

Serial: 96585

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99026-SCT

**FILED** *Appellant*

JUN 20 2002

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

*Appellee*

v.

***RE: AUTHORIZATION OF COURT  
ANNEXED MEDIATION IN  
CHANCERY, CIRCUIT AND COUNTY  
COURTS***

**ORDER**

This matter is before the Court en banc on Petition of Court Annexed Mediation Committee and Alternative Dispute Resolution Section, The Mississippi Bar seeking extension of the Court Annexed Mediation program by amending Rule XIII of the Court Annexed Mediation Rules for Civil Litigation and the adoption of a new Rule XV establishing standards of conduct for mediators. Having considered the petition, the Court finds that such amendments to the Court Annexed Mediation Rules, with certain revisions, as set forth in Exhibits "A" and "B" to this order, will promote the fair and efficient administration of justice.

IT IS THEREFORE ORDERED that the petition is granted, with modification as set forth herein. Rule XIII of the Court Annexed Mediation Rules for Civil Litigation is hereby amended as set forth in Exhibit "A" hereto, and a new Rule XV is adopted, as set forth in Exhibit "B" hereto.

IT IS FURTHER ORDERED that the Clerk of this Court shall spread this Order upon the minutes of the Court and shall forward a true certified copy hereof to West Publishing Company for publication in the next edition of the *Mississippi Rules of Court* and in the *Southern Reporter, Second Series, (Mississippi Edition)*.

SO ORDERED, this the 17<sup>th</sup> day of June, 2002.

  
WILLIAM L. WALLER, JR., JUSTICE,  
FOR THE COURT

EASLEY, J. WOULD DENY  
GRAVES, J. NOT PARTICIPATING

**EXHIBIT "A" TO ORDER**

**COURT ANNEXED MEDIATION RULES  
FOR CIVIL LITIGATION**

**XIII. SUSPENSION AND TERMINATION OF THE PLAN**

Unless extended by order of the Supreme Court, this plan will expire on December 31, 2004 ~~2002~~. The plan may be suspended or terminated by the Supreme Court upon a determination by the Court that there is an inadequate number of qualified mediators available to meet the demand without undue delay in the disposition of cases, or for such other reason as the Court may deem appropriate.

[Amended effective June 27, 2002.]

**EXHIBIT "B" TO ORDER**  
**COURT ANNEXED MEDIATION RULES**  
**FOR CIVIL LITIGATION**

**XV. STANDARDS OF CONDUCT FOR MEDIATORS**

The following standards shall apply to and govern the conduct of mediators conducting mediation pursuant to these Rules.

**Comment**

These standards are drawn from Model Standards of Conduct for Mediators promulgated by the American Arbitration Association and the Alternate Dispute Resolution Section of the American Bar Association. Certain adjustments have been made in the Model Standards to conform this Rule XV to the text and practices set forth in the other sections of these Court Annexed Mediation Rules for Civil Litigation.

**A. Self-Determination: A Mediator Shall Recognize that Mediation is Based on the Principle of Self-Determination by the Parties.**

Self-determination is the fundamental principle of mediation. It requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement. Having complied in good faith with any order entered under Rule III, any party may withdraw from mediation at any time.

**Comments**

The mediator may provide information about the process, raise issues, and help parties explore options. The primary role of the mediator is to facilitate a voluntary resolution of a dispute. Parties shall be given the opportunity to consider all proposed options.

A mediator cannot personally ensure that each party has made a fully informed choice to reach a particular agreement, but is a good practice for the mediator to make the parties aware of the importance of consulting other professionals, where appropriate, to help them make informed decisions.

Mediation under these rules is conducted in association with proceedings pending in the courts of the state, pursuant to orders of the courts in which the subject cases are pending as described in Rule III. Mediation is commenced by an order of the assigning court, which must be complied with in good faith. Failure to abide by such an order is subject to sanctions under

Rule VI. Therefore, prior to withdrawing from or terminating a mediation, the parties must have fully performed her or his obligation under such an order and under the rules.

**B. Impartiality: A Mediator shall Conduct the Mediation in an Impartial Manner.**

The concept of mediator impartiality is central to the mediation process. A mediator shall mediate only those matters in which she or he can remain impartial and evenhanded. If at any time the mediator is unable to conduct the process in an impartial manner, the mediator is obligated to withdraw.

**Comment**

A mediator shall avoid conduct that gives the appearance of partiality toward one of the parties. The quality of the mediation process is enhanced when the parties have confidence in the impartiality of the mediator. When mediators are appointed by a court, the appointing court shall make reasonable efforts to ensure that mediators serve impartially.

A mediator should guard against partiality or prejudice based on the parties' personal characteristics, background or performance at the mediation.

**C. Conflicts of Interest: A Mediator shall Disclose All Actual and Potential Conflicts of Interest Reasonably Known to the Mediator.**

After disclosure, the mediator shall decline to mediate unless all parties the mediator, or the court has assigned the mediator by order. The need to protect against conflicts of interest also governs conduct that occurs during and after the mediation.

A conflict of interest is a dealing or relationship that might create an impression of possible bias. The basic approach to questions of conflict of interest is consistent with the concept of self-determination. The mediator has a responsibility to disclose all actual and potential conflicts that are reasonably known to the mediator and could reasonably be seen as raising a question about impartiality. If all parties agree to mediate after being informed of conflicts, the mediator may proceed with the mediation. If, however, the conflict of interest casts serious doubt on the integrity of the process, the mediator shall decline to proceed, and the parties shall immediately notify the court that the mediator has so declined.

A mediator must avoid the appearance of conflict of interest both during and after the mediation. Without the consent of all parties, a mediator shall not subsequently establish a professional relationship with one of the parties in a related matter, or in an unrelated matter

under circumstances which would raise legitimate questions about the integrity of the mediation process.

### Comments

A mediator shall avoid conflicts of interest in recommending the services of other professionals. A mediator may make reference to professional referral services or associations which maintain rosters of qualified professionals.

Potential conflicts of interest may arise between administrators of mediation programs and mediators and there may be strong pressures on the mediator to settle a particular case or cases. The mediator's commitment must be to the parties and the process. Pressure from outside of the mediation process should never influence the mediator to coerce parties to settle.

Although it is desirable that all parties accept the mediator, when the mediator is designated by order of the court under Rule III, the mediator shall conduct the mediation, unless she or he has a conflict of interest, or is relieved by the court.

### **D. Competence: A Mediator shall Mediate Only When the Mediator has the Necessary Qualifications to Satisfy the Reasonable Expectations of the Parties.**

Any person may be selected as a mediator, provided that the parties are satisfied with the mediator's qualifications. Training and experience in mediation, however, are often necessary for effective mediation. A person who offers herself or himself as available to serve as a mediator gives parties and the public the expectation that she or he has the competency to mediate effectively. In court-connected or other forms of mandated mediation, it is essential that mediators assigned to the parties have the requisite training and experience.

### Comment

Mediators should have information available for the parties regarding their relevant training, education and experience.

The requirements for appearing on the list of mediators must be made public and available to interested persons.

When mediators are appointed by a court, the appointing court shall make reasonable efforts to ensure that each mediator is qualified for the particular mediation.

**E. Confidentiality: A Mediator shall Maintain the Reasonable Expectations of the Parties with Regard to Confidentiality.**

The mediator shall follow the requirements of Rule VII regarding confidentiality. The reasonable expectations of the parties with regard to confidentiality shall be met by the mediator. The parties' expectations of confidentiality depend on the provisions of Rule VII, the circumstances of the mediation and any agreements they may make. The mediator shall not disclose any matter that a party expects to be confidential unless given permission by all parties or unless required by rule, law or other public policy.

**Comment**

Within the limitations of Rule VII, the parties may make their own rules with respect to confidentiality, or other accepted practice of an individual mediator, or the appointing court may dictate a particular set of expectations. Since the parties' expectations regarding confidentiality are important, the mediator should discuss these expectations with the parties.

If the mediator holds private sessions with a party, the nature of these sessions with regard to confidentiality should be discussed prior to undertaking such sessions.

In order to protect the integrity of the mediation, a mediator should avoid communicating information about how the parties acted in the mediation process, the merits of the case, or settlement offers. The mediator may report, if required, whether parties appeared at a scheduled mediation.

Where the parties have agreed that all or a portion of the information disclosed during a mediation is confidential, the parties' agreement should be respected by the mediator.

Confidentiality should not be construed to limit or prohibit the effective monitoring, research, or evaluation of mediation programs by responsible persons. Under appropriate circumstances, researchers may be permitted to obtain access to the statistical data and, with the permission of the parties, to individual case files, observations of live mediation, and interviews with participants.

**F. Quality of the Process: A Mediator shall Conduct the Mediation Fairly, Diligently, and in a Manner Consistent with the Principle of Self-Determination by the Parties.**

A mediator shall work to ensure a quality process and to encourage mutual respect among the parties. A quality process requires a commitment by the mediator to diligence and procedural fairness. There should be adequate opportunity for each party in the mediation to participate in the discussions. The parties decide when they will reach an agreement or terminate a mediation.

### **Comment**

A mediator may agree to mediate only when he or she is prepared to commit the attention essential to an effective mediation.

Mediators should only accept cases when they can satisfy the reasonable expectations of the parties concerning the timing of the process. A mediator should not allow a mediation to be unduly delayed by the parties or their representatives.

The presence or absence of persons at a mediation depends on the agreement of the parties and the mediator. The parties and mediator may agree that others may be excluded from particular sessions or from the entire mediation process.

The primary purpose of a mediator is to facilitate the parties' voluntary agreement. This role differs substantially from other professional-client relationships. Mixing the role of a mediator and the role of a professional advising a client is problematic, and mediators must strive to distinguish between the roles. A mediator should, therefore, refrain from providing professional advice. Where appropriate, a mediator should recommend that parties seek outside professional advice, or consider resolving their dispute through arbitration, counseling, neutral evaluation, or other processes. A mediator who undertakes, at the request of the parties, an additional dispute resolution role in the same matter assumes increased responsibilities and obligations that may be governed by the standards of other processes.

A mediator shall withdraw from a mediation when incapable of serving or when unable to remain impartial. If a mediator withdraws, the parties shall immediately report her or his withdrawal to the appointing court.

A mediator shall withdraw from a mediation or postpone a session if the mediation is being used to further illegal conduct, or if a party is unable to participate due to drug, alcohol, or other physical or mental incapacity.

Mediators should not permit their behavior in the mediation process to be guided by a desire for a high settlement rate.

A mediator should not accept a fee for referral of a matter to another mediator or to any other person.

**I. Obligations to the Mediation Process: Mediators have a Duty to Improve the Practice of Mediation.**

**Comment**

Mediators are regarded as knowledgeable in the process of mediation. They have an obligation to use their knowledge to help educate the public about mediation; to make mediation accessible to those who would like to use it; to correct abuses; and to improve their professional skills and abilities.

[Amended effective June 27, 2002.]