



The Role of Fairness and Justice in Arbitrations

May 19, 2016 - 2:00 pm to 3:00 pm ET

PROGRAM SUMMARY

Speaker: Reginald A. Holmes, Esq.

Attendees will gain insight into the ethical, professional and practical imperatives for assuring that arbitrations are conducted fairly and justly to all participants (**The Fairness Imperative**). Additionally, attendees will gain a working knowledge of current best practices and trends, and successful approaches and strategies, which arbitrators, lawyers and advocates and parties may employ to assure that the arbitrations over which they preside or participate, are Fair and Just. Attendees will also obtain practical suggestions on how best to achieve the fairness imperative in situations involving parties with unequal resources, knowledge and advocacy skills.

AGENDA

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| 2:00 p.m. | Welcome and Introduction of Speaker | (5 minutes) |
| 2:05 p.m. | <i>Why Fairness and Justice in arbitrations matter</i>
<i>Overview of Contemporary perceptions of ADR</i>
<i>Problematic Arbitration Situations</i>
<i>Pro Se Parties</i>
<i>Under-resourced and overmatched Parties</i>
<i>Individual, Civil and legislative and constitutional rights</i>
<i>Implications for commercial and other forms of Arbitration</i>
The Fairness Imperative
<i>And the Arbitrator duty to provide a fair and Just Forum</i>
<i>Strategies and best practices for arbitration fairness and Justice</i>
<i>Practice pointers for Lawyer/advocates</i>
<i>Practice Pointers for Parties</i>
<i>AAA processes, procedures and initiatives</i>
<i>Prognosis for arbitration fairness and Justice</i> | (50 minutes) |
| 2:55 p.m. | Conclusion and Questions | (5 minutes) |
| 3:00 p.m. | Evaluation | (5 minutes) |
| 3:05 p.m. | Adjourn | |



Reginald A. Holmes, Esq.
The Holmes Law Firm

Profession	Arbitrator, Mediator, Referee, Private Judicial Officer, Attorney; Professional Consultant
Current Employer-Title	The Holmes Law Firm of Atlanta and Los Angeles
Mediation Profession	Arbitrator, Mediator, Referee, Private Judicial Officer, Attorney; Professional Consultant
Work History	Chairman, The Holmes Law Firm, 2000-present; Chairman of the Board, Renaissance Oak Real Property Development, LLC; Executive Vice President and General Counsel, Horne Entertainment Inc., 1997-00; General Manager for Intellectual Property Licensing and Business Development/Assistant General Counsel for Intellectual Property and Business, McDonnell Douglas Corp., 1996-97; Baker & Hostetler, 1995-96; Chairman, Holmes & Associates, 1990-95; General Counsel, Western Region, Wang Laboratories Inc., 1983-90; Director of Contracts and Pricing, Rockwell International, 1980-83; Patent Attorney, Wescom Inc., 1978-80; Patents and Copyright Clerk, Cushman, Darby & Cushman, 1976-78.
Experience	<p>Extensive and over arching in-depth blue chip and "in the trenches" experience as an attorney, litigator, business executive, professional consultant, "In House" corporate counsel, Judge and ADR neutral. Career has encompassed vast areas of complex business, commerce and conflict issues. The following is a narrative of some of that experience:</p> <p>Extensive experience with major sophisticated nationwide franchise, dealers and third party representative agreements including Structuring, negotiating and enforcement and termination of all manner of complex and sophisticated franchise and distribution agreements; expert on management of franchisor/franchise relationship management; FORMER PATENT ATTORNEY WITH DEEP EXPERIENCE WITH TECHNOLOGY AND INTELLECTUAL PROPERTY ISSUES including the conceptionalization, funding, development, exploitation, protection and enforcement of technology and intellectual property rights through the use of contracts, patents, trademarks, copyrights, trade secrets,; invention, inventor and inventorship advice, counseling and planning; acquisition, commercialization and revenue generation from patents and other IP with strong emphasis on information, computer and telecommunication technology; litigation including infringement, antitrust and fraud claims, ADR, legislation and public education; conduct of Markman Hearings; Consultant to private alternative "clean" energy investment group; Experience in the employment area include recruitment, executive compensation and termination of employees and executives; as well as harassment, sex and race discrimination, defamation, employee theft and fraud, privacy and secrecy protection, retaliation and wrongful termination claims; Experience in the entertainment and sports area include working as General counsel and EVP of business affairs and offering management and legal counseling</p>

directed towards movie and TV show production, internet gaming, and sports franchises and other Hollywood based entertainment assets; vetting TV and movie productions and clearing intellectual property rights.

Background and experience in the financial and commercial area includes structuring, capitalizing, managing, growing, LBO and taking public corporations, partnerships and LLC's; counseling related to asset base financing and mortgage backed securities; advice directed towards the restricting, bankruptcy and reorganization of distressed businesses; Counseling fiduciaries on investment powers, duties and responsibilities; and management of consumer credit and debt. As an attorney and General partner in the real property and construction area experience includes "Deal making" and all manner of joint ventures and strategic engagements for the development and financing of sophisticated commercial, planned and multi-unit residential real estate projects including appraisal, environmental assessment, profitability analysis, development, construction, marketing and workout issues; have handled both sides of claims for construction defect and fraud.

In the international arena experience includes: Negotiation of joint venture arrangements, manufacturing and supply agreements and the Structuring, negotiating and enforcement of all manner international franchise and international distribution deals; Counsel directed towards Intellectual property rights acquisition and IP protection and enforcement strategies for China, Japan, India, the Pacific basin, Europe and Africa. Background also includes significant experience in intellectual property valuation and rate of return analysis, computer aided design , e-commerce law, aerospace, government contracts, managing multi-ethnic employees groups and developing self-directed employee learning programs, global dispute resolution, proper management of outside counsel and legal fees and "Line" P&L responsibility.

General Experience

Extensive and over arching in-depth blue chip and "in the trenches" experience as an attorney, litigator, business executive, professional consultant, "In House" corporate counsel, Judge and ADR neutral. Career has encompassed vast areas of complex business, commerce and conflict issues. The following is a narrative of some of that experience:

Extensive experience with major sophisticated nationwide franchise, dealers and third party representative agreements including Structuring, negotiating and enforcement and termination of all manner of complex and sophisticated franchise and distribution agreements; expert on management of franchisor/franchise relationship management; **FORMER PATENT ATTORNEY WITH DEEP EXPERIENCE WITH TECHNOLOGY AND INTELLECTUAL PROPERTY ISSUES** including the conceptionalization, funding, development, exploitation, protection and enforcement of technology and intellectual property rights through the use of contracts, patents, trademarks, copyrights, trade secrets,; invention, inventor and inventorship advice, counseling and planning; acquisition, commercialization and revenue generation from patents and other IP with strong emphasis on information, computer and telecommunication technology; litigation including infringement, antitrust and fraud claims, ADR, legislation and public education; conduct of Markman Hearings; Consultant to private alternative "clean" energy investment group; Experience in the employment area include recruitment,

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Experience as a Mediator

Has served as a mediator in hundreds of disputes. These disputes have spanned across the full range of human endeavors and involved just about every conceivable subject matter. More than 20 mediations have been conducted in the following general areas: commercial and business; franchise, dealer and partnership; employment discrimination and wrongful termination; intellectual property (patents, trademarks, copyrights and trade secrets, technology, software and related services and anime issues); banks, credit card and financial institutions; real estate and construction; entertainment and sports entities and international and multi-national disputes. Amounts in dispute have varied from a few thousand dollars to over \$200 million dollars.

Specialties and Sub-Specialties

Breaches and violation in country or international law agreements, treaties or constraints.

Alternative Dispute Resolution Experience

Member of the AAA's Large Complex Case Panel for more than 10 years. Since 1988 has served as chair, sole and panel arbitrator, mediator, referee, private judge,

private justice, Discovery Referee, Markman hearing officer or judge pro tem in hundreds of complex commercial disputes. Amounts in dispute have ranged from small dollar matters to amounts in controversy well in excess of \$200 million. Subject matters in dispute have ranged across the pantheon of referenced industries including software fraud, entertainment industry disputes, termination of distributorship, breach of a sports contract, patent infringement, race discrimination, sexual harassment, partnership dissolution, and stock, securities and investor fraud, construction defect, breach of entertainment distribution contract, breach of surety and trustee obligation, identity theft, defamation, and imaging rights theft, software defect fraud and breach of international distribution rights. Frequent panelist and lecturer on ADR, private justice and technology topics for various bar and business organizations. Former chair of the AAA's Los Angeles B2B Advisory Committee.

Representative Issues Handled as a Mediator

Cases mediated are usually of the complex variety with many issues, claims and request for remedies involved. However the general subject matter themes for a few of areas of focus are as follows:

-INTELLECTUAL PROPERTY - infringement, damages and royalty entitlement, patent claims construction and markman hearing analysis, look and feel infringement, inventor and work for hire rights, contract breach, fraud, antitrust and punitive damages, and interference issues.

-FRANCHISE - franchisee program compliance, geographical and territorial limitations, royalty and payment issues, infringement, fraud, franchisor support issues and state compliance issues.

Employment disputes - race, sex, orientation and religious discrimination, hostile work place, reinstatement claims, defamation, back pay, reasonable accommodation, reverse discrimination, employee theft, work performance, wrongful termination, breach of contract, fraud, and punitive damages.

-INTERNATIONAL - breach of contract, geographical and territorial breaches limitations, IP rights violations, product or service quality issues, trade dress or name issues, royalty and payment issues, infringement, fraud, support service issues and breaches and violation in country or international law agreements, and treaties or constraints.

Alternative Dispute Resolution Training

AAA Roundtable - Arbitration Panels, 2015; AAA How You Can Make the Most of Mediation's Global Growth 2015; AAA The 31st Annual Joint Colloquium, NY, 2014; AAA ICDR International Symposia in Advanced Case Management Issues, 2014; AAA eDiscovery 2.0, 2014; AAA Advanced Mediation Series: Managing the Dynamics of a Multi-Party Class, 2014; AAA Winning at Arbitration: More than 30 Specific Tips Advocates Can Use to Improve Arbitration Outcomes, 2014; AAA Managing a Successful Arbitration, 2013; AAA/ICDR Neutrals Conference, 2012, 2009; College of Commercial Arbitrators Annual Meeting, 2011, 2008; AAA Regaining Speed and Economy in Dispute Resolution, 2011; ICDR/IBA Four Roundtables in Times Square - Putting the Spotlight on International Arbitration on Broadway, 2011; AAA Due Process Dilemmas: How Far to Go in the Name of Fairness, 2011; AAA Spring Construction Conference, Mediation: It's Not New, So What's Next?, 2011; AAA Better, Faster, Cheaper: Reducing Costs in Labor Arbitration, 2011; AAA Workplace Bullying: The Role of Policies and ADR Systems, 2011; AAA Dealing with Delay Tactics in Arbitration (ACE004), 2010, 2005; AAA How to Prevent Arbitrations from Transforming into Litigations, 2009; AAA Electronic Discovery in Arbitration: What You Need to Know, 2009; AAA

Current Issues in Employment Arbitration: The Arbitration Fairness Act of 2009 Legislation and Recent Court Decisions, 2009; AAA Hot Topics in International Construction Arbitration, 2009; AAA Alternative Investments Meet Alternative Dispute Resolution, 2009; ICDR Joint Colloquium on International Arbitration, 2008; AAA Construction Mediation Conference, 2007; ICDR International Symposia in Advanced Case Management Issues, 2007; NAA Beyond the Protocol: The Future of Due Process in Workplace Dispute Resolution, 2007; AAA Neutrals Conference, 2006, 2005; AAA Pro Se: Managing Cases Involving Self-Represented Parties (ACE002), 2006; DRS/LA Bar, 30-Hour Mediator Training, 2005; AAA Arbitration Awards: Safeguarding, Deciding & Writing Awards (ACE001), 2005; AAA Commercial Arbitrator II Training: Advanced Case Management Issues, 2001; Price Waterhouse Company, Directing Efficient High Stakes ADR Proceedings, 2000; AAA/USATF Doping Grievance Arbitrator Training, 2000; AAA Commercial Arbitrator Training, 1999; Los Angeles County Bar, Arbitration and Mediation Seminar, 1998; various other ADR training.

Multi Party Mediation Experience

Has mediated cases where the number of parties have ranged from three to 15. Most of these cases involved franchise or insurance claims.

Years of Practice as a Mediator

20

Education

University of Florida (BS, Electrical Engineering-1975); Georgetown University (JD-1978)

Professional Licenses

Admitted to the Bar: Virginia, 1978; Illinois, 1979; California, 1981; U.S. Patent Bar (inactive), 1979.

Professional Associations

State Bar of California (International Law Section, Executive Committee; Franchise Law Section, Executive Committee); Los Angeles County Bar Association (Board of Trustees, Judicial Appointments Committee); Langston Bar Association (Past President); California Judicial Council; Public Counsel (Past Board of Directors); College of Commercial Arbitrators (Fellow); California Association of Distinguished Arbitrators (Fellow); Association for International Arbitration; Kappa Alpha Psi (Life Member); NB United Fund (Past Chairman).

Total Number of Cases Mediated

200

Mediation Experience as an Advocate or Party

Has served as a full time neutral for more than 10 years. Prior to this, handled scores of mediations as an advocate where the amount in dispute ranged from a few thousand to tens of millions of dollars. Now actively presents programs and training seminars for mediation advocates.

Publications and Speaking Engagements

"Navigating the High Intensity Mediation", California Department of Fair Employment and Housing, January 6, 2015; "Challenges and Issues with Bias and Culture in International arbitration", Third Annual LACBA & ICDR International Arbitration Conference, May 9, 2014; "Mediating and arbitrating USA v. Canada commercial franchise and distribution disputes" Toronto, Canada, Toronto, June, 2014; "How to get your mediator to see things your way", LACBA Labor and Employment law Section, May 4, 2014; "Arbitrating and mediating disputes with

China connected parties and issues", Guangzhou, China, April, 2014; "Dispute resolution and conflict management in the corporate board room", ABA DRS spring meeting, Washington, DC, April 2013; "Cutting edge techniques for winning the international arbitration case", Tokyo, Japan, December 2013; "Dispute Resolution for the Billion dollar Intellectual property disputes – from an arbitrator who has presided over one", ABA, San Francisco, June 2014; "The Ins and Outs of acting as private Settlement Counselor", ACR annual convention, San Diego, October 14, 2013; "Achieving Justice for small players and corporate persons in hotly contested arbitrations", College of Commercial Arbitrators, Santa Fe, New Mexico, October, 2013; "Preventing Runaway Arbitrations", ABA annual convention, San Francisco, Ca., August 2013; "Protecting Mediator confidentiality", Beverly Hills Bar Association, May, 24, 2012; The great debate: Arbitration v. Litigation, ABA annual meeting, Chicago, August 2012; "Fostering private Justice", DePaul University Law School, June 22, 2011; "How to build a successful mediation or arbitration practice", ABA DRS section, Denver, April, 2011; "Master Techniques for Winning the Large Complex Case," The Emerging Issues Forum, 2010; "Private Justice-ADR's Only Legitimate Objective," LOS ANGELES LAWYER, 2010; "The Many Splendid Roles of the Lawyer in ADR," Pepperdine Law School, Straus Institute, 2010; "Arbitrating international commercial disputes in Georgia", ICLE in Georgia, 2010; "Mediating Employment disputes in Georgia", ICLE in Georgia, 2010; "An Essential Toolbox for the Champions of ADR," 2009; The Private Justice System in a Post-ADR World," AAA, 2009; "A Primer on Mediating and Arbitrating the Multimillion Dollar Franchise Dispute," 2008; "A Primer on Arbitrating International Intellectual Property Cases," 2008; "A Better Option: Mediating and Arbitrating the High Stakes Employment Case," 2008; "Understanding and Winning Consumer Arbitration Cases," 2008; "When the Building Must Go On: The Med/Arb Option for Construction and Real Estate Projects," 2007; "Avoiding Armageddon Through ADR," 2006; "Keys for Successful USA Based International Arbitration," 2005; "Winning Mediation Strategies," 2001; "Winning Arbitration Strategies for the Large Complex Patent Case," 1999; "The Legalities of Exporting," Department of Commerce, 1992-94; "Structuring Distribution Agreements in Asia," Computer Law Institute, 1988; Contributing Editor, "Negotiating Computer Contracts," 1984, 1992.

Mediation Philosophy

My mediation philosophy is grounded on the notion that every dispute or conflict can be orderly advanced or resolved in a structured fashion provided that the resolution of the dispute is desired by the parties. The role of the mediator is to assist the parties in obtaining the outcome (usually settlement) that they are seeking from the mediation. Each mediation is unique. My approach is customized for the parties, attorneys or representatives, subject matter and outcomes or results sought. A consideration of these factors will result in an evaluative, facilitative, transformative or mixed approach being employed. The expectation is that the parties will participate in the mediation in good faith, listen to the other side, respect the mediation process and advocate for an outcome that is acceptable to them.

Mediation References

Russell M. Frandsen, rfrandsen@businesslegalgroup.com, (626) 432-7229; Melissa J. Fassett, mjf@ppplaw.com, (805) 962-0011; Hellen Huang, hhuang@ssd.com, (213) 689-5111.

Alternative Dispute Resolution Training

AAA How You Can Make the Most of Mediation's Global Growth 2015; AAA The 31st Annual Joint Colloquium, NY, 2014; AAA ICDR International Symposia in Advanced Case Management Issues, 2014; AAA eDiscovery 2.0, 2014; AAA Advanced Mediation Series: Managing the Dynamics of a Multi-Party Class, 2014; AAA Winning at Arbitration: More than 30 Specific Tips Advocates Can Use to Improve Arbitration Outcomes, 2014; AAA Managing a Successful Arbitration, 2013; AAA/ICDR Neutrals Conference, 2012, 2009; College of Commercial Arbitrators Annual Meeting, 2011, 2008; AAA Regaining Speed and Economy in Dispute Resolution, 2011; ICDR/IBA Four Roundtables in Times Square - Putting the Spotlight on International Arbitration on Broadway, 2011; AAA Due Process Dilemmas: How Far to Go in the Name of Fairness, 2011; AAA Spring Construction Conference, Mediation: It's Not New, So What's Next?, 2011; AAA Better, Faster, Cheaper: Reducing Costs in Labor Arbitration, 2011; AAA Workplace Bullying: The Role of Policies and ADR Systems, 2011; AAA Dealing with Delay Tactics in Arbitration (ACE004), 2010, 2005; AAA How to Prevent Arbitrations from Transforming into Litigations, 2009; AAA Electronic Discovery in Arbitration: What You Need to Know, 2009; AAA Current Issues in Employment Arbitration: The Arbitration Fairness Act of 2009 Legislation and Recent Court Decisions, 2009; AAA Hot Topics in International Construction Arbitration, 2009; AAA Alternative Investments Meet Alternative Dispute Resolution, 2009; ICDR Joint Colloquium on International Arbitration, 2008; AAA Construction Mediation Conference, 2007; ICDR International Symposia in Advanced Case Management Issues, 2007; NAA Beyond the Protocol: The Future of Due Process in Workplace Dispute Resolution, 2007; AAA Neutrals Conference, 2006, 2005; AAA Pro Se: Managing Cases Involving Self-Represented Parties (ACE002), 2006; DRS/LA Bar, 30-Hour Mediator Training, 2005; AAA Arbitration Awards: Safeguarding, Deciding & Writing Awards (ACE001), 2005; AAA Commercial Arbitrator II Training: Advanced Case Management Issues, 2001; Price Waterhouse Company, Directing Efficient High Stakes ADR Proceedings, 2000; AAA/USATF Doping Grievance Arbitrator Training, 2000; AAA Commercial Arbitrator Training, 1999; Los Angeles County Bar, Arbitration and Mediation Seminar, 1998; various other ADR training.

Citizenship

United States of America

Languages

Chinese

Locale

Pasadena, California, United States of America

Compensation

Hearing:	\$575.00/Hr
Study:	\$575.00/Hr
Travel:	\$250.00/Hr
Cancellation:	\$2500.00/Day
Cancellation Period:	45 Days
Comment:	Hourly rate charged for all hours worked. If a scheduled hearing is cancelled, postponed or continued within 30 days of its scheduled date for any reason, the parties will be assessed a \$2500.00 fee for each such cancelled, postponed or continued date,

which shall be payable immediately. Unless otherwise specified, no travel expenses are assessed for hearings conducted in within 30 miles of the arbitrators Los Angeles, Chicago or Atlanta offices.



The Code of Ethics for Arbitrators in Commercial Disputes

Effective March 1, 2004

The **Code of Ethics for Arbitrators in Commercial Disputes** was originally prepared in 1977 by a joint committee consisting of a special committee of the American Arbitration Association® and a special committee of the American Bar Association. The Code was revised in 2003 by an ABA Task Force and special committee of the AAA®.

Preamble

The use of arbitration to resolve a wide variety of disputes has grown extensively and forms a significant part of the system of justice on which our society relies for a fair determination of legal rights. Persons who act as arbitrators therefore undertake serious responsibilities to the public, as well as to the parties. Those responsibilities include important ethical obligations.

Few cases of unethical behavior by commercial arbitrators have arisen. Nevertheless, this Code sets forth generally accepted standards of ethical conduct for the guidance of arbitrators and parties in commercial disputes, in the hope of contributing to the maintenance of high standards and continued confidence in the process of arbitration.

This Code provides ethical guidelines for many types of arbitration but does not apply to labor arbitration, which is generally conducted under the **Code of Professional Responsibility for Arbitrators of Labor-Management Disputes**.

There are many different types of commercial arbitration. Some proceedings are conducted under arbitration rules established by various organizations and trade associations, while others are conducted without such rules. Although most proceedings are arbitrated pursuant to voluntary agreement of the parties, certain types of disputes are submitted to arbitration by reason of particular laws. This Code is intended to apply to all such proceedings in which disputes or claims are submitted for decision to one or more arbitrators appointed in a manner provided by an agreement of the parties, by applicable arbitration rules, or by law. In all such cases, the persons who have the power to decide should observe fundamental standards of ethical conduct. In this Code, all such persons are called "arbitrators," although in some types of proceeding they might be called "umpires," "referees," "neutrals," or have some other title.

Arbitrators, like judges, have the power to decide cases. However, unlike full-time judges, arbitrators are usually engaged in other occupations before, during, and after the time that they serve as arbitrators. Often, arbitrators are purposely chosen from the same trade or industry as the parties in order to bring special knowledge to the task of deciding. This Code recognizes these fundamental differences between arbitrators and judges.

In those instances where this Code has been approved and recommended by organizations that provide, coordinate, or administer services of arbitrators, it provides ethical standards for the members of their respective panels of arbitrators. However, this Code does not form a part of the arbitration rules of any such organization unless its rules so provide.



Note on Neutrality

In some types of commercial arbitration, the parties or the administering institution provide for three or more arbitrators. In some such proceedings, it is the practice for each party, acting alone, to appoint one arbitrator (a “party-appointed arbitrator”) and for one additional arbitrator to be designated by the party-appointed arbitrators, or by the parties, or by an independent institution or individual. The sponsors of this Code believe that it is preferable for all arbitrators including any party-appointed arbitrators to be neutral, that is, independent and impartial, and to comply with the same ethical standards. This expectation generally is essential in arbitrations where the parties, the nature of the dispute, or the enforcement of any resulting award may have international aspects. However, parties in certain domestic arbitrations in the United States may prefer that party-appointed arbitrators be non-neutral and governed by special ethical considerations. These special ethical considerations appear in Canon X of this Code.

This Code establishes a presumption of neutrality for all arbitrators, including party-appointed arbitrators, which applies unless the parties’ agreement, the arbitration rules agreed to by the parties or applicable laws provide otherwise. This Code requires all party-appointed arbitrators, whether neutral or not, to make pre-appointment disclosures of any facts which might affect their neutrality, independence, or impartiality. This Code also requires all party-appointed arbitrators to ascertain and disclose as soon as practicable whether the parties intended for them to serve as neutral or not. If any doubt or uncertainty exists, the party-appointed arbitrators should serve as neutrals unless and until such doubt or uncertainty is resolved in accordance with Canon IX. This Code expects all arbitrators, including those serving under Canon X, to preserve the integrity and fairness of the process.

Note on Construction

Various aspects of the conduct of arbitrators, including some matters covered by this Code, may also be governed by agreements of the parties, arbitration rules to which the parties have agreed, applicable law, or other applicable ethics rules, all of which should be consulted by the arbitrators. This Code does not take the place of or supersede such laws, agreements, or arbitration rules to which the parties have agreed and should be read in conjunction with other rules of ethics. It does not establish new or additional grounds for judicial review of arbitration awards.

All provisions of this Code should therefore be read as subject to contrary provisions of applicable law and arbitration rules. They should also be read as subject to contrary agreements of the parties. Nevertheless, this Code imposes no obligation on any arbitrator to act in a manner inconsistent with the arbitrator’s fundamental duty to preserve the integrity and fairness of the arbitral process.

Canons I through VIII of this Code apply to all arbitrators. Canon IX applies to all party-appointed arbitrators, except that certain party-appointed arbitrators are exempted by Canon X from compliance with certain provisions of Canons I-IX related to impartiality and independence, as specified in Canon X.



CANON I: An arbitrator should uphold the integrity and fairness of the arbitration process.

- A.** An arbitrator has a responsibility not only to the parties but also to the process of arbitration itself, and must observe high standards of conduct so that the integrity and fairness of the process will be preserved. Accordingly, an arbitrator should recognize a responsibility to the public, to the parties whose rights will be decided, and to all other participants in the proceeding. This responsibility may include pro bono service as an arbitrator where appropriate.
- B.** One should accept appointment as an arbitrator only if fully satisfied:
 - (1)** that he or she can serve impartially;
 - (2)** that he or she can serve independently from the parties, potential witnesses, and the other arbitrators;
 - (3)** that he or she is competent to serve; and
 - (4)** that he or she can be available to commence the arbitration in accordance with the requirements of the proceeding and thereafter to devote the time and attention to its completion that the parties are reasonably entitled to expect.
- C.** After accepting appointment and while serving as an arbitrator, a person should avoid entering into any business, professional, or personal relationship, or acquiring any financial or personal interest, which is likely to affect impartiality or which might reasonably create the appearance of partiality. For a reasonable period of time after the decision of a case, persons who have served as arbitrators should avoid entering into any such relationship, or acquiring any such interest, in circumstances which might reasonably create the appearance that they had been influenced in the arbitration by the anticipation or expectation of the relationship or interest. Existence of any of the matters or circumstances described in this paragraph C does not render it unethical for one to serve as an arbitrator where the parties have consented to the arbitrator's appointment or continued services following full disclosure of the relevant facts in accordance with Canon II.
- D.** Arbitrators should conduct themselves in a way that is fair to all parties and should not be swayed by outside pressure, public clamor, and fear of criticism or self-interest. They should avoid conduct and statements that give the appearance of partiality toward or against any party.
- E.** When an arbitrator's authority is derived from the agreement of the parties, an arbitrator should neither exceed that authority nor do less than is required to exercise that authority completely. Where the agreement of the parties sets forth procedures to be followed in conducting the arbitration or refers to rules to be followed, it is the obligation of the arbitrator to comply with such procedures or rules. An arbitrator has no ethical obligation to comply with any agreement, procedures or rules that are unlawful or that, in the arbitrator's judgment, would be inconsistent with this Code.
- F.** An arbitrator should conduct the arbitration process so as to advance the fair and efficient resolution of the matters submitted for decision. An arbitrator should make all reasonable efforts to prevent delaying tactics, harassment of parties or other participants, or other abuse or disruption of the arbitration process.
- G.** The ethical obligations of an arbitrator begin upon acceptance of the appointment and continue throughout all stages of the proceeding. In addition, as set forth in this Code, certain ethical obligations begin as soon as a person is requested to serve as an arbitrator and certain ethical obligations continue after the decision in the proceeding has been given to the parties.
- H.** Once an arbitrator has accepted an appointment, the arbitrator should not withdraw or abandon the appointment unless compelled to do so by unanticipated circumstances that would render it impossible or impracticable to continue. When an arbitrator is to be compensated for his or her services, the arbitrator may withdraw if the parties fail or refuse to provide for payment of the compensation as agreed.
- I.** An arbitrator who withdraws prior to the completion of the arbitration, whether upon the arbitrator's initiative or upon the request of one or more of the parties, should take reasonable steps to protect the interests of the parties in the arbitration, including return of evidentiary materials and protection of confidentiality.



Comment to Canon I

A prospective arbitrator is not necessarily partial or prejudiced by having acquired knowledge of the parties, the applicable law or the customs and practices of the business involved. Arbitrators may also have special experience or expertise in the areas of business, commerce, or technology which are involved in the arbitration. Arbitrators do not contravene this Canon if, by virtue of such experience or expertise, they have views on certain general issues likely to arise in the arbitration, but an arbitrator may not have prejudged any of the specific factual or legal determinations to be addressed during the arbitration.

During an arbitration, the arbitrator may engage in discourse with the parties or their counsel, draw out arguments or contentions, comment on the law or evidence, make interim rulings, and otherwise control or direct the arbitration. These activities are integral parts of an arbitration. Paragraph D of Canon I is not intended to preclude or limit either full discussion of the issues during the course of the arbitration or the arbitrator's management of the proceeding.

CANON II: An arbitrator should disclose any interest or relationship likely to affect impartiality or which might create an appearance of partiality.

- A.** Persons who are requested to serve as arbitrators should, before accepting, disclose:
 - (1) any known direct or indirect financial or personal interest in the outcome of the arbitration;
 - (2) any known existing or past financial, business, professional or personal relationships which might reasonably affect impartiality or lack of independence in the eyes of any of the parties. For example, prospective arbitrators should disclose any such relationships which they personally have with any party or its lawyer, with any co-arbitrator, or with any individual whom they have been told will be a witness. They should also disclose any such relationships involving their families or household members or their current employers, partners, or professional or business associates that can be ascertained by reasonable efforts;
 - (3) the nature and extent of any prior knowledge they may have of the dispute; and
 - (4) any other matters, relationships, or interests which they are obligated to disclose by the agreement of the parties, the rules or practices of an institution, or applicable law regulating arbitrator disclosure.
- B.** Persons who are requested to accept appointment as arbitrators should make a reasonable effort to inform themselves of any interests or relationships described in paragraph A.
- C.** The obligation to disclose interests or relationships described in paragraph A is a continuing duty which requires a person who accepts appointment as an arbitrator to disclose, as soon as practicable, at any stage of the arbitration, any such interests or relationships which may arise, or which are recalled or discovered.
- D.** Any doubt as to whether or not disclosure is to be made should be resolved in favor of disclosure.
- E.** Disclosure should be made to all parties unless other procedures for disclosure are provided in the agreement of the parties, applicable rules or practices of an institution, or by law. Where more than one arbitrator has been appointed, each should inform the others of all matters disclosed.
- F.** When parties, with knowledge of a person's interests and relationships, nevertheless desire that person to serve as an arbitrator, that person may properly serve.



- G.** If an arbitrator is requested by all parties to withdraw, the arbitrator must do so. If an arbitrator is requested to withdraw by less than all of the parties because of alleged partiality, the arbitrator should withdraw unless either of the following circumstances exists:
 - (1)** An agreement of the parties, or arbitration rules agreed to by the parties, or applicable law establishes procedures for determining challenges to arbitrators, in which case those procedures should be followed; or
 - (2)** In the absence of applicable procedures, if the arbitrator, after carefully considering the matter, determines that the reason for the challenge is not substantial, and that he or she can nevertheless act and decide the case impartially and fairly.
- H.** If compliance by a prospective arbitrator with any provision of this Code would require disclosure of confidential or privileged information, the prospective arbitrator should either:
 - (1)** Secure the consent to the disclosure from the person who furnished the information or the holder of the privilege; or
 - (2)** Withdraw.

CANON III: An arbitrator should avoid impropriety or the appearance of impropriety in communicating with parties.

- A.** If an agreement of the parties or applicable arbitration rules establishes the manner or content of communications between the arbitrator and the parties, the arbitrator should follow those procedures notwithstanding any contrary provision of paragraphs B and C.
- B.** An arbitrator or prospective arbitrator should not discuss a proceeding with any party in the absence of any other party, except in any of the following circumstances:
 - (1)** When the appointment of a prospective arbitrator is being considered, the prospective arbitrator:
 - (a)** may ask about the identities of the parties, counsel, or witnesses and the general nature of the case; and
 - (b)** may respond to inquiries from a party or its counsel designed to determine his or her suitability and availability for the appointment. In any such dialogue, the prospective arbitrator may receive information from a party or its counsel disclosing the general nature of the dispute but should not permit them to discuss the merits of the case.
 - (2)** In an arbitration in which the two party-appointed arbitrators are expected to appoint the third arbitrator, each party-appointed arbitrator may consult with the party who appointed the arbitrator concerning the choice of the third arbitrator;
 - (3)** In an arbitration involving party-appointed arbitrators, each party-appointed arbitrator may consult with the party who appointed the arbitrator concerning arrangements for any compensation to be paid to the party-appointed arbitrator. Submission of routine written requests for payment of compensation and expenses in accordance with such arrangements and written communications pertaining solely to such requests need not be sent to the other party;
 - (4)** In an arbitration involving party-appointed arbitrators, each party-appointed arbitrator may consult with the party who appointed the arbitrator concerning the status of the arbitrator (i.e., neutral or non-neutral), as contemplated by paragraph C of Canon IX;
 - (5)** Discussions may be had with a party concerning such logistical matters as setting the time and place of hearings or making other arrangements for the conduct of the proceedings. However, the arbitrator should promptly inform each other party of the discussion and should not make any final determination concerning the matter discussed before giving each absent party an opportunity to express the party's views; or
 - (6)** If a party fails to be present at a hearing after having been given due notice, or if all parties expressly consent, the arbitrator may discuss the case with any party who is present.
- C.** Unless otherwise provided in this Canon, in applicable arbitration rules or in an agreement of the parties, whenever an arbitrator communicates in writing with one party, the arbitrator should at the same time send a copy of the communication to every other party, and whenever the arbitrator receives any written communication concerning the case from one party which has not already been sent to every other party, the arbitrator should send or cause it to be sent to the other parties.



CANON IV: An arbitrator should conduct the proceedings fairly and diligently.

- A.** An arbitrator should conduct the proceedings in an even-handed manner. The arbitrator should be patient and courteous to the parties, their representatives, and the witnesses and should encourage similar conduct by all participants.
- B.** The arbitrator should afford to all parties the right to be heard and due notice of the time and place of any hearing. The arbitrator should allow each party a fair opportunity to present its evidence and arguments.
- C.** The arbitrator should not deny any party the opportunity to be represented by counsel or by any other person chosen by the party.
- D.** If a party fails to appear after due notice, the arbitrator should proceed with the arbitration when authorized to do so, but only after receiving assurance that appropriate notice has been given to the absent party.
- E.** When the arbitrator determines that more information than has been presented by the parties is required to decide the case, it is not improper for the arbitrator to ask questions, call witnesses, and request documents or other evidence, including expert testimony.
- F.** Although it is not improper for an arbitrator to suggest to the parties that they discuss the possibility of settlement or the use of mediation, or other dispute resolution processes, an arbitrator should not exert pressure on any party to settle or to utilize other dispute resolution processes. An arbitrator should not be present or otherwise participate in settlement discussions or act as a mediator unless requested to do so by all parties.
- G.** Co-arbitrators should afford each other full opportunity to participate in all aspects of the proceedings.

Comment to Paragraph G

Paragraph G of Canon IV is not intended to preclude one arbitrator from acting in limited circumstances (e.g., ruling on discovery issues) where authorized by the agreement of the parties, applicable rules or law, nor does it preclude a majority of the arbitrators from proceeding with any aspect of the arbitration if an arbitrator is unable or unwilling to participate and such action is authorized by the agreement of the parties or applicable rules or law. It also does not preclude *ex parte* requests for interim relief.

CANON V: An arbitrator should make decisions in a just, independent and deliberate manner.

- A.** The arbitrator should, after careful deliberation, decide all issues submitted for determination. An arbitrator should decide no other issues.
- B.** An arbitrator should decide all matters justly, exercising independent judgment, and should not permit outside pressure to affect the decision.
- C.** An arbitrator should not delegate the duty to decide to any other person.
- D.** In the event that all parties agree upon a settlement of issues in dispute and request the arbitrator to embody that agreement in an award, the arbitrator may do so, but is not required to do so unless satisfied with the propriety of the terms of settlement. Whenever an arbitrator embodies a settlement by the parties in an award, the arbitrator should state in the award that it is based on an agreement of the parties.



CANON VI: An arbitrator should be faithful to the relationship of trust and confidentiality inherent in that office.

- A.** An arbitrator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the arbitration proceeding to gain personal advantage or advantage for others, or to affect adversely the interest of another.
- B.** The arbitrator should keep confidential all matters relating to the arbitration proceedings and decision. An arbitrator may obtain help from an associate, a research assistant or other persons in connection with reaching his or her decision if the arbitrator informs the parties of the use of such assistance and such persons agree to be bound by the provisions of this Canon.
- C.** It is not proper at any time for an arbitrator to inform anyone of any decision in advance of the time it is given to all parties. In a proceeding in which there is more than one arbitrator, it is not proper at any time for an arbitrator to inform anyone about the substance of the deliberations of the arbitrators. After an arbitration award has been made, it is not proper for an arbitrator to assist in proceedings to enforce or challenge the award.
- D.** Unless the parties so request, an arbitrator should not appoint himself or herself to a separate office related to the subject matter of the dispute, such as receiver or trustee, nor should a panel of arbitrators appoint one of their number to such an office.

CANON VII: An arbitrator should adhere to standards of integrity and fairness when making arrangements for compensation and reimbursement of expenses.

- A.** Arbitrators who are to be compensated for their services or reimbursed for their expenses shall adhere to standards of integrity and fairness in making arrangements for such payments.
- B.** Certain practices relating to payments are generally recognized as tending to preserve the integrity and fairness of the arbitration process. These practices include:
 - (1)** Before the arbitrator finally accepts appointment, the basis of payment, including any cancellation fee, compensation in the event of withdrawal and compensation for study and preparation time, and all other charges, should be established. Except for arrangements for the compensation of party-appointed arbitrators, all parties should be informed in writing of the terms established;
 - (2)** In proceedings conducted under the rules or administration of an institution that is available to assist in making arrangements for payments, communication related to compensation should be made through the institution. In proceedings where no institution has been engaged by the parties to administer the arbitration, any communication with arbitrators (other than party appointed arbitrators) concerning payments should be in the presence of all parties; and
 - (3)** Arbitrators should not, absent extraordinary circumstances, request increases in the basis of their compensation during the course of a proceeding.

CANON VIII: An arbitrator may engage in advertising or promotion of arbitral services which is truthful and accurate.

- A.** Advertising or promotion of an individual's willingness or availability to serve as an arbitrator must be accurate and unlikely to mislead. Any statements about the quality of the arbitrator's work or the success of the arbitrator's practice must be truthful.
- B.** Advertising and promotion must not imply any willingness to accept an appointment otherwise than in accordance with this Code.



Comment to Canon VIII

This Canon does not preclude an arbitrator from printing, publishing, or disseminating advertisements conforming to these standards in any electronic or print medium, from making personal presentations to prospective users of arbitral services conforming to such standards or from responding to inquiries concerning the arbitrator's availability, qualifications, experience, or fee arrangements.

CANON IX: Arbitrators appointed by one party have a duty to determine and disclose their status and to comply with this code, except as exempted by Canon X.

- A.** In some types of arbitration in which there are three arbitrators, it is customary for each party, acting alone, to appoint one arbitrator. The third arbitrator is then appointed by agreement either of the parties or of the two arbitrators, or failing such agreement, by an independent institution or individual. In tripartite arbitrations to which this Code applies, all three arbitrators are presumed to be neutral and are expected to observe the same standards as the third arbitrator.
- B.** Notwithstanding this presumption, there are certain types of tripartite arbitration in which it is expected by all parties that the two arbitrators appointed by the parties may be predisposed toward the party appointing them. Those arbitrators, referred to in this Code as "Canon X arbitrators," are not to be held to the standards of neutrality and independence applicable to other arbitrators. Canon X describes the special ethical obligations of party-appointed arbitrators who are not expected to meet the standard of neutrality.
- C.** A party-appointed arbitrator has an obligation to ascertain, as early as possible but not later than the first meeting of the arbitrators and parties, whether the parties have agreed that the party-appointed arbitrators will serve as neutrals or whether they shall be subject to Canon X, and to provide a timely report of their conclusions to the parties and other arbitrators:
 - (1)** Party-appointed arbitrators should review the agreement of the parties, the applicable rules and any applicable law bearing upon arbitrator neutrality. In reviewing the agreement of the parties, party-appointed arbitrators should consult any relevant express terms of the written or oral arbitration agreement. It may also be appropriate for them to inquire into agreements that have not been expressly set forth, but which may be implied from an established course of dealings of the parties or well-recognized custom and usage in their trade or profession;
 - (2)** Where party-appointed arbitrators conclude that the parties intended for the party-appointed arbitrators not to serve as neutrals, they should so inform the parties and the other arbitrators. The arbitrators may then act as provided in Canon X unless or until a different determination of their status is made by the parties, any administering institution or the arbitral panel; and
 - (3)** Until party-appointed arbitrators conclude that the party-appointed arbitrators were not intended by the parties to serve as neutrals, or if the party-appointed arbitrators are unable to form a reasonable belief of their status from the foregoing sources and no decision in this regard has yet been made by the parties, any administering institution, or the arbitral panel, they should observe all of the obligations of neutral arbitrators set forth in this Code.
- D.** Party-appointed arbitrators not governed by Canon X shall observe all of the obligations of Canons I through VIII unless otherwise required by agreement of the parties, any applicable rules, or applicable law.



CANON X: Exemptions for arbitrators appointed by one party who are not subject to rules of neutrality.

Canon X arbitrators are expected to observe all of the ethical obligations prescribed by this Code except those from which they are specifically excused by Canon X.

A. *Obligations Under Canon I*

Canon X arbitrators should observe all of the obligations of Canon I subject only to the following provisions:

- (1) Canon X arbitrators may be predisposed toward the party who appointed them but in all other respects are obligated to act in good faith and with integrity and fairness. For example, Canon X arbitrators should not engage in delaying tactics or harassment of any party or witness and should not knowingly make untrue or misleading statements to the other arbitrators; and
- (2) The provisions of subparagraphs B(1), B(2), and paragraphs C and D of Canon I, insofar as they relate to partiality, relationships, and interests are not applicable to Canon X arbitrators.

B. *Obligations Under Canon II*

- (1) Canon X arbitrators should disclose to all parties, and to the other arbitrators, all interests and relationships which Canon II requires be disclosed. Disclosure as required by Canon II is for the benefit not only of the party who appointed the arbitrator, but also for the benefit of the other parties and arbitrators so that they may know of any partiality which may exist or appear to exist; and
- (2) Canon X arbitrators are not obliged to withdraw under paragraph G of Canon II if requested to do so only by the party who did not appoint them.

C. *Obligations Under Canon III*

Canon X arbitrators should observe all of the obligations of Canon III subject only to the following provisions:

- (1) Like neutral party-appointed arbitrators, Canon X arbitrators may consult with the party who appointed them to the extent permitted in paragraph B of Canon III;
- (2) Canon X arbitrators shall, at the earliest practicable time, disclose to the other arbitrators and to the parties whether or not they intend to communicate with their appointing parties. If they have disclosed the intention to engage in such communications, they may thereafter communicate with their appointing parties concerning any other aspect of the case, except as provided in paragraph (3);
- (3) If such communication occurred prior to the time they were appointed as arbitrators, or prior to the first hearing or other meeting of the parties with the arbitrators, the Canon X arbitrator should, at or before the first hearing or meeting of the arbitrators with the parties, disclose the fact that such communication has taken place. In complying with the provisions of this subparagraph, it is sufficient that there be disclosure of the fact that such communication has occurred without disclosing the content of the communication. A single timely disclosure of the Canon X arbitrator's intention to participate in such communications in the future is sufficient;
- (4) Canon X arbitrators may not at any time during the arbitration:
 - (a) disclose any deliberations by the arbitrators on any matter or issue submitted to them for decision;
 - (b) communicate with the parties that appointed them concerning any matter or issue taken under consideration by the panel after the record is closed or such matter or issue has been submitted for decision; or
 - (c) disclose any final decision or interim decision in advance of the time that it is disclosed to all parties.



- (5) Unless otherwise agreed by the arbitrators and the parties, a Canon X arbitrator may not communicate orally with the neutral arbitrator concerning any matter or issue arising or expected to arise in the arbitration in the absence of the other Canon X arbitrator. If a Canon X arbitrator communicates in writing with the neutral arbitrator, he or she shall simultaneously provide a copy of the written communication to the other Canon X arbitrator;
- (6) When Canon X arbitrators communicate orally with the parties that appointed them concerning any matter on which communication is permitted under this Code, they are not obligated to disclose the contents of such oral communications to any other party or arbitrator; and
- (7) When Canon X arbitrators communicate in writing with the party who appointed them concerning any matter on which communication is permitted under this Code, they are not required to send copies of any such written communication to any other party or arbitrator.

D. *Obligations Under Canon IV*

Canon X arbitrators should observe all of the obligations of Canon IV.

E. *Obligations Under Canon V*

Canon X arbitrators should observe all of the obligations of Canon V, except that they may be predisposed toward deciding in favor of the party who appointed them.

F. *Obligations Under Canon VI*

Canon X arbitrators should observe all of the obligations of Canon VI.

G. *Obligations Under Canon VII*

Canon X arbitrators should observe all of the obligations of Canon VII.

H. *Obligations Under Canon VIII*

Canon X arbitrators should observe all of the obligations of Canon VIII.

I. *Obligations Under Canon IX*

The provisions of paragraph D of Canon IX are inapplicable to Canon X arbitrators, except insofar as the obligations are also set forth in this Canon.

**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 Resolution¹. A joint committee consisting of representatives from the same successor organizations revised the Model Standards in 2005.² Both the original 1994 version and the 2005 revision have been approved by each participating organization.³

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.

¹ 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.

² 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.

³ 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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