

Circuit Civil Mediation Training

LEARNING OBJECTIVES

At the conclusion of our training, you will have developed a fundamental understanding in the following core areas required for Circuit Civil Mediators, and you will be able to:

(A) ATTORNEYS AND MEDIATION

- (1) Understand the role of litigants' attorneys in the mediation process and the potential for conflicts.
- (2) Understand attorney-client relationship within the context of mediation.
- (3) Understand the need to establish credibility with attorneys and parties.
- (4) Identify and be sensitive to issues of attorneys' fees, fee shifting statutes and contingency fee arrangements.
- (5) Understand the use of private sessions with attorneys.
- (6) Understand the impact on the mediation process of identification of outstanding discovery issues and options for proceeding.
- (7) Understand the difference between mediation under court order and pre-suit or voluntary mediation.

(B) COMMUNICATION SKILLS

- (1) Identify and demonstrate the essential elements for effective listening and responding.
- (2) Identify and demonstrate the essential elements for effective note-taking.
- (3) Identify and demonstrate the essential elements for effective questioning.
- (4) Demonstrate the essential techniques for gathering information.
- (5) Identify and demonstrate appropriate non-verbal communication.
- (6) Identify and demonstrate the appropriate format for recording the understanding of the parties, including use of the appropriate language for persons, dates and financial sums.
- (7) Understand that a mediator shall cause the terms of any agreement reached to be memorialized appropriately and discuss with the parties and counsel the process for formalization and implementation of the agreement.
- (8) Identify legalese and jargon which inhibit the communication process between the mediator and the parties.
- (9) Develop an awareness that people differ in how they make decisions, how they process information and how they communicate.

(C) COMMUNITY RESOURCES AND REFERRAL PROCESS

- (1) Understand and identify when and how to use outside experts effectively or how to assist the parties in determining appropriate community resources.
- (2) Identify situations in which the mediator should suggest that the parties contact independent legal counsel, postpone or cancel mediation or refer the parties to other resources.
- (3) Identify appropriate courses of action when confronted with substance abuse during the mediation session.

(D) CONFLICT RESOLUTION CONCEPTS

- (1) Define and understand the difference between non-litigation methods of dispute settlement, including: negotiation, mediation and arbitration.
- (2) Identify criteria by which parties select a method of dispute settlement for resolving particular disputes and evaluate the strengths and weaknesses of any dispute settlement method.
- (3) Understand and demonstrate effective use of basic principles of negotiation.
- (4) Understand how mediation is an extension of negotiation.
- (5) Contrast mediation with litigation and understand the difference in roles of judges, lawyers, experts, mediators and arbitrators.
- (6) Understand that mediation involves empowerment.

(E) COURT PROCESS

- (1) Understand the route and manner by which a case is referred to mediation.
- (2) Understand the difference between a pre-judgment and post-judgment mediation.
- (3) Explain the consequences of a mediated agreement as well as a failure to reach agreement.
- (4) Identify the state rules, state statutes and local procedures and forms governing circuit civil mediation and understand the applicable portions of each.
- (5) Demonstrate awareness of the American with Disabilities Act (ADA) requirements and strategies for handling situations when faced with disability issues or special needs.
- (6) Know the distinction between circuit civil and county court mediation rules.
- (7) Understand and explain how mediation confidentiality and Chapter 286 (Sunshine Law) impact each other in mediation involving public entities.
- (8) Understand the constraints on confidentiality and be able to identify the exclusions (both as relates to the entire mediation and the separate session).
- (9) Understand mentorship and application for certification requirements.

(F) DIVERSITY ISSUES

- (1) Recognize personal biases, prejudices, and styles which are the product of one's background and personal experiences.
- (2) Identify cultural, racial, ethnic, age, gender, religious and disability issues which may arise in mediation.
- (3) Understand socio-economic, cultural, racial, ethnic, age, gender, religious, sexual orientation and disability issues which may arise in mediation and/or affect the parties' negotiation style, ability or willingness to engage in mediation.
- (4) Identify techniques for mediating cases where there is a language barrier or when a translator participates in the mediation session.

(G) MEDIATION PROCESS AND TECHNIQUES

- (1) Identify the stages and components of the mediation conference.
- (2) Understand and demonstrate the role of the mediator in structuring the mediation conference, such as conducting an opening statement, preparing a party to mediate, maintaining decorum, professionalism, control of the session, structuring and managing the discussion, building on partial agreements, scheduling the time, location and number of conferences, establishing the format of each conference and focusing discussion.
- (3) Understand the importance of demonstrating empathy, building rapport, establishing trust, setting a cooperative tone, demonstrating neutrality and impartiality, demonstrating sympathetic listening and questioning, empowering parties and remaining non-judgmental.
- (4) Identify and demonstrate the characteristics which enhance or undermine the effectiveness of the mediator including, language use, non-verbal communication and eye contact.
- (5) Identify the principles and functions which define the mediator's role and distinguish it from other forms of dispute resolution intervention.
- (6) Identify those procedural elements which must be taken care of prior to the entry of the parties into the mediation room, including seating of parties and set-up of the room.
- (7) Understand that upon commencement of the mediation session, a mediator shall describe the mediation process and the role of the mediator and shall inform the mediation participants that mediation is a consensual process; the mediator is an impartial facilitator without the authority to impose a resolution or adjudicate any aspect of the dispute; and communications made during the process are confidential except where disclosure is required by law.
- (8) Deliver an appropriate opening statement.
- (9) Understand and demonstrate the mediator's role in identifying issues and developing a full understanding of the parties' agendas.

- (10) Frame issues in neutral language.
- (11) Develop a strategic framework for discussing the issues in a dispute.
- (12) Differentiate between issues which are appropriate for mediation and those that are not appropriate.
- (13) Identify individuals who are entitled to participate in the mediation conference as well as those non-parties who may need to be present, including legal parties as well as "parties in interest", for example, best friends, family members, workers' compensation lien holders, guardians ad litem (GALs).
- (14) Identify and demonstrate techniques a mediator may use to assist a party in reconsidering his/her position on a particular proposal.
- (15) Demonstrate when to use various persuasion techniques.
- (16) Identify and demonstrate techniques to obtain closure and deal with unresolved legal issues.
- (17) Understand how to use substantive and procedural issues in the context of mediation.
- (18) Understand and demonstrate how to use separate sessions (caucuses) and how to introduce them to the parties.
- (19) Distinguish the circumstances under which issues are appropriate for discussion in joint session from circumstances which require a separate session.
- (20) Identify appropriate techniques for mediating with multiple parties.
- (21) Identify appropriate techniques for handling a situation where individual(s) present do not have authority to settle.
- (22) Identify appropriate techniques for mediating cases in which one or more parties are not represented by attorneys.
- (23) Identify appropriate techniques for handling difficult situations, (e.g., a party walks out, a party makes personal attacks on another party or mediator, a party is not really engaged in the mediation, a party or attorney is very recalcitrant, a party or non-party is emotionally overwrought or a party appears to be physically ill).

(H) NEGOTIATION DYNAMICS

- (1) Understand the issues of settlement authority, mind set and hidden agendas as they relate to institutional litigants.
- (2) Understand how to mediate with insurance corporate representatives.
- (3) Understand how an insurance carrier assesses its interest in a case.
- (4) Understand the relationship of a defense attorney and his/her client to the client's insurance carrier.
- (5) Recognize common negotiation techniques and tactics and demonstrate how to handle them.
- (6) Understand basic insurance nomenclature.

(I) STANDARDS OF CONDUCT/ETHICS FOR MEDIATORS

- (1) Identify potential ethical dilemmas in the circuit civil mediation context.
- (2) Identify and demonstrate an appropriate course of action when confronted with an ethical dilemma.
- (3) Understand the Florida Rules for Certified and Court-Appointed Mediators (understand courses of action specifically prohibited).
- (4) Understand whether parties involved in a mediation choose to resolve their dispute is secondary in importance to whether the mediator conducts the mediation in accordance with the Florida Rules for Certified and Court-Appointed Mediators.
- (5) Understand the mediator's responsibility to the courts.
- (6) Understand the mediator's responsibility to the parties.
- (7) Understand the mediator's obligations regarding impartiality.
- (8) Understand when a mediator shall adjourn, terminate, cancel or postpone a mediation session.
- (9) Understand the ethical constraints on confidentiality and identify the exclusions both in relation to the entire mediation and the separate session.
- (10) Understand the interplay between other professional standards and the Florida Rules for Certified and Court-Appointed Mediators.
- (11) Understand that a mediator may provide information that the mediator is qualified by training or experience to provide only if such can be done in a manner consistent with the standards of impartiality and the preservation of party self-determination.
- (12) Understand that a mediator shall not offer a personal or professional opinion intended to coerce the parties, unduly influence the parties, decide the dispute, direct a resolution of any issue or indicate how the court in which the case has been filed will resolve the dispute.
- (13) Understand that a mediator may point out possible outcomes of the case and discuss the merits of a claim or defense only if such can be done in a manner consistent with standards of impartiality and preservation of party self-determination.
- (14) Understand that a mediator shall decline an appointment, withdraw or request appropriate assistance when the facts and circumstances of the case are beyond the mediator's skill or experience.
- (15) Understand the mediator's ethical obligations regarding advertising and billing practices.
- (16) Understand a mediator shall respect the roles of other professional disciplines in the mediation process and shall promote cooperation between mediators and other professionals.
- (17) Understand the grievance procedure contained in the Florida Rules for Certified and Court-Appointed Mediators.