



## How You Can Make the Most of Mediation's Global Growth

December 17, 2014 – 1:00 p.m. to 2:00 p.m. ET

### PROGRAM SUMMARY

**Speakers:** Lynn Cole

The use of mediation is experiencing rapid global growth. It mirrors the rapid expansion of international business over several decades as large and small companies in a myriad of countries shift to a worldwide vision no longer tied to national boundaries. As commerce and trade increase, so too does the likelihood of disputes, creating new opportunities for mediators interested in meeting the challenges of international practice.

### AGENDA

<b>1:00 p.m.</b>	<b>Welcome and Introduction of Speakers</b>	(5 minutes)
<b>1:05 p.m.</b>	<b>Mediation's Global Growth</b> <ul style="list-style-type: none"><li>• how and why mediation is expanding globally</li><li>• the impact of mediation traditions on modern day mediation</li><li>• the role of international institutions that support mediation</li><li>• the role of judicial reform in mediation growth</li><li>• how mediations are enforced internationally</li><li>• how to expand your practice into the international arena</li></ul>	(50 minutes)
<b>1:55 p.m.</b>	<b>Conclusion and Questions</b>	(5 minutes)
<b>2:00 p.m.</b>	<b>Evaluation</b>	(5 minutes)
<b>2:05 p.m.</b>	<b>Adjourn</b>	

**Lynn H. Cole, Esq.** is a dispute resolution professional with experience in all aspects of ADR, including mediation and arbitration and mediation system-design in three, developing Rule of Law countries. As a Harvard-trained and Florida-certified mediator, she also has served as a Special Master, an SEC receiver, a neutral evaluator, a Special Magistrate and settlement counsel. She has served internationally in Bulgaria, Jordan and Kosovo as an ADR and Mediation Specialist with USAID and teaches internationally.



*“Lynn accomplished more in a 6-hour mediation than attorneys could in more than a year.” “As an attorney, I was impressed by [her] ability to absorb and synthesize both the facts of the case, and the intangible aspects as well. She was able to put the parties at ease and helped defuse a rather emotionally charged situation”. One attorney described the mediation at issue as follows, “This was one of the most fruitful and rewarding – even uplifting – mediations I have ever participated in. The parties came in despising each other with no expectation of settlement. During the process, they gained a settlement and some measure of mutual respect and understanding.” Another attorney noted that Ms. Cole was able to handle emotions with ease and keep the parties focused on the facts. Excerpts: IMI (International Mediation Institute) Feedback Digest*

#### **HONORS, MEMBERSHIPS AND PROFESSIONAL ACTIVITIES**

- ◆ *Mediators Beyond Borders*, Founding Member, member BOD and President (2011-present)
- ◆ *International Mediation Leadership Summit*, The Hague (ABA/DR Section)-invited member
- ◆ IMI (“International Mediation Institute”), Internationally Certified Mediator (2009 – current)
- ◆ CPR (“Int’l Institute for Conflict Prevention and Resolution”), Mediator and Arbitrator panels
- ◆ WIPO (“World Intellectual Property Organization”), located in The Hague, Invited Mediator
- ◆ AAA (“American Arbitration Association”), Mediator and Arbitrator Roster of Neutrals
- ◆ NAF (“National Arbitration Forum”) Mediator and Arbitrator Roster of Neutrals
- ◆ USCIB (“U. S. Council for International Business”), listed as Arbitrator and Mediator
- ◆ FINRA (“Financial Industry Regulatory Authority”), arbitrator
- ◆ NAM (“National Arbitrators and Mediators”) Neutral Roster, Mediator and Arbitrator
- ◆ Resolute Systems, Inc., Panel of Neutrals, Arbitrator and Mediator
- ◆ Arbitral Judge, the Willem C. Vis International Commercial Arbitration Moot, Vienna-current
- ◆ Special Magistrate appointed by Circuit Civil Judge, 13<sup>th</sup> Judicial Circuit of Florida, in multi-party case (2007-2008)
- ◆ Assn. of Conflict Resolution (“ACR”) International Board of Directors (2008-present)
- ◆ Federal Bar Association, ADR Section, Chair, (2004 – 2007)
- ◆ Florida Academy of Mediators (“FAPM”), Adm. Vice-President, (2006-2008)
- ◆ Tampa Commission on Ethics, Appointed by Mayor, Chair 2010 (2004 – present)
- ◆ Mediation Qualifications Board, Founding Member, App’ted by FL Supreme Court (1991-2002)
- ◆ Civil Justice Reform Act Advisory Commission, Chair, appointed by Chief Judge, M.D.FL, (1997-98) (Recommended designed and inclusion of ADR system in M.D. Florida federal courts)
- ◆ Florida Bar Association, International Section (member)
- ◆ SEC Receiver (\$20 Million Ponzi scheme), appointed by U.S. Federal Judge (1999 - 2005)

- ◆ Special Master (complex tax fraud case), Appointed by U.S. Magistrate Judge (2000)
- ◆ Chair, 13<sup>th</sup> Judicial Nominations Commission, Appointed by Governor, (1996-1997)
- ◆ Testimony before U.S. Congressional Sub-Committee on Government Personnel recommending use of Mediation for Federal Employee discrimination matters (1998)
- ◆ Special Appointee by State House Committee to Hills. Co. Labor Relations Board (1995)
- ◆ Chair, Selection Committee for United States Magistrate, Appointed by Chief District Court Judge, M.D. Fla. (1991)
- ◆ 11<sup>th</sup> Circuit Vice President, Federal Bar Association (1990-2004); National Membership Chair, Federal Bar Association (1999 - 2001)
- ◆ Chair, Trial Lawyers' Section, Hillsborough County Bar Association (1991-92)
- ◆ Chair, 13<sup>th</sup> Judicial Circuit Florida Bar Grievance Committee (1987-89)
- ◆ Master and Charter Member, American Inns of Court, Ferguson-White Inn (1987-present)

## **BACKGROUND and EDUCATION**

### **Work Experience:**

#### ***International Mediation Programs and System Development***

- ◆ ADR Specialist, USAID/ Checchi, assigned to USAID project exclusively devoted to developing mediation and arbitration throughout the country of Kosovo (October 2009 - current)
- ◆ Mediation Specialist, USAID/DPK, re-assigned to Jordan to expand original Pilot Mediation Program into additional courts and private sector of Jordanian society. Work with MOJ, court, and lawyers to expand and improve current Pilot Programs (January 2009); Attended national mediation conference as USAID representative in Prishtina (Dec. 2009); Assisted in the design and training of member of the Kosovo Mediation Committee established to bring mediation to Kosovo (July 2010)
- ◆ Mediation Specialist, USAID/NCSC, assigned to Kosovo to assist in implementation and development of first Pilot Court-Related Mediation Program. Prepared recommendations to judges on: general mediation procedures and forms; selection of mediator trainees; educational requirements for mediators; mediator training requirements; provisions for referring cases to mediation; mediation procedures for recording case intakes, case processing, and case disposition; mediation confidentiality; creation of a mediation steering committee; grievance procedures, and mediation fees. Prepare revision suggestions for Draft Mediation Law (April 2007)
- ◆ ADR Specialist, USAID/ABA assigned to Jordan to assist in implementation and development of first Mediation Court Pilot Program in Middle East with Minister of Justice and Chief Judge of Amman Court of First Instance. Assignments included: construction of a Mediation Center; drafting rules, forms, surveys and regulations for the Court Pilot Program; developing Introduction to ADR training for Judicial Institute of Jordan; conducting mediation training for Arab Women's Legal Network and judges; drafting and training Standards of Conduct for Mediators.
- ◆ Mediation Training Program Designer, designed and implemented USAID/ABA training for Jordanian Judicial and Mediation Delegation in USA (7 days). (March- June 2006)
- ◆ Mediation Specialist, USAID/ABA/CEELI assigned to Bulgaria assisting Minister of Justice and Mediation Steering Committee in drafting and implementing ethical, procedural, educational and certification rules and regulations pursuant to the Mediation Act of 12.2005. Conducted advanced mediation training. (April - July 2005)

### *Domestic Experience*

- ◆ Stetson University College of Law, Adjunct Professor of ADR, 2004 to 2008
- ◆ Law Offices of Lynn Cole, P.A., Managing Partner and President, *av*-rated, boutique litigation law firm with focus on federal trial practice in areas of business and complex commercial litigation; labor and employment (representing both employers and employees), contracts; securities; property; products liability; banking; anti-trust; utilities; and, construction law. (1995-2002); Fulltime Dispute Resolution Professional (2002 - present)
- ◆ Allen Dell Law Firm, partner for over 10 years in mid-sized law firm with trial practice, primarily in federal court, in the areas of complex commercial, construction, constitutional and anti-trust litigation; and local governmental contract, administration and constitutional law issues. Clients included: Tampa General Hospital (Hillsborough County Hospital Authority); Tampa International Airport (Hillsborough County Airport Authority); Florida Steel; Florida Power and Seminole Electric, among others. (1984-1995)
- ◆ Assistant United States Attorney, M. D. Florida appointed by A.G. Griffin Bell. 1979-1984
- ◆ Assistant District Attorney, Lehigh County, Pa. 1975-1978

### *Education:*

- ◆ Harvard College of Law, Mediation Program of Instructions for Lawyers, Mediation Certificate, June 2002
- ◆ John Marshall Law School, Juris Doctor Degree, 1975; President, Student Bar Association
- ◆ University of Maryland, Graduate School, Courses towards Master's Degree in Counseling
- ◆ University of Maryland, B.A. in Intellectual History

### INTERNATIONAL MEDIATION TRAINING:

#### Mediation Training

- ◆ *Fundamentals of Mediation*, Trainer, Mediation Commissioners of Kosovo, July 2010
- ◆ *Basic Mediation*, Ohio State University, Moritz College of Law, Nov. 2009
- ◆ *Advanced Commercial Mediation*, Trainer, sponsored Serbian Assn of Mediators, Beograd, Serbia, March 2009
- ◆ *Ethics for Mediators*, Trainer, sponsored by US Embassy and Slovenia Assn' of Mediators, Ljubljana, Slovenia, November, 2008
- ◆ *Advanced Commercial Mediation*, Trainer, sponsored by Croatian Association of Mediation, Zagreb, Croatia, October 2008
- ◆ *Advanced Commercial Mediation Trainer*, sponsored by BAARD of Bulgaria, March 2008 (16 credits for Bulgarian Mediators);
- ◆ *Basic Commercial Mediation*, Trainer, sponsored by ABA/CEELI, Belgrade, Serbia, October 2007 (6 credits for Continuing Legal Education) training judges and mediators;
- ◆ *Advanced Commercial Mediation*, Trainer, sponsored by Department of State, US Embassy, Ljubljana, Slovenia, October 2007 training judges and mediators (15 credits for 25 Slovenian Certified Mediators);
- ◆ *Basic Mediation Training*, Trainer, sponsored by USAID/NCSC, Prishtina, Kosovo, March 2007 (Contributor to and oversight of design and content for mediation Pilot program training for 10 Kosovar and Serbian mediators and judges);
- ◆ *Basic Mediation Training for Arabic Women*, sponsored by ABA MENA Program, Amman Jordan, May - June 2006 (two one-week certified training programs for 15-20 participants each);

- ◆ *Judicial Mediation Training for Jordanian Judges*, designed, implemented and conducted seminars on judicial ethics in mediation, the scope of judicial mediation, and establishing mediation programs as extensions of the Pilot Mediation Program in Amman, Jordan, Tampa, FL, July 2006;
- ◆ *Ethics for Judicial Mediators*, sponsored by ABA CEELI Program, Certified Training for Judicial Mediators, Amman, Jordan, May 2006;
- ◆ *Imbalance of Power in Mediations*, sponsored by ABA CEELI Program, Sofia, Bulgaria, May 2005;
- ◆ *Advanced Mediation Training*, sponsored by ABA CEELI Program, Advanced Certified Training for Mediators, Plovdiv Bulgaria, May, 2005

#### **GUEST SPEAKER and LECTURER**

- ◆ *ADR in Forbidden Places: Tourism & Trade*, Florida Bar International Section, Sept. 2010
- ◆ *View from the End of the Table - A Discussion on Mediation (President's Showcase)*, Fl. Bar - International Section, May 2010
- ◆ *Ethics for Mediators*, Hillsborough County Bar Association, April, 2010
- ◆ *Mediators Beyond Borders and the Rule of Law: Peacebuilding in International Communities*, ABA-DR 12<sup>th</sup> Annual Conference, April 2010
- ◆ *Arbitration v Mediation: Use of Mediation Techniques in Arbitration*, Belgrade, Serbia March 2010
- ◆ *Practical Aspects, Mediator Ethics*, Hillsborough County Bar Assn', February 2010
- ◆ *Mediation in Kosovo – Maximizing the Potential*, Panel presenter, participant, Pristina, Kosovo, Dec. 2010.
- ◆ *Expanding Access to Justice Globally Through Court-Related Mediation*, Dispute Resolution Center of Florida, Annual Conference, August 2009
- ◆ *Court Based Mediation: Expanding Access to Justice in Developing Societies*, 11<sup>th</sup> Annual ABA/DR Section Conference, Speaker and Participant, April 2009
- ◆ SEEMF, 4<sup>th</sup> Annual Southeastern Europe Mediation Forum, Speaker and Participant, Nov. 2008
- ◆ *Basic Mediation Overview*, Trainer and Speaker, University of Florida (54 Students), Oct. 2008
- ◆ *Mediating Abroad, Making the Paradigm Shift*, Assn of Conflict Resolution ("ACR"), Annual Conference, Sept. 2008
- ◆ *Mediation Gone Global – Some Precepts for Mediating Abroad*, Dispute Resolution Center of Florida, Annual Conference, August 2008
- ◆ *E-Mediation, The New Horizon of Mediation*, Mid-Year Seminar of Florida Academy of Professional Mediators, organizer and moderator
- ◆ *Mediation: Enhancing Access to Justice in Developing Nations' Judiciaries*, Association for Conflict Resolution, Annual Conference, Phoenix, October 2007;
- ◆ *Challenges of Establishing Court Mediation Programs Abroad*; 16<sup>th</sup> Annual Dispute Resolution Conference of Florida, August 2007;
- ◆ *Mediation-Cultivating the Rule of Law*, Annual Conference of the ABA, DR Section, April 2007;
- ◆ *Global Alternative Dispute Resolution, An Overview*, Federal Bar Association Annual Meeting, August 2006 (organizer and moderator);
- ◆ *Challenges and Lessons Learned in Establishing Court Mediation Programs Abroad*, Chatham College, Speaker's Program, Mesites Foundation, January 2007;
- ◆ *Mediation, Meeting Global Challenges*, Tampa Bay Chapter of the United Nations, February 2007;
- ◆ *Challenges of Establishing Court Mediation Programs Abroad – Bulgaria and Jordan*, Columbus Bar Association of Attorneys, Columbus Ohio, November 2006;
- ◆ *Rule of Law –Global Efforts*, Rotary Club of Tampa Bay, November 2005;
- ◆ *ADR, Expanding to Shrink the World*, 14<sup>th</sup> Annual Dispute Resolution Conference of Florida, August 2005;

- ◆ *Basic Commercial Litigation: Selected Issues on Ethics and Professionalism in Litigation*, Florida Bar Continuing Legal Education Seminar, March 1994;
- ◆ *Representing the Public/Private Owner*, 17<sup>th</sup> Annual Construction Contract Litigation Seminar, Florida Bar CLE Seminar, May 1993;

#### PUBLICATIONS

- ◆ *Use of ADR in Restricted Countries*, Florida Bar, International Section, Sept. 2010
- ◆ *Jordan Leads the Arab Middle East in Mediation*, ACR Int'l Section Newsletter, Jan/Feb 2008
- ◆ *Mediators Without Borders*, The Caucus, Florida Academy of Professional Mediators, Vol. 18, March 2007;
- ◆ *A Journey in Mediation - The Bulgarian Path*, The Federal Lawyer, Volume 53. No. 7, August 2006;
- ◆ *Mediation in the Middle East, Part 1*, The Lawyer, Vol. 16, September 2006;
- ◆ *Mediation in the Middle East, Part 2*, The Lawyer, Vol. 17, October 2006;
- ◆ *Musings of a Mediator Gone Global, Part 1*, Vol. 16, October 2005;
- ◆ *Musings of a Mediator Gone Global, Part 2*, Vol. 17, No. 3, November 2005;
- ◆ *Mediation-Coming into Your Community*, The Lawyer, Vol. 15, No. 5, February 2005

DISCLAIMER: *Ms. Cole's opinions expressed herein are her own and do not represent, nor are they intended to represent, the opinion of any arbitration, mediation or professional association with which she is affiliated.*

**MODEL STANDARDS OF CONDUCT  
FOR MEDIATORS**

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

**AMERICAN BAR ASSOCIATION**  
(ADOPTED AUGUST 9, 2005)

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

**SEPTEMBER 2005**

## **The Model Standards of Conduct for Mediators September 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.

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.

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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 revisions to the Model Standards were approved by the American Bar Association's House of Delegates on August 9, 2005, the Board of the Association for Conflict Resolution on August 22, 2005 and the Executive Committee of the American Arbitration Association on September 8, 2005.

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 use fee arrangements that 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.



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