

## CHAPTER 13 MEDIATORS

**621—13.1(20) Scope and authority.** This chapter applies to all mediators listed on the agency's mediator list and to all persons applying for inclusion on the list.

[ARC 1642C, IAB 10/1/14, effective 11/5/14]

**621—13.2(20) Definitions.**

*“Ad hoc mediator”* means a person included on the list who enters into an independent contractor agreement with the agency to provide mediation to parties requesting impasse services pursuant to Iowa Code section 20.20.

*“Advocate”* means a person who represents employers, employee organizations, or individuals or entities in labor relations or employment relations matters, including but not limited to the subjects of union representation and recognition matters, negotiations, mediation, arbitration, unfair or prohibited labor practices, equal employment opportunity, and other areas generally recognized as constituting labor or employment relations. “Advocate” includes representatives of employers or employees in individual cases or controversies involving workers' compensation, occupational health or safety, minimum wage, or other labor standards matters. “Advocate” also includes persons directly or indirectly associated with an advocate in a business or professional relationship as, for example, partners or employees of a law firm.

*“FMCS”* means the Federal Mediation and Conciliation Service.

*“Qualified-mediator list”* or *“list”* means the agency-maintained list of mediators who have met the criteria set forth in this chapter.

[ARC 1642C, IAB 10/1/14, effective 11/5/14]

**621—13.3(20) List and status of members.**

**13.3(1) *The list.*** The agency shall maintain a list of mediators who meet the criteria for listing contained in rule 621—13.4(20) and who remain in good standing.

**13.3(2) *Adherence to standards and requirements.*** Persons included on the list shall comply with the agency's administrative rules pertaining to mediation. Mediators shall conform to the ethical standards and procedures set forth in the current Code of Professional Conduct for Labor Mediators, as approved and published by the Association of Labor Relations Agencies, and chapter 11 of the Iowa Court Rules. When in conflict, the Code of Professional Conduct for Labor Mediators shall take precedence over the Iowa Court Rules.

**13.3(3) *Status of FMCS and ad hoc mediators.*** Ad hoc mediators and mediators employed by FMCS are not employees of the state of Iowa.

**13.3(4) *Rights of persons on the list.*** Placement on the list shall be at the sole discretion of the board.

**13.3(5) *Assignments.*** The agency has sole discretion to make and modify mediation assignments.

[ARC 1642C, IAB 10/1/14, effective 11/5/14]

**621—13.4(20) Mediator listing.**

**13.4(1) *Categories of mediators.*** The list shall consist of three categories of mediators:

- a. The agency's professional staff;
- b. Mediators employed by FMCS; and
- c. Ad hoc mediators.

**13.4(2) *Application procedures for ad hoc mediators.*** Persons seeking to be included on the list must complete and submit an application to the agency. Applicants shall submit at least two professional references, preferably one reference from management and one reference from labor. The board will review the application under the criteria set forth in this rule and shall make a final decision as to whether an applicant may be placed on the list. Satisfactorily meeting all criteria does not entitle an applicant to inclusion on the list. Each applicant shall be notified in writing of the board's decision.

**13.4(3) *Knowledge and abilities.*** Applicants must establish requisite knowledge and abilities as follows:

- a. Good verbal and written communication skills;
- b. The ability and willingness to travel throughout Iowa and to work prolonged and unusual hours;
- c. Knowledge of Iowa Code chapter 20, the agency's administrative rules, and principles and practices of contracts, public finance, and labor relations; and
- d. The ability and willingness to conduct a mediation in a fair and impartial manner.

**13.4(4) Experience.** Applicants must demonstrate requisite experience in labor relations or mediation in one of the following ways:

- a. At least three years of collective bargaining experience in the public or private sector;
- b. At least three years of actual mediation experience;
- c. At least five years of other relevant experience in labor-related fields including but not limited to human resource management, industrial relations, and labor unionism;
- d. A law degree or a master's or equivalent degree in industrial or labor relations or alternative dispute resolution; or
- e. Experience that is a combination of that described in paragraphs "a" through "d" of this subrule.

**13.4(5) Geographical location.** Preference will be given to applicants residing in or near areas of the state where few other listed mediators reside.

**13.4(6) Training.**

- a. Prior to inclusion on the list, an applicant must complete the following training:
  - (1) Formal training provided by the agency; and
  - (2) Mentorship in at least two disputes with an experienced, listed mediator. The board may require additional mentoring if deemed necessary.
- b. Training requirements may be waived by the board for applicants with prior public sector mediation experience.

**13.4(7) Conflict of interest.** Prior to inclusion on the list, all applicants must disclose potential conflicts of interest as described in subrule 13.6(1).

**13.4(8) Exemption.** Persons on the agency's professional staff and mediators employed by FMCS shall not be required to submit an application for listing and shall be deemed as meeting all criteria set forth in subrules 13.4(3) through 13.4(6) throughout the duration of their employment with the agency or FMCS.

**13.4(9) Grandfather clause.** Any person listed prior to November 5, 2014, shall be deemed as meeting all criteria set forth in subrules 13.4(3), 13.4(4) and 13.4(6).

[ARC 1642C, IAB 10/1/14, effective 11/5/14]

**621—13.5(20) Independent contractor agreement.** An ad hoc mediator must enter into an independent contractor agreement with the agency prior to receiving mediation assignments. The independent contractor agreement between the ad hoc mediator and the agency shall establish the hourly rate, reimbursable fees and expenses, duration, and other terms and conditions.

[ARC 1642C, IAB 10/1/14, effective 11/5/14]

**621—13.6(20) Conflict of interest.**

**13.6(1) Conflict of interest.** The board shall determine whether a person has a conflict of interest which may require denial of an application or removal from the list or from individual assignments. A conflict of interest arises where:

- a. A mediator is or has been an employee or advocate for a party to the mediation within the prior two years; or
- b. A mediator's immediate family member, or any other person with whom the mediator has close, personal ties, is an interested party in the outcome of the mediation; or
- c. Any other matter that may create an appearance of bias, lack of impartiality, or interest in the proceedings to which the mediator may be or has been assigned.

**13.6(2) Duty to disclose.** A person applying for inclusion on the list or a person included on the list has a continuing duty to disclose to the board in writing any potential or actual conflicts of interest as described in subrule 13.6(1).

**13.6(3) Disclosure.** The board may require a mediator to disclose certain matters to the parties of a mediation prior to its commencement. If either party objects to proceeding to mediation with that mediator, the board may assign a different mediator.

[ARC 1642C, IAB 10/1/14, effective 11/5/14]

**621—13.7(20) Confidentiality.**

**13.7(1) Exemption from open meetings law.** In accordance with Iowa Code section 20.17(3), communications between the parties and the mediator during the course of a mediation shall be exempt from the provisions of Iowa Code chapter 21.

**13.7(2) Mediator privilege.** In accordance with Iowa Code section 20.31(2), a mediator shall not testify in judicial, administrative, or grievance proceedings regarding any matters occurring in the course of a mediation, including any verbal or written communication or behavior, other than facts relating exclusively to the timing or scheduling of mediation. A mediator shall not produce or disclose any documents, including notes, memoranda, or other work product, relating to mediation, other than documents relating exclusively to the timing or scheduling of mediation.

**13.7(3) Exception.** Subrule 13.7(2) shall not apply in any of the following circumstances:

- a. The testimony, production, or disclosure is required by statute;
- b. The testimony, production, or disclosure provides evidence of an ongoing or future criminal activity; or
- c. The testimony, production, or disclosure provides evidence of child abuse as defined in Iowa Code section 232.68(2).

[ARC 1642C, IAB 10/1/14, effective 11/5/14]

**621—13.8(20) Complaints.** Any affected person or party shall direct a complaint against a mediator who is on the list to the board. The board will consider the complaint and other relevant information and take such action it deems appropriate.

[ARC 1642C, IAB 10/1/14, effective 11/5/14]

**621—13.9(20) Inactive status.** A member of the list who continues to meet the criteria for inclusion on the list shall inform the agency if the member is unavailable for assignment on a temporary basis because of illness, vacation, schedule, or other reasons. That member will not receive assignments during the period in which the member is unavailable.

[ARC 1642C, IAB 10/1/14, effective 11/5/14]

These rules are intended to implement Iowa Code sections 20.1, 20.6 and 20.20.

[Filed ARC 1642C (Notice ARC 1570C, IAB 8/6/14), IAB 10/1/14, effective 11/5/14]