Parties, advocates and attorney-mediators are impacted by the variety of rule systems that have developed around mediation processes. Our discussion will focus on interactions between: professional mediator standards, state statutory parameters, local court mediation rules and the Illinois Rules of Professional Conduct.

Mediator Standards of Conduct

Depending on the context of the mediation, different ethical standards for mediators may apply.

The Model Standards of Conduct for Mediators have been adopted by the American Bar Association, the American Arbitration Association, and the Association for Conflict Resolution and its local chapters across the United States. (Select excerpts begin on page 3 of these materials.)

The Model Standards of Practice for Family and Divorce Mediation have been adopted by the American Bar Association Family Section, as well as the Association of Family and Conciliation Courts, the Association for Conflict Resolution and its local Chapters across the United States, as well as other state and national organizations. (Select excerpts begin on page 10 of these materials.)

Other professional organizations, ADR provider organizations and states that certify mediators have also developed standards for mediation. See eg. International Institute for Conflict Prevention and Resolution (CPR) (available at www.CPRadr.org), Florida Rules for Certified and Court-Appointed Mediators (available at www.flcourts.org).
The Illinois Uniform Mediation Act.

The Illinois Uniform Mediation Act (UMA), 710 ILCS 35, applies to the majority of types of mediation, regardless of whether parties attend voluntarily or by court-order. Among other provisions, the UMA addresses privilege, confidentiality, impartiality and conflicts of interests, and limits on the amount of information that a mediator can report to a referring court. (Select excerpts begin on page 20 of these materials.)

Local Court Rules

Circuit Court rules in Illinois can vary significantly in their requirements for mediator appointment to court rosters and their procedures related to mediation.

The Illinois Rules of Professional Conduct

The Illinois Rules of Professional Conduct, governing attorneys, include specific provisions for an attorney acting as a “mediator” or “other third-party neutral”.

RPC Rules 1.12(a) and 1.12(b) extend the conflict of interest limitations to the attorney-neutral’s ability to subsequently represent a party or seek employment, as well as to other members of the attorney’s firm.

Under RPC Rule 2.4, Lawyer Serving as Third-Party Neutral, an attorney-mediator “shall inform unrepresented parties that the lawyer is not representing them and shall explain to them the difference between the lawyer’s role as a third-party neutral and a lawyer’s role as one who represents a client.”
Model Standards of Conduct for Mediators

(Select excepts from the Model Standards. Full text available at www.americanbar.org)

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.

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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 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 Arbitration Association on September 8, 2005.
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.

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.

• 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.

• 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.

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Overview and Definitions

Family and divorce mediation ("family mediation" or "mediation") is a process in which a mediator, an impartial third party, facilitates the resolution of family disputes by promoting the participants' voluntary agreement. The family mediator assists communication, encourages understanding and focuses the participants on their individual and common interests. The family mediator works with the participants to explore options, make decisions and reach their own agreements.

Family mediation is not a substitute for the need for family members to obtain independent legal advice or counseling or therapy. Nor is it appropriate for all families. However, experience has established that family mediation is a valuable option for many families because it can:

- increase the self-determination of participants and their ability to communicate
- promote the best interests of children
- reduce the economic and emotional costs associated with the resolution of family disputes.

Effective mediation requires that the family mediator be qualified by training, experience and temperament; that the mediator be impartial; that the participants reach their decisions voluntarily; that their decisions be based on sufficient factual data; that the mediator be aware of the impact of culture and diversity; and that the best interests of children be taken into account. Further, the mediator should also be prepared to identify families whose history includes domestic abuse or child abuse.

These Model Standards of Practice for Family and Divorce Mediation ("Model Standards") aim to perform three major functions:

1. to serve as a guide for the conduct of family mediators
2. to inform the mediating participants of what they can expect
3. to promote public confidence in mediation as a process for resolving family disputes

The Model Standards are aspirational in character. They describe good practices for family mediators. They are not intended to create legal rules or standards of liability.

The Model Standards include different levels of guidance:

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

Most of the Standards employ the term "should" which indicates that the practice described in the Standard is highly desirable and should be departed from only with very strong reason.

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

Standard I

A family mediator shall recognize that mediation is based on the principle of self-determination by the participants.

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

B. The primary role of a family mediator is to assist the participants to gain a better understanding of their own needs and interests and the needs and interests of others and to facilitate agreement among the participants.

C. A family mediator should inform the participants that they may seek information and advice from a variety of sources during the mediation process.

D. A family mediator shall inform the participants that they may withdraw from family mediation at any time and are not required to reach an agreement in mediation.

E. The family mediator's commitment shall be to the participants and the process. Pressure from outside of the mediation process shall never influence the mediator to coerce participants to settle.

Standard II
A family mediator shall be qualified by education and training to undertake the mediation.

A. To perform the family mediator's role, a mediator should:

1. have knowledge of family law;

2. have knowledge of and training in the impact of family conflict on parents, children and other participants, including knowledge of child development, domestic abuse and child abuse and neglect;

3. have education and training specific to the process of mediation;

4. be able to recognize the impact of culture and diversity.

B. Family mediators should provide information to the participants about the mediator's relevant training, education and expertise.

Standard III

A family mediator shall facilitate the participants' understanding of what mediation is and assess their capacity to mediate before the participants reach an agreement to mediate.

A. Before family mediation begins a mediator should provide the participants with an overview of the process and its purposes, including:

1. informing the participants that reaching an agreement in family mediation is consensual in nature, that a mediator is an impartial facilitator, and that a mediator may not impose or force any settlement on the parties;

2. distinguishing family mediation from other processes designed to address family issues and disputes;

3. informing the participants that any agreements reached will be reviewed by the court when court approval is required;

4. informing the participants that they may obtain independent advice from attorneys, counsel, advocates, accountants, therapists or other professionals during the mediation process;

5. advising the participants, in appropriate cases, that they can seek the advice of religious figures, elders or other significant persons in their community whose opinions they value;

6. discussing, if applicable, the issue of separate sessions with the participants, a description of the circumstances in which the mediator may meet
alone with any of the participants, or with any third party and the
conditions of confidentiality concerning these separate sessions;

7. informing the participants that the presence or absence of other persons at
a mediation, including attorneys, counselors or advocates, depends on the
agreement of the participants and the mediator, unless a statute or
regulation otherwise requires or the mediator believes that the presence of
another person is required or may be beneficial because of a history or
threat of violence or other serious coercive activity by a participant.

8. describing the obligations of the mediator to maintain the confidentiality
of the mediation process and its results as well as any exceptions to
confidentiality;

9. advising the participants of the circumstances under which the mediator
may suspend or terminate the mediation process and that a participant has
a right to suspend or terminate mediation at any time.

B. The participants should sign a written agreement to mediate their dispute and the
terms and conditions thereof within a reasonable time after first consulting the
family mediator.

C. The family mediator should be alert to the capacity and willingness of the
participants to mediate before proceeding with the mediation and throughout the
process. A mediator should not agree to conduct the mediation if the mediator
reasonably believes one or more of the participants is unable or unwilling to
participate.

D. Family mediators should not accept a dispute for mediation if they cannot satisfy
the expectations of the participants concerning the timing of the process.

Standard IV

A family mediator shall conduct the mediation process in an impartial manner. A family
mediator shall disclose all actual and potential grounds of bias and conflicts of interest
reasonably known to the mediator. The participants shall be free to retain the mediator by
an informed, written waiver of the conflict of interest. However, if a bias or conflict of
interest clearly impairs a mediator's impartiality, the mediator shall withdraw regardless
of the express agreement of the participants.

A. Impartiality means freedom from favoritism or bias in word, action or appearance,
and includes a commitment to assist all participants as opposed to any one
individual.
B. Conflict of interest means any relationship between the mediator, any participant or the subject matter of the dispute, that compromises or appears to compromise the mediator's impartiality.

C. A family mediator should not accept a dispute for mediation if the family mediator cannot be impartial.

D. A family mediator should identify and disclose potential grounds of bias or conflict of interest upon which a mediator's impartiality might reasonably be questioned. Such disclosure should be made prior to the start of a mediation and in time to allow the participants to select an alternate mediator.

E. A family mediator should resolve all doubts in favor of disclosure. All disclosures should be made as soon as practical after the mediator becomes aware of the bias or potential conflict of interest. The duty to disclose is a continuing duty.

F. A family mediator should guard against bias or partiality based on the participants' personal characteristics, background or performance at the mediation.

G. A family mediator should avoid conflicts of interest in recommending the services of other professionals.

H. A family mediator shall not use information about participants obtained in a mediation for personal gain or advantage.

I. A family mediator should withdraw pursuant to Standard IX if the mediator believes the mediator's impartiality has been compromised or a conflict of interest has been identified and has not been waived by the participants.

Standard V

A family mediator shall fully disclose and explain the basis of any compensation, fees and charges to the participants.

A. The participants should be provided with sufficient information about fees at the outset of mediation to determine if they wish to retain the services of the mediator.

B. The participants' written agreement to mediate their dispute should include a description of their fee arrangement with the mediator.

C. A mediator should not enter into a fee agreement that is contingent upon the results of the mediation or the amount of the settlement.

D. A mediator should not accept a fee for referral of a matter to another mediator or to any other person.
E. Upon termination of mediation a mediator should return any unearned fee to the participants.

Standard VI

A family mediator shall structure the mediation process so that the participants make decisions based on sufficient information and knowledge.

A. The mediator should facilitate full and accurate disclosure and the acquisition and development of information during mediation so that the participants can make informed decisions. This may be accomplished by encouraging participants to consult appropriate experts.

B. Consistent with standards of impartiality and preserving participant self-determination, a mediator may provide the participants with information that the mediator is qualified by training or experience to provide. The mediator shall not provide therapy or legal advice.

C. The mediator should recommend that the participants obtain independent legal representation before concluding an agreement.

D. If the participants so desire, the mediator should allow attorneys, counsel or advocates for the participants to be present at the mediation sessions.

E. With the agreement of the participants, the mediator may document the participants' resolution of their dispute. The mediator should inform the participants that any agreement should be reviewed by an independent attorney before it is signed.

Standard VII

A family mediator shall maintain the confidentiality of all information acquired in the mediation process, unless the mediator is permitted or required to reveal the information by law or agreement of the participants.

A. The mediator should discuss the participants' expectations of confidentiality with them prior to undertaking the mediation. The written agreement to mediate should include provisions concerning confidentiality.

B. Prior to undertaking the mediation the mediator should inform the participants of the limitations of confidentiality such as statutory, judicially or ethically mandated reporting.
C. As permitted by law, the mediator shall disclose a participant's threat of suicide or violence against any person to the threatened person and the appropriate authorities if the mediator believes such threat is likely to be acted upon.

D. If the mediator holds private sessions with a participant, the obligations of confidentiality concerning those sessions should be discussed and agreed upon prior to the sessions.

E. If subpoenaed or otherwise noticed to testify or to produce documents the mediator should inform the participants immediately. The mediator should not testify or provide documents in response to a subpoena without an order of the court if the mediator reasonably believes doing so would violate an obligation of confidentiality to the participants.

Standard VIII

A family mediator shall assist participants in determining how to promote the best interests of children.

A. The mediator should encourage the participants to explore the range of options available for separation or post divorce parenting arrangements and their respective costs and benefits. Referral to a specialist in child development may be appropriate for these purposes. The topics for discussion may include, among others:

1. information about community resources and programs that can help the participants and their children cope with the consequences of family reorganization and family violence;

2. problems that continuing conflict creates for children's development and what steps might be taken to ameliorate the effects of conflict on the children;

3. development of a parenting plan that covers the children's physical residence and decision-making responsibilities for the children, with appropriate levels of detail as agreed to by the participants;

4. the possible need to revise parenting plans as the developmental needs of the children evolve over time; and

5. encouragement to the participants to develop appropriate dispute resolution mechanisms to facilitate future revisions of the parenting plan.

B. The mediator should be sensitive to the impact of culture and religion on parenting philosophy and other decisions.
C. The mediator shall inform any court-appointed representative for the children of the mediation. If a representative for the children participates, the mediator should, at the outset, discuss the effect of that participation on the mediation process and the confidentiality of the mediation with the participants. Whether the representative of the children participates or not, the mediator shall provide the representative with the resulting agreements insofar as they relate to the children.

D. Except in extraordinary circumstances, the children should not participate in the mediation process without the consent of both parents and the children's court-appointed representative.

E. Prior to including the children in the mediation process, the mediator should consult with the parents and the children's court-appointed representative about whether the children should participate in the mediation process and the form of that participation.

F. The mediator should inform all concerned about the available options for the children's participation (which may include personal participation, an interview with a mental health professional, the mediator interviewing the child and reporting to the parents, or a videotaped statement by the child) and discuss the costs and benefits of each with the participants.

Standard IX

A family mediator shall recognize a family situation involving child abuse or neglect and take appropriate steps to shape the mediation process accordingly.

A. As used in these Standards, child abuse or neglect is defined by applicable state law.

B. A mediator shall not undertake a mediation in which the family situation has been assessed to involve child abuse or neglect without appropriate and adequate training.

C. If the mediator has reasonable grounds to believe that a child of the participants is abused or neglected within the meaning of the jurisdiction's child abuse and neglect laws, the mediator shall comply with applicable child protection laws.

1. The mediator should encourage the participants to explore appropriate services for the family.

2. The mediator should consider the appropriateness of suspending or terminating the mediation process in light of the allegations.

Standard X
A family mediator shall recognize a family situation involving domestic abuse and take appropriate steps to shape the mediation process accordingly.

A. As used in these Standards, domestic abuse includes domestic violence as defined by applicable state law and issues of control and intimidation.

B. A mediator shall not undertake a mediation in which the family situation has been assessed to involve domestic abuse without appropriate and adequate training.

C. Some cases are not suitable for mediation because of safety, control or intimidation issues. A mediator should make a reasonable effort to screen for the existence of domestic abuse prior to entering into an agreement to mediate. The mediator should continue to assess for domestic abuse throughout the mediation process.

D. If domestic abuse appears to be present the mediator shall consider taking measures to insure the safety of participants and the mediator including, among others:

   1. establishing appropriate security arrangements;
   2. holding separate sessions with the participants even without the agreement of all participants;
   3. allowing a friend, representative, advocate, counsel or attorney to attend the mediation sessions;
   4. encouraging the participants to be represented by an attorney, counsel or an advocate throughout the mediation process;
   5. referring the participants to appropriate community resources;
   6. suspending or terminating the mediation sessions, with appropriate steps to protect the safety of the participants.

E. The mediator should facilitate the participants' formulation of parenting plans that protect the physical safety and psychological well-being of themselves and their children.

Standard XI

A family mediator shall suspend or terminate the mediation process when the mediator reasonably believes that a participant is unable to effectively participate or for other compelling reason.

A. Circumstances under which a mediator should consider suspending or terminating the mediation, may include, among others:
1. the safety of a participant or well-being of a child is threatened;

2. a participant has or is threatening to abduct a child;

3. a participant is unable to participate due to the influence of drugs, alcohol, or physical or mental condition;

4. the participants are about to enter into an agreement that the mediator reasonably believes to be unconscionable;

5. a participant is using the mediation to further illegal conduct;

6. a participant is using the mediation process to gain an unfair advantage;

7. if the mediator believes the mediator's impartiality has been compromised in accordance with Standard IV.

B. If the mediator does suspend or terminate the mediation, the mediator should take all reasonable steps to minimize prejudice or inconvenience to the participants which may result.

**Standard XII**

A family mediator shall be truthful in the advertisement and solicitation for mediation.

A. Mediators should refrain from promises and guarantees of results. A mediator should not advertise statistical settlement data or settlement rates.

B. Mediators should accurately represent their qualifications. In an advertisement or other communication, a mediator may make reference to meeting state, national or private organizational qualifications only if the entity referred to has a procedure for qualifying mediators and the mediator has been duly granted the requisite status.
ILLINOIS UNIFORM MEDIATION ACT


…

Section 2 Definitions

(1) "Mediation" means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

(2) "Mediation communication" means a statement, whether oral or in a record or verbal or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.

(3) "Mediator" means an individual who conducts a mediation.

(4) "Nonparty participant" means a person, other than a party or mediator, that participates in a mediation.

(5) "Mediation party" means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(7) "Proceding" means:

   (A) a judicial, administrative, arbitral, or other adjudicative process, including related pre-hearing and post-hearing motions, conferences, and discovery; or

   (B) a legislative hearing or similar process.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "Sign" means:

   (A) to execute or adopt a tangible symbol with the present intent to authenticate a record; or
(B) to attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate a record.

Section 3 Scope

(a) Except as otherwise provided in subsection (b) or (c), this Act applies to a mediation in which:

1. the mediation parties are required to mediate by statute or court or administrative agency rule or referred to mediation by a court, administrative agency, or arbitrator;

2. the mediation parties and the mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged against disclosure; or

3. the mediation parties use as a mediator an individual who holds himself or herself out as a mediator, or the mediation is provided by a person that holds itself out as providing mediation.

(b) The Act does not apply to a mediation:

[settlement conferences conducted by a judge who might make a ruling in the case, collective bargaining settings, peer mediations or mediations between residents of a youth correctional institution.]

(c) Parties can agree in a record that mediation will not be privileged.

Section 4 Privilege Against Disclosure; Admissibility; Discovery

(a) Except as otherwise provided in Section 6, a mediation communication is privileged as provided in subsection (b) and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by Section 5.

(b) In a proceeding, the following privileges apply:

1. A mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication.

2. A mediator may refuse to disclose a mediation communication, and may prevent any other person from disclosing a mediation communication of the mediator.

3. A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant.

(c) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

Sec. 5 Waiver and Preclusion of Privilege

(a) A privilege under Section 4 may be waived in a record or orally during a proceeding if it is expressly waived by all parties to the mediation and:
(1) in the case of the privilege of a mediator, it is expressly waived by the mediator; and

(2) in the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.

(b) A person that discloses or makes a representation about a mediation communication which prejudices another person in a proceeding is precluded from asserting a privilege under Section 4, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

(c) A person that intentionally uses a mediation to plan, attempt to commit or commit a crime, or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege under Section 4.

Section 6 Exceptions to Privilege

(a) There is no privilege under Section 4 for a mediation communication that is:

(1) in an agreement evidenced by a record signed by all parties to the agreement;

(2) available to the public under the Freedom of Information Act or made during a session or a mediation which is open, or is required by law to be open, to the public;

(3) a threat or statement of a plan to inflict bodily injury or commit a crime of violence;

(4) intentionally used to plan a crime, attempt to commit a crime, or to conceal an ongoing crime or ongoing criminal activity;

(5) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator;

(6) except as otherwise provided in subsection (c), sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a party based on conduct occurring during a mediation; or

(7) sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in a proceeding in which a child or adult protective services agency is a party, unless the case is referred by a court to mediation and a public agency participates.

(b) There is no privilege under Section 4 if a court, administrative agency, or arbitrator finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and that the mediation communication is sought or offered in:

(1) a court proceeding involving a felony; or
(2) except as otherwise provided in subsection (c), a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.

(c) A mediator may not be compelled to provide evidence of a mediation communication referred to in subsection (a)(6) or (b)(2).

(d) If a mediation communication is not privileged under subsection (a) or (b), only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under subsection (a) or (b) does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

Section 7 Prohibited Mediator Reports

(a) Except as required in subsection (b), a mediator may not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, administrative agency, or other authority that may make a ruling on the dispute that is the subject of the mediation.

(b) A mediator may disclose:

(1) whether the mediation occurred or has terminated whether a settlement was reached, and attendance;

(2) a mediation communication as permitted under Section 6; or

(3) a mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment.

(c) A communication made in violation of subsection (a) may not be considered by a court, administrative agency, or arbitrator.

Section 8 Confidentiality

Unless subject to the Open Meetings Act or the Freedom of Information Act, mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this State.

Section 9 Mediator's Disclosure of Conflicts of Interest; Background

(a) Before accepting a mediation, an individual who is requested to serve as a mediator shall:

(1) make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and an existing or past relationship with a mediation party or foreseeable participant in the mediation; and
(2) disclose any such known fact to the mediation parties as soon as is practical before accepting a mediation.

(b) If a mediator learns any fact described in subsection (a)(l) after accepting a mediation, the mediator shall disclose it as soon as is practicable.

(c) At the request of a mediation party, an individual who is requested to serve as a mediator shall disclose the mediator's qualifications to mediate a dispute.

(d) A person that violates subsection (a), (b), or (g) is precluded by the violation from asserting a privilege under Section 4.

(e) Subsections (a), (b), (c), and (g) do not apply to an individual acting as a judge.

(f) This Act does not require that a mediator have a special qualification by background or profession.

(g) A mediator must be impartial, unless after disclosure of the facts required in subsections (a) and (b) to be disclosed, the parties agree otherwise.

Section 10 Participation in Mediation

An attorney or other individual designated by a party may accompany the party to and participate in a mediation. A waiver of participation given before the mediation may be rescinded.

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