

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

SENATE BILL NO. 1223

By: Taylor and Henry of the  
Senate

and

Toure of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to mediation; creating the District Court Mediation Act; providing short title; construing act; authorizing court to refer matters for mediation; stating time for referral to mediation; requiring use of certain form; defining terms; stating responsibilities and duties of participants; prohibiting certain persons from serving as mediator; requiring certain disclosures by mediator; declaring mediation sessions to be private; declaring certain communications to be confidential; limiting use of certain recording devices during mediation sessions and providing exception; prohibiting certain service of process upon participants; authorizing court to maintain certain list of mediators and stating certain requirements for inclusion upon such list; clarifying that parties may agree to participate in any other dispute resolution process or to select any other mediator; requiring certain mediators to provide proof of qualifications; providing form; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1821 of Title 12, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "District Court Mediation Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1822 of Title 12, unless there is created a duplication in numbering, reads as follows:

Nothing in this act shall be construed to replace or supersede any provision of the Dispute Resolution Act or the rules and

procedures promulgated to implement and effectuate the Dispute Resolution Act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1823 of Title 12, unless there is created a duplication in numbering, reads as follows:

Any district court, by agreement of the parties, may refer any civil case, including any domestic relations case, or any portion thereof for mediation. A referral to mediation may be made at any time while a civil case is pending. The order of referral to mediation shall be entered on a standard form consistent with the form provided in subsection D of Section 5 of this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1824 of Title 12, unless there is created a duplication in numbering, reads as follows:

The following provisions shall apply to any mediation ordered by a court pursuant to Section 3 of this act:

1. Mediation shall be a process in which an impartial person, the mediator, facilitates communication between disputing parties to promote understanding, reconciliation, and settlement. Participants shall include the mediator, the parties, interested non-parties or their representatives, and all others present. The mediator may meet with participants together or individually;
2. The mediator shall be an advocate for settlement and use the mediation process to help the parties fully explore any potential areas of agreement. The mediator shall not serve as a judge and shall not have authority to render any decisions on any disputed issues or to force a settlement between the parties;
3. The parties shall be responsible for negotiating any resolution to a dispute. Parties shall participate in mediation in good faith, and put forth their best efforts with the intention to settle all issues if possible. If the parties are unable to settle all issues, they shall attempt to settle as many issues as possible;
4. No person with any financial or personal interest in the result of mediation may serve as a mediator. Prior to agreeing to mediate a dispute, the mediator shall disclose any circumstances

likely to create a presumption of bias or prevent a prompt meeting with the parties;

5. Mediation sessions shall be private. Persons other than the parties and interested non-parties and their representatives may attend only with the consent of the parties, interested non-parties, and the mediator;

6. Any communication relating to the subject matter of the dispute made during the mediation process by a participant or any other person present at the mediation shall be a confidential communication. No admission, representation, statement, or other confidential communication made in setting up or in conducting the mediation shall be admissible as evidence or subject to discovery, except that, no fact independently discoverable shall be nondiscoverable solely by virtue of having been disclosed in such confidential communication. There shall be no stenographic or electronic record, including audio or video, of the mediation process unless it is agreed upon by the parties, interested non-parties, and the mediator, and it is not otherwise prohibited by law. No participant in the mediation proceeding, including the mediator, shall be subpoenaed or otherwise compelled to disclose any matter disclosed in the process of setting up or conducting the mediation proceeding; and

7. No subpoena, summons, complaint, petition, citation, or other process of any kind may be served upon any person who is at or near the site of any mediation session and is there because of the mediation.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1825 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. A district court may maintain a list of qualified mediators to assist the parties in selecting a mediator. In order to be placed on any such list, an individual shall meet the following minimum requirements:

1. Civil and commercial mediators shall:

- a. be certified pursuant to the Dispute Resolution Act,  
or

- b. (1) complete a minimum of twenty-four (24) hours of mediation training, which training has been approved by the Mandatory Continuing Legal Education Commission of the Oklahoma Bar Association,
- (2) observe a minimum of two (2) mediation proceedings, and
- (3) complete at least six (6) hours every other year of continuing professional education in the area of mediation, which education has been approved by the Mandatory Continuing Legal Education Commission of the Oklahoma Bar Association; and

2. Divorce and Family Mediators shall:

- a. be certified for family and divorce mediation pursuant to the Dispute Resolution Act, or
- b. (1) complete forty (40) hours of training in family and divorce mediation, which training has been approved by the Mandatory Continuing Legal Education Commission of the Oklahoma Bar Association,
- (2) conduct at least twelve (12) hours of mediation with three (3) separate families, and
- (3) complete at least six (6) hours every other year of professional education in the area of family mediation, or
- c. have been regularly engaged in the practice of family and divorce mediation for at least four (4) years.

B. Nothing in this act shall preclude the parties from agreeing:

1. To participate in any alternative dispute resolution process, including mediation, independent of this act or any related court order; or

2. To select a mediator not identified on any list of qualified mediators maintained by the district court.

C. Mediators who are not certified pursuant to the Dispute Resolution Act, upon request by the court, any party, or legal counsel, shall provide information demonstrating the mediator's compliance with the requirements of Section 4 of this act, and shall agree to adhere to the Model Standards of Conduct for Mediators approved by the Litigation and Dispute Resolution Sections of the American Bar Association, the American Arbitration Association, and the Society of Professionals in Dispute Resolution.

D. The following form shall be used to order mediation pursuant to this act:

IN THE DISTRICT COURT OF \_\_\_\_\_ COUNTY

STATE OF OKLAHOMA

Order of Referral To Mediation

This case is ordered to mediation pursuant to the District Court Mediation Act. Parties and legal counsel shall proceed in good faith to resolve this case. The parties shall select and contact a mediator or mediation program or service within five (5) business days to make appropriate arrangements for the mediation proceeding. Mediation shall be completed within \_\_\_\_\_ days from the date of this order.

Mediation shall be attended by persons with full settlement authority. Both parties shall participate in mediation; attorneys may participate as agreed by the parties and the mediator. Named parties shall be present except for a named party who has no interest in the outcome and no settlement authority. Each party who is represented by legal counsel shall be accompanied at mediation by an attorney who is fully familiar with the case. In addition, any interested non-party, including any insurance company or other entity that is contractually required to defend or to pay damages, shall be represented by a person with full settlement authority.

SECTION 6. This act shall become effective November 1, 1998.

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