

# NOTICE TO THE BAR

## SUPREME COURT OF NEW JERSEY

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### **Re: Standards of Conduct for Mediators in Court-Connected Programs**

The Supreme Court has approved Standards of Conduct for Mediators in Court-Connected Programs. The standards apply to all mediators, whether they are court staff, volunteers, or paid by the parties, when they are acting in state court-connected programs mediating matters in the Municipal Courts, or in the Superior Court. The standards are intended to instill and promote public confidence in the mediation process and to be a guide to mediators in discharging their professional responsibilities.

Chief Justice Deborah T. Poritz has appointed an Advisory Committee on Mediator Standards to assist mediators who seek advice on their interpretation and to monitor complaints about mediators received from attorneys or parties in mediation so as to provide data as to whether a more formal complaint process should be developed in the future. The Committee is drawn from members of the Committee on Complementary Dispute Resolution who are knowledgeable about the standards, and is chaired by Superior Court Judge Patricia Richmond LeBon. Members, all experienced mediators, include Sanford M. Jaffe, Esq., Director of the Center for Negotiation and Conflict Resolution at Rutgers University; Robert E. Nies, Esq.; Richard H. Steen, Esq. and Ronald M. Sturtz, Esq.

Questions about the standards, or a request for clarification from the Advisory Committee may be directed to:

Thomas N. Farrell  
Coordinator, CDR Programs  
Trial Court Service  
Special Programs Unit  
P.O. Box 988  
Trenton, NJ 08625

Richard J. Williams  
Administrative Director of the Courts

<http://www.judiciary.state.nj.us/notices/n000216a.htm>

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# **Standards Of Conduct For Mediators In Court-Connected Programs \***

**Preamble, Scope and Purpose:** These standards of conduct are intended to instill and promote public confidence in the mediation process and to be a guide to mediators in discharging their professional responsibilities. Public understanding and confidence are vital to a strong mediation program. Persons serving as mediators are responsible for conducting themselves in a manner that will merit the confidence of parties, members of the bar, and judges. These standards apply to all mediators when acting in state court-connected programs.

**Definition of Mediation:** Mediation is a process in which an impartial third party neutral (mediator) facilitates communication between disputing parties for the purpose of assisting them in reaching a mutually acceptable agreement. Mediators promote understanding, focus the parties on their interests, and assist the parties in developing options to make informed decisions that will promote settlement of the dispute. Mediators do not have authority to make decisions for the parties, or to impose a settlement.

**I. Principle Of Self-Determination: A mediator shall proceed with the understanding that mediation is based on the fundamental principle of self-determination by the parties. Self-determination requires that the mediation process rely upon the ability of the parties to reach a voluntary agreement without coercion.**

A. A mediator shall inform the parties that mediation is consensual in nature, that the mediator is an impartial facilitator, that any party may withdraw from mediation at any time as specified in R. 1:40-4(a) through (e), and that the mediator may not impose or force any settlement on the parties.

B. The primary role of a mediator is to facilitate a voluntary resolution of the dispute, allowing the parties the opportunity to consider all options for settlement.

C. Because a mediator cannot personally ensure that each party has made a fully informed choice to reach a particular agreement, a mediator should make the parties aware of the importance of consulting other professionals, where appropriate, to help them make informed decisions.

**II. Impartiality: A mediator shall always conduct mediation sessions in an impartial manner. The concept of mediator impartiality is central to the mediation process. A mediator shall only mediate a dispute in which there is reason to believe that impartiality can be maintained.**

When a mediator is unable to conduct the mediation in an impartial manner, the mediator must withdraw from the process.

A. When disputing parties have confidence in the impartiality of the mediator, the quality of the mediation process is enhanced. A mediator shall therefore avoid any conduct that gives the appearance of either favoring or disfavoring any party.

B. A mediator shall guard against prejudice or lack of impartiality because of any party's personal characteristics, background, or behavior during the mediation. A mediator shall advise all parties of any circumstances bearing on possible bias, prejudice, or lack of impartiality.

**III. Conflicts Of Interest: A mediator must disclose all actual and potential conflicts of interest reasonably known to the mediator. After disclosure, the**

**mediator may proceed with the mediation only if all parties consent to mediate. Nonetheless, if the mediator believes that the conflict of interest casts doubt on the integrity of the mediation process, the mediator shall decline to proceed.**

A. A mediator shall always avoid conflicts of interest when recommending the services of other professionals. If requested, a mediator may provide parties with information on professional referral services or associations that maintain rosters of qualified professionals.

B. (1) Related Matters: A mediator who has served as a third party neutral, or any professional member of that mediator's firm/office, shall not subsequently represent or provide professional services for any party to the mediation proceeding in the same matter or in any related matter.

(2) Unrelated Matters: A mediator who has served as a third party neutral, or any professional member of that mediator's firm/office, shall not subsequently represent or provide professional services for any party to the mediation proceeding in any unrelated matter for a period of six months, unless all parties consent after full disclosure.

**IV. Competence: A mediator shall only mediate when the mediator possesses the necessary and required qualifications to satisfy the reasonable expectations of the parties.**

A. A mediator appointed by the court shall have training and education in the mediation process, and shall have familiarity with the general principles of the subject matter involved in the case being mediated.

B. A mediator shall have information available for the parties regarding the mediator's relevant training, education, and experience.

C. A mediator has an obligation to continuously strive to improve upon his or her professional skills, abilities, and knowledge of the mediation process.

**V. Confidentiality: To protect the integrity of the mediation, a mediator shall not disclose any information obtained during the mediation unless the parties expressly consent to such disclosure, or unless disclosure is required by applicable rules or law. A mediator shall not otherwise communicate any information to the court about the mediation, except: 1) whether the case has been resolved in whole or in part; or 2) whether the parties or attorneys appeared at a scheduled mediation.**

Consistent with Rule 1:40-4, a mediator shall:

A. Preserve and maintain the confidentiality of all mediation proceedings and advise the parties of the Rule's provisions;

B. Prior to the commencement of mediation, reach agreement with the parties concerning the limits and bounds of confidentiality and non-disclosure;

C. Conduct the mediation so as to provide the parties with the greatest protection of confidentiality afforded by court rule and mutually agreed to by the parties;

D. Maintain confidentiality in the storage and disposal of all records and remove all identifying information when such information is used for research, training, or statistical compilations, except minimum identifiers necessary to link research documents; and

E. Not use confidential information obtained in a mediation outside the mediation process.

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**VI. Quality Of The Process: A mediator shall conduct the mediation fairly, diligently, and in a manner consistent with the principle of self-determination by the parties. To further these goals, a mediator shall:**

- A. Work to ensure a quality process and to encourage mutual respect among the parties, including a commitment by the mediator to diligence and to procedural fairness;
- B. Assess the case and determine that it is appropriate and suitable for continuing the mediation;
- C. Provide adequate opportunity for each party in the mediation to participate fully in the discussions, and allow the parties to decide when and under what conditions they will reach an agreement or terminate the mediation;
- D. Not unnecessarily or inappropriately prolong a mediation session if it becomes apparent to the mediator that the case is unsuitable for mediation, or if one or more parties is unwilling or unable to participate in the mediation process in a meaningful manner;
- E. Only accept cases when the mediator can satisfy the reasonable expectations of the parties concerning the timetable for the process, and not allow a mediation to be unduly delayed by the parties or their representatives; and
- F. Where appropriate, recommend that parties seek outside professional advice or consider resolving their dispute through arbitration, counseling, neutral evaluation, or other processes.

**VII. Fees For Service: A mediator shall fully disclose and explain any applicable fees and charges to the parties. Payment for mediation services shall be in accordance with Rule 1:40-4 of the Rules of Court.**

- A. Fees charged by the mediator shall be reasonable, taking into account, among other things, the subject area and the complexity of the matter, the expertise of the mediator, the time required, and the rates customary in the community.
- B. A mediator shall provide parties with sufficient information about fees in writing at the outset of a mediation.
- C. A mediator shall not enter into a fee agreement in which the amount of the fee is contingent upon the result of the mediation or the financial amount of the settlement.

**\*Note: Sources Used**

- 1). Model Standards Of Conduct For Mediators (AAA, ABA & SPIDR).
- 2). Minnesota General Rules of Practice, Rule 114.
- 3). Ensuring Competence and Quality In Dispute Resolution Practice, Report #2 by SPIDR.
- 4). Colorado Office Of Dispute Resolution, Draft Report of ADR Professionals Qualifications Project Steering Committee.
- 5). Code Of Professional Ethics For The Practice Of Mediation, New Jersey Association of Professional Mediators.
- 6). CPR Institute for Dispute Resolution/Georgetown University Law Center Joint Commission on Ethics and Standards in ADR.