

Elder Mediation Core and Specialized Training Objectives, with Commentary ¹

I. Overview:

1. Elder mediation builds upon prior knowledge, skills, and experience. The “core” training objectives have been developed to orient mediators to the issues and skills necessary to enter the practice of elder mediation. Additional training objectives cover subject areas in which greater precaution or specialized complex knowledge is necessary.
2. Prerequisite: Best practice is that trainees complete 40 hours of mediation training before taking elder mediation core training.
3. It is considered best practice that trainees have previous mediation experience.
4. “Core” elder mediation training (suggested 40 hours total, not necessarily consecutively). These objectives take time to present, discuss, and practice.
5. Specialized elder mediation training, in addition to the core training
 - a. Adult guardianship and care of vulnerable adults²
 - b. Acute and long term care settings³
 - c. End of life decisions³
 - d. Estate matters³
 - e. Other areas to be developed

Central values:

A central value infused throughout both the core elder mediation training and training in specialized areas is the importance of supporting the self-determination of the older person in the mediation process. This may be accomplished by the older person’s physical presence and/or by the inclusion of the older person’s expressed wishes and long-standing values when decisions under consideration might impact the older person. While elder mediation upholds the self-determination of all participants, training should address the forces that exclude older persons from decision-making, such as ageism, potential frailty, cognitive concerns and cultural norms.

Terms:

Elder mediation, as used in these objectives, refers to all mediation cases in which an older person may be involved. These cases include both those in which an older person is a participant—such as neighbor, grandparent, consumer, divorce, long-term and health care disputes, where capacity is not or may not be an issue—as well as those situations involving guardianship, caregiver, family issues and other situations in which capacity is likely to be a concern. Elder mediation addresses issues that occur as a result of life cycle events, transitions, and/or losses often associated with aging and dying and may include the mediation of conflicts without the direct involvement of the older adult such as communication and rivalries among adult children, and estate administration.

¹ These training objectives were developed by ACR’s Elder Mediation Training Standards Committee and are intended to provide guidance to trainers who seek to design and provide comprehensive instruction to those seeking to practice in the area of elder care mediation, and to promote quality elder care mediation practice.

² Objectives now available in draft form.

³ Remaining objectives to be developed

Capacity to mediate refers to a person's ability to participate in the mediation process safely and effectively.

"Core" training topics are summarized from the learning/training objectives.

1. Issues faced by elders and their families
2. Mental and physical effects of aging
3. Societal bias and cultural attitudes toward aging
4. Mediator self assessment of biases/perceptions
5. Capacity to mediate
6. Elder abuse
7. Intake and screening procedures
8. Ethical issues and challenges
9. Skills development and practice
10. Knowledge of community resources
11. Role and use of support persons, advocates, and resource persons
12. Risk of loss of rights or benefits.

Commentary:

The committee has not attempted to set time frames for elder mediation training. Training time may vary depending on the background of the trainees, the mediation setting, and the resources available. It is likely that a single training may not meet all these objectives, and that trainers will need to develop multiple training programs to allow mediators to master all these objectives. The committee recommends that presenters of training programs that do not cover all the objectives inform trainees which additional objectives are unmet. Our experience suggests that forty hours of training may be needed to fulfill the core objectives.

There is some overlap between the core objectives and those of the specialized trainings. However, we have attempted to focus in the specialized objectives on areas of training that are unique or distinctly important in the particular specialty.

The objectives for both core elder mediation training and training in specialized areas envision inclusion of multi-disciplinary professionals as trainers, along with experienced elder mediation trainers. If a specialist is not a mediator or intimately familiar with mediation, the committee recommends that an experienced mediation trainer be available at the presentation in order to raise and answer questions and to integrate the substantive material into the context of the mediation process.

In addition, while these training objectives are intended to address elder mediation, we recognize that many providers offer tailored dispute resolution processes that include hybrid approaches, negotiation coaching, or other services that do not adhere strictly to a typical mediation model.

Furthermore, the committee has not attempted to require teaching a specific philosophy or model of mediation. Rather, it is our expectation that each trainer and training program will address the issues raised in these objectives and explore with trainees how to provide quality elder mediation in their practices. Similarly, we do not recommend any particular non-mediation professional or

educational background, although we recognize that there may be such requirements in some jurisdictions, particularly for mediators who want to practice in a court-related setting.

These objectives apply to training for mediators. Additional objectives may be developed for training advocates, support persons, and resource persons involved in elder mediation.

II. Core Elder Mediation Training Objectives, With Commentary

1. Understand problems and issues faced by elders and families.

Commentary

Conflicts involving older adults can be a complex mix of legal/medical/psycho-social/spiritual issues. They can arise in many settings – family, community, older adult residential communities, long-term care and acute care. Elder mediation is often multi-issue, multi-party and multi-generational. Older persons, their families and significant others are often facing losses and life changes in the context of aging that may affect the mediation, whether or not they are directly related to the conflicts being discussed. Elder mediation training should provide an introduction to these conflicts and settings. At the same time, trainees need to gain clarity about the boundaries between mediation, advocacy and the practice of law, therapy and social work.

2. Have knowledge of the mental and physical effects of aging and how to accommodate those changes so as to maximize participation in the mediation process for an older person and all other participants.

Commentary

Presentation of information about normal aging, individual differences in the rate of aging, and disabilities that are more prevalent among older persons can give the mediator awareness and sensitivity while avoiding assumptions about any particular older person who is a mediation participant. Best practice is to include participatory exercises designed to increase mediator understanding of common challenges encountered in the aging process.

3. Be aware of societal and participant biases as well as family and cultural attitudes regarding aging and their effect on the mediation process.

Commentary

Aging biases may be present in parties, including older people themselves, support people, and the mediator. The training should help mediators understand how ageist views may be inherent in the conflict as well as in the communication patterns of participants. Mediators should learn appropriate strategies to recognize bias, minimize its impact, and ensure that each participant's voice is heard in the mediation. In addition, training should consider the influence of family culture and ethnicity on communication patterns involving an older person.

4. Engage in a self-assessment of any aging or disability-related biases/perceptions that might impact mediator competency.

Commentary

Self-assessment begins at the training, and is an ongoing process in each elder mediation case that the mediator undertakes. Mediators need to be aware of any unconscious bias that may make the mediator more or less partial to any participant in mediation. Self-reflection is important to developing strong mediation skills in any context, and mediator competency in elder mediation is enhanced by mediator consideration and understanding of perceptions, biases, or ageist thinking and the ways these beliefs can have an impact on the mediation process and the parties. Self-assessment of competency is also a factor in a mediator's decision to accept or decline a particular case.

5. Understand and be alert to factors affecting capacity to mediate and their effect on a safe and fair mediation process.

Commentary

"Capacity to mediate" refers to a person's ability to participate in the mediation process safely and effectively. Training should include a discussion of the different understandings of the term capacity within the legal, medical and mediation contexts. Training should emphasize that it is never the role of a mediator to decide whether a participant has legal capacity, a determination that can be made only by a court.

Capacity to mediate may be a concern when a person exhibits cognitive impairment, or when medication, depression or other factors affect a person's abilities to participate in or benefit from mediation. Capacity to mediate issues may also be raised when there are allegations or other evidence of elder abuse (See objective 6), domestic violence, or other factors that create feelings of fear, threat or duress and may affect a person's ability to use the mediation process.

Training should include how to screen for capacity to mediate issues (See objective 7) and how to respond appropriately. Sometimes questions about capacity arise after mediation has begun. Mediators need to learn how the use of accommodations and mediation strategies may help enhance a person's capacity to mediate and when such accommodations and strategies are appropriate.

Training should also include a discussion of ways to incorporate the expressed wishes and long-standing values of an older person if she or he is not able to participate fully in the process. Assuring that the older person has the opportunity to make his or her wishes known and considered, either through direct participation in the process or through other means (See objective 11), can be crucial to the integrity of the mediation process, especially in situations where decisions made in mediation will have a direct impact on the older adult.

Capacity to mediate issues do not apply solely to older persons. Mediators need to be alert to cognitive concerns, mental health issues, abuse and signs of fear and threat experienced by others, such as caregivers and adult children. Mediators need training in the use of mediation strategies and accommodations for all participants to enhance their capacity to participate fully.

6. Understand and be alert to issues of elder abuse as they affect the mediator's responsibility to provide a safe and effective process.

Commentary

The presence of elder abuse can have a severe impact on the safety and fairness of the mediation process. Because elder abuse is often hidden, and is generally vastly under-reported, the committee recommends that training on the incidence and effect of elder abuse should be a part of every elder mediation core training. Mediators should understand how feelings of threat or duress may affect an older person's ability to speak freely and openly, and to identify, assess, and make decisions about potential mediation outcomes and consequences, and a person's ability to follow through on decisions reached in mediation.

The training should include screening for elder abuse and introduce mediators to the issues that arise when elder abuse is alleged or suspected either in the preliminary stages of mediation or after the mediation has begun. These issues include whether to begin or terminate a mediation, how to ensure the safety of participants and the fairness of the process, and the use of community resources to assist parties when abuse is alleged or present. Training should also include a discussion of the mediator's legal or ethical responsibility to report elder abuse, the impact of the presence of other mandated reporters, and limitations on confidentiality. See also commentary under objectives 5 (capacity to mediate), 7 (screening and intake), and 8 (ethical issues).

7. Understand the need for appropriate intake procedures and the factors that make thorough screening essential in elder mediation.

Commentary

Intake is especially important in elder mediation. Intake begins with helping the participants understand elder mediation and decide whether the process meets their needs. The intake process includes screening for elder abuse and capacity issues to ensure safety and the ability to participate fully as discussed in the prior objective and commentary. A goal of intake is to identify and address any physical limitations and determine necessary accommodations, which may include setting an optimal time and place for and length of the mediation session. Pre-mediation process also includes determination of who will be present at the mediation and exploration of roles that individuals may play in the mediation process. At this stage, it is important to consider how to include the voice or values of the older person to the greatest extent possible, particularly when there are cognitive deficits or when the older person is not present. Consideration should also be given as to whether it is appropriate to meet without the older adult.

In some situations, there may be a need for in-person meetings as well as telephonic or electronic communication. In some models of mediation, the pre-mediation process is also a time to begin to understand the dynamics and culture of the parties; to build participants' rapport and comfort with the process and possibly with the mediator; to assist participants to prepare for the session, and, especially in multi-party cases, to plan the structure of the mediation process.

Core elder mediation training should discuss the role of the mediator in the pre-mediation and intake process. In many programs or cases, support staff or intake specialists make an initial determination of appropriateness. Elder mediation core training in these situations should provide the mediator with an understanding of the importance of this stage and its goals. The mediator should understand the limits and parameters of the initial screening process, the need

for training of support personnel, and the mediator's responsibility to ensure continued appropriateness of the process throughout the mediation. The committee recommends that programs that provide elder mediation training for their own mediators include their intake personnel in the training as well.

Some programs include mediators in the intake process as a matter of policy or need. The committee recommends that training for mediators in such programs, and for mediators in private practice, include discussions of the benefits and pitfalls of mediator involvement in intake, as well as skills training in the pre-mediation process. Best practice includes trainee practice of pre-mediation conversations.

In either case, the training should include a discussion of situations in which a mediator is not competent to handle a particular case—because of lack of needed expertise, or because the mediator does not feel able to ensure the safety and integrity of the process—and of appropriate steps to take in that situation, whether it is identified during the intake process or later in the mediation.

8. Deepen understanding of ethical issues and the unique challenges of elder mediation.

Commentary

The best practice is to acknowledge that ethical issues exist on every level/facet of the mediation process, and mediators should be trained to identify ethical issues that might arise at any point, from intake to closure. The committee recommends that ethics education be interwoven throughout training and not be presented only as a separate module.

During the training process, mediators will need to examine a variety of situations where there are competing ethical values and weigh the benefits and risks of continuing or halting the mediation process and whether there are strategies to address or minimize the impact of the dilemma. Below is a list of potential issues (some repeated from other sections).

- **Clarify Professional Boundaries:** Because of the complex nature of elder mediation, mediators need to understand the boundaries between mediation and the practice of law, social work and therapy. At the same time mediators need to identify cases where an older person's rights may be at stake and be prepared to support the involvement of an advocate, legal representative, or support person. In addition, while it is beyond a mediator's role to provide case management, mediators should be prepared to provide linkages to aging services (see objective #9).
- **Address Whether an Older Adult Does/Does Not Need to Participate:** Mediators need to understand when the presence of an older adult is or is not ethically imperative. Mediators need to consider ethical issues that may arise when a participant has cognitive impairments, including potential benefits and risks of participating directly in the mediation process. Mediators need to know when it is appropriate for parties to meet without an older adult and when a mediator should take an active role in supporting the inclusion of the older person's voice or long-standing values, particularly in cases of cognitive deficit. Mediators should consider how to respond to potential ageist tendencies by parties or to other factors that could

negate self-determination by excluding the older person's physical presence and/or consideration of the older adult's voice and wishes. At the same time, mediators need to maintain impartiality and take care not to alienate the other participants.

- **Ethical Issues Surrounding Elder Abuse:** Mediators need to be trained in how to screen for and respond to issues of elder abuse during both the pre-mediation stage and the on-going mediation process in a way that is safe to participants.
- **Conflicts of Interest:** Mediators need training in how to identify and respond to conflicts of interest between older adults, their agents under power of attorney, guardians or support persons.
- **Confidentiality:** Mediators need to understand the exceptions to confidentiality that may arise in elder abuse cases and how to communicate those exceptions to the participants. Mediators should understand any limitations to confidentiality when a court-appointed guardian ad litem is part of the mediation process. Mediators need to learn how to maintain confidentiality or obtain appropriate releases when working with advocates, support persons, or agencies.
- **Mediator Competency:** Mediators need to be alert to their own limitations to mediate a case for which they have not received sufficient training or for which they need to seek additional support.
- **Informed Consent:** Since self-determination is a hallmark of mediation, mediators should be trained to recognize when parties may need additional information on relevant laws and resources in order for participants to make informed decisions in mediation, and should understand how to assure availability of information without compromising neutrality or otherwise going outside the bounds of the mediator's role.

9. Develop and practice skills related to elder mediation.

Commentary

The committee recommends that any training allow time for role plays and provide feedback to participants by experienced coaches. Role play developers should consider role descriptions that suggest realistic ways of "playing" older participants. The training should support mediators in gaining competence to facilitate discussions that include multiple generations, advocates and support persons. Training should provide time to practice all stages of mediation, including pre-mediation meetings or calls. Ethical issues should be raised and discussed in the role play context. Role play debriefing should support mediator self-reflection of lessons learned in role plays. Appropriate use of videos, discussion, and lecture can also enhance skill development.

10. Have knowledge of community resources related to older adults and ways to utilize resources in the mediation process.

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Commentary

Many mediation participants come to the mediation with limited knowledge of the resources available to older persons in their community, yet this information can be critical for participants to make informed decisions. Elder mediation training should include a discussion of available resources, how to recognize aspects of cases that might benefit from social, legal, health care, or other community resources, how participants may get the specialized information they need to make and carry out informed decisions, and the role of the mediator and the mediation program in this process.

In addition, trainers should consider discussing the benefit to mediators of establishing collaborative relationships with aging service providers. These relationships can enhance the mediator's sensitivity to aging issues, improve access to services, provide for reciprocal referrals, and increase mutual understanding about mediation, the nature of services available in the community, and the roles of each.

11. Understand the role and use of support persons, advocates, surrogates, and resource persons in the mediation process.

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Commentary

Support persons, advocates, surrogates and resource persons may play many different roles in elder mediation. Elder mediation training should cover what those roles may be and how they affect the dynamics of the mediation process. Discussion should include:

- how decisions are made about the presence and role of such persons;
- the mediator's role, if any, in finding them;
- the mediator's role in preparing them to participate in the process;
- the role of support persons or advocates in decision-making;
- issues of confidentiality when non-parties are present;
- personal agendas and conflicts of interest; and
- ensuring that the older person's voice is heard.

12. Be alert to situations that may place an elder at risk for loss of rights or benefits and recognize when participants may benefit from or need to consult an advocate or expert. Be aware of legal issues that may arise during elder mediation and understand that additional training may be necessary to competently mediate certain cases, such as adult guardianship

Commentary

Mediators need to recognize when there are legal implications to the decisions being considered, and know to proceed cautiously, if at all. These issues may include, but are not limited to, seeking guardianship, transferring real estate, making decisions that have an impact on Medicaid eligibility, impinging an older person's civil rights, and signing legal documents, including powers of attorney. Training should include strategies to assure that participants obtain adequate information and legal advice when legal issues or rights are at stake, in order to make informed decisions. (See objective 10.)

ACR Elder Decision-Making and Conflict Resolution Section Training Standards Committee:
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