

ADR Association of Barbados, Inc.

CERTIFIED MEDIATOR

June, 2005

CERTIFIED MEDIATOR

INTRODUCTION

Mediation is a process of intervention in a dispute or negotiation by an impartial third party who has no decision-making power. The third party assists disputing parties in voluntarily reaching their own mutually acceptable settlement of issues in dispute by structuring the negotiation, maintaining the channels of communication, assisting each party to articulate their needs, identifying the issues, and assisting the parties in creating alternative ideas to resolve the dispute.

The ADR Association of Barbados has obtained recognition under the Federal Trade Marks Act for the designations Certified Mediator. All other groups and individuals are prohibited from adopting or using any of these marks or any marks that might be mistaken for these marks without the consent of The ADR Association of Barbados.

The Certified Mediator designation has been established to recognize a "generalist competence," the goal being to assist the public in finding qualified mediators. The ADR Association of Barbados recognizes that specific additional skills and competencies may be necessary for mediation in specific areas such as family and multi-party mediation.

In order to ensure that a high, consistent set of standards is met by the persons entitled to use this designation, the Board of Directors of The ADR Association of Barbados has established general principles, a set of criteria, and a protocol to be used in assessing the eligibility of a candidate for the designation and for the granting of the designation.

GENERAL PRINCIPLES

A member of The ADR Association of Barbados, who meets the standards required of a Certified Mediator, may apply for the designation on the form prescribed by The ADR Association of Barbados.

The following process is required to qualify an applicant for designation:

- i. Satisfactory completion of the educational and practical experience and skills assessment requirements; and
- ii. Review and approval by the ADR Association of Barbados Review Committee and ratification by the Board of Directors; and
- iii. Review and approval by The ADR Association of Barbados's Accreditation Committee and ratification by The ADR Association of Barbados's Board of Directors.

Each successful applicant is required to complete a pledge to abide by The ADR Association of Barbados's Code of Ethics.

The designation is awarded by The ADR Association of Barbados Inc. and is subject to renewal or revocation in accordance with the rules established by The ADR Association of Barbados Inc .

The certificate presented to a successful candidate remains at all times the property of The ADR Association of Barbados Inc.

CRITERIA

Definitions:

CERTIFIED MEDIATOR ACCREDITATION COMMITTEE (CMAC): is appointed by the Board of Directors of the ADR Association of Barbados. (hereinafter referred to as the "Association") to review and approve recommendations for accreditation as a Certified Mediator by the Accreditation Committee and to review and approve mediation training and competency assessment programs to ensure national consistency. The Committee shall be comprised of no fewer than three (3) Certified Mediators.

CERTIFIED MEDIATOR ACCREDITATION COMMITTEE (CMAC): is appointed by The ADR Association of Barbados and will comprise of no fewer than three (3) mediators, with balanced representation from qualified practitioners, academic, and researchers, and at least one mediation trainer.

QUALIFYING MEDIATOR: Certified Mediators, or persons otherwise deemed qualified, by the CMAC and appointed by that body to carry out the function.

In appointing a Qualifying Mediator, the CMAC should consider the following guidelines:

1. Has approximately forty (40) hours of mediation theory and skills training, received through recognized training programs, and
2. Has approximately 16 hours of mediation practice.

COMPETENCY ASSESSMENT PROGRAM: is a program designed to assess the competencies of mediation practitioners as set out in Appendix "A."

The following criteria and conditions must be met by an applicant:

I. EDUCATION

- a. Completion of at least forty (40) hours mediation theory and skills training in mediation training programs approved by The ADR Association of Barbados Inc.

OR

- b. Where the CMAC agrees by majority that the applicant has satisfied or exceeded the above through proven skills and competency, longevity in practice and recognition and recommendation by peers, the educational requirements listed above may be waived. The decision of the CMAC must be supported by documented reasons for the recommendation.

II. PRACTICAL EXPERIENCE

Conducted at least four (4) mediations with the applicant having been the sole mediator or the mediation chairperson in at least two (2) of those mediations. Furthermore, at least two (2) of the mediations conducted must have been fee paid mediations (i.e. the mediator has been remunerated either by fee or by salary for services rendered as mediator).

III. SKILLS ASSESSMENT

Demonstrated competency in the process of mediation in the areas outlined in Appendix "A" as determined through:

1. Observation and approval by a Qualifying Mediator through one or more of the following: co-mediation, practicum, role playing, video-taped mediation, or other processes approved by The ADR Association of Barbados.
OR
2. Successful completion of a competency assessment program approved by The ADR Association of Barbados.
OR
3. An interview between the applicant and the CMAC;
OR
4. Any other means of assessing an applicant's competency in the process of mediation, proposed by the applicant or the CMAC and approved by The ADR Association of Barbados.

IV. WAIVER

Notwithstanding the above, where the CMAC determines that the applicant has satisfied or exceeded I, II, and III above through proven skills and competency, longevity in practice, and recognition and recommendation by peers, the requirements listed above may be waived. The decision of the CMAC must be supported by documented reasons for the recommendation.

V. PLEDGE

The applicant must pledge to comply by The ADR Association of Barbados's Code of Ethics.

VI. MEMBERSHIP

The Mediator must be a member of good standing of the ADR Association of Barbados Inc.

VII. LENGTH OF DESIGNATION

The "Certified Mediator" designation must be renewed every three (3) years.

- a. Completion of a Renewal Application;
AND
- b. Renewed Pledge;
- c. At least twenty-four (24) hours of continuing education approved by the ADR Association of Barbados for that purpose.

The "Certified Mediator" designation will not be renewed where the applicant has breached the Pledge.

PROTOCOL

1. The ADR Association of Barbados invites/accepts applications from those members who believe they possess the standards required of a Certified Mediator.
2. The CMAC shall recommend to the ADR Association of Barbados all those applicants who have qualified as candidates.
3. The Board shall consider and approve those candidates it deems qualified, and recommend them to the CMAC with the following minimum information:
 - i. Candidate's application (on prescribed form), and
 - ii. Candidate's pledge (on prescribed form).
4. Each application shall be considered by the ADR Association of Barbados Inc... Each member of the CMAC will consider the information submitted on a candidate, may discuss such information with other members of the Committee if necessary, and shall vote on each candidate using the prescribed ballot form.
5. A candidate who receives a majority of the votes cast in favor shall be recommended to The ADR Association of Barbados's Board of Directors for the designation Certified Mediator.
6. All candidates recommended to The ADR Association of Barbados's Board of Directors by the CMAC shall be considered by the Board at its next regularly scheduled meeting or by mail ballot vote of the Board.

VOTING

Any person who also sits on the CMAC and has voted on any candidate at that level must refrain from voting on that candidate as a member of The ADR Association of Barbados Board.

APPENDIX "A" - COMPETENCIES IN MEDIATION

The following areas will form the basis of the skills assessment.

- a. Ability to describe to the disputants the importance of confidentiality in the mediation process and how that will be maintained;
- b. Ability to listen actively;
- c. Ability to question the parties effectively and get the facts and perceptions out on the table;
- d. Ability to deal with complex factual material;
- e. Ability to analyze problems, identify and separate the issues involved, and frame these issues for resolution or decision-making;
- f. Ability to use clear, neutral language in speaking and in writing;
- g. Sensitivity to strongly felt values of the disputants, including gender, ethnic, and culture differences;
- h. Ability to treat the parties equally and fairly;
- i. Commitment to honesty, dignified behavior, respect for the parties, and ability to create and maintain control of a diverse group of disputants;
- j. Ability to identify and separate the mediator's personal values from issues under consideration;
- k. Ability to understand and deal with power imbalances;
- l. Ability to preserve parties' autonomy;
- m. Ability to understand the negotiation process and the elements of effective negotiation;
- n. Ability to earn trust and develop rapport;
- o. Ability to uncover parties' needs and interests through questioning;
- p. Ability to screen out non-mediatable issues;

- q. Ability to help parties invent creative options;
- r. Ability to help the parties identify principles and criteria that will guide their decision-making;
- s. Ability to help the parties assess their non-settlement alternatives;
- t. Ability to help the parties make their own informed choices; and
- u. Ability to help the parties assess whether their agreement can be implemented.

COMPETENCIES IN MEDIATION

(Adapted from the National Education Committee of the Arbitration and Mediation Institute of Canada,
Nov. 30, 1999)

The listing below is not an exhaustive listing of competencies and is intended as a guideline of generally recognized desirable qualities for competent mediators practicing in a commercial environment.

Administrative Skills

General Definition:

The ability to organize and conduct the practice of mediation in an efficient and effective manner.

- a. Ability to organize and maintain office systems :
 - appointment system
 - correspondence system
 - engagement file system with monitoring feature
 - time log, billing, and disbursements receivable system
- b. Ability to work within the system/rules governing the accepting and handling of engagements:
 - records details of appointment (terms, conditions, and fees)
 - confirms appointment (engagement letter or contract)
 - ensures all pertinent correspondence, sent and received, is provided to both parties
 - demonstrates a clear understanding of the applicable Rules and Ethics
- c. Ability to allocate time, effort, and other resources:
 - expeditiously reviews and deals with documents and information received
 - develops an overall perspective of the engagement
 - draws up timetable for dealing with preparatory matters and the conduct of the mediation

- d. Ability to organize the required needs of the mediation:
 - adequacy of session room to accommodate the parties and others
 - capability to provide privacy for private consultations and caucusing
 - determining suitability of the location in terms of minimizing external distractions or interruptions
 - capability of session accommodation facility to meet special needs of participants
- e. Ability to bring the engagement to completion
 - has a good understanding of closure techniques and the settlement process
 - understands the importance of working co-operatively to draft the memorandum of understanding/settlement agreement
 - submits fee billing in accordance with terms of engagement or within a reasonable time

Procedural Skills

General definition:

Ability to recognize the nature of the dispute and establish clear understandings, concerning the process, with and between the parties

- a. Ability to determine legitimacy and jurisdiction
 - reviews contracts between the parties (if they exist)
 - ensures the issues in dispute are covered by the mediation clause or are suitable for mediation
 - determines that he/she possesses adequate knowledge of the business or industry encompassing the dispute
 - ensures there is no reason for parties to challenge the appointment
 - ensures that the appointment is not inconsistent with the applicable laws or institutional rules
- b. Ability to establish clear understandings
 - clearly explains the role of the mediator
 - clearly defines and explains the mediation process
 - emphasizes the "mutually agreed to solution principle"
 - emphasizes the "rights of the parties to withdraw"
 - emphasizes the "confidentiality principle" and explains its limitations
 - determines that those persons, who hold the decision-making power, will be at the table
 - reviews the engagement contact/agreement to mediate
 - in cooperation with the parties, estimates time that will be required for the mediation
 - formalizes the engagement
- c. Ability to supervise the preliminary meeting
 - supervises conduct of the meeting

- explains the purpose and content of the meeting
 - brings the parties to agreement on procedural matters
- d. Ability to deal with preliminary matters
- holds preliminary meeting if required or requested
 - provides assistance to the parties in preparing for the mediation
 - determines if legal counsel, witnesses, experts, or other parties will be involved
 - ensures all parties have a clear understanding of how the mediation session will be conducted and settlement effected
 - ensures all necessary procedural steps have been completed

Relationship Skills

General Definition:

The ability to instill and maintain a positive relationship and good communication

- a. Ability to maintain a positive relationship
- acts with courtesy, respect, and patience and encourages the parties to do the same
 - separates mediator's personal values from the issues of the mediation
 - earns trust
 - builds rapport
 - compliments progressive behavior
 - indicates empathy for the issues
 - does not pre-judge the parties on the issues
 - is modest in attitude held towards others
 - exhibits sensitivity to strongly held values of the disputants, including ethnic, gender, and cultural differences
 - devotes appropriate care and attention towards the parties
- b. Ability to listen effectively
- listens to both parties in an passive and active manner
 - exhibits an understanding of the importance of body language to the listening process
 - intervenes selectively to obtain clarification, assist in understanding, or maintain order
 - exhibits patience and does not interrupt except in the most serious circumstances
- c. Ability to speak effectively
- uses clear diction and collateral body language
 - asks succinct questions when necessary
 - is direct but not intimidating
 - speaks in a clear audible voice
 - uses simple language
 - utilizes terminology that is common to the parties' industry or way of life

- d. Ability to maintain a conducive atmosphere during the session
 - uses civil language
 - permits humor which is beneficial to the process and non-offensive
 - displays understanding of the factual material and submissions
 - puts parties and witnesses/collaborating presenters at ease
 - avoids distracting body movements or facial expressions
 - discourages an excessively adversarial climate
 - shows empathy

Facilitation Skills

General definition:

Ability to conduct the mediation session using fair, flexible, and effective procedures, skills, and techniques

- a. Ability to conduct a fair session
 - maintains neutrality and impartiality
 - understands the nature of power imbalances and how to deal with them
 - treats parties' fairly and equally
 - preserves parties' autonomy
 - allows each party an opportunity to examine witnesses/collaborating presenters
 - allows parties to make objections and respond fully to objections
 - allows parties adequate time to deal with surprises
 - deals expeditiously with parties' questions on procedural matters
 - keeps interruptions to a minimum
 - imparts and encourages courtesy and respect
 - accepts criticism in a constructive manner
- b. Ability to promote an assertive tone
 - speaks in an assertive manner
 - encourages the parties to conduct themselves in an assertive manner
 - assists the deliberations by rephrasing accusatory or aggressive statements into an assertive form
- c. Ability to deal with high emotion
 - recognizes the need for and advantage of venting
 - calls a recess to diffuse negative circumstances of high emotion
 - holds a caucus to deal with severe negative circumstances of high emotion
- d. Ability to organize and analyze data
 - develops an overall perspective of the engagement
 - understands the sequence and nature of events contributing to the dispute
 - exhibits the ability to deal with complex factual material
 - organizes data into a logical format
 - determines the most effective and efficient way to utilize the data to complement the mediation process

- utilizes ancillary tools such as flip charts and white boards to assist understanding
- e. Ability to deal with the issues
- possesses an adequate knowledge of the business/industry/way of life related to the dispute
 - assists the parties to clarify and identify the issues
 - isolates those issues that are of no or little relevance
 - separates the parties claims and issues
 - assists the parties to establish an objective methodology to evaluate claims
 - reconstructs the issues in terms that will assist understanding
 - screens out non-mediatable issues
- f. Ability to surface needs and interests
- exhibits an understanding of the importance of surfacing needs and interest and conveys this importance to the parties
 - exhibits an ability to identify symptoms
 - asks probing questions directed to uncover potential needs and interests
 - asks open ended questions directed to uncover potential needs and interests
 - encourages candid responses
 - holds caucuses focused on uncovering needs and interests
- g. Ability to advance the process
- empowers the parties to own and actively participate in the process
 - separates the people from the problem
 - assists parties to maintain focus and momentum
 - assists the parties to evaluate submissions and the relevant material
 - is open and flexible to suggestions and ideas presented by the parties
 - assists the parties to generate creative options
 - assists the parties to evaluate their positions using BATNAs and Reality Checks
 - assists parties to make their own informed choices
 - utilizes appropriate tools and techniques to break impasse, achieve understanding, and steer the process to settlement
- h. Ability to bring closure and achieve settlement
- recognizes the optimum moment when the parties express a desire to deal/compromise
 - assists the parties to bargain a solution
 - utilizes appropriate tools and techniques to achieve closure
 - assists the parties to move from closure to settlement
 - assists the parties to asses whether their proposed settlement terms can be implemented
 - assists the parties/their advisors to draft their memorandum of understanding /settlement agreement

