

**RECOMMENDATION  
TO REPLACE CHAPTER 11  
OF THE IOWA SUPREME COURT RULES  
WITH THE  
ABA/AAA/ACR MODEL STANDARDS OF CONDUCT FOR  
MEDIATORS (2005)**

**Chapter 11 Study Group**

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**ISBA Family and Juvenile Law Section (Approved April, 2009)**

**ISBA ADR Section (Approved May, 2009)**

**American Academy of ADR Attorneys (Approved June, 2009)**

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## **SECTION 1**

### **Introduction**

Chapter 11 of the Iowa Rules of Court, “Rules Governing Standards of Practice for Lawyer Mediators in Family Disputes” (hereinafter “Chapter 11”), became effective on February 2, 1987. Chapter 11 provides ethical guidance to lawyers when acting as third-party neutrals assisting parties to consensually resolve family disputes. Only lawyer mediators in family disputes are directly subject to its provisions. Although the rules contained in Chapter 11 were renumbered and some provisions amended in 2002, most of Chapter 11 is over 20 years old. It has been many years since these rules have been comprehensively studied.

Over the last four and one half years, significant study and discussion of Chapter 11 has taken place within the Iowa State Bar Association (hereinafter the “ISBA”) through its Family and Juvenile Law and Alternate Dispute Resolution Sections. More recently, this discussion was expanded to include representatives from the American Academy of ADR Attorneys (hereinafter the “AAAA”) and the Iowa Association of Mediators (hereinafter “IAM”). A joint resolution from all professional groups representing lawyer/mediators in Iowa has now been approved.

The joint resolution of the ISBA Family & Juvenile Law Section, the ISBA ADR Section, and the AAAA recommends the repeal of Chapter 11 and its replacement with the ABA/AAA/ACR Model Standards of Conduct for Mediators (2005) (the “2005 Standards”) as the ethical guideline for lawyer/mediators in family disputes. IAM has

already adopted this ethical code for the regulation of its members, regardless of profession of origin.

This report outlines why the use of mediation in family disputes has grown; how that growth has taken place in Iowa; the history of this joint recommendation; and the rationale for its adoption. Materials to aid in the future consideration of this recommendation and the development of a dispute resolution program for family law cases are also provided.

## **SECTION 2**

### **A. The Growth of Family Law Mediation**

Twenty years ago, when Chapter 11 was first developed, mediation was an emerging field. The Family Law area was on the cutting edge of its development. Little was known about how mediation would be received by the Courts and the public let alone what should be done about the development of qualifications and ethical standards for mediators. This situation changed in the years that followed with the rapid expansion of mediation as an alternative to litigation of family disputes across Iowa and the nation.

Mediation has become well established because of its benefits when done well. For the majority of people, mediation provides a safe place to air differences and to seek self determined resolutions of their family law issues. Self-determination means individualized case outcomes and greater ownership and compliance with those outcomes when completed. The process is confidential, readily available, and compared with the cost of litigated decision making, is usually less expensive.

Very often, mediation preserves a precious commodity in family law cases, the parties' good will. This occurs because mediation encourages parties to speak with one

another and to take an active role in resolving their disputes. The litigation process discourages parties from communicating with each other and encourages the continuation of the marital conflict. This tendency frequently prolongs the grieving process and emotional upheaval found in family law matters and accentuates feelings of victimization by the other party or the process itself.

In litigation, the goal becomes to end conflict by influencing a third party decision maker or convincing the other party to abandon their position rather than taking ownership of the problem and responsibility for seeking a joint solution. While good lawyers will attempt to make it happen, there is no necessity for a client to explore their own behavior or consider the possibility their “adversary” may have equally well conceived ideas for ending the conflict. A good mediation promotes client awareness of individual contribution to conflict and helps the majority of clients understand they will be best served by being part of the effort to control it. Such awareness prepares clients to successfully resolve future issues and can go a long way toward getting parties out of the “revolving door” to the courthouse.

### **B. Family Law Mediation in Iowa**

It is no longer open to debate. Family Law Mediation is well established in Iowa. The original Iowa programs requiring mandatory mediation in Family Law cases were created in the 5<sup>th</sup> and 6<sup>th</sup> Judicial Districts in 1998. Eleven years later, these programs are continuing to provide the judiciary and the public with access to mediation services in family law matters in spite of uncertain funding and other institutional challenges. Unless excused from participation, all Family Law litigants in these districts are generally required to attend at least one mediation session before their case goes to trial. Mediation

is also being used successfully in an increasing range of family law matters including juvenile welfare. The following is a description of these programs.

The Polk County Bar Association operates the District Court Mediation Program at 500 SW 7<sup>th</sup> Street, Suite 100, Des Moines, Iowa 50309. Joseph M. Harrison is the director of the program. Joe Harrison may be reached at telephone number (515)286-2140. His e-mail is [jharrison@pcpaonline.org](mailto:jharrison@pcpaonline.org). Any attorney seeking assistance with the selection of a mediator is welcome to contact Joe Harrison for assistance.

The Polk County program maintains a roster of ninety mediators. Ninety to ninety-five percent of these mediators are lawyers. Other professions represented include family therapists, educators and a postmaster. Forty-hour mediation training in custody and divorce is initially required to be on the Family Law mediation roster along with continuing ADR or family law education thereafter.

The Polk County program roster includes mediators from other parts of the state, with the exception of the Sixth Judicial District. Occasional referrals of parties from other counties or judicial districts are made through the Polk County program. The program collects evaluations from mediation participants on their mediators and their experience in mediation. A very high level of satisfaction with mediation and their mediators is reported by participants in the Polk County Program.

The Polk County Mediation Program office collects complaints against mediators. In the last three years, there have been no reports of ethical violations to the program. The program director reviews mediation participant evaluations. The program discourages coercive mediation tactics.

The Sixth Judicial District operates a mandatory mediation program throughout the district. The program is administered by Annie Tucker of Mediation Services of Eastern Iowa. The Mediation Services of Eastern Iowa offices are located at 509 Kirkwood Avenue, Iowa City, Iowa 52240. Annie Tucker can be reached at (319)248-1940. She is an excellent source for information about mediation and mediators in eastern Iowa.

The website address of Mediation Services of Eastern Iowa is [www.mediateiowa.org](http://www.mediateiowa.org). This website has helpful information regarding 6<sup>th</sup> District roster mediators, their philosophy, experience, rates and facilities. The website also has helpful information to assist clients in understanding the mediation process and how to prepare for a mediation session.

There are thirty-seven mediators on the Sixth Judicial District roster. Sixty-two percent of the mediators are lawyers. Other professions represented include therapists, an accountant, a Masters in Conflict Resolution and a psychologist. Like the Polk County program, forty hour training in divorce and custody mediation is initially required for all roster mediators along with continuing education in ADR or Family Law thereafter. The Sixth District also requires the completion of mandatory education on identifying domestic violence and understanding its impact on mediation participants and the mediation process.

As in Polk County, participant evaluations of mediators and the mediation process are collected by the Program director. A high level of user satisfaction with mediators and the mediation process is reported in the 6<sup>th</sup> Judicial District. There have been no complaints of ethical violations by mediators since program inception.

The most significant differences between the 6<sup>th</sup> District and the Polk County program are in the timing of mediation, the subject matter of mediation, the involvement of attorneys in the process and the funding mechanism for the program. In Polk County, mediation is mandated in connection with applications for temporary custody, after pre-trial conferences which generally occur approximately 120 days after a case is filed, and on all contempt matters except those raising financial issues only. The prevailing form of mediation in Polk County is joint session followed by private caucus. 95% of the mediations are conducted with parties and lawyers present. A very heavy percentage (90-95%) of the mediation work is being performed by lawyer mediators.

In the 6<sup>th</sup> District, mediation is mandated at the time a case is filed. If a request for temporary custody is made, mediation must occur before the temporary order hearing takes place. Otherwise, mediation is mandated to take place within 45 days of filing the action. The 45-day requirement is usually not judicially enforced unless the failure to complete mediation is brought to the Court's attention. Contempt matters are not subject to mandatory mediation. Separate session with private caucus is the exception not the rule. It is also common for parties to attend mediation without their attorneys. In the 6<sup>th</sup> District, more mediation work is being done by mediators who are not lawyers than in Polk County.

Both programs are privately funded through fees. In Polk County, the court approved, private mediators employed through the program collect an administrative fee along with service fees at the time an actual mediation occurs. The administrative fee is remitted to the Program Administrator. In the Sixth Judicial District, the court approved divorce education providers charge a separate fee for providing a mediation education

component as part of their programs. An agreed portion of the mediation education fee is remitted to Mediation Services of Eastern Iowa. Funding in both Polk County and the Sixth District from these sources has been sufficient to maintain a stable administrative staff to operate the programs without other financial support from the State of Iowa. There is subsidization of administrative office space and equipment by both districts but the parties or mediators in both programs are bearing the actual cost of mediation. All roster mediators in Polk County and the Sixth Judicial District are required to provide no or reduced cost mediation service in cases where the parties are below income thresholds set by the Court.

The following is completion data for mediations completed through the Polk County Family Mediation Program: 2001: 525 mediations completed; 2002: 700 mediations completed; 2003: 830 mediations completed; 2004: 939 mediations completed; and 2005: 869 mediations completed. 1,446 cases were referred to the mediation program in 2005. Information for 2006 through 2008 is compiled but not yet available. Polk County filings indicate that there are approximately 2,900 proceedings for dissolution, dissolution modification or paternity matters filed in a typical year. The available data for the 6th Judicial District indicates that from August of 1996 through August of 2008, 3124 mediation sessions have been completed. A year to year breakdown is not available.

### **SECTION 3**

#### **History of the Recommendation**

In late 2004, lawyer/mediators in the ISBA Family and Juvenile Law Section (hereinafter the "F&JL Section") began to discuss Chapter 11 within the Section's ADR

Committee. It was the initial impression of this group that the rules in Chapter 11 were not widely known within the Bar. The Committee was also concerned with the language in several of Chapter 11's rules. Some rules appear to impose absolute duties that simply cannot be met by mediators. If strictly enforced, lawyers would be eliminated from the field of family law mediation.

In October of 2005, the ADR Committee of the F&JL Section gave a presentation on Chapter 11 at the Section's Annual CLE Meeting. The discussion which took place in the following months confirmed the impressions of the original committee. The question then became what to do. Throughout 2006, the F&JL Section discussed the best course of action within its ADR Committee. Consideration was given to eliminating, redrafting or replacing the provisions of Chapter 11 but no clear consensus emerged from this discussion.

In the winter of 2006, the F&JL Section reported its concerns with Chapter 11 to the ISBA Board of Governors. A request was made that the Board of Governors approve a resolution advising the Iowa Supreme Court of the Bar's concerns with Chapter 11 and requesting the Court to undertake a review. At that point, the Board of Governors requested the F&JL Section to continue working on a recommendation and to obtain consensus for the recommendation with the ISBA ADR Section.

The F&JL Section ADR Committee moved forward on this request in 2007. After significant discussion, a consensus was reached to recommend replacement of Chapter 11 with the ABA/AAA/ACR Model Standards of Conduct for Mediators (2005). The F&JL Section ADR Committee Report and Recommendation was submitted to the F&JL Section Council and approved in April of 2008. The specific resolution approved

by the Section reads: 1.) That Chapter 11 of the Iowa Rules of Court be repealed; 2.) That the 2005 ABA/AAA/ACR Model Standards of Conduct for Mediators be adopted in place of Chapter 11 and made applicable to all lawyers when acting as mediators regardless of practice area; and 3.) That the F&JL Section request the ISBA ADR Section to approve an identical motion and join with the F&JL Section in asking the ISBA Board of Governors to make a similar recommendation to the Iowa Supreme Court.

Following approval, the ISBA ADR Section (hereinafter "ADR Section") was approached and made aware of the F&JL Section recommendation. Under the leadership of ADR Section Chair Robert Fanter, a study group was formed to examine and act upon the recommendation. Because it is only Iowa lawyer/mediators who are directly regulated by the provisions of Chapter 11, it was initially decided that participation from the AAAA should be sought. The first meeting of the Chapter 11 Study Group (hereinafter the Study Group") occurred on June 12, 2008, by telephone conference.

The Study Group met on three occasions between June 12 and November 1, 2008. Over this period, the membership of the Study Group was expanded to include a representative from the Iowa College of Law and from the Iowa judiciary. The minutes of the Study Group meetings are located in Appendix A to this report. In summary, the Study Group worked hard to: 1.) inform lawyers of its work; 2.) examine the validity of the F&JL Section recommendation regarding repeal and replacement of Chapter 11; 3.) understand the unique statutory context for regulating Iowa lawyer/mediators in family disputes; and 4.) research the current state of mediator regulation across the country and develop a well considered recommendation. In this effort, the work of Professor Ann Estin and her research assistant, Brent Liebersbach, from the University of Iowa was

particularly valuable. The research table they developed summarizes the current ethical codes in use for mediator regulation in the United States and is attached to this report as Appendix B. At its November 1, 2008, meeting, the Study Group finalized its recommendation and commissioned this report.

#### SECTION 4

### **RATIONALE FOR THE RECOMMENDATION TO REPEAL CHAPTER 11 AND REPLACE IT WITH THE ABA/AAA/ACR MODEL STANDARDS OF CONDUCT FOR MEDIATORS (2005)**

#### **A. There Are Significant Problems With the Ethical Rules in Chapter 11**

In the eyes of the Study Group and the practice constituencies it represents, some of the standards in Chapter 11 are impossible for a lawyer/mediator to fulfill. Other standards are not in keeping with the realities of existing mediation practice. As such, the rules of Chapter 11 may unintentionally create ethical and malpractice traps for lawyer mediators. Rule 11, as written, may also provide a false sense of security for parties to family law mediation and to the broader public. The following are some examples of the more difficult aspects of Chapter 11.

(1) Rule 11.5(1) provides as follows:

The mediator shall assure that there is full financial and factual disclosure, such as each would reasonably receive in the discovery process, or that the participants have sufficient information to waive intelligently the right to such disclosure.

Use of the term “assure” in the context of this Rule is inappropriate. Even in a fully litigated dissolution, lawyers are not expected to “assure” full financial and factual disclosure by their clients. Attorneys must act ethically and in conformity with the

applicable standard of care. Lawyer mediators in family law matters, who often meet the parties for the first time at mediation, have no means of independently investigating the accuracy of either party's representations. In most instances, the parties themselves are not interested in the additional cost independent investigation by the lawyer/mediator would necessitate. Further, most parties are, or will be, represented by counsel. The Chapter makes no provision for relaxation of the mediator's duty when the parties have legal representation.

(2) Rule 11.4(3) provides as follows:

The mediator has a duty to insure that the participant's consider fully the best interests of any affected child and that they understand the consequences of any decision they reach concerning the child, apart from a desire for any particular parenting arrangement. ...

(3) Rule 11.5(2) provides in part as follows:

The mediator shall assure that each participant has the opportunity to fully understand the implications and ramifications of all available options.

Again, use of the term "insure" and "assure" is inappropriate. While the aspirational content of these rules is commendable, they arguably impose a standard of care that a lawyer/mediator is unable to meet. Mediators simply are not in a position to control the thought processes of participants or to know the level of their actual understanding. The rule also seems to conflict with the lawyer/mediator's duty to refrain from providing legal advice as required by Rules 11.1 and 11.7.

(4) Rule 11.2(6) provides as follows:

Among the topics covered during the orientation session, the mediator shall discuss the following: ...the mediator shall inform the participants that the mediator cannot represent either or both of them in any other legal matter during the mediation process or for a period of three years after the termination of the mediation process. The mediator cannot undertake the mediation if either of the

participants previously has been a client, or a client of the mediator's law firm.

Two very broad and apparently non-waivable restrictions are imposed by this rule.

Why a lawyer/mediator and their firm should be prohibited from representing a mediation participant in matters unrelated to the mediation for three years after mediation is not clear. This is especially true when the interests of the other participant are not involved. Nor is it apparent why a lawyer mediator should be prohibited from conducting a mediation if either of the participants has previously been a client of the mediator or the mediator's law firm. A prohibition from mediating if the prior representation pertained to the subject of the mediation makes sense. If the representation did not pertain to the subject of the mediation, however, a requirement for disclosure of the prior representation by the lawyer/mediator and written acknowledgment of the disclosure and informed consent to use the mediator by the participant should be sufficient to protect the public. These broad restrictions are seen by many lawyers as a significant reason to refrain from doing family mediation work and may be limiting its availability, especially in rural areas.

**B. Iowa Supreme Court Regulation of Family Law Mediators is Required by  
Iowa Law and is Desirable**

At its first meeting, the Study Group discussed whether separate ethical regulation of lawyer/mediators in family disputes is necessary in light of the recent adoption of the Iowa Rules of Professional Conduct. Rule 32.2.4 specifically permits lawyers to act as mediators for persons who are not clients provided that the lawyer informs unrepresented parties that the lawyer does not represent them. If the lawyer knows or reasonably should

know that a party does not understand the difference between the lawyer's role as a third party neutral or as a representative of the client, the lawyer is required to explain. Presumably, all other ethical guidelines of the Iowa Rules of Professional Conduct would be applicable to a lawyer/mediator as well. Given the express ethical regulation of lawyers already applicable under the Rules, isn't further regulation of lawyer/mediators unnecessary and redundant?

Iowa Code Section 598.7 speaks to this issue. The Section provides in pertinent part as follows:

598.7 MEDIATION.

2. The Supreme Court shall establish a dispute resolution program in family law cases that includes the opportunities for mediation and settlement conferences. Any judicial district may implement such a dispute resolution program, subject to the rules prescribed by the supreme court.

3. The Supreme Court shall prescribe rules for the mediation program, including the circumstances under which the district court may order participation in mediation.

4. Any dispute resolution program shall comply with all of the following standards:
- a. Participation in mediation shall include attendance at a mediation session with the mediator and the parties to the action, listening to the mediator's explanation of the mediation process, presentation of one party's view of the case, and listening to the response of the other party. Participation in mediation does not require that the parties reach an agreement.
  - b. The parties may choose the mediator, or the court shall appoint a mediator. A court-appointed mediator shall meet the qualifications established by the supreme court.
  - c. Parties to the mediation have the right to advice and presence of counsel at all times.
  - d. The parties to the mediation shall present any agreement reached through the mediation to their attorneys, if any. A mediation agreement reached by the parties shall not be enforceable until approved by the court.
  - e. The costs of mediation shall be borne by the parties, as agreed to by the parties, or as ordered by the court, and may be taxed as court costs. Mediation shall be provided on a sliding fee scale for parties who are determined to be indigent pursuant to section 815.9.

5. The Supreme Court shall prescribe qualifications for mediators under this section. The qualifications shall include but are not limited to the ethical standards to be observed by mediators. The qualifications shall not include a requirement that the mediator be licensed to practice any particular profession.

As can be seen, this statute mandates the creation of a dispute resolution program in family law cases. It also calls for the ethical regulation of mediators in such programs and suggests the regulations should be applicable to all mediators whether lawyers or not. In adopting Chapter 11, the Supreme Court has partially fulfilled its statutory duty. Given this statutory direction, the Study Group concluded that separate ethical regulations for lawyer/mediators in family disputes should be continued.

The Study Group also believes that it is important for the Bar and the Iowa Supreme Court to take a leadership role in family law mediation and mediation generally. While there are problems with the language and substance of some of Chapter 11's rules, there is no question those rules are in the interest of the public and for its protection. They outline duties that are desirable for all mediators, whether a lawyer or not. They also set forth many standards that would be beneficial to apply to other areas of mediation as well. By providing realistic practice standards for lawyer/mediators in family disputes, the Bar and the Supreme Court will continue to provide needed leadership in responsible dispute resolution in our state.

**C. Adoption of the ABA/AAA/ACR Models Standards of Conduct for  
Mediators (2005) In Place of Chapter 11 Is The Best Course Of Action At The  
Present Time**

Between 1982 and 1984, the Association of Family and Conciliation Courts convened three national symposia on divorce mediation standards. The result of these efforts was the 1984 Standards for Family and Divorce Mediation (the "AFCC

Standards”). In the same time frame, the Family Law Section of the ABA developed Standards of Practice for Lawyer Mediators in Family Law Disputes (the “ABA Standards”). As a result of shared membership between the two promulgating bodies, the AFCC Standards and the ABA Standards are basically compatible. It does not appear these Standards were formally approved by the governing bodies of either Association, however.

Following promulgation of the AFCC and ABA Standards, several states and organizations developed their own family law mediation standards. The Academy of Family Mediators developed its own code of ethics based on the AFCC Standards. It is believed that the 1984 AFCC and ABA Standards formed at least a partial basis for Iowa’s Chapter 11. In 1996, the ABA Family Law Section decided to take another look at family law mediation standards. This review ultimately resulted in the promulgation of the 2000 Standards of Practice for Family and Divorce Mediation (the 2000 Standards) by the Symposium on Standards of Practice, an umbrella organization consisting of representatives from the ABA, AFCC and 20 other family mediation organizations. A copy of the 2000 Standards of Practice for Family and Divorce Mediation is attached as Appendix C to this report.

Along with the divorce mediation developments described above, came efforts by other mediation groups to establish standards of practice for mediation generally. In 1994, The Model Standards of Conduct for Mediators was developed by a joint task force of the American Bar Association, the American Arbitration Association and the Society for Professionals in Dispute Resolution (a predecessor of the present Association for Conflict Resolution). Ten years later, these same organizations completed a 3 year

process of reviewing the 1994 Standards and updated them with amendments. In 2005, the governing boards of the ABA, AAA, and ACR formally approved these amendments and adopted the Model Standards of Conduct for Mediators (2005). A copy of the 2005 Standards is attached as Appendix D to this report.

The research performed by Professor Estin for the Study Group indicates that the 1994 or 2005 versions of the Model Standards of Conduct for Mediators are the ethical standards most commonly approved by governmental bodies. The 1984 AFCC and ABA Standards and the 2000 Standards are more commonly adopted by private mediation organizations in the Family Law area. No clear trend favoring adoption of a particular ethical code for family law mediation or mediation generally can presently be discerned.

It is the consensus of the Study Group that the 2005 Model Standards is the appropriate ethical code for regulating lawyer mediators in Family Law matters. The 2005 Model Standards is the product of significant research and consensus building within the American Bar and the major mediation organizations. Only the 2005 Model Standards have been approved by the ABA Board of Delegates as well as the governing bodies of the American Arbitration Association and the Association for Conflict Resolution.

The 2005 Model Standards build upon and refine ten years of experience under the 1994 standards, the first concerted effort to define best mediation practice generally. Further, since the 2005 Model Standards has already been approved by the Iowa Association of Mediators, it has the advantage of existing acceptance by its members, including those doing Family Law mediation in Iowa. The adoption of the 2005 Model Standards may also aid in the larger task of developing general mediator ethical standards

of wider application at a future time, a task beyond the resources of the present Study Group.

The Committee notes that the most substantial differences between Chapter 11 and the 2005 Model Standards are in the following areas: conflict of interest (Rule 11.2(6)); the requirements for party and mediator consideration of children's best interests (Rule 11.4(3)); mediator's duty with regard to disclosure by the participants (Rule 11.5) and the required emphasis on recommending legal representation (Rule 11.7). The Study Group is not suggesting revisions to the 2005 Model Standards to address these differences. If the Bar or the Court concludes that Chapter 11's approach (or the approach of the 2000 Standards of Practice) to these areas should be considered, these provisions could be grafted on to the 2005 Model Standards without great difficulty.

## **SECTION 5**

### **CONCLUSION AND RECOMMENDATION<sup>6</sup>**

Persons engaged in resolving civil disputes as third party neutrals, regardless of profession, serve an important position of public trust and ought to be regulated. At the time of its adoption, and continuing today, Chapter 11 provides important guidance to lawyers when acting in the role of a third-party neutral in family law matters. Unfortunately, there are significant problems with Chapter 11's provisions that warrant prompt action by the ISBA and the Iowa Supreme Court to replace it.

There are now existing standards of conduct for mediators, regardless of profession of origin, that have been developed and used across the country. There are model codes of general application and those specifically tailored for Family Law and Divorce mediation. Selecting a model code of mediator conduct and tailoring it as

necessary to meet the unique aspects of Iowa practice appears to be the most efficient approach to mediator regulation. The use of the ABA/AAA/ACR Model Standards of Conduct (2005), without revision, is the best immediate course of action to replace the problematic provisions of Chapter 11 in the opinion of the Study Group.

The Study Group therefore urges the following resolutions be adopted by the ISBA Board of Governors:

(1) That the ISBA Board of Governors recommend to the Iowa Supreme Court the repeal of Chapter 11 of the Iowa Rules of Court as soon as reasonably possible;

(2) That the ISBA Board of Governors recommend that the Iowa Supreme Court replace Chapter 11 with the 2005 ABA/AAA/ACR Model Standards of Conduct for Mediators as the ethical guidelines for lawyer/mediators in family disputes when Chapter 11 is repealed; and

(3) That the ISBA Board of Governors recommend that the Iowa Supreme Court establish a Task Force to create a dispute resolution program for family law cases in the Iowa District Courts that meets the requirements of Iowa Code Section 598.7.

Respectfully submitted,

Chapter 11 Study Group

**ISBA F& JL Section:** Matthew J. Brandes, Reporter, Terry Parsons and Steve Sovern;  
**Academic and Judicial Members:** Ann Estin, Professor, University of Iowa College Of Law; and Senior Judge William Thomas.

**ISBA ADR Section:** Bob Fanter; Jeff Krausman, and John Hintermeister; **American Academy of ADR Attorneys (AAAA):** Larry McLellan; Lora McCollom and Linda Neuman.

**Minutes of the Chapter 11 Study Committee  
6/12/08 Meeting**

**Attendance. ISBA ADR Section:** Bob Fanter; Jeff Krausman, and John Hintermeister; **American Academy of ADR Attorneys (AAAA):** Larry McLellan, Linda Neuman, and Laura McCollom; **ISBA Family and Juvenile Law Section (F&J):** Terry Parsons and Matt Brandes

The meeting convened at 7:00 a.m. on June 12, 2008 by telephone conference call.

The committee initially discussed whether there are other constituencies to involve. The committee discussed possible participation by non-lawyer mediator groups, a representative from the Drake Law School and judicial representatives. It was noted that the primary impetus for convening the study committee is to address concerns with a unique ethical code that is only applicable to lawyer mediators in family law matters. For this reason, some sentiment was expressed that the focus should be on the legal constituencies with which the study committee membership has direct contact.

The committee agrees that expanding to include judicial representatives such as Justice Cady or Senior Judges Jordan or Thomas would be desirable. Linda Neuman will contact Justice Cady to advise him of the study committee's work, the concerns that have been identified with regard to Chapter 11 and to take an initial read of the Supreme Court's willingness to consider repeal or modification of Chapter 11. Lora McCollom will contact Judge Jordan. Matt Brandes will contact Judge Thomas. Report of contacts is requested before the next meeting so any interested judge can be notified.

The committee reviewed and discussed the F&J Section Chapter 11 Report and Recommendation (Report). Although no vote of the committee was taken, there appears to be consensus that there are drafting problems in the provisions of Chapter 11 as pointed out in the Report. The F&J Section is seeking prompt action to correct these difficulties. It was also noted that while there are no other legislative or judicially mandated ADR ethical codes in Iowa, the new Rules of Professional Conduct, specifically Rule 32:2.4, address the ethical obligation of lawyers when serving as a third party neutral. Therefore, a related issue is whether a separate set of standards for lawyer mediators is needed due to the existing provisions of the Rules of Professional Conduct.

One of the initial questions to be addressed is whether there should be a separate ethical code for attorneys acting as third party neutrals. A related issue is whether an attorney engaged in family law mediation should be subject to specialized and more restrictive rules than lawyer mediators acting as neutrals in other practice areas. Depending on the answer to these questions, what recommendations should be made? The committee discussed several options:

1. Chapter 11 could be repealed and no separate set of standards for lawyer mediators adopted in light of the language of Rule 32: 2.4 of the Code of the Rules of Professional Conduct;

2. Chapter 11 could be replaced with a model code such as the 2005 ABA/AAAA/ACR Model Standards of Conduct for Mediators as recommended by the F&J Section (such a code would apply to attorneys acting as third party neutrals regardless of the practice area.);
3. Chapter 11 could be replaced with a model code specifically applicable to third party neutrals in family law disputes (see Standards of Practice for Lawyer Mediators in Family Law Disputes, ABA 1984) or Model Standards of Practice for Family and Divorce Mediation, August 2000); or
4. Chapter 11 could be retained with modifications to address the concerns noted in the F&J Section Report.

It was the sense of the meeting that additional time is necessary in order for the ADR Section and the AAAA to make a report and sound out their leadership and members.

Larry McLellan and Bob Fanter will be reviewing the Committee's discussion with their constituencies in advance of our next Study Group meeting. Both bodies will be advised of the F&J Section concerns with regard to the language with Chapter 11 and that the Study Committee shares these concerns on initial review. Bob and Larry will determine if any consensus presently exists within their membership in regard to the general question of lawyer mediator regulation, the issue of separate regulation for attorneys doing family law mediation, and the various options outlined above.

The next meeting is scheduled for August 27, 2008 at 7:00 a.m. The meeting will be conducted by telephone conference call on the Bar phone conference facility. The purpose of the meeting is to finalize Committee membership; share the results of the ADR Section and AAAA discussion; establish a definite scope of work for the Committee; and establish a time frame for completion of the study committee recommendation. Depending on perceived scope and time frame for the work of the Committee, the members are also asked to consider the possible need for an interim recommendation with respect to enforcement of Chapter 11. The Committee also agreed an in person meeting in November of 2008 coinciding with the ADR Section/AAAA CLE program should be scheduled.

In advance of the next meeting, all study committee members are asked to consider the initial questions and the various approaches to committee action outlined above. In connection with this consideration, Jeff Krausman will be sharing scholarly information via e-mail with the committee. Larry McLellan may also have information from the University of Missouri to share as well. If any other study committee member identifies information of interest to the Committee's work, they are encouraged to share same via e-mail with the members.

Respectfully Submitted,  
Matthew J. Brandes, Reporter  
Chapter 11 Study Group

**Minutes of the Chapter 11 Study Committee**  
**August 27, 2008**  
**Meeting**

**Attendance. ISBA ADR Section:** Bob Fanter; Jeff Krausman, and John Hintermeister; **American Academy of ADR Attorneys (AAAA):** Larry McLellan; **ISBA Family and Juvenile Law Section (F&J):** Matt Brandes; **Additional Committee Members:** Professor Ann Estin of the University of Iowa and Senior Judge William Thomas

The meeting convened at 7:00 a.m. on August 27, 2008 by telephone conference call.

Matt Brandes advised the committee that Linda Neuman would be unable to attend the meeting due to a previous mediation commitment in Cedar Rapids. Linda has contacted Justice Cady, who is sympathetic to the Study Group's concerns about Chapter 11. Although he could not speak for the Court, Justice Cady observed the Court would likely be receptive to an update. He further indicated the Court respects the work of the ABA's Committees and would appreciate the uniformity that adoption of the ABA Model Standards of Conduct for Mediators would bring to professional conduct rules. Justice Cady noted the world of mediation has changed tremendously since Chapter 11 was enacted in 1987. Linda discussed the possible protocol for approaching the Court on the matter. Justice Cady suggested starting with Chief Justice Ternus, who might then assign the proposal to the Court's Internal Rules Committee for consideration. Jim Carney may have other views on how to approach the Court.

Bob Fanter reported on behalf of the ISBA ADR Section. A summary letter has been forwarded to the 56 members of the Section. Based on responses received, Bob believes the ADR Section is satisfied with the membership composition of the Study Group. He also believes the ADR Section concurs with the conclusion of the Family and Juvenile Law Section that provisions of Chapter 11 are problematic and that it is time for a process of reevaluation and change.

Larry McLellan reported on behalf of the AAAA. The AAAA Board has discussed the Study Group work. The AAAA Board voted to support repeal of Chapter 11 in its last meeting. The AAAA suggests the addition of another judicial representative. Larry will be contacting Justice Lavorato to determine his willingness to join the Study Group.

The Committee discussed a memorandum prepared by Jeff Krausman and shared with Bob Fanter regarding the language of Iowa Code Section 598.7. It is Jeff's opinion that the language of this section may prevent the Study Group from simply recommending the repeal of Chapter 11. Bob and Jeff will share the memorandum by email for consideration by the rest of the Study Group in connection with ongoing deliberations. A copy of the current language of Iowa Code Section 598.7 is appended to these minutes.

The Committee discussed research e-mailed by Larry McLellan to committee members on August 26, 2008, as follows: "Rejoice! Rejoice! Rejoice, Give Thanks, and Sing:

ABA, ACR, and AAA Adopt revised Model Standards of Conduct for Mediators” 5 Appalachian J.L.195 (2006); and “Recent Developments Model Standards of Conduct for Mediators”, 21 Ohio St. J. on Disp. Resol. 547 (2006). Larry also provided information concerning a new service available through the ABA Section of Dispute Resolution. The ABA Section is now offering to provide written opinions on ethical questions in everyday practice of mediation relating to the Model Standards of Conduct for Mediators. It is noted the opinions will be advisory only and will not have the force of law.

The Committee’s discussion turned to scope of work. In addition to conforming the Study Group recommendation with the requirements of Section 598.7, the Committee discussed topics upon which it would be helpful to have additional research. These topics are identified below.

The Study Group would like to obtain a 50 state review of in place ethical regulation of mediators, lawyer and non-lawyer alike to identify the following:

- a) What states have adopted ethical codes that apply to mediators?
- b) What ethical codes are in use?
- c) Do any states using the Model Code of Professional Responsibility for Attorneys have separate ethical standards for lawyer mediators?
- d) Do any states separately regulate mediators in family disputes?
- e) What states have prescribed qualifications for mediators and what qualifications are being prescribed?

The Study Group also discussed locating the reporter notes for the 2005 ABA/AAA/ACR Model Standards of Conduct for Mediators. The Reporter notes may be obtained on the following website:  
<http://moritzlaw.osu.edu/programs/adr/msoc/>

Professor Ann Estin will be assisting the Study Group with this research. Professor Estin has research assistant time she will dedicate to the investigation over the next semester. She believes that it will be possible to complete a preliminary report on the additional research identified by the end of September. The addition of this research to the resource material previously shared should provide the Study Group with most of the scholarly input needed to begin formulation of its recommendation.

The best method for advancing the work was then discussed. Once the research is available, the meeting attendees believe the best way to progress the work is through an in-person meeting or meetings. The meetings will be scheduled to coincide with the fall meetings of the Family and Juvenile Law Section and the joint ADR Section/AAA meeting. The Study Group will convene on November 1 at 9:00 a.m. in Des Moines. Matt Brandes and Bob Fanter will coordinate the location and advise the Group. It is anticipated that additional work will remain to finalize a recommendation after the November 1 meeting. Study Group members are asked to hold the afternoon of November 20, 2008, for a second, afternoon meeting in Des Moines.

It is the goal of the Study Group to finalize a recommendation, if possible, and provide a report of same to the joint session of the ADR Section and the AAAA on November 21. If the availability of the research permits, a telephone conference meeting to discuss the research will be convened in October for those members of the Study Group who are available.

The meeting adjourned at 7:50 a.m.

Respectfully Submitted,

Matthew J. Brandes, Reporter  
Chapter 11 Study Group

**Minutes of the Chapter 11 Study Committee  
November 1, 2008  
Meeting**

**Attendance. ISBA ADR Section:** Bob Fanter; Jeff Krausman, and John Hintermeister; **American Academy of ADR Attorneys (AAAA):** Larry McLellan; **ISBA Family and Juvenile Law Section (F&J):** Matt Brandes; **Additional Committee Members:** Professor Ann Estin of the University of Iowa and Senior Judge William Thomas.

The meeting convened at 9:00 a.m. on November 1, 2008, in the Whitfield and Eddy West Des Moines offices.

The Minutes of the August 27, 2008, meeting were approved.

The Committee received a report from Ann Estin regarding The University of Iowa research on the ethical standards for mediators that have been adopted by governmental entities or private mediation organizations across the United States. A table summarizing the research was circulated in advance of the meeting. The Model Standards of Conduct for Mediators, either the 1994 or 2005 versions, appear to be the most commonly approved ethical standards by governmental bodies. The Model Standards of Practice for Family and Divorce Mediation developed by the AFCC in conjunction with the ABA are more commonly adopted by private mediation organizations in the Family Law area. Ann indicated that no clear trend toward approval of one mediator ethical code can presently be discerned.

The Committee turned to the discussion items listed in the meeting agenda. The following is a summary of that discussion:

- A. The Study Group agrees that Court approved ethical standards for Iowa mediators in the area of Family Law are needed due to the express language of Iowa Code § 598.7(5).
- B. Although many different views were expressed, it is the sense of the Study Group that it would be best to focus on the provisions of Chapter 11 and Family Law mediation alone. The project of developing mediator ethical standards of wider application is a topic that likely has a longer development period, will involve more constituencies and is likely beyond the resources of the present Study Group.
- C. It is the consensus of the Study Group that the 2005 Model Standards of Conduct for Mediators is the appropriate ethical code for regulating lawyer mediators in Family Law matters. The 2005 Model Standards are the product of significant research and consensus building within the American Bar and the major mediation organizations. Only the 2005 Model Standards have been approved by the ABA Board of Delegates as well as the governing bodies of the American Arbitration Association and the Association for Conflict Resolution. The 2005

standards build upon and refine ten years of experience under the 1994 standards, the first concerted effort to define best mediation practice.

D.

The Committee noted that the most substantial differences between Chapter 11 and the Model Standards are in the following areas: conflict of interest (Rule 11.2(6)); the requirement for party and mediator consideration of children's best interests (Rule 11.4(3)); mediator's duty with regard to disclosure by the participants (Rule 11.5) and the required emphasis on recommending legal representation (Rule 11.7). The Committee is not suggesting revisions to the 2005 Model Standards. If the Bar or the Court concludes that Chapter 11's approach to these areas should be continued, these provisions could be grafted on to the 2005 standards without great difficulty.

The Study Group discussed the process for completing a recommendation. A written recommendation will be developed and addressed to the Iowa State Bar Association Board of Governors. A drafting committee composed of Matt Brandes, Ann Estin, and Bill Thomas will work on initial preparation of the report. A December 1, 2008, timeframe for circulation of the draft to the remainder of the Study Group will be the goal.

While report preparation is underway, Larry McLellan will ask Linda Neuman to keep the Supreme Court advised that this project is moving forward and to share the likely form of the recommendation. Larry and Judge Thomas will also open up direct communication with the Chief Judges in the 5<sup>th</sup> and 6<sup>th</sup> Districts to inform them of the Study Group's recommendation and invite comments from the existing mediation programs. Once the report is completed, the ADR Section and the AAAA will likely take another vote on the final recommendation. Both organizations currently support revised standards to replace Chapter 11, but the recommendation to adopt the 2005 Model Standards has not been finalized.

The next meeting of the Study Group will be established after the draft report is circulated. It is the sense of some committee members that a final, in-person meeting may be best to conclude workup of the final report once a draft is available. Meeting arrangements will be made by e-mail to the Study Group.

The meeting adjourned at 10:45 a.m.

Respectfully Submitted,

Matthew J. Brandes, Reporter  
Chapter 11 Study Group

**Proposed  
Minutes of the Chapter 11 Study Committee  
March 31, 2009  
Meeting**

**Attendance: ISBA ADR Section:** Bob Fanter and John Hintermeister; **American Academy of ADR Attorneys (AAAA):** Larry McLellan; **ISBA Family and Juvenile Law Section (F&J):** Matt Brandes and Steve Sovern; **Additional Committee Members:** Professor Ann Estin and Senior Judge William Thomas.

The meeting convened at 7:00 a.m. on March 31, 2009, by telephone conference call.

The Minutes of the November 1, 2008, meeting were reviewed and approved with an amendment to strike the final sentence of the first paragraph of Section C. A copy of the November 1, 2008 Minutes, as amended, will be substituted in the final report of the committee.

The Committee reviewed the final report and recommendation of the Study Group. It was unanimously agreed that revisions be made to pages 2, 3, 4, 5, 6, 7, 18 and 19. Following revisions the report will be re-circulated

The Study Group voted unanimously to approve the final report and recommendation as revised.

The Study Group discussed next steps. Bob Fanter and Matt Brandes will determine the next meeting of the Iowa State Bar Association Board of Governors. Approvals from the Family and Juvenile Law Section, ADR Section and the AAAA will be sought in advance of that date. The Study Group members will be advised as approvals are received.

Assuming the approvals of the ISBA Sections and the AAAA are obtained, the ISBA Section Chairs for the Family and Juvenile Law Section and the ADR Section will be asked to present the report to the Board of Governors. If the opportunity for a presentation is offered, the Committee will be notified. The Committee will be kept advised as the approval process proceeds.

The meeting adjourned at 8:05 a.m.

Respectfully Submitted,

Matthew J. Brandes, Reporter  
Chapter 11 Study Group

State	Rule 2.4 of Model Rules of Professional Conduct?	Ethical Codes or Rules that Govern Mediation within the State	Private Mediation Organizations within the State & the Ethical Standards Promulgated if Applicable
Alabama	Not Adopted	<p>1.) Alabama Center for Dispute Resolution: "Code of Ethics for Mediation"</p> <p>a. <a href="http://www.alabamaadr.org/index.php?option=com_content&amp;task=view&amp;id=24&amp;Itemid=6">http://www.alabamaadr.org/index.php?option=com_content&amp;task=view&amp;id=24&amp;Itemid=6</a></p> <p>2.) Alabama Center for Dispute Resolution: "Code of Ethics for Arbitrators"</p> <p>a. <a href="http://www.alabamaadr.org/index.php?option=com_content&amp;task=view&amp;id=25&amp;Itemid=39">http://www.alabamaadr.org/index.php?option=com_content&amp;task=view&amp;id=25&amp;Itemid=39</a></p>	
Alaska	Not adopted	<p>1.) AK Rule of Prof. Conduct 2.2, "intermediary"</p> <p>2.) AK Rules of Civ. Pro. R. 100, "Mediation and other forms of ADR"</p> <p>3.) A.S. 25.04.060, Marital and Domestic Relations: "Mediation"</p>	1.) Alaska Dispute Settlement Association
Arizona	Adopted: Arizona Rules of Prof. Conduct, R. 2.4	None	<p>1.) Mediation Association of Southern Arizona</p> <p>2.) Arizona Association of Conflict Resolution</p>
Arkansas	Adopted: Arkansas Rules of Prof. Conduct, R. 2.4	<p>1.) Arkansas ADR Commission Requirements for the Conduct of Mediation and Mediators:</p> <p>a. <a href="http://courts.state.ar.us/pdf/0516_conduct.pdf">http://courts.state.ar.us/pdf/0516_conduct.pdf</a></p> <p>2.) AR. ST. Title 11, Ch. 2, Subch 2: "Arkansas Mediation and Conciliation Service Nondisclosure Act"</p>	<p>1.) Arkansas Conflict Resolution Association: <a href="http://www.mediate.com/arkansas">http://www.mediate.com/arkansas</a></p>
California	Not Adopted	<p>1.) Cal. R. of Ct.: Rules of Conduct for Mediators in Court-Connected Mediation Programs for Civil Cases, R. 3.850 – 3.868</p> <p>2.) Cal. R. of Ct.: Court-Connected Child Custody Mediation, R. 5.210</p>	<p>1.) Southern California Mediation Association: "Ethical Guidelines"</p> <p>a. <a href="http://www.scmmediation.org/mediation_scm_standards.asp">http://www.scmmediation.org/mediation_scm_standards.asp</a></p> <p>2.) Association for Dispute Resolution of Northern California: "Standards for Mediators"</p> <p>a. <a href="http://www.mediate.com/adrcnc/pg1038.cfm">http://www.mediate.com/adrcnc/pg1038.cfm</a></p> <p>3.) California Dispute Resolution Council: "Standards"</p> <p>a. <a href="http://www.cdrc.net/pg2.cfm">http://www.cdrc.net/pg2.cfm</a></p>

State	Rule 2.4 of Model Rules of Professional Conduct?	Ethical Codes or Rules that Govern Mediation within the State	Private Mediation Organizations within the State & the Ethical Standards Promulgated If Applicable
Colorado	Adopted: Colorado Rules of Prof. Conduct, R. 2.4	<p>1.) Colorado Court Adoptions</p> <p>a. <a href="http://www.courts.state.co.us/Administration/Section.cfm/Section/adrprof">http://www.courts.state.co.us/Administration/Section.cfm/Section/adrprof</a></p> <p>i. ABA Standards of Practice for Family and Divorce Mediation</p> <p>1. <a href="http://www.abanet.org/family/rep">http://www.abanet.org/family/rep</a></p> <p>ii. Colorado Model Standards of Conduct for Mediators</p>	<p>4.) California Association of Legal Mediators</p> <p>1.) Colorado Council of Mediators &amp; Mediation Organizations: <a href="http://www.coloradomediation.org/">http://www.coloradomediation.org/</a></p> <p>a. adopted 2005 Model Standards of Conduct for Mediators</p> <p>i. <a href="http://www.coloradomediation.org/codeofconduct.htm">http://www.coloradomediation.org/codeofconduct.htm</a></p> <p>2.) Divorce Resolutions, Colorado Center for Divorce Mediation: "Colorado Model Standards of Conduct for Mediators"</p> <p>a. <a href="http://www.coloradodivorcemediation.com/spotlight/Colorado-Mediators-Model-Standards.asp">http://www.coloradodivorcemediation.com/spotlight/Colorado-Mediators-Model-Standards.asp</a></p>
Connecticut	Adopted: Connecticut Rules of Prof. Conduct, R. 2.4		<p>1.) Connecticut Council for Divorce Mediation and Collaborative Practice: <a href="http://www.ctmediators.org/index.htm">http://www.ctmediators.org/index.htm</a></p> <p>a. "CCDM Standards and Protocols"</p> <p>i. <a href="http://www.ctmediators.org/standards.htm">http://www.ctmediators.org/standards.htm</a></p>
Delaware	Adopted: Delaware Rules of Prof. Conduct, R. 2.4	<p>1.) ADR Sup. Ct. Civil Rule 16.1</p> <p>2.) Alternative Dispute Resolution in Superior Court of Delaware</p> <p>a. <a href="http://courts.state.de.us/courts/superior%20court/ADR/ADR/adr_delaware.htm#d4">http://courts.state.de.us/courts/superior%20court/ADR/ADR/adr_delaware.htm#d4</a></p>	
District of Columbia	Adopted: District of Columbia Rules of Prof. Conduct, R. 2.4	<p>1.) Multi-Door Dispute Resolution Division Superior Court</p> <p>a. <a href="http://www.dccourts.gov/dccourts/superior/multi/EthicalStandards.pdf">http://www.dccourts.gov/dccourts/superior/multi/EthicalStandards.pdf</a></p>	
Florida	Adopted: Florida Bar Rule, Chapter 4: Rules of Prof. Conduct, R. 4-2.4	<p>1.) Fla. Sup. Ct. Comm. on ADR Rules &amp; Policy, Florida DRC Rules For Mediators, Rules 10.200-10.690</p> <p>a. <a href="http://www.flcourts.org/gen_public/adr/certrules.shtml">http://www.flcourts.org/gen_public/adr/certrules.shtml</a></p> <p>2.) Currently drafting New ADR Standards of Conduct</p> <p>a. <a href="http://www.flcourts.org/gen_public/adr/certrules.shtml">http://www.flcourts.org/gen_public/adr/certrules.shtml</a></p>	

State	Rule 2.4 of Model Rules of Professional Conduct?	Ethical Codes or Rules that Govern Mediation within the State	Private Mediation Organizations within the State & the Ethical Standards Promulgated if Applicable
Georgia	Not Adopted	ADR Rules, Ethical Standards for Neutrals	1.) Georgia Commission on Dispute Resolution: <a href="http://www.godr.org/">http://www.godr.org/</a> a. "Alternative Dispute Resolution Rules" i. <a href="http://www.godr.org/pdfs/CURRENT%20ADR%20RULES%20COMPLETE%2010-06-08.pdf">http://www.godr.org/pdfs/CURRENT%20ADR%20RULES%20COMPLETE%2010-06-08.pdf</a>
Hawaii	Not Adopted	1.) Hawaii Court; Guidelines for Hawaii Mediators (non-binding) a. <a href="http://www.courts.state.hi.us/page_servicer/Services/AlternativeDispute/Selecting/Guidelines/4E212173EC8EC6CDEBC3B6FAAA.html">http://www.courts.state.hi.us/page_servicer/Services/AlternativeDispute/Selecting/Guidelines/4E212173EC8EC6CDEBC3B6FAAA.html</a>	
Idaho	Adopted: Idaho Rules of Prof. Conduct, R. 2.2	1.) Idaho State Bar Association: 2005 ABA Model Standards of Conduct for Mediators (inspirational guidelines) a. <a href="http://www2.state.id.us/isb/rules/mediatorstandards.htm">http://www2.state.id.us/isb/rules/mediatorstandards.htm</a> 2.) I.C. Title 9, Ch.8: "Uniform Mediation Act"	1.) Idaho Mediation Association: <a href="http://www.idahomediation.org/">http://www.idahomediation.org/</a> a. "Standards of Practice for Idaho Mediators" i. <a href="http://www.idahomediation.org/sop.pdf">http://www.idahomediation.org/sop.pdf</a>
Illinois	Not Adopted	1.) 710 IL St CH Act 35: "Uniform Mediation Act"	1.) Mediation Council of Illinois: "Professional Standards of Conduct for Mediators" a. <a href="http://www.mediationcouncilofillinois.org/standards_of_practice.shtml">http://www.mediationcouncilofillinois.org/standards_of_practice.shtml</a> 2.) Mediation Association of Southern Illinois
Indiana	Adopted: Indiana Rules of Prof. Conduct, R. 2.4	1.) Indiana Rules of Court, "Rules for ADR" a. <a href="http://www.in.gov/judiciary/rules/adr/">http://www.in.gov/judiciary/rules/adr/</a>	1.) Indiana Association of Mediators a. <a href="http://www.mediation-indiana.org/index.html">http://www.mediation-indiana.org/index.html</a>
Iowa	Adopted: Iowa Rules of Prof. Conduct, R. 32:2.4	1.) Iowa Court Rules, Rules Governing Practice and Procedure, Ch.11: "Rules Governing Standards of Practice for Lawyer Mediators in Family Disputes" 2.) I.C.A. § 598.7 "Mediation" 3.) I.C.A. § 679C "Uniform Mediation Act"	1.) Iowa Association of Mediators: "Model Standards of Conduct for Mediators" a. <a href="http://www.iowaadr.org/Standards.htm">http://www.iowaadr.org/Standards.htm</a> 2.) Iowa Association for Dispute Resolution
Kansas	Adopted: Kansas Rules of	1.) Rules of the Supreme Court of Kansas, Rules	

State	Rule 2.4 of Model Rules of Professional Conduct?	Ethical Codes or Rules that Govern Mediation within the State	Private Mediation Organizations within the State & the Ethical Standards Promulgated if Applicable
	Prof. Conduct, R. 226:2.3	<p>relating to mediation, R. 903: "Ethical Standards for Mediators"</p> <p>a. Adopted as an amended version of the 1994 ABA Model Standards of Conduct for Mediators</p> <p>2.) K.S.A. 23-603 "Mediation of Domestic Disputes: Duties of Mediator"</p>	
Kentucky	Not Adopted	<p>1.) 2002 Model Mediation Rules Mediation Guidelines for Court of Justice Mediators</p> <p>a. <a href="http://courts.ky.gov/stateprograms/mediation/modelmediationrules.htm">http://courts.ky.gov/stateprograms/mediation/modelmediationrules.htm</a></p>	
Louisiana	Adopted: Louisiana Rules of Prof. Conduct, R. 2.4	<p>1.) LSA-R.S. Title 9, Codebook 1, Code Title V, Chapter 1, Part III, Subpart A: "Evaluation and Mediation"</p>	<p>1.) Family Mediation Council of Louisiana: <a href="http://www.familymediationcouncil.com/Home.php">http://www.familymediationcouncil.com/Home.php</a></p> <p>a. "Mediator's Standards"</p> <p>i. <a href="http://www.familymediationcouncil.com/Mediators/Standards.php">http://www.familymediationcouncil.com/Mediators/Standards.php</a></p>
Maine	Recently Adopted on 2/26/2009	<p>1.) Me. Sup. Ct., Code of Conduct for Maine Judicial Branch ADR Neutrals</p> <p>a. <a href="http://www.courts.state.me.us/courtinfo/services/adr/pdf/codeofconduct%200%20.pdf">http://www.courts.state.me.us/courtinfo/services/adr/pdf/code of conduct%200%20.pdf</a></p>	<p>1.) Maine Association of Mediators: "Standards of Conduct – Ethics Agreement"</p> <p>a. <a href="http://mainemediators.org/who_were/standards-of-conduct">http://mainemediators.org/who_were/standards-of-conduct</a></p>
Maryland	Adopted: Maryland Rules of Prof. Conduct, R. 2.4	<p>1.) Maryland Standards of Conduct for Mediators, Arbitrators, and other ADR Practitioners</p> <p>a. <a href="http://www.courts.state.md.us/macro/standardsfinal.pdf">http://www.courts.state.md.us/macro/standardsfinal.pdf</a></p>	
Massachusetts	Adopted: Massachusetts Rules of Prof. Conduct, R. 2.4	<p>1.) Mass. Sup. Jud. Ct., Uniform Rules on Dispute Resolution including Explanatory and Implementation Materials, Rule 1.18</p> <p>a. <a href="http://www.mass.gov/courts/admin/legal/newadrbk.pdf">http://www.mass.gov/courts/admin/legal/newadrbk.pdf</a></p>	
Michigan	Not Adopted	<p>1.) Michigan Supreme Court: Standards of</p>	<p>1.) Family Mediation Council: Michigan</p>

State	Rule 2.4 of Model Rules of Professional Conduct?	Ethical Codes or Rules that Govern Mediation within the State	Private Mediation Organizations within the State & the Ethical Standards Promulgated if Applicable
		Conduct for Mediators a. <a href="http://www.courts.michigan.gov/scao/re-sources/standards/odr/conduct.pdf">http://www.courts.michigan.gov/scao/re-sources/standards/odr/conduct.pdf</a>	a. <a href="http://familymediation.com">http://familymediation.com</a>
Minnesota	Adopted: 52 M.S.A. Rule of Prof. Conduct, 2.4	1.) Minnesota General Rules of Practice, R. 114 "Code of Ethics"	1.) Conflict Resolution Minnesota
Mississippi	Adopted: Mississippi Rules of Prof. Conduct, R. 2.4	1.) Rule X.D. Court Annexed Mediation Rules for Civil Litigation a. <a href="http://www.msbar.org/7_alternative_dispute_resolution.php">http://www.msbar.org/7_alternative_dispute_resolution.php</a>	
Missouri	Adopted: Sup. Ct. R. of Prof. Conduct, R.4-2.4	1.) MO Sup. Ct. R. 88.06 "Mediation-Duties of the Mediator"	1.) Association of Missouri Mediators: <a href="http://www.mediate.com/amm/">http://www.mediate.com/amm/</a> a. Adopted 2005 Model Standards of Conduct for Mediators as a "Guideline" i. <a href="http://www.mediate.com/amm/pg19.cfm">http://www.mediate.com/amm/pg19.cfm</a>
Montana	Adopted: MT rules, Rules of Prof. Conduct, R. 2.3	1.) M.C.A. 39-71-2409; Workers Compensation Mediation: "Duties of Mediators"	1.) Montana Mediation Association: <a href="http://www.mtmediation.org/">http://www.mtmediation.org/</a> a. "Standards of Practice, Qualifications for Designation as Family Mediator" i. <a href="http://www.mtmediation.org/docs/Family%20Ethics%20and%20Quals.pdf">http://www.mtmediation.org/docs/Family%20Ethics%20and%20Quals.pdf</a>
Nebraska	Adopted: Neb. Ct. R., Ch. 3; Rules of Prof. Conduct Art. 5, R. 2.3 (§ 3-502.3)	1.) Neb. Rev. Stat. Ann. § 25-2913: "Mediators, Qualifications, Compensation, Powers, and Duties" 2.) Neb. Rev. Stat. Ann. § 25-2930: "Uniform Mediation Act"	1.) Nebraska Office of Dispute Resolution Manual on Standards and Ethics a. <a href="http://www.supremecourt.ne.gov/mediation/pdf/Standards-Ethics-Manual-June-2001-version.pdf">http://www.supremecourt.ne.gov/mediation/pdf/Standards-Ethics-Manual-June-2001-version.pdf</a>
Nevada	Adopted: Nevada Rules of Prof. Conduct, R. 2.4	1.) Nev. Rev. Stat. ADR Mediation Rules: "Nevada Mediation Rules" 2.) Rules of Practice for the Eighth Judicial District of Nevada, "R. 5.70: Mandatory Mediation Program" a. Adopts ABA Model Standards of Conduct for Mediators 1994	

State	Rule 2.4 of Model Rules of Professional Conduct?	Ethical Codes or Rules that Govern Mediation within the State	Private Mediation Organizations within the State & the Ethical Standards Promulgated if Applicable
New Hampshire	Adopted: New Hampshire Rules of Prof. Conduct, R. 2.4	1.) N.H. Rev. Stat. § 328-C Rules for Marital Mediators 2.) Standards of Conduct for New York State Community Mediators a. <a href="http://www.newhampshiremediationlawyers.com/news.cfm/Article/65826/Media-Stards-of-Conduct-Ethics.html">http://www.newhampshiremediationlawyers.com/news.cfm/Article/65826/Media-Stards-of-Conduct-Ethics.html</a> 3.) Sp. Ct. Rule 170 a. <a href="http://www.courts.state.nh.us/rules/sror/sror-h3-170.htm">www.courts.state.nh.us/rules/sror/sror-h3-170.htm</a>	1.) New Hampshire Conflict Resolution Association a. <a href="http://www.nhcra.org">http://www.nhcra.org</a>
New Jersey	Adopted: New Jersey Rules of Prof. Conduct, R. 2.4	1.) N.J. Sup. Ct., Standards of Conduct for Mediators in Court-Connected Programs a. <a href="http://www.judiciary.state.nj.us/notices/n000216a.htm">http://www.judiciary.state.nj.us/notices/n000216a.htm</a>	1.) N.J. Association for Prof. Mediators Standards of Conduct for Mediators a. <a href="http://www.niapm.org/pg/about_niapm/StandardsofConduct.pdf">http://www.niapm.org/pg/about_niapm/StandardsofConduct.pdf</a>
New Mexico	Adopted: New Mexico Rules of Prof. Conduct, R. 2.4	1.) NM ST 44-7b: "Mediation Procedures Act"	1.) New Mexico Mediation Association a. "Code of Ethical Conduct" i. <a href="http://www.cio.state.nm.us/content/guidelinesStds/archive/adr/NMMACodeofEthics.pdf">http://www.cio.state.nm.us/content/guidelinesStds/archive/adr/NMMACodeofEthics.pdf</a> b. "Mediation Ethics and Standards of Practice" i. <a href="http://www.nmma.info/images/EthicsandStandards.pdf">http://www.nmma.info/images/EthicsandStandards.pdf</a>
New York	Adopted: New York Rules of Prof. Conduct, including R. 2.4, become effective April 1, 2009.	1.) Standards of Conduct for New York State Community Dispute Resolution Center Mediators a. <a href="http://www.courts.state.ny.us/ip/adr/Publications/info_for_Programs/Standards_of_Conduct_CDRC_Mediators.pdf">http://www.courts.state.ny.us/ip/adr/Publications/info_for_Programs/Standards_of_Conduct_CDRC_Mediators.pdf</a> 2.) Local Bankruptcy Rules, App. 2, 4.4	
North Carolina	Adopted: North Carolina Rules of Prof. Conduct, R. 2.4	1.) N.C. Sup. Ct., Standards of Professional Conduct for Mediators a. <a href="http://www.nccourts.org/Courts/CRS/Councils/DRC/Documents/standardsofconduct.pdf">www.nccourts.org/Courts/CRS/Councils/DRC/Documents/standardsofconduct.pdf</a>	

State	Rule 2.4 of Model Rules of Professional Conduct?	Ethical Codes or Rules that Govern Mediation within the State	Private Mediation Organizations within the State & the Ethical Standards Promulgated if Applicable
North Dakota	Adopted: ND Court Rules of Prof. Conduct, R. 2.3	1.) N.D.R.Ct. Rule 8.8: "Alternative Dispute Resolution" 2.) N.D.R.Ct.; Rule 8.9: "Roster of Alternative Dispute Resolution Neutrals"	1.) Alternative Dispute Resolution: a. <a href="https://www.ncsconline.org/wc/Publications/adr/ADR_Detail.asp?Locale_ID=2070">https://www.ncsconline.org/wc/Publications/adr/ADR_Detail.asp?Locale_ID=2070</a>
Ohio	Adopted: Ohio Rules of Prof. Conduct, R. 2.4	1.) Ohio Revised Code Sections 2710.01-2710.10: "Uniform Mediation Act" 2.) Rule 16 Rules of Superintendence for Ohio Courts a. <a href="http://www.sconet.state.oh.us/dispute_resolution/FAQ/default.asp">http://www.sconet.state.oh.us/dispute_resolution/FAQ/default.asp</a>	1.) Ohio Commission on dispute resolution & conflict management a. <a href="http://www.disputeresolution.ohio.gov/index.htm">http://www.disputeresolution.ohio.gov/index.htm</a>
Oklahoma	Adopted: O.S.A.; T.5, Ch. 1, App. 3-A Rules of Prof. Conduct, R. 2.4	1.) 12 O.S.A., Ch. 37, Appendix A: "Code of Prof. Conduct for Mediators" 2.) 12 O.S.A., Ch. 37: "Dispute Resolution Act"	1.) Oklahoma Academy of Mediators and Arbitrators
Oregon	Adopted: Oregon Prof. Rules of Conduct, R. 2.4	1.) O.R.S. §1.4: Court-Connected Mediator Qualifications Rules, General Rules for all Court Connected Mediators: "Mediator Ethics" 2.) O.R.S. § 36.220: "Confidentiality of Mediation Communication and Agreements" 3.) O.R.S. §107.785: Mediation Proceedings Private; Confidentiality of Communications; Records Closed 4.) Oregon Uniform Trial Court Rule § 12.530	1.) Oregon Mediation Association: <a href="http://www.omediate.org">http://www.omediate.org</a> i. "Core Standards of Mediation Practice" 1. <a href="http://www.omediate.org/pg61.cfm">http://www.omediate.org/pg61.cfm</a> 2.) Oregon Dispute Resolution Commission
Pennsylvania	Adopted: Pennsylvania Rules of Prof. Conduct, R. 2.4		1.) Pennsylvania Council of Mediators: <a href="http://pamediation.org/index.html">http://pamediation.org/index.html</a> a. "Ethics and Standards of Conduct" i. <a href="http://pamediation.org/ethics.html">http://pamediation.org/ethics.html</a>
Rhode Island	Adopted: Rhode Island Rules of Prof. Conduct, R. 2.4	1.) R.I. Gen.Laws § 9-198-44 (a) (2001)	
South Carolina	Adopted: South Carolina Rules of Prof. Conduct, R. 2.4	1.) S.C. Jud. Dept., Standards of Conduct for Mediators, Rule 16, app. B a. <a href="http://www.judicial.state.sc.us/courtReg/">http://www.judicial.state.sc.us/courtReg/</a>	

State	Rule 2.4 of Model Rules of Professional Conduct?	Ethical Codes or Rules that Govern Mediation within the State	Private Mediation Organizations within the State & the Ethical Standards Promulgated if Applicable
South Dakota	Adopted: SDCL Rules of Prof. Conduct, R. 2.4	<p><a href="#">arbmedb.html</a></p> <p>3.) SDCL § 19-13A: "Uniform Mediation Act"</p> <p>4.) SDCL § 25-4-58.2: "Conduct of Family Court Mediators"</p>	
Tennessee	Not Adopted: But similar ADR rule in Tennessee Rules of Prof. Conduct, R. 2.4	<p>1.) Tenn. Sup. Ct., Tenn. Sup. Ct. Rule 31 Appendix A, Standards of Professional Conduct for Rule 31: "Neutrals"</p> <p>a. <a href="http://www.tsc.state.tn.us/opinions/tsc/rules/TNrulesofcourt/06supct25_end.htm#31">http://www.tsc.state.tn.us/opinions/tsc/rules/TNrulesofcourt/06supct25_end.htm#31</a></p>	<p>1.) Tennessee Association of Professional Mediators</p> <p>a. <a href="http://www.tennmediators.org/index.cfm">http://www.tennmediators.org/index.cfm</a></p>
Texas	Not Adopted	<p>1.) V.T.C.A. Civil Practice &amp; Remedies Code § 154.053: "Standards and Duties of Impartial Third Parties"</p> <p>2.) V.T.C.A., Govt. Code T. 2, Subt. G App. A, Art. 10, § 9, Rule 1.07: "Conflict of Interest, Intermediary"</p>	<p>1.) Texas Association of Mediators: <a href="http://www.txmediator.org">http://www.txmediator.org</a></p> <p>a. "Standards of Practice"</p> <p>i. <a href="http://www.txmediator.org/standards.htm">http://www.txmediator.org/standards.htm</a></p> <p>b. "Ethical Guidelines for Mediators"</p> <p>i. <a href="http://www.txmediator.org/ethics.htm">http://www.txmediator.org/ethics.htm</a></p> <p>2.) State Bar of Texas Alternative Resolution Dispute Section</p> <p>a. <a href="http://www.texasbar.com/Content/ContentGroups/Publication/1/Legal_Resources_Consumer_Information/Legal_and_Judicial_System1/DisputeResolution.pdf">http://www.texasbar.com/Content/ContentGroups/Publication/1/Legal_Resources_Consumer_Information/Legal_and_Judicial_System1/DisputeResolution.pdf</a></p> <p>3.) "State Bar Ethical Guidelines for Mediators"</p> <p>a. <a href="http://www.texasbar.com/Content/ContentGroups/Publications3/Journal/20051/October4/Mediation%20order%200ct05.pdf">http://www.texasbar.com/Content/ContentGroups/Publications3/Journal/20051/October4/Mediation%20order%200ct05.pdf</a></p> <p>4.) Texas Mediator Credentialing Association: "Standards of Practice and Code of Ethics"</p> <p>a. <a href="http://www.txmca.org/ethics.htm">http://www.txmca.org/ethics.htm</a></p>
Utah	Adopted: UT Sup.Ct. R. of Prof. Practice, Ch. 13 Rules of Prof. Conduct, R. 2.4	<p>1.) UT ST § 78B-10: "Utah Uniform Mediation Act"</p> <p>2.) Rule of Court-Annexed ADR, Rule 104: "Code of Ethics for ADR Providers"</p> <p>a. <a href="http://www.utcourts.gov/resources/rules/approved/2008/11/ADR104.pdf">http://www.utcourts.gov/resources/rules/approved/2008/11/ADR104.pdf</a></p>	<p>1.) Utah Association of Family Mediators</p>
Vermont	Not Adopted	<p>1.) Vt. Stat. Ann. Tit. 3, § 925</p>	<p>1.) Vermont Mediators Association</p>

State	Rule 2.4 of Model Rules of Professional Conduct?	Ethical Codes or Rules that Govern Mediation within the State	Private Mediation Organizations within the State & the Ethical Standards Promulgated if Applicable
Virginia	Not Adopted: but similar rules adopted as Virginia Rules of Prof. Conduct, R. 2.10 and 2.11	<p>1.) Standards of Ethics and Professional Responsibility for Certified Mediators</p> <p>a. <a href="http://www.courts.state.va.us/soe/soe.htm">http://www.courts.state.va.us/soe/soe.htm</a></p>	<p>a. <a href="http://vtmediators.org">http://vtmediators.org</a></p>
Washington	Adopted: Rules of Prof. Conduct, R. 2.4	<p>1.) Revised Code of Washington: § 7.07 "Uniform Mediation Act"</p>	<p>1.) Washington Mediation Association: <a href="http://www.washingtonmediation.org">http://www.washingtonmediation.org</a></p> <p>a. "Standards of Practice for Mediators"</p> <p>i. <a href="http://www.washingtonmediation.org/ethics.html">http://www.washingtonmediation.org/ethics.html</a></p>
West Virginia	Not Adopted	<p>1.) Ethical Guidelines For Lawyer-Mediators in West Virginia</p> <p>a. <a href="http://www.wvbar.org/BARINFO/lawyer/june1998/ethical.pdf">http://www.wvbar.org/BARINFO/lawyer/june1998/ethical.pdf</a></p> <p>2.) WV. R. Fam. Ct. Rule 42</p>	
Wisconsin	Adopted: Wis. Sup. Ct. R., Ch. 20, Rules of Prof. Conduct, R. 2.4	<p>1.) W.S.A. §802.12: "Alternative Dispute Resolution"</p>	<p>1.) Wisconsin Association of Mediators: <a href="http://www.wamediators.org">http://www.wamediators.org</a></p> <p>a. "Ethical Guidelines for the Practice of Mediation"</p> <p><a href="http://www.wamediators.org/pubs/ethicalguidelines.html">http://www.wamediators.org/pubs/ethicalguidelines.html</a></p>
Wyoming	Adopted: Wyoming Rules, Rules of Prof. Conduct, R. 2.4	<p>1.) W.S. 1-43-104 Mediation: "Immunity"</p> <p>2.) Wyoming Rules, Rules of Prof. Conduct, R. 2.2 "Intermediary"</p> <p>3.) W.S. 11-41-105 Agriculture Mediation Service: "Selection of Mediators; Duties; Compensation; Immunity"</p>	<p>1.) Wyoming Coalition for Conflict Resolution</p>
National			<p>1.) Standards of Practice for Family and Divorce Mediation</p> <p>a. <a href="http://www.mediate.com/articles/afcsstds.cfm">http://www.mediate.com/articles/afcsstds.cfm</a></p> <p>2.) American Association of Attorney-Mediators</p> <p>a. <a href="http://www.attorney-mediators.org/ethics.html">http://www.attorney-mediators.org/ethics.html</a></p>

## Standards of Practice

### Model Standards of Practice for Family and Divorce Mediation

Developed by

### The Symposium on Standards of Practice

August 2000

#### Reporter's Foreword

The *Model Standards of Practice for Family and Divorce Mediation* ("Model Standards") are the family mediation community's definition of the role of mediation in the dispute resolution system in the twenty-first century. They are the latest milestone in a nearly twenty year old effort by the family mediation community to create standards of practice that will increase public confidence in an evolving profession and provide guidance for its practitioners. The *Model Standards* are the product of an effort by prominent mediation-interested organizations and individuals to create a unified set of standards that will replace existing ones. They draw on existing codes of conduct for mediators and take into account issues and problems that have been identified in divorce and family mediation practice.

Between 1982 and 1984 AFCC convened three national symposia on divorce mediation standards. Over forty individuals from thirty organizations attended to explore issues of certification, licensure and standards of practice. Drafts were distributed to over one hundred thirty individuals and organizations for comment and review. The result of the efforts was the *1984 Model Standards of Practice for Family and Divorce Mediation* ("1984 Model Standards") which have served as a resource document for state and national mediation organizations.

In tandem with the process convened by AFCC, the American Bar Association's Family Law Section drafted *Standards of Practice for Lawyer Mediators in Family Law Disputes* (1984) ("1984 ABA Standards"). The *1984 ABA Standards* were primarily developed for lawyers who wished to be mediators, a role at that time some thought inconsistent with governing standards of professional responsibility for lawyers. The *1984 ABA Standards* helped define how lawyers could serve as family mediators and still stay within the ethical guidelines of the profession. Several members of the Committee worked on the *1984 Model Standards*, particularly Jay Folberg and Tom Bishop, participated in the drafting of the *1984 ABA Standards*. As a result the *1984 ABA Standards* were basically compatible with the *1984 Model Standards*.

Following promulgation of the *1984 Model Standards* and *1984 ABA Standards* interest in mediation in all fields, and family mediation in particular, burgeoned. Interested organizations promulgated their own standards of practice. The Academy of Family Mediators, for example, promulgated its own standards of conduct based on the *1984 Model Standards*. Several states and courts have also set standards. See, e.g., Florida Rules for Certified and Court-Appointed Mediators (October, 1995); Iowa Supreme Court, Rules Governing Standards of Practice for Lawyer-Mediators in Family Disputes (1986).

Other efforts were made by concerned organizations to establish standards of practice for mediation generally. For example, a joint Task Force of the American Arbitration Association, American Bar Association and the Society of Professionals in Dispute Resolution (SPIDR) published *Model Standards of Conduct for Mediators* in 1995.

In 1996, the Family Law Section of the American Bar Association came to the conclusion that interest in and knowledge about family mediation had expanded dramatically since the *1984 ABA Standards* were promulgated and a fresh look at that effort was required. It created a Task Force on Standards of Practice for Divorce Mediation (later renamed the Committee on Mediation) ("ABA Committee") to review the *1984 ABA Standards* and make recommendations for changes and amendments. The ABA Committee was chaired by Nancy Palmer and Phyllis Campion. Professor Andrew Schepard of Hofstra Law School was asked to serve as the Committee's Reporter. The project was conceived of as a collaboration with other interested groups; membership of the ABA Committee included non-lawyer mediators and liaisons from AFCC, AFM and SPIDR.

After intensive review and study, the ABA Committee concluded that while the *1984 ABA Standards* were a major step forward in the development of divorce and family mediation they were in need of significant revision.

First, the *1984 ABA Standards* did not address many critical issues in mediation practice that have been identified since they were initially promulgated. They did not deal with domestic violence and child abuse. The *1984 ABA Standards* also did not address the mediator's role in helping parents define the best interests of their children in their post-divorce parenting arrangements. They made no mention of the need for special expertise and training in mediation

or family violence.

Second, the 1984 ABA Standards were inconsistent with other guidelines for the conduct of mediation subsequently promulgated. The ABA Committee believed that uniformity of mediation standards among interested groups is highly desirable to provide clear guidance for family mediators and for the public. Uniformity and clarity could not be provided within the framework of the 1984 ABA Standards. The ABA Committee therefore decided to replace the 1984 ABA Standards with a new document.

The ABA Committee, including representatives from AFCC, AFM and SPIDR, therefore, created a new draft of standards of practice for family mediation specially applicable to lawyers who sought to involve themselves in that process. The Committee set several goals for the revised standards. First, the ABA Committee sought to insure that its revised standards were state of the art, addressing important developments in family mediation practice since the adoption of the 1984 ABA Standards and 1984 Model Standards. Second, the ABA Committee sought to insure that its recommended standards were consistent, as far as is possible, with other standards of practice for divorce and family mediation.

To meet these goals, the ABA Committee examined all available standards of practice, conducted research, and consulted with a number of experts on family and divorce mediation. It particularly focused on consultations with experts in domestic violence and child abuse about the appropriate role for mediation when family situations involved violence or the allegations thereof.

The Council of the ABA's Family Law Section reviewed the ABA Committee's first draft effort in November of 1997. It concluded that other interested mediation organizations should be included in the process of drafting revised standards of practice for family mediation.

Other mediation organizations also recognized that their current standards of practice for family mediation also needed review in light of developments in mediation practice since they were promulgated. In 1998, AFCC offered to re-convene the Model Standards Symposium using the draft Standards of Practice created by the ABA Committee as a beginning point of discussion. The Family Law Section of the American Bar Association and the National Council of Dispute Resolution Organizations (an umbrella organization which includes the Academy of Family Mediators, the American Bar Association Section of Dispute Resolution, AFCC, Conflict Resolution Education Network, the National Association for Community Mediation, the National Conference on Peacemaking and Conflict Resolution, and the Society of Professionals in Dispute Resolution) joined AFCC in co-convening the Model Standards Symposium.

In October, 1998 the Model Standards Symposium convened in Orlando to review the draft standards created by the ABA Committee. Representatives of over twenty family mediation organizations reviewed the ABA draft line by line during a full day session facilitated by Tom Fee. A first Draft of revised *Model Standards* for all family mediators regardless of profession of origin resulted.

The Symposium met again on February 26, 2000 in New Orleans. At that time it reviewed proposals for changes in the *Draft Standards* which were published in the January 2000 issue of the *Family and Conciliation Courts Review* and posted on the Web sites of AFCC, the ABA Family Law Section, and the ABA Dispute Resolution Section. In addition, before the February 2000 Meeting, the *Draft Standards* were mailed to over ninety (90) local and national mediation interested groups. All of these publications included requests for comments with proposals for specific language changes in the *Draft Standards*. In response, the Symposium received comments and over eighty (80) proposals for changes in the *Draft Model Standards* from numerous groups and individuals that make up the diverse membership of the family mediation community.

All of the comments and suggestions for change were made in a constructive spirit. Commentators generally supported the effort to develop *Model Standards* and expressed appreciation to the Symposium for its work.

Attendees at the February 2000 Meeting included approximately twenty-five family mediators from across the nation with years of experience in the field. Participants included leaders in national or local family mediation or dispute resolution organizations. In addition, the American Bar Association's Commission on Domestic Violence participated as an expert consultant at the February meeting.

Tom Fee again served as the facilitator for the February 2000 Meeting. The structure of the Meeting was guided by a steering committee comprised of representatives of the convening organizations. The Symposium participants were divided into three work groups, each assigned to analyze and comment on a specific number of proposed Standards. The work groups each appointed a reporter, and the whole group reconvened towards the end of the day to process the changes the work groups recommended and to see how they related to the *Draft Standards* as a whole.

Discussion was again lively and well-informed; in effect, the February 2000 Meeting was a continuation of a seminar of accomplished professionals and organizational leaders on the future of family and divorce mediation. Mediators of different professions of origin, background and orientation engaged in a discussion which bridged gaps between

different perspectives. Great progress was made in developing a final set of *Model Standards* that each participating organization would be encouraged to discuss and adopt for its own purposes.

The Symposium did not finish its work at the February 2000 Meeting, a not surprising outcome given the complexity and richness of the discussion. The participants agreed that the Reporter for the Symposium, in conjunction with the Reporters for each workgroup, would collate the changes in the *Draft Standards* that had been agreed to and identify the unresolved issues. A revised Draft of the *Standards* in that format was sent to over ninety (90) interested organizations.

The Symposium completed its work at a subsequent meeting in Chicago on August 5, 2000 which followed the same organizational model as the February 2000 meeting. Tom Fee again facilitated. Eighteen (18) experienced family mediators from around the nation again participated in lively full day discussions which reviewed the Draft *Model Standards* line by line.

The *Model Standards* that follow are thus the result of extensive and thoughtful deliberation by the family mediation community with wide input from a variety of voices. Nonetheless, they should not be thought of as a final product but more like a panoramic snapshot of what is important to the family mediation community at the beginning of the new Millennium. The Symposium hopes the *Model Standards* will provide a framework for a continuous dialogue to define and refine our emerging profession. The Symposium organizers hope that the family mediation organizations, the bench and the bar and the public will use the *Model Standards* as a starting point for discussion and debate. That continuing process should result in identification of new areas of concern that additional Standards should address and proposals for revision of existing *Standards*.

On a personal level, I have never worked with better people than those who made up the Symposium. Special thanks go to the wonderful people who made this task a continuing seminar in the underlying values of family mediation and how to reach consensus among thoughtful, decent citizens of their communities. The participants in the Symposium demonstrated a cooperative, inquisitive spirit that made the Reporter's work a pleasure.

*Professor Andrew Shepard*

*Hofstra University School of Law*

*Hempstead, New York*

*August, 2000*

**The Symposium on Model Standards of Practice for Family and Divorce Mediation**

**Note:** Organizational affiliations are listed for identification only. Symposium members who represented organizations listed below functioned as liaisons. Their participation does not indicate organizational endorsement of the *Model Standards*.

**Convening Organizations:**

The Association of Family and Conciliation Courts

The Family Law Section of the American Bar Association

National Council of Dispute Resolution Organizations (NCDRO)

which includes:

The Academy of Family Mediators

The American Bar Association Section of Dispute Resolution

The Association of Family and Conciliation Courts

Conflict Resolution Education Network

The National Association for Community Mediation

The National Conference on Peacemaking and Conflict Resolution

The Society of Professionals in Dispute Resolution

**Model Standards Steering Committee**

Phil Bushard, Association of Family and Conciliation Courts (1999-2000)

Christie Coates, Association of Family and Conciliation Courts (1998-2000)

Tom Fee, Facilitator, The Agreement Zone (1998-2000)

Jack Hanna, NCDRO Secretariat and American Bar Association Dispute Resolution Section (1999-2000)

Ann Milne, Association of Family and Conciliation Courts (1998-2000)

Tim Walker, American Bar Association Family Law Section (1998-2000)

Sally Pope, NCDRO Secretariat and Academy of Family Mediators (1998-1999)

Eileen Pruett, Association of Family and Conciliation Courts (1999-2000) and Supreme Court of Ohio, Office of Dispute Resolution Programs

Andrew Schepard, Reporter, Hofstra University School of Law (1998-2000)

Model Standards Symposium Participants	Organization Delegate
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Family and Divorce Mediation Council of New York	Eli Uncyk (New Orleans)
Florida Association of Professional Family Mediators	Nancy Blanton (New Orleans) Richard Doelker (New Orleans)
Florida Dispute Resolution Center	Sharon Press (Orlando, New Orleans, Chicago)
Hofstra University School of Law	Andrew Schepard, Reporter (Orlando, New Orleans, Chicago)
Indiana Association of Mediators, Inc	Patrick Brown (Orlando) Beth Kerns (Orlando)
Mediation Association of Northwest Ohio	Richard Altman (Orlando, New Orleans, Chicago)
Mediation Association of Tennessee	Jan Walden (Orlando)
Mediation Council of Illinois	Jerald Kessler (Orlando, Chicago)
Montgomery County Mediation Center	Winnie Backlund (Orlando, Chicago)
National Association for Community Mediation	Carolee Robertson (Chicago)
National Conference on Peacemaking and Conflict Resolution	S. Y. Bowland (New Orleans, Chicago)
New York State Council on Divorce Mediation	Steven Abel (Orlando) Glenn Dornfeld (New Orleans)
New York State Dispute Resolution Association	Rosalyn Magidson (New Orleans, Chicago)
Pennsylvania Council of Mediators	Winnie Backlund (Orlando, Chicago) Grace Byler (New Orleans, Chicago)
Tennessee Superior Court, ADR Commission	Ann Barker (Orlando, New Orleans)
State Bar of Wisconsin, Alternative Dispute Resolution Section	Larry Kahn (Chicago)
Society for Professionals in Dispute Resolution	Sharon Press (Orlando, New Orleans, Chicago)
Supreme Court of Ohio Dispute Resolution Program	C. Eileen Pruett (Orlando, New Orleans, Chicago)
The Agreement Zone	Tom Fee, Facilitator (Orlando, New Orleans, Chicago)
Wisconsin Association of Mediators	Larry Kahn (Chicago)

**Additional Organizations Providing Written Commentary**

Association of Broward County Mediators, by Amy Kirschner Hyman

Mediation Services and ADR Referrals, Seventh Judicial Circuit of Maryland, by Ramona Buck

Office of Dispute Resolution, Colorado Judicial Branch, by Robert Smith

Family and Divorce Mediation Council of Greater New York, by June Jacobson

***Model Standards of Practice for Family and Divorce Mediation***

**Overview and Definitions**

Family and divorce mediation ("family mediation" or "mediation") is a process in which a mediator, an impartial third party, facilitates the resolution of family disputes by promoting the participants' voluntary agreement. The family mediator assists communication, encourages understanding and focuses the participants on their individual and common interests. The family mediator works with the participants to explore options, make decisions and reach their

own agreements.

Family mediation is not a substitute for the need for family members to obtain independent legal advice or counseling or therapy. Nor is it appropriate for all families. However, experience has established that family mediation is a valuable option for many families because it can:

1. increase the self-determination of participants and their ability to communicate;
2. promote the best interests of children; and
3. reduce the economic and emotional costs associated with the resolution of family disputes.

Effective mediation requires that the family mediator be qualified by training, experience

and temperament; that the mediator be impartial; that the participants reach their decisions voluntarily; that their decisions be based on sufficient factual data; that the mediator be aware of the impact of culture and diversity; and that the best interests of children be taken into account. Further, the mediator should also be prepared to identify families whose history includes domestic abuse or child abuse.

These *Model Standards of Practice for Family and Divorce Mediation* ("Model Standards") aim to perform three major functions:

1. to serve as a guide for the conduct of family mediators;
2. to inform the mediating participants of what they can expect; and
3. to promote public confidence in mediation as a process for resolving family disputes.

The *Model Standards* are aspirational in character. They describe good practices for family mediators. They are not intended to create legal rules or standards of liability.

The *Model Standards* include different levels of guidance:

1. Use of the term "may" in a *Standard* is the lowest strength of guidance and indicates a practice that the family mediator should consider adopting but which can be deviated from in the exercise of good professional judgment.
2. Most of the *Standards* employ the term "should" which indicates that the practice described in the *Standard* is highly desirable and should be departed from only with very strong reason.
3. The rarer use of the term "shall" in a *Standard* is a higher level of guidance to the family mediator, indicating that the mediator should not have discretion to depart from the practice described.

#### **Standard I**

*A family mediator shall recognize that mediation is based on the principle of self-determination by the participants.*

- A. Self-determination is the fundamental principle of family mediation. The mediation process relies upon the ability of participants to make their own voluntary and informed decisions.
- B. The primary role of a family mediator is to assist the participants to gain a better understanding of their own needs and interests and the needs and interests of others and to facilitate agreement among the participants.
- C. A family mediator should inform the participants that they may seek information and advice from a variety of sources during the mediation process.
- D. A family mediator shall inform the participants that they may withdraw from family mediation at any time and are not required to reach an agreement in mediation.
- E. The family mediator's commitment shall be to the participants and the process. Pressure from outside of the mediation process shall never influence the mediator to coerce participants to settle.

#### **Standard II**

*A family mediator shall be qualified by education and training to undertake the mediation.*

- A. To perform the family mediator's role, a mediator should:
  1. have knowledge of family law;
  2. have knowledge of and training in the impact of family conflict on parents, children and other participants, including knowledge of child development, domestic abuse and child abuse and

- neglect;
3. have education and training specific to the process of mediation;
  4. be able to recognize the impact of culture and diversity.

B. Family mediators should provide information to the participants about the mediator's relevant training, education and expertise.

### Standard III

*A family mediator shall facilitate the participants' understanding of what mediation is and assess their capacity to mediate before the participants reach an agreement to mediate.*

- A. Before family mediation begins a mediator should provide the participants with an overview of the process and its purposes, including:
  1. informing the participants that reaching an agreement in family mediation is consensual in nature, that a mediator is an impartial facilitator, and that a mediator may not impose or force any settlement on the parties;
  2. distinguishing family mediation from other processes designed to address family issues and disputes;
  3. informing the participants that any agreements reached will be reviewed by the court when court approval is required;
  4. informing the participants that they may obtain independent advice from attorneys, counsel, advocates, accountants, therapists or other professionals during the mediation process;
  5. advising the participants, in appropriate cases, that they can seek the advice of religious figures, elders or other significant persons in their community whose opinions they value;
  6. discussing, if applicable, the issue of separate sessions with the participants, a description of the circumstances in which the mediator may meet alone with any of the participants, or with any third party and the conditions of confidentiality concerning these separate sessions;
  7. informing the participants that the presence or absence of other persons at a mediation, including attorneys, counselors or advocates, depends on the agreement of the participants and the mediator, unless a statute or regulation otherwise requires or the mediator believes that the presence of another person is required or may be beneficial because of a history or threat of violence or other serious coercive activity by a participant.
  8. describing the obligations of the mediator to maintain the confidentiality of the mediation process and its results as well as any exceptions to confidentiality;
  9. advising the participants of the circumstances under which the mediator may suspend or terminate the mediation process and that a participant has a right to suspend or terminate mediation at any time.
- B. The participants should sign a written agreement to mediate their dispute and the terms and conditions thereof within a reasonable time after first consulting the family mediator.
- C. The family mediator should be alert to the capacity and willingness of the participants to mediate before proceeding with the mediation and throughout the process. A mediator should not agree to conduct the mediation if the mediator reasonably believes one or more of the participants is unable or unwilling to participate.
- D. Family mediators should not accept a dispute for mediation if they cannot satisfy the expectations of the participants concerning the timing of the process.

### Standard IV

*A family mediator shall conduct the mediation process in an impartial manner. A family mediator shall disclose all actual and potential grounds of bias and conflicts of interest reasonably known to the mediator. The participants shall be free to retain the mediator by an informed, written waiver of the conflict of interest. However, if a bias or conflict of*

*interest clearly impairs a mediator's impartiality, the mediator shall withdraw regardless of the express agreement of the participants.*

- A. Impartiality means freedom from favoritism or bias in word, action or appearance, and includes a commitment to assist all participants as opposed to any one individual.
- B. Conflict of interest means any relationship between the mediator, any participant or the subject matter of the dispute, that compromises or appears to compromise the mediator's impartiality.
- C. A family mediator should not accept a dispute for mediation if the family mediator cannot be impartial.
- D. A family mediator should identify and disclose potential grounds of bias or conflict of interest upon which a mediator's impartiality might reasonably be questioned. Such disclosure should be made prior to the start of a mediation and in time to allow the participants to select an alternate mediator.
- E. A family mediator should resolve all doubts in favor of disclosure. All disclosures should be made as soon as practical after the mediator becomes aware of the bias or potential conflict of interest. The duty to disclose is a continuing duty.
- F. A family mediator should guard against bias or partiality based on the participants' personal characteristics, background or performance at the mediation.
- G. A family mediator should avoid conflicts of interest in recommending the services of other professionals.
- H. A family mediator shall not use information about participants obtained in a mediation for personal gain or advantage.
- I. A family mediator should withdraw pursuant to *Standard IX* if the mediator believes the mediator's impartiality has been compromised or a conflict of interest has been identified and has not been waived by the participants.

#### Standard V

*A family mediator shall fully disclose and explain the basis of any compensation, fees and charges to the participants.*

- A. The participants should be provided with sufficient information about fees at the outset of mediation to determine if they wish to retain the services of the mediator.
- B. The participants' written agreement to mediate their dispute should include a description of their fee arrangement with the mediator.
- C. A mediator should not enter into a fee agreement which is contingent upon the results of the mediation or the amount of the settlement.
- D. A mediator should not accept a fee for referral of a matter to another mediator or to any other person.
- E. Upon termination of mediation a mediator should return any unearned fee to the participants.

#### Standard VI

*A family mediator shall structure the mediation process so that the participants make decisions based on sufficient information and knowledge.*

- A. The mediator should facilitate full and accurate disclosure and the acquisition and development of information during mediation so that the participants can make informed decisions. This may be accomplished by encouraging participants to consult appropriate experts.
- B. Consistent with standards of impartiality and preserving participant self-determination, a mediator may provide the participants with information that the mediator is qualified by training or experience to provide. The mediator shall not provide therapy or legal advice.
- C. The mediator should recommend that the participants obtain independent legal representation before concluding an agreement.
- D. If the participants so desire, the mediator should allow attorneys, counsel or advocates for the participants to be present at the mediation sessions.
- E. With the agreement of the participants, the mediator may document the participants' resolution of their dispute. The mediator should inform the participants that any agreement should be reviewed by an independent attorney before it is signed.

#### Standard VII

*A family 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.*

- A. 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.
- B. Prior to undertaking the mediation the mediator should inform the participants of the limitations of confidentiality such as statutory, judicially or ethically mandated reporting.

- C. The mediator shall disclose a participant's threat of suicide or violence against any person to the threatened person and the appropriate authorities if the mediator believes such threat is likely to be acted upon as permitted by law.
- D. 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.
- E. If subpoenaed or otherwise noticed to testify or to produce documents the mediator should inform the participants immediately. The mediator should not testify or provide documents in response to a subpoena without an order of the court if the mediator reasonably believes doing so would violate an obligation of confidentiality to the participants.

**Standard VIII**

*A family mediator shall assist participants in determining how to promote the best interests of children.*

- A. The mediator should encourage the participants to explore the range of options available for separation or post divorce parenting arrangements and their respective costs and benefits. Referral to a specialist in child development may be appropriate for these purposes. The topics for discussion may include, among others:
  - 1. information about community resources and programs that can help the participants and their children cope with the consequences of family reorganization and family violence;
  - 2. problems that continuing conflict creates for children's development and what steps might be taken to ameliorate the effects of conflict on the children;
  - 3. development of a parenting plan that covers the children's physical residence and decision-making responsibilities for the children, with appropriate levels of detail as agreed to by the participants;
  - 4. the possible need to revise parenting plans as the developmental needs of the children evolve over time; and
  - 5. encouragement to the participants to develop appropriate dispute resolution mechanisms to facilitate future revisions of the parenting plan
- B. The mediator should be sensitive to the impact of culture and religion on parenting philosophy and other decisions.
- C. The mediator shall inform any court-appointed representative for the children of the mediation. If a representative for the children participates, the mediator should, at the outset, discuss the effect of that participation on the mediation process and the confidentiality of the mediation with the participants. Whether the representative of the children participates or not, the mediator shall provide the representative with the resulting agreements insofar as they relate to the children.
- D. Except in extraordinary circumstances, the children should not participate in the mediation process without the consent of both parents and the children's court-appointed representative.
- E. Prior to including the children in the mediation process, the mediator should consult with the parents and the children's court-appointed representative about whether the children should participate in the mediation process and the form of that participation.
- F. The mediator should inform all concerned about the available options for the children's participation (which may include personal participation, an interview with a mental health professional, or the mediator reporting to the parents, or a videotape statement) and discuss the costs and benefits of each with the participants.

**Standard IX**

*A family mediator shall recognize a family situation involving child abuse or neglect and take appropriate steps to shape the mediation process accordingly.*

- A. As used in these Standards, child abuse or neglect is defined by applicable state law.
- B. A mediator shall not undertake a mediation in which the family situation has been assessed to involve child abuse or neglect without appropriate and adequate training.
- C. If the mediator has reasonable grounds to believe that a child of the participants is abused or neglected within the meaning of the jurisdiction's child abuse and neglect laws, the mediator shall comply with applicable child protection laws.

1. The mediator should encourage the participants to explore appropriate services for the family.
2. The mediator should consider the appropriateness of suspending or terminating the mediation process in light of the allegations.

#### **Standard X**

*A family mediator shall recognize a family situation involving domestic abuse and take appropriate steps to shape the mediation process accordingly..*

- A. As used in these Standards, domestic abuse includes domestic violence as defined by applicable state law and issues of control and intimidation.
- B. A mediator shall not undertake a mediation in which the family situation has been assessed to involve domestic abuse without appropriate and adequate training.
- C. Some cases are not suitable for mediation because of safety, control or intimidation issues. A mediator should make a reasonable effort to screen for the existence of domestic abuse prior to entering into an agreement to mediate. The mediator should continue to assess for domestic abuse throughout the mediation process.
- D. If domestic abuse appears to be present the mediator shall consider taking measures to insure the safety of participants and the mediator including, among others:
  1. establishing appropriate security arrangements;
  2. holding separate sessions with the participants even without the agreement of all participants;
  3. allowing a friend, representative, advocate, counsel or attorney to attend the mediation sessions;
  4. encouraging the participants to be represented by an attorney, counsel or an advocate throughout the mediation process;
  5. referring the participants to appropriate community resources;
  6. suspending or terminating the mediation sessions, with appropriate steps to protect the safety of the participants.
- E. The mediator should facilitate the participants' formulation of parenting plans that protect the physical safety and psychological well-being of themselves and their children.

#### **Standard XI**

*A family mediator shall suspend or terminate the mediation process when the mediator reasonably believes that a participant is unable to effectively participate or for other compelling reasons.*

- A. Circumstances under which a mediator should consider suspending or terminating the mediation, may include, among others:
  1. the safety of a participant or well-being of a child is threatened;
  2. a participant has or is threatening to abduct a child;
  3. a participant is unable to participate due to the influence of drugs, alcohol, or physical or mental condition;
  4. the participants are about to enter into an agreement that the mediator reasonably believes to be unconscionable;
  5. a participant is using the mediation to further illegal conduct;
  6. a participant is using the mediation process to gain an unfair advantage;
  7. if the mediator believes the mediator's impartiality has been compromised in accordance with *Standard IV*.
- B. If the mediator does suspend or terminate the mediation, the mediator should take all reasonable steps to minimize prejudice or inconvenience to the participants which may result.

#### **Standard XII**

*A family mediator shall be truthful in the advertisement and solicitation for mediation.*

- A. Mediators should refrain from promises and guarantees of results. A mediator should not advertise statistical settlement data or settlement rates.
- B. Mediators should accurately represent their qualifications. In an advertisement or other communication, a mediator may make reference to meeting state, national, or private organizational qualifications only if the

entity referred to has a procedure for qualifying mediators and the mediator has been duly granted the requisite status.

**Standard XIII**

*A family mediator shall acquire and maintain professional competence in mediation.*

- A. Mediators should continuously improve their professional skills and abilities by, among other activities, participating in relevant continuing education programs and should regularly engage in self-assessment.
- B. Mediators should participate in programs of peer consultation and should help train and mentor the work of less experienced mediators.
- C. Mediators should continuously strive to understand the impact of culture and diversity on the mediator's practice.

**Appendix: Special Policy Considerations for State Regulation of Family Mediators and Court Affiliated Programs**

The *Model Standards* recognize the *National Standards for Court Connected Dispute Resolution Programs* (1992). There are also state and local regulations governing such programs and family mediators. The following principles of organization and practice, however, are especially important for regulation of mediators and court-connected family mediation programs. They are worthy of separate mention.

- A. Individual states or local courts should set standards and qualifications for family mediators including procedures for evaluations and handling grievances against mediators. In developing these standards and qualifications, regulators should consult with appropriate professional groups, including professional associations of family mediators.
- B. When family mediators are appointed by a court or other institution, the appointing agency should make reasonable efforts to insure that each mediator is qualified for the appointment. If a list of family mediators qualified for court appointment exists, the requirements for being included on the list should be made public and available to all interested persons.
- C. Confidentiality should not be construed to limit or prohibit the effective monitoring, research, evaluation or monitoring of mediation programs by responsible individuals or academic institutions provided that no identifying information about any person involved in the mediation is disclosed without their prior written consent. Under appropriate circumstances, researchers may be permitted to obtain access to statistical data and, with the permission of the participants, to individual case files, observations of live mediations, and interviews with participants.

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**MODEL STANDARDS OF CONDUCT  
FOR MEDIATORS**

**AMERICAN ARBITRATION ASSOCIATION**  
(ADOPTED SEPTEMBER 8, 2005)

**AMERICAN BAR ASSOCIATION**  
(APPROVED BY THE ABA HOUSE OF DELEGATES AUGUST 9, 2005)

**ASSOCIATION FOR CONFLICT RESOLUTION**  
(ADOPTED AUGUST 22, 2005)

**SEPTEMBER 2005**

## **The Model Standards of Conduct for Mediators 2005**

The Model Standards of Conduct for Mediators was prepared in 1994 by the American Arbitration Association, the American Bar Association's Section of Dispute Resolution, and the Association for Conflict Resolution<sup>1</sup>. A joint committee consisting of representatives from the same successor organizations revised the Model Standards in 2005.<sup>2</sup> Both the original 1994 version and the 2005 revision have been approved by each participating organization.<sup>3</sup>

### **Preamble**

Mediation is used to resolve a broad range of conflicts within a variety of settings. These Standards are designed to serve as fundamental ethical guidelines for persons mediating in all practice contexts. They serve three primary goals: to guide the conduct of mediators; to inform the mediating parties; and to promote public confidence in mediation as a process for resolving disputes.

Mediation is a process in which an impartial third party facilitates communication and negotiation and promotes voluntary decision making by the parties to the dispute.

Mediation serves various purposes, including providing the opportunity for parties to define and clarify issues, understand different perspectives, identify interests, explore and assess possible solutions, and reach mutually satisfactory agreements, when desired.

### **Note on Construction**

These Standards are to be read and construed in their entirety. There is no priority significance attached to the sequence in which the Standards appear.

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<sup>1</sup> The Association for Conflict Resolution is a merged organization of the Academy of Family Mediators, the Conflict Resolution Education Network and the Society of Professionals in Dispute Resolution (SPIDR). SPIDR was the third participating organization in the development of the 1994 Standards.

<sup>2</sup> Reporter's Notes, which are not part of these Standards and therefore have not been specifically approved by any of the organizations, provide commentary regarding these revisions.

<sup>3</sup> The 2005 version to the Model Standards were approved by the American Bar Association's House of Delegates on August 9, 2005, the Board of the Association of Conflict Resolution on August 22, 2005 and the Executive Committee of the American Arbitration Association on September 8, 2005.

The use of the term "shall" in a Standard indicates that the mediator must follow the practice described. The use of the term "should" indicates that the practice described in the standard is highly desirable, but not required, and is to be departed from only for very strong reasons and requires careful use of judgment and discretion.

The use of the term "mediator" is understood to be inclusive so that it applies to co-mediator models.

These Standards do not include specific temporal parameters when referencing a mediation, and therefore, do not define the exact beginning or ending of a mediation.

Various aspects of a mediation, including some matters covered by these Standards, may also be affected by applicable law, court rules, regulations, other applicable professional rules, mediation rules to which the parties have agreed and other agreements of the parties. These sources may create conflicts with, and may take precedence over, these Standards. However, a mediator should make every effort to comply with the spirit and intent of these Standards in resolving such conflicts. This effort should include honoring all remaining Standards not in conflict with these other sources.

These Standards, unless and until adopted by a court or other regulatory authority do not have the force of law. Nonetheless, the fact that these Standards have been adopted by the respective sponsoring entities, should alert mediators to the fact that the Standards might be viewed as establishing a standard of care for mediators.

## **STANDARD I. SELF-DETERMINATION**

- A. A mediator shall conduct a mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome. Parties may exercise self-determination at any stage of a mediation, including mediator selection, process design, participation in or withdrawal from the process, and outcomes.
1. Although party self-determination for process design is a fundamental principle of mediation practice, a mediator may need to balance such party self-determination with a mediator's duty to conduct a quality process in accordance with these Standards.
  2. A mediator cannot personally ensure that each party has made free and informed choices to reach particular decisions, but, where

appropriate, a mediator should make the parties aware of the importance of consulting other professionals to help them make informed choices.

- B. A mediator shall not undermine party self-determination by any party for reasons such as higher settlement rates, egos, increased fees, or outside pressures from court personnel, program administrators, provider organizations, the media or others.

## **STANDARD II. IMPARTIALITY**

- A. A mediator shall decline a mediation if the mediator cannot conduct it in an impartial manner. Impartiality means freedom from favoritism, bias or prejudice.
- B. A mediator shall conduct a mediation in an impartial manner and avoid conduct that gives the appearance of partiality.
  - 1. A mediator should not act with partiality or prejudice based on any participant's personal characteristics, background, values and beliefs, or performance at a mediation, or any other reason.
  - 2. A mediator should neither give nor accept a gift, favor, loan or other item of value that raises a question as to the mediator's actual or perceived impartiality.
  - 3. A mediator may accept or give de minimis gifts or incidental items or services that are provided to facilitate a mediation or respect cultural norms so long as such practices do not raise questions as to a mediator's actual or perceived impartiality.
- C. If at any time a mediator is unable to conduct a mediation in an impartial manner, the mediator shall withdraw.

## **STANDARD III. CONFLICTS OF INTEREST**

- A. A mediator shall avoid a conflict of interest or the appearance of a conflict of interest during and after a mediation. A conflict of interest can arise from involvement by a mediator with the subject matter of the dispute or from any relationship between a mediator and any mediation participant, whether past or present, personal or professional, that reasonably raises a question of a mediator's impartiality.

- B. A mediator shall make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for a mediator. A mediator's actions necessary to accomplish a reasonable inquiry into potential conflicts of interest may vary based on practice context.
- C. A mediator shall disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality. After disclosure, if all parties agree, the mediator may proceed with the mediation.
- D. If a mediator learns any fact after accepting a mediation that raises a question with respect to that mediator's service creating a potential or actual conflict of interest, the mediator shall disclose it as quickly as practicable. After disclosure, if all parties agree, the mediator may proceed with the mediation.
- E. If a mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, a mediator shall withdraw from or decline to proceed with the mediation regardless of the expressed desire or agreement of the parties to the contrary.
- F. Subsequent to a mediation, a mediator shall not establish another relationship with any of the participants in any matter that would raise questions about the integrity of the mediation. When a mediator develops personal or professional relationships with parties, other individuals or organizations following a mediation in which they were involved, the mediator should consider factors such as time elapsed following the mediation, the nature of the relationships established, and services offered when determining whether the relationships might create a perceived or actual conflict of interest.

#### **STANDARD IV. COMPETENCE**

- A. A mediator shall mediate only when the mediator has the necessary competence to satisfy the reasonable expectations of the parties.
  - 1. Any person may be selected as a mediator, provided that the parties are satisfied with the mediator's competence and qualifications. Training, experience in mediation, skills, cultural understandings and other qualities are often necessary for mediator

competence. A person who offers to serve as a mediator creates the expectation that the person is competent to mediate effectively.

2. A mediator should attend educational programs and related activities to maintain and enhance the mediator's knowledge and skills related to mediation.
  3. A mediator should have available for the parties' information relevant to the mediator's training, education, experience and approach to conducting a mediation.
- B. If a mediator, during the course of a mediation determines that the mediator cannot conduct the mediation competently, the mediator shall discuss that determination with the parties as soon as is practicable and take appropriate steps to address the situation, including, but not limited to, withdrawing or requesting appropriate assistance.
- C. If a mediator's ability to conduct a mediation is impaired by drugs, alcohol, medication or otherwise, the mediator shall not conduct the mediation.

#### **STANDARD V. CONFIDENTIALITY**

- A. A mediator shall maintain the confidentiality of all information obtained by the mediator in mediation, unless otherwise agreed to by the parties or required by applicable law.
1. If the parties to a mediation agree that the mediator may disclose information obtained during the mediation, the mediator may do so.
  2. A mediator should not communicate to any non-participant information about how the parties acted in the mediation. A mediator may report, if required, whether parties appeared at a scheduled mediation and whether or not the parties reached a resolution.
  3. If a mediator participates in teaching, research or evaluation of mediation, the mediator should protect the anonymity of the parties and abide by their reasonable expectations regarding confidentiality.
- B. A mediator who meets with any persons in private session during a mediation shall not convey directly or indirectly to any other person, any information that was obtained during that private session without the consent of the disclosing person.

- C. A mediator shall promote understanding among the parties of the extent to which the parties will maintain confidentiality of information they obtain in a mediation.
- D. Depending on the circumstance of a mediation, the parties may have varying expectations regarding confidentiality that a mediator should address. The parties may make their own rules with respect to confidentiality, or the accepted practice of an individual mediator or institution may dictate a particular set of expectations.

#### **STANDARD VI. QUALITY OF THE PROCESS**

- A. A mediator shall conduct a mediation in accordance with these Standards and in a manner that promotes diligence, timeliness, safety, presence of the appropriate participants, party participation, procedural fairness, party competency and mutual respect among all participants.
  - 1. A mediator should agree to mediate only when the mediator is prepared to commit the attention essential to an effective mediation.
  - 2. A mediator should only accept cases when the mediator can satisfy the reasonable expectation of the parties concerning the timing of a mediation.
  - 3. The presence or absence of persons at a mediation depends on the agreement of the parties and the mediator. The parties and mediator may agree that others may be excluded from particular sessions or from all sessions.
  - 4. A mediator should promote honesty and candor between and among all participants, and a mediator shall not knowingly misrepresent any material fact or circumstance in the course of a mediation.
  - 5. The role of a mediator differs substantially from other professional roles. Mixing the role of a mediator and the role of another profession is problematic and thus, a mediator should distinguish between the roles. A mediator may provide information that the mediator is qualified by training or experience to provide, only if the mediator can do so consistent with these Standards.

6. A mediator shall not conduct a dispute resolution procedure other than mediation but label it mediation in an effort to gain the protection of rules, statutes, or other governing authorities pertaining to mediation.
  7. A mediator may recommend, when appropriate, that parties consider resolving their dispute through arbitration, counseling, neutral evaluation or other processes.
  8. A mediator shall not undertake an additional dispute resolution role in the same matter without the consent of the parties. Before providing such service, a mediator shall inform the parties of the implications of the change in process and obtain their consent to the change. A mediator who undertakes such role assumes different duties and responsibilities that may be governed by other standards.
  9. If a mediation is being used to further criminal conduct, a mediator should take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.
  10. If a party appears to have difficulty comprehending the process, issues, or settlement options, or difficulty participating in a mediation, the mediator should explore the circumstances and potential accommodations, modifications or adjustments that would make possible the party's capacity to comprehend, participate and exercise self-determination.
- B. If a mediator is made aware of domestic abuse or violence among the parties, the mediator shall take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.
- C. If a mediator believes that participant conduct, including that of the mediator, jeopardizes conducting a mediation consistent with these Standards, a mediator shall take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.

#### **STANDARD VII. ADVERTISING AND SOLICITATION**

- A. A mediator shall be truthful and not misleading when advertising, soliciting or otherwise communicating the mediator's qualifications, experience, services and fees.

1. A mediator should not include any promises as to outcome in communications, including business cards, stationery, or computer-based communications.
  2. A mediator should only claim to meet the mediator qualifications of a governmental entity or private organization if that entity or organization has a recognized procedure for qualifying mediators and it grants such status to the mediator.
- B. A mediator shall not solicit in a manner that gives an appearance of partiality for or against a party or otherwise undermines the integrity of the process.
- C. A mediator shall not communicate to others, in promotional materials or through other forms of communication, the names of persons served without their permission.

#### **STANDARD VIII. FEES AND OTHER CHARGES**

- A. A mediator shall provide each party or each party's representative true and complete information about mediation fees, expenses and any other actual or potential charges that may be incurred in connection with a mediation.
1. If a mediator charges fees, the mediator should develop them in light of all relevant factors, including the type and complexity of the matter, the qualifications of the mediator, the time required and the rates customary for such mediation services.
  2. A mediator's fee arrangement should be in writing unless the parties request otherwise.
- B. A mediator shall not charge fees in a manner that impairs a mediator's impartiality.
1. A mediator should not enter into a fee agreement which is contingent upon the result of the mediation or amount of the settlement.
  2. While a mediator may accept unequal fee payments from the parties, a mediator should not allow such a fee arrangement to adversely impact the mediator's ability to conduct a mediation in an impartial manner.

## **STANDARD IX.    ADVANCEMENT OF MEDIATION PRACTICE**

- A.    A mediator should act in a manner that advances the practice of mediation. A mediator promotes this Standard by engaging in some or all of the following:
1.    Fostering diversity within the field of mediation.
  2.    Striving to make mediation accessible to those who elect to use it, including providing services at a reduced rate or on a pro bono basis as appropriate.
  3.    Participating in research when given the opportunity, including obtaining participant feedback when appropriate.
  4.    Participating in outreach and education efforts to assist the public in developing an improved understanding of, and appreciation for, mediation.
  5.    Assisting newer mediators through training, mentoring and networking.
- B.    A mediator should demonstrate respect for differing points of view within the field, seek to learn from other mediators and work together with other mediators to improve the profession and better serve people in conflict.