**Model Standards of Conduct For Mediators**

**The Model Standards of Conduct for Mediators were prepared**

**from 1992 through 1994 by a joint committee composed of two**

**delegates from the American Arbitration Association, John D.**

**Feerick, Chair, and David Botwinik, two from the American Bar**

**Association, James Alfini and Nancy Rogers, and two from the**

**Society of Professionals in Dispute Resolution, Susan Dearborn**

**and Lemoine Pierce.**

**The Model Standards have been approved by the American**

**Arbitration Association, the Litigation Section and the**

**Dispute Resolution Section of the American Bar Association,**

**and the Society of Professionals in Dispute Resolution.**

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**The views set out in this publication have not been considered**

**by the American Bar Association House of Delegates and do not**

**constitute the policy of the American Bar Association.**

**Introductory Note**

**The initiative for these standards came from three**

**professional groups: The American Arbitration Association, the**

**American Bar Association, and the Society of Professionals in**

**Dispute Resolution.**

**The purpose of this initiative was to develop a set of**

**standards to serve as a general framework for the practice of**

**mediation. The effort is a step in the development of the**

**field and a tool to assist practitioners in it--a beginning,**

**not an end. The model standards are intended to apply to all**

**types of mediation. It is recognized, however, that in some**

**cases the application of these standards may be affected by**

**laws or contractual agreements.**

**Preface**

**The model standards of conduct for mediators are intended to**

**perform three major functions: to serve as a guide for the**

**conduct of mediators; to inform the mediating parties; and to**

**promote public confidence in mediation as a process for**

**resolving disputes. The standards draw on existing codes of**

**conduct for mediators and take into account issues and**

**problems that have surfaced in mediation practice. They are**

**offered in the hope that they will serve an educational**

**function and provide assistance to individuals, organizations,**

**and institutions involved in mediation.**

**I. Self-Determination:**

**A Mediator shall Recognize that Mediation is Based on the**

**Principle of Self-Determination by the Parties.**

**Self-determination is the fundamental principle of mediation.**

**It requires that the mediation process rely upon the ability**

**of the parties to reach a voluntary, uncoerced agreement. Any**

**party may withdraw from mediation at any time.**

**Comments:**

**The mediator may provide information about the process, raise**

**issues, and help parties explore options. The primary role of**

**the mediator is to facilitate a voluntary resolution of a**

**dispute. Parties shall be given the opportunity to consider**

**all proposed options.**

**A mediator cannot personally ensure that each party has made a**

**fully informed choice to reach a particular agreement, but is**

**a good practice for the mediator to make the parties aware of**

**the importance of consulting other professionals, where**

**appropriate, to help them make informed decisions.**

**II. Impartiality: A Mediator shall Conduct the Mediation in an**

**Impartial Manner.**

**The concept of mediator impartiality is central to the**

**mediation process. A mediator shall mediate only those matters**

**in which she or he can remain impartial and evenhanded. If at**

**any time the mediator is unable to conduct the process in an**

**impartial manner, the mediator is obligated to withdraw.**

**Comments:**

**A mediator shall avoid conduct that gives the appearance of**

**partiality toward one of the parties. The quality of the**

**mediation process is enhanced when the parties have confidence**

**in the impartiality of the mediator.**

**When mediators are appointed by a court or institution, the**

**appointing agency shall make reasonable efforts to ensure that**

**mediators serve impartially.**

**A mediator should guard against partiality or prejudice based**

**on the parties' personal characteristics, background or**

**performance at the mediation.**

**III. Conflicts of Interest: A Mediator shall Disclose all**

**Actual and Potential Conflicts of Interest Reasonably Known to**

**the Mediator.**

**After Disclosure, the Mediator shall Decline to Mediate unless**

**all Parties Choose to Retain the Mediator. The Need to Protect**

**Against Conflicts of Interest also Governs Conduct that Occurs**

**During and After the Mediation.**

**A conflict of interest is a dealing or relationship that might**

**create an impression of possible bias. The basic approach to**

**questions of conflict of interest is consistent with the**

**concept of self-determination. The mediator has a**

**responsibility to disclose all actual and potential conflicts**

**that are reasonably known to the mediator and could reasonably**

**be seen as raising a question about impartiality. If all**

**parties agree to mediate after being informed of conflicts,**

**the mediator may proceed with the mediation. If, however, the**

**conflict of interest casts serious doubt on the integrity of**

**the process, the mediator shall decline to proceed.**

**A mediator must avoid the appearance of conflict of interest**

**both during and after the mediation. Without the consent of**

**all parties, a mediator shall not subsequently establish a**

**professional relationship with one of the parties in a related**

**matter, or in an unrelated matter under circumstances which**

**would raise legitimate questions about the integrity of the**

**mediation process. Comments:**

**A mediator shall avoid conflicts of interest in recommending**

**the services of other professionals. A mediator may make**

**reference to professional referral services or associations**

**which maintain rosters of qualified professionals.**

**Potential conflicts of interest may arise between**

**administrators of mediation programs and mediators and there**

**may be strong pressures on the mediator to settle a particular**

**case or cases. The mediator's commitment must be to the**

**parties and the process. Pressure from outside of the**

**mediation process should never influence the mediator to**

**coerce parties to settle.**

**IV. Competence: A Mediator shall Mediate Only When the**

**Mediator has the Necessary Qualifications to Satisfy the**

**Reasonable Expectations of the Parties.**

**Any person may be selected as a mediator, provided that the**

**parties are satisfied with the mediator's qualifications.**

**Training and experience in mediation, however, are often**

**necessary for effective mediation. A person who offers herself**

**or himself as available to serve as a mediator gives parties**

**and the public the expectation that she or he has the**

**competency to mediate effectively. In court-connected or other**

**forms of mandated mediation, it is essential that mediators**

**assigned to the parties have the requisite training and**

**experience. Comments:**

**Mediators should have information available for the parties**

**regarding their relevant training, education and experience.**

**The requirements for appearing on the list of mediators must**

**be made public and available to interested persons.**

**When mediators are appointed by a court or institution, the**

**appointing agency shall make reasonable efforts to ensure that**

**each mediator is qualified for the particular mediation.**

**V. Confidentiality: A Mediator shall Maintain the Reasonable**

**Expectations of the Parties with Regard to Confidentiality.**

**The reasonable expectations of the parties with regard to**

**confidentiality shall be met by the mediator. The parties'**

**expectations of confidentiality depend on the circumstances of**

**the mediation and any agreements they may make. The mediator**

**shall not disclose any matter that a party expects to be**

**confidential unless given permission by all parties or unless**

**required by law or other public policy. Comments:**

**The parties may make their own rules with respect to**

**confidentiality, or other accepted practice of an individual**

**mediator or institution may dictate a particular set of**

**expectations. Since the parties' expectations regarding**

**confidentiality are important, the mediator should discuss**

**these expectations with the parties.**

**If the mediator holds private sessions with a party, the**

**nature of these sessions with regard to confidentiality should**

**be discussed prior to undertaking such sessions.**

**In order to protect the integrity of the mediation, a mediator**

**should avoid communicating information about how the parties**

**acted in the mediation process, the merits of the case, or**

**settlement offers. The mediator may report, if required,**

**whether parties appeared at a scheduled mediation.**

**Where the parties have agreed that all or a portion of the**

**information disclosed during a mediation is confidential, the**

**parties' agreement should be respected by the mediator.**

**Confidentiality should not be construed to limit or prohibit**

**the effective monitoring, research, or evaluation of mediation**

**programs by responsible persons. Under appropriate**

**circumstances, researchers may be permitted to obtain access**

**to the statistical data and, with the permission of the**

**parties, to individual case files, observations of live**

**mediations, and interviews with participants.**

**VI. Quality of the Process: A Mediator shall Conduct the**

**Mediation Fairly, Diligently, and in a Manner Consistent with**

**the Principle of Self-Determination by the Parties.**

**A mediator shall work to ensure a quality process and to**

**encourage mutual respect among the parties. A quality process**

**requires a commitment by the mediator to diligence and**

**procedural fairness. There should be adequate opportunity for**

**each party in the mediation to participate in the discussions.**

**The parties decide when they will reach an agreement or**

**terminate a mediation. Comments:**

**A mediator may agree to mediate only when he or she is**

**prepared to commit the attention essential to an effective**

**mediation.**

**Mediators should only accept cases when they can satisfy the**

**reasonable expectations of the parties concerning the timing**

**of the process. A mediator should not allow a mediation to be**

**unduly delayed by the parties or their representatives.**

**The presence or absence of persons at a mediation depends on**

**the agreement of the parties and the mediator. The parties and**

**mediator may agree that others may be excluded from particular**

**sessions or from the entire mediation process.**

**The primary purpose of a mediator is to facilitate the**

**parties' voluntary agreement. This role differs substantially**

**from other professional-client relationships. Mixing the role**

**of a mediator and the role of a professional advising a client**

**is problematic, and mediators must strive to distinguish**

**between the roles. A mediator should, therefore, refrain from**

**providing professional advice. Where appropriate, a mediator**

**should recommend that parties seek outside professional**

**advice, or consider resolving their dispute through**

**arbitration, counseling, neutral evaluation, or other**

**processes. A mediator who undertakes, at the request of the**

**parties, an additional dispute resolution role in the same**

**matter assumes increased responsibilities and obligations that**

**may be governed by the standards of other processes.**

**A mediator shall withdraw from a mediation when incapable of**

**serving or when unable to remain impartial.**

**A mediator shall withdraw from a mediation or postpone a**

**session if the mediation is being used to further illegal**

**conduct, or if a party is unable to participate due to drug,**

**alcohol, or other physical or mental incapacity.**

**Mediators should not permit their behavior in the mediation**

**process to be guided by a desire for a high settlement rate.**

**VII. Advertising and Solicitation: A Mediator shall be**

**Truthful in Advertising and Solicitation for Mediation**

**Advertising or any other communication with the public**

**concerning services offered or regarding the education,**

**training, and expertise of the mediator shall be truthful.**

**Mediators shall refrain from promises and guarantees of**

**results. Comments:**

**It is imperative that communication with the public educate**

**and instill confidence in the process.**

**In an advertisement or other communication to the public, a**

**mediator may make reference to meeting state, national, or**

**private organization qualifications only if the entity**

**referred to has a procedure for qualifying mediators and the**

**mediator has been duly granted the requisite status.**

**VIII. Fees: A Mediator shall fully Disclose and Explain the**

**Basis of Compensation, Fees, and Charges to the Parties.**

**The parties should be provided sufficient information about**

**fees at the outset of a mediation to determine if they wish to**

**retain the services of a mediator. If a mediator charges fees,**

**the fees shall be reasonable, considering among other things,**

**the mediation service, the type and complexity of the matter,**

**the expertise of the mediator, the time required, and the**

**rates customary in the community. The better practice in**

**reaching an understanding about fees is to set down the**

**arrangements in a written agreement. Comments:**

**A mediator who withdraws from a mediation should return any**

**unearned fee to the parties.**

**A mediator should not enter into a fee agreement which is**

**contingent upon the result of the mediation or amount of the**

**settlement.**

**Co-mediators who share a fee should hold to standards of**

**reasonableness in determining the allocation of fees.**

**A mediator should not accept a fee for referral of a matter to**

**another mediator or to any other person.**

**IX. Obligations to the Mediation Process: Mediators have a**

**Duty to Improve the Practice of Mediation. COMMENT:**

**Mediators are regarded as knowledgeable in the process of**

**mediation. They have an obligation to use their knowledge to**

**help educate the public about mediation; to make mediation**

**accessible to those who would like to use it; to correct**

**abuses; and to improve their professional skills and**

**abilities.**

**Copies of the Model Standards of Conduct for Mediators are**

**available from the offices of the participating organizations.**

**The addresses are listed below.**

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