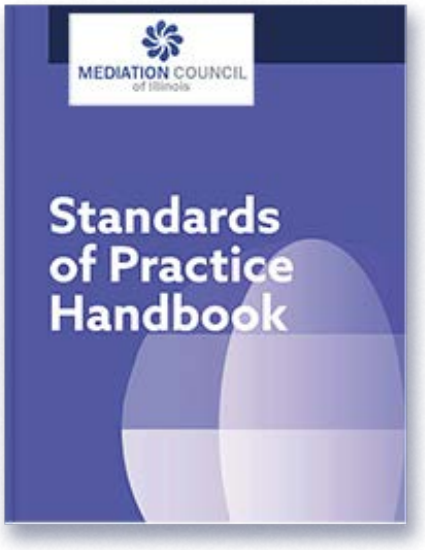

MCI Professional Standards of Practice for Mediators

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MCI Standards of Practice

The MCI Standards include different levels of guidance:

Use of the term "may" in a Standard is the lowest strength of guidance and indicates a practice that the mediator should consider adopting but which can be deviated from in the exercise of good professional judgment.

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.

The use of the term "shall" in a Standard is a higher level of guidance to the mediator, indicating that the mediator should not have discretion to depart from the practice described.

Definition

Mediation is a voluntary procedure whereby an independent and impartial third party or parties promote and facilitate the resolution of a dispute between parties. Mediation is based on the principle of self-determination by the participants.

A. Self-determination is the fundamental principle of mediation. The mediation process relies upon the ability of participants to make their own voluntary and informed decisions.

B. The role of a 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. Clients should be advised at the outset of mediation that other relevant professionals, in addition to attorneys, may have to be employed to assist the mediation process in establishing values, weighing tax consequences of alternative arrangements, and dealing with other technical information.

D. A 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 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.

F. Mediators shall make no recommendations to the court related to parenting agreements.

I. Competence

Mediators shall maintain high standards of competence. Recognizing the boundaries of their competence and the limitations of their techniques, they only provide services or use techniques for which they are qualified by training and experience, using consultation from other professionals as appropriate. They maintain knowledge of current professional information related to the services they render. Mediators accurately represent their competence, education, training, and experience.

A. Formal Education

Mediators shall hold either a bachelor's degree; a J.D. degree; a master's degree; or equivalent training or experience in mental health or related disciplines. If a mediator chooses to be a member of a professional organization in his or her discipline, then the mediator must be a member in good standing.

B. Training

Mediators shall have undergone at least forty hours of training specifically in mediation by a recognized training organization before representing themselves to the public as mediators. Qualified divorce mediators shall have at least a basic awareness of applicable family law and training in the divorce process, conflict management, family systems and therapy, child development, and the effect of divorce upon children. Mediators shall be able to recognize the impact of culture and diversity on the mediation process

C. Continuing Education

Mediators shall participate in continuing education and be responsible for ongoing professional growth. Mediators recognize their shared responsibility to join with other mediators and with members of other related professions to promote mutual professional development.

D. Self-Monitoring, Personal Functioning, and Bias

Mediators recognize that their capacity to mediate successfully depends in part on their ability to maintain effective interpersonal relations. They shall refrain from undertaking any mediation in which their personal problems are likely to lead to inadequate professional services or harm to a client; or, if engaged in such activity, when they become aware of their personal problems they shall suspend, terminate, or limit the scope of their mediation activities or seek competent professional assistance to determine whether they should suspend, terminate, or limit the scope of their mediation activities.

E. A mediator should recognize a family situation involving child abuse or neglect and shall take appropriate steps to shape the mediation process accordingly. As used in these Standards, child abuse or neglect is defined by applicable state law. 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. 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.

F. A mediator should recognize a family situation involving domestic abuse and shall take appropriate steps to shape the mediation process accordingly. As used in these Standards, domestic abuse includes domestic violence as defined by applicable state law and issues of control and intimidation. A mediator shall not undertake a mediation in which the family situation has been assessed to involve domestic abuse without appropriate and adequate training. Some cases are not suitable for mediation because of safety, control or intimidation issues. A mediator shall make a reasonable effort to screen for the existence of domestic abuse prior mediating. The mediator shall continue to assess for domestic abuse throughout the mediation process. The mediator should facilitate the participants' formulation of parenting plans that protect the physical safety and psychological well-being of themselves and their children. 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;
3. Encouraging *pro se* participants to seek legal counsel;
4. Referring the participants to appropriate community resources;
5. Suspending or terminating the mediation sessions, with appropriate steps to protect the safety of the participants.

II. Confidentiality

Mediation proceedings and all information obtained from and about the participants through the mediation process shall be treated as confidential. This requirement may only be waived by informed written consent of both parties and the mediator. Personal or evaluative information is discussed only for professional purposes with persons clearly concerned with the case and bound in writing by the confidentiality of the mediation process. The mediator shall refrain from knowingly or intentionally releasing information that might possibly impact legal proceedings. The mediator shall inform the participants in writing that confidentiality will not apply when there is a threat to inflict bodily harm and suspected child abuse or neglect.

A. Safeguards Against Invasion of Privacy

A mediator's Report to the court shall present only information required by the court.

B. Public Use of Information

Mediators who present personal information obtained during the course of professional work in writings, lectures, or other public forums need either to obtain adequate prior written informed consent or to disguise identifying information of the persons involved.

C. Limits of Confidentiality

The mediator should, in every way possible, seek to maintain and to protect the confidentiality of mediation. This includes informing the participants in writing that:

1) that the mediator and the records of the mediation process cannot be subpoenaed in any court or subsequent legal proceeding, and 2) advising the parties of the limits of confidentiality.

D. Records

Mediators shall make provisions for maintaining confidentiality in the storage and ultimate disposal of client records.

III. Welfare of Clients

Mediators respect the integrity and protect the welfare of the families and individuals with whom they work. They make reasonable efforts to ensure that their services are used appropriately. These efforts include fully informing potential clients of the purpose and nature. of the mediation process.

A. Conflict of Interest: Employee/Client

Upon recognition of an actual or potential conflict of interest between the client and the mediator's employing institution, mediators shall clarify the nature and direction of their loyalties and responsibilities and keep all parties informed of their commitments.

B. Conflict of Interest: Dual Relationships

Mediators have the responsibility of monitoring their own needs and values and of acting in accordance with their potentially influential position vis-a-vis clients and children of clients, in order to avoid exploiting the trust and dependency involved in the mediation process to their own ends or gratification. Mediators shall make every effort to avoid dual relationships with clients and/ or relationships that might impair their professional judgment or increase the risk of client exploitation. Examples of such dual relationships include but are not limited to sexual intimacies with clients or members of their family and providing mediation services to their students, supervisors, close friends, or relatives.

C. Fees

Financial arrangements in professional practice are in accord with professional standards that safeguard the best interests of the client and that are in writing and clearly understood by the client in advance of billing.

1. Fee Arrangements

The mediator should explain the fees for mediation and reach an agreement with the parties for payment at the orientation session. A mediator shall not charge a contingency fee or base the fee in any manner on the outcome of the mediation process. A

flat fee for the entire mediation may be charged if agreed at the outset. Hourly rates may be established, either at a set rate or on a sliding scale, taking into account the financial means and abilities of the parties

2. Referral Fee

No commission, rebate, or other form of remuneration may be given or received for referral of clients for professional services, whether by an individual or by an agency.

3. Pro Bono

Mediators should contribute a portion of their services to work for which they receive little or no financial remuneration.

D. Initial Advice

At the initial orientation session, mediator should at a minimum advise potential clients of the following:

1. The issues to be mediated should be delineated from the outset.

2. Therapy is not a part of the mediator's function. Therapists should not conduct mediation when their clients have contracted for therapeutic services.

3. Neither law nor therapy shall be practiced in mediation. Attorneys should not conduct mediation when their clients have contracted for legal services. Discussion of legal alternatives that develop during the mediation process shall De discussed by the parties with their respective legal representatives for purposes of review and explanation.

4. The parties should each be advised to obtain independent legal counsel to assist and to advise them throughout the mediation.

5. The mediation can be suspended or terminated at the request of either party. In the event of a suspension, the mediator may suggest a referral for outside professional consultation. The mediator may suspend or terminate the mediation if:

a. it appears that the party is acting in bad faith (utilizing extreme pressure tactics, unilaterally altering the circumstances of an issue under discussion, refusing to supply information necessary to the mediation process, or refusing to meet with the mediator);

b. either party appears not to understand the negotiation;

c. either party appears to be unable or unwilling to fully negotiate for themselves;

d. the prospects of achieving a responsible understanding appear unlikely; or

e. a serious risk of harm may result to the minor children because their needs and interest(s) are not being considered by the parties though various attempts have been made to facilitate the parties in addressing the needs and interests of the minors.

6. The cost of mediation in terms of hourly rates must be agreed upon (see C above), as well as the method and responsibility for payment.

7. The participants need to be advised both that the mediation process is confidential and also of the limits of confidentiality.

8. Participants should be informed that the mediation process requires voluntary full disclosure.

9. When financial matters are mediated the mediator shall inform the parties that they will each be expected to voluntarily submit and exchange with the other a statement of assets and liabilities, income information, and detailed budgets.

E. Fairness in the Agreement to Mediate

Mediators have a duty to facilitate informed consent in the signing of the agreement to mediate. Mediators have an obligation to uphold their responsibilities as outlined in the agreement to mediate.

IV. Impartiality

The role of the mediator is to serve as an impartial third party with responsibility for structuring and monitoring the process of decision making between the parties. Mediators can serve effectively only when all parties to the dispute are confident of the mediator's impartiality. Mediators shall disclose to both parties any ties, association, or potential biases they may have in working with either party. This includes acknowledgment of any prior relationship with either of the parties to the dispute. Mediators have a duty to disclose at the earliest appropriate time to the parties involved all contacts between the mediator(s) and either party or any other relevant third party, including the clients' attorneys. Mediators assume the responsibility for withdrawing from a case if they believe or perceive that there is a clear conflict of interest, or if a bias

emerges that interferes with the mediation, regardless of the expressed desires of the parties.

A. Non-concurrence

Impartiality is not the same as neutrality in questions of fairness. Although a mediator is the facilitator and not a party to the negotiations, should parties come to an understanding that the mediator finds unconscionable or grossly unfair, the mediator is not obligated to write up a mediation agreement. In the event this occurs, the mediator should inform the participants of his or her decision and indicate that the participants or their attorneys may draft an agreement.

B. Role Conflict

In order to avoid actual or potential conflicts of interest, a lawyer mediator should not represent either party before, during, or after the mediation process. If the mediator is a mental health professional, there should be no professional relationship with the participants in counseling or therapy, before, during, or after the mediation process. If a mediator has represented or counseled one of the parties beforehand, the mediator should not contract to mediate with these parties.

C. Best Interests of the Children

While the mediator has a duty to be impartial, the mediator also has a responsibility to assist participants in considering the best interests of children and other persons who are unable to give voluntary, informed consent**.** The mediator has a duty to assist participants to examine the separate and individual needs of their children, to consider those needs apart from their own desires for any particular formula for sharing their children, which might be motivated by factors involved in the relationship between the participants and not directly related to the best interest of the children. If the mediator believes that any proposed agreement between the parties puts the children at risk, the mediator has a duty to attempt to facilitate further discussion of the proposed agreement.

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.

The mediator should be sensitive to the impact of culture and diversity on parenting philosophy and other decisions. If anyone in addition to the parties is in attendance in the mediation session, the mediator should, prior to the session and again at the outset of the session, discuss the effect of that participation on the mediation process and the impact on confidentiality. Prior to including the children in the mediation process, the mediator should consult with the parents and the children's court-appointed representative about the children's participation in the mediation process and the form of that participation. Court-employed mediators shall follow the guidelines established within their court system regarding interviewing children.

V. Professional Relationships

Mediators shall acknowledge and respect the needs, special competencies, and obligations of their colleagues in mediation and other professions.

A. Intra-professional Relations

Mediators acknowledge their limits and respect the areas of competence of related professionals. They encourage the use of professional, technical, and administrative resources that serve the best interests of clients. A mediator shall not enter any dispute that is being mediated by another mediator without a clear understanding that the first relationship has been terminated. Court-employed mediators shall follow the guidelines established within their court system regarding entrance into a mediation relationship. When co-mediating, each mediator has a responsibility to keep the other mediator informed of developments essential to an

effective collaborative effort. While present with clients, the mediator should avoid direct criticism of the co-mediator.

B. Professional Decorum

Mediators, whether functioning independently or as part of an organization, shall act professionally and with proper decorum at all times. When mediators function as employees of organizations providing mediation services or as independent mediators serving clients in an organizational context, mediators seek to support the integrity, reputation, and proprietary rights of the host organization. When it is judged necessary in a client's interest to question an individual's or an organization's programs or policies, mediators attempt to effect change by constructive action.

VI. Informed Decisions

The mediator should ensure that the parties have been advised to obtain legal counsel and a sufficient understanding of relevant statutory and case law, as well as local judicial traditions, to make an informed consent on the issue involved. In addition, the mediator should ensure that each of the participants has an understanding of, as well as a reasonable opportunity to weigh, the application of appropriate legal information to his or her situation before reaching an understanding. The mediator has a duty to ensure that the understanding of each of the parties with respect to the relevant information is adequate to allow balanced negotiation. When necessary, the mediator shall refer the parties to experts for consultation and/or evaluation.

A. Informed Decisions

The objective of mediation is not a settlement at any cost; rather, it is an agreement that addresses the needs and interests of all parties. A mediator shall have the right to terminate the mediation process when the mediator believes the participants are about to enter into an agreement that the mediator reasonably believes to be unconscionable.

B. Understanding Decisions

The mediator should ensure that each person understands the implications and the ramifications of the options available. In this regard, the mediator should attempt to assist each person in understanding the interplay of his or her own emotions with the decision making process during the mediation.

C. Noncoercive Negotiations

The mediator has a duty to ensure a balanced dialogue and must attempt to defuse any manipulative or intimidating negotiating techniques utilized by either of the parties. If the mediator finds that it is not possible to eliminate such bargaining techniques from the process, he or she should not permit the mediation to proceed.

D. Independent Legal Counsel

The mediator has a duty to advise the mediation participants to obtain legal counsel and advice prior to reaching an understanding. A referral for legal advice should be made before the decision making process and not after the participants have already reached a full accord to which they may have made an emotional commitment. Mediators, including attorney-mediators, shall not advise either party as to their legal rights or responsibilities so as to direct the parties' decision on an issue. Each party must be referred to independent legal counsel for that advice. A single attorney to advise the participants as to the law in the course of a mediation is not a substitute for independent legal counsel. Mediators should avoid any ongoing referral relationship with an attorney that hampers the independence of the attorney's judgment in giving advice or reviewing the understanding.

VII. Public Statements and Promotional Activities

Public statements, announcements. of services, advertising, and promotional activities of divorce mediators serve the purpose of helping the public make informed judgments and choices about divorce mediation and its alternatives. Mediators shall represent accurately and objectively their professional qualifications, affiliations, and functions, as well as those of the institutions or organizations with which they or their statements may be associated. In public statements providing information or professional opinions related to mediation, mediators base their statements on acceptable professional opinion, current knowledge, and research data, with full recognition of the limits and uncertainties of such sources.

A. Professional Identification

When announcing or advertising professional services, mediators may list the following information to describe the provider and services offered; name, relevant academic degrees, relevant training in mediation, date, type and level of certification or licensure, appropriate professional affiliations and membership status, address,

telephone number, office hours, a brief listing of the type of services provided, an appropriate presentation of fee information and foreign languages spoken. Additional relevant or important consumer information may be included, if not prohibited by other sections of the profession standards.

B. Misrepresentation or Abuse in Public Announcements

In announcing or advertising the availability of mediation services, products, or publications, mediators do not represent their affiliations with any organizations in a manner that falsely implies sponsorship or certification by those organizations. Public statements, including but not limited to communication by means of periodical, book, list, directory, television, radio, motion pictures, or electronic media shall not contain (1) false, fraudulent, misleading, deceptive, or unfair statements; (2) misrepresentation of facts, or statements likely to mislead or deceive by making only partial disclosure of relevant facts; (3) testimonials from clients regarding the quality of mediators' services or products; (4) statements intended or likely to appeal to clients' fears, anxieties, or emotions concerning the possible results of failure to obtain the offered services; or (5) statements intended or likely to create false or unjustified expectations of favorable results.

C. Solicitation

Mediators shall not compensate or give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of or in return for professional publicity in a news item. This does not preclude payments for publicity and/or advertising.

D. Accurate and Adequate Information

When functioning as teachers or trainers of mediation, mediators shall ensure that announcements and publicity are accurate and not misleading, particularly with regard to whether or not the event involved is being presented and intended as a training event for mediators. Announcements, brochures, or advertisements describing workshops, seminars, or other educational programs accurately present intended audience and eligibility requirements, educational objectives, and nature of the material to be covered, as well as the education, training, and experience of the mediators who present the programs, and any fees involved.

E. Obligation to Correct

Mediators shall accept the obligation to correct others who, when representing the mediator's professional qualifications or associations with products or services, do so in a manner incompatible with these guidelines.

VIII. Research

Mediators recognize that research is essential to the advancement of knowledge and that all investigations must be conducted with respect for the rights and dignity of participants and with concern for their welfare. Specifically, the conditions of the Human Subjects Experimentations, as designated by the Department of Health and Human Services of the United States Federal Government, shall be adhered to. When involved in research, mediators shall advise research participants of the funding source of sponsorship of the research and inform the participants of the nature of the study, either before or after the data collection.

A. Freedom of Choice

Ethical practice requires the investigator to respect the individual's freedom to decline to participate in, or to withdraw from research. The obligation to protect this freedom requires special vigilance when the investigator is in a position of power over the participant, as, for example, when the participant is a student, client, employee, or otherwise is in a dual relationship with the investigator. Ethically acceptable research begins with the establishment of a clear and fair agreement between the investigator and the research participant that clarifies the responsibilities of each. The investigator has the obligation to honor all promises and commitments included in that agreement.

IX. Unethical Conduct

A. Accountability

Acceptance into the Mediation Council of Illinois entails the acceptance by the member of the judgment of one's fellow members as to standards of professional ethics, subject to the safeguards provided as follows. Acceptance of membership involves explicit agreement to abide by the acts of discipline herein set forth. Should a member be expelled from the council, that member shall at once surrender his or her membership certificate to the Ethics Committee.

B. Procedures

It is the duty of each member to maintain high standards of ethical practice. Should a fellow member appear to violate the foregoing Standards of Practice, a member who knows firsthand of such activities should, if possible, attempt to rectify the situation. If an informal solution fails, a formal complaint may be brought either by a member or by a non-member to the Mediation Council Ethics Committee in accordance with the following procedures:

1. A member or nonmember shall make a complaint of unethical practice in writing to the Ethics Committee.

2. Within ten (10) days of receipt of the appropriately written complaint, the Ethics Committee Chairperson shall write to the complainant to acknowledge receipt.

3. Within ten (10) days of receipt of the appropriately written complaint, the Chairperson of the Ethics Committee shall notify in writing the person against whom the complaint has been made (i.e. the Respondent), of receipt of the complaint. The notification to the Respondent will include information on MCI procedures for processing complaints, including the criteria for acceptance.

4. As soon as possible, but within thirty (30) days of receipt of the original complaint, the Complainant and Respondent will be notified whether the complaint has been accepted. If accepted, the notification will include information on MCI steps and time lines for processing complaints.

5. If the Ethics Committee accepts the complaint, they will conduct a formal review. During this process the Respondent shall have access to all documentation cited against him or her and shall have the opportunity to directly respond to the Ethics Committee.

6. Recommendations to be made by the committee will include mediation, to provide the parties an opportunity to resolve the issue(s). Further, the committee may also make recommendations that the complaint was unfounded or the respondent may receive a reprimand, probation, suspension, or dismissal from membership.

7. The Complainant and Respondent shall have the right to appeal to the Board of Directors following the disposition of the case by the Ethics Committee. The Board has the option to uphold the determination of the committee, modify the recommendation or reverse it. The decision of the Board must be in writing and state the specific reasons for their decision.

8. Members of the council are expected to cooperate with duly constituted committees of the council, in particular with the Ethics Committee, by responding to inquiries promptly and completely. Members have the obligation to uphold MCI's time limits for processing complaints and the burden of demonstrating that they acted with "reasonable promptness".

Adapted with permission from The American Psychological Association, by the Ethics Committee (Carl Schneider, Nettie Breslin, Joy Feinberg, Helen Rogal, and Burton Zoub).

Mediation Council of Illinois 1984

Revised November 2009
Ethics Committee:
Margaret S. Powers & Ruth Lipschutz - co-chairs
Corinne Levitz