MINDFUL MEDIATION: ETHICAL DILEMMAS FOR ATTORNEYS AND MEDIATORS

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A NOTE CONCERNING THE PROGRAM MATERIALS

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THE PRESENTERS

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JUDGE JOAN BYER served as a Circuit Court Judge in the family division of Louisville, Kentucky’s Jefferson Circuit Court from 1996 through 2015. Named Louisville Bar Association Judge of the Year in 2002, Judge Byer has received numerous recognitions reflecting her exemplary qualifications as a jurist and as a community leader. Judge Byer was instrumental in the development of the Homeless Not Helpless Conference, a community response to homeless students in the Louisville, Jefferson County Public Schools. She assisted in the creation of the First Annual Multidisciplinary Symposium: Faces of Childhood Trauma in collaboration with the University of Louisville Kent School of Social Work, Administrative Office of the Courts and the Louisville medical community. Judge Byer served as a Trustee on the Board for the National Council of Family and Juvenile Court Judges and as past President of the National Truancy Prevention Association, a non-profit organization dedicated to the needs of challenged school aged youth. Judge Byer also served on the Board of Directors for the YMCA Safe Place, a voluntary shelter for teens, including as its board Chair, and currently serves on CJJ’s Board of Directors.

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BOB DUNCAN is a Member in the Health Care and Insurance Industry groups at Jackson Kelly PLLC, focusing primarily on litigation, health care litigation, and products liability litigation. Mr. Duncan’s practice involves a wide variety of civil litigation, concentrating on defense of doctors, hospitals, and other health care providers in medical liability actions, along with matters involving complex insurance issues, insurance bad faith claims, products liability, and construction. He also regularly serves as a mediator in civil litigation matters. His passion for the law is reflected not only through his practice, but through his desire to craft the next generation of lawyers. He has taught both medical liability and legal writing as an adjunct law professor. Mr. Duncan earned his undergraduate degree from the University of Kentucky and his J.D. from the University of Kentucky College of Law. He has been named by The Best Lawyers in America® for Commercial Litigation, Litigation – Construction, Mass Tort Litigation/Class Actions – Defendants and Product Liability Litigation – Defendants (2005-2019).
JEFFREY MANDO is a premier litigation attorney in Kentucky and Ohio. With over 35 years of experience as a trial attorney, Mr. Mando represents law enforcement officers and state and local governments in high profile lawsuits, including police shootings, pursuits, and death in custody cases. He has tried over 80 cases to a jury both in state and federal courts and has conducted over 60 appellate oral arguments. He is lead counsel of record in numerous published federal and state court opinions on law enforcement liability and qualified immunity. Recently, he was awarded “Lawyer of the Year” from Best Lawyers in the area of litigation. He has also been named as a Cincinnati Leading Lawyer, Super Lawyer and was named Kentucky Defense Counsel for 2018.

MIKE TROOP has been a mediator for the past 13 years, during which he received extensive training in negotiations/mediations/conflict resolution at Harvard Law School Program on Negotiations, Straus Institute for Dispute Resolution at Pepperdine Law School, the United States Department of Justice and the Kentucky Administrative Office of the Courts. Mr. Troop is an experienced instructor and teacher having been an adjunct professor of negotiations at the University of Kentucky College of Law, assistant professor of business law at the University of Mississippi and instructor on resolving church conflict at the Lexington Theological Seminary. He has provided training in mediations, negotiations, conflict resolution for the AOC and various state and county agencies and organizations, as well as preparing and presenting materials at KBA law updates. Mr. Troop is a member of the Kentucky Chapter of the National Academy of Distinguished Neutrals, member of the Kentucky Supreme Court Mediation Rules Committee and has served as chair of the KBA Alternative Dispute Resolution Section. His other experience includes serving as Commissioner of the Kentucky State Police, Secretary of the Kentucky Justice Cabinet and member of the Kentucky General Assembly and Presidentialy appointed United States Attorney for the Western District of Kentucky.
ORDER

IN RE: AMENDMENT TO THE RULES OF ADMINISTRATIVE PROCEDURE APART XII. MEDIATION GUIDELINES FOR COURT OF JUSTICE MEDIATORS

It is HEREBY ORDERED that a new Part XII of the Rules of Administrative Procedure is created to contain the following:

Section 1. Statement of Purpose

The following Guidelines concern suggested minimum standards for training, experience, education, and ethical conduct for mediators practicing in courts of the Commonwealth of Kentucky. They are intended to promote public confidence in the mediation process. Judges and the public are encouraged to refer to the Administrative Office of the Court’s (AOC) website for the roster of mediators who voluntarily agree to comply with these Guidelines. Additional information and related forms are available at Guidelines for Basic Mediation Training at www.kycourts.net.

Section 2. Training and Experience

(1) General civil mediator. A mediator who offers to provide general civil mediation services should have the following minimum training and experience:

(a) Forty hours of training by a mediation training provider covering communication skills; conflict resolution theory and practice; mediation theory, practice, and techniques; the court process; and

(b) Fifteen hours of mediation experience with parties in actual disputes, representing at least three cases, where the mediator is a participating mediator under the guidance of a mediator qualified under these Guidelines or a mediation training center.

(2) Family Mediator. A mediator who offers to provide family mediation services should have the following minimum training and experience:

(a) Forty hours of training by a mediation training provider including conflict resolution, the mediation process, communication skills, the psychological aspects of divorce on families, domestic violence, substance abuse, financial and property issues, paternity, family law, and family or circuit court procedures. Family mediators are strongly encouraged to take general mediation training prior to this training.
Fifteen hours of mediation experience with parties in actual family disputes, representing at least three cases, where the mediator is a participating mediator under the guidance of a family mediator qualified under these Guidelines, or a mediation training center.

Special Provisions for Mediators in Practice Prior to Adoption of the Guidelines. Any mediator may be deemed qualified under these Guidelines if the mediator has engaged in a mediation practice prior to the adoption of these Guidelines and submits to the Mediation Division of the Administrative Office of the Courts a written statement describing equivalent training and experience. A form is available at www.kycourts.net.

Section 3. Ethical Guidelines

(1) Mediation Defined. Mediation is an informal process in which a neutral third person, called a mediator, facilitates the resolution of a dispute between two or more parties. The process is designed to help disputing parties reach an agreement on all or part of the issues in dispute. Decision-making authority remains with the parties, not the mediator. The mediator assists the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives. Parties should comply with orders of the court requiring participants in mediation to have settlement authority. See Kentucky Farm Bureau Mut. Ins. Co. v. Wright, 136 S.W.3d 455 (Ky. 2004).

Comment. A mediator’s obligation is to assist the parties in reaching a voluntary outcome. The mediator should not coerce a party in any way. A mediator may make suggestions, but the parties make all settlement decisions voluntarily.

(2) Mediator Conduct. A mediator’s duty to protect the integrity and confidentiality of the mediation process commences with the first communication with a party, is continuous in nature, and does not terminate upon the conclusion of the mediation.

Comment (a). A mediator should not use information obtained during the mediation for personal gain or advantage.

Comment (b). The interests of the parties should always be placed above the personal interest of the mediator.

Comment (c). A mediator should not accept mediations that cannot be completed in a timely manner, or as directed by the court.

Comment (d). Although a mediator may advertise the mediator’s qualifications and availability to mediate, the mediator should not solicit a specific case to mediate.

Comment (e). A mediator should not mediate a dispute when the mediator has knowledge that another mediator was appointed or selected without first consulting with the other mediator or the parties. If the previous mediation has been concluded, consultation is not necessary.

(3) Mediation Costs. As early as practicable, and before the mediation session begins, a mediator should explain all fees and other expenses to be charged for the mediation. A mediator should not charge a contingent fee or base a fee upon the outcome of the mediation. In appropriate cases,
a mediator should perform mediation services on a sliding scale, at a reduced fee, or without compensation, based on the parties’ ability to pay. **Comment (a).** In court mediations, a mediator should avoid the appearance of impropriety regarding the amount of the mediator’s fee. The fee should be reasonable and no greater than the mediator’s standard rate as a mediator.  
**Comment (b).** If a party and the mediator have a dispute that cannot be resolved before commencement of the mediation as to the mediator’s fee, the mediator should decline to serve so that the parties may obtain another mediator.

4. **Disclosure of Possible Conflicts.** Prior to commencing the mediation, the mediator should make full disclosure of any known relationships with the parties or their counsel that may affect, or give the appearance of affecting, the mediator's neutrality. A mediator should not serve in the matter if a party makes an objection to the mediator based upon a conflict or perceived conflict.  
**Comment (a).** A mediator should withdraw from mediation if it is inappropriate to serve.  
**Comment (b).** If, after commencement of the mediation, the mediator discovers that such a relationship exists, the mediator should make full disclosure as soon as practicable.

5. **Mediator Qualifications.** A mediator should inform the participants of the mediator’s qualifications and experience.  
**Comment.** A mediator's qualifications and experience constitute the foundation upon which the mediation process depends; therefore, if there is any objection to the mediator's qualifications to mediate the dispute, the mediator should withdraw from the mediation. Likewise, the mediator should decline to serve if the mediator feels unqualified to do so.

6. **The Mediation Process.** The mediator should inform and discuss with the participants the rules and procedures pertaining to the mediation process.  
**Comment (a).** A mediator should inform the parties about the mediation process no later than the opening session.  
**Comment (b).** At a minimum, the mediator should inform the parties of the following:

   (i) The mediation is private. Unless otherwise agreed by the participants, only the mediator, the parties and their representatives are allowed to attend;

   (ii) The mediation is informal. There are no court reporters present; no record is made of the proceedings; no subpoena or other service of process is allowed; and no rulings are made on the issues or the merits of the case;

   (iii) The mediation is confidential;

   (iv) Any outcome rests with the parties; and
(v) The mediator does not render legal advice or represent any party.

(7) Convening the Mediation. Unless the parties agree otherwise, the mediator should not convene a mediation session unless all parties and their representatives ordered by the court are present, corporate parties are represented by officers or agents who have demonstrated to the mediator that they possess adequate authority to negotiate a settlement, and an adequate amount of time has been reserved by all parties to the mediation to allow the mediation process to be productive.

(8) Confidentiality.

(a) Mediation sessions should be closed to all persons other than the parties, their legal representatives, and other persons invited by the mediator with the consent of the parties.

(b) Mediation should be regarded as settlement negotiations for purposes of Kentucky Rule of Evidence 408.

(c) Mediators should not be subject to process requiring the disclosure of any matter discussed during the mediation, but rather, such matters are considered confidential and privileged in nature except on order of the Court for good cause shown. This privilege and immunity reside in the mediator and may not be waived by the parties.

(d) Nothing in this rule prohibits the mediator from reporting abuse according to KRS 209.030, KRS 620.030, or other applicable law.

Comment. A mediator should not permit recordings or transcripts to be made of mediation proceedings. A mediator should maintain confidentiality in the storage and disposal of records and render anonymous all identifying information when materials are used for research, educational or other informational purposes.

(9) Report to Court. The mediator reports to the court that the mediation has not occurred, has not been completed, or that the mediation has been completed with or without an agreement on any or all issues. With the consent of the parties, the mediator may also identify those matters, which, if resolved or completed, would facilitate the possibility of a settlement.

(10) Impartiality. A mediator should be impartial toward all parties.

Comment. If a mediator or the parties find that the mediator’s impartiality has been compromised, the mediator should offer to withdraw from the mediation process. Impartiality means freedom from favoritism or bias in word, action, and appearance; it implies a commitment to aid all parties in reaching a settlement.

(11) Disclosure and Exchange of Information. A mediator should encourage the disclosure of information and should assist the parties in considering the benefits, risks, and alternatives available to them.
(12) **Professional Advice.** A mediator should not give legal or other professional advice to the parties except as provided in Section 3(17)(b) *infra re:* Evaluative Mediation.

**Comment (a).** In appropriate circumstances, a mediator should encourage the parties to seek legal, financial, tax or other professional advice before, during, and after the mediation process.

**Comment (b).** A mediator should not convene the mediation if the mediator has reason to believe that a pro se party fails to understand that the mediator is not providing legal representation for the pro se party.

(13) **No Judicial Action Taken.** A person serving as a mediator should not subsequently serve as a judge, master commissioner, guardian ad litem, or in any other judicial or quasi-judicial capacity in matters that are the subject of the mediation, unless the parties otherwise agree.

**Comment.** It is generally inappropriate for a mediator to serve in a judicial or quasi-judicial capacity in a matter in which the mediator had communications with one or more parties without all other parties present. For example, an attorney-mediator who has served as a mediator in a pending litigation should not subsequently serve in the same case as a special master, guardian ad litem, or in any other judicial or quasi-judicial capacity with binding decision-making authority. Notwithstanding the foregoing, where an impasse has been declared at the conclusion of a mediation, the mediator, if requested and agreed to by all parties, may serve as the arbitrator in a binding arbitration of the dispute, or as a third-party neutral in any other alternative dispute proceeding, so long as the mediator believed nothing learned during private conferences with any party to the mediation will bias the mediator or will unfairly influence the mediator's decisions while acting in the mediator's subsequent capacity.

(14) **Termination of Mediation Session.** A mediator should postpone, recess, or terminate the mediation process if it is apparent to the mediator that continuation of the process is unproductive.

(15) **Agreement in Writing.** If an agreement is reached during the mediation conference, it is reduced to writing and signed by the parties. The parties are responsible for the drafting of the agreement, although the mediator may assist in the drafting of the agreement with the consent of the parties.

(16) **Mediator's Relationship with the Judiciary.** A mediator should avoid the appearance of impropriety in the mediator's relationship with a member of the judiciary or the court staff with regard to appointments or referrals to mediation.

(17) **Mediation Styles**

(a) **Facilitative Mediation.** The facilitative mediator structures a process to assist the parties in reaching a mutually agreeable outcome. The mediator asks questions; validates and normalizes parties' points of view; searches for interests underneath the positions taken by parties; and assists the parties in finding and analyzing options for resolution. The facilitative mediator does not
make recommendations to the parties, give his or her own advice or opinion as to the outcomes of the case, or predict what a court would do in the case. The mediator is in charge of the process, while the parties are in charge of the outcome. Facilitative mediators want to ensure that parties come to agreements based on information and understanding. They hold joint sessions with all parties present so that the parties can hear each other's points of view, and hold confidential sessions with individual parties. They want the parties to have the major influence on decisions made.

(b) **Evaluative Mediation.** Evaluative mediation is modeled after settlement conferences held by judges. The evaluative mediator assists the parties in reaching resolution by pointing out the weaknesses of their case. An evaluative mediator might make formal or informal recommendation to the parties as to the outcome of the issues. The evaluative mediator is more concerned with the legal rights of the parties, rather than the parties' needs and interests, and evaluation is based on legal concepts of fairness. The evaluative mediator meets most often in separate meetings with the parties and their attorneys, practicing “shuttle diplomacy.” He/she helps the parties and their attorneys evaluate their legal position and the costs versus the benefits of settling in mediation rather than pursuing litigation. The evaluative mediator structures the process and directly influences the outcome of mediation.

**Comment (a). Providing Information.** Consistent with standards of impartiality and preserving party self-determination, a mediator may provide information that he/she is qualified to provide by virtue of training or experience.

**Comment (b). Independent Legal Advice.** When a mediator believes a party does not understand or appreciate how an agreement may adversely affect legal rights or obligations, the mediator should advise the party of the right to seek independent legal counsel.

**Comment (c). Personal or Professional Opinions.** A mediator should not offer a personal or professional opinion intended to coerce the parties, decide the dispute, or direct a resolution of any issue. Consistent with standards of impartiality and preserving party self-determination, however, a mediator may point out possible outcomes of the case and discuss merits of a claim or defense. A mediator should not offer a personal or professional opinion as to how the court in which the case has been filed will resolve the dispute.

(c) **Transformative Mediation.** Transformative mediation is based on the values of “empowerment” and “recognition.” The potential for transformative mediation is that any or all parties, or their relationships, may be transformed during the mediation. In these ways, the values of transformative mediation mirror those of facilitative mediation. In transformative mediation, the parties structure the process, with the mediator following their lead, and individual caucus sessions are rarely used.
Responsibilities to the Profession and the Public

(a) **Community Service.** A mediator is encouraged to provide at least twenty hours per year of mediation service in the community for nominal or no fee.

(b) **Training.** A mediator should acquire substantive knowledge and procedural skills in her/his specialized area of practice.

(c) **Continuing Education.** A mediator should participate in continuing mediation education and be personally responsible for ongoing professional growth. A mediator is encouraged to join with other mediators and members of related professions to promote mutual professional development. A mediator should obtain at least four hours of continuing education every two years.

The following are some ways to obtain continuing education:

(i) Attending, lecturing, or teaching at a live lecture or seminar on a topic related to the practice of mediation;
(ii) Listening or viewing audio, video, or web based presentations on a topic related to mediation;
(iii) Co-mediating or supervising trainees as part of the trainee’s mentorship requirements;
(iv) Participating as a trainer or coach in general or family mediation trainings;
(v) Authoring or editing written materials submitted for publication that have significant intellectual or practical content directly related to the practice of mediation.

(d) **Promotion of Mediation.** A mediator should promote the advancement of mediation by providing and supporting efforts to educate the public and members of other professions, and by encouraging and participating in research and publication of accurate information about mediation.

(e) **Advertising.** A mediator should make only accurate statements about the mediation process, its cost and benefits, and about the mediator's qualifications.

Section 4. Roster of Mediators

AOC will maintain a Roster of Mediators who agree to comply with these guidelines. Any mediator who wishes to be included on this roster should make application to the AOC. See form on [www.kycourts.net](http://www.kycourts.net).
This Order shall be effective April 15, 2005 and until further Order.

Entered this the 12th day of April 2005.

[Signature]

CHIEF JUSTICE
CODE OF PROFESSIONAL COURTESY

Attorneys are required to strive to make the system of justice work fairly and efficiently. In carrying out that responsibility, attorneys are expected to comply with the letter and spirit of the applicable Code of Professional Responsibility adopted by the Supreme Court of Kentucky.

The Code of ProfessionalCourtesy is intended as a guideline for lawyers in their dealings with their clients, opposing parties and their counsel, the courts and the general public. This Code is not intended as a disciplinary code nor is it to be construed as a legal standard of care in providing professional services. Rather, it has an aspirational purpose and is intended to serve as the Kentucky Bar Association’s statement of principles and goals for professionalism among lawyers.

1. A lawyer should avoid taking action adverse to the interests of a litigant known to be represented without timely notice to opposing counsel unless ex parte proceedings are allowed.

2. A lawyer should promptly return telephone calls and correspondence from other lawyers.

3. A lawyer should respect opposing counsel’s schedule by seeking agreement on deposition dates and court appearances (other than routine motion) rather than merely serving notice.

4. A lawyer should avoid making ill-considered accusations of unethical conduct toward an opponent.

5. A lawyer should not engage in intentionally discourteous behavior.

6. A lawyer should not intentionally embarrass another attorney and should avoid personal criticism of other counsel.

7. A lawyer should not seek sanctions against or disqualification of another attorney unless necessary for the protection of a client and fully justified by the circumstances, not for the mere purpose of obtaining tactical advantage.

8. A lawyer should strive to maintain a courteous tone in correspondence, pleadings and other written communications.

9. A lawyer should not intentionally mislead or deceive an adversary and should honor promises or commitments made.

10. A lawyer should recognize that the conflicts within a legal matter are professional and not personal and should endeavor to maintain a friendly and professional relationship with other attorneys in the matter. In other words, “leave the matter in the courtroom.”

11. A lawyer should express professional courtesy to the court and has the right to expect professional courtesy from the court.
I. PURPOSES AND OBJECTIVES

A. To review mediation ethics and conduct in court imposed or approved mediations for both the lawyer who serves as mediator and the lawyer who is engaged as an advocate;

B. To present potential mediator and advocate ethical dilemmas in the context of ethical codes or standards of practice, recognizing that such codes and standards do not always articulate a definitive answer and that professional practice is a process of continuing self-examination, rather than learning a list of rules; and

C. To provide some guidance for Kentucky lawyers as mediators and advocates as they ethically fulfill the statutory declaration of public policy on encouragement of dispute resolution through negotiation and settlement: "It is the policy of this Commonwealth to encourage the peaceable resolution of disputes and the early, voluntary settlement of litigation through negotiation and mediation. To the extent it is consistent with other laws, the courts and state governmental agencies are authorized and encouraged to refer disputing parties to mediation before trial or hearing," KRS 454.011.

II. CODES AND STANDARDS

A. Kentucky Supreme Court Model Mediation Rules

B. Kentucky Code of Professional Responsibility

C. Local Circuit Rules

D. Model Standards of Conduct for Mediators from the American Bar Association, American Arbitration Association, Association for Conflict Resolution

III. LAWYER MEDIATORS AND LAWYER ADVOCATES IN MEDIATION PRACTICE

A. Lawyer/Mediator* Model Rules/Codes as Relating to Common Mediator Ethical Dilemmas

1. Competency.

2. Impartiality.

3. Confidentiality.

4. Informed consent.

6. Separating mediation from counseling and legal advice.

7. Preventing abuse of the mediation process.

B. Lawyer/Advocate* Rules/Codes Relating to the Advocate

1. Kentucky Model Mediation Rules.

   a. Rule 4.1 Truthfulness in Statements to Others.
   b. Rule 1.12 Judge, Arbitrator, Mediator or other Third-party Neutral.
   c. Rule 1.2 Scope of Representation and Allocation of Authority between Client and Lawyer.
   d. Rule 1.4(a) Communication.
   e. Rule 8.3 Reporting Professional Misconduct.
   f. Rule 4.4 Respect for Rights of Third Persons.
   g. Rule 3.3 Candor towards the Tribunal.

* See discussion in Mediation: The Roles of Advocate and Neutral, Dwight Golann and Jay Folberg, Aspen Publishers, Chapter 12 Revised Edition.
Rule 1. Preamble and Scope.

The County Trial Courts find that under some circumstances the process known as mediation may provide an efficient and cost-effective alternative to traditional litigation, and, further, that the wise and judicious use of mediation may benefit litigants.

Mediation is intended to help both litigants and the Courts facilitate the settlement of disputes. Litigants should participate in good faith and in an earnest attempt to resolve their differences.

This Rule refers to mediation. Nothing in this Rule shall prohibit parties from resolving disputes through other methods. However, in any case where one party may pose a risk of harm (such as domestic violence) to another party or family member, mediation should not be used.


Mediation is an informal process in which a neutral third person(s) called a mediator facilitates the resolution of a dispute between two or more parties. The process is designed to help disputing parties reach an agreement on all or part of the issues in dispute. Decision-making authority remains with the parties, not the mediator. The mediator assists the parties in identifying issues, fostering joint problem-solving, and exploring settlement alternatives.


At any time on its own motion or on motion of any party, the Court may refer a case or portion of a case for mediation. In this decision, the court shall consider:

A. The stage of the litigation, including the need for discovery, and the extent to which it has been conducted;

B. The nature of the issues to be resolved;

C. The value to the parties of confidentiality, rapid resolution, or the promotion or maintenance of ongoing relationships;

D. The willingness of the parties to mutually resolve their dispute;

E. Other attempts at dispute resolution; and

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F. The ability of the parties to participate in the mediation process.


Unless otherwise ordered by the Court, mediation shall not stay any other proceedings.

Rule 5. Appointment of Mediator.

Within fifteen (15) days of referral, the parties shall agree on a mediator or a mediation service. If the parties cannot agree, they shall notify the court, which will select a mediator or a mediation service.


The mediator shall be compensated at the rate agreed between the mediator and the parties if the mediator is chosen by agreement. If the mediator is appointed by the Court, the fee for the mediator shall be reasonable and no greater than the mediator’s standard rate as a mediator. Unless otherwise agreed by the parties or ordered by the Court, the parties shall equally divide the mediator’s professional fees.


Following selection of the mediator, the mediator shall set an initial mediation conference within thirty (30) days. The mediation conference shall be held in the county in which the case is pending or at a site agreed upon by the parties. The mediator may meet with the parties or their counsel prior to the mediation conference for the purpose of establishing a procedure for the mediation conference. The mediator may require the parties to submit a confidential statement of the case or other materials that the mediator may reasonably believe appropriate for efficiently conducting the mediation conference.

Rule 8. Attendance at Mediation Conference.

The parties must attend the mediation conference. Counsel shall attend the mediation conference unless otherwise agreed to by the parties and the mediator or ordered by the Court. If a party is a public entity, it shall appear by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision making body or officer of the entity. If a party is an organization other than a public entity, it shall appear by the physical presence of a representative, other than the party’s counsel of record, who has full authority to settle without further consultation. If any party is insured for the claim in dispute, that party shall also be required to have its insurer(s) present by the physical presence of a representative of the insurance carrier(s) who is not that carrier’s outside counsel; this representative must have full settlement authority. The foregoing requirements of attendance may be varied only by stipulation of the parties or by order of the Court for good cause shown.

Rule 9. Completion or Termination of Mediation.

The mediator may terminate the mediation conference after a settlement is reached or when the mediator determines that continuation of the process would be unproductive. After the initial mediation conference, mediation shall continue only by the agreement of the parties, their counsel and the mediator, or by order of the Court.
Rule 10. Report to the Court.

The mediator shall report to the court that the mediation has not occurred, has not been completed, or that the mediation has been completed with or without an agreement on any or all issues. With the consent of the parties, the mediator may also identify those matters which, if resolved or completed, would facilitate the possibility of a settlement.

Rule 11. Agreement.

If an agreement is reached during the mediation conference, it shall be reduced to writing and signed by the parties. The parties shall be responsible for the drafting of the agreement, although the mediator may assist in the drafting of the agreement with the consent of the parties.


A. Mediation sessions shall be closed to all persons other than the parties, their legal representatives, and other persons invited by the mediator with the consent of the parties.

B. Mediation shall be regarded as settlement negotiations for purposes of KRE 408.

C. Mediators shall not be subject to process requiring the disclosure of any matter discussed during the mediation, but rather, such matters shall be considered confidential and privileged in nature except on order of the Court for good cause shown. This privilege and immunity reside in the mediator and may not be waived by the parties.

D. Nothing in this rule shall prohibit the mediator from reporting abuse according to KRS 209.030, KRS 620.030, or other applicable law.

14.01. Cases subject to mediation: Except for habeas corpus matters or cases involving election contests, administrative appeals, or appeals from the District Court, any Judge may refer any civil case to mediation at either the completion of the pleadings or at any other time before the trial.

14.02. Referral to mediation.

(a) The Judge may refer the case to mediation with or without the parties’ consent. Either party may move the Court to refer the case to mediation. The Court shall refer mediation to either a Court-approved mediator or an appropriate mediation facility according to that facility’s guidelines.

(b) Any party may move to disqualify a mediator from a case for good cause. If the Court disqualifies a mediator from the case, the Court shall enter an order naming a qualified replacement. Nothing in this provision precludes mediators from either disqualifying themselves or refusing an assignment. The time for mediation is tolled during any period in which a motion to disqualify is pending.

(c) Referral of a case to mediation is not a stay of discovery proceedings unless otherwise ordered by the Court or agreed to in writing by the parties.

14.03. Mediation conferences:

(a) The parties shall schedule a mediation conference with the mediation facility or mediator within five (5) business days from the entry of the Court’s order to schedule a mediation conference. The parties shall hold the mediation conference within thirty (30) days from the entry of the order or later if by agreement of both parties.

(b) The parties shall attend the mediation conference once an order to mediate has been entered. Counsel for each party may attend. The mediator shall conduct the conference to consider:

(1) settlement of the case;

(2) simplification of the issues; and

(3) any other matters that either the mediator or the parties, or both, determine may aid the disposition of the case.

(c) The mediator shall schedule sessions as necessary to complete the mediation process. Mediation shall continue until either:

(1) the parties have reached a settlement;
(2) the parties are unwilling to proceed further; or

(3) the mediator determines that further efforts are futile.

d) Appearance at mediation; sanctions:

(1) Upon motion, the Court may impose sanctions against a party if that party fails to appear at a duly noticed mediation conference, unless the party shows good cause why they failed to appear. Possible sanctions include, but are not limited to, either an award of attorney’s fees or other costs of mediation, or both.

(2) If a party to mediation is a public entity, that party has appeared if a representative with both full authority to negotiate on behalf of the entity and to recommend settlement to the decision-making body of the entity is physically present at the mediation conference.

(3) In all other cases, a party has appeared at the mediation conference if the party (or representative with full authority to settle without further consultation, other than the party’s counsel) and a representative of the insurance carrier for any insured party with full authority to settle without further consultation, other than the insurance carrier’s counsel, is physically present at the mediation conference.

e) The mediator may request that the parties bring either documents or witnesses (including expert witnesses) or both to the mediation conference, but has no authority to order the parties to do so.

14.04. Confidentiality:

(a) Except as in 14.04(d) of these rules, all mediation documents and communications made during mediation conferences are both privileged and confidential. They are not subject to disclosure through discovery or any other process, and are not admissible into evidence in any judicial or administrative proceeding.

(b) No part of a mediation proceeding is considered public record.

(c) No part of a mediation proceeding is subject to either the Kentucky Open Meetings Act or the Kentucky Open Records Act.

(d) There is no privilege and no restriction on disclosure to the extent that:

(1) the parties consent in writing;

(2) the mediation communication or document gives the mediator either knowledge or reasonable cause to suspect that either a child or a spouse has been abused, or a child has been neglected; or
(3) the mediation communications were made in furtherance or the commission of a crime or fraud or as part of a plan to commit a crime or fraud.

(e) Nothing in this rule permits an individual to obtain immunity from prosecution for criminal conduct.

(f) Except as in 14.04(d) of these rules, a party has a privilege both to refuse to disclose and to prevent any other person from disclosing any communications or documents produced or generated during mediation proceedings between or among the parties to the case.

(g) A mediator, mediation facility, or employees and agents of a mediator or mediation facility, in relation to parties or entities that engaged in mediation, have privilege not to:

1. testify as a witness either in discovery or at trial, in any administrative proceeding, or civil or criminal litigation; and
2. produce any documents disclosed or generated during the mediation proceedings, or any documents used in the normal course of business by the mediator or mediation facility.

(h) Any party in an administrative proceeding, or civil or criminal litigation, who tries to:

1. subpoena as a witness; or
2. compel the production of any documents from any mediator, mediation facility, or any of their agents or employees, shall be liable for payment to those people for all reasonable costs and attorney’s fees incurred in defending the particular action or quashing the particular motion.

14.05. Reporting to the Court:

(a) Either the mediator or mediation facility shall promptly notify the Court when they decline to accept a case for mediation.

(b) Either the mediator or mediation facility may refer a case back to the Court for good cause shown at any time after the mediator or mediation facility accepts a case for mediation. Either the mediator or mediation facility shall make the referral in writing.

(c) If a case is settled either prior to or during mediation, one of the parties shall prepare and submit to the Court an order stating a settlement has been reached. That party shall deliver a file-stamped copy of the order to the mediator. Any party who tenders an order shall include a distribution list with the name and address of each party who is to receive a copy of the order. The tendering party shall also provide addressed envelopes (postage not required) with which to send a copy of the order to each party on the distribution list.
(d) The parties shall submit a joint statement to the Court within ten (10) days of termination of mediation proceedings stating both the issues that have been resolved and the issues that remain for trial if:

(1) some, but not all, of the issues in the case are settled during mediation;

(2) agreements are reached to limit discovery; or

(3) agreements are reached on any other matter.

(e) At the termination of mediation, either the mediator or the mediation facility shall report to the Court that the mediation proceeding has ended. If the parties have not reached an agreement on any other matter in the mediation proceedings, the mediator shall report the lack of an agreement to the Court without comment or recommendation. If the parties consent, the mediator may identify any pending motions, outstanding legal issues, discovery process, or any other action by any party that would facilitate settlement if resolved of [sic] completed.
AMERICAN ARBITRATION ASSOCIATION
(ADOPTED SEPTEMBER 8, 2005)

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

ASSOCIATION FOR CONFLICT RESOLUTION
(ADOPTED AUGUST 22, 2005)

SEPTEMBER 2005
The Model Standards of Conduct for Mediators
2005

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

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.

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

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2 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.

3 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.

4 The 2005 version to the Model Standards were approved by the American Bar Association’s House of Delegates on August 9, 2005, the Board of the Association of Conflict Resolution on August 22, 2005 and the Executive Committee of the American Association on September 8, 2005.
These Standards do not include specific temporal parameters when referencing a mediation, and therefore, do not define the exact beginning or ending of a mediation.

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

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

**STANDARD I. SELF-DETERMINATION**

A. A mediator shall conduct a mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome. Parties may exercise self-determination at any stage of a mediation, including mediator selection, process design, participation in or withdrawal from the process, and outcomes.

1. Although party self-determination for process design is a fundamental principle of mediation practice, a mediator may need to balance such party self-determination with a mediator’s duty to conduct a quality process in accordance with these Standards.

2. A mediator cannot personally ensure that each party has made free and informed choices to reach particular decisions, but, where appropriate a mediator should make the parties aware of the importance of consulting other professionals to help them make informed choices.

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

**STANDARD II. IMPARTIALITY**

A. A mediator shall decline a mediation if the mediator cannot conduct it in an impartial manner. Impartiality means freedom from favoritism, bias or prejudice.

B. A mediator shall conduct a mediation in an impartial manner and avoid conduct that gives the appearance of partiality.
1. A mediator should not act with partiality or prejudice based on any participant's personal characteristics, background, values and beliefs, or performance at a mediation, or any other reason.

2. A mediator should neither give nor accept a gift, favor, loan or other item of value that raises a question as to the mediator's actual or perceived impartiality.

3. A mediator may accept or give *de minimis* gifts or incidental items or services that are provided to facilitate a mediation or respect cultural norms so long as such practices do not raise questions as to a mediator's actual or perceived impartiality.

C. If at any time a mediator is unable to conduct a mediation in an impartial manner, the mediator shall withdraw.

**STANDARD III. CONFLICTS OF INTEREST**

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

B. A mediator shall make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for a mediator. A mediator's actions necessary to accomplish a reasonable inquiry into potential conflicts of interest may vary based on practice context.

C. A mediator shall disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality. After disclosure, if all parties agree, the mediator may proceed with the mediation.

D. If a mediator learns any fact after accepting a mediation that raises a question with respect to that mediator's service creating a potential or actual conflict of interest, the mediator shall disclose it as quickly as practicable. After disclosure, if all parties agree, the mediator may proceed with the mediation.

E. If a mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, a mediator shall withdraw from or decline to proceed with the mediation regardless of the expressed desire or agreement of the parties to the contrary.

F. Subsequent to a mediation, a mediator shall not establish another relationship with any of the participants in any matter that would raise questions about the integrity of the mediation. When a mediator develops personal or professional relationships with parties, other individuals or organizations following a mediation in which they were involved, the mediator should consider factors such as time elapsed following
the mediation, the nature of the relationships established, and services offered when determining whether the relationships might create a perceived or actual conflict of interest.

**STANDARD IV. COMPETENCE**

A. A mediator shall mediate only when the mediator has the necessary competence to satisfy the reasonable expectations of the parties.

1. Any person may be selected as a mediator, provided that the parties are satisfied with the mediator's competence and qualifications. Training, experience in mediation, skills, cultural understandings and other qualities are often necessary for mediator competence. A person who offers to serve as a mediator creates the expectation that the person is competent to mediate effectively.

2. A mediator should attend educational programs and related activities to maintain and enhance the mediator's knowledge and skills related to mediation.

3. A mediator should have available for the parties' information relevant to the mediator's training, education, experience and approach to conducting a mediation.

B. If a mediator, during the course of a mediation determines that the mediator cannot conduct the mediation competently, the mediator shall discuss that determination with the parties as soon as is practicable and take appropriate steps to address the situation, including, but not limited to, withdrawing or requesting appropriate assistance.

C. If a mediator's ability to conduct a mediation is impaired by drugs, alcohol, medication or otherwise, the mediator shall not conduct the mediation.

**STANDARD V. CONFIDENTIALITY**

A. A mediator shall maintain the confidentiality of all information obtained by the mediator in mediation, unless otherwise agreed to by the parties or required by applicable law.

1. If the parties to a mediation agree that the mediator may disclose information obtained during the mediation, the mediator may do so.

2. A mediator should not communicate to any non-participant information about how the parties acted in the mediation. A mediator may report, if required, whether parties appeared at a scheduled mediation and whether or not the parties reached a resolution.

3. If a mediator participates in teaching, research or evaluation of mediation, the mediator should protect the anonymity of the parties and abide by their reasonable expectations regarding confidentiality.
B. A mediator who meets with any persons in private session during a mediation shall not convey directly or indirectly to any other person, any information that was obtained during that private session without the consent of the disclosing person.

C. A mediator shall promote understanding among the parties of the extent to which the parties will maintain confidentiality of information they obtain in a mediation.

D. Depending on the circumstance of a mediation, the parties may have varying expectations regarding confidentiality that a mediator should address. The parties may make their own rules with respect to confidentiality, or the accepted practice of an individual mediator or institution may dictate a particular set of expectations.

STANDARD VI. QUALITY OF THE PROCESS

A. A mediator shall conduct a mediation in accordance with these Standards and in a manner that promotes diligence, timeliness, safety, presence of the appropriate participants, party participation, procedural fairness, party competency and mutual respect among all participants.

1. A mediator should agree to mediate only when the mediator is prepared to commit the attention essential to an effective mediation.

2. A mediator should only accept cases when the mediator can satisfy the reasonable expectation of the parties concerning the timing of a mediation.

3. The presence or absence of persons at a mediation depends on the agreement of the parties and the mediator. The parties and mediator may agree that others may be excluded from particular sessions or from all sessions.

4. A mediator should promote honesty and candor between and among all participants, and a mediator shall not knowingly misrepresent any material fact or circumstance in the course of a mediation.

5. The role of a mediator differs substantially from other professional roles. Mixing the role of a mediator and the role of another profession is problematic and thus, a mediator should distinguish between the roles. A mediator may provide information that the mediator is qualified by training or experience to provide, only if the mediator can do so consistent with these Standards.

6. A mediator shall not conduct a dispute resolution procedure other than mediation but label it mediation in an effort to gain the protection of rules, statutes, or other governing authorities pertaining to mediation.

7. A mediator may recommend, when appropriate, that parties consider resolving their dispute through arbitration, counseling, neutral evaluation or other processes.
8. A mediator shall not undertake an additional dispute resolution role in the same matter without the consent of the parties. Before providing such service, a mediator shall inform the parties of the implications of the change in process and obtain their consent to the change. A mediator who undertakes such role assumes different duties and responsibilities that may be governed by other standards.

9. If a mediation is being used to further criminal conduct, a mediator should take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.

10. If a party appears to have difficulty comprehending the process, issues, or settlement options, or difficulty participating in a mediation, the mediator should explore the circumstances and potential accommodations, modifications or adjustments that would make possible the party's capacity to comprehend, participate and exercise self-determination.

B. If a mediator is made aware of domestic abuse or violence among the parties, the mediator shall take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.

C. If a mediator believes that participant conduct, including that of the mediator, jeopardizes conducting a mediation consistent with these Standards, a mediator shall take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.

STANDARD VII. ADVERTISING AND SOLICITATION

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

1. A mediator should not include any promises as to outcome in communications, including business cards, stationery, or computer-based communications.

2. A mediator should only claim to meet the mediator qualifications of a governmental entity or private organization if that entity or organization has a recognized procedure for qualifying mediators and it grants such status to the mediator.

B. A mediator shall not solicit in a manner that gives an appearance of partiality for or against a party or otherwise undermines the integrity of the process.

C. A mediator shall not communicate to others, in promotional materials or through other forms of communication, the names of persons served without their permission.
STANDARD VIII. FEES AND OTHER CHARGES

A. A mediator shall provide each party or each party's representative true and complete information about mediation fees, expenses and any other actual or potential charges that may be incurred in connection with a mediation.

1. If a mediator charges fees, the mediator should develop them in light of all relevant factors, including the type and complexity of the matter, the qualifications of the mediator, the time required and the rates customary for such mediation services.

2. A mediator's fee arrangement should be in writing unless the parties request otherwise.

B. A mediator shall not charge fees in a manner that impairs a mediator's impartiality.

1. A mediator should not enter into a fee agreement which is contingent upon the result of the mediation or amount of the settlement.

2. While a mediator may accept unequal fee payments from the parties, a mediator should not allow such a fee arrangement to adversely impact the mediator's ability to conduct a mediation in an impartial manner.

STANDARD IX. ADVANCEMENT OF MEDIATION PRACTICE

A. A mediator should act in a manner that advances the practice of mediation. A mediator promotes this Standard by engaging in some or all of the following:

1. Fostering diversity within the field of mediation.

2. Striving to make mediation accessible to those who elect to use it, including providing services at a reduced rate or on a pro bono basis as appropriate.

3. Participating in research when given the opportunity, including obtaining participant feedback when appropriate.

4. Participating in outreach and education efforts to assist the public in developing an improved understanding of, and appreciation for, mediation.

5. Assisting newer mediators through training, mentoring, and networking.

B. A mediator should demonstrate respect for differing points of view within the field, seek to learn from other mediators and work together with other mediators to improve the profession and better serve people in conflict.
Preamble: A Lawyer’s Responsibilities

Ill. As a representative of clients, a lawyer performs various functions. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others.

IV. In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.4.

SCR 3.130(2.4) Lawyer serving as third-party neutral

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer’s role in the matter, the lawyer shall explain the difference between the lawyer’s role as a third-party neutral and a lawyer’s role as one who represents a client.

SCR 3.130(4.1) Truthfulness in statements to others

In the course of representing a client a lawyer: (a) shall not knowingly make a false statement of material fact or law to a third person. This includes the mediator. Rule 3.3, Candor toward the tribunal, is not applicable to mediation because it is not a “tribunal.”

SCR 3.130(1.12) Judge, arbitrator, mediator or other third-party neutral

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer, or as an arbitrator, mediator or other third-party neutral. This rule does not prohibit an arbitrator, mediator, or third-party neutral from negotiating future cases. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a
matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this Rule.

Comment under this Rule

(2) Like former judges, lawyers who have served as arbitrators, mediators or other third-party neutrals may be asked to represent a client in a matter in which the lawyer participated personally and substantially. This Rule forbids such representation unless all of the parties to the proceedings give their informed consent, confirmed in writing. See Rule 1.0(e) and (b). Other law or codes of ethics governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. See Rule 2.4 (emphasis added).

(3) Although lawyers who serve as third-party neutrals do not have information concerning the parties that is protected under Rule 1.6, they typically owe the parties an obligation of confidentiality under law or codes of ethics governing third-party neutrals. Thus, paragraph (c) provides that conflicts of the personally disqualified lawyer will be imputed to other lawyers in a law firm unless the conditions of this paragraph are met.

SCR 3.130(1.2) Scope of Representation and allocation of authority between client and lawyer

(a) A lawyer shall abide a client's decision to settle a matter.

. . . .

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent....

SCR 3.130(4.1) Truthfulness in statements to others

"In the course of representing a client a lawyer: (a) shall not knowingly make a false statement of material fact or law to a third person...." This includes the mediator.

Rule 3.3, Candor toward the tribunal, is not applicable to mediation because it is not a "tribunal."

SCR 3.130(1.4)(a)(3) Communication

A lawyer shall: ....(3) keep the client reasonably informed about the status of the matter.
**SCR 3.130(8.4) Misconduct**

It is professional misconduct for a lawyer to:

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

**SCR 3.130(8.3) Reporting professional misconduct**

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the Association’s Bar Counsel.

**SCR 3.130(3.3) Candor toward the tribunal**

Not applicable to mediations because not a tribunal, but Rule 4.1 applies to what is said to the mediator or other advocates.