

27th August 2014

ATT: Ms M Munyembate

Department of Justice and Correctional Services
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E-mail: MMunyembate@justice.gov.za

Dear Ms Munyembate

RE: COMMENTS ON THE QUALIFICATION STANDARDS FOR ACCREDITATION OF MEDIATORS AS REQUIRED BY RULE 86 OF THE COURT-ANNEXED MEDIATION RULES

Thank you for this opportunity to submit comments on the accreditation norms and standards for mediators. We commend the Department on the proposals and have the following few comments to make.

Felicity Steadman and John Brand have drafted mediator skills training materials and trained mediators for 24 years, at first through the Independent Mediation Service of South Africa (IMSSA), then through the Commission for Conciliation Mediation and Arbitration (CCMA), the International Labour Organisation (ILO) and Conflict Dynamics. Conflict Dynamics has worked in close association with the Centre for Effective Dispute Resolution (CEDR) in the UK training commercial mediators since 2007, and in 2012 Felicity and John were awarded the ADR Trainer Award for their work training commercial mediators in South Africa. The comments below are based on this extensive experience designing training materials and training mediators in South Africa and around the world

1. Section 1 Syllabus and course content

- 1.1. Duration of training: We agree that every mediator must undergo a minimum of 40 hours contact training, this is an international benchmark. It should be emphasised that this is an international minimum standard and that many countries requires significantly more contact time.
- 1.2. Certification of training: We are concerned that the training institutions and the courses that they will provide will not themselves be accredited in the manner that training providers are usually accredited by SAQA or a SETA. This could pose a serious risk to the quality of this training. The Dispute Settlement Accreditation

Council (DiSAC) has formulated standards for the accreditation of training providers and mediator provider organisations, and we support its recommendations in this regard. We propose that the Minister consider accrediting training courses and training providers to DiSAC standards in order to ensure that the credentials that mediators present to the Minister when they apply to join the panel of mediators are sound;

- 1.3. The proposed theoretical components of the training are typical of mediator training in South Africa and internationally, save for the requirement for training in basic civil procedure. In the case of mediators who are already legally trained this would seem to be superfluous, while for non-lawyers this could prove useful although we are in no way suggesting that court-annexed mediators should be trained lawyers. We also propose that mediators' understanding of these theoretical components should be assessed by, for example, a written test.
- 1.4. The proposed practical component of the training should be much more detailed than currently described. Mediation is, to a very large extent, a practical skill and we recommend that mediator training courses should have a strong practical component. Specifically, mediators should be given at least 4 opportunities on a basic 40 hour course to act as mediator in role-plays. They should be coached by experienced mediators and be given one-on-one feedback on their performance. At least two of the four role-plays should be assessed and mediators should be provided with written feedback. Assessment should be conducted in accordance with a set of mediator competencies determined by the training provider, which in turn are aligned with the prescribed theoretical component of the teaching. The coaches and assessors should themselves meet minimum requirements including being accredited mediators with at least 5 year experience as mediators. We attach for your information the Guidelines and Mediator Competencies we require our coaches and assessors to follow (annexure 1 and 2).
- 1.5. Exemption from training: The success of the mediation rules will, to a very large extent, depend on the skilful handling of the mediations by the mediators. Court-annexed mediation is no less challenging than other types of mediation, indeed it might be more challenging because one or both parties may be reluctant to engage in the process and there may be time constraints. We cannot think of any applicant who should be exempt from the requirements of accreditation in terms of these norms and standards as contemplated in section 1 (2). There is already a diverse body of at least 300 accredited mediators in South Africa who have already attended 40 hour courses to the standards referred to above. They would immediately be well placed to apply for accreditation for court-annexed mediation.

2. Section 2 Mediator levels

- 2.1. We agree with the idea that there be two levels of mediators so that more experienced mediators can be assigned to more complex or higher value claims. We are however of the view that the proposed difference between the two levels is unnecessarily wide and that considering how little mediation experience most accredited mediators have there will be very few mediators immediately available who meet the proposed level 2 requirements.
- 2.2. It goes without saying that besides requiring a NQF level 4 competency and basic computer literacy skills, level 1 mediators must also be accredited mediators in order to be considered for the panel.
- 2.3. In the case of level 2 mediators we suggest that in addition to being an accredited mediator and having an NQF level 7 qualification, level 2 mediators be required to prove that they have a minimum of 2 years mediation experience. This experience could include family, labour/management, employment and community mediation.
- 2.4. Some mediators will be able to prove that they have the required experience by asking the panel to which they are affiliated to confirm this, but in the case of mediators who are not affiliated to a panel of mediators we suggest that they be required to provide an affidavit confirming their experience.

3. Section 3 Character and other certification

- 3.1. The character and other certification that each applicant is required to produce appear reasonable.
- 3.2. In relation to Section 3 (1) (d), we think that mediators should have to provide proof that they have not only completed the level of mediator training required but also been assessed as competent. Mere attendance at a course for 40 hours should not be sufficient and would not comply with international standards.
- 3.3. In relation to Section 3 (1) (e), we again think that the training providers referred to in 3 (1) (e) should be accredited by the minister to ensure that they meet basic standards and that their courses satisfy the norms and standards required by the Minister otherwise the certificate of good standing referred to here will be of little value.

4. Section 4 Panel of mediators – no comment

5. Section 5 Mediator ethics – no comment

6. Section 6 Fees – no comment

7. Section 7 Duty to disclose conflict of interest – no comment

8. Section 8 Mediator's conduct and obligations during mediation proceedings – no comment

We hope these comments are of assistance in your work.

Yours sincerely

FJSteadman.

FELICITY STEADMAN AND JOHN BRAND