

Rule 16 - 6.03 Neutrals.

(A) Certification of Neutrals.

(1) The Court will certify those persons who are eligible to serve as neutrals (mediators or evaluators) in such numbers as the Court deems appropriate. The Court will have the authority to establish qualifications for and monitor the performance of neutrals, and to withdraw the certification of any neutral. A list of certified neutrals will be maintained by the Clerk, and will 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 (5) 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 (2) 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 odd numbered year beginning with an initial reporting period in 2019 for the two preceding years; and

(h) after having completed twenty-five (25) mediations, agree to be observed for two (2) 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:

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

(b) 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;

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

(d) 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 will not for that reason be disqualified from appearing as counsel in any other case pending before the Court.

(6) After January 31 of each odd-numbered year beginning in 2019, the Clerk will examine the list of certified neutrals to determine which neutrals did not receive appointments during the previous two years and which neutrals did not complete the continuing legal education required in paragraph (A)(2)(g) above. The Clerk will determine the neutral's 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 will submit by April 1 information demonstrating completion of the continuing legal education requirement during the previous two years as well as information demonstrating the neutral's continued interest in mediation. If such information is not provided, the Clerk will recommend to the Court that the neutral 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.

(7) In addition to the removal process set forth in paragraph (6) above, the Court may withdraw the certification of any neutral at any time, provided that the neutral will be given notice in writing including the reason for the withdrawal of certification at least 30 days prior to the proposed date of withdrawal. If the neutral objects to the withdrawal, the neutral must respond in writing to the Clerk prior to the proposed date of withdrawal and may request an opportunity to be heard. Upon receipt of the neutral's request, the Court will stay the withdrawal, furnish an opportunity to be heard to the neutral, and respond to the neutral in writing as to the

manner of the hearing. The hearing will take place within 30 days of the neutral's request. After the hearing, the Court will advise the neutral in writing as to its final determination of the neutral's status.

(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 will 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. Parties must file a motion for leave to designate a neutral not on the list of certified neutrals maintained by the Court. The motion must include the reason for the selection of the neutral.

(3) The Clerk will 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 must send to the neutral a copy of the Order referring the case to Alternative Dispute Resolution. The appointment will 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 will 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, the cost will be divided into three equal shares. Except as provided in subsection

(C)(2), a neutral may 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 will be paid directly to the neutral. Failure to pay the neutral will 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 will 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 will 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 will 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 must avoid a conflict of interest or the appearance of a conflict of interest during and after a mediation or early neutral evaluation. A neutral must 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 must 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 must 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 must notify lead counsel who will arrange for selection of a different neutral by agreement of the parties or by the Clerk.