

# The New Jersey Association of Professional Mediators

## Standards of Conduct for Mediators

*The Model Standards of Conduct for Mediators, the source document for these Standards, was prepared in 1994 by the American Arbitration Association, the American Bar Association's Section of Dispute Resolution, and the Association for Conflict Resolution. A joint committee consisting of representatives from the same successor organizations revised the Model Standards in 2005. Both the original 1994 version and the 2005 revision have been approved by each participating organization.*

*The Model Standards of Conduct for Mediators as revised herein was adopted by the Board of Directors of the New Jersey Association of Professional Mediators on January 31, 2007.*

### *Preamble*

Mediation is used to resolve a broad range of conflicts within a variety of settings. These Standards are designed to serve as fundamental ethical guidelines for persons mediating in all practice contexts. They serve three primary goals: to guide the conduct of mediators; to inform the mediating parties; and to promote public confidence in mediation as a process for resolving disputes.

The ethical practice of mediation is a hallmark of the New Jersey Association of Professional Mediators. If you have a question about our Standards, or if you feel one of our members has acted in an unethical manner, you can contact the NJAPM Ethics Review Board by e-mail to [ethics@njapm.org](mailto:ethics@njapm.org) or by mail to The NJAPM Ethics Review Board c/o our Association Office. All ethics matters are handled in confidence. In addition to the New Jersey Association of Professional Mediators Standards of Conduct for Mediators below, the NJAPM has policy statements and the address of our Association office available on our website at [www.njapm.org](http://www.njapm.org).

Mediation is a process in which an impartial third party facilitates communication and negotiation and promotes voluntary decision making by the Parties to the dispute.

Mediation serves various purposes, including providing the opportunity for Parties to define and clarify issues, understand different perspectives, identify interests, explore and assess possible solutions, and reach mutually satisfactory agreements.

### **Note on Construction**

The Standards are to be read and construed in their entirety. There is no priority significance attached to the sequence in which the Standards appear.

### **Definitions.**

"Party" means a person who participates in a mediation and whose agreement is necessary to resolve the dispute.

"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.

The use of the term "shall" in a Standard indicates that the mediator must follow the practice described. The use of the term "should" indicates that the practice described in the standard is highly desirable, but not required, and is to be departed from only for strong reasons and in light of the careful use of judgment and discretion.

The use of the term "mediator" is understood to be inclusive so that it applies to co-mediator models.

These Standards do not include specific time frames when referencing a mediation, and therefore, do not define the exact beginning or ending of a mediation.

Various aspects of mediation, including some matters covered by these Standards, may also be affected by applicable law, such as New Jersey's Uniform Mediation Act, N.J.S.A. 2A:23-1, et seq., court rules, regulations, other applicable professional rules, mediation rules to which the Parties have agreed and other agreements of the Parties. These sources may create conflicts with, and may take precedence over, these Standards. However, a mediator should make every effort to comply with the spirit and intent of these Standards in resolving such conflicts. This effort should include honoring all remaining Standards not in conflict with these sources.

These Standards, unless and until adopted by a court or other regulatory authority do not have the force of law. Nonetheless, these Standards have been adopted by the respective sponsoring entities, and by The New Jersey Association of Professional Mediators. Mediators should be aware that the Standards may be viewed as establishing a standard of care for mediators.

## **STANDARD I. SELF-DETERMINATION**

- A. A Mediator shall conduct a mediation based on the principle of Party self-determination. Self-determination is the act of coming to a voluntary decision in which each Party makes free and informed choices as to process and outcome. Parties may exercise self-determination at any stage of a mediation, including mediator selection, process design, participation in or withdrawal from the process, and outcomes.
- B. Although Party self-determination for process design is a fundamental principle of mediation practice, a mediator may need to balance such party self-determination with a mediator's duty to conduct a quality process in accordance with these standards, and the recognition that in some cases, such as court-referred matters, neither the Parties nor the mediator can make certain choices concerning the process or range of outcomes.
- C. A mediator cannot personally ensure that each Party has made free and informed choices to reach particular decisions, but, where appropriate, a mediator should make the Parties aware of the importance of consulting other professionals to help them make informed choices.
- D. A mediator shall not undermine Party self-determination by any Party for reasons such as higher settlement rates, egos, increased fees, or outside pressures from court personnel, program administrators, provider organizations, the media or others.

## **STANDARD II. IMPARTIALITY**

- A. A mediator shall decline a mediation if the mediator cannot conduct it in an impartial manner. Impartiality means freedom from favoritism, bias or prejudice.
- B. A mediator shall conduct a mediation in an impartial manner and should try to avoid conduct that gives the appearance of partiality.
  - 1. A mediator shall guard against partiality or prejudice based on a participant's personal characteristics, background, values and belief, or performance at a mediation.
  - 2. A mediator should neither give nor accept a gift, favor, loan or other item of value that would be likely to raise a question as to the mediator's actual or perceived impartiality.
- C. If at any time, a mediator realizes that s/he is unable to conduct a mediation in an impartial manner, and that no reasonable effort is likely to ameliorate the problem, then the mediator shall withdraw.

## **STANDARD III. CONFLICTS OF INTEREST**

- A. A mediator shall avoid a conflict of interest and should avoid the appearance of a conflict of interest during and after a mediation. A conflict of interest can arise from involvement by a mediator with the subject matter of the dispute or from any relationship between a mediator and any Party or other Persons, whether past or present, personal or professional, that reasonably raises a question of a mediator's impartiality.
- B. A mediator shall make reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for a mediator. A mediator's actions necessary to accomplish a reasonable inquiry into potential conflicts of interest may vary based on practice context.
- C. A mediator shall disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality. After disclosure, if all parties agree, the mediator may proceed with the mediation except as provided for in Paragraph III E below.
- D. If a mediator learns of any fact after accepting a mediation that raises a question with respect to that mediator's service, creating a potential or actual conflict of interest, then the mediator shall disclose it as quickly as practicable. After disclosure, if all Parties agree, the mediator may proceed with the mediation except as provided for in Paragraph III E below.
- E. If a mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, a mediator shall withdraw from or decline to proceed with the mediation, regardless of the expressed desire or agreement of the parties to the contrary.
- F. Subsequent to a mediation, a mediator shall not establish another relationship with any of the Parties or other Persons in any matter that would reasonably raise questions about the integrity of the mediation. When, following a mediation, a mediator develops personal or professional relationships with Parties, other individuals or organizations involved in the mediation, the mediator should consider factors such as time elapsed following the mediation, the nature of the relationships established, and the subsequent services offered when determining whether the relationships might reasonably create a perceived or actual conflict of interest.

## **STANDARD IV. COMPETENCE**

- A. A mediator shall mediate only when the mediator reasonably believes s/he has the necessary competence to satisfy the reasonable expectations of the Parties.
  - 1. Any person may be selected as a mediator, provided that the Parties are satisfied with the mediator's competence and qualifications. Training, experience in mediation, skills, cultural understanding, and other qualities are often necessary for mediator competence. A person who offers to serve as a mediator creates the expectation that the person is competent to mediate effectively. At the request of any Party, a mediator shall disclose his or her qualifications to mediate the dispute.
  - 2. A mediator should attend educational programs and related activities to maintain and enhance the mediator's knowledge and skills related to mediation.
  - 3. A mediator should have available for the Parties written information on the mediation process, and should have available for the Parties information relevant to the mediator's training, education, experience and approach to conducting a mediation.

- B. If a mediator, during the course of a mediation determines that the mediator cannot conduct the mediation competently, the mediator shall discuss that determination with the Parties as soon as is practicable and take appropriate steps to address the situation, including, but not limited to, withdrawing or requesting appropriate assistance.
- C. If a mediator's ability to conduct a mediation is impaired by drugs, alcohol, medication or otherwise, the mediator shall not conduct the mediation.

## **STANDARD V. CONFIDENTIALITY**

- A. A mediator shall maintain the confidentiality of all information obtained by the mediator in mediation unless otherwise agreed to by the Parties or required by applicable law.
  - 1. If the Parties agree that the mediator may disclose information obtained during the mediation, the mediator may do so.
  - 2. A mediator shall not communicate to any non-participant information about how the Parties acted in the mediation. A mediator may report, if required, whether Parties appeared at a scheduled mediation and whether or not the Parties reached a resolution.
  - 3. If a mediator participates in the teaching, research or evaluation of mediation, the mediator shall protect the anonymity of the Parties and abide by their reasonable expectations regarding confidentiality.
- B. Unless required to do so by law, a mediator who meets with any Party in private session during a mediation shall not convey directly or indirectly to any other Person, including any other Party, information that was obtained during that private session without the consent of the disclosing Person.
- C. A mediator shall promote understanding among the Parties of the extent to which they will maintain confidentiality of information they obtain in a mediation.
- D. Depending on the circumstances of a mediation, the Parties may have varying expectations regarding confidentiality that a mediator should address. The Parties may make their own rules with respect to confidentiality, or the accepted practice of an individual mediator or institution may dictate a particular set of expectations.

## **STANDARD VI. QUALITY OF THE PROCESS**

- A. A mediator shall conduct a mediation in accordance with these Standards and in a manner that promotes diligence, timeliness, safety, presence of the appropriate participants, Party participation, procedural fairness, Party competency and mutual respect among all participants.
  - 1. A mediator shall agree to mediate only when the mediator is prepared to commit the attention essential to an effective mediation.
  - 2. A mediator shall accept cases only when the mediator can satisfy the reasonable expectation of the Parties concerning the timing of a mediation.
  - 3. Except as may be required by law, the presence or absence of persons at a mediation depends on the agreement of the Parties and the mediator.
  - 4. A mediator should promote honesty and candor between and among all participants, and a mediator shall not knowingly misrepresent any material fact or circumstance in the course of a mediation.
  - 5. The practice of mediation is a discipline separate and distinct from other professions; however, mediation may also be offered as a service by other professionals. A mediator may provide information that the mediator is qualified by training or experience to provide, only if the mediator can do so consistent with these Standards.
  - 6. A mediator shall not conduct a dispute resolution procedure other than mediation but label it mediation in an effort to gain the protection of rules, statutes, or other governing authorities pertaining to mediation.
  - 7. A mediator may recommend, when appropriate, that Parties consider resolving their dispute through arbitration, counseling, neutral evaluation or other process.
  - 8. A mediator shall not undertake an additional dispute resolution role in the same matter without the consent of the Parties. Before providing such service, a mediator shall inform the Parties of the implications of the change in process and obtain their consent to the change. A mediator who undertakes such role assumes different duties and responsibilities that may be governed by other standards.
  - 9. If a mediation is being used to further criminal conduct, a mediator shall take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.
  - 10. If a Party appears to have difficulty comprehending the process, issues, or settlement options, or difficulty in participating in a mediation, the mediator should explore the circumstances and potential accommodations, modifications or adjustments that would make possible the Party's capacity to comprehend, participate and exercise self-determination.
  - 11. The mediator or a Party may terminate the session if there is an imbalance of power between the Parties that the mediator cannot overcome; a Party challenges the impartiality of the mediator; there is abusive behavior that the mediator cannot control, or a Party continuously resists the mediation process or the mediator.
  - 12. The mediator shall terminate the session if there is a failure of communication that seriously impedes effective discussion; the mediator believes a Party is under the influence of drugs or alcohol; or the mediator believes continued mediation is inappropriate or inadvisable for any reason.

B. If a mediator is made aware of domestic abuse or violence among the Parties, the mediator shall take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation, and reporting such conduct as may be required by law.

C. If a mediator believes that participant conduct, including that of the mediator, jeopardizes conducting a mediation consistent with these Standards, a mediator shall take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.

## **STANDARD VII. ADVERTISING AND SOLICITING**

A. A mediator shall be truthful and not misleading at all times, including when advertising, soliciting or otherwise communicating the mediator's qualifications, experience, services and fees.

1. A mediator shall not include any promises as to outcome in communications, including business cards, stationery, or computer-based communications.

2. A mediator shall only claim to meet the mediator qualifications of a governmental entity or private organization if that entity or organization has a recognized procedure for qualifying mediators and it grants such status to the mediator.

B. A mediator shall not solicit in a manner that gives an appearance of partiality for or against a Party or otherwise undermines the integrity of the process.

C. A mediator shall not communicate to others, in promotional materials or through other forms of communication, the names of Parties or Persons served without their permission.

## **STANDARD VIII. FEES AND OTHER CHARGES**

A. A mediator shall provide each Party or each Party's representative true and complete information about mediation fees, expenses and any other actual or potential charges that may be incurred in connection with mediation.

1. If a mediator charges a fee, the mediator should develop the fee in light of all relevant factors, including the type and complexity of the matter, the qualifications of the mediator, the time required and the rates customary for such mediator services.

2. A mediator's fee arrangement shall be in writing unless the Parties request otherwise.

B. A mediator shall not charge fees in a manner that impairs a mediator's impartiality.

1. A mediator shall not enter into a fee arrangement that is contingent upon the result of the mediation or amount of settlement.

2. While a mediator may accept unequal fee payments from the Parties, a mediator shall not allow such a fee arrangement to adversely impact the mediator's ability to conduct a mediation in a impartial manner.

## **STANDARD IX. ADVANCEMENT OF MEDIATION PRACTICE**

A. A mediator should act in a manner that advances the practice of mediation. A mediator promotes this Standard by engaging in some or all of the following:

1. Fostering diversity within the field of mediation.

2. Striving to make mediation accessible to those who elect to use it, including providing services at a reduced rate or on a pro bono basis as appropriate.

3. Participating in research when given the opportunity, including obtaining participant feedback when appropriate.

4. Participating in outreach and education efforts to assist the public in developing an improved understanding of, and appreciation for, mediation.

5. Helping newer mediators through training, mentoring and networking.

6. Participating in mediation membership organizations and supporting organizations that promote legitimate use of mediation and other forms of appropriate dispute resolution.

B. A mediator should demonstrate respect for differing points of view within the field, seek to learn from other mediators and work together with other mediators to improve the profession and better serve people in conflict.

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