

Ethics in Mediation

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Mediation in Western society is a relatively new field. As it develops, the need for certain standards in competency and accountability is becoming clear. The following discussion on ethics is taken from a presentation given in 1998 at the 7th Annual Northwest ADR Conference by Julia Gold and Alan Kirtley. The search for words to express ethical management is an ongoing one. The authors present these model standards of conduct for mediators to serve three major functions: as a guide for the conduct of mediators, to inform the mediating parties, and to promote public confidence in mediation as a process for resolving disputes. They set out a series of principles:

1. **Self-determination:** A mediator shall recognize that mediation is based on the principle of self-determination by the parties. Self-determination requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement. Any party may withdraw from mediation at any time.

2. **Impartiality:** A mediator shall conduct the mediation in an impartial manner. A mediator shall mediate only those matters in which he or she remains impartial and evenhanded. If at any time the mediator is unable to conduct the process in an impartial manner, the mediator is obligated to withdraw. A mediator should guard against partiality or prejudice based on a party's personal characteristics, background or performance at the mediation.

3. **Conflicts of interest:** A mediator shall disclose all actual and potential conflicts of interest reasonably known to the mediator. After disclosure, the mediator shall decline to mediate unless all parties choose to retain the mediator. The need to protect against conflict of interest also governs conduct that occurs during and after the mediation. A conflict of interest is a dealing or relationship that might create an impression of possible bias. Without the consent of all parties, a mediator shall not subsequently establish a professional relationship with one of the parties in a related manner, or in an unrelated manner under circumstances that would raise legitimate questions about the integrity of

the mediation process. Pressure from outside the mediation process should never influence the mediator to coerce the parties to settle.

4. Competence: A mediator shall mediate only when the mediator has the necessary qualifications to satisfy the reasonable expectations of the parties. Mediators should have information available to the parties regarding their relevant training, education, and experience.

5. Confidentiality. A mediator shall maintain the reasonable expectations of the parties with regard to confidentiality. The parties' expectations of confidentiality depend on the circumstances of the mediation and any agreements they may make. The mediator shall not disclose any matter that a party expects to be confidential unless given permission by all parties or unless required by law or other public policy. If the mediator holds private sessions with a party, the nature of these sessions with regard to confidentiality should be discussed prior to undertaking such sessions. In order to protect the integrity of the mediation, a mediator should avoid communicating information about how the parties acted in the mediation process, the merits of the case, or settlement offers. The mediator may report, if required, whether parties appeared at a scheduled mediation.

6. Quality of the process: A mediator shall conduct the mediation fairly, diligently, and in a manner consistent with the principle of self-determination by the parties. There should be adequate opportunity for each party in mediation to participate in the discussions. The parties decide when and under what conditions they will reach an agreement or terminate a mediation.

7. Advertising and solicitation: A mediator shall be truthful in advertising and solicitation for mediation. Advertising or any other communication with the public concerning services offered or regarding the education, training, and expertise of a mediator shall be truthful. Mediators shall refrain from promises and guarantees of results.

8. Fees: A mediator shall fully disclose and explain the basis of compensation, fees and charges to the parties. The parties should be provided sufficient information about fees at the outset of a mediation to determine if they wish to retain the services of a mediator. A mediator should not enter into a fee agreement that is contingent upon the result of the mediation or the amount of the settlement. A mediator should not accept a fee for referral of a matter to another mediator or any other person.