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In the
Indiana Supreme Court

CAUSE NUMBER: 94S00-0801-MS- 15

ORDER AMENDING RULES FOR ALTERNATIVE DISPUTE RESOLUTION

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, Rules 2.5 and 6.1 of the *Indiana Rules for Small Claims* are amended to read as follows (deletions shown by ~~striking~~ and new text shown by underlining):

RULES FOR ALTERNATIVE DISPUTE RESOLUTION

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Rule 2.5. Qualifications of Mediators

(A) Civil Cases: Educational Qualifications.

(1) Subject to approval by the court in which the case is pending, the parties may agree upon any person to serve as a mediator.

(2) In civil cases, a registered mediator must be an attorney in good standing with the Supreme Court of Indiana.

(3) To register as a civil mediator, a person must meet all the requirements of this rule and must have either: (1) taken at least forty (40) hours of Commission approved civil mediation training in the three (3) years immediately prior to submission of the registration application, or (2) completed forty (40) hours of Commission approved civil mediation training at any time and taken at least six (6) hours of approved Continuing Mediation Education in the three (3) years immediately prior to submission of the registration application.

(4) However, a person who has met the requirements of A.D.R. Rule 2.5(B)(2)(a), is registered as a domestic relations mediator, and by December 31 of the second full year after meeting those requirements completes a Commission approved civil crossover mediation training program may register as a civil mediator.

(5) As part of ~~the judge's~~ a judicial officer's judicial service, a ~~judge~~ judicial officer may serve as a mediator in a case pending before another judicial officer.

(B) ~~*Domestic Relations Cases: Educational Qualifications*~~ Domestic Relations Cases: Educational Qualifications.

(1) Subject to approval of the court, in which the case is pending, the parties may agree upon any person to serve as a mediator.
(2) In domestic relations cases, a registered mediator must be either: (a) an attorney, in good standing with the Supreme Court of Indiana; (b) a person who has a bachelor's degree or advanced degree from an institution recognized by a U.S. Department of Education approved accreditation organization, e.g. The Higher Learning Commission of the North Central Association of Colleges and Schools. Notwithstanding the provisions of (2)(a) and (b) above, any licensed professional whose professional license is currently suspended or revoked by the respective licensing agency, or has been relinquished voluntarily while a disciplinary action is pending, shall not be a registered mediator.
(3) To register as a domestic relations mediator, a person must meet all the requirements of this rule and must have either: (1) taken at least forty hours of Commission approved domestic relations mediation training in the three (3) years immediately prior to submission of the registration application, or (2) taken at least forty (40) hours of Commission approved domestic relations mediation training at any time, and taken at least six (6) hours of approved Continuing Mediation Education in the three (3) years immediately prior to submission of the registration application.
(4) However, if a person is registered as a civil mediator and by December 31 of the second full year after meeting those requirements completes a Commission approved domestic relations crossover mediation training program (s)he may register as a domestic relations mediator.
(5) As part of ~~the judge's~~ a judicial officer's judicial service, a ~~judge~~ judicial officer may serve as a mediator in a case pending before another judicial officer.

(C) Continuing Mediation Education ("CME") Requirements for All Registered Mediators. A registered mediator must complete a minimum of six hours of Commission approved continuing mediation education anytime during a three-year educational period. A mediator's initial educational period commences January 1 of the first full year of registration and ends December 31 of the third full year. Educational periods shall be sequential, in that once a mediator's particular three-year period terminates, a new three-year period and six hour minimum shall commence.
(1) Mediators registered before the effective date of this rule shall begin their first three-year educational period January 1, 2004.
(2) Attorney mediators may petition the Commission to align their three-year mediator educational period with their three-year continuing legal education educational period. During the period of realignment, attorney mediators must report a prorated number of continuing mediation hours.

(D) Basic Continuing Mediation Education Reporting Requirements. Within thirty (30) days of presenting a Commission approved basic or continuing mediation education training course, the sponsor of that course must forward a list of attendees to the Commission. This list shall include for each attendee: full name; attorney number (if applicable); residence and business addresses and phone numbers; and the number of mediation hours attended. A

course approved for CME may also qualify for CLE credit, so long as the course meets the requirements of Admission and Discipline Rule 29. For courses approved for both continuing legal education and continuing mediation education, the sponsor must additionally report continuing legal education, speaking and professional responsibility hours attended.

(E) Accreditation Policies and Procedures for CME.

(1) *Approval of courses*. The Commission shall approve the course, including law school classes, if it determines that the course will make a significant contribution to the professional competency of mediators who attend. In determining if a course, including law school classes, meets this standard the Commission shall consider whether:

(a) the course has substantial content dealing with alternative dispute resolution process;
(b) the course deals with matters related directly to the practice of alternative dispute resolution and the professional responsibilities of neutrals;
(c) the course deals with reinforcing and enhancing alternative dispute resolution and negotiation concepts and skills of neutrals;
(d) the course teaches ethical issues associated with the practice of alternative dispute resolution;
(e) the course deals with other professional matters related to alternative dispute resolution and the relationship and application of alternative dispute resolution principles;
(f) the course deals with the application of alternative dispute resolution skills to conflicts or issues that arise in settings other than litigation, such as workplace, business, commercial transactions, securities, intergovernmental, administrative, public policy, family, guardianship and environmental~~.~~; and,
(g) in the case of law school classes, in addition to the standard set forth above the class must be a regularly conducted class at a law school accredited by the American Bar Association.

(2) Credit will be denied for the following activities:

(a) ~~l~~ Legislative, lobbying or other law-making activities.
(b) ~~i~~ In-house program. The Commission shall not approve programs which it determines are primarily designed for the exclusive benefit of mediators employed by a private organization or mediation firm. Mediators within related companies will be considered to be employed by the same organization or law firm for purposes of this rule. However, governmental entities may sponsor programs for the exclusive benefit of their mediator employees.
(c) ~~p~~ Programs delivered by these methods: satellite, microwave, video, computer, internet, telephone or other electronic methods. To be approved courses must provide a discussion leader or two-way communication, classroom setting away from the mediator's offices, opportunity to ask questions, and must monitor attendance.
(d) ~~e~~ Courses or activities completed by self-study.
(e) ~~p~~ Programs directed to elementary, high school or college student level neutrals.

(3) *Procedures for Sponsors*. Any sponsor may apply to the Commission for approval of a course. The application must:

(a) be submitted to the Commission at least thirty (30) days before the first date on which the course is to be offered;
(b) contain the information required by and be in the form approved by the Commission and available upon request or at the Commission's web site: www.in.gov/judiciary/cle; and,
(c) be accompanied by the written course outline and brochure used to furnish information about the course to mediators.

(4) *Procedure for Mediators*. A mediator may apply for credit of a course either before or after the date on which it is offered. The application must:

(a) contain the information required by and be in the form approved by the Commission and available upon request or at the Commission's web site: www.in.gov/judiciary/cle;
(b) be accompanied by the written course outline and brochure used to furnish information about the course to mediators; and,
(c) be accompanied by an affidavit of the mediator attesting that the mediator attended the course together with a certification of the course Sponsor as to the mediator's attendance. If the application for course approval is made before attendance, this affidavit and certification requirement shall be fulfilled within thirty (30) days after course attendance.

(F) Procedure for Resolving Disputes. Any person who disagrees with a decision of the Commission and is unable to resolve the disagreement informally, may petition the Commission for a resolution of the dispute. Petitions pursuant to this Section shall be considered by the Commission at its next regular meeting, provided that the petition is received by the Commission at least ten (10) business days before such meeting. The person filing the petition shall have the right to attend the Commission meeting at which the petition is considered and to present relevant evidence and arguments to the Commission. The rules of pleading and practice in civil cases shall not apply, and the proceedings shall be informal as directed by the Chair. The determination of the Commission shall be final subject to appeal directly to the Supreme Court.
(G) Confidentiality. Filings with the Commission shall be confidential. These filings shall not be disclosed except in furtherance of the duties of the Commission or upon the request, by the mediator involved, or as directed by the Supreme Court.
(H) Rules for Determining Education Completed.

(1) *Formula*. The number of hours of continuing mediation education completed in any course by a mediator shall be computed by:

(a) Determining the total instruction time expressed in minutes;
(b) Dividing the total instruction time by sixty (60); and,
(c) Rounding the quotient up to the nearest one-tenth (1/10).

Stated in an equation the formula is:

$$\text{Total Instruction time (in minutes)} = \text{Hours completed (rounded up the nearest 1/10)} * \frac{}{\text{Sixty (60)}}$$

(2) *Instruction Time Defined.* Instruction time is the amount of time when a course is in session and presentations or other educational activities are in progress. Instruction time does not include time spent on:

(a) Introductory remarks;
(b) Breaks; or
(c) Business meetings.

(3) A registered mediator who participates as a teacher, lecturer, panelist or author in an approved continuing mediation education course will receive credit for:

(a) Four (4) hours of approved continuing mediation education for every hour spent in presentation.
(b) One (1) hour of approved continuing mediation education for every four (4) hours of preparation time for a contributing author who does not make a presentation relating to the materials prepared.
(c) One (1) hour of approved continuing mediation education for every hour the mediator spends in attendance at sessions of a course other than those in which the mediator participates as a teacher, lecturer or panel member.
(d) Mediators will not receive credit for acting as a speaker, lecturer or panelist on a program directed to elementary, high school or college student level neutrals, or for a program that is not approved under Alternative Dispute Resolution Rule 2.5(E).

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Rule 6.1. Case Selection

Pursuant to IC 33-38-10-3(c), upon the filing of a written joint petition and the written consent of a registered private judge, a civil case founded on contract, tort, or a combination of contract and tort, or involving a domestic relations matter shall be assigned to a private judge for disposition.

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These amendments shall take effect January 1, 2009.

The Clerk of this Court is directed to forward a copy of this Order to the Clerk of each Circuit Court in the State of Indiana; Attorney General of Indiana; Legislative Services Agency and its Office of Code Revision; Administrator, Indiana Supreme Court; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Prosecuting Attorney's Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; Indiana Judges and Lawyers Assistance Program; the libraries of all law schools in this state; the Michie Company; and the West Group.

The West Group is directed to publish this Order in the advance sheets of this Court.

The Clerks of the Circuit Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this 23rd day of September, 2008.

Randall T. Shepard

Randall T. Shepard
Chief Justice of Indiana

All Justices concur.