOCIATION**

P.O. Box 1470
Waco, Texas 76703-1470
www.txmca.org

PRSR STD
U.S. Postage
PAID
Temple, Texas
Permit #238



**TEXAS MEDIATOR
CREDENTIALING
ASSOCIATION**



Promoting
Quality
Mediation
Throughout
Texas

**QUALIFICATIONS
AND
CREDENTIALS
MATTER**

*Insist on mediators who
are credentialed by
the Texas Mediator
Credentialing Association*

**WHY USE A
CREDENTIALLED MEDIATOR?**

- Meets a prescribed set of performance standards
- Agrees to conform to published ethical standards and grievance process
- Meets specific educational requirements with mandatory mediation-oriented continuing education