**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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