

*This is the first in a series of training objectives developed by the Training Standards Committee of the Elder Decision-Making & Conflict Resolution Section of the Association for Conflict Resolution.*

## **Elder Care and Elder Family Decision-Making Mediation: Training Objectives and Commentary**

*Prepared by the ACR Section on Elder Decision-Making and Conflict Resolution  
Committee on Training Standards*

These training objectives have been developed to orient mediators to the issues and skills necessary to enter the practice of elder care and elder family decision-making mediation (“elder mediation”). *Elder mediation*, as used in these objectives, refers to all mediation in which participants address issues that occur as a result of life cycle events, transitions, and/or losses often associated with aging and dying.<sup>1</sup> It may include issues of personal or medical care, financial concerns, autonomy and independence, family issues, living arrangements, planning, decision-making, and communication. It may include the mediation of conflicts without the direct involvement of the older person such as communication difficulties and family dynamics.

Elder mediation training is intended to build upon prior knowledge, skills, and experience. These objectives are for training of mediators who have already completed basic training and who want to specialize in elder family mediation. It is considered best practice that trainees have previous mediation training (40 hours) and experience.

These objectives are divided into two parts. The first part includes objectives necessary to handle elder mediation cases in which no court involvement is anticipated. The second part, on adult guardianship mediation, presents additional training objectives for mediators who seek to handle competently elder mediation in which a petition for guardianship has been filed, or in which one or more parties have retained an attorney or have otherwise seriously considered filing a guardianship petition. The adult guardianship mediation training may be presented as part of an elder mediation training, or as an additional, stand-alone training for mediators who already have training and experience in elder mediation.

A central value infused throughout elder mediation training is the importance of supporting the self-determination of the older person in the mediation process to the greatest extent. This value 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 mediation discussion, action or decisions may 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.

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<sup>1</sup> Other types of elder mediation, such as long-term care, end-of-life, or estate matters may require additional training. The committee will address objectives for these types of training in the future.

*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 all the objectives.

The objectives 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, whether given as part of an elder mediation training, or in a separate session.

**Part I Elder Mediation Objectives and Commentary**

- I-1. Understand problems and issues faced by older persons and their families, including the family dynamics involved.

*Commentary*

Training should prepare mediators to handle multiple parties, and a complex mix of legal/medical/psycho-social/spiritual issues. Elder mediation is often multi-issue, multi-party and multi-generational. Trainees should be made aware of how family issues, which may have been unresolved for many years, may impact the mediation. Death or illness of a spouse or caregiver, declining health, new relationships, change of roles within the family, loss of resources, or other serious life changes may compound existing family dynamics. Questions of autonomy and independence on the one hand and safety

and security on the other may lead to different perspectives on the issues. A competent elder mediator will understand and be prepared to work in the context of the wide range of issues, concerns, dynamics, and options in elder mediations. Training should provide a framework for the use of mediation at numerous points in the planning and decision-making process involving vulnerable adults. Mediation can facilitate shared family decision-making regarding housing, treatment, financial, and incapacity planning options in a way that honors the interests and goals of all participants.

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.

- I-2. Have knowledge of the psychosocial 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*

Gaining knowledge about aging, individual differences in the process 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. The mediator should also be able to clearly describe to all participants this orientation favoring maximum participation.

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

*Commentary*

Participants, including older persons themselves and support people, as well as the mediator, may have biases involving aging. 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 and community culture on communication patterns involving an older person.

- I-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 participants. Self-assessment of competency is also a factor in a mediator's decision to accept or decline a particular case.

- I-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 I-7), 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. Even stress and length of time spent in mediation can have a negative impact on ability to participate fully.

Training should include how to screen for capacity to mediate issues (See objective I-8) and how to respond appropriately. Sometimes questions about capacity arise after mediation has begun. Mediators need training in the use of mediation strategies to creatively enhance each person's capacity to engage fully.

Training should emphasize a presumption that the older person will participate, to the extent possible. 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 an 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 objectives I-9 and I-12), 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 person.

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.

- I-6. Understand the accommodations that may be needed for persons with cognitive or other disabilities.

*Commentary*

Mediation training and the mediation process should be fully accessible to all participants, and accommodations should be provided at no additional cost where needed

or beneficial. For this reason it is important that mediators and mediation center staff understand and are sensitive to barriers that might limit the ability of a party to participate fully and benefit from the mediation process. Trainees should understand the range of accommodations that might be used to enhance or support participation by all.

- I-7. Deepen understanding of issues of elder abuse as they affect the mediator's responsibility to provide a safe and effective process including:
- definitions of, and how to recognize, elder abuse
  - the dynamics within the family or caregiver relationship
  - how to screen for abuse prior to and throughout the mediation process
  - when to rule out mediation
  - when to continue mediation
  - the relationship of mediation to adult protective services
  - confidentiality and mandated reporters

#### *Commentary*

The presence of elder abuse can have a severe impact on the safety and fairness of the mediation process and on the capacity to mediate. Because elder abuse is often hidden, and is generally vastly under-reported, the committee recommends that training on the definitions of elder abuse, how it may be manifested, and ways to recognize abuse, as well as the incidence and effect of elder abuse should be a part of every elder mediation training. Mediators should understand how feelings of threat or duress may affect a person's ability to speak freely and openly, ability to identify, assess, and make decisions about potential mediation outcomes and consequences, and 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 people 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 I-5 (capacity to mediate), I-8 (screening and pre-conference work), and I-9 (ethical issues).

- I-8. Understand the need for appropriate intake and pre-conference procedures and the factors that make thorough screening essential in elder mediation.

#### *Commentary*

Intake and pre-conference work are especially important in elder mediation. This work includes helping the participants understand elder mediation and decide whether the process meets their needs, as well as 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 the pre-conference conversation 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-conference process also includes determination of who will be present at the mediation and preliminary 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 person.

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-conference process is also a time to begin to understand the dynamics and culture of the participants; to build their 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.

Elder mediation training should discuss the role of the mediator in the pre-conference and intake process. In many programs or cases, support staff or intake specialists make an initial determination of appropriateness. Elder mediation 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 pre-conference 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 at this stage, as well as skills training in the pre-conference process. Best practice includes trainee practice of pre-conference 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, pre-conference conversations, or later in the mediation.

I-9. 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 I-11).
- **Address Whether an Older Person Does/Does Not Need to Participate:** Mediators need to understand when the presence of an older person 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 to meet without an older person 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 participants or to other factors that could negate self-determination by excluding the older person's physical presence and/or consideration of the older person'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-conference 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 persons, their agents under power of attorney 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 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 participants may need additional information on relevant laws and resources in order 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.

I-10. 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-conference meetings or calls. Ethical issues should be raised and discussed in the role play context. Role play debriefing should support mediator reflection on mediator actions and lessons learned in role plays. Appropriate use of videos, discussion, and lecture can also enhance skill development. See Appendix, attached, for a description of best practices in mediation skills training.

I-11. Have knowledge of community resources related to older persons and ways to utilize resources in the mediation process.

*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, financial, 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.

I-12. Understand the role and use of support persons, advocates, surrogates, medical professionals and other resource persons in the mediation process.

*Commentary*

Support persons, advocates, surrogates, medical professionals, and other 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 choice, presence and role of such persons;
- the mediator's role, if any, in suggesting or identifying additional participants;
- 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.

I-13. Be alert to situations that may place an older person 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 or tax liability, 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 I-11.)

I-14. Understand the unique issues presented in identifying and writing down matters agreed upon by participants in elder mediation.

#### *Commentary*

Training should include a discussion of strategies for assisting participants to craft written materials in elder mediation that are thorough, clear and reflect the desires of and commitments made by the mediation participants. Those written materials may include agreements, memoranda of understanding, summaries of discussion, or other documents however titled, hereinafter called "agreements."

Training should discuss informed decision making in elder mediation, including situations in which review of agreements by counsel or others is appropriate. Training should offer practice in asking questions to test the participants' commitment and understanding of agreements reached in mediation, to clarify their expectations for external enforcement, and to assure that they are aware of the implications of signing the agreement and are fully committed to all steps necessary for implementation. Training should include discussion on the logistics and ability of cognitively challenged individuals to make and keep agreements.

Training should discuss the range of potential “audiences” for agreements and be able to work with participants to draft agreements that may have an impact outside or beyond the parties to the mediation. Training should emphasize the importance of asking “what-if” questions, to address future planning, unexpected contingencies, and post-agreement issues. Training should include elements of agreements to address substantive, procedural and psychological closure where relevant.<sup>2</sup>

- I-15. Explore ideas for program development, policy development, marketing a practice, generating cases, and building and evaluating an elder mediation practice.

#### *Commentary*

The committee believes that the training should discuss the importance of setting policies and ideas for implementing effective use of elder mediation. These may include, for example, developing relationships with the elder law community, the judiciary, professional and non-profit guardianship entities, faith-based organizations, organizations supporting less restrictive alternatives to guardianship, advocacy organizations for vulnerable adults, and adult protective services. Trainers should consider inviting members of such groups to participate in training as a way to increase the use of mediation in family caregiving disputes.

### **Part II: Additional Mediation Training Objectives for Adult Guardianship Cases**

The committee believes that additional training is needed for mediators to mediate issues related to personal and/or financial guardianship (conservatorship) of adults. This area of expertise includes cases in which a petition for guardianship is being proposed at the time of case intake (for example, when an attorney has been retained for this purpose), or in which a petition has been filed, including cases where a guardian has already been appointed.

This training may be presented as a separate training or integrated into an elder mediation training. However, in either case, it assumes that mediators have mastered the previous objectives of elder mediation training in addition to those below.

The goal of these objectives is to orient mediators to a wide variety of issues related to adult guardianship mediation (AGM)-- the nature of guardianship, the value of mediation in adult guardianship and how it fits into the guardianship process--as well as to teach the skills and knowledge necessary to mediate guardianship issues competently.<sup>3</sup>

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<sup>2</sup> Substantive closure includes terms that address the range of practical interests identified by participants. Procedural closure includes elements that speak to the resolution of any legal or administrative process that may be pending or related to the mediation. And psychological closure encompasses elements such as apologies or other commitments that relate to specific psychological needs or interests of participants. See, for example, Christopher Moore, *The Mediation Process*, 3rd Edition, 2003 (page 309).

<sup>3</sup> These objectives focus on the needs of older persons in the guardianship system. Additional or different training may be needed if the focus is on a different category of guardianship, such as that for persons with developmental disabilities or brain injury.

The training objectives assume that guardianship mediation will occur within a setting where appropriate policies, procedures, and safeguards have been established either by an individual professional mediator or by a mediation program or office.

*Commentary*

The term “adult guardianship mediation” (AGM) is used in these objectives to mean elder mediation in which a petition for guardianship has been filed or granted, or in which, at the time of case intake, an attorney has been retained for the purpose of filing or objecting to such a petition. In this context, AGM includes the emotional and relational dynamics associated with the care of a person who has or may have capacity issues and an exploration of alternatives and resources that may be put in place with or instead of guardianship, with or without court involvement.

We recognize that various terms are used in different jurisdictions to refer to a legally appointed surrogate and to the person over whom guardianship is sought and/or obtained. In this document, we use the terms “guardian” and “vulnerable adult,” “alleged incapacitated person,” or “incapacitated person.”

Due to the variability of guardianship laws and procedures over time and among jurisdictions, it is recommended that trainers consider the inclusion of elder law or disability attorneys and other professionals to present legal and other specialized issues, concepts, and materials.

- II-1. Grasp the basics of the adult guardianship process and the options available under guardianship, and understand the range of alternatives to court-ordered guardianship.

*Commentary*

Training should include information about the effect of guardianship on the rights of an individual and the role of the court, both in protecting individual rights and in meeting physical and financial needs. It should encompass a discussion that includes the pros and cons of the available alternatives to legal guardianship. The training should include examination of the role of the mediator in assuring that participants have access to necessary information about guardianship and alternatives in order to make informed decisions and to exercise self-determination. This information should include ways to access resources that are not available in court and options to tailor, structure, or avoid the need for guardianship.

- II-2. Understand the importance of inclusion of the vulnerable adult’s voice, even if she or he is not able to participate fully in mediation.

*Commentary*

AGM training should stress the importance of protecting and enhancing self-determination of the vulnerable adult to participate in mediation to the maximum extent possible and practical. Training should emphasize ways to maintain the integrity of the mediation process by encouraging each party to express opinions, communicate freely,

and make decisions while respecting the role of the court. Mediation is not a substitute for court determination as to whether or not a guardian should be appointed.

Training should include a discussion of appropriate ways to include a person who has already been judicially determined to be incapacitated. Topics should address the vulnerable adult's role in the mediation process, assurance that his or her voice is heard or wishes incorporated into the discussion, and possible implications for signing agreements. See objective I-14, (agreements).

II-3. Develop a deeper understanding of ethical issues related to adult guardianship.

*Commentary*

Ethical issues that may arise in adult guardianship cases include:

- mediator competence to handle a particular case
- issues of confidentiality specific to attorneys, investigators, guardians ad litem, or others appointed by the court
- participation of the alleged or legally determined incapacitated person
- conflict of interest between an older person and a guardian or court-appointed representative
- policies and procedures that support an ethical practice
- self-determination
- informed decision-making
- mediator neutrality

Although we have presented a discrete objective on ethics in adult guardianship mediation, the committee believes that ethics and ethical values should be interwoven throughout the entire training and not only as a separate unit. See the commentary for objective I-9 (ethical issues).

II-4. Understand the value and uses of mediation during the pre-filing, adjudication and post-adjudication phases of guardianship.

*Commentary*

AGM training should support trainees in understanding how self-determination is a foundational value in both guardianship proceedings and mediation. Mediators should understand how mediation can support the use of least restrictive alternatives in the care of persons with diminished capacity or special vulnerabilities, the use of limited versus plenary guardianships, and the consideration of ways to maximize autonomy for those placed under guardianship.

Mediation is also of value when annexed to the court process of determining financial or personal arrangements related to potential or actual incapacity, and in structuring a cooperative resolution to conflicting needs and goals of participants or interested parties. Finally, mediation can address disputes or concerns that may arise after protective arrangements are in place.

- II-5. Obtain information and referrals regarding the specific laws and relevant roles, processes, terminology, and timelines for the jurisdictions represented within the training.

*Commentary*

AGM training should include a review of the court process in guardianship cases, including an explanation of when a court determination of incapacity may be necessary or unnecessary, appropriate or inappropriate. Training should contain legal information relevant to the jurisdictions represented in the training or detailed information on how to find the relevant laws.

Mediators should understand the functions of persons potentially involved with the adult guardianship process – which vary from place to place and case to case – e.g., guardians, wards, court-appointed attorneys, alleged incapacitated persons, visitors, investigators, conservators, agents under powers of attorney, guardians ad litem, public guardians, adult protective services workers, or representative payees. See objective II-6 for a discussion of their role within the mediation process.

Training should include the discussion of “mediating in the shadow of the law,” clear delineation of the role of the court, the role of the legally interested parties and others, and the role of the mediator. Training should explore the challenges to mediator neutrality in the context of the guardianship process and provide strategies regarding how to refrain from crossing the boundary into advocacy. See objective II-9 (agreements).

- II-6. Understand the importance of weighing the effect of including or excluding in mediation those persons who may be involved with the adult guardianship decision-making process.

*Commentary*

AGM training should discuss the role in the mediation process of professionals, court appointees, fiduciaries, and others involved in a guardianship case. The training should include a special focus on how the role, if any, of such persons in the mediation process is determined and how potential ethical dilemmas associated with participation in mediation can be resolved. See Objective II-3. The training should also discuss the possible impacts on the mediation of including or excluding such participants.

- II-7. Understand the procedures, agencies, and resources relevant to those with no discernable support system- i.e., guardian of last resort.

*Commentary*

AGM training should alert trainees to the challenges faced by the large percentage of vulnerable adults who do not have family or other community support. Trainees should be informed about available resources, and ways to expand the caregiving network.

II-8. Develop and practice skills specifically related to adult guardianship mediation.

*Commentary*

Because of the unique features of adult guardianship mediation, best practice for training includes ample time for each trainee to experience engaging with the people in the conflict, to practice mediation skills, and to receive feedback from coaches or trainers who are experienced adult guardianship mediators. Role plays should include adequate time for self-reflection and participant feedback. Role plays should enable trainees to practice dealing with potential ethical dilemmas, working with multiple parties, and assisting in the development of agreements. See Appendix, attached, for a description of best practices in mediation skills training.

II-9. Understand the unique issues presented in drafting agreements in adult guardianship cases.

*Commentary*

Training should present information on the role of the court in specific types of agreement, such as appointment of a fiduciary, in the jurisdictions represented in the training. Mediators should be aware of statutory requirements that courts, not participants, determine the need for a guardian so that agreements are worded to reflect this.

Training should discuss the role of counsel in drafting or approving agreements. Mediators should be aware of what kinds of clauses are enforceable by a court as a contract, what types are non-enforceable, how participants can construct self-enforcing clauses when desired, and whether having separate agreements for different types of issues may be appropriate. Mediators should assure that participants are prepared for the next steps in approval of agreement or implementation.

Mediators should understand the role in the agreement process of persons already judicially determined to be legally incapacitated, such as: the importance of allowing them to sign agreements, the role of an appointed surrogate or fiduciary in signing on their behalf, disagreements between incapacitated individuals and their legal representatives about the agreement, and ability to make and keep an agreement.

### **Appendix: Mediation Skills Training: Best Practices**

The committee has identified a need to help trainers present skills training through role play. While the following suggestions are not necessarily unique to elder mediation, they provide a good basis for planning and presenting skills training as part of elder mediation training.

- Role plays are best when they follow a demonstration by the trainer or a video of another mediator. The trainer should set up the role play so that people can be successful. Role plays are about practicing skills; therefore the trainer should identify the particular skills the trainee mediator is to focus upon. Clear expectations and directions set the stage for trainees to be successful.
- Include a variety of stages and contexts for the role plays. The role plays in the training should begin with fewer members and easier disputes. With confidence and more understanding of the context, the role plays would increase in difficulty.
- Include in the fact sheet feelings or interests for each role, what keeps a person from agreement, and their desire, if any, for settlement.
- Include a clear description of the roles of professionals and support people so people can adequately enact the roles, or have the various people in the training play their “real life” roles.
- Instruct role players to be responsive to the mediator’s interventions if they would likely create movement (rather than making the matter more difficult), so the mediators can practice new skills and be successful.
- Small groups with an experienced mediator acting as a coach is best practice. Providing a variety of mediation approaches is helpful to allow trainees to settle in on their own style/orientation to mediation.
- Trainers may want to provide coaching instructions that reflect the unique aspects of elder mediation and remind coaches of the specific challenges trainees may face in the role play.
- Coaches should provide feedback that includes mediator strengths demonstrated in the role play, lists areas or suggestions for improvement, and includes examples of specific language or interventions employed by the mediator, where possible.
- To encourage reflective practice, include debriefing on skills and ethical issues that arose in the role play. Provide suggestions for how something might be handled. Provide plenty of sample questions or phrases to use in mediation. Encourage discussion about the unique aspects of elder mediation, such as pre-conference meetings, working with multiple parties, family dynamics, and including and accommodating a cognitively incapacitated party. Additional challenges to “traditional” mediator practice should be discussed, such as the order in which parties are asked to speak, how parties are addressed by the mediator, techniques to engage all participants in the discussion, and how autonomy and self-determination are respected.