



So You Want to Become a Mediator: Here's What You Need to Know

December 11, 2014 – 1:00 p.m. to 2:00 p.m. ET

PROGRAM SUMMARY

Speakers: Judith Meyer

Mediation as an alternative dispute resolution process has become increasingly popular in recent years. It has become equally popular as an alternative career for litigators and retired/retiring judges, with the result that the field is now crowded with practitioners. Establishing and maintaining a mediation practice can be challenging, with a relatively small percentage of the mediators receiving the greatest share of the available work. With that in mind, how can you improve your chances of attracting a following and attaining success in the mediation field?

AGENDA

1:00 p.m.	Welcome and Introduction of Speakers	(5 minutes)
1:05 p.m.	Disclosure Issues <ul style="list-style-type: none">• Existing arbitrator disclosure standards• Case law• Judicial guidelines• The challenges presented by the Internet Age• Arbitrator communications on the Internet• Disclosing affiliations• Managing your online profile• Endorsements• Considerations for advocates	(50 minutes)
1:55 p.m.	Conclusion and Questions	(5 minutes)
2:00 p.m.	Evaluation	(5 minutes)
2:05 p.m.	Adjourn	

JUDITH MEYER, ESQ
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A Winnetka native and New Trier graduate, Judith mediates and arbitrates complex commercial cases, specializing in legally complex, high-emotion, high-stakes disputes. She teaches Negotiation, Mediation and Arbitration at Cornell Law School and serves as a Judge Pro Tem, Referee and Special Master for the Commerce Court of Philadelphia and the Commonwealth Court of Pennsylvania. Judith is a Distinguished Fellow in the International Academy of Mediators, a Fellow in the Chartered Institute of Arbitrators, a member of the College of Commercial Arbitrators and of The Academy of Court Appointed Neutrals. Judith chairs the International Standards Commission of the International Mediation Institute in The Hague. She serves on numerous ADR panels including the AAA, AHLA, NAM, EEOC, FINRA, ADROptions, CPR Institute National Panel of Distinguished Neutrals, CIETAC, and the Singapore Mediation Centre. Judith serves as Judge Pro Tem/mediator for the Philadelphia Commerce Court, the Federal Circuit Court of Appeals, the ICC, the Circuit Courts of Maryland, the Bankruptcy Court, Delaware, and the USDC Eastern District, Pennsylvania. She serves on the E-Discovery Panel for the USDC Western District of Pennsylvania. She was “Of Counsel” to Bazelon, Less & Feldman, Philadelphia, partner in Lande, Rolston and Meyer, Beverly Hills, and the first woman partner in Meserve, Mumper & Hughes, Los Angeles. A graduate of Cornell Law School, Judith has been voted a SuperLawyer 2005 through 2014 and is listed in Best Lawyers in America in ADR.



AAA Webinar – How to Become a Mediator December 2014

SUGGESTED READINGS

How to Make Money as a Mediator, Jeffrey Krivis and Naomi Lucks (2006)

Mediation: A Texas Practice Guide, Eric Galton (1993)

The Mediator's Handbook, John Cooley (2000)

Getting to Yes: Negotiating Agreement Without Giving In, Roger Fisher and William Ury (1981)

Classic and seminal work on positional vs. interest-based bargaining.

Influence: The Psychology of Persuasion, Robert Cialdini (2006)

Methods of generating agreement: the reciprocity norm, commitment and consistency, social proofs, liking, authority and scarcity. A fun and easy read.

Negotiating Rationally, Max H. Bazerman and Margaret A. Neale, (1992)

One of the best early popular discussions of psychological heuristics by one of the masters in the field.

Bargaining for Advantage: Negotiation Strategies for Reasonable People, G. Richard Shell (1999)

Professor Shell teaches at the Wharton School of Business at the University of PA. I consider this his best book, rich with iconic business examples of classical and one-off negotiation strategies.



Beyond Reason: Using Emotions as You Negotiate, Roger Fisher and Daniel Shapiro (2005)

Another iconic read: address the concern, not the emotion. Express appreciation: find merit in what others think, feel or do - and show it. Build affiliation: turn an adversary into a colleague. Respect autonomy: do not impinge upon theirs. Acknowledge status: everyone has a particular status; recognize it and do not compete for status. Choose a fulfilling role for you and for everyone in the negotiation.

Difficult Conversations: How to Discuss What Matters Most, Douglas Stone, Bruce Patton and Sheila Heen (1999).

A difficult conversation is anything you find hard to talk about. Shift to a learning stance. Stop arguing about who is right; explore each other's stories. Abandon blame. Create a learning conversation.

Getting Past No: Negotiating With Difficult People, William Ury (1991)

A follow-on to "Getting to Yes." Do not react; "go to the balcony." Don't reject; reframe. Build them a "golden bridge"; turn adversaries into partners.

Beyond Right and Wrong: The Power of Effective Decision Making for Attorneys and Clients, Randall Kiser (2010)

This is not an easy read, but it has critical empirical insights for trial lawyers and the mediators who coach them. One fine example: although plaintiffs' counsel refuse settlement offers more frequently than defense counsel, the average cost of plaintiffs' error is dramatically smaller (\$27,000) than the average cost of defense counsel error (\$355,000).

Beyond Winning: Negotiating to Create Value in Deals and Disputes, Robert H. Mnookin (2000)

My favorite take-away from this book is the explanation of the multiple tensions in the dynamic of negotiating relationships: between lawyer and lawyer, between lawyer and client, between client and client. Unless these tensions are acknowledged, they are impediments to entering into an otherwise good deal or any deal.



Thinking, Fast and Slow, Daniel Kahneman (2011)

Daniel Kahneman won the 2002 Nobel Prize in Economics for his work in behavioral science. An exploration of the best and worst aspects of fast thinking and the profound effects of cognitive biases on decision making in planning your next vacation to investing for the future. An in-depth but totally readable exploration of cognitive biases and their impact on your life.

A GUIDE TO
Mediation and Arbitration
for Business People

Amended and Effective September 1, 2007



American Arbitration Association
Dispute Resolution Services Worldwide

www.adr.org

Table of Contents

Introduction	2
The National Roster of Neutrals	4
An AAA Glossary of Dispute Resolution Terms	5
A Guide to Mediation for Business People	7
Stages of a Mediation	
I. The Agreement to Mediate	10
II. Selection of the Mediator	11
III. Preparation for the Mediation Session	11
IV. The Mediation Conference	12
V. The Settlement	13
A Guide to Arbitration for Business People	15
Stages of an Arbitration	
I. The Agreement to Arbitrate	15
II. Selection of the Arbitrator	19
III. Preparation for the Hearing	21
IV. Presentation of the Case	23
The Award	25
Procedures for Large, Complex Disputes	27
International Cases	28
Administrative Fees	29

A Guide to Mediation and Arbitration for Business People

Introduction

In the normal course of day-to-day business affairs, disputes are often inevitable. Parties might disagree as to their individual rights and obligations no matter how carefully a contract is written. This can lead to delayed shipments, complaints about the quality of merchandise, claims of nonperformance, and similar misunderstandings. The resolution of such disputes, however, need not be costly and acrimonious. Alternative means of dispute resolution can save time and money, and can help to put the dispute behind you while preserving valuable business relationships.

The American Arbitration Association (AAA) administers a broad range of dispute resolution services, which address the needs of businesses and individuals mired in conflict. These services include:

Mediation

Mediation is a meeting among disputants, their representatives, and a mediator to discuss settlement. The mediator's role is to help the disputants explore issues, needs, and settlement options. The mediator may offer suggestions and point out issues that the disputants may have overlooked, but resolution of the dispute rests with the disputants themselves. A mediation conference can be scheduled very quickly and requires a relatively small amount of preparation time. The conference usually begins with a joint discussion of the case, followed by the mediator working with the disputants both together and separately, if appropriate, to resolve the case. Many cases are resolved within a few hours. Perhaps most important is, mediation works! Statistics show that 85% of commercial matters and 95% of personal injury matters end in written settlement agreements.

Arbitration

Arbitration is referral of a dispute to one or more impartial persons for final and binding determination. Private and confidential, it is designed for quick, practical, and economical settlements. Parties can exercise additional control over the arbitration process by adding specific provisions to their contracts' arbitration clauses or, when a dispute arises, through the modification of certain aspects of the arbitration rules to suit a particular dispute. Stipulations may be made regarding confidentiality of proprietary information used; evidence, locale, number of arbitrators; and issues subject to arbitration, for example. The parties may also provide for expedited arbitration procedures, including the time limit for rendering an award, if they anticipate a need for hearings to be scheduled on short notice. All such mutual agreements will be binding on the American Arbitration Association as well as the arbitrator. The AAA has also developed special Procedures for Large, Complex Disputes for cases in which the disclosed claim of any party is at least \$500,000.

Prior to the initial hearing in a case, the AAA may schedule either an administrative conference with the parties or a preliminary hearing with the arbitrator(s) and the parties to arrange for such matters as the production of relevant documents and the identification of witnesses, and for discussion of and agreement by the parties to any desired rule modifications. AAA administration is guided by those decisions that the parties make as to how to handle such sensitive issues as privacy of proceedings, confidentiality, trade secrets, evidence, proprietary information, and injunctive relief.

The National Roster of Neutrals

To serve the community with mediators and arbitrators representing all fields of specialization, the AAA maintains a national roster of approximately 8,000 trained experts throughout the United States and the rest of the world.

The AAA requires that applicants have a minimum of ten years of senior level business or professional expertise or legal practice prior to being considered for the roster.

Selected qualities in arbitrators and mediators for which the AAA looks are:

- > commitment to impartiality and objectivity;
- > dispute management skills;
- > judicious temperament: impartiality, patience, and courtesy;
- > respect of bar or business community for integrity, patience, and courtesy; and
- > strong academic background and professional or business credentials.

The American Arbitration Association is committed to maintaining an ongoing review of the quality of its roster of neutrals. Current panelists and new applicants are evaluated by regional office committees to guarantee neutrals' possession of superior management skills, commitment, ethics, training, and suitability to the caseload. Then, external review committees evaluate the neutrals according to a number of criteria including substantive expertise, preeminence in the field, fairness, and the manner in which they conduct proceedings. A final internal review by the Association monitors the integrity of the process, the quality of roster composition, and balance in terms of gender, racial, and ethnic diversity. The bottom line is a roster of neutrals crafted to meet the needs of the parties.

An AAA Glossary of Dispute Resolution Terms

Some of the commonly used terms follow.

Arbitration is submission of a dispute to one or more impartial persons for a final and binding decision.

Awards are the decisions of arbitrators. Awards are made in writing and are enforceable in court under state and federal statutes. Enforcement actions, when necessary, are brought by the parties to the arbitration.

Case managers are the AAA staff persons assigned to administer cases. The case manager is responsible for the general management of a particular case, including panel selection, scheduling and exchange of information among the parties, and all of the other administrative details involved in moving cases through the system.

Caucuses are meetings in which a mediator talks with the parties individually to discuss the issues.

Claimants are filing parties, also known as plaintiffs.

Counterclaims are counter demands made by a respondent in his or her favor against a claimant. They are not mere answers or denials of the claimant's allegations.

Demands for Arbitration are unilateral filings of claims in arbitration, based on a contractual or statutory right; also, the forms used.

Fact finding is a process by which parties present the arguments and evidence to a neutral person who then issues a nonbinding report on the findings, usually recommending a basis for settlement.

Hearing is a proceeding in which evidence is taken for the purpose of determining the facts of a dispute and reaching a decision based on evidence.

Mediation is a process in which a neutral assists the parties in reaching their own settlement but does not have the authority to make a binding decision.

Mini-trial is a confidential, nonbinding exchange of information, intended to facilitate settlement. The goal of mini-trial is to encourage prompt, cost-effective resolution of complex litigation. Mini-trial seeks to narrow the areas of controversy, dispose of collateral issues, and encourage a fair and equitable settlement.

Negotiation is a process in which disputants communicate their differences to one another and with this knowledge try to resolve them.

Parties are the disputants.

Respondents are responding parties, also known as defendants.

Submission is the filing of a dispute by all parties to a dispute resolution process after it arises.

A Guide to Mediation for Business People

How Does Mediation Differ From Arbitration?

Arbitration is less formal than litigation, and mediation is even less formal than arbitration. Unlike an arbitrator, a mediator does not have the power to render a binding decision. A mediator does not hold evidentiary hearings as would an arbitrator but instead conducts informal joint and separate meetings with the parties to understand the issues, facts, and positions of the parties. The separate meetings are known as caucuses. In contrast, arbitrators hear testimony and receive evidence in a joint hearing, on which they render a final and binding decision known as an award.

In joint sessions or caucuses with each side, a mediator tries to obtain a candid discussion of the issues and priorities of each party. Gaining certain knowledge or facts from these meetings, a mediator can selectively use the information derived from each side to:

- > reduce the hostility between the parties and help them to engage in a meaningful dialogue on the issues at hand;
- > open discussions into areas not previously considered or inadequately developed;
- > communicate positions or proposals in understandable or more palatable terms;
- > probe and uncover additional facts and the real interests of parties;
- > help each party to better understand the other party's view and evaluation of a particular issue, without violating confidences;
- > narrow the issues and each party's positions, and deflate extreme demands;
- > gauge the receptiveness for a proposal or suggestion;
- > explore alternatives and search for solutions;
- > identify what is important and what is expendable;
- > prevent regression or raising of surprise issues; and
- > structure a settlement to resolve current problems and future parties' needs.

Types of Disputes Resolved by Mediation

Any type of civil dispute can be resolved by mediation. The kinds of conflicts brought to AAA mediations have been as varied as the types of industries and business specialties using the process. Just about any type of dispute that parties want resolved quickly and inexpensively can be submitted to mediation.

The Benefits of Mediation

The benefits of successfully mediating a dispute to settlement vary, depending on the needs and interests of the parties. The most common advantages are that:

- > parties are directly engaged in the negotiation of the settlement;
- > the mediator, as a neutral third party, can view the dispute objectively and can assist the parties in exploring alternatives which they might not have considered on their own;
- > as mediation can be scheduled at an early stage in the dispute, a settlement can be reached much more quickly than in litigation;
- > parties generally save money through reduced legal costs and less staff time;
- > parties enhance the likelihood of continuing their business relationship; and
- > creative solutions or accommodations to special needs of the parties can become a part of the settlement.

In the interest of swift and low-cost dispute resolution, arbitrations pending under the rules of the American Arbitration Association can be submitted to mediation under the applicable mediation rules at no additional administrative fee. The parties are responsible for compensating the mediator at his or her published hourly rate.

Occurrence of Mediation

Mediations can originate in different ways. First, mediation can occur when a dispute initially arises and before a lawsuit is ever filed. Second, mediation can occur as an adjunct procedure to pending litigation. That is, as soon as the parties file a lawsuit, they can use mediation in an effort to resolve the dispute at the inception of litigation or at any time thereafter, but prior to a trial being held. Third, mediation can occur during or immediately after a trial but before a decision is announced by a judge or jury. Fourth, mediation can occur after a judgment has been rendered in litigation. There might be a disagreement over the meaning or manner of carrying out a judgment, or concern about the possibility of lengthy court appeals. The parties can seek the assistance of a mediator to help them resolve these problems.

The Mediators

AAA mediators are carefully selected attorneys, retired judges, and experts in various professional and business fields. Each candidate has been trained by the AAA in mediation skills and closely evaluated to determine the level of skills attained. Only highly respected and experienced individuals are selected and trained by the AAA to be mediators. The mediators on the panel are chosen to serve on a particular case based on their expertise in the area of the dispute.

Scheduling a Mediation

Once parties have agreed to submit their dispute to mediation and have executed the appropriate forms, a mediation can be conducted on the first mutually available date. Of course, the parties may agree to have their mediation set for an earlier or later date depending on the circumstances of their case.

Stages of a Mediation

I. The Agreement to Mediate

As mediation is a voluntary process, the parties must agree in writing that their dispute will be conducted under the applicable mediation rules of the AAA. This may be accomplished in a number of ways.

Request for Mediation

The parties can provide for the resolution of future disputes by including a mediation clause in their contract. A typical mediation clause reads as follows:

If a dispute arises out of or relates to this contract or the breach thereof and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure.

The clause may also provide for the qualifications of the mediator, the method of payment, the locale of meetings, and any other item of concern to the parties. When a party files a Request for Mediation, the requesting party must forward a copy of the mediation clause contained in the contract under which the dispute arose. A Request for Mediation form can be found on the Association's Web site at www.adr.org.

Submission to Mediation

Where the parties did not provide in advance for mediation, they may submit an existing dispute to mediation by the filing of a submission form that has been duly executed by the parties or their authorized representatives. A Submission to Dispute Resolution form can be found on the Association's Web site at www.adr.org.

II. Selection of the Mediator

Upon receipt of the Request for Mediation or the Submission to Dispute Resolution, the AAA will appoint a qualified mediator to serve on the case. The parties will be provided with a biographical sketch of the mediator. The parties are instructed to review the sketch closely and advise the Association of any objections they may have to the appointment. Since it is essential that the parties have complete confidence in the mediator's ability to be fair and impartial, the Association will replace any mediator not acceptable to the parties. Parties also may search the online profiles of the AAA's Panel of Mediators at **www.aaamediation.com**.

III. Preparation for the Mediation Session

To prepare for mediation:

1. Define and analyze the issues involved in the dispute.
2. Recognize the parameters of the given situation (what you can realistically expect, time constraints, available resources, legal ramifications, business or trade practices, costs, etc.).
3. Identify your needs and interests in settling the dispute.
4. Prioritize the issues in light of your needs.
5. Determine courses of action, positions, and tradeoffs and explore a variety of possible solutions.
6. Seek to make your proposals reasonable and legitimate and be willing to accommodate needs of the other party.
7. Ascertain the strengths and weaknesses of your case.
8. Ready facts, documents, and sound reasoning to support your claims.
9. Anticipate the other party's needs, demands, strengths and weaknesses, positions, and version of facts.
10. Focus on the interests, not the position, of each party.
11. Develop your strategies and tactics through discussion of issues, presentation of proposals and testing of the other party's positions.

IV. The Mediation Conference

The parties should come to the mediation conference prepared with all of the evidence and documentation they feel will be necessary to discuss their respective cases. Parties are, of course, entitled to representation by counsel.

At the outset, mediators describe the procedures and ground rules covering each party's opportunity to talk, order of presentation, decorum, discussion of unresolved issues, use of caucuses, and confidentiality of proceedings.

After these preliminaries, each party describes respective views of the dispute. The initiating party discusses its understanding of the issues, the facts surrounding the dispute, what it wants, and why. The other party then responds and makes similar presentations to the mediator. In this initial session, the mediator gathers as many facts as possible and clarifies discrepancies. The mediator tries to understand the perceptions of each party, their interests, and their positions on the issues.

When joint discussions have reached a stage where no further progress is being made, the mediator often meets with each party in caucuses. While holding separate sessions with each party, the mediator may shuttle back and forth between parties and bring them back to joint sessions at appropriate intervals. During each caucus, the mediator attempts to clarify each party's version of the facts, priorities, and positions, loosen rigid stances, explore alternative solutions, and seek possible tradeoffs. The mediator probes, tests, and challenges the validity of each party's positions. The mediator serves not as an advocate but as an "agent of reality." The mediator must make each party think through demands, priorities, and views, and deal with the other party's arguments.

An effective mediator knows that demands and priorities shift as ideas meet opposition, different facts are considered, and underlying circumstances change as parties reappraise and modify positions. In effect, the mediator increases the parties' perceptions of their cases

in order to construct a settlement range within which the parties can assess the consequences of continuing or resolving the dispute. By having parties focus on the risks and burdens of litigation, the mediator creates in the minds of the parties the idea that there are alternatives to seek. The parties articulate these possibilities by moving toward tradeoffs and acceptable accommodations.

During the final caucuses and joint sessions, the mediator narrows the differences between the parties and obtains agreement on major and minor issues. The mediator reduces a disagreement into a workable solution. At appropriate times, the mediator makes suggestions about a final settlement, stresses the consequences of failure to reach agreement, emphasizes the progress which has been made, and formalizes offers to gain an agreement.

The mediator acts as a facilitator to keep discussions focused and avoid new outbreaks of disagreement. The mediator will often have the parties negotiate the final terms of a settlement in a joint session. The mediator will then verify the specifics of an agreement and make sure that the terms are comprehensive, specific, and clear in the final session.

V. The Settlement

When the parties reach an agreement, they should reduce the terms to writing and exchange releases. They may also request that the agreement be put in the form of a consent award, for which the AAA will make the arrangements.

If the mediation fails to reach a settlement of any or all of the issues, the parties may submit to binding arbitration. Such arbitration would be administered under the appropriate arbitration rules. In accordance with the AAA's Commercial Mediation Procedures, the information offered in mediation may not be used in arbitration (or in subsequent litigation).

Cost of the Mediation

The cost of mediation is based on the mediator's published hourly rate, which covers both mediator compensation and an allocated portion for the AAA's services.

All expenses are generally borne equally by the parties. The parties may adjust this arrangement by agreement.

Before the commencement of the mediation, the AAA shall estimate anticipated total expenses. Each party shall pay its portion of that amount as per the agreed upon arrangement. When the mediation has terminated, the AAA shall render an accounting and return any unexpended balance to the parties.

A Guide to Arbitration for Business People

Stages of an Arbitration

I. The Agreement to Arbitrate

The most important step in initiating arbitration is the agreement to arbitrate. This agreement can be of one of two kinds: it can take the form of a future-dispute arbitration clause in a contract or, where the parties did not provide in advance for arbitration, it can take the form of a submission of an existing dispute to arbitration.

The parties can provide for the arbitration of future disputes by inserting the following clause into their contracts.

Standard Arbitration Clause

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Arbitration of existing disputes may be accomplished by the use of the following:

We, the undersigned parties, hereby agree to submit to arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules the following controversy: (cite briefly). We further agree that the above controversy be submitted to (one) (three) arbitrator(s). We further agree that we will faithfully observe this agreement and the rules, that we will abide by and perform any award rendered by the arbitrator(s), and that a judgment of the court having jurisdiction may be entered on the award.

Regardless of how the agreement to arbitrate was reached, filing of a claim with the AAA along with the appropriate filing fee, and serving the defending party are all that is required to set the machinery for arbitration into motion. Upon receiving the initiating papers together with the filing fee, the AAA assigns the case to one of its staff members, whose official title is case manager and who, from that point onward, is at the disposal of the parties, expediting administration and assisting both sides in all procedural matters until the award is rendered.

Pursuant to the rules, the parties and the AAA may use facsimile transmission, telegrams, or other written forms of electronic communication to give the notices required by the rules.

The American Arbitration Association will supply the form, or a Submission to Dispute Resolution form, free of charge on request but arbitration may also be initiated through ordinary correspondence, provided that all of the essential information is included. These forms can also be obtained through the Association's Web site located at www.adr.org.

Special attention is sometimes required to determine in which state and city hearings are to take place. If the place of arbitration has not been designated in the contract or the Submission to Dispute Resolution, or if the parties have not otherwise notified the AAA of their agreement on locale, the AAA will designate the city in accordance with its rules. Among the factors considered are:

- > locations of the parties;
- > locations of witnesses and documents;
- > the location of sites or the place of materials;
- > relative costs to the parties;
- > the place of performance of the contract;
- > laws applicable to the contract;
- > places of previous court actions, if any;
- > the location of the most appropriate panel of arbitrators; and
- > any other reasonable arguments that might affect the locale determination.

Hearings may be held in any geographical area, not just where the AAA maintains regional offices.

Expedited Procedures, outlined in Sections E1 through E10 of the rules, are applied in any case where no disclosed claim or counterclaim exceeds \$75,000, exclusive of interest and arbitration costs. Those procedures provide for notice of arbitrator appointment and notice of hearing by telephone and for the award of the arbitrator to be rendered no later than 14 days from the date of closing of the hearing.

An Important Note Concerning Consumer-Related Disputes

The AAA applies the Supplementary Procedures for Consumer-Related Disputes to arbitration clauses in agreements between individual consumers and businesses where the business has a standardized, systematic application of arbitration clauses with customers and where the terms and conditions of the purchase of standardized, consumable goods or services are nonnegotiable or primarily nonnegotiable in most or all of its terms, conditions, features, or choices. The product or service must be for personal or household use. The AAA will have the discretion to apply or not to apply the Supplementary Procedures and the parties will be able to bring any disputes concerning the application or non-application to the attention of the arbitrator. Consumers are not prohibited from seeking relief in a small claims court for disputes or claims within the scope of its jurisdiction, even in consumer arbitration cases filed by the business.

For additional information on the AAA and consumer-related disputes, please review the Consumer Due Process Protocol, the Supplementary Procedures for Consumer-Related Disputes, and other material found on our Web site at www.adr.org.

A Checklist for Initiating Arbitration

	By Demand for Arbitration	By Submission to Arbitrator
Original Document	Mail to the respondent.	File with the AAA in duplicate.
Copies Needed by the AAA	Two.	Two.
Copies Retained by the Parties	The demanding party retains one.	Each party retains one.
Signatures Required	An authorized person for the demanding party signs and lists his or her title.	Authorized persons for both parties sign, listing their titles.
Identification of Parties	The respondent should be clearly identified by official name and address.	Official names and addresses of both parties should appear, with signatures and titles.
Contract Clauses	Arbitration clauses should be quoted in full (may be attached separately if more convenient). Include date of the document.	Not applicable.
The Filing Fee	A nonrefundable filing fee must be advanced by the demanding party. The arbitrator later apportiones the fee.	The fee may be shared equally. The arbitrator later apportiones the fee.
The Statement of the Dispute	It should be brief but clear and include the amount claimed, if any, and the relief sought.	Claims and answers should be brief but clear and include the amount claimed, if any, and the relief sought.
Answering Statements	The respondent may mail the answering statement to the claimant and file two copies with the AAA. If a counterclaim is asserted, a filing fee must be paid.	See the preceding.
Composition of the Arbitration Panel	The AAA will determine the number of arbitrators unless composition is stated in the arbitration clause.	The number of arbitrators desired may be stated at the time of filing. If not stated, the AAA will determine the composition of the panel.
Locale of Arbitration	If not provided for in the arbitration clause, the demanding party should indicate its preference.	Locale should be indicated, if possible.

II. Selection of the Arbitrator

To serve the business community with arbitrators representing all fields of specialization, the American Arbitration Association now maintains a National Roster of Neutrals of approximately 8,000 individuals throughout the United States and the rest of the world. Usually nominated by leading figures in their industries, trades, or professions, arbitrators are added to the panel after careful checking of qualifications and reputations.

Arbitrators generally charge a rate consistent with his or her stated rate of compensation, beginning with the first day of hearing. When appointed by the AAA, neutrals serve under its Commercial Arbitration Rules and their conduct is guided by the Code of Ethics for Arbitrators in Commercial Disputes, a copy of which is sent to them upon their appointment to a case. Arbitrators deserve the same respect and courtesy given to all who dedicate themselves to the public good.

Parties can show their appreciation to the arbitrators and at the same time serve their own best interests by presenting their cases in an expeditious and orderly way, thereby facilitating the task of the arbitrator.

Unless the parties have indicated another method, the AAA uses the following simple and effective system for selecting the arbitrator:

1. After the filing of the submission or the answering statement, or upon the expiration of the time within which the answering statement is to be filed, the AAA sends each party a copy of the same specially prepared list of proposed arbitrators to resolve the controversy. In drafting the list, the AAA is guided by the nature of the dispute. Biographical information on each arbitrator accompanies the list.

2. Parties are allowed 15 days to study the list, strike names to which they object, and number the remaining names in the order of preference. *Additional information about the proposed arbitrators is available through the case manager. While the AAA makes every effort to keep its information current, each party is encouraged to do further research on the persons suggested.* If administration is under the Expedited Procedures, the parties are allowed seven days to study the list of five proposed arbitrators, strike two names, and number the remaining names in order of preference.
3. When these lists are returned to the AAA, the case manager compares indicated preferences and makes note of the mutual choices. Where parties are unable to find a mutual choice on a list, the AAA has the power to make the appointment without submitting additional lists, although additional lists may be submitted at the request of both parties.
4. If the parties cannot agree on an arbitrator, the AAA will make an administrative appointment, but in no case will an arbitrator whose name was crossed out by either party be appointed.

Panels with Party-Appointed Arbitrators

Under some arbitration clauses in use, each party to a dispute appoints one arbitrator (who might or might not be a member of the AAA's National Roster of Neutrals) and the two select a third arbitrator from the AAA's panels in accordance with procedures just described in steps 2-4. Unless the parties specifically agree in writing that the party-appointed arbitrators are to be non-neutral, arbitrators appointed by the parties in this manner must meet the impartiality and independence standards set forth within the rules.

In cases in which the party-appointed arbitrators are serving as non-neutrals, to avoid the danger that a compromise award might have to be rendered for the sake of a majority, the parties sometimes provide, and the AAA recommends, that the third arbitrator be permitted to render the award alone when a unanimous award is not possible. This may be done by the parties in their agreement to arbitrate or in a later stipulation.

It is also recommended in cases involving non-neutral party-appointed arbitrators that the neutral arbitrator ascertain from the party-appointed arbitrators the nature and extent of any relationship between the arbitrators and the parties that appointed the arbitrators and whether there will be any direct communication between such arbitrators and the parties that appointed them.

Finally, even in cases in which party-appointed arbitrators are serving as non-neutrals, the AAA recommends that parties agree to not communicate ex parte with their party-appointed arbitrator after the appointment procedures in the rules have been completed.

III. Preparation for the Hearing

The case manager consults all parties and arbitrators to determine a mutually convenient day and time for the hearing. If the parties cannot agree, the arbitrator is empowered to set dates.

Note that, in this as in all other administrative matters, the AAA staff manages details and arrangements. This has a two-fold advantage: it relieves the arbitrator of the burden and eliminates the necessity of direct communication between the parties and the arbitrator except at the hearing. By specifically forbidding communication with the arbitrator, except in the presence of both parties, AAA rules avoid the danger that one side will offer arguments or evidence that the other has no opportunity to rebut. Parties may participate in the Accelerated Exchange Program allowing the parties and arbitrators to exchange documents directly, copying the AAA, if the case meets specific program requirements.

At the request of any party or at the discretion of the AAA, an administrative conference with the AAA and the parties and/or their representatives will be scheduled in appropriate cases to expedite the proceedings. There is no additional administrative fee for this service.

In most cases, a preliminary hearing with the parties and/or their representatives and the arbitrator will be scheduled by the arbitrator to specify the issues to be resolved, to stipulate uncontested facts, and to consider other matters that will expedite the arbitration proceedings.

Consistent with the expedited nature of arbitration, the arbitrator may, at the preliminary hearing, establish (i) the extent of and a schedule for the production of relevant documents and other information, (ii) the identification of all witnesses to be called, and (iii) a schedule for further hearings to resolve the dispute. For purposes of arbitrator compensation, the preliminary hearing will be considered the first day of service.

Occasionally, a party needs to postpone a scheduled hearing. When this is necessary, the party seeking postponement should first contact the other party to obtain its consent, as well as alternate hearing dates, before contacting the AAA. If the other party does not consent to the postponement, the AAA should be so advised. The case manager will, in turn, coordinate having the arbitrator decide whether the hearing should be postponed, as the rules provide. In no event should the parties contact the arbitrator directly.

Since the arbitrator will make the award on the basis of the facts and exhibits presented at the hearing, it is essential that the parties or their representatives prepare for arbitration carefully.

1. Assemble all documents and papers that you will need at the hearing. Always make photocopies for the arbitrator and the other party. If documents that are needed are in the possession of the other party, ask that they be brought to the arbitration. Under some state arbitration laws, the arbitrator or another person has authority to subpoena documents and witnesses. A checklist of documents and exhibits will be helpful toward your orderly presentation.
2. If it will be necessary for the arbitrator to visit a building site or warehouse for an on-the-spot investigation, make plans in advance. The arbitrator will have to be accompanied by representatives of both parties, unless they specifically authorize that the investigation be conducted without their presence or unless one party fails to attend after being notified.
3. Interview all of your witnesses. Make certain that each one understands the whole case and particularly the importance of his or her own testimony within it.

4. If there is a possibility that others, not on your regular list of witnesses, might have to appear, alert them to be available on call without delay.
5. Make a written summary of what each witness will prove. This will be useful as a checklist at the hearing and will help you make sure that nothing is overlooked.
6. Study the case from the other side's point of view. Be prepared to answer the opposition's evidence.
7. If a transcript of the hearing is needed, the parties are responsible for making the arrangements and notifying the other parties of such arrangements in advance of the hearing.

The right to representation in arbitration by counsel or another authorized person is guaranteed by the rules of the American Arbitration Association. A party who desires to be represented should notify the other side and file a copy of the notice with the AAA at least three days before the hearing. When arbitration is initiated by a representative or when the respondent replies through a representative, however, such notice is deemed to have been given.

IV. Presentation of the Case

Arbitration hearings are conducted somewhat like court trials, except that arbitrations are less formal. Arbitrators are not required to follow strict rules of evidence. They must hear all of the evidence material to an issue but they may determine for themselves what is relevant. Arbitrators are therefore inclined to accept evidence that might not be allowed by judges.

This does not mean, however, that all evidence will be considered of equal weight.

Direct testimony of witnesses is usually more persuasive than hearsay evidence, and facts will be better established by documents and exhibits than by argument only.

It is customary for the claimant to proceed first with its case, followed by the respondent. This order may be varied, however, when the arbitrator thinks it necessary. In any event, the “burden of proof” is not on one side more than the other; each party must try to convince the arbitrator of the correctness of its position and no hearing is closed until both have had a full opportunity to do so. That is why it is equally the responsibility of the claimant and the respondent to present their cases to the arbitrator in an orderly and logical manner. This includes:

1. An opening statement that clearly but briefly describes the controversy and indicates what is to be proved. Such a statement lays the groundwork and helps the arbitrator understand the relevance of testimony to be presented.
2. A discussion of the remedy sought. This is important because the arbitrator’s power is conferred by the agreement of the parties. Each party should try to show that the relief that it requests is within the arbitrator’s authority to grant.
3. Introduction of witnesses in a systematic order to clarify the nature of the controversy and to identify documents and exhibits. Cross-examination of witnesses is important, but each party should plan to establish its case by its own witnesses.
4. A closing statement that should include a summary of the evidence and arguments and a refutation of points made by the opposition.

Above all, a cooperative attitude is essential for effective arbitration. Overemphasis or exaggeration, concealing of facts, introduction of legal technicalities with the objective of delaying proceedings, or, in general, disregard of ordinary rules of courtesy and decorum can have an adverse effect on arbitrators.

After both sides have had an equal opportunity to present all of their evidence, the arbitrator declares the hearing closed. Under AAA rules, the arbitrator has 30 days from that time within which to render an award, unless the agreement provides otherwise. If the case was administered under the Expedited Procedures in the rules, the arbitrator has 14 days within which to render an award.

The Award

The award is the decision of the arbitrator on the matters submitted to him or her under the arbitration agreement. If the arbitration panel consists of more than one arbitrator, the majority decision, under AAA rules, is binding. The purpose of the award is to dispose of the controversy finally and conclusively. It is made within the limits of the arbitration agreement and its rules on each claim submitted. Arbitrators are not required to write opinions explaining the reasons for their decisions. As a general rule, AAA commercial awards consist of a brief direction to the parties on a single sheet of paper. Written opinions can generate attacks on the award because they identify targets for the losing party. In some cases, both parties will request an opinion or the arbitration agreement provides for one. The AAA then has no objection. Usually, however, the parties look to the arbitrator for a decision, not an explanation.

The power of the arbitrator ends with the making of the award. An award may not be changed by the arbitrator, once it is made, unless the parties agree to restore the power of the arbitrator or unless the law provides otherwise.

When the parties agree to request a clarification or interpretation of a disputed ruling, the agreement must be in writing. Such an agreement is filed with the AAA, which then proceeds to make the necessary arrangements with the arbitrator. In some jurisdictions, the law permits arbitrators to clarify or modify the award upon the request of a party.

The services of the AAA are generally concluded with the transmittal of the award. Although there is voluntary compliance with the majority of awards, judgment on the award can be entered in a court having appropriate jurisdiction if necessary.

Procedure for Oral Hearings

	Who Decides	Who Makes Arrangements	Notice
Time	The arbitrator, at the convenience of the parties.	The case manager, who consults the parties and the arbitrator.	At least ten days, given by the case manager unless parties agree otherwise.
Representation by Counsel	The individual party.	The individual party.	Three days notice to other party unless arbitration was initiated by counsel, in which case notice is deemed to have been given.
Stenographic Records and Interpreters	The requesting party.	The requesting party.	The requesting party notifies the other party in advance of the hearing and may inquire of the other side as to whether it would like to share the cost and get a copy of the record.
Attendance at Hearing	Parties attend and bring witnesses. Arbitrators decide which other interested persons may attend and may require withdrawal of witnesses during the testimony of others.	Parties arrange for attendance of witnesses.	Parties notify their own interested persons.
Affidavits and Documents	The arbitrator decides whether to receive such evidence when it is presented.	Each party arranges to submit its own documents. If they are in the possession of the other party, documents may be requested directly.	Arbitrator will set a deadline for exchange of documents and affidavits.
Subpoenas of Witnesses and Documents	The arbitrator issues subpoenas on showing of need by a party. In New York state, attorneys of record may also issue subpoenas.	The case manager obtains signature of arbitrator for subpoena supplied by party and returns subpoena to party for service.	Subpoenas are served by parties directly on the witness or the custodian of documents.
Inspection or Investigation	The arbitrator may decide on his or her own initiative or at the request of a party, if the arbitrator deems it necessary.	The case manager.	Parties are notified of time and place of inspection so that they can be present.
Closing of Oral Hearings	The arbitrator closes the hearing after both sides complete proofs and witnesses. If briefs, investigations, or more data are required, the hearings are kept open.	The case manager arranges for receipt of post-hearing matters and makes a record of the closing of hearings on instructions from the arbitrator.	The case manager notifies parties of all official closing dates.

Procedures for Large, Complex Disputes

Recognizing that large, complex arbitrations often present unique procedural problems, the AAA, working with attorneys, arbitrators, and industry advisory groups, has developed Procedures for Large, Complex Disputes. The overall purpose of these procedures is to provide for efficient, economical, and speedy resolution of larger disputes. Cases are administered by senior AAA staff. The procedures provide for an early administrative conference with the AAA and a preliminary hearing with the arbitrators, both conducted via telephone conference call. Documentary exchanges and other essential exchanges of information are facilitated, as is preparation of a statement of reasons accompanying the award. The procedures apply when the disclosed claim of any party is at least \$500,000. They are meant to complement the applicable rules that the parties have agreed to use and may be modified by the parties.

Optional Rules for Emergency Measures of Protection

If emergency interim relief is required before the panel has been constituted, parties have needed to resort to the courts rather than seek the requisite relief from the arbitrator. To bridge this deficiency and to more fully implement the parties' intent to arbitrate any future disputes, the AAA has made available Optional Rules for Emergency Measures of Protection.

As the title indicates, these measures are optional. The contracting parties must have agreed to use them either by special agreement or in their arbitration clause. A party seeking such relief prior to the constitution of the panel must notify the AAA and all other parties in writing of the nature of the relief sought, the reasons why such relief is required, and why the party is entitled to such relief on an emergency basis. Within one business day of receipt of the notice, the AAA will appoint a single emergency arbitrator to rule on emergency applications from a special AAA panel of emergency arbitrators designated for that purpose. Of course, the appointment of the emergency arbitrator will be subject to a disclosure and challenge procedure similar to that in the standard commercial rules.

The rules provide an expedited time within which the arbitrator shall establish a schedule for consideration of the application for relief, and shall accordingly review the request. If the arbitrator determines that the party is entitled to the relief, he or she may enter an interim award granting the relief and stating the reasons therefore. Any application to modify an interim award of emergency relief must be based on changed circumstances and may be made to the emergency arbitrator until such time as the panel is constituted. The emergency arbitrator shall have no further power to act after the panel is constituted, unless the parties agree that the emergency arbitrator is named as a member of the panel. The procedures contain a provision on modification of the interim award and apportionment of costs.

International Cases

In order to best serve the parties in any international dispute resolution proceeding, the AAA has created a separate division called the International Centre for Dispute ResolutionSM (ICDR). The ICDR handles all international matters, including the administration of international mediation and arbitration cases. This international administrative system is set apart from the AAA's domestic administrative services. The key distinction is to provide the international business and legal community confidence in having an award that will be internationally recognized and enforceable.

An international case is generally defined as having either the place of arbitration or performance of the agreement outside the United States, or having an arbitration agreement between parties from different countries. ICDR administration is designed for parties that have differing languages, legal systems and cultural backgrounds. The ICDR maintains specialized administrative facilities supervised by multilingual attorneys in New York, a European office in Dublin and a worldwide panel of more than 400 arbitrators and mediators.

The International Dispute Resolution Procedures of the ICDR are the most frequently used rules, which were specifically drafted to meet the expectations of international business. Among the more interesting features of these rules are provisions that support party control of the process and provide for independent and impartial arbitrators, expedited proceedings and reasoned decisions. As one of the world's few arbitral institutions that consistently administers international mediations around the globe, the ICDR provides administration of international mediations under the International Mediation Rules of the ICDR. The ICDR also administers cases under Supplementary Procedures for International Commercial Arbitration, which are applied to international proceedings when parties agree to arbitrate in accordance with one of the various AAA arbitration rules. The Supplementary Procedures are used in conjunction with the applicable rules and will incorporate several of the provisions from the international rules. The ICDR also administers cases, as administering or appointing authority, under UNCITRAL arbitration rules. The thrust of all of these rules and procedures is to provide the parties with an expeditious and economic internationally enforceable award.

Administrative Fees

As a not-for-profit organization, the AAA prescribes an initial filing fee and a case service fee to compensate for the cost of providing administrative services. The initial filing fee is payable in full by a filing party when a claim, counterclaim, or additional claim is filed. A case service fee will be incurred for all cases that proceed to their first hearing. Both of these administrative fees are based on the amount of the claim or counterclaim. In addition, filing fees are subject to a refund schedule and case service fees are generally refundable at the conclusion of the case if no hearings occur.

In an effort to make arbitration costs reasonable to consumers, the AAA has a separate fee schedule for disputes arising from arbitration clauses in agreements between individual consumers and businesses, where the business has a standardized, systematic application of arbitration clauses with customers and where the terms and conditions of the purchase of standardized, consumable goods or services are nonnegotiable or primarily nonnegotiable in most or all of its terms, conditions, features, or choices. The product or service must be for personal or household use. Please refer to the Supplementary Procedures for Consumer-Related Disputes when filing a consumer-related claim.

Arbitrator compensation is not included in the administrative fee schedule. The parties are responsible for compensating the arbitrator at his or her published rate (hourly or per diem).

As an additional service, the AAA provides hearing rooms, which are available for rental by the parties. Check with the AAA for rates and availability.

For more information concerning the AAA's administrative fee schedule and refund schedule, please visit our Web site at www.adr.org.

Notes

Notes

Rules, forms, procedures and guides, as well as information about applying for a fee reduction or deferral, are subject to periodic change and updating. To ensure that you have the most current information, see our Web site at www.adr.org.

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American Arbitration Association

Dispute Resolution Services Worldwide



**MODEL STANDARDS OF CONDUCT
FOR MEDIATORS**

AMERICAN ARBITRATION ASSOCIATION
(ADOPTED SEPTEMBER 8, 2005)

AMERICAN BAR ASSOCIATION
(ADOPTED AUGUST 9, 2005)

ASSOCIATION FOR CONFLICT RESOLUTION
(ADOPTED AUGUST 22, 2005)

SEPTEMBER 2005

The Model Standards of Conduct for Mediators September 2005

The *Model Standards of Conduct for Mediators* was prepared in 1994 by the American Arbitration Association, the American Bar Association's Section of Dispute Resolution, and the Association for Conflict Resolution¹. A joint committee consisting of representatives from the same successor organizations revised the Model Standards in 2005.² Both the original 1994 version and the 2005 revision have been approved by each participating organization.³

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.

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, when desired.

Note on Construction

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

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 very strong reasons and requires careful use of judgment and discretion.

¹ The Association for Conflict Resolution is a merged organization of the Academy of Family Mediators, the Conflict Resolution Education Network and the Society of Professionals in Dispute Resolution (SPIDR). SPIDR was the third participating organization in the development of the 1994 Standards.

² Reporter's Notes, which are not part of these Standards and therefore have not been specifically approved by any of the organizations, provide commentary regarding these revisions.

³ The 2005 revisions to the Model Standards were approved by the American Bar Association's House of Delegates on August 9, 2005, the Board of the Association for Conflict Resolution on August 22, 2005 and the Executive Committee of the American Arbitration Association on September 8, 2005.

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 temporal parameters when referencing a mediation, and therefore, do not define the exact beginning or ending of a mediation.

Various aspects of a mediation, including some matters covered by these Standards, may also be affected by applicable law, 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 other sources.

These Standards, unless and until adopted by a court or other regulatory authority do not have the force of law. Nonetheless, the fact that these Standards have been adopted by the respective sponsoring entities, should alert mediators to the fact that the Standards might 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, uncoerced 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.
 - 1. 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.
 - 2. 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.
- B. 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 avoid conduct that gives the appearance of partiality.
 - 1. A mediator should not act with partiality or prejudice based on any participant's personal characteristics, background, values and beliefs, or performance at a mediation, or any other reason.
 - 2. A mediator should neither give nor accept a gift, favor, loan or other item of value that raises a question as to the mediator's actual or perceived impartiality.
 - 3. A mediator may accept or give de minimis gifts or incidental items or services that are provided to facilitate a mediation or respect cultural norms so long as such practices do not raise questions as to a mediator's actual or perceived impartiality.
- C. If at any time a mediator is unable to conduct a mediation in an impartial manner, the mediator shall withdraw.

STANDARD III. CONFLICTS OF INTEREST

- A. A mediator shall avoid a conflict of interest or 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 mediation participant, whether past or present, personal or professional, that reasonably raises a question of a mediator's impartiality.
- B. A mediator shall make a 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.
- D. If a mediator learns 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, the mediator shall disclose it as quickly as practicable. After disclosure, if all parties agree, the mediator may proceed with the mediation.
 - 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 participants in any matter that would raise questions about the integrity of the mediation. When a mediator develops personal or professional relationships with parties, other individuals or organizations following a mediation in which they were involved, the mediator should consider factors such as time elapsed following the mediation, the nature of the relationships established, and services offered when determining whether the relationships might create a perceived or actual conflict of interest.

STANDARD IV. COMPETENCE

- A. A mediator shall mediate only when the mediator 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 understandings 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.
 - 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' 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 to a mediation agree that the mediator may disclose information obtained during the mediation, the mediator may do so.
 2. A mediator should 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 teaching, research or evaluation of mediation, the mediator should protect the anonymity of the parties and abide by their reasonable expectations regarding confidentiality.
- B. A mediator who meets with any persons in private session during a mediation shall not convey directly or indirectly to any other person, any 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 the parties will maintain confidentiality of information they obtain in a mediation.
- D. Depending on the circumstance 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 should agree to mediate only when the mediator is prepared to commit the attention essential to an effective mediation.
2. A mediator should only accept cases when the mediator can satisfy the reasonable expectation of the parties concerning the timing of a mediation.
3. 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 all sessions.
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 role of a mediator differs substantially from other professional roles. Mixing the role of a mediator and the role of another profession is problematic and thus, a mediator should distinguish between the roles. 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 processes.
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 should 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 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.

- 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.
- 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 SOLICITATION

- A. A mediator shall be truthful and not misleading when advertising, soliciting or otherwise communicating the mediator's qualifications, experience, services and fees.
 - 1. A mediator should not include any promises as to outcome in communications, including business cards, stationery, or computer-based communications.
 - 2. A mediator should 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 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 a mediation.
 - 1. If a mediator charges fees, the mediator should develop them 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 mediation services.

2. A mediator's fee arrangement should 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 should not enter into a fee agreement which is contingent upon the result of the mediation or amount of the settlement.
 2. While a mediator may accept unequal fee payments from the parties, a mediator should not use fee arrangements that adversely impact the mediator's ability to conduct a mediation in an 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. Assisting newer mediators through training, mentoring and networking.
- 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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