

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

JUL 01 1996

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Alvin Engel
Clerk

IN THE MATTER OF THE ADOPTION OF A)
TEMPORARY EMERGENCY RULE TO BE)
ADDED TO SDCL 25-4 RELATING TO)
THE ESTABLISHMENT OF FAMILY LAW)
MEDIATION STANDARDS)

RULE 96-7

Pursuant to the Court's order of July 1, 1996, directing the entry of a temporary emergency rule relating to the establishment of Family Law Mediation Standards, it is

ORDERED that the following new rule, to be added to SDCL 25-4, be and it is hereby adopted to read in its entirety as follows:

25-__-__. Minimum Qualifications for Family Court Mediators. To be eligible as a court appointed mediator under SDCL 25-4-56, a mediator must have the following minimum qualifications:

- (1) A mediator must file an approved application on the prescribed form with the presiding judge for the circuit or circuits in which the mediator will conduct mediations. See prescribed form attached as Exhibit A.
- (2) A mediator must have a minimum of forty (40) hours training and apprentice with an experienced mediator for at least three mediation sessions. In place of forty (40) hours training and apprenticeship, a person may, with court approval, qualify as a mediator if that person has had five year experience in mediating custody and visitation issues with a minimum of twenty (20) mediations during that period. A mediator must have competence in the following areas:
 - (a) general knowledge of the South Dakota court system and its procedures in contested family matters;

- (b) general knowledge of South Dakota family law, especially as applied to custody and visitation issues;
 - (c) knowledge of child development and specifically the impact of divorce or separation on family members;
 - (d) knowledge of resources available in the state to which the parties and the children can be referred for assistance;
 - (e) knowledge of interviewing and mediation techniques applicable to the family setting.
- (3) A mediator must be committed to and participate in continuing education courses.

25-4-__ . Conduct of Family Court Mediators.

Mediators are expected to conduct themselves by the highest ethical standards. Mediators should conduct themselves and mediations according to the following general principles:

- (1) A mediator should recognize that mediation is based on participation and self-determination by the parties. A mediator shall conduct the mediation process fairly, diligently, impartially and in a manner consistent with assisting the parties in reaching a voluntary, uncoerced agreement on the issues outstanding between them.
- (2) A mediator shall fully disclose to all parties involved in the mediation any actual or potential conflicts of interest. A mediator shall not accept or shall withdraw from any mediation in which the mediator has reason to believe he or she cannot conduct the mediation in an impartial manner. If after full disclosure of an actual or potential conflict of interest to the parties, the mediator shall withdraw from the mediation if request by any party to do so.
- (3) A mediator should maintain confidentiality at all times except as provided by law or court order. A mediator may otherwise disclose information regarding the mediation only with the expressed consent of the parties.
- (4) A mediator shall fully disclose to the parties and explain the basis of compensation, fees, and other charges to the parties. This disclosure should occur at the first meeting of the mediator and the parties.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 1996.

DATED at Pierre, South Dakota, this 1st day of July, 1996.

BY THE COURT:



Robert A. Miller, Chief Justice

ATTEST:


Clerk of the Supreme Court
(SEAL)

Exhibit A.

**MEDIATOR APPLICATION FORM
UNIFIED JUDICIAL SYSTEM OF SOUTH DAKOTA**

_____ **CIRCUIT COURT**

Name: _____

Address: _____

Day time Phone: _____

Instructions: Please complete the following questionnaire as specified under each section. If additional space is needed, attach a sheet for each area making sure to indicate which section of the questionnaire to which you are responding. This form must be filed with the Presiding Judge for each circuit in which you intend to participate in court appointed mediation.

1) Provide your professional background including degree(s), certificate(s), practice specialization(s), years of experience and special training :

2) Provide a full and complete disclosure of all professional employment experiences whether in the field of mediation or in any other field:

3) Provide complete information regarding any training, seminars, work shops, etc., you deem pertinent to mediation:

4) Provide the number of mediations in which you have been involved giving approximate dates of those mediations if available. Please indicate how many of the mediations were successful.

5) Describe methods of mediation you have used and time required to conduct a typical mediation:

6) Please describe how fees and costs are calculated for completion of a typical mediation:

7) Please describe the requirements for payment of fees:

I am aware of and agree to abide by the principles and guidelines set out in the Interim Standards for mediators as promulgated by the Supreme Court of South Dakota.

Signature

Date

NOTE: This form must be updated as changes to the information occur or at least annually.

Approved:

Presiding Circuit Judge