

POLICY MANUAL



Nebraska Office of Dispute Resolution Administrative Office of the Courts Nebraska Supreme Court

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THE DUTIES OF THE DIRECTOR

1. DUTIES RELATED TO THE APPOINTMENT OF ADVISORY COUNCIL MEMBERS.

- a. **Advisory Council Vacancies.** Each year, as seats on the Council become vacant and require filling, the Director of the Office of Dispute Resolution may contact directors of various entities to include but not be limited to those listed below in order to solicit nominations. This list shall be revised, updated, and expanded regularly by the Director in consultation with the Council.

1. Better Business Bureau
2. Chamber of Commerce
3. Insurance Association
4. Interchurch Ministries of Nebraska
5. Legal Services Programs and the Center on Legal Services
6. Local Community Action Programs
7. National Association for Advancement of Colored People
8. Nebraska Association of Social Workers
9. Nebraska Commission on Law Enforcement and Criminal Justice
10. Nebraska Community Mental Health Center Association
11. Nebraska County Judges Association
12. Nebraska Department of Health and Human Services
13. Nebraska District Court Judges Association
14. Nebraska Domestic Violence Coalition
15. Nebraska Education Association
16. Nebraska Indian Commission
17. Nebraska Mediation Association
18. Nebraska Latino American Commission
19. Nebraska Psychiatric Association
20. Nebraska Psychological Association
21. Nebraska State Bar Association
22. Private and State schools of social work and psychology
23. Public Counsel
24. State Mediation Centers
25. The Governor's Policy Research Office
26. United Way
27. Urban League
28. Voices for Children
29. All other people and groups who have expressed an interest in serving on the Advisory Council.

- b. **Consecutive terms.** Effective for Council members serving or seated during 2013 and thereafter, each member of the Council may serve consecutive three-year terms, subject to the individual's preference and the consensus of the Council at the end of each term.
- c. **Nomination List.** Based upon nominations from the above groups and upon nominations generated on his or her own, the Director shall compile a list of all potential candidates for each open seat on the Advisory Council.
- d. **Advisory Council Application Form.** The Director may design an information form to be submitted to the Office of Dispute Resolution by each nominee wishing to be considered for the Advisory Council. This form shall request information regarding the nominee's educational and employment background regarding mediation and such other information that the Director deems necessary. The form shall also include a statement to be endorsed by the nominee indicating his or her willingness to serve on the Council. The form shall include a reference to the deadline for the submission of the form.
- e. **Submission of Names to Supreme Court.** If applicable, after the deadline for the submission of forms, the Director shall review the information forms; collect other information on nominees as the Director deems appropriate; and forward recommendations to the full Advisory Council for its consensus on selecting nominees to fill each vacant voting and ex officio seat. These names shall be forwarded to the Supreme Court, and the Director may make specific recommendations regarding the appointments.
- f. **Selection of Ex-officio Members.** With respect to the appointment of non-voting ex-officio members of the Council, mediation center directors will be appointed on a rotating basis. The term of office for the non-voting members shall be two years. Staggered terms shall commence beginning with the January 2006 appointments, with one of those appointees serving a one-time three-year term. The director of the Douglas County District Court Conciliation and Mediation Office shall serve as a non-voting ex-officio member.
- g. **Notification of Appointments.** Upon the selection of the new members to the Advisory Council, the Director shall send out a notice of the appointments to all nominees, both those chosen and not chosen.
- h. **Selection Time Periods.** The Director should initiate the process by July 1 of each year, and complete it by October 1 of each year.
- i. **Diversity of Nominations.** The Director's and Council's recommendations to the Supreme Court should reflect consideration of professional, geographic, social, gender, and ethnic diversity.

2. MEETINGS OF THE ADVISORY COUNCIL.

- a. **Four Scheduled Meetings.** In consultation with the Advisory Council, the Director shall schedule four meetings of the Council for each year. The Director shall obtain a place for each of these meetings, and the Director shall send out a reminder prior to each meeting.

- b. **Minutes of Meetings.** An office staff member or Council recording secretary shall attend the meetings of the Advisory Council and take notes of the meeting. Minutes shall be sent to all members of the Council. A copy of the minutes shall also be kept in the Office of Dispute Resolution.
- c. **Special Meetings.** Whenever it becomes necessary for the Council to meet at a time additional to one of its four regularly scheduled meetings, the Council may ask the Director to obtain a meeting place and to provide notice of the meeting to all members.
- d. **Reimbursement for Meetings.** The Director shall be familiar with the procedures and requirements for the reimbursement of expenses set out in N.R.S. Section 81-1174 to 81-1177. The Director shall assist Advisory Council members in receiving reimbursement for their expenses pursuant to the Dispute Resolution Act by providing the Council with the necessary forms to complete, advising the Council about procedures, and assisting with the submission of the completed requests.
- e. **Task Force Selection.** Whenever the Council considers appointing a Task Force to assist it in carrying out its work, the Director shall assist the Council in finding appropriate candidates for such Task Force.

3. OTHER RESPONSIBILITIES OF THE DIRECTOR.

- a. **Center Formation Information.** The Director shall make information on the centers available statewide by sending notices calling for applications and stating submission deadlines to center organizational leaders.
- b. **Center Formation Encouragement.** The Director shall encourage the formation of mediation centers by making funds available for the creation and support of centers by writing and speaking throughout the state on mediation, and by contacting specific individuals and groups to generate interest in forming a center.
- c. **Center Funding Applications.** The Director shall review all applications for the funding of a center, making recommendations for modification, if necessary. In consultation with the Advisory Council, the Director shall select specific proposed centers for funding. Yearly each center will make applications for funding approval. Should more than one center proposal be submitted for a given area, these additional factors shall be given consideration:
 - 1) Geographical area served
 - 2) Inclusiveness of case types
 - 3) Local and regional involvement
 - 4) Cost effectiveness of services
 - 5) Volunteer involvement
 - 6) Effectiveness of program design
 - 7) Project feasibility

The Council may make recommendations as to weighted areas of consideration of the above factors.

- d. **Reporting System.** The Director shall develop a uniform system of reporting and collecting of statistical data from approved centers along with a consistent

method of evaluating approved centers. To discharge this duty, the Director may consult with outside parties trained in program evaluation and research methodology. The Director may also fund appropriate research evaluating mediation in Nebraska.

- e. **Annual Budget.** The Director shall prepare an annual budget.
- f. **Sliding Scale Fees.** It is a general program policy to encourage the use of mediation. Therefore, fees, when used, should be kept to a level so as not to discourage participation.
 - 1) **Individual.** The Director shall develop and yearly review guidelines for a sliding scale of fees charged by the centers. A sliding scale chart based upon the federal poverty guidelines (released in February of each year), gross household income, and household size shall be distributed to the centers yearly. No person shall be denied services because of an inability to pay. A waiting list for access to no-cost or low-cost mediation services may be used. (Amended 5/15/09 ODR Advisory Council)

Intake staff shall require parties to complete an Income Verification Form to determine fees. Parties should be assured that such information is confidential. Centers are encouraged to request pre-payment for services. (Amended 11/2/07 ODR Advisory Council)

In special circumstances, such as small claims cases that have low associated fees, centers may consider fee adjustment to encourage participation in mediation.
 - 2) **Multiparty.** A center may also charge an hourly fee, negotiated case by case, for multi-party or complex disputes that are likely to require multiple sessions or specialized training.
 - 3) **Businesses.** Fees for businesses and organizations may require a separate fee scale.
 - 4) **Contracts.** Centers may engage in income-producing contracts from public or private sources.
- g. **Trainings.** The Director shall assist in making available at least one basic training for center mediators per year. Advanced training shall also be made available within the State. Professional growth workshops will be encouraged yearly. Such trainings may require a fee or be offered without charge.

- h. **Public Awareness.** The Director shall speak to community groups and write for state and local publications on the dispute resolution process in order to generate greater public awareness and use of the process.
- i. **Other Funding.** The Director shall seek out public and private sources of funding to better carry out the purposes of the Act.

4. APPLICATION FOR CENTER APPROVAL OF FUNDING.

An application for funding by a center must include all the statutory requirements: Plan of operation, objectives, population served, administrative organization, record-keeping procedures, mediator qualifications, annual budget, and proof of non-profit status.

- a. **Application Form.** Completion of a letter requesting funding must be submitted to the Office of Dispute Resolution by the designated deadline.
- b. **Center Forms.** Forms to be used by the centers should be included in the Application, such as Consent to Mediate, Consent to Extend the Statute of Limitations, Information and Confidentiality Statement.
- c. **Budget.** The annual projected budget must identify all salary and expense items. All sources of income must be included.
- d. **Inspection.** A statement of permission for the Director of the Office of Dispute Resolution, or designee, and the State or other Auditor, to inspect all records necessary to verify information provided in the application for the center's approval or required to be submitted in reports to the Office or to verify compliance with the statute or rules must be included in the Application.

5. PROCEDURES FOR APPROVED CENTERS.

All centers must have clearly established procedures in the following areas.

- a. **Permanent Files of Centers.**
Each center must keep a record of each initial contact it receives concerning assistance to resolve a particular dispute. Initial contacts should be classified by the following types:

Dispute between:

- 1) Consumers and sellers
- 2) Neighbors
- 3) Business associates
- 4) Landlord and tenant
- 5) Community groups
- 6) Others

Disputes concerning:

- 1) Child custody, visitation, and support
- 2) Domestic relations other than child custody and visitation
- 3) Juvenile(s)
- 4) Juvenile offense(s)
- 5) Other (describe)

b. **Numbered Case Files.** Each center must have a system for numbering case files which can begin anew each fiscal year. A numbered case file must be started at the time a party requests mediation and the case is opened by the center.

c. **Center Forms and Records.** Each case file must contain all of the following forms and records pertinent to the case:

- 1) Intake form with each participant's name, telephone number and address (including zip code), source of referral, and the number the center assigns to that file.
- 2) Notification forms with time and place of the session, and a list of the participants and mediator to be present.
- 3) Consent To Mediate and Confidentiality Form, signed and dated by every participant. The latest date on the consent forms establishes the date on which the center "accepts the case" for purposes of the suspension of the statute of limitations. The confidentiality statement must include the State mandatory child abuse reporting requirement.
- 4) Consent to extend the tolling of statutes of limitation form, signed and dated by participants, if such time is to exceed sixty days.
- 5) Agreement, or copy of agreement, if reached.
- 6) Closure Form with date of mediation session(s), length of each session, and indication of outcomes.
 - a) Full agreement
 - b) Partial agreement
 - c) No agreement
 - d) Did not meet
 - e) Resolved prior to mediation
 - f) Number of sessions
- 7) Evaluation form to be filled out by participants including at least the following information:
 - a) If participant felt the mediator was neutral
 - b) If participant felt the relationship with the other party had been improved as a result of mediation
 - c) Degree of satisfaction with the mediation process generally
- 8) Records of billing
- 9) Records of payment

- d. **Mediator Training.** Each center must keep a file for each person who mediates cases for that center documenting his or her training and apprenticeship as required by the statute. The date, place, hours, trainer, and topics covered must be included. Also, records of continuing education.
- e. **Mediator Payment.** List number and location of volunteer mediators. If volunteer mediators are reimbursed for expenses, procedures must be stated. If mediators are paid, schedule for paying mediators must be stated. If the center has both volunteer and paid mediators, distinctions must be based upon relevant specialized training and/or experience, must be reasonable, and stated in procedures.
- f. **Center Fees.** Each center must have a standard form explaining its fees which is consistent with the fee guidelines set forth in the Policy Manual.
- g. **Accounting System.** The center must have an accounting system organized so that the use of all funds from the Office of Dispute Resolution is identifiable and documented.

Each center must submit a full audit every year. (Amended 11/2/07 ODR Advisory Council)

- h. **Complaint Procedures.** The center must have a written procedure for handling of complaints and complaint forms which must include but not be limited to the following information:
 - 1) The complainant's name, address, and telephone number (where they can be reached)
 - 2) The names of the participants and mediator, if applicable
 - 3) The date of the mediation session, if applicable
 - 4) The nature of the complaint

Procedures must also indicate the internal review of such complaints. Such complaints must be handled within thirty days of receipt unless exceptional circumstances requires an extension. Complainants must be responded to in writing and informed of their right to request a review by the Office of Dispute Resolution of the center's decision.

- i. **Divorce Policies.** The center must have a written statement of its policies and practices for mediation of marital dissolution, modification of parenting, custody, visitation or other access issues, to include 1) a statement of compliance with the requirement that all mediators for such disputes will have the basic thirty hours of mediation training, an apprenticeship, and an additional thirty hours of training in family mediation, as required by statute; 2) a statement of compliance that affiliates and staff providing specialized ADR facilitation have the statutorily required additional twenty-four hours of training; 3) a statement of compliance that statutorily required screening is being conducted by center staff or affiliates for domestic intimate partner abuse, unresolved parental conflict, child abuse or neglect, other forms of intimidation, or a party's inability to negotiate freely and make informed decisions; and 4) a statement that parties will be informed during the intake process that they will need court approval to get a divorce and that the center strongly advises each of them to consult with an attorney. (Amended 11/2/07 ODR Advisory Council)

6. CENTER REPORTS TO THE OFFICE OF DISPUTE RESOLUTION.

The Centers will report quarterly to the Office of Dispute Resolution. The annual report will be a summation of the quarterly reports in that year. Reporting forms may be supplied by the Office. Information for the reports should include the following:

- a. **Referral sources.**
- b. **Outcomes of cases.**
 - 1) Numbers of initial contacts
 - 2) Numbers of first mediation sessions scheduled
 - 3) Numbers of cases withdrawn before mediation
 - 4) Numbers of cases resolved prior to mediation
 - 5) Number of cases in which participants met and did not reach agreement.
 - 6) Numbers of cases in which participants met and reached partial agreement.
 - 7) Numbers of cases in which participants met and reached full agreement.
- c. **Types of Cases.** State outcomes of cases by type. For each type of case, state how many:
 - 1) Made an initial contact and did not meet
 - 2) Met and reached no agreement
 - 3) Met and reached partial agreement
 - 4) Met and reached full agreement
- d. **Participant evaluations.** Of participants who attended at least one session, how many indicated they felt that:
 - 1) The mediator was neutral
 - 2) Their relationship with the other person(s) improved as a result of mediation
 - 3) That they were satisfied with the process generally
- e. **Costs of sessions.** Include the following information regarding costs of mediation:
 - 1) Average cost per person per mediation session
 - 2) Number of cases accepted for mediation at no fee
 - 3) Number of sessions conducted by volunteer mediators at no reimbursement
 - 4) Average expenses paid volunteer mediators per session
 - 5) Average paid per session to paid mediators, include the total number of cases and amount paid
 - 6) Average cost for court referred cases
- f. **Outreach efforts.** List all activities and publications involving public relations efforts.

7. REPORTING AND APPLICATION CYCLE.

The following dates must be observed when reports and applications/re-applications are submitted to the Office of Dispute Resolution:

June 30	End of Fiscal (and Reporting) Year Application/Re-application Due Center Re-application Reviews
July 15	Fourth Quarter and Annual Reports Due Application/Re-application Approval
September 30	End of First Quarter Reporting Period
October 15	First Quarter Report Due
December 30	End of Second Quarter Reporting Period
January 15	Second Quarter Report Due
March 31	End of Third Quarter Reporting Period
April 15	Third Quarter Report Due

8. GRIEVANCE PROCEDURES.

Complaints may be made directly to a center or to the Office of Dispute Resolution.

- a. **Complaints to a Center.** Each approved mediation center shall adopt written complaint procedures. (See Section 5, h.)
- b. **Complaints to the Office of Dispute Resolution.** Any organization or individual may file a written signed complaint with the Office of Dispute Resolution. The Director shall review the complaint and respond in writing within thirty days. The Advisory Council should be consulted as appropriate.
- c. **Compliance Procedures.** If it is determined by the Director that there has been a failure by a center to comply with the Dispute Resolution Act or with these policies, a notification of such shall be made to the center setting forth a reasonable period of time for voluntary compliance.
- d. **Non-Compliance Procedures.** If a center does not demonstrate compliance within the periods of time set forth in the notification, the matter may be subject to the following procedures: withholding of payment, suspending or terminating award, or any other remedies that may be available.

9. MEDIATOR COMPETENCY.

Ensuring competence and quality in the practice of mediation is an essential responsibility of the centers. There are many factors involved in achieving competence and multiple paths can be taken to ensure the highest quality of service. The areas identified below contribute to mediator competency. Each center must have written policies and procedures in each of these areas that meet minimum state requirements. Currently revised procedures must clearly identify these areas and be submitted to the Office of Dispute Resolution upon annual re-application.

- a. **Recruitment and Selection.** Each center must regularly assess its mediator needs and recruit accordingly. The application process must distinguish between types of trainee applicants: 1) those applying for the volunteer internship program in order to mediate with the center; 2) those who are valued supporters/referral

sources/program developers; and 3) those requesting the training independently of the center. Application procedures should be clear and distinct to each type. Scholarship availability and procedures should be defined.

- b. **Training.** Complete records on mediator training must be kept by the center. In addition to the statutory or program training requirements, records for continuing education and refresher courses must also be kept.

Continuing education requirements must be at least eight hours or two sessions per year or sixteen hours in two years beginning in the first full calendar year following the trainee's basic mediation training. Centers may grant credit for additional training, workshops, presentations, conferences, in-service programs, books, videos, and other appropriate and relevant learning experiences. Trainees must be informed of the requirement before and during their internship. Certified mediators are also required to have continuing education. Consequences for non-compliance must be stated and should include non-assignment of cases and/or non-certification.

If an intern has not mediated within a year of training, the center must have a policy regarding case assignment and refresher requirements.

Training and continuing education requirements for Parenting Act mediators shall comply with the most recently approved State Court Administrator policies. (Amended 5-15-09 ODR Advisory Council)

- c. **Performance.** Centers should try whenever possible to assign a recently trained mediator within three months of basic mediation training. Mediators in the volunteer internship program must finish within three years unless there are special circumstances and the center and intern both approve an extension.
- d. **Supervision/Certification.** Mediators in the internship program must be supervised by an experienced mediator at least three times. Centers should have procedures for selecting and preparing supervising mediators. Interns must receive oral or written feedback for at least three sessions based on the standard skills competency checklist. Mediators must receive party evaluation feedback and be encouraged to do self-assessments.

Center certification procedures must be written and clearly stated to the trainee upon application to the internship program.

- e. **Grievance/Dismissal.** Centers must have a policy regarding the handling of complaints relating to mediator competency including procedures for disciplinary actions or dismissal.