

**Judicial Council ADR Committee
Work Group on Standards of Conduct for Mediators**

**DRAFT Revised Maryland Standards of Conduct for Mediators
Distributed for Comment Only**

1 INTRODUCTION AND DEFINITIONS

2 A. Mediation is a collaborative process used to resolve or prevent a broad range of
3 conflicts in a wide variety of settings. The fundamental principles of mediation are self-
4 determination, impartiality and confidentiality.

5 B. In mediation, one or more impartial mediators promote communication and voluntary
6 decision making by people who have a conflict.

7 C. These Standards of Conduct (Standards) include ethical principles to guide the conduct
8 of mediators, to help set appropriate expectations for mediation participants, and to
9 promote public confidence in mediation.

10 D. These Standards apply to a mediator and any person involved in the mediation process
11 on behalf of the mediator or a mediation program when:

12 1. A Maryland court has referred all or part of a case to mediation;

13 2. The mediator has agreed to follow the Maryland Standards of Conduct for
14 Mediators, including when the mediator has invoked the Maryland Mediation
15 Confidentiality Act¹; or

16 3. The mediator belongs to or is mediating for a program or organization that
17 requires its members or mediators to follow the Maryland Standards of Conduct
18 for Mediators.

19

¹ DRAFTERS NOTE: A mediator may invoke the Maryland Mediation Confidentiality Act by stating in writing that the mediation communications will remain confidential in accordance with the Act and that the mediator has read and will abide by the Maryland Standards of Conduct for Mediators during the mediation. See Maryland Code, Courts and Judicial Proceedings, section 3-1802(b).

**DRAFT Revised Maryland Standards of Conduct for Mediators
Distributed for Comment Only**

1 E. The following definitions apply in interpreting these Standards:

2 1. “Mediator” includes a sole mediator and all co-mediators.

3 2. “Shall” means that the mediator is required to act as described.

4 3. “Should” means that the action described is highly desirable, and may only be
5 departed from after careful consideration and for a compelling reason.

6 4. “Mediation communication” means a communication, whether spoken, written,
7 or nonverbal, made as part of a mediation, including a communication made for
8 the purpose of considering, initiating, continuing, reconvening, or evaluating a
9 mediation or a mediator.

10 5. “Party” means a person that participates in a mediation and whose agreement is
11 necessary to resolve the dispute.

12 6. “Participant” means any person, other than a mediator or a party that
13 participates in or observes any part of a mediation.

14 7. “The Maryland Mediation Confidentiality Act” and “the Act” refer to Maryland
15 Code, Courts and Judicial Proceedings, section 3-1801 et. seq.

16 F. These Standards shall be read and interpreted in their entirety. Their order does not
17 indicate that one Standard is more or less important than another.

18 G. Some matters covered by these Standards may be affected by applicable law, court
19 rules, regulations, or other applicable professional rules. If these other sources conflict
20 with and take precedence over these Standards, the mediator shall inform the
21 participants of the conflict, comply with the spirit and intent of the preempted Standard
22 to the extent possible, and honor all remaining Standards.

23

**DRAFT Revised Maryland Standards of Conduct for Mediators
Distributed for Comment Only**

1 STANDARD I. SELF-DETERMINATION

2 A. A mediator shall promote and respect the parties' self-determination at all times.

3 B. Self-determination means that each party makes voluntary, uncoerced, and informed
4 choices about the mediation process and outcome.

5 1. The parties may generally exercise self-determination in all aspects of a
6 mediation, including the selection of a mediator, the mediation process, the
7 manner and extent of their participation, whether to make an agreement, the
8 terms of any agreement, and whether to withdraw from, postpone, or terminate
9 mediation.

10 2. A mediator may need to balance party self-determination about the mediation
11 process with the mediator's duty to conduct the mediation in a manner that
12 promotes the quality and integrity of the process. The mediator's duty to
13 conduct a quality process may take priority over party self-determination about
14 process.

15 3. A mediator cannot personally ensure that each party has made informed
16 choices. Where appropriate, a mediator should make the parties aware that they
17 may consult other professionals to help them make informed choices in a
18 manner that does not impair the mediator's impartiality. If a party requests the
19 opportunity to obtain additional information to help the party make an informed
20 decision, the mediator should allow the party a reasonable opportunity to do
21 this.

**DRAFT Revised Maryland Standards of Conduct for Mediators
Distributed for Comment Only**

1 C. A mediator shall not undermine any party's self-determination because of the
2 mediator's personal interests or outside pressure.²

3

4 **STANDARD II. IMPARTIALITY**

5 A. A mediator shall conduct all aspects of a mediation in an impartial manner.

6 B. Conducting a mediation in an impartial manner means acting without favoritism, bias, or
7 prejudice.

8 1. A mediator shall not agree to mediate if the mediator cannot act in an impartial
9 manner.

10 2. A mediator shall not favor or disfavor any party or participant for any reason,
11 such as the participant's behavior during or outside the mediation process,
12 personal characteristics, background, values, beliefs, or actions.

13 3. A mediator shall withdraw if, at any time, the mediator becomes unable to act in
14 an impartial manner.

15 C. A mediator shall not say or do anything that might reasonably raise a question about the
16 mediator's impartiality.

17 D. A mediator shall not offer, give, solicit, or accept any item or service of value, either
18 before, during or after a mediation, if doing so might reasonably raise a question about
19 the mediator's impartiality.

20

21

² DRAFTER'S NOTE: Personal interests may include attaining higher settlement rates or increased fees and outside pressures may come from program administrators, provider organizations, judges, court personnel, or others.

**DRAFT Revised Maryland Standards of Conduct for Mediators
Distributed for Comment Only**

1 STANDARD III. CONFLICTS OF INTEREST

2 A. A mediator shall avoid any direct or indirect conflict of interest.

3 1. A conflict of interest is any past or present personal, professional, or financial
4 relationship or circumstance that might reasonably raise a question about the
5 mediator's impartiality.

6 2. A direct conflict of interest may arise from a connection between the mediator
7 and:

8 a. a person involved in the dispute;

9 b. the subject matter of the dispute; or

10 c. a potential outcome of the mediation or the dispute.

11 3. An indirect conflict of interest may arise from a connection between a person
12 who has a personal, professional or financial relationship with the mediator and:

13 a. a person involved in the dispute;

14 b. the subject matter of the dispute;

15 c. a potential outcome of the mediation or the dispute; or

16 d. a person who has a personal, professional or financial relationship to a
17 person involved in the dispute, the subject matter of the dispute, or a
18 potential outcome of the mediation or the dispute.

19 B. A mediator shall make a reasonable effort to identify any conflicts of interest as soon as
20 possible under the circumstances.

21 C. If a mediator knows or learns of any relationship or circumstance that creates or might
22 create a conflict of interest, the mediator shall promptly do one of the following:

23 1. Decline to accept the mediation, if it has not begun;

**DRAFT Revised Maryland Standards of Conduct for Mediators
Distributed for Comment Only**

- 1 2. Withdraw from the mediation, if it has begun; or
- 2 3. Fully disclose the relationship or circumstance that may create a conflict of
- 3 interest to the parties and, if the parties all agree, proceed with the mediation.
- 4 D. During and after a mediation, the mediator shall not establish any new relationship or
- 5 involvement that might reasonably appear to create a conflict of interest without the
- 6 informed consent of all parties.³
- 7 E. If a mediator’s conflict of interest might reasonably be seen as undermining the integrity
- 8 of the mediation process, the mediator shall decline or withdraw from the mediation, or
- 9 refrain from establishing the new relationship or involvement, regardless of any other
- 10 desire, agreement, or consent of the parties to the mediation.

11

12 **STANDARD IV. COMPETENCE**

- 13 A. A person who offers or agrees to mediate creates the expectation that the person is
- 14 competent to mediate effectively. Training, experience in mediation, skills, cultural
- 15 understandings, and other qualities are often necessary for mediator competence.
- 16 B. A mediator shall have the ability to describe accurately and to provide the mediation
- 17 skills, techniques, and processes that the mediator uses.
- 18 C. A mediator shall provide accurate and appropriately complete information about the
- 19 mediator’s qualifications, experience, skills, techniques, and processes to potential
- 20 mediation participants and to any program from which the mediator accepts referrals.

³ DRAFTERS NOTE: In deciding whether a new relationship or involvement is permissible, or whether the parties’ consent is required, the mediator shall consider the subject matter of the mediation, the time elapsed since the mediation, the nature of the possible new relationship or involvement, and any other relevant factors.

**DRAFT Revised Maryland Standards of Conduct for Mediators
Distributed for Comment Only**

1 D. A mediator shall only claim, offer, or agree to provide services that the mediator has the
2 skills, experience, knowledge or other qualifications to provide competently.

3 E. A mediator shall attend educational programs and related activities to develop,
4 maintain, and enhance the mediator's mediation skills, experience, knowledge and
5 other qualifications.

6 F. If a mediator cannot competently conduct a mediation, the mediator shall promptly:

- 7 1. Discuss the situation with the parties and take appropriate steps to address it;
- 8 2. Request appropriate assistance; or
- 9 3. Withdraw from the mediation, either with or without disclosing the reason.

10 G. A mediator shall not conduct a mediation if the mediator's ability to do so is impaired by
11 drugs, alcohol, medication, or other condition.

12

13 **STANDARD V. CONFIDENTIALITY**

14 A. A mediator shall follow all applicable mediation confidentiality statutes and rules of
15 court, and any confidentiality agreement between the parties and the mediator that is
16 consistent with any applicable statutes and rules.⁴

17 B. A mediator shall maintain the confidentiality of all mediation communications and
18 outcomes unless disclosure is required or permitted by law.⁵

⁴ DRAFTERS NOTE: The existence and scope of mediation confidentiality in Maryland depends on the context and circumstances of the mediation. If Title 17 of the Maryland Rules applies, mediation confidentiality is established and governed by Rule 17-105. If Title 17 of the Maryland Rules does not apply, mediation confidentiality may or may not be established and governed by the Maryland Mediation Confidentiality Act.

⁵ Confidentiality is important to promote communication in mediation and to preserve mediator impartiality, the appearances and perceptions of mediator impartiality, and the integrity of the mediation process.

**DRAFT Revised Maryland Standards of Conduct for Mediators
Distributed for Comment Only**

1 C. A mediator shall not reveal information about the conduct of any party or participant in
2 a mediation to anyone who is not a party or a participant.

3 D. A mediator who speaks with any party or participant in a private session shall not,
4 without the consent of that party or participant, reveal any information that was
5 obtained during the private session.

6 E. A mediator shall not reveal the name of, or other identifying information about, any
7 party or participant, other than an attorney for a party, without that party or
8 participant's prior, written consent.

9 F. A mediator who participates in teaching, research, or evaluation of mediation shall
10 protect the anonymity of the parties and participants and shall respect their reasonable
11 expectations about privacy and confidentiality.

12 G. A mediator shall clearly explain any applicable mediation confidentiality statutes, rules
13 and standards, and any relevant exceptions, to all mediation participants before
14 discussing the conflict and at the beginning of the first mediation session.

15 H. A mediator shall discuss with the parties and participants whether and the extent to
16 which the parties and participants will maintain the confidentiality of mediation
17 communications.

18

19 **STANDARD VI. QUALITY AND INTEGRITY OF THE MEDIATION PROCESS**

20 A. A mediator shall conduct a mediation in a manner that promotes the quality and
21 integrity of the mediation process.

22 1. A mediator shall not conduct a dispute resolution process other than mediation
23 and identify it as mediation.

**DRAFT Revised Maryland Standards of Conduct for Mediators
Distributed for Comment Only**

- 1 2. A mediator shall not knowingly misrepresent any fact or circumstance in the
2 course of a mediation.
- 3 3. A mediator shall support honesty and candor by all parties and participants.
- 4 4. If a mediator has reason to believe that a mediation is being used to further a
5 crime, the mediator should take appropriate steps. These steps may include
6 continuing, postponing, withdrawing from, or terminating the mediation.
- 7 5. If a mediator believes that anything, including conduct of a party, participant or
8 mediator, is making a mediation inconsistent with these Standards, or is
9 otherwise undermining the integrity of the mediation process, the mediator
10 should take appropriate steps. These steps may include continuing, postponing,
11 withdrawing from, or terminating the mediation.
- 12 B. A mediator shall follow all applicable statutes, rules of court, and standards of conduct
13 when mediating.
- 14 1. A mediator shall follow these Standards when they apply, unless a Standard is
15 inconsistent with an applicable statute or provision of the Maryland Rules.
- 16 2. A mediator shall follow the requirements of any court or other mediation
17 program when mediating a case as part of that program, unless such a
18 requirement is inconsistent with these Standards or with an applicable statute or
19 provision of the Maryland Rules.
- 20 C. A mediator shall only agree to mediate a matter if the mediator is able to:
- 21 1. Commit the time and attention necessary to conduct an effective mediation; and
- 22 2. Satisfy any reasonable expectations or requirements of the parties, and of any
23 referring program, concerning the timing of the mediation.

**DRAFT Revised Maryland Standards of Conduct for Mediators
Distributed for Comment Only**

1 D. A mediator should help the parties identify the people who are appropriate participants
2 in the mediation and facilitate the participation of those people. The parties and
3 mediator may agree that other people may be included in or excluded from some or all
4 sessions.

5 E. A mediator shall not perform professional services in any other capacity for any party in
6 an ongoing mediation without the informed consent of all other parties in the
7 mediation.

8 1. A mediator shall not change from mediation to any other dispute resolution
9 process without first discussing the implications with the parties and obtaining
10 their informed consent.

11 2. A mediator shall not change processes if this is prohibited by the rules of the
12 mediation program that referred the case, if any.

13 F. Upon the request of a party or a participant, a mediator may provide information that
14 the mediator is qualified by training or experience to provide, if the mediator can do so
15 consistent with these Standards and any other applicable statutes, rules of court, and
16 standards of conduct.

17 G. If a mediator has reason to believe that a party is having difficulty or is unable to fully
18 understand, participate, or exercise self-determination in a mediation, the mediator
19 shall explore possible ways to address this. If the difficulty or inability cannot be
20 satisfactorily addressed, the mediator shall take other appropriate steps. These steps
21 may include postponing, withdrawing from, or terminating the mediation.

22 H. A mediator shall pay attention to power dynamics and assess whether a party may be
23 experiencing abuse, coercion, duress, or undue influence. If a mediator has reason to

**DRAFT Revised Maryland Standards of Conduct for Mediators
Distributed for Comment Only**

1 believe that any of these factors may be preventing a party from fully participating or
2 exercising self-determination, the mediator shall take appropriate steps. These steps
3 may include exploring the issue in private session as well as continuing, postponing,
4 withdrawing from, or terminating the mediation.

5 I. A mediator shall pay attention to signs of possible domestic abuse. If a mediator has
6 reason to believe that domestic abuse may be preventing a party from fully participating
7 or exercising self-determination, the mediator shall take appropriate steps. These steps
8 may include exploring the issue in private session, as well as continuing, postponing,
9 withdrawing from, or terminating the mediation.

10 J. If a mediator decides that it is necessary to postpone, withdraw from, or terminate a
11 mediation, the mediator shall consider the safety of the participants and the integrity of
12 the mediation process. The mediator may inform some or all mediation participants of
13 the reason for postponing, withdrawing from, or terminating the mediation if this is
14 consistent with the mediator's confidentiality and impartiality obligations.

15
16 **STANDARD VII. ADVERTISING AND SOLICITATION**

17 A. Any advertisement, solicitation of business, or other communication of a mediator's
18 services shall be consistent with these Standards, including Confidentiality and Quality
19 and Integrity of the Mediation Process.

20 B. A mediator shall be truthful and appropriately complete in any communications about
21 the mediator's qualifications, experience, skills, techniques, processes, practices,
22 services, availability, and fees.

**DRAFT Revised Maryland Standards of Conduct for Mediators
Distributed for Comment Only**

1 prepare for and conduct the mediation, and customary rates for similar
2 mediation services.

3 2. If a mediator or an organization through which the mediator is providing services
4 will charge any fees or other expenses for a mediation, the fee arrangement
5 should be in writing.

6 B. A mediator or an organization through which a mediator is providing services shall not
7 charge fees or other expenses in a manner that might reasonably impair the mediator's
8 impartiality or the appearance of the mediator's impartiality.

9 1. A mediation fee agreement shall not be contingent on the outcome of the
10 mediation or the amount or other terms of any settlement.

11 2. A mediator may accept unequal fee payments on behalf of the parties if this
12 does not impair the mediator's impartiality or the appearance of the mediator's
13 impartiality.

14
15 **STANDARD IX. ADVANCEMENT OF MEDIATION PRACTICE**

16 A. A mediator should advance the practice of mediation. A mediator may do this by:

17 1. Fostering the diversity of mediators;

18 2. Striving to make mediation accessible to all, including by providing mediation
19 services at a reduced rate or without charge, when appropriate;

20 3. Participating in research about and evaluation of mediation, including by
21 requesting participant feedback, when appropriate;

22 4. Promoting public understanding of and appreciation for mediation; and

**DRAFT Revised Maryland Standards of Conduct for Mediators
Distributed for Comment Only**

- 1 5. Helping newer mediators, when appropriate, including through co-mediation,
2 mentoring, and networking.
- 3 B. A mediator should demonstrate respect for differing points of view within the mediation
4 field, seek to learn from other mediators, and work together with other mediators to
5 improve the profession and better serve people in conflict.

DRAFT