

NEBRASKA MEDIATION & ADR HANDBOOK

FOR JUDGES
& COURT STAFF

Published by the Nebraska Dispute Resolution Office
Administrative Office of the Court
Nebraska Supreme Court

First Published -- January 1993

Updated -- May 2004

Revised -- May 2005

Updated February 2006

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NEBRASKA MEDIATION CENTERS

Preface

Nebraska Mediation & ADR Handbook for Judges and Court Staff
May 2005 Revision

It is in recognition of the commitment and dedication of the men and women serving as judges, clerk magistrates, district court clerks, and court personnel within the Nebraska court system that the Office of Dispute Resolution offers this revised handbook on mediation and alternative dispute resolution. The judicial branch of government has long stood for fairness, equity, justice . . . where voices are heard and issues are resolved. It is in light of these time-honored principles that the Nebraska justice system has determined that in addition to the traditional adversarial process, other appropriate processes to resolve disputes may be offered to the citizenry to enhance individual and public commonwealth.

For nearly fourteen years, Nebraska's six ODR-approved community mediation centers have provided a significant resource to Nebraska's courts toward this goal. In 2004 alone, over 2,122 mediation and facilitation cases were handled by the centers, of which 41% were domestic relations cases, 20% family group conferencing, 17% community disputes, 10% restorative justice.

As the new director for the Office of Dispute Resolution, Nebraska Court Administrator's Office, it is my hope that the materials and resources enclosed within this handbook will not only be useful, but may stimulate ideas for new and enhanced court-based or court-referred mediation and ADR. This office welcomes inquiries and ideas at any time, and I look forward to meeting and working with many of Nebraska's judges and court personnel.

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May 2005

SECTION 1: INTRODUCTION

This handbook is designed to provide judges and court staff materials regarding the Office of Dispute Resolution and the Nebraska community mediation centers, so that courts can more effectively use the centers to assist litigants and courts. The regional centers in Nebraska primarily use a facilitative, interest-based mediation model and generally follow the same program standards and procedures. Each mediation center has developed programs unique to its geographical area designed to assist the public and courts to access justice for disputes. Judges and court personnel are welcome and encouraged to work with the directors of their respective mediation center to develop programs that will be of assistance to their court.

Some form of informal mediation and ways to resolve disputes has been used in every culture and people throughout history. Mediation has been used by indigenous peoples of the Americas, New Zealand, Australia, and also used by religious orders such as the Quakers and Mennonites. In more recent times, formal systems of rights-based dispute resolution, using primarily an adversarial process, have evolved in Western civilization and have been largely and exclusively used in the United States and many other nations. For the past three decades and more, the informal, more interest-based dispute resolution strategies have begun to be incorporated into the mainstream of the justice system.

In 1965, Nebraska passed the Conciliation Court Act which allowed for alternative dispute resolution methods to be used in divorce matters. Today, Douglas County has a Rule 4-3 and a few other counties have incorporated informal alternative intervention models in custody disputes.

Statewide community-based mediation efforts began in the 1980s in Nebraska. The financial crisis in agriculture in the early 1980s gave rise to the farm crisis hotline in 1984, and in 1988 to the Nebraska Farm Mediation Act. The Farm Mediation Program demonstrated that many problems could successfully be solved consensually, often as an alternative or supplement to the courts. It also showed that statewide programs working in cooperation with institutions, agencies, and local individuals could extend limited resources and provide greater access. As a result, efforts were made to extend the mediation process to other kinds of disputes, and in 1991 the Nebraska Dispute Resolution Act was passed, broadening the use of mediation to all types of civil conflicts.

The Nebraska Mediation and ADR Handbook for Judges and Court Staff was originally funded in part by the National Institute for Dispute Resolution and later revisions supported by the Nebraska Administrative Office of the Court, Office of Dispute Resolution. The opinions expressed herein do not necessarily reflect the position of the Institute. It is hoped that this handbook will encourage a continuing dialogue between the courts and the mediation centers in order to create and sustain a quality partnership.

SECTION 2: GLOSSARY

ODR - Office of Dispute Resolution. The Office of Dispute Resolution is part of the State Court Administrator's Office and under the authority and supervision of the Nebraska Supreme Court. The Office of Dispute Resolution approves and sets mediator and center ethical, training, and related standards for the ODR-approved regional mediation centers to further the use of mediation, ADR, consensus building, and problem solving in the state.

ADR - Alternative - or Appropriate Dispute Resolution. Alternative /Appropriate Dispute Resolution (ADR) is the broad umbrella title covering a wide variety of practices and programs designed to find a way to settle disputes outside of the traditional adversarial process. ADR approaches include conciliation, mediation, arbitration, and hybrid programs that include some elements of each. Summary jury trial, mini-trial, and early evaluation are all considered forms of ADR. An emerging ADR application that integrates restorative practices into the court room is known as the problem solving court – including examples such as drug courts, family dependency courts, and domestic violence courts.

Mediation. Mediation is a process by which a neutral third party assists two or more people to address issues in conflict in order to give them an opportunity to reach a mutually agreed upon negotiated solution. The mediator uses a variety of skills and techniques to help the parties negotiate but does not make any decisions for them. Some of the more common types of mediation are “interest-based facilitative mediation” and “evaluative mediation.” The type of case, parties’ and attorneys’ preferences, and potential for ongoing future business, family, or community relationships can influence the specific type of mediation selected.

Arbitration. Like mediation, arbitration is a process by which a neutral third party assists two or more people to resolve a dispute or controversy. However, the arbitrator, unlike the mediator, has the authority to render a binding or non-binding decision after hearing the parties’ and their attorneys’ arguments and reviewing relevant evidence.

Court-based/court-connected/court annexed mediation. Across the nation, a good number of state courts, and most all federal district courts, sponsor mediation programs as part of the established justice system. These mediation programs are managed by court personnel, are funded by and under control of the courts. Terms often used to describe these programs are “court-based, court-connected, court-annexed, or multi-door courthouse.” Mediators come from a variety of sources, including paid court mediation staff and court-maintained private/community mediator rosters, mediators affiliated with agencies and community mediation centers. While court-based or court-connected mediation is still rare in Nebraska state courts, two that are well-

known are the Douglas County, Nebraska Conciliation Court in Omaha that addresses parenting, custody disputes and certain young adult criminal restorative justice cases and the U.S. District Court for the District of Nebraska Mediation Program.

Court-referred mediation. Court-referred mediation is the most prevalent type of court involvement with mediation in Nebraska. County, district, juvenile, and tribal courts across the state have, since 1992, referred a variety of civil, juvenile, and criminal disputes to community mediation centers and private mediators. These referrals have been both informally referred and by formal court order, and include small claims cases, probate and estate, business disputes, domestic relations, juvenile, child welfare, and others.

Unlike “court-based or court-connected” cases in which case management and administration is funded by and operated by courts, “court-referred” cases are administered and provided by community mediation centers or private mediators, with costs and fees being paid for by the parties themselves or through specific grants and contracts.

Community Mediation Centers. In the United States, there are nearly 500 community mediation centers. Since 1992, the Nebraska Office of Dispute Resolution has annually approved six (6) non-profit regional community mediation centers (“centers”) in Nebraska to serve the public and accept mediation and related problem solving referrals. These referrals come from a variety of sources, including the courts, attorneys, human service agencies, schools, businesses, and private individuals. The centers have partnered in a variety of ways with county, district and juvenile courts to address the needs of litigants and courts alike. A list of the Nebraska mediation centers and contact information is located in the Appendix.

Conciliation. Uses a third party to work with parties separately in an attempt to correct misconceptions, reduce unreasonable fears, and improve communication to an extent that will permit direct discussion between the parties and lead ultimately to a voluntary settlement.

Facilitation. Facilitation is a process that assists groups of people with goal setting, information gathering, and decision-making. A facilitator helps to design and implement a process that encourages effective communication and key stakeholder participation in order to identify and problem solve around diverse and sometimes complex issues. It is an efficient and effective means for larger numbers of people to manage and implement joint efforts. Facilitation is a practice that is often linked with strategies such as public policy consensus making, collaborative problem solving, strategic planning, and organizational design and decision-making.

Family Group Conferencing (FGC). FGC is an intensive facilitative process that brings extended families, friends, service providers, and others into a facilitated discussion to develop a plan to address a variety of familial and community based matters. While FGC can be creatively and effectively used to address a variety of family concerns, the most prevalent use of FGC in Nebraska over the past several years has been to address the specific population of abused or neglected children and for youth involved in status offences and juvenile crime. The mediation centers are the primary providers of Family Group Conferencing and have highly qualified specialists known as FGC coordinators who manage this intensive process.

Parenting Mediation. In Nebraska, the community mediation centers, court-connected conciliation programs, and private mediators actively perform parenting mediation pursuant to the Nebraska Parenting Act. The Parenting Act, N.R.S. Sections 43-2901 et seq. was enacted in 1993 to maintain the best interests of a minor child, and to the greatest extent possible, by including the ongoing involvement of both parents in the life of the minor child. The Act states that parents should strive to have continued communications with each other in order to make as many joint decisions in performing such parenting functions as are necessary for the care and healthy development of the minor child. A mediated process for parents to develop a mutually agreed Parenting Plan is provided for under the Act.

Restorative Justice. Restorative justice (RJ) is a set of principles which form the paradigm for a court or agency to address crime in which to “restore” or to attempt to make whole is the guiding principle. Three essential principles are (1) victim sensitivity and restoration; (2) offender accountability; and (3) community and public safety. Restorative justice can be contrasted to retributive justice. RJ models include victim/offender dialogue, sentencing circles, victim impact panels, group conferencing, and the various problem solving courts.

Study Circles. Study circles are democratic, small-group participatory conversations that offer citizens the chance to get to know one another, consider different points of view, explore disagreements, and find common ground. Study circles on race and diversity have been initiated nationally in the past few years and the ODR system has been actively involved in Nebraska.

Negotiated Rule Making. Negotiated rule making is a process designed to involve all stakeholders in the implementation of legislation through active participation in the development of agency regulations. Nebraska has a Negotiated Rule Making statute, N.R.S Sections 84-921 et seq. Particular legislation can prescribe citizen involvement through Technical Advisory Committees (TAC) such as the one to address leaky underground petroleum storage issues that was facilitated by Nebraska ODR-center-affiliated mediators in recent years.

SECTION 3: BENEFITS OF MEDIATION

Mediation will not solve all the problems of society, and it will not solve all the problems of the courts. However, mediation does provide an avenue for individuals to achieve resolution of disputes in a wide variety of cases. The process, when appropriate and where used effectively, can have many benefits.

Mediation is inherently non-coercive. It seeks to use the value systems of the parties in a normative way to help them to resolve their differences. When an agreement is reached through mediation, it is based upon the parties' own values and needs, and not imposed upon the parties by outside force.

Mediated agreements are self-enforcing. A number of studies have shown that parties who have reached their own agreement are generally more likely to follow through and comply with its terms than those whose agreement has been imposed by a third party decision-maker.

Parties are satisfied with the ADR process. When parties reach an agreement through mediation, they are more likely to be satisfied with the process and to have faith in the process than are litigants at the conclusion of a trial. Even in cases when an agreement is not reached through mediation, the parties who have attempted mediation tend to perceive the opposing party as acting in good faith more often than litigants who go to trial without having attempted mediation.

The process is flexible and comprehensive. Mediation has the added advantage of being able to develop agreements that cover both legal and extra-legal issues. In divorce and custody cases for example, visits with extended family members may be outside the purview of statutory authority, however, the flexible nature of mediation allows the parties to determine the issues that are important to them, as well as resolve the essential legal issues for the divorce.

Mediation both resolves past issues and addresses future needs. Mediation allows parties to come to a resolution of their dispute within the context of their relationship. This is particularly important when the relationship is going to continue, such as the relationship that parents have with one another even after a divorce, the relationship of one business partner to another, the relationship of employer and employee, the relationship of neighbors, etc. Mediation not only resolves the dispute at hand but may set up a framework to more easily resolve future disagreements. Mediated settlements tend to hold over time; and, if the parties do develop a later dispute, they are better equipped to resolve the dispute without resorting to the courts.

Mediation is private. The mediation process is done in private rather than in an open courtroom. The matters discussed in mediation are confidential and preserve the privacy of the parties involved.

SECTION 4: WHEN MEDIATION IS EFFECTIVE

Generally speaking, mediation should be considered in those situations where a long-term relationship is involved, such as conflicts between family members, employer/employee, landlord/tenant, debtor/creditor, parent/child/school, neighbor/neighbor, business associates, and many others. However, to successfully mediate, parties must be able to:

- Have some desire to work through the problem.
- Be able to communicate on some level.
- Be competent and in control of their actions and behavior, not violent or under the influence of alcohol or drugs.
- Be able to follow some degree of structure (both in the mediation process and any resulting from the agreement).

Some conditions make settlement more easily achievable:

- A previous history of cooperation.
- No long history of dispute, distrust, litigation.
- Reasonable number of issues in dispute.
- Hostility towards each other is moderate or low.
- External pressure to settle (for example, one party faces a time constraint).
- Limited psychological attachment toward each other.
- Adequate resources that can be compromised.

It does not mean that there cannot be successful mediation without these conditions; rather that such types of cases will get settled less frequently.

Mediation is likely not effective when the following factors would preclude a referral of a case to mediation:

- When there is a need for public sanctioning of conduct
- When repetitive violations of statutes or regulations need to be dealt with collectively and uniformly
- When it is important to set legal precedent or settle important legal or factual issues for the general public

SECTION 5: COMMONLY ASKED QUESTIONS

What does mediation cost?

Mediation centers and private mediators alike set their own rates for mediation, and in Nebraska, these reflect **a range** of rates, **typically from \$25/hour per person to \$150/hour per person**. Nebraska's mediation centers sets rates based upon per person or per group costs, and fees are disclosed prior to commencing mediation. The Dispute Resolution Statute provides that no one is to be denied access to mediation based upon inability to pay; thus, the ODR-approved centers do also have a sliding scale for fees.

How many times and how long of a session is typical for a full mediation process?

The type of case, the needs of the parties, any court-imposed expectations, and timelines influence the length and number of mediation sessions. Some cases, such as divorce or community disputes, usually require multiple, briefer (2 hour) sessions. Other types of situations, such as pre-litigation civil disputes and cases than involve multiple parties from multi-state venues may be scheduled for a one-time, all day session.

How long does it take to get to the table to complete the mediation process?

A range of 10 to 25 days is the average amount of time between initial contact from a disputant until actually getting to the table to mediate. The initial interviewing and intake, scheduling, and case management process, getting in touch with the second party and engaging their agreement to mediate, finding mutually suitable dates for the mediation session all affects the timeline.

Who are the mediators?

Mediators come from a variety of backgrounds, including law, counseling, business, education, community, and others. In Nebraska, mediators affiliated with the ODR-approved community mediation centers have successfully completed at least thirty hours of basic mediation training and have apprenticed as a mediator with an experienced mediator. At present (2005), there are no statutory training or educational requirements for private mediators, with the exception of family mediators, who must complete a statutorily required sixty hours of training in basic and family mediation.

Advanced training for center-affiliated and private mediators in such areas as restorative justice, employment, special educational mediation is offered through the NMCA/ODR Training Institute, mediation centers and other regional and national organizations. **Each of the state's mediation centers has an internal mediator credentialing and evaluation process for their affiliated mediators, as well as a grievance process.**

Where do mediation referrals to community mediation centers come from?

ODR statistics reflect that **nearly a third of referrals** to the community mediation centers come **from the legal/justice system**, primarily from attorneys representing clients and judges hearing cases. The next greatest number of referrals comes from human services agencies, with other referrals from schools and individuals themselves. Anyone can refer a case to mediation. The Dispute Resolution Act provides that referrals may be made by a court, an attorney, a law enforcement officer, a social service agency, a school, or any other interested person or agency.

If a court wants to refer a case for mediation, how should that be done?

Judges and court staff who wish to access mediation are encouraged to contact an ODR-approved community mediation center and/or private mediators to become more familiar with the types of cases mediated and other services. A list of the centers is included in the Appendix.

When judges or court staff make a referral to mediation, it is helpful to describe to the parties and lawyers as to why mediation is being encouraged. For some individuals, this may be the first they have heard of mediation. Mediation brochures from the centers and ODR are available for display and distribution by the courts. **Informally, parties and/or attorneys may be given the phone number of the regional mediation center** and may be encouraged to call the centers for more information. The mediation case manager will then further process the case.

Formally, a judge may also refer a case to mediation by use of a court order, with a copy of the order faxed or sent to the regional mediation center. The order should state whether the parties or the center are to make initial contact, and how the outcome of the mediation is to be reported back to the court. Courts should establish presumptive deadlines for the mediation process which may be extended by a showing of the parties that a continuation would assist resolution.

Courts may consider and encourage potential litigants to consider mediation as an option prior to filing, as well as during the pendency of the case and after final judgment or order.

If a court refers a case to mediation, will it get a report back from the mediator?

When a court refers a case to a mediation center, the center, the parties, or parties' attorneys generally provide **nominal information to the court as to whether parties participated in the mediation and whether an agreement was reached**. Typically, if mediation is successful in reaching an agreement, the mediated agreement is usually incorporated into a settlement agreement by parties' attorneys and submitted to the court. If the mediation does not result in an agreement, the parties may return to court. The mediator's privilege precludes subsequent reporting to the court as to the communications occurring during the mediation.

Are mediated agreements enforceable?

Generally speaking, mediated agreements are considered as enforceable along the lines of **basic contract principles**.

Mediated agreements tend to be highly self-enforced. Individuals are nearly twice as likely to comply voluntarily with mediated agreements than with court-imposed judgments.

Are mediation sessions confidential?

Mediations conducted by the mediation centers are confidential as provided for under the Nebraska Dispute Resolution Act and the Nebraska Uniform Mediation Act.

What is the role of lawyers in mediation?

Lawyers have clear and important roles in terms of representing clients who are participating in mediation. Similar in principle to preparing clients for trial, attorneys will want to prepare their clients for mediation, and understand the nuances and opportunities for resolution that interest-based and other types of mediation afford their clients. Attorneys may decide to attend mediation sessions (or not), advise indirectly outside of sessions, review draft mediation agreements, and complete the legal process following the session.

What types of mediation programs are being offered by Nebraska's community mediation centers?

There are a number of mediation and problem solving programs provided by some or all of Nebraska's community mediation centers. Many of these are done in connection with courts and the legal system. These include:

- Small claims mediation
- Parenting, custody, visitation mediation; full divorce

- Juvenile disputes, delinquency, parent-youth mediation
- Child abuse and neglect family group conferencing
- Probate and estate conferencing
- Restorative justice – victim/offender dialogue, circle sentencing
- Neighborhood and community issues

If a court wants to propose or explore creating a pilot ADR or mediation project, or to increase the use of court-connected mediation, how should that be done?

The court may contact the director of the mediation center serving its area (see Appendix), or the director of the Office of Dispute Resolution.

Can judges and other court personnel attend mediation training?

Yes. Any judge, clerk magistrate, or other court personnel who want to attend the ODR-endorsed 30-hour basic mediation training are encouraged to do so. Even if there is no intention of serving as a mediator, it will benefit the courts, community mediation centers, and the public when judges and other court personnel have an understanding of the process. Additionally, the problem solving and communication skills taught in mediation training are useful in everyday professional and personal settings. Generally, there is a basic training offered by the ODR/NMCA Training Institute every six (6) months, available in different parts of the state. Reduced fees or special ODR-sponsored trainings may be available for judges and court personnel.

Related education for judges and court staff on ADR and mediation may also be available in one or two-day settings. Contact the director of the Office of Dispute Resolution or the center director in your area for more information.

Nebraska Dispute Resolution Act

25-2901. Act, how cited. Sections 25-2901 to 25-2921 shall be known and may be cited as the Dispute Resolution Act.

25-2902. Legislative findings. The Legislature finds that:

- (1) The resolution of certain disputes can be costly and time consuming in the context of a formal judicial proceeding;
- (2) Mediation of disputes has a great potential for efficiently reducing the volume of matters which burden the court system in this state;
- (3) Unresolved disputes of those who do not have the resources for formal resolution may be of small social or economic magnitude individually but are collectively of enormous social and economic consequences;
- (4) Many seemingly minor conflicts between individuals may escalate into major social problems unless resolved early in an atmosphere in which the disputants can discuss their differences through a private informal yet structured process;
- (5) There is a need in our society to reduce acrimony and improve relationships between people in conflict which has a long-term benefit of a more peaceful community of people;
- (6) There is a compelling need in a complex society for dispute resolution whereby people can participate in creating comprehensive, lasting, and realistic resolutions to conflicts;
- (7) Mediation can increase access of the public to dispute resolution and thereby increase public regard and usage of the legal system; and
- (8) Nonprofit dispute resolution centers can make a substantial contribution to the operation and maintenance of the courts of this state by preserving the court's scarce resources for those disputes which cannot be resolved by means other than litigation.

25-2903. Terms, defined. For purposes of the Dispute Resolution Act:

- (1) Approved center shall mean a center that has applied for and received approval from the director under section 25-2909;
- (2) Center shall mean a nonprofit organization or a court-established program which makes dispute resolution procedures available;
- (3) Council shall mean the Advisory Council on Dispute Resolution;
- (4) Director shall mean the Director of the Office of Dispute Resolution;
- (5) Dispute resolution process shall mean a process by which the parties involved in a dispute voluntarily agree to enter into informal discussion and negotiation with the assistance of a mediator;
- (6) Mediation shall mean the intervention into a dispute by a third party who has no decision-making authority and is impartial to the issues being discussed;
- (7) Mediator shall mean a person trained in the process of mediation who assists parties in dispute to reach a mutually acceptable resolution of their conflict; and
- (8) Office shall mean the Office of Dispute Resolution.

25-2904. Office of Dispute Resolution; established; director; qualifications; duties. The Office of Dispute Resolution is hereby established in the office of the State Court Administrator. The director of the office shall be hired by the Supreme Court. The director may but need not be an attorney and shall be hired on the basis of his or her training and experience in mediation. The director shall administer the Dispute Resolution Act and shall serve as staff to the council.

25-2905. Advisory Council on Dispute Resolution; created; members. The Advisory Council on Dispute Resolution is hereby created. The council shall be comprised of individuals from a variety of disciplines who are trained and knowledgeable in mediation and selected to be representative of the geographical and cultural diversity of the state and to reflect gender fairness. The council shall consist of eleven voting members. The membership shall include a representative from the Nebraska District Court Judges Association, the Nebraska County Court Judges Association, and the Nebraska State Bar Association. The council shall be appointed by the Supreme Court or a designee. Nominations shall be solicited from the Nebraska District Court Judges Association, the Nebraska County Court Judges Association, the Nebraska State Bar Association, the Nebraska Mediation Coalition, the Public Counsel, social workers, mental health professionals, educators, and other interested groups or individuals. The Supreme Court or its designee shall not be restricted to the solicited list of nominees in making its appointments. Two nonvoting, ex officio members shall be appointed by the council from among the approved centers.

25-2906. Council; members; terms; vacancy; officers. The initial members of the council shall be appointed for terms of one, two, or three years. All subsequent appointments shall be made for terms of three years. Any vacancy on the council shall be filled in the same manner in which the original appointment was made and shall last for the duration of the term vacated. Appointments to the council shall be made within ninety days after September 6, 1991. The council shall select a chairperson, a vice-chairperson, and such other officers as it deems necessary.

25-2907. Council; powers and duties; members; expenses.

(1) The council shall advise the director on the administration of the Dispute Resolution Act.

(2) The council shall meet at least four times per year and at other times deemed necessary to perform its functions.

Members of the council shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(3) The council may appoint task forces to carry out its work. Task force members shall have knowledge of, responsibility for, or interest in an area related to the duties of the council.

25-2908. Director; duties. Consistent with the purposes and objectives of the Dispute Resolution Act and in consultation with the council, the director shall:

(1) Make information on the formation of centers available statewide and encourage the formation of centers;

(2) Approve centers which meet requirements for approval;

(3) Develop a uniform system of reporting and collecting statistical data from approved centers;

(4) Develop a uniform system of evaluating approved centers;

- (5) Prepare a yearly budget for the implementation of the act and distribute funds to approved centers;
- (6) Develop guidelines for a sliding scale of fees to be charged by approved centers;
- (7) Develop curricula and initiate training sessions for mediators and staff of approved centers and of courts;
- (8) Establish volunteer training programs;
- (9) Promote public awareness of the dispute resolution process;
- (10) Apply for and receive funds from public and private sources for carrying out the purposes and obligations of the act; and
- (11) Develop a uniform system to create and maintain a roster of mediators for juvenile offender and victim mediation, as provided in section 43-245, and centers approved under section 25-2909. The roster shall be made available to courts and county attorneys.

25-2909. Grants; application; contents; approved centers; reports.

- (1) The office shall annually award grants to approved centers. It is the intent of the Legislature that centers be established and grants distributed statewide.
- (2) A center or an entity proposing a center may apply to the office for approval to participate in the dispute resolution process pursuant to the Dispute Resolution Act by submitting an application which includes:
 - (a) A plan for the operation of the center;
 - (b) The center's objectives;
 - (c) The areas of population to be served;
 - (d) The administrative organization;
 - (e) Record-keeping procedures;
 - (f) Procedures for intake, for scheduling, and for conducting and terminating dispute resolution sessions;
 - (g) Qualifications for mediators for the center;
 - (h) An annual budget for the center; and
 - (i) Proof of 501(c)(3) status under the Internal Revenue Code or proof of establishment by a court.

The office may specify additional criteria for approval and for grants as it deems necessary.

- (3) Annual reports shall be required of each approved center. The reports shall include the number and types of cases handled in the year and a showing of continued compliance with the act. Any programs existing on September 6, 1991, shall not be included in the act unless they apply and are approved under this section.

25-2910. Approved center; funding; fees. An approved center may use sources of funds, both public and private, in addition to funds appropriated by the Legislature. An approved center may require each party to pay a fee to help defray costs based upon ability to pay. A person shall not be denied services solely because of an inability to pay the fee.

25-2911. Dispute resolution; types of cases; referral of cases.

- (1) The following types of cases may be accepted for dispute resolution at an approved center:
 - (a) Civil claims and disputes, including, but not limited to, consumer and commercial complaints, disputes between neighbors, disputes between business associates, disputes between landlords and tenants, and disputes within communities;

(b) Disputes concerning child custody and visitation rights and other areas of domestic relations; and

(c) Juvenile offenses and disputes involving juveniles.

(2) An approved center may accept cases referred by a court, an attorney, a law enforcement officer, a social service agency, a school, or any other interested person or agency or upon the request of the parties involved. A case may be referred prior to the commencement of formal judicial proceedings or may be referred as a pending court case. In order for a referral to be effective, all parties involved must consent to such referral. If a court refers a case to an approved center, the center shall provide information to the court as to whether an agreement was reached. If the court requests a copy of the agreement, the center shall provide it.

25-2912. Dispute resolution process; procedures. Before the dispute resolution process begins, an approved center shall provide the parties with a written statement setting forth the procedures to be followed.

25-2913. Mediators; qualifications; compensation; powers and duties.

(1) Mediators of approved centers shall have completed at least thirty hours of training in conflict resolution techniques, neutrality, agreement writing, and ethics. For disputes involving marital dissolution, mediators of approved centers shall have an additional thirty hours in family mediation. An initial apprenticeship with an experienced mediator shall be required for at least three sessions for all mediators without prior mediation experience.

(2) An approved center may provide for the compensation of mediators or utilize the services of volunteer mediators or both.

(3) The mediator shall assist the parties in reaching a mutually acceptable resolution of their dispute through discussion and negotiation. The mediator shall be impartial, neutral, and unbiased and shall make no decisions for the parties.

(4) The mediator shall officially terminate the process if the parties are unable to agree or if, in the judgment of the mediator, the agreement would be unconscionable. The termination shall be without prejudice to either party in any other proceeding.

(5) The mediator has no authority to make or impose any adjudicatory sanction or penalty upon the parties.

(6) The mediator shall be aware of and recommend outside resources to the parties whenever appropriate. The mediator shall advise participants to obtain legal review of agreements as necessary.

25-2914. Confidentiality; exceptions. Any verbal, written, or electronic communication made in or in connection with matters referred to mediation which relates to the controversy or dispute being mediated and agreements resulting from the mediation, whether made to the mediator, the staff of an approved center, a party, or any other person attending the mediation session, shall be confidential. Mediation proceedings shall be regarded as settlement negotiations, and no admission, representation, or statement made in mediation, not otherwise discoverable or obtainable, shall be admissible as evidence or subject to discovery. A mediator shall not be subject to process requiring the disclosure of any matter discussed during mediation proceedings unless all the parties consent to a waiver. Confidential communications and materials are subject to disclosure when all parties agree in writing to waive confidentiality regarding specific verbal, written, or electronic communications relating to the mediation session or the agreement. This section shall not apply if a party brings an

action against the mediator or center, if the communication was made in furtherance of a crime or fraud, or if this section conflicts with other legal requirements.

25-2915. Immunity; exceptions. No mediator, staff member, or member of a governing board of an approved center may be held liable for civil damages for any statement or decision made in the process of dispute resolution unless such person acted in a manner exhibiting willful or wanton misconduct.

25-2916. Agreement; contents; enforceability. If the parties involved in the dispute reach an agreement, the agreement may be reduced to writing and signed by the parties. The agreement shall set forth the settlement of the issues and the future responsibilities of each party. If a court referred the case, the agreement as signed and approved by the parties may be presented to the court as a stipulation and, if approved by the court, shall be enforceable as an order of the court.

25-2917. Tolling of statute of limitations; when. During the period of the dispute resolution process, any applicable statute of limitations shall be tolled as to the parties. The tolling shall commence on the date the approved center accepts the case and shall end on the date of the last mediation session. This period shall be no longer than sixty days without consent of all the parties.

25-2918. Rules and regulations. The Supreme Court, upon recommendation by the director in consultation with the council, shall adopt and promulgate rules and regulations to carry out the Dispute Resolution Act.

25-2919. Application of act. The Dispute Resolution Act shall apply only to approved centers and mediators of such centers.

25-2920. Director; report. The director shall report annually to the Chief Justice, the Governor, and the Legislature on the implementation of the Dispute Resolution Act. The report shall include the number and types of disputes received, the disposition of the disputes, any problems encountered, any recommendations to address problems, and a comparison of the cost of mediation and litigation.

25-2921. Dispute Resolution Cash Fund; created; use; investment. The Dispute Resolution Cash Fund is created. The State Court Administrator shall administer the fund. The fund shall consist of proceeds received pursuant to subdivision (10) of section 25-2908 and section 33-155. The fund shall be used to supplement the administration of the office and the support of the approved centers. It is the intent of the Legislature that any General Fund money supplanted by the Dispute Resolution Cash Fund may be used for the support and maintenance of the State Library. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Nebraska Parenting Act

43-2901. Act, how cited. Sections 43-2901 to 43-2919 shall be known and may be cited as the Parenting Act.

43-2902. Legislative findings. The Legislature finds it is in the best interests of a minor child to maintain, to the greatest extent possible, the ongoing involvement of both parents in the life of the minor child. The Legislature further finds that parents should maintain continued communications to make as many joint decisions in performing such parenting functions as are necessary for the care and healthy development of the minor child.

In any proceeding between parents under Chapter 42 involving a minor child, the best interests of the minor child shall be the standard by which the court adjudicates and establishes the individual parental responsibilities. The state presumes the critical importance of the parent-child relationship and the child-parent relationship in the welfare and development of the minor child and that the relationship between the minor child and both parents should be fostered unless otherwise inconsistent with the best interests of the minor child. The best interests of the minor child are served by a parenting arrangement which best serves a minor child's emotional growth, health, stability, and physical care.

The Legislature further finds that the best interests of the minor child are ordinarily addressed when both parents remain active and involved in parenting. It is the policy of this state to assure the right of children, when it is in their best interests, to frequent and continuing contact with parents who have shown the ability to act in the best interests of the children and to encourage parents to share in the rights and responsibilities of raising their children after divorce or separation.

43-2903. Terms, defined. For purposes of the Parenting Act:

- (1) Minor child shall mean a child under the age of nineteen years;
- (2) Parenting functions shall mean those aspects of the parent-child relationship in which the parent makes fundamental decisions and performs fundamental functions necessary for the care and development of the minor child. Parenting functions shall include, but not be limited to:
 - (a) Maintaining a loving, stable, consistent, and nurturing relationship with the minor child;
 - (b) Attending to the ongoing needs of the minor child, including feeding, clothing, physical care and grooming, supervision, and engaging in other activities appropriate to the healthy development of the minor child within the social and economic circumstances of the family;
 - (c) Attending to adequate education for the minor child, including remedial or other special education essential to the best interests of the minor child;
 - (d) Assisting the minor child in maintaining a positive relationship with both parents and other family members;
 - (e) Assisting the minor child in developing and maintaining appropriate interpersonal relationships; and
 - (f) Exercising appropriate support for social, academic, athletic, or other special interests and abilities of the minor child within the social and economic circumstances of the family;

(3) Parenting plan shall mean a plan for parenting the minor child in consideration of the parenting functions, which plan may be incorporated into any final decree or decree of modification in an action (a) for dissolution of marriage, (b) concerning the validity of a marriage, or (c) for legal separation; and

(4) Remediation process shall mean the method established in the parenting plan which provides each parent a means to resolve future circumstantial changes or conflicts regarding the parenting functions or the parenting plan and which minimizes relitigation and utilizes judicial intervention as a last resort.

43-2904. Proceedings regarding parenting; informational materials provided; State Court Administrator; duties; mediators; screening guidelines.

(1) In any proceeding under Chapter 30, 42, or 43 in which the parenting of minor children is in issue except any proceeding under the Revised Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act, subsequent to the initial filing or upon filing of an application for modification of a decree, the parties shall receive from the clerk of the court information regarding the divorce process, a divorce time-line, parenting during and after divorce, the parenting plan, the mediation process, and resource materials, as well as the availability of mediation through the conciliation office, other court-based programs, or the state mediation centers as established through the Office of Dispute Resolution. Development of these informational materials and the implementation of this subsection shall be accomplished through the State Court Administrator.

(2) Mediators shall be trained to recognize domestic violence. Screening guidelines and safety procedures for cases involving child abuse, spouse abuse, or both shall be devised by the State Court Administrator. If the case is determined not to involve child abuse, spouse abuse, or both and both parties voluntarily agree to mediation, the case may be scheduled for future mediation sessions.

43-2905. Mediator; qualifications; standards; conflicts of interest.

(1) A mediator under the Parenting Act may be a court-based conciliation court counselor, a court-based mediator, a state mediation center mediator as established by the Office of Dispute Resolution, or a mediator in private practice. To qualify as a mediator, a person shall have a minimum of thirty hours of basic mediation training and thirty hours of family mediation training and shall have served as an apprentice to an experienced mediator as defined in section 25-2903.

(2) A mediator who performs mediation in family matters shall also meet the following standards:

(a) Knowledge of the court system and procedures used in contested family matters;

(b) General knowledge of Nebraska family law, especially regarding custody, visitation, and support;

(c) Knowledge of other resources in the state to which parties and children can be referred for assistance; and

(d) General knowledge of child development, clinical issues relating to children, the effects of marriage dissolution on children, parents, and extended families, and the psychology of families.

(3) No mediator who represents or has represented one or both of the parties or has had either of the parties as a client may mediate the case. If such services have been provided to both participants, mediation shall not proceed unless the prior relationship has been discussed, the role of the mediator has been made distinct from the earlier relationship, and the participants have been given the opportunity to fully choose to proceed. All other potential conflicts of interest shall be disclosed and discussed before the parties decide whether to proceed with that mediator.

43-2906. Court-based mediation; referral. With the consent of both parties, a court may refer a case to court-based mediation, at no cost to the parties, and may state a date for the case to return to court, but such date shall be no longer than ninety days from the date the order is signed unless the court grants an extension. If the court refers a case to such mediation, the court may, if appropriate, order temporary support in order to meet the Nebraska Supreme Court rules for expedited process or case progression.

43-2907. Mediator; duties. The mediator shall facilitate the mediation process. The mediator shall inform the parties of the factors the court will consider. The mediator shall be impartial and shall use his or her best efforts to assist both parties in the development of a parenting plan. The mediator shall assist the parties in assessing their needs and those of the minor child involved in the proceeding and may include the minor child in the mediation process if necessary or appropriate.

43-2908. Mediation; how conducted; confidentiality. Mediation under the Parenting Act shall be conducted in private. The mediator shall advise the parties that they should consult with an attorney. Any disclosure of abuse made during the mediation process shall be confidential, except that reports of abuse or neglect as defined in section 28-710 made during the mediation process shall be timely reported to the district judge and an in camera hearing shall be held to determine whether a report should be made pursuant to section 28-711 and if further investigation is merited.

No records, notes, or other documentation, written or electronic, of the mediation process, except the contents of a final agreement between the parties, shall be examined in any judicial or administrative proceeding. Any communications made confidential by the act which become subject to judicial or administrative process requiring the disclosure of such communications shall not be disclosed.

43-2909. Mediation; termination; when.

(1) The mediator may terminate mediation if one or more of the following conditions exist:

(a) There is no reasonable possibility that mediation will promote the development of an effective parenting plan;

(b) Allegations are made of direct physical or significant emotional harm to a party or to a minor child that have not been heard and ruled upon by the court. Prior to the commencement of mediation, the parties to mediation shall be notified by the mediator that evidence of abuse or neglect as defined in section 28-710 shall be reported to the district judge who shall hold an in camera hearing to determine whether a report should be made pursuant to section 28-711 and if further investigation is merited; or

(c) Mediation will otherwise fail to serve the best interests of the minor child.

(2) If mediation is not appropriate pursuant to subsection (1) of this section, the mediator shall so inform the court. Any additional statements shall not be prejudicial to either party.

(3) Either party may terminate mediation at any point in the process.

43-2910. Mediation agreement; report to court. Any agreement reached by the parties as a result of mediation shall be reported to the court and to counsel for the parties by the mediator prior to the day set for hearing or at such time as is designated by the court. If the parties do not reach agreement as a result of mediation, the mediator shall report that fact to the court on or before the reporting date established by the court.

43-2911. Costs. The costs of the mediation process shall be paid by the parties on an equal-share basis according to each party's ability to pay or on a sliding fee scale. If a court refers a case to court-based mediation, there shall be no fee.

43-2912. Parenting plan; purpose and scope. At a minimum, the purpose and scope of the parenting plan shall be to:

(1) Assist in developing a satisfactorily restructured family that meets the needs of all the members;

(2) Provide for the minor child's physical care;

(3) Maintain the minor child's emotional stability;

(4) Provide for the minor child's changing needs as he or she develops, in a manner which minimizes the need for future modifications to the parenting plan;

(5) Set forth the authority and responsibilities of each party with respect to the minor child;

(6) Minimize the minor child's exposure to harmful parental conflict;

(7) Encourage the parties, when appropriate, to fulfill their parenting responsibilities through agreements in the parenting plan rather than by relying on judicial intervention;

(8) Encourage mutual appropriate participation by both parties in the minor child's activities;

(9) Provide both parties equal access to the minor child's medical, dental, and school records;

(10) Encourage remediation prior to litigation; and

(11) Assist both parties to articulate a visitation schedule which would be acceptable if the other party is awarded custody of the minor child.

43-2913. Parenting plan; contents. The parenting plan shall contain custody and visitation arrangements, apportionment of time with each party, and provisions for a remediation process regarding future modifications to such plan as provided in sections 43-2914 to 43-2916. The parenting plan shall address only issues regarding parenting functions. Other issues, including, but not limited to, property division and financial issues or child support, shall be specifically excluded from the parenting plan.

43-2914. Parenting plan; requirements; emergency medical procedures. The parenting plan shall encourage mutual discussion of major decisions regarding the minor child's education, health care, and religious upbringing. Regardless of the allocation of decision making in the parenting plan, either party may authorize emergency medical procedures in situations affecting the immediate health of the child.

Each party shall establish procedures for making decisions regarding the day-to-day care and control of the minor child while the minor child is residing with that party.

43-2915. Parenting plan; schedule of time to be spent with each parent; considerations; decree to include parenting plan.

(1) The parenting plan shall include a schedule which designates in which party's home the minor child shall reside on given days of the year, including provisions for specified religious and secular holidays, birthdays of family members, vacations, and other special occasions.

(2) In the development of a parenting plan, consideration shall be given to the minor child's age and developmental needs and provision of a healthy relationship between the minor child and each party.

(3) The minimum court-ordered time the minor child shall spend with each parent shall be specified, including, but not limited to, specified religious and secular holidays, birthdays, vacations, and other special occasions.

(4) The decree shall include the parenting plan developed by the parents through mediation and approved by the court pursuant to the Parenting Act.

43-2916. Remediation process. When mutual decision-making is agreed upon in the parenting plan but cannot be achieved, the parties shall make a good faith effort to resolve the issue through the remediation process. The remediation process shall minimize the minor child's exposure to parental conflict and encourage mutual agreement without judicial intervention.

43-2917. Parenting plan; submission; court; powers. When the parenting plan is agreed to by both parties, it shall be submitted to the parties' legal counsels who shall submit it for inclusion in the decree under section 42-120 or 42-364. The court may, after a hearing and based on the best interests of the minor child, approve the plan, modify and approve the plan as modified, or reject the plan and order the parties to develop a new plan.

43-2917.01. Parenting education course; when required; costs. Any party to a divorce action involving minor children or an action involving child custody or visitation may be required by the court to complete a parenting education course pursuant to this section prior to the entry by the court of a final judgment or order modifying the final judgment in such action. The court must approve the course, and participation in the course may be delayed or waived by the court for good cause shown. Failure or refusal by any party to participate in such a course as ordered by the court shall not delay the entry of a final judgment or order modifying a final judgment in such action by more than six months and shall in no case be punished by incarceration.

A parenting education course pursuant to this section shall be designed to educate the parties about the impact of the pending divorce, custody, or visitation action upon their children. The course shall include, but not be limited to, information on the developmental stages of children, adjustment of children to parental separation, dispute resolution and conflict management, guidelines for visitation, stress reduction in children, and cooperative parenting.

Each party shall be responsible for the costs, if any, of attending a court-ordered parenting education course. The court may specifically allocate costs between the parties for their required participation in the course. At the request of any party, the parties shall be allowed to attend separate courses or to attend the same course at different times, specifically if violence has been present in the relationship or one party has threatened the other party with violence.

43-2918. State Court Administrator; develop rules. The State Court Administrator shall develop rules to implement the Parenting Act which are consistent with the Dispute Resolution Act. Such rules shall include training and evaluation of mediators used by state mediation centers.

43-2919. Act; applicability; county attorney or authorized attorney; participation prohibited. The Parenting Act shall not apply in any action filed by a county attorney or authorized attorney pursuant to his or her duties under sections 42-358, 43-512 to 43-512.18, and 43-1401 to 43-1418, the Income Withholding for Child Support Act, the Revised Uniform Reciprocal Enforcement of Support Act before January 1, 1994, and the Uniform Interstate Family Support Act for purposes of the establishment of paternity and the establishment and enforcement of child and medical support. A county attorney or authorized attorney shall not participate in the development of or court review of a parenting plan under the Parenting Act.

Nebraska Uniform Mediation Act

25-2930. Act, how cited. Sections 25-2930 to 25-2942 shall be known and may be cited as the Uniform Mediation Act.

25-2931. Terms, defined. For purposes of the Uniform Mediation Act:

- (1) Mediation means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.
- (2) Mediation communication means a statement, whether oral or in a record or verbal or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.
- (3) Mediator means an individual who conducts a mediation.
- (4) Nonparty participant means a person, other than a party or mediator, that participates in a mediation.
- (5) Mediation party means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.
- (6) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.
- (7) Proceeding means:
 - (a) a judicial, administrative, arbitral, or other adjudicative process, including related prehearing and post-hearing motions, conferences, and discovery; or
 - (b) a legislative hearing or similar process.
- (8) Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (9) Sign means:
 - (a) to execute or adopt a tangible symbol with the present intent to authenticate a record; or
 - (b) to attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate a record.

25-2932. Scope.

- (a) Except as otherwise provided in subsection (b) or (c) of this section, the Uniform Mediation Act applies to a mediation in which:
 - (1) the mediation parties are required to mediate by statute or court or administrative agency rule or referred to mediation by a court, administrative agency, or arbitrator;
 - (2) the mediation parties and the mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged against disclosure; or
 - (3) the mediation parties use as a mediator an individual who holds himself or herself out as a mediator, or the mediation is provided by a person that holds itself out as providing mediation.

- (b) The Uniform Mediation Act does not apply to a mediation:
- (1) relating to the establishment, negotiation, administration, or termination of a collective-bargaining relationship;
 - (2) relating to a dispute that is pending under or is part of the processes established by a collective-bargaining agreement, except that the act applies to a mediation arising out of a dispute that has been filed with an administrative agency or court;
 - (3) conducted by a judge who might make a ruling on the case; or
 - (4) conducted under the auspices of:
 - (a) a primary or secondary school if all the parties and the mediator are students; or
 - (b) a correctional institution for youths or a juvenile center if all the parties and the mediator are residents of that institution.
 - (c) If the parties agree in advance in a signed record or a record of proceeding so reflects that all or part of a mediation is not privileged, the privileges under sections 25-2933 to 25-2935 do not apply to the mediation or part agreed upon. However, such sections apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

25-2933. Privilege against disclosure; admissibility; discovery.

- (a) Except as otherwise provided in section 25-2935, a mediation communication is privileged as provided in subsection (b) of this section and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by section 25-2934.
- (b) In a proceeding, the following privileges apply:
- (1) A mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication.
 - (2) A mediator may refuse to disclose a mediation communication and may prevent any other person from disclosing a mediation communication of the mediator.
 - (3) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant.
- (c) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

25-2934. Waiver and preclusion of privilege.

- (a) A privilege under section 25-2933 may be waived in a record or orally during a proceeding if it is expressly waived by all parties to the mediation and:
- (1) in the case of the privilege of a mediator, it is expressly waived by the mediator; and
 - (2) in the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.
- (b) A person that discloses or makes a representation about a mediation communication which prejudices another person in a proceeding is precluded from asserting a privilege under section 25-2933, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.
- (c) A person that intentionally uses a mediation to plan, attempt to commit, or commit a crime or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege under section 25-2933.

25-2935. Exceptions to privilege.

- (a) There is no privilege under section 25-2933 for a mediation communication that is:
- (1) in an agreement evidenced by a record signed by all parties to the agreement;
 - (2) available to the public under sections 84-712 to 84-712.09 or made during a session of a mediation which is open, or is required by law to be open, to the public;
 - (3) a threat or statement of a plan to inflict bodily injury or commit a crime of violence;
 - (4) intentionally used to plan a crime, attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity;
 - (5) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator;
 - (6) except as otherwise provided in subsection (c) of this section, sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a party based on conduct occurring during a mediation; or
 - (7) sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in a proceeding in which a child or adult protective services agency is a party.
- (b) There is no privilege under section 25-2933 if a court, administrative agency, or arbitrator finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and that the mediation communication is sought or offered in:
- (1) a court proceeding involving a felony; or
 - (2) except as otherwise provided in subsection (c) of this section, a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.
- (c) A mediator may not be compelled to provide evidence of a mediation communication referred to in subdivision (a)(6) or (b)(2) of this section.
- (d) If a mediation communication is not privileged under subsection (a) or (b) of this section, only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under subsection (a) or (b) of this section does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

25-2936. Prohibited mediator reports.

- (a) Except as required in subsection (b) of this section, a mediator may not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, administrative agency, or other authority that may make a ruling on the dispute that is the subject of the mediation.
- (b) A mediator may disclose:
- (1) whether the mediation occurred or has terminated, whether a settlement was reached, and attendance;
 - (2) a mediation communication as permitted under section 25-2935; or
 - (3) a mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment.
- (c) A communication made in violation of subsection (a) of this section may not be considered by a court, administrative agency, or arbitrator.

25-2937. Confidentiality. Unless subject to sections 84-712 to 84-712.09 or 84-1408 to 84-1414, mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this state.

25-2938. Mediator's disclosure of conflicts of interest; background.

(a) Before accepting a mediation, an individual who is requested to serve as a mediator shall:

(1) make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and an existing or past relationship with a mediation party or foreseeable participant in the mediation; and

(2) disclose any such known fact to the mediation parties as soon as is practical before accepting a mediation.

(b) If a mediator learns any fact described in subdivision (a)(1) of this section after accepting a mediation, the mediator shall disclose it as soon as is practicable.

(c) An individual who is requested to serve as a mediator shall disclose the mediator's qualifications to mediate a dispute.

(d) A person that violates subsection (a), (b), or (g) of this section is precluded by the violation from asserting a privilege under section 25-2933.

(e) Subsections (a), (b), (c), and (g) do not apply to an individual acting as a judge.

(f) The Uniform Mediation Act does not require that a mediator have a special qualification by background or profession.

(g) A mediator must be impartial, unless after disclosure of the facts required in subsections (a) and (b) of this section to be disclosed, the parties agree otherwise.

25-2939. Participation in mediation. An attorney may represent, or other individual designated by a party may accompany the party to, and participate in a mediation. A waiver of representation or participation given before the mediation may be rescinded.

25-2940. Relation to federal Electronic Signatures in Global and National Commerce Act. The Uniform Mediation Act modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but the Uniform Mediation Act does not modify, limit, or supersede 15 U.S.C. 7001(c) or authorize electronic delivery of any of the notices described in 15 U.S.C. 7003(b).

25-2941. Uniformity of application and construction. In applying and construing the Uniform Mediation Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

25-2942. Application to existing agreements or referrals.

(a) The Uniform Mediation Act governs a mediation pursuant to a referral or an agreement to mediate made on or after August 31, 2003.

(b) On or after January 1, 2004, the Uniform Mediation Act governs an agreement to mediate whenever made.

(c) The Uniform Mediation Act is intended to address issues of privilege and does not diminish any other mediation requirements of the statutes of Nebraska.

APPENDIX

ADVISORY COUNCIL ON DISPUTE RESOLUTION (2006)

Members:

Term Expires December 31

James E. Gordon	12-07
Michael Baumfalk	12-08
Carl Eskridge	12-08
Honorable Curtis H. Evans	12-08
Robert Kirby	12-06
Honorable Patricia Lamberty	12-06
Linda Sanchez-Masi	12-07
Rick Thomas	12-06
Joe W. Wright	12-07

Ex Officio Members:

Mary Lee Brock	12-06
Rae Ann Schmitz	12-06

Debora Brownyard, J.D., Director
Office of Dispute Resolution
Administrative Office of the Courts/Probation
P.O. Box 98910
Lincoln, NE 68509-8910
(402) 471-2766; dbrownya@nsc.state.ne.us

Nebraska Mediation Centers

Center for Conflict Resolution

Rae Ann Schmitz, Executive Director
1524 Broadway
P.O. Box 427
Scottsbluff, NE 69363-0427
Phone: (308) 635-2002 and (800) 967-2115
raschmitz@conflictresolutioncenter.com

Counties covered by Center for Conflict Resolution: Arthur, Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Grant, Hooker, Keith, Kimball, Lincoln, Logan, McPherson, Morrill, Scotts Bluff, Sheridan, Sioux, Thomas

Central Mediation Center

Lynne Favinger, Executive Director
204 East 25th Street, Suite 5
P.O. Box 838
Kearney, NE 68848-0838
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info@centralmediationcenter.com

Counties covered by Central Mediation Center: Adams, Blaine, Buffalo, Chase, Clay, Custer, Dawson, Dundy, Franklin, Frontier, Furnas, Garfield, Gosper, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Howard, Kearney, Loup, Merrick, Nuckolls, Perkins, Phelps, Red Willow, Sherman, Valley, Webster, Wheeler

Concord Center

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Counties covered by Concord Center: Douglas and Sarpy

Nebraska Justice Center

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P.O. Box 1062
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Phone: (402) 753-9415 and (866) 846-5576
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Counties covered by Nebraska Justice Center: Antelope, Boone, Boyd, Brown, Burt, Cedar, Cherry, Colfax, Cuming, Dakota, Dixon, Dodge, Holt, Keya Paha, Knox, Madison, Nance, Pierce, Platte, Rock, Stanton, Thurston, Washington, Wayne

The Resolution Center

Judy Pingel, Executive Director
5109 W. Scott Road, Suite 414
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Phone: (402) 223-6061 or (800) 837-7826
TRC@bvca.net

Counties covered by The Resolution Center: Butler, Cass, Fillmore, Gage, Jefferson, Johnson, Nemaha, Otoe, Pawnee, Polk, Richardson, Saline, Saunders, Seward, Thayer, York

The Mediation Center**Resources for Collaborative Decision Making**

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County covered by The Mediation Center: Lancaster

Nebraska Mediation Centers

