



OREGON JUDICIAL DEPARTMENT
Office of the State Court Administrator

August 28, 2024

MEMORANDUM

TO: The Uniform Trial Court Rules (UTCR) Committee

FROM: The Court-Connected Mediator Qualifications Advisory Committee

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Oregon Judicial Department

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SUBJECT: UTCR Chapter 12 – Proposed Changes to Court-Connected
Mediator Qualifications

BOTTOM LINE The Court-Connected Mediator Qualifications Advisory Committee submits the attached proposed Chapter 12 revisions for the UTCR Committee's consideration on October 10, 2024. This memo and the enclosed supplemental materials are designed to help guide the UTCR Committee's discussion regarding the proposed UTCR Chapter 12 amendments.

The Court-Connected Mediator Qualifications rules, formerly housed in CJO 05-028, were moved into Uniform Trial Court Rules (UTCR) Chapter 12 effective August 1, 2022, as recommended by the UTCR Committee and approved by Chief Justice Walters in CJO 22-009. The rules had not been updated since 2005¹. Over the years, the Office of the State Court Administrator (OSCA) received feedback and rule revision recommendations from stakeholders. The Oregon Judicial Department made efforts in 2017 and 2021 to facilitate discussions regarding potential revisions. However, the scope of recommendations, number of stakeholders impacted, time limitations, and staff

¹ For more information about the history of the rules prior to 2005, see the [preface](#) to CJO 05-028.

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capacity all presented barriers to implementing changes to the rules. OSCA received funding to staff an ADR Analyst position in 2022 and the Court-Connected Mediator Qualifications Advisory Committee was developed in 2022.

The Court-Connected Mediator Qualifications Advisory Committee's enclosed proposed revisions culminate two years of stakeholder efforts. The proposals reflect detailed and intentional deliberations from monthly committee meetings, subcommittee meetings, and additional specialized workgroup discussions. Each proposed change was examined individually and in the context of the full chapter, Oregon statutes, and mediator ethical standards. This comprehensive approach allowed us to attend to the nuanced interconnections within Chapter 12 and in relation to the broader dispute resolution scheme.

We respectfully request that the UTCR Committee make a preliminary recommendation to post the Court-Connected Mediator Qualifications Advisory Committee's proposed Chapter 12 amendments to solicit public comment. Posting the proposed amendments for public comment will help inform whether we successfully balanced the needs of related stakeholders and whether any further improvements are needed. We invite the UTCR Committee to exercise caution before making further changes to Chapter 12. Even seemingly minor adjustments to one section of the rules may lead to unintended consequences for other sections of the qualification requirements.

We have enclosed the following materials to help guide your discussion:

- UTCR Chapter 12 with additions shown in **{bold, underlined, and brackets}**, and deletions shown in [*italics and braces*].
- Appendix 1 (Preface)
 - Introduces the Court-Connected Mediator Qualifications Advisory Committee's participants, underlying goals, and future recommendations.
- Appendix 2
 - Lists examples of substantive proposed amendments for quick reference.
- Chart 1
 - Compares the existing rule, the proposed rule, and the reasoning for proposed substantive changes for Chapter 12 in numerical order.
- Chart 2.
 - Compares the proposed qualification requirements by mediator type.
- Chart 3
 - Outlines the underlying requirements for each of the four court-connected mediation trainings.
- Flowchart 1:
 - Outlines the three mediator experience pathways for Domestic Relations Custody and Parenting Plan Mediators and Financial Issues Mediators.

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- The draft mediation training curriculums promulgated by the State Court Administrator that are referenced in 12.100, 12.110, and 12.120:
 - Updated Basic Mediation Training Curriculum (12.100)
 - Updated Domestic Relations Custody and Parenting Plan Mediation Training Curriculum (12.110)
 - New proposed Domestic Relations Financial Issues Mediation Training curriculum (12.120).

Caitlyn Jackson will be available at the October 10, 2024 UTCR Committee meeting to present an overview of the proposed revisions and to answer any questions. If the UTCR Committee has recommendations or needs additional information prior to the October 10 meeting, please contact Caitlyn.Jackson@ojd.state.or.us or 971-718-2484.

Attachments: Chapter 12 Amendments

Chart 1 - Proposed Chapter 12 Amendments and Reasoning

Chart 2 - Proposed Qualifications by Type of Mediator

Chart 3 - Proposed Mediation Training Requirements

Flowchart 1 - Proposed Dom Rel Experience Pathways, Both Types

OSCA Training Guidelines - Basic Mediation, Updated

OSCA Training Guidelines - Custody Parenting Plan Mediation, Updated

OSCA Training Guidelines - Dom Rel Financial Issues Mediation, New

Ec: The Court-Connected Mediator Qualifications Advisory Committee

Scroll down for Appendix 1 and Appendix 2

Preface

Proposed changes to UTCR Chapter 12 regarding Court-Connected Mediator Qualifications

The Court-Connected Mediator Qualifications Advisory Committee

The Court-Connected Mediator Qualifications Advisory Committee was composed of mediators, trainers, and stakeholders for each type of court-connected mediation outlined in the rules and from the different court-connected mediation structures across Oregon. This included court-based and community dispute resolution center-based mediation coordinators; domestic relations mediators employed by county programs and contracted by panel counties; private mediators; and volunteer mediators. Remote committee meetings enabled broad stakeholder participation from all areas of the state.

The Committee included stakeholders from Oregon-based alternative dispute resolution higher education programs, Community Dispute Resolution Centers, circuit courts, the Department of Justice, the Mediation Subcommittee of the State Family Law Advisor Committee, the Oregon Mediation Association, the Oregon Mediator Diversity Project, and the Oregon State Bar Alternative Dispute Resolution Section Executive Committee.

Goals

The Court-Connected Mediator Qualifications Advisory Committee's efforts were guided by five goals (listed alphabetically, not in order of priority below). The Committee strove to revise the mediator qualification rules to:

- Adequately tailor the rules to the varied knowledge and experience required to provide mediation service in three different case types: civil, domestic relations parenting time and custody, and domestic relations financial issues;
- Diversify the demographic representation by eliminating unnecessary barriers that are preventing aspiring mediators from entry into court-connected mediation;
- Ensure sufficient mediators to meet the need while providing for appropriate training and education requirements;
- Establish good public policy and provide a stable foundation for court-connected dispute resolution for people in all areas of the state, including underserved populations; and,
- Reflect the needs of all stakeholders, including parties, programs, mediators, courts, lawyer advocates and state agencies.

Noteworthy Proposals

Over the last two years, the Court-Connected Mediator Qualifications Advisory Committee navigated tension between wanting to eliminate unnecessary barriers for prospective mediators while also upholding a minimum level of qualifications necessary for supporting mediator competency. In line with the above goals, and to increase the

future success of court-connected mediation across Oregon, to enhance party satisfaction, and to create greater competency of new court-connected mediators, the Committee developed the enclosed proposed changes to Chapter 12 for the UTCR Committee's consideration. To illustrate the nature of the comprehensive amendments, examples of the Committee's more significant proposals are listed below in Appendix 2.

Future Recommendations

The Court-Connected Mediator Qualifications Advisory Committee's enclosed proposals strengthen the existing foundation for court-connected mediator qualifications and support the above-listed Committee goals. The Committee recommends the following next steps for furthering public policy efforts regarding court-connected mediation:

1. For the next round of Chapter 12 revisions:
 - a. The Committee recommends the development of layered qualification requirements for general court-connected civil mediators who mediate in specialized case areas. For example:
 - i. General civil cases involving higher dispute amounts and topics other than small claims and FED cases;
 - ii. Probate, conservatorship, and guardianship cases; and
 - iii. Any other specialized case area.Unfortunately, the Committee was unable to create such layered qualifications due to time constraints.
 - b. The Committee did not have time to finalize a proposal for Chapter 12 to address the rapid evolution of technology and subsequent impacts for mediator ethical standards. The Committee recommends attending to such standards in future Chapter 12 revisions.
2. To eliminate the greatest barrier that prevents aspiring mediators from entry into court-connected mediation, the Committee recommends determining an appropriate venue for pushing forward initiatives to support future compensation for civil court-connected mediators. Providing mediators compensation will support efforts to diversify mediator pools beyond what is possible through revisions to Chapter 12. Such diversification is necessary for meeting needs of underserved populations in Oregon. Additionally, mediators have been volunteering their expertise for decades, and as the field professionalizes outside the court system, the pool willing to continue this pro bono work will decrease.

Appendix 2

Examples of the Court-Connected Mediator Qualifications Advisory Committee's Proposed Chapter 12 Changes²

Regarding mediation training qualification requirements, the committee recommends:

- Revising the Basic Mediation Training requirements so that:
 - The total required Basic Mediation Training hours increase from 30 hours to 40 hours to align with the length of most existing basic mediation trainings in Oregon and to allow additional time for new training topics.
 - The existing gap that allows for trainees to play the role of a mediation party for all role plays is addressed.
- Revising the Court-System Training requirements so that:
 - The total Court-System Training hours are raised from six hours to eight hours for small claims mediators to align with existing trainings and to ensure required training topics are covered sufficiently for new mediators.
 - The Court-System Training topics are revised to remove very broad areas of the law and to add new requirements that the local court provide information about local programs and procedures, including scheduling mediation sessions, submitting mediator reports and mediation agreements to the court, the process for the parties to complain about the mediation process, and expectations around professional engagement with the court and the parties.
 - Substantially similar education or experience is allowed as a substitute for the Court-system Training.
- Revising Domestic Relations Parenting Plan Mediation Training requirements to:
 - Specify the skills trainees should gain from the training.
 - Specify a role play requirement in line with other sections of the rules.
 - Remove very broad areas of law and theory that were not feasibly taught during a 40-hour training to focus on the necessary skills.
 - Align the total experience hours required for becoming a Custody and Parenting Plan Lead Trainer with the average length of court-connected domestic relations mediation cases.
- Revising Domestic Relations Financial Issues Mediation Training requirements so:
 - The 40 training hours be a single curriculum consistent with guidelines promulgated by the State Court Administrator and non-integrated training requirements be removed.
 - The instruction topics align with the newly developed domestic relations financial issues curriculum guidelines.
 - The rule outlines qualification requirements for becoming a lead trainer for the Domestic Relations Financial Issues Training.

² The full list of the Court-Connected Mediator Qualifications Advisory Committee's proposed Chapter 12 changes is outlined in the document titled "Chapter 12 Amendments." Additional supplemental information is available in the corresponding attachments.

Regarding the qualification requirements for Court-Connected Civil Mediators, the Committee recommends:

- Making the existing experience requirements clearer and revising the total experience requirements to establish a minimum number of hours of mediation so that the mediator is exposed to a variety of situations before mediating without supervision.
- Aligning the total hours required for becoming a qualified court-connected civil mediation supervisor so that the total hours required are in line with the average length of court-connected civil mediation cases.

Regarding the qualification requirements for Court-Connected Domestic Relations Custody and Parenting Plan and Financial Issues Mediators, the Committee recommends:

- Creating an alternative pathway for individuals with substantive experience who do not meet the specific degree requirements to:
 - Support efforts to increase access for individuals to become court-approved mediators while upholding the high level of knowledge and technical skill necessary to competently mediate custody and parenting plan cases.
 - Benefit mediation clients, courts, and enhance the pool of domestic relations custody and parenting plan mediators.
 - Support requests from rural courts to expand pathways for individuals to become court-approved custody and parenting plan mediators outside the current advanced educational degree structure.
- Outlining different mediation experience pathways depending on how the applicant qualifies under the education requirements.
- Aligning the number of cases required in the current experience rule with the number of total hours required. Based on the average amount of time for each mediation case across the state (3.3), the total cases required have been adjusted to align with the total hour requirement in the existing rule (100 hours or 50 hours depending on the experience pathway).
- Requiring mediators for all domestic relations experience pathways to “mediate under supervision.”
- Aligning the total hours required for becoming a qualified court-connected custody and parenting plan mediation or domestic relations financial issues mediation supervisor so that the total hours required are in line with the average length of court-connected civil mediation cases.
- Adding clarification that mediation experience cases and hours met under 12.070(3) that included mediation of domestic relations financial issues may also be counted to satisfy the experience requirements of 12.080(3) (and vis-a-versa).

Regarding the qualification requirements for Court-Connected Domestic Relations Financial Issues Mediators

- In addition to the revisions outlined in the above section, the Committee recommends:
 - Requiring that the applicant demonstrate proficiency in mediation of financial issues prior to the applicant mediating without an approved mediator or supervisor present in the mediation session to fulfill the requirements of ORS 107.755(4).
 - Specifying that the mediation experience cases and hours should involve mediation of financial matters in the areas the applicant intends to practice.
 - Repealing insurance requirements for financial issues mediators and supervisors because insurance requirements are more appropriate for each court or county's employment contracts.

Regarding Mediator Continuing Education, the Committee Recommends:

- That court-connected mediators be required to complete one hour of continuing education every two years regarding equity, diversity, inclusion, and access.
- Revising the list of optional continuing education topics for all mediators to include: Power dynamics; Trauma-informed practices; The use of technology in mediation; and Suicide prevention.
- Amending the rule to require that domestic relations mediators complete:
 - One hour of continuing education related to domestic violence or intimate partner violence every two years.
 - The Oregon Judicial Department (OJD) Domestic Relations Mediator Report to the Court Training within six months of being approved to mediate and within six months of OJD releasing any updated mediator report trainings.
- Capping the total number of continuing education hours that a mediator can get from formally debriefing cases with mediator supervisors and colleagues to two hours per reporting period.

Regarding the remaining sections of Chapter 12, the Committee Recommends:

- Adding definitions of Case and Lead Trainer to the rules.
- Amending the pathways for determining authorities to approve a mediator who doesn't meet the minimum requirements to ensure the mediator has appropriate qualifications or is supervised until they meet the minimum requirements.
- Requiring mediators to provide written information to parties regarding certain mediator ethics topics and requiring that mediators document the parties' agreement to such topics.
- Repealing the requirement that courts provide information about a mediator's qualifications and instead require that mediators have information about their qualifications available for parties upon request.