

**Texas Association of Mediators  
Code of Ethics**

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Code Of Ethics	Mediator's Duty of Disclosure Biases. The mediator shall disclose to the participants any biases or strong views relating to the issues to be mediated.
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Mediator Credentialing	Training and Experience. The mediator's education, training, and experience to mediate the issues should be

Texas Mediator Credentialing Committee Reading Mediation Casebook	accurately described to the participants.  Procedures The mediator shall reach an understanding with the participants regarding the procedures to be followed in mediation. This includes but is not limited to the practice as to separate meetings between a participant and the mediator, confidentiality, use of legal services, the involvement of additional parties, and conditions under which mediation may be terminated.
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#### IMPARTIALITY AND NEUTRALITY

Impartiality. The mediator is obligated to maintain impartiality toward all participants. Impartiality means freedom from favoritism or bias, either in word or action. Impartiality implies a commitment to aid all participants, 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 disputing parties. If the mediator feels, or any one of the participants states, that the mediator's background or personal experiences would prejudice the mediator's performance, the mediator should withdraw from mediation unless all 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 legal or counseling services have been provided to one of the participants. If such services have been provided to both participants, mediation shall not proceed unless the prior relationship has been discussed, the role of mediator made distinct from the earlier relationship, and the participants given the opportunity to freely choose to proceed.

Relationship to Participants. The mediator should be aware that post-mediation professional or social relationships may compromise the mediator's continued availability as a neutral third party.

Conflict of Interest. A mediator should disclose any circumstance to the participants that might cause a

conflict of interest.

#### 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 to the clients.

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. Confidentiality relates to the full and open disclosure necessary for the mediation process. A mediator shall foster the confidentiality of the 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.

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

Consequences of Disclosure of Facts Between Parties. The mediator shall discuss with the participants the potential consequences of their disclosure of facts to each other during the mediation process.

#### 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.

#### Caucus

The mediator shall discuss policy regarding confidentiality for individual caucuses. In the event that a mediator, upon consent of the participants, speaks privately with any person not represented in mediation, the mediator shall define how the information will be used.

#### Storage and Disposal of Records

The mediator shall maintain confidentiality in the

storage and disposal of records.

#### FULL DISCLOSURE

The mediator shall require disclosure of all relevant information in the mediation process, as would reasonably occur in the judicial discovery process.

#### SELF-DETERMINATION

Responsibilities of the Participants and the Mediator  
The primary responsibility for the resolution of a dispute rests with the participants.

The mediator's obligation is to assist the disputants in reaching an informed and voluntary settlement. At no time shall a mediator coerce a participant into agreement or make a substantive decision for any participant.

#### Responsibility to Third Parties

The mediator has a responsibility to promote the participants' consideration of the interests of other persons affected by the agreement. The participants shall be 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 participants to obtain independent expert information and advice when such information is needed to reach an informed agreement or to protect the rights of a participant.

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 participants to seek independent legal counsel prior to resolving the issues and in conjunction with formalizing an agreement.

#### PARTIES' ABILITY TO NEGOTIATE

The mediator shall ensure that each participant has had an opportunity to understand the implications and ramifications of available options. In the event a participant 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

##### With Agreement

Full Agreement. The mediator shall discuss with the participants the process for formalization and implementation of the agreement.

Partial Agreement. When the participants reach a partial agreement, the mediator shall discuss with them procedures available to resolve the remaining issues.

##### Without Agreement

Termination by Participants. The mediator shall inform the participants of their right to withdraw from mediation at any time and for any reason.

Termination by Mediator. If the mediator believes that the participants 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.

Impasse. If the participants reach a final impasse, 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

The Responsibility of the Mediator Toward Other Mediators  
Relationship with Other Mediators. A mediator should not mediate any dispute that is being mediated by another mediator without first endeavoring to consult with the person or persons conducting such mediation.

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

Mediation Service. A mediator is encouraged to provide some mediation service in the community for nominal or no fee.

Promotion of Mediation. A mediator shall promote the advancement of mediation by encouraging and participating in research, publishing or other forms of professional and public education.

### **ETHICAL GUIDELINES FOR MEDIATORS**

from The State Bar of Texas Alternative Dispute Resolution Section

#### PREAMBLE

These Ethical Guidelines are intended to promote public confidence in the mediation process and to be a general guide for mediator conduct. They are not intended to be disciplinary rules or a code of conduct. Mediators should be responsible to the parties, the courts and the public, and should conduct themselves accordingly. These Ethical Guidelines are intended to apply to mediators conducting mediations in connection with all civil, criminal, administrative and appellate matters whether the mediation is pre-suit or court-annexed and whether the mediation is court-ordered or voluntary.

#### GUIDELINES

1. Mediation Defined. Mediation is a private process in which an impartial person, a mediator, encourages and facilitates communications between parties to a conflict and strives to promote reconciliation, settlement, or understanding. A mediator should not render a decision on the issues in dispute. The primary responsibility for the resolution of a dispute rests with the parties.

Comment. A mediator's obligation is to assist the parties in reaching a voluntary settlement. The mediator should not coerce a party in any way. A mediator may make suggestions, but all settlement decisions are to be made voluntarily by the parties themselves.

2. Mediator Conduct. A mediator should protect the integrity and confidentiality of the mediation process. The duty to protect the integrity and confidentiality of the mediation process commences with the first communication to the mediator, is continuous in nature, and does not terminate upon the conclusion of the mediation.

Comment (a). A mediator should not use information obtained during the mediation for personal gain or advantage.

Comment (b). The interests of the parties should always be placed above the personal interest of the mediator.

Comment (c). A mediator should not accept mediations which cannot be completed in a timely manner or as directed by a court.

Comment (d). Although a mediator may advertise the mediator's qualifications and availability to mediate, the mediator should not solicit a specific case or matter.

Comment (e). A mediator should not mediate a dispute when the mediator has knowledge that another mediator has been appointed or selected without first consulting with the other mediator or the parties unless the previous mediation has been concluded.

3. Mediation Costs. As early as practical, and before the mediation session begins, a mediator should explain all fees and other expenses to be charged for the mediation. A mediator should not charge a contingent fee or a fee based upon the outcome of the mediation. In appropriate cases, a mediator should perform mediation services at a reduced fee or without compensation.

Comment (a). A mediator should avoid the appearance of impropriety in regard to possible negative perceptions regarding the amount of the mediator's fee in court-ordered mediations.

Comment (b). If a party and the mediator have a dispute that cannot be resolved before commencement of the mediation as to the mediator's fee, the mediator should decline to serve so that the parties may obtain another mediator.

4. Disclosure of Possible Conflicts. Prior to commencing the mediation, the mediator should make full disclosure of any known relationships with the parties or their counsel that may affect or give the appearance of affecting the mediator's neutrality. A mediator should not serve in the matter if a party makes an objection to the mediator based upon a conflict or perceived conflict.

Comment (a). A mediator should withdraw from a mediation if it is inappropriate to serve.

Comment (b). If after commencement of the mediation, the mediator discovers that such a relationship exists, the mediator should make full disclosure as soon as practicable.

5. Mediator Qualifications. A mediator should inform the participants of the mediator's qualifications and experience.

Comment. A mediator's qualifications and experience constitute the foundation upon which the mediation process depends; therefore, if there is any objection to the mediator's qualifications to mediate the dispute, the mediator should withdraw from the mediation. Likewise, the mediator should decline to serve if the mediator feels unqualified to do so.

6. The Mediation Process. A mediator should inform and discuss with the participants the rules and procedures pertaining to the mediation process.

Comment (a). A mediator should inform the parties about the mediation process no later than the opening session.

Comment (b). At a minimum, the mediator should inform the parties of the following: (1) the mediation is private (Unless otherwise agreed by the participants, only the mediator, the parties and their representatives are allowed to attend.); (2) the mediation is informal (There are no court reporters present, no record is made of the proceeding, no subpoena or other service of process is allowed, and no rulings are made on the issues or the merits of the case.); and (3) the mediation is confidential to the extent provided by law. (See e.g., Sec.154.053 and 154.073, Tex. Civ. Prac. & Rem. Code.)

7. Convening the Mediation. Unless the parties agree otherwise, the mediator should not convene a mediation session unless all parties and their representatives ordered by the court have appeared, corporate parties are represented by officers or agents who have represented to the mediator that they possess adequate authority to negotiate a settlement, and an adequate amount of time has been reserved by all parties to the mediation to allow the mediation process to be productive.

Comment. A mediator should not convene the mediation if the mediator has reason to believe that a Pro Se party fails to understand that the mediator is not providing legal representation for the pro Se party. In connection with Pro Se parties, see also Guidelines #9, 11, and 13 and associated comments below.

8. Confidentiality. A mediator should not reveal information made available in the mediation process, which information is privileged and confidential, unless the affected parties agree otherwise or as may be required by law.

Comment (a). A mediator should not permit recordings or transcripts to be made of mediation proceedings.

Comment (b). A mediator should maintain confidentiality in the storage and disposal of records and should render anonymous all identifying information when materials are used for research, educational or other informational purposes.

Comment (c). Unless authorized by the disclosing party, a mediator should not disclose to the other parties information given in confidence by the disclosing party and should maintain confidentiality with respect to communications relating to the subject matter of the dispute. The mediator should report to the court whether or not the mediation occurred, and that the mediation either resulted in a settlement or an impasse, or that the mediation was either recessed or rescheduled.

Comment (d). In certain instances, applicable law may require disclosure of information revealed in the mediation process. For example, the Texas Family Code may require a mediator to disclose child abuse or neglect to the appropriate authorities. If confidential information is disclosed, the mediator should advise the parties that disclosure is required and will be made.

9. Impartiality. A mediator should be impartial toward all parties.

Comment. If a mediator or the parties find that the mediator's impartiality has been compromised, the mediator should offer to withdraw from the mediation process. Impartiality means freedom from favoritism or bias in word, action and appearance; it implies a commitment to aid all parties in reaching a settlement.

10. Disclosure and Exchange of Information. A mediator should encourage the disclosure of information and should assist the parties in considering the benefits, risks, and the alternatives available to them.

11. Professional Advice. A mediator should not give legal or other professional advice to the parties.

Comment (a). In appropriate circumstances, a mediator should encourage the parties to seek legal, financial, tax or other professional advice before, during or after the mediation process.

Comment (b). A mediator should explain generally to pro se parties that there may be risks in proceeding without independent counsel or other professional advisors.

12. No Judicial Action Taken. A person serving as a mediator generally should not subsequently serve as a judge, master, guardian-ad-litem, or in any other judicial or quasi-judicial capacity in the matters that are the subject of the mediation.

Comment. It is generally inappropriate for a mediator to

serve in a judicial or quasi-judicial capacity in a matter in which the mediator has had communications with one or more parties without all other parties present. For example, an attorney-mediator who has served as a mediator in pending litigation should not subsequently serve in the same case as a special master, guardian-ad-litem, or in any other judicial or quasi-judicial capacity with binding decision-making authority. Notwithstanding the foregoing where an impasse has been declared at the conclusion of a mediation, the mediator, if requested and agreed to by all parties, may serve as the arbitrator in a binding arbitration of the dispute, or as a third-party neutral in any other alternative dispute proceeding, so long as the mediator believes nothing learned during private conferences with any party to the mediation will bias the mediator or will unfairly influence the mediator's decisions while acting in his/her subsequent capacity.

13. Termination of Mediation Session. A mediator should postpone, recess, or terminate the mediation process if it is apparent to the mediator that the case is inappropriate for mediation or one or more of the parties is unwilling or unable to participate meaningfully in the mediation process.

14. Agreements in Writing. A mediator should encourage the parties to reduce all settlement agreements to writing.

15. Mediator's Relationship with the Judiciary. A mediator should avoid the appearance of impropriety in the mediator's relationship with a member of the judiciary or the court staff with regard to appointments or referrals to mediation.