

# **State Court Administrator Guidelines Relating to Oregon Judicial Department Court-Connected Mediator Qualifications Rules Section 3.2 Basic Mediation Curriculum**

A basic mediation curriculum should include instruction to help the trainee:

1. Gain an understanding of conflict resolution and mediation theory, including instruction on:
  - a. Conflict theory;
  - b. Dispute resolution systems;
  - c. The evolution of mediation as a practice; and
  - d. Theories regarding the steps or phases of a mediation and transitions from one phase to another.
  
2. Effectively prepare for mediation, including instruction on:
  - a. Case management models so that the trainee might gain a general awareness of the ways that mediations are handled in various courts and programs that the trainee might encounter;
  - b. Assessing disputants and conflicts to ensure that the matter is within the mediator's skill and ability;
  - c. Structuring the process to ensure that it is appropriate for that particular matter;
  - d. The use of joint session and caucus-based models of mediation;
  - e. Helping parties, via premediation communications, understand the mediation process including its potential benefits and its limitations;
  - f. Helping parties understand the mediator's role and the value of parties obtaining independent legal advice;
  - g. Use of premediation agreements; and
  - h. The mediator's role in ensuring party self-determination with respect to both the process and the outcome of the mediation. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes a free and informed choice to agree or not agree.
  
3. Create a safe and comfortable environment for the mediation, including instruction on:
  - a. Making opening statements, setting the tone, and explaining the process; and
  - b. Establishing trust and respect.

4. Facilitate effective communication between the parties and between the mediator and the parties, including instruction on:
  - a. Techniques that encourage effective listening, such as active listening, clarifying, reframing, paraphrasing, body language, open-ended questions, empathy, and validation;
  - b. Legal and practical aspects of candor and confidentiality in mediation;
  - c. Cross-cultural and diversity awareness; and
  - d. Dealing with strong emotions and interpersonal conflict.
5. Use techniques that help the parties solve problems and seek agreement, including instruction on:
  - a. Creating a climate conducive to resolution or problem solving;
  - b. Identifying and distinguishing between positions and underlying interests;
  - c. Identifying, prioritizing, and assessing options including BATNA analysis; and
  - d. Techniques for breaking an impasse.
6. Conduct the mediation in a fair and impartial manner, including instruction on:
  - a. Maintaining mediator impartiality;
  - b. Mediator confidentiality;
  - c. Impartial regard; and
  - d. The mediator's duties with respect to assessing and responding to any potential conflicts of interest.
7. Understand mediator confidentiality and ethical standards for mediator conduct adopted by Oregon and national organizations.
8. Conclude a mediation and memorialize understandings and agreements, including:
  - a. Elements of an agreement;
  - b. Instruction on the mediators' appropriate role in these activities; and
  - c. Any postmediation follow-up.