TEXAS MEDIATION TRAINERS ROUNDTABLE ("TMTR")
ELDER MEDIATION BASIC TRAINING STANDARDS

These training objectives have been developed to orient mediators to the issues and skills necessary to enter the practice of 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, serious illness or disability, and dying. It may include issues of personal or medical care, financial concerns, autonomy and independence, dignity and respect, safety, family issues, living arrangements, planning, decision-making and communication.

Introductions to elder mediation training should include information on the demographics of aging in the U.S. and around the world, the types of disputes appropriate for elder mediation and the goals of elder mediation, which include the preservation of family and professional relationships and the principled resolution of conflicts in ways that support and protect vulnerable adults.

A central value infused throughout elder mediation training is the importance of supporting the self-determination of the older, ill or disabled person in the mediation process to the greatest extent possible. This value may be accomplished by the older, ill or disabled person's physical presence and/or by the inclusion of the older, ill or disabled person's expressed wishes and longstanding values whenever mediation discussion, action or decisions may impact the older, ill or disabled person. While elder mediation upholds the self-determination of all participants, training should address the forces that potentially exclude older, ill or disabled persons from decision-making, such as ageism, frailty, cognitive concerns and cultural norms.

Issues related to aging, illness, disability and dying are complex and emotional. Their effects on aging, ill or disabled individuals and their family members are different for each person and family. The Elder Mediation Basic Training should be viewed by trainees as the beginning of their education in elder mediation and in issues of conflict resolution surrounding aging, illness and loss. Trainees should be encouraged to embark on a continuing search for additional meaningful education in these areas to support their growth as elder mediators.

Training should include a mix of lecture (including guest lecturers on aging issues and care as deemed appropriate by the instructors), group discussion, role plays and feedback from experienced elder mediators to trainees on participants' role play performances. Instructors may also wish to provide readings and bibliographies of additional relevant materials for trainees both pre- and post-training.

Prior training: A 40-hr course in Basic Mediation training is a prerequisite to this course. Family Mediation training is recommended, but not required. Elder mediation training is intended to build upon prior knowledge, skills and experience in both mediation and aging issues.

Minimum course time for Elder Mediation Basic Training: 20 hours.

Acknowledgement: In creating these training standards, TMTR gratefully acknowledges the work of the Association for Conflict Resolution Elder Mediation Section Committee on Training Standards and thanks the Elder Mediation Section for its generous permission, granted by the Section's Executive Committee

in April 2017, to adopt, combine, modify and/or expand for use in Texas the recommended Training Objectives and Commentaries from that section's Training Standards and Commentaries for (a) Elder Care and Elder Family Decision-Making Mediation, (b) Working with Older Persons in Mediation – Diversity Training and (c) Mediation in the Long-Term Care Setting.

ELDER MEDIATION BASIC TRAINING OBJECTIVES

TMTR establishes the following course objectives for Elder Mediation Basic Training:

Each student should:

1. **Understand problems and issues faced by older, ill or disabled persons and their families, including the family dynamics involved. (1 hr minimum)**

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.

2. **Have knowledge of the psychosocial, mental and physical effects of aging, illness or disability, as well as the accompanying strengths and losses, so as to accommodate those changes to maximize participation in the mediation process for an older, ill or disabled person and all other participants. (1.5 hrs minimum)**

    A. **Understand cognitive factors affecting capacity to mediate, their effects on a safe and fair mediation process, and the role of surrogate decision-makers. Training should emphasize the following:**

    - Basic concepts of capacity;
    - Basic knowledge of factors affecting capacity;
    - Laws related to personal and financial surrogacy;
    - Surrogates and support persons, including their rights, duties and limitations;
    - Standards of surrogate decision-making; and

- Approaches to maximize capacity to participate in mediation, even when a surrogate is involved.

B. Understand physical factors affecting capacity to mediate and their effects on a safe and fair mediation process. Training should emphasize the following:

- Basic knowledge of common diseases/conditions of aging;
- Approaches to maximize the ability to participate in mediation.

Commentary

Gaining knowledge about aging/illness/disability and individual differences in the process of aging can give the mediator awareness and sensitivity while avoiding assumptions about any particular older, ill or disabled 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 and appropriate accommodations that may enhance participation. The mediator should also be able to clearly describe to all participants this orientation favoring maximum participation.

"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 or exploitation, 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.

Mediators should understand that 'capacity' is not global, but is both contextual and task-specific. For example, a party may lack capacity to manage finances, but still have capacity to mediate. In addition, the resident in a long-term care setting may be better able to participate in a mediation at certain times of the day, in personally comfortable places in the residence, and/or with the appropriate aids, such as hearing aids or glasses. Training should highlight context as an important part of preparation and process. The goal is to facilitate contextually, so that the level of capacity to mediate is enhanced.

Incapacity is not synonymous with medical and psychological conditions such as dementia or schizophrenia; rather, such conditions may contribute to a lack of functional ability in certain areas. Mediators should begin with a presumption of capacity, but be alert to indications of problems. Finally, mediators should recognize that diminished capacity can be reversible or temporary when caused by factors such as side effects of medication, infection, malnutrition, stress, grief and transfer trauma.

Training should include how to screen for capacity to mediate issues 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, ill or disabled person will participate, to the extent possible. Training should also include a discussion of ways to incorporate the expressed wishes and longstanding values of an older, ill or disabled person if she or he is not able to participate fully in the process. Assuring that he/she has the opportunity to make his or her wishes known and considered, either through direct participation in the process or through other means, 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, ill or disabled person.

Capacity to mediate issues do not apply solely to older, ill or disabled persons. Mediators need to be alert to cognitive concerns, mental health issues, abuse and signs of fear and threat experienced by others, such as spouses, caregivers and adult children.

Training should include basic education in the various roles of surrogate decision-makers in Texas, for example, court-appointed guardians of the person and/or estate, agents under financial, health care or mental health powers of attorney or named in an Advance Directive to Physicians, supporters under supported decision-making agreements, and persons designated by law under the Texas Consent to Medical Treatment Act. It is strongly recommended that education on the various legal alternatives for surrogacy be presented by an attorney with significant experience with these legal issues. Discussion should include when these surrogates may make or communicate decisions for an older, ill or disabled adult, the bases for decisions by surrogates, and the limitations of their powers. Elder mediators should recognize when surrogates may be necessary participants in the mediation and when participants or the mediator may need to seek expert counsel on this topic. There can be no resolution if all the necessary decision-makers are not in agreement, so it is vital for elder mediators to recognize who is a necessary party to the mediation process.

Please note that Elder Mediation Basic Training is not intended to train elder mediators to mediate guardianship matters within Texas court systems. Guardianship mediation is anticipated to require a significant legal background in probate matters. The additional related training needs for a mediator to competently handle such matters exceeds the parameters of the basic training course addressed in these standards.

3. **Understand the accommodations that may be needed for persons with cognitive or other disabilities. (0.5 hrs minimum)**

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, including scheduling the location, time and length of mediation sessions to maximize participation by all participants.

4. **Be aware of societal and participant biases as well as family, generational, and cultural attitudes regarding aging, illness and disability and their effect on the mediation process. Engage in self-**

assessment of any aging or disability-related biases/perceptions that might impact mediator competency. (0.5 hrs minimum)

Commentary
Participants, including older, ill or disabled persons themselves and support people, as well as the mediator, may have biases involving aging, illness and disability. The training should help mediators understand how biased 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, ill or disabled person.

Self-assessment also 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.

5. **Deepen understanding of issues of elder abuse and financial exploitation as they affect the mediator's responsibility to provide a safe and effective process including: (1 hr minimum)**

- **Definitions of, and how to recognize, elder abuse or financial exploitation;**
- **The dynamics within the family or caregiver relationship;**
- **How to screen for abuse or exploitation prior to and throughout the mediation process;**
- **When to rule out mediation;**
- **When to continue mediation;**
- **The relationship of mediation to Adult Protective Services; and**
- **Confidentiality and mandated reporters.**

Commentary
The presence of elder abuse and/or financial exploitation can have a severe impact on the safety and fairness of the mediation process and on the capacity to mediate. Because elder abuse or exploitation is often hidden and is generally vastly under-reported, we recommend that training on the definitions of elder abuse and financial exploitation, how it may be manifested, and ways to recognize abuse or exploitation, as well as the incidence and effect of elder abuse and exploitation, 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, her ability to identify, assess and make decisions about potential mediation outcomes and consequences, and her ability to follow through on decisions reached in mediation.

The training should include screening for elder abuse and financial exploitation and introduce mediators to the issues that arise when elder abuse or exploitation 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 or exploitation is alleged or present. Training should also include a discussion of the mediator's legal or ethical responsibility to report elder abuse or financial exploitation, the impact of the presence of other mandated reporters, and limitations on confidentiality.

6. Understand the need for appropriate intake and preconference procedures and the factors that make thorough screening essential in elder mediation. (1.5 hrs minimum)

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/exploitation, physical challenges and capacity issues to ensure safety and the ability to participate fully, as discussed in the prior objectives and commentaries. A goal of the preconference conversation is to identify and address any physical or cognitive limitations and determine necessary accommodations, which may include setting an optimal time and place for and length of the mediation session. Preconference 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, ill or disabled person to the greatest extent possible, particularly when there are cognitive deficits, communicative challenges, or when the older, ill or disabled person will not be present. If the older, ill or disabled person has cognitive deficits or cannot communicate decisions, it is important to learn whether he or she has a legally-designated surrogate decision-maker who may be a necessary participant in the process. Consideration should also be given as to whether it is appropriate to mediate without the participation of the older, ill or disabled person; it is the duty of the mediator to independently determine whether the older, ill or disabled person cannot or chooses not to participate rather than relying upon assurances of this from other participants.

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 preconference 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 preconference 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 preconference process as a matter of policy or need. We recommend that training for mediators in such programs, and for mediators in private practice, include discussion of the benefits and pitfalls of mediator involvement at this stage, as well as skills training in the preconference process. Best practice includes trainee practice of preconference 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, preconference conversations, or later in the mediation.

7. Deepen understanding of ethical issues and the unique challenges of elder mediation. (1.5 hrs minimum)

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. We recommend 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, ill or disabled 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 education about and referrals to aging services.
- **Address Whether an Older, Ill or Disabled Person Does/Does Not Need to Participate:** Mediators need to understand when the presence of an older, ill or disabled 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, ill or disabled person and when a mediator should take an active role in supporting the inclusion of the older, ill or disabled person's voice or longstanding 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, ill or disabled person's physical presence and/or consideration of his or her voice and wishes. At the same time, mediators need to maintain impartiality and take care not to alienate the other participants.

- **Recognize Imbalances of Power:** Mediators need to recognize when participants display imbalances in power which may inhibit the voice of older/ill/disabled participants and/or skew the decision-making process unfairly. Mediators need to learn techniques that will maximize the voices of all participants to facilitate more balanced discussions and decision-making.
- **Ethical Issues Surrounding Elder Abuse or Financial Exploitation:** Mediators need to be trained in how to screen for and respond to issues of elder abuse or financial exploitation during both the preconference stage and the ongoing mediation process in a way that is safe for participants.
- **Conflicts of Interest:** Mediators need training in how to identify and respond to conflicts of interest among older/ill/disabled persons, their surrogate decision-makers, their support persons and other participants.
- **Confidentiality:** Mediators need to understand the exceptions to confidentiality that may arise in elder abuse or financial exploitation 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.

8. **Develop and practice skills related to elder mediation. Increase skills through role play practice and debrief. Role play skills include, but are not limited to: (6 hrs minimum)**

- **Determining whether mediation is appropriate;**
- **Working with individuals with diminished capacity**
- **Identifying any accommodations that may be needed;**
- **Identifying who needs to participate and their roles;**
- **Working with multiple parties including long-term care staff, surrogates, advocates and support persons; and**
- **Addressing relevant laws and regulations.**
- **Working with participants to evaluate suggested resolutions.**

Commentary
Training should allow time for role plays and feedback to participants by experienced coaches. Role play developers should consider role descriptions that suggest realistic ways of "playing" older, ill or disabled participants. The training should support mediators in gaining competence to facilitate discussions that include multiple generations, multiple parties, advocates and support persons. Training should provide time to practice all stages of mediation, including preconference meetings or calls. Role plays and

exercises should provide trainees with practice in working with individuals who may have diminished capacity, in recognizing the need for and establishing accommodations, addressing fear of retaliation, and in maximizing individuals' abilities to participate and engage effectively in the process. 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.

Training should also offer practice in working with long-term care staff and other stakeholders to identify who may participate, to overcome any resistance to the mediation process and to encourage a collaborative problem-solving approach. Role plays should enable trainees to understand the roles of surrogates and advocates and to understand ways to work with them. Role play examples should include the opportunity to understand the effect of relevant local, state and national laws and regulations (or lack thereof) on the mediation process. If possible, including participants from local long-term care facilities as role players can enhance the learning experience.

Training and role plays should develop skills by which mediators can assist participants to envision the implementation and effect of proposed resolutions to their conflicts. Will their proposals work in the real world given ethical, legal or financial constraints?

9. **Have basic knowledge of the normal mental and physical effects of aging, as well as strengths and losses that may come with aging/illness/disability, so as to understand how those factors affect the individual's ability to care for himself, to manage his finances, to care for his property, to make sound decisions and to keep himself safe. Trainees should also have knowledge of community resources related to older, ill or disabled persons and ways to utilize resources in the mediation process. (3 hrs minimum)**

    - **Basic knowledge of common diseases/conditions of aging that may affect physical capabilities, for example, arthritis, heart disease, vision loss, hearing loss, mobility challenges, diabetes, cancer, speech difficulties and the related care, assistance and safety needs.**
    - **Basic knowledge of common diseases/conditions that may affect cognitive capacity, for example, dementia (including Alzheimer's disease), Parkinson's, stroke, a debilitating mental or physical illness, intellectual disabilities, head injuries, infection, chemotherapy, other medications and drug interactions, delirium, pain, grief, stress and others, and the effects of cognitive challenges on an individual's safety, self-care and financial management.**
    - **Basic understanding of the variety of in-home and community services available.**
    - **Basic understanding of the continuum of facility care options available, the types of conflicts that arise in long-term care and the role of the long-term care ombudsman as a resident advocate, as established under the Older Americans Act.**
    - **Basic understanding of medical costs for care, payment options (including insurance and public benefits) and their impact on individuals and families.**
    - **Basic understanding of the stresses on family caregivers.**

Commentary

An elder mediator need not be an expert in physical or cognitive conditions, nor is the mediator expected to have extensive expertise in care options, costs or payment options for care. These factors all play into the vast majority of elder mediations, however, and participants may arrive at the mediation with only limited knowledge of or experience in dealing with these troubling issues that are new to them. In order for participants to craft a workable resolution to their conflict and make informed decisions, they often need assistance from the elder mediator to identify integral issues and may need referrals to relevant local resources for education and guidance before resolution can be reached. Training should include a discussion of how to recognize aspects of cases that might benefit from social, financial, legal, health care or other community resources, a discussion of related available resources and 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. Training should be designed to bring the most prevalent of these issues to the awareness of trainees, who are then encouraged to independently research these topics and resources to develop personal competence in assisting participants to obtain needed information throughout the mediation 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/illness/disability 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.

10. **Be alert to situations that may place an older, ill or disabled person at risk for loss of rights, assets 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, and legal qualifications, may be necessary to competently mediate certain cases, such as guardianship. (1.5 hrs minimum)**

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 or financial assets, making decisions that have an impact on Medicaid or VA eligibility or tax liability, impinging on an older, ill or disabled person's civil rights, and signing legal documents, including powers of attorney, supported decision-making agreements, deeds, wills or beneficiary designations. It is strongly recommended that training on these topics be provided by an attorney with significant experience with these issues.

11. **Understand the unique issues presented in identifying and writing down matters agreed upon by participants in elder mediation, including hearing loss, vision loss, communicative difficulties and cognitive capacity challenges. Identify the parties necessary to achieve an agreement both ethically and legally. (1 hr minimum)**

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, or when approval by the court may be required. Training should offer practice in asking questions to test the participants' commitment to 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 or conflict. Training should include elements of agreements to address substantive, procedural and psychological closure where relevant.

12. Explore ideas for program development, policy development, marketing a practice, generating cases and building and evaluating an elder mediation practice. (1 hr minimum)

Commentary
Training should discuss the importance of setting policies and generating 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, elder care facilities and agencies, 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 elder mediation.