

COVER SHEET FOR COMMENTS ON DRAFT REVISED MARYLAND STANDARDS OF CONDUCT FOR MEDIATORS

To use "Submit Form"
you may need to save
file and open with Adobe Reader or Acrobat.
You may instead attach your comments to
any e-mail to standards@mdcourts.gov.

INSTRUCTIONS: Please submit written comments as follows:

- **Please submit your comments by August 30, 2017**, so they may be compiled for the next Work Group meeting.
- **Please be specific.** It will be most helpful if your comments clearly identify specific provisions of the draft revised standards that you have comments or concerns about and make specific suggestions for improvements. The attached draft has been formatted for your convenience in doing this.
- **Please attach your written comments to this Cover Sheet.** This voluntary information will enable us to contact you if there are questions about your comments and may provide helpful context.
- **Please use the "Submit Form" button, if available, or attach this Cover Sheet and your comments to an e-mail to standards@mdcourts.gov.** You may also mail or deliver your comments to MACRO, 2001-C Commerce Park Drive, Annapolis, MD 21401.
- **For more information**, including dates and locations of forums and a webinar about the draft revised standards, visit www.mdcourts.gov/macro/revisedstandards.html.

PART 1: FOR ALL COMMENTATORS

Name _____
Title _____ Organization _____
Address _____ City _____ State _____ Zip _____
E-mail _____ Telephone _____

Which of the following roles do you occupy? (Please check all that apply)

- | | | |
|-------------------------------------------------------------------|--------------------------------------------|----------------------------------------------|
| <input type="checkbox"/> Mediator | <input type="checkbox"/> Mediation Trainer | <input type="checkbox"/> Mediation Trainee |
| <input type="checkbox"/> Judge: ___ Active ___ Senior ___ Retired | <input type="checkbox"/> Magistrate | <input type="checkbox"/> Court Administrator |
| <input type="checkbox"/> Mediation Program Manager | <input type="checkbox"/> Roster Manager | |
| <input type="checkbox"/> Mediation User: ___ Party ___ Attorney | | |
| <input type="checkbox"/> Other - please specify: _____ | | |

PART 2: FOR MEDIATORS ONLY

Which of the following Maryland programs do you mediate for? (Please check all that apply)

- | | |
|---------------------------------------------------------|-------------------------------------------------------------------|
| <input type="checkbox"/> District Court | <input type="checkbox"/> Circuit Court: ___ Family ___ Non-Family |
| <input type="checkbox"/> Court of Special Appeals | <input type="checkbox"/> Other (non-court) Agency |
| <input type="checkbox"/> Community Mediation Program(s) | <input type="checkbox"/> Private Practice or Firm |
| <input type="checkbox"/> Other - please specify: _____ | |

Which of the following organizations do you belong to? (Please check all that apply)

- Association for Conflict Resolution (ACR): ___ Maryland Chapter ___ National/International
- Community Mediation Maryland (CMM)
- Maryland Council for Dispute Resolution (MCDR)
- Maryland Program for Mediator Excellence (MPME)
- Maryland State Bar Association (MSBA) ADR Section
- Academy of Professional Family Mediators (APFM)
- American Arbitration Association (AAA) Roster
- American Bar Association (ABA) Section of Dispute Resolution
- Association of Family and Conciliation Courts (AFCC)

**Thank you for
your comments!**

DRAFT Revised Maryland Standards of Conduct for Mediators

WORK GROUP DRAFT TEXT (7/3/2017)

YOUR COMMENT

INTRODUCTION AND DEFINITIONS	AGREE? DISAGREE? SUGGESTION?
A. Mediation is a collaborative process used to resolve or prevent a broad range of conflicts in a wide variety of settings. The fundamental principles of mediation are self-determination, impartiality and confidentiality.	
B. In mediation, one or more impartial mediators promote communication and voluntary decision making by people who have a conflict.	
C. These Standards of Conduct (Standards) include ethical principles to guide the conduct of mediators, to help set appropriate expectations for mediation participants, and to promote public confidence in mediation.	
D. These Standards apply to a mediator and any person involved in the mediation process on behalf of the mediator or a mediation program when: <ol style="list-style-type: none"> 1. A Maryland court has referred all or part of a case to mediation; 2. The mediator has agreed to follow the Maryland Standards of Conduct for Mediators, including when the mediator has invoked the Maryland Mediation Confidentiality Act¹; or 3. The mediator belongs to or is mediating for a program or organization that requires its members or mediators to follow the Maryland Standards of Conduct for Mediators. 	

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

WORK GROUP DRAFT TEXT (7/3/2017)

YOUR COMMENT

INTRODUCTION AND DEFINITIONS	AGREE? DISAGREE? SUGGESTION?
<p>E. The following definitions apply in interpreting these Standards:</p> <ol style="list-style-type: none"> 1. “Mediator” includes a sole mediator and all co-mediators. 2. “Shall” means that the mediator is required to act as described. 3. “Should” means that the action described is highly desirable, and may only be departed from after careful consideration and for a compelling reason. 4. “Mediation communication” means a communication, whether spoken, written, or nonverbal, made as part of a mediation, including a communication made for the purpose of considering, initiating, continuing, reconvening, or evaluating a mediation or a mediator.² 5. “Party” means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.³ 6. “Participant” means any person, other than a mediator or a party that participates in or observes any part of a mediation.⁴ 7. “The Maryland Mediation Confidentiality Act” and “the Act” refer to Maryland Code, Courts and Judicial Proceedings, section 3-1801 et. seq. 	
<p>F. These Standards shall be read and interpreted in their entirety. Their order does not indicate that one Standard is more or less important than another.</p>	

² DRAFTERS NOTE: This definition of “mediation communication” is verbatim from Rule 17-102(h) and similar to Maryland Code, Courts and Judicial Proceedings, section 3-1801(c).

³ DRAFTERS NOTE: This definition of “party” is verbatim from 3-1801(d). Party is not defined in Title 17.

⁴ DRAFTERS NOTE: Participant is not currently defined in Title 17 or in the Act.

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WORK GROUP DRAFT TEXT (7/3/2017)

YOUR COMMENT

INTRODUCTION AND DEFINITIONS

AGREE? DISAGREE? SUGGESTION?

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

OTHER COMMENTS ABOUT INTRODUCTORY MATERIALS

DRAFT Revised Maryland Standards of Conduct for Mediators

WORK GROUP DRAFT TEXT (7/3/2017)

YOUR COMMENT

STANDARD I. SELF-DETERMINATION	AGREE? DISAGREE? SUGGESTION?
A. A mediator shall promote and respect the parties' self-determination at all times.	
B. Self-determination means that each party makes voluntary, uncoerced, and informed choices about the mediation process and outcome.	
1. The parties may generally exercise self-determination in all aspects of a mediation, including the selection of a mediator, the mediation process, the manner and extent of their participation, whether to make an agreement, the terms of any agreement, and whether to withdraw from, postpone, or terminate mediation.	
2. A mediator may need to balance party self-determination about the mediation process with the mediator's duty to conduct the mediation in a manner that promotes the quality and integrity of the process. The mediator's duty to conduct a quality process may take priority over party self-determination about process.	
3. A mediator cannot personally ensure that each party has made informed choices. Where appropriate, a mediator should make the parties aware that they may consult other professionals to help them make informed choices in a manner that does not impair the mediator's impartiality. If a party requests the opportunity to obtain additional information to help the party make an informed decision, the mediator should allow the party a reasonable opportunity to do this.	

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WORK GROUP DRAFT TEXT (7/3/2017)

YOUR COMMENT

STANDARD I. SELF-DETERMINATION	AGREE? DISAGREE? SUGGESTION?
C. A mediator shall not undermine any party’s self-determination because of the mediator’s personal interests or outside pressure. ⁵	
	<p align="center">OTHER COMMENTS ABOUT STANDARD 1</p>

⁵ 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.

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WORK GROUP DRAFT TEXT (7/3/2017)

YOUR COMMENT

STANDARD II. IMPARTIALITY	AGREE? DISAGREE? SUGGESTION?
A. A mediator shall conduct all aspects of a mediation in an impartial manner.	
B. Conducting a mediation in an impartial manner means acting without favoritism, bias, or prejudice.	
1. A mediator shall not agree to mediate if the mediator cannot act in an impartial manner.	
2. A mediator shall not favor or disfavor any party or participant for any reason, such as the participant's behavior during or outside the mediation process, personal characteristics, background, values, beliefs, or actions.	
3. A mediator shall withdraw if, at any time, the mediator becomes unable to act in an impartial manner.	
C. A mediator shall not say or do anything that might reasonably raise a question about the mediator's impartiality.	
D. A mediator shall not offer, give, solicit, or accept any item or service of value, either before, during or after a mediation, if doing so might reasonably raise a question about the mediator's impartiality.	
	OTHER COMMENTS ABOUT STANDARD II

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WORK GROUP DRAFT TEXT (7/3/2017)

YOUR COMMENT

STANDARD III. CONFLICTS OF INTEREST	AGREE? DISAGREE? SUGGESTION?
A. A mediator shall avoid any direct or indirect conflict of interest.	
1. A conflict of interest is any past or present personal, professional, or financial relationship or circumstance that might reasonably raise a question about the mediator's impartiality.	
2. A direct conflict of interest may arise from a connection between the mediator and: <ul style="list-style-type: none"> a. a person involved in the dispute; b. the subject matter of the dispute; or c. a potential outcome of the mediation or the dispute. 	
3. An indirect conflict of interest may arise from a connection between a person who has a personal, professional or financial relationship with the mediator and: <ul style="list-style-type: none"> a. a person involved in the dispute; b. the subject matter of the dispute; c. a potential outcome of the mediation or the dispute; or d. a person who has a personal, professional or financial relationship to a person involved in the dispute, the subject matter of the dispute, or a potential outcome of the mediation or the dispute. 	
B. A mediator shall make a reasonable effort to identify any conflicts of interest as soon as possible under the circumstances.	

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WORK GROUP DRAFT TEXT (7/3/2017)

YOUR COMMENT

STANDARD III. CONFLICTS OF INTEREST	AGREE? DISAGREE? SUGGESTION?
<p>C. If a mediator knows or learns of any relationship or circumstance that creates or might create a conflict of interest, the mediator shall promptly do one of the following:</p> <ol style="list-style-type: none"> 1. Decline to accept the mediation, if it has not begun; 2. Withdraw from the mediation, if it has begun; or 3. Fully disclose the relationship or circumstance that may create a conflict of interest to the parties and, if the parties all agree, proceed with the mediation. 	
<p>D. During and after a mediation, the mediator shall not establish any new relationship or involvement that might reasonably appear to create a conflict of interest without the informed consent of all parties.⁶</p>	
<p>E. If a mediator's conflict of interest might reasonably be seen as undermining the integrity of the mediation process, the mediator shall decline or withdraw from the mediation, or refrain from establishing the new relationship or involvement, regardless of any other desire, agreement, or consent of the parties to the mediation.</p>	
	<p>OTHER COMMENTS ABOUT STANDARD III</p>

⁶ 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.

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WORK GROUP DRAFT TEXT (7/3/2017)

YOUR COMMENT

STANDARD IV. COMPETENCE	AGREE? DISAGREE? SUGGESTION?
<p>A. A person who offers or agrees to mediate creates the expectation that the person is competent to mediate effectively. Training, experience in mediation, skills, cultural understandings, and other qualities are often necessary for mediator competence.</p>	
<p>B. A mediator shall have the ability to describe accurately and to provide the mediation skills, techniques, and processes that the mediator uses.</p>	
<p>C. A mediator shall provide accurate and appropriately complete information about the mediator’s qualifications, experience, skills, techniques, and processes to potential mediation participants and to any program from which the mediator accepts referrals.</p>	
<p>D. A mediator shall only claim, offer, or agree to provide services that the mediator has the skills, experience, knowledge or other qualifications to provide competently.</p>	
<p>E. A mediator shall attend educational programs and related activities to develop, maintain, and enhance the mediator’s mediation skills, experience, knowledge and other qualifications.</p>	
<p>F. If a mediator cannot competently conduct a mediation, the mediator shall promptly:</p> <ol style="list-style-type: none"> 1. Discuss the situation with the parties and take appropriate steps to address it; 2. Request appropriate assistance; or 3. Withdraw from the mediation, either with or without disclosing the reason. 	

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WORK GROUP DRAFT TEXT (7/3/2017)

YOUR COMMENT

STANDARD IV.	COMPETENCE	AGREE? DISAGREE? SUGGESTION?
G.	A mediator shall not conduct a mediation if the mediator's ability to do so is impaired by drugs, alcohol, medication, or other condition.	OTHER COMMENTS ABOUT STANDARD IV

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YOUR COMMENT

STANDARD V.	CONFIDENTIALITY	AGREE? DISAGREE? SUGGESTION?
A.	A mediator shall follow all applicable mediation confidentiality statutes and rules of court, and any confidentiality agreement between the parties and the mediator that is consistent with any applicable statutes and rules. ⁷	
B.	A mediator shall maintain the confidentiality of all mediation communications and outcomes unless disclosure is required or permitted by law. ⁸	
C.	A mediator shall not reveal information about the conduct of any party or participant in a mediation to anyone who is not a party or a participant.	
D.	A mediator who speaks with any party or participant in a private session shall not, without the consent of that party or participant, reveal any information that was obtained during the private session.	
E.	A mediator shall not reveal the name of, or other identifying information about, any party or participant, other than an attorney for a party, without that party or participant's prior, written consent.	
F.	A mediator who participates in teaching, research, or evaluation of mediation shall protect the anonymity of the parties and participants and shall respect their reasonable expectations about privacy and confidentiality.	

⁷ 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.

⁸ 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.

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WORK GROUP DRAFT TEXT (7/3/2017)

YOUR COMMENT

STANDARD V. CONFIDENTIALITY	AGREE? DISAGREE? SUGGESTION?
G. A mediator shall clearly explain any applicable mediation confidentiality statutes, rules and standards, and any relevant exceptions, to all mediation participants before discussing the conflict and at the beginning of the first mediation session.	
H. A mediator shall discuss with the parties and participants whether and the extent to which the parties and participants will maintain the confidentiality of mediation communications.	
	OTHER COMMENTS ABOUT STANDARD V

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WORK GROUP DRAFT TEXT (7/3/2017)

YOUR COMMENT

STANDARD VI.	QUALITY AND INTEGRITY OF THE MEDIATION PROCESS	AGREE? DISAGREE? SUGGESTION?
A.	A mediator shall conduct a mediation in a manner that promotes the quality and integrity of the mediation process.	
	1. A mediator shall not conduct a dispute resolution process other than mediation and identify it as mediation.	
	2. A mediator shall not knowingly misrepresent any fact or circumstance in the course of a mediation.	
	3. A mediator shall support honesty and candor by all parties and participants.	
	4. If a mediator has reason to believe that a mediation is being used to further a crime, the mediator should take appropriate steps. These steps may include continuing, postponing, withdrawing from, or terminating the mediation.	
	5. If a mediator believes that anything, including conduct of a party, participant or mediator, is making a mediation inconsistent with these Standards, or is otherwise undermining the integrity of the mediation process, the mediator should take appropriate steps. These steps may include continuing, postponing, withdrawing from, or terminating the mediation.	

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WORK GROUP DRAFT TEXT (7/3/2017)

YOUR COMMENT

STANDARD VI. QUALITY AND INTEGRITY OF THE MEDIATION PROCESS	AGREE? DISAGREE? SUGGESTION?
<p>B. A mediator shall follow all applicable statutes, rules of court, and standards of conduct when mediating.</p> <ol style="list-style-type: none"> 1. A mediator shall follow these Standards when they apply, unless a Standard is inconsistent with an applicable statute or provision of the Maryland Rules. 2. A mediator shall follow the requirements of any court or other mediation program when mediating a case as part of that program, unless such a requirement is inconsistent with these Standards or with an applicable statute or provision of the Maryland Rules. 	
<p>C. A mediator shall only agree to mediate a matter if the mediator is able to:</p> <ol style="list-style-type: none"> 1. Commit the time and attention necessary to conduct an effective mediation; and 2. Satisfy any reasonable expectations or requirements of the parties, and of any referring program, concerning the timing of the mediation. 	
<p>D. A mediator should help the parties identify the people who are appropriate participants in the mediation and facilitate the participation of those people. The parties and mediator may agree that other people may be included in or excluded from some or all sessions.</p>	

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WORK GROUP DRAFT TEXT (7/3/2017)

YOUR COMMENT

STANDARD VI. QUALITY AND INTEGRITY OF THE MEDIATION PROCESS	AGREE? DISAGREE? SUGGESTION?
<p>E. A mediator shall not perform professional services in any other capacity for any party in an ongoing mediation without the informed consent of all other parties in the mediation.</p> <ol style="list-style-type: none"> 1. A mediator shall not change from mediation to any other dispute resolution process without first discussing the implications with the parties and obtaining their informed consent. 2. A mediator shall not change processes if this is prohibited by the rules of the mediation program that referred the case, if any. 	
<p>F. Upon the request of a party or a participant, a mediator may provide information that the mediator is qualified by training or experience to provide, if the mediator can do so consistent with these Standards and any other applicable statutes, rules of court, and standards of conduct.</p>	
<p>G. If a mediator has reason to believe that a party is having difficulty or is unable to fully understand, participate, or exercise self-determination in a mediation, the mediator shall explore possible ways to address this. If the difficulty or inability cannot be satisfactorily addressed, the mediator shall take other appropriate steps. These steps may include postponing, withdrawing from, or terminating the mediation.</p>	

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WORK GROUP DRAFT TEXT (7/3/2017)

YOUR COMMENT

STANDARD VI.	QUALITY AND INTEGRITY OF THE MEDIATION PROCESS	AGREE? DISAGREE? SUGGESTION?
H.	A mediator shall pay attention to power dynamics and assess whether a party may be experiencing abuse, coercion, duress, or undue influence. If a mediator has reason to believe that any of these factors may be preventing a party from fully participating or exercising self-determination, the mediator shall take appropriate steps. These steps may include exploring the issue in private session as well as continuing, postponing, withdrawing from, or terminating the mediation.	
I.	A mediator shall pay attention to signs of possible domestic abuse. If a mediator has reason to believe that domestic abuse may be preventing a party from fully participating or exercising self-determination, the mediator shall take appropriate steps. These steps may include exploring the issue in private session, as well as continuing, postponing, withdrawing from, or terminating the mediation.	
J.	If a mediator decides that it is necessary to postpone, withdraw from, or terminate a mediation, the mediator shall consider the safety of the participants and the integrity of the mediation process. The mediator may inform some or all mediation participants of the reason for postponing, withdrawing from, or terminating the mediation if this is consistent with the mediator's confidentiality and impartiality obligations.	

DRAFT Revised Maryland Standards of Conduct for Mediators

WORK GROUP DRAFT TEXT (7/3/2017)

YOUR COMMENT

STANDARD VI. QUALITY AND INTEGRITY OF THE MEDIATION PROCESS

AGREE? DISAGREE? SUGGESTION?

OTHER COMMENTS ABOUT STANDARD VI

DRAFT Revised Maryland Standards of Conduct for Mediators

WORK GROUP DRAFT TEXT (7/3/2017)

YOUR COMMENT

STANDARD VII. ADVERTISING AND SOLICITATION	AGREE? DISAGREE? SUGGESTION?
A. Any advertisement, solicitation of business, or other communication of a mediator’s services shall be consistent with these Standards, including Confidentiality and Quality and Integrity of the Mediation Process.	
B. A mediator shall be truthful and appropriately complete in any communications about the mediator’s qualifications, experience, skills, techniques, processes, practices, services, availability, and fees.	
1. A mediator shall not make any promises or representations about mediation outcomes.	
2. A mediator shall only claim to meet the mediator qualifications of a public or private entity if that entity has a procedure for qualifying mediators and has determined that the mediator meets those qualifications. Any communication stating that a mediator is or has been certified shall identify the organization or program that certified the mediator. ⁹	
C. A mediator shall not advertise or solicit business in any way that might reasonably create an impression that the mediator favors or disfavors any party or any type of parties.	
	OTHER COMMENTS ABOUT STANDARD VII

⁹ DRAFTERS NOTE: Obtaining a certificate of completion of a mediation training does not constitute certification as a mediator.

DRAFT Revised Maryland Standards of Conduct for Mediators

WORK GROUP DRAFT TEXT (7/3/2017)

YOUR COMMENT

STANDARD VIII.	FEES AND OTHER CHARGES	AGREE? DISAGREE? SUGGESTION?
A.	When or before scheduling a mediation, the mediator or the mediator's representative shall give each party or party's representative complete and accurate information about any fees and expenses that the mediator and any organization through which the mediator is providing services may charge in connection with the mediation.	
1.	If a mediator or an organization through which the mediator is providing services charges fees or other expenses, those fees and expenses shall be reasonable in light of all relevant factors. These factors may include the type and complexity of the matter, the mediator's qualifications and availability, the time required to prepare for and conduct the mediation, and customary rates for similar mediation services.	
2.	If a mediator or an organization through which the mediator is providing services will charge any fees or other expenses for a mediation, the fee arrangement should be in writing.	
B.	A mediator or an organization through which a mediator is providing services shall not charge fees or other expenses in a manner that might reasonably impair the mediator's impartiality or the appearance of the mediator's impartiality.	
1.	A mediation fee agreement shall not be contingent on the outcome of the mediation or the amount or other terms of any settlement.	

DRAFT Revised Maryland Standards of Conduct for Mediators

WORK GROUP DRAFT TEXT (7/3/2017)

YOUR COMMENT

STANDARD VIII.	FEES AND OTHER CHARGES	AGREE? DISAGREE? SUGGESTION?
2.	A mediator may accept unequal fee payments on behalf of the parties if this does not impair the mediator's impartiality or the appearance of the mediator's impartiality.	OTHER COMMENTS ABOUT STANDARD VIII

DRAFT Revised Maryland Standards of Conduct for Mediators

WORK GROUP DRAFT TEXT (7/3/2017)

YOUR COMMENT

STANDARD IX. ADVANCEMENT OF MEDIATION PRACTICE	AGREE? DISAGREE? SUGGESTION?
A. A mediator should advance the practice of mediation. A mediator may do this by:	
1. Fostering the diversity of mediators;	
2. Striving to make mediation accessible to all, including by providing mediation services at a reduced rate or without charge, when appropriate;	
3. Participating in research about and evaluation of mediation, including by requesting participant feedback, when appropriate;	
4. Promoting public understanding of and appreciation for mediation; and	
5. Helping newer mediators, when appropriate, including through co-mediation, mentoring, and networking.	
B. A mediator should demonstrate respect for differing points of view within the mediation field, seek to learn from other mediators, and work together with other mediators to improve the profession and better serve people in conflict.	
	OTHER COMMENTS ABOUT STANDARD IX