

Standards of Practice for Mediators

Promulgated by the Texas Association of Mediators

Revised May 2003

PREAMBLE

Mediation is a conflict resolution process in which an impartial third party assists the participants in negotiating a consensual and informed settlement. In mediation, whether private or public, decision-making authority rests with the parties. The role of the mediator includes reducing the obstacles to communication, maximizing the exploration of alternatives, and addressing the needs of those it is agreed are involved or affected.

Mediation is based on principles of problem solving that focus on the needs and interests of the participants; fairness; privacy; self-determination; and the best interests of all parties.

These standards are intended to assist and guide public, private, voluntary, and mandatory mediation. It is understood that the manner of implementation and mediator adherence to these standards may be influenced by local law or rules of court.

DEFINITIONS

Participant - Anyone present during the mediation, including, but not limited to, the mediator(s), the parties, attorneys, observers, and witnesses.

Party - One of the persons having the issues to be resolved.

INITIATING THE PROCESS

Orientation

Prior to the mediation the Mediator may describe the differences and similarities between mediation and other procedures for dispute resolution. In defining the process, the mediator may help the parties evaluate the benefits, risks, and costs of mediation and the alternatives available to them.

Description of the Mediation Process

The mediator shall define mediation and describe the process to be used during the mediation, including, but not limited to separate meetings between participants and the mediator(s), use of legal or other professional services, the involvement of additional participants, and conditions under which the mediation may be terminated

Establishing the Appropriateness of All Participants

The mediator and the Parties shall agree on the appropriateness of all participants to the mediation.

Issue Identification

The mediator shall elicit sufficient information from the parties so that they can mutually define and agree on the issues to be resolved in mediation.

Mediator's Duty of Disclosure

The mediator shall disclose to the participants any biases or strong views relating to the issues to be mediated. The mediator's education, training, and experience to mediate the issues should be accurately described to the participants. The mediator shall fully explain and disclose the basis of any compensation, fees, and charges to the participants.

A mediator should disclose any circumstance to the participants that might cause a conflict of interest. The mediator shall encourage disclosure of all relevant information in the mediation process.

Limits of Confidentiality

The mediator shall inform the parties at the initial meeting of limitations on confidentiality, such as statutorily or judicially mandated reporting.

Mutual Duties and Responsibilities

The mediator and the participants shall agree upon the duties and responsibilities that each is accepting in the mediation process. This may be a written or verbal agreement.

IMPARTIALITY AND NEUTRALITY

Impartiality

The mediator shall maintain impartiality toward all parties. Impartiality means freedom from favoritism or bias, either in word or action. Impartiality implies a commitment to aid all parties, as opposed to a single individual, in reaching a mutually satisfactory agreement. Impartiality means that a mediator will not play an adversarial role.

The mediator has a responsibility to maintain impartiality while raising questions for the parties to consider as to the fairness, equity, and feasibility of proposed options for settlement.

Neutrality

Neutrality refers to the relationship that the mediator has with the participants. If the mediator feels, or any one of the parties or their attorneys states, that the mediator's background or personal experiences would prejudice the mediator's performance, the mediator should withdraw from mediation unless all parties agree to proceed.

Prior Relationships

A mediator's actual or perceived impartiality may be compromised by social or professional relationships with one of the participants at any point in time. The mediator shall not proceed if previous professional services have been provided to one of the parties, unless all other parties

agree to proceed after full disclosure. If such services have been provided to any participants, mediation shall not proceed unless the prior relationship has been discussed, the role of mediator made distinct from the earlier relationship, and the parties given the opportunity to freely choose to proceed.

COSTS AND FEES

Explanation of Fees

The mediator shall explain the fees to be charged for mediation and any related costs and shall agree with the participants on how the fees will be shared and the manner of payment.

Reasonable Fees

When setting fees, the mediator shall ensure that they are explicit, fair, reasonable, and commensurate with the service to be performed. Unearned fees should be promptly returned.

Contingent Fees

It is inappropriate for a mediator to charge contingent fees or to base fees on the outcome of mediation.

Referrals and Commissions

No commissions, rebates, or similar forms of remuneration shall be given or received for referral of clients for mediation services.

CONFIDENTIALITY AND EXCHANGE OF INFORMATION

Confidentiality

A mediator shall maintain the confidentiality of all information acquired in the mediation process, unless the mediator is permitted or required to reveal the information by law or agreement of the participants. Confidentiality relates to the full and open disclosure necessary for the mediation process. A mediator shall uphold the confidentiality of the process.

The mediator should discuss the participants' expectations of confidentiality with them prior to undertaking the mediation. The written agreement to mediate should include provisions concerning confidentiality.

If the mediator holds private sessions with a participant, the obligations of confidentiality concerning those sessions should be discussed and agreed upon prior to the sessions.

Appearing in Court

The mediator shall inform the participants of circumstances under which mediators may be compelled to testify in court.

Release of information

The mediator shall obtain the consent of the participants prior to releasing information to others. The mediator shall maintain confidentiality and render anonymous all identifying information when materials are used for research or training purposes.

Storage and Disposal of Records

The mediator shall maintain confidentiality in the storage and disposal of records.

SELF-DETERMINATION

Responsibilities of the Parties and the Mediator

The primary responsibility for the resolution of a dispute rests with the parties. The mediator's obligation is to assist the parties in reaching an informed and voluntary settlement. At no time shall a mediator coerce a party into agreement or make a substantive decision for any participant.

Responsibility to Third Parties

The mediator has a responsibility to promote the parties consideration of the interests of other persons affected by the agreement. The parties maybe encouraged to seek outside professional consultation when appropriate or when they are otherwise unable to agree on the needs of any individual affected by the agreement.

PROFESSIONAL ADVICE

Independent Advice and Information

The mediator shall encourage and assist the parties to obtain independent expert information and advice when such information is needed to reach an informed agreement or to protect the rights of all parties.

Providing information

A mediator shall give information only in those areas where qualified by training or experience.

Independent Legal Counsel

When the mediation may affect legal rights or obligations, the mediator shall advise the parties to seek independent legal counsel prior to resolving the issues and in conjunction with formalizing an agreement.

ABILITY TO NEGOTIATE

The mediator shall ensure that each party has had an opportunity to understand the implications and ramifications of available options. In the event a party needs either additional information or assistance in order for the negotiations to proceed in a fair and orderly manner or for an agreement to be reached, the mediator shall refer the individual to appropriate resources.

Procedural Factors

The mediator has a duty to ensure balanced negotiations and should not permit manipulative or intimidating negotiation techniques.

Psychological Factors

The mediator shall explore whether the participants are capable of participating in informed negotiations. The mediator may postpone mediation and refer the parties to appropriate resources if necessary.

CONCLUDING MEDIATION

The mediator shall discuss with the participants the process for formalization and implementation of the agreement. When the participants reach a partial agreement, the mediator shall discuss with them procedures available to resolve the remaining issues.

Termination of Mediation

The mediator shall inform the participants of their right to withdraw from mediation at any time and for any reason; however, the mediation can only be terminated by the parties or the mediator. If the mediator believes that the parties are unable or unwilling to participate meaningfully in the process or that a reasonable agreement is unlikely, the mediator may suspend or terminate mediation and should encourage the parties to seek appropriate professional help.

If the parties are unable to reach an agreement within a reasonable time, the mediator should not prolong unproductive discussions that would result in emotional and monetary costs to the participants.

TRAINING AND EDUCATION

Training

A mediator shall acquire substantive knowledge and procedural skill in the mediation process, professional ethics, and in his or her specialized area of practice.

Continuing Education

A mediator shall participate in continuing education and be personally responsible for ongoing professional growth. A mediator is encouraged to join with other mediators and members of related professions to promote mutual professional development.

ADVERTISING

A mediator shall make only accurate statements about the mediation process, its costs and benefits, and the mediator's qualifications.

RELATIONSHIPS WITH OTHER PROFESSIONALS

Co-Mediation

In those situations where more than one mediator is participating in a particular case, each mediator has a responsibility to keep the others informed of developments essential to a cooperative effort.

Relationships with Other Professionals

A mediator shall respect the complementary relationship and promote cooperation between mediators and other professionals.

ADVANCEMENT OF MEDIATION

A mediator is encouraged to provide some mediation service in the community for nominal or no fee and to promote the advancement of mediation by supporting research, publishing or other forms of professional and public education.

Portions of these standards are based on the Association for Conflict Resolution's "Standards of Practice for Family and Divorce Mediations," adopted by ACR in April 2002. Used by permission of ACR.