

**Rule 16 - 6.03      Neutrals.**

**(A)      Certification of Neutrals.**

(1)      The Court may certify those persons who are eligible to serve as neutrals (mediators or evaluators) in such numbers as the Court deems appropriate. The Court shall have the authority to establish qualifications for and monitor the performance of neutrals, and to withdraw the certification of any neutral. Lists of certified neutrals shall be maintained by the Clerk, and shall be made available to counsel, litigants, and the public for inspection upon request.

(2)      To be eligible for certification under this rule a person must:

(a) file an application for certification on a form provided by the Clerk;

(b) be admitted to practice law in the highest court of any state or the District of Columbia for at least five years;

(c) be a member in good standing in each jurisdiction where admitted to practice law at the time of application for certification;

(d) complete at least thirty-two (32) hours of approved professional training in mediation;

(e) observe as a non-participant at least two mediations conducted by a mediator who has completed at least twenty-five (25) mediations and is either certified under this rule or qualified under Missouri Supreme Court Rule 17;

(f) agree to serve for reduced or no compensation from a party who has qualified pursuant to paragraph (C)(2) of this rule for appointment of a pro bono neutral;

(g) complete four (4) hours of accredited continuing legal education in alternative dispute resolution on or before January 31 of each even numbered year beginning with an initial reporting period in 2016 for the two preceding years; and

(h) after having completed twenty-five mediations, agree to be observed for two mediations each year by interested individuals who would otherwise be qualified for certification under this rule.

(3) The training requirement established in paragraph (A)(2)(d) above is satisfied by the completion of accredited continuing legal education course work which includes the following:

(1) conflict resolution and mediation theory, including causes and dynamics of conflict, interest-based versus positional bargaining, negotiating theory, and models of conflict resolution;

(2) mediation and co-mediation skills and techniques, including information gathering skills, conflict management skills, listening skills, negotiations techniques, power issues, caucusing, management of joint session, cultural and gender issues, and modeling with self-represented as well as represented individuals;

(3) mediator conduct, including conflicts of interest, confidentiality, impartiality, ethics and standards of practice; and

(4) mediation simulations or role play activities.

(4) An attorney certified under this rule who is not admitted to practice law in this Court is bound by the Rules of Professional Conduct as approved and amended from time to time by the Supreme Court of Missouri and this Court's Rules of Disciplinary Enforcement, in accordance with Local Rule 12.02, to the same extent and under the same conditions as a member of the bar authorized to practice before this Court.

(5) Any member of the bar of this Court who is certified as a neutral shall not for that reason be disqualified from appearing as counsel in any other case pending before the Court.

(6) In January of each even-numbered year, the Clerk shall examine the list of certified neutrals to determine which neutrals did not receive appointments during the previous two years. The Clerk shall notify those neutrals that the Court's record does not show any appointments for those years, and shall solicit their interest in continuing to be carried on the Court's list of certified neutrals. If the neutral desires to remain on the list, the neutral shall submit by March 1 information demonstrating ADR experience and/or training during the previous two years. If such information is not provided the neutral shall be removed from the list. A person applying for certification as a neutral after having been removed pursuant to this rule must satisfy the requirements for certification in effect at the time of the new application.

**(B) Appointment of Neutrals.**

(1) Within the time prescribed by the Order Referring Case to Alternative Dispute Resolution, the parties must notify the Clerk in writing of the parties' choice of a neutral. If the parties fail timely to select a neutral, the Clerk shall select a neutral from the list and notify the parties.

(2) Notwithstanding subsection (B)(1), the Court, in consultation with the parties, may appoint a neutral who has special subject matter expertise germane to a particular case, whether or not such individual is on the list of certified neutrals.

(3) The Clerk shall send a Notice of Appointment of Neutral to the parties and to the individual designated by the parties, after lead counsel has confirmed that individual's availability. Upon receipt of the Notice of Appointment, lead counsel shall send to the neutral a copy of the Order referring the case to Alternative Dispute Resolution. The appointment shall be effective until the neutral notifies the Court in writing that the referral has been concluded.

**(C) Compensation of Neutral.**

(1) Unless otherwise agreed by all parties or ordered by the Court, one-half the cost of the neutral's services shall be borne by the plaintiff(s) and one-half by the defendant(s) at the rate contained in the neutral's fee schedule filed with the Court. In a case with third-party defendants, cost shall be divided into three equal shares. A neutral shall not charge or accept in connection with a particular case a fee or thing of value from any source other than the parties. The Court may review the reasonableness of the fee and enter any order modifying the fee. Compensation shall be paid directly to the neutral upon the conclusion of the ADR process. Failure to pay the neutral shall be brought to the Court's attention.

(2) A party who demonstrates a financial inability to pay all or part of that party's pro rata share of the neutral's fee may file a motion asking the Court to appoint a neutral who shall serve pro bono. The Court may waive all or part of that party's share of the fee. A neutral appointed to serve pro bono may apply to the Court for payment of that share of the neutral's fee waived for an indigent party, consistent with regulations approved by the Court. When so ordered by the Court, payment to the neutral shall be made by the Clerk from the

Attorney Admission Fee Non-Appropriated Fund. Other parties to the case who are able to pay the fee shall bear their pro rata portions of the fee.

**(D) Disqualification of Neutral**

(1) The term "conflict of interest" as used in this rule means any direct or indirect financial or personal interest in the outcome of a dispute, or any existing or prior financial, business, professional, family or social relationship with any participant in an ADR process which is likely to affect the neutral's impartiality or which may reasonably create an appearance of partiality or bias.

(2) A neutral shall avoid a conflict of interest or the appearance of a conflict of interest during and after a mediation or early neutral evaluation. A neutral shall make a reasonable inquiry to determine whether there are any facts that would cause a reasonable person to believe that an actual or potential conflict of interest exists for the neutral in connection with service in a particular case referred to ADR by the Court.

(3) A neutral shall disclose to participants, as soon as practicable, all facts and information relevant to any actual and potential conflicts of interest that are reasonably known to the neutral. If, after accepting a designation by the parties, a neutral learns any previously undisclosed information that could reasonably suggest a conflict of interest, the neutral must promptly disclose the information to the participants. After the neutral's disclosure, the ADR may proceed if all parties agree to service by the neutral.

(4) Notwithstanding the agreement of the parties to waive a conflict of interest, a neutral shall withdraw from or decline a designation in a case if the neutral determines that an actual or potential conflict of interest may undermine the integrity of the mediation or early neutral evaluation.

(5) Any party who believes that an assigned neutral has a conflict of interest may request the neutral to recuse. If the neutral declines, the party may file a motion for disqualification of the neutral. Failure to file a motion will waive the objection.

(E) **Unavailability of Neutral.** A neutral who cannot serve within the period of referral shall notify lead counsel who will arrange for selection of a different neutral by agreement of the parties or by the Clerk.

(Amended October 1, 2001; effective November 1, 2001)

(Amended February 10, 2004; effective March 12, 2004)

(Amended July 10, 2006; effective August 28, 2006)

(Amended April 6, 2009; effective May 11, 2009)

(Amended July 9, 2010; effective August 16, 2010).

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