THE MARYLAND STANDARDS OF CONDUCT FOR MEDIATORS

January 1, 2020

The **Maryland Standards of Conduct for Mediators**, effective January 1, 2020, are the same standards as the **Maryland Standards of Conduct for Court-Designated Mediators** adopted by Administrative Order of the Maryland Court of Appeals on December 6, effective January 1, 2020.

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PREFACE

These revised Maryland Standards of Conduct for Mediators (the Standards) replace the Standards of Conduct for Mediators, Arbitrators and other ADR Practitioners approved by the Maryland Court of Appeals on October 31, 2001 and the Maryland Program for Mediator Excellence (MPME) Maryland Standards of Conduct for Mediators approved by the Mediator Excellence Council on April 20, 2006.

The revisions were initially drafted by the Maryland Judicial Council ADR Committee Work Group on Standards of Conduct for Mediators, which included representatives of the ADR Committee, Maryland mediator practitioner organizations, and the Maryland Judiciary statewide ADR offices. During the drafting process, approximately 200 Maryland mediators and mediation program administrators attended public forums across the state and online, and many made oral or written comments. The Work Group considered these comments in developing a new draft of revised Standards, which it submitted to the Judicial Council ADR Committee. The revised draft Standards were then considered, revised, and approved by the Judicial Council ADR Committee, for submission to the Judicial Council.

These Standards are intended to guide the conduct of mediators, to help set appropriate expectations for mediation participants, and to promote public confidence in mediation.[1] To accomplish these goals, the Standards should be publicized and made readily

[1] DRAFTERS NOTE: These Standards are not intended to create a basis to set aside an agreement reached in mediation or for a cause of action against a mediator. A violation of standards is not intended to excuse the mediator's obligation to follow these or any other applicable standards or to diminish confidentiality under any applicable law.

available to mediators and mediation users by mediation trainers, organizations that require or provide mediation, and mediators.

These Standards provide general ethical principles that should be followed by all mediators to whom they apply, regardless of the mediation framework or style being practiced. The Standards do not explicitly address all ethical issues that may arise in mediation. Mediators and organizations that provide mediation should regularly and carefully study the Standards and consider how these general principles may apply to situations that may arise in their practices.

These Standards shall be read in their entirety and interpreted and applied as a whole.[2] No one Standard is more important than another.

APPLICATION AND DEFINITIONS

A. Application. These Standards apply to a mediator and to any person assisting the mediator in convening, administering, or conducting a mediation when:

1. A Maryland court has ordered, directed, or referred all or part of a case to the mediator, or to an ADR organization or an ADR unit of the court that designated the mediator, and the order, direction, or referral is contained in a court record; or

2. The mediator has agreed to follow the Maryland Standards of Conduct for Mediators;[3] or

[2] DRAFTERS NOTE: In some instances, a Standard will illuminate the mediator's obligations under another Standard. In other instances, there may be a tension between the mediator's obligations under these Standards.
[3] DRAFTERS NOTE: For example, to invoke the Maryland Mediation Confidentiality Act the mediator must state in

3. The mediator belongs to or is mediating for a program or organization that requires its members or mediators to follow the Maryland Standards of Conduct for Mediators.

B. Definitions. For purposes of these Standards:

1. "Certification" means that a public or private entity with criteria for certifying mediators has determined that the mediator meets those criteria. Different entities certify mediators based on different criteria, which may include observation and assessment of the mediator's skills ("performance based certification"), a review of the mediator's training and experience ("paper based certification"), or both. Obtaining a certificate of completion of a mediation training does not constitute certification as a mediator.

2. "Competent" and "competence" mean that the mediator has knowledge, skills, and abilities to mediate.

3. "Conflict of interest" means a past or present personal, professional, or financial relationship or circumstance that affects or that might reasonably be seen to affect the mediator's impartiality or the appearance of the mediator's impartiality.

4. "Impartial" and "impartiality" mean acting without favoritism, bias, or prejudice.

5. "Maryland Rules" means the rules adopted by the Maryland Court of Appeals.

writing that the mediator has read and will abide by the Maryland Standards of Conduct for Mediators during the mediation. See Maryland Code, Courts and Judicial Proceedings, section 3-1802(b).

6. "Mediation" means a collaborative process in which one or more mediators support communication and voluntary decision making by people or entities with a current or potential conflict.[4] The fundamental principles of mediation are party self-determination, mediator impartiality, and confidentiality.

7. "Mediation communication" means any spoken, written, or nonverbal communication made as part of a mediation, including for the purpose of considering, initiating, convening, continuing, reconvening, or evaluating a mediation or a mediator.

8. "Mediator" means a person who offers or agrees to conduct or conducts a mediation. Mediator includes a sole mediator, all co-mediators, and any person who helps a mediator conduct a mediation.

9. "Observer" means a person who attends a mediation for purposes of training, mentoring, research, evaluation, or quality assurance.

10. "Participant" means any person other than a mediator or an observer who attends or engages in any part of a mediation. Participant includes a party.

11. "Party" means a person, including the decision-making representative of an entity, who attends or engages in any part of a mediation and whose agreement is legally or practically necessary to resolve the conflict.

12. "Self-determination" means the opportunity to make voluntary, uncoerced, and informed decisions.

[4] DRAFTERS NOTE: Mediation is used to resolve or prevent a broad range of conflicts in a wide variety of settings.

13. "Shall" means the mediator is required to act as described.

14. "Should" means the mediator may only depart from the described action after careful consideration and for a compelling reason.

15. "The Maryland Mediation Confidentiality Act" and "the Act" mean Maryland Code, Courts and Judicial Proceedings, section 3-1801 et. seq.

STANDARD I. SELF-DETERMINATION

A. A mediator shall support and respect the self-determination of all parties, so that each party may make voluntary, uncoerced, and informed decisions about their participation in the mediation process and the mediation outcome.[5]

1. A mediator should consider and explore any request that a party may make about the mediation process, and attempt to address the interests underlying the request, in a manner consistent with the mediator's practices, qualifications, and other duties under these Standards.[6]

2. A mediator should inform the parties that they may consult other persons to help them make informed choices.[7] If a party requests the opportunity to obtain

[5] DRAFTERS NOTE: The parties may always exercise self-determination regarding the manner and extent of their own participation in the mediation process, whether to enter an agreement, and the terms of any agreement. Unless otherwise required by a court or other agency, the parties may also exercise self-determination regarding whether to mediate, the selection of a mediator, the participants in the mediation, and whether to withdraw from, postpone, or terminate mediation.

[6] DRAFTERS NOTE: A mediator is responsible for giving the parties a general explanation of the mediation process that the mediator will provide and for the quality and integrity of that process. (See Standard VI.) The parties may often exercise self-determination regarding the mediation process by making an informed selection of a mediator and by telling the mediator their process preferences. However, the parties do not control the mediation process.

[7] DRAFTERS NOTE: The mediator must be careful to advise the parties that they may consult others at a time and in a manner that is consistent with the mediator's obligations to act impartially and respect party self-determination.

additional information to help the party make an informed decision, the mediator should allow the party a reasonable opportunity to do this.[8]

B. A mediator shall not undermine any party's self-determination to promote or achieve a settlement. A mediator shall resist any outside pressure to achieve settlement, including any pressure from courts or other referral sources, programs or organizations that the mediator is affiliated with, employers, or funders.

C. If a mediator has reason to believe that a party is having difficulty understanding, participating, or exercising self-determination in a mediation, the mediator shall consider and, if appropriate, explore with the participants, possible ways to increase the party's ability to participate in mediation. If the difficulty cannot be satisfactorily addressed, the mediator should terminate the mediation.

D. If a mediator has reason to believe that abuse, coercion, duress, or undue influence may be preventing a party from fully participating or exercising self-determination, the mediator shall consider and, if appropriate, explore with the participants, whether there is a way to conduct the mediation in a manner that would allow the party to participate freely, safely, and without fear of retaliation. If the mediator concludes that any party cannot participate safely and without fear of retaliation, the mediator shall terminate the mediation.

[8] DRAFTERS NOTE: A mediator cannot personally ensure that each party has made informed decisions.

STANDARD II. IMPARTIALITY

A. A mediator shall conduct all aspects of a mediation in an impartial manner, which means acting without favoritism, bias, or prejudice.

1. A mediator shall decline a new mediation or withdraw from an ongoing mediation if the mediator cannot act in an impartial manner for any reason.

2. A mediator shall not favor or disfavor any participant for any reason, such as the participant's race, age, sex, gender identity, sexual orientation, disability, appearance, personal characteristics, background, values, beliefs, or actions or behavior during or outside the mediation process.

3. A mediator shall make an effort to be aware of the mediator's biases and should learn about unconscious and implicit biases.

B. A mediator shall refrain from statements and conduct, during and outside of mediation, that might reasonably raise a question about the mediator's impartiality.[9]

C. A mediator shall not offer, give, solicit, or accept any item or service of value, before, during or after a mediation, if doing so might reasonably raise a question about the mediator's impartiality.

STANDARD III. CONFLICTS OF INTEREST

A. A mediator shall not mediate a dispute in which the mediator has any direct or indirect conflict of interest that is or reasonably should be known to the mediator unless the

[9] DRAFTERS NOTE: A mediator should be aware that public statements, writings, and social media activities may give the appearance that the mediator is not impartial.

mediator has disclosed the relevant circumstances to all parties, the parties have thereafter agreed that the mediator may conduct or proceed with the mediation, and the conflict would not undermine the integrity of the mediation process.

1. A conflict of interest is any personal, professional, or financial relationship or circumstance that might reasonably raise a question about the mediator's impartiality. A conflict of interest may arise from a relationship or circumstance that existed before the mediation, one that exists at the time of the mediation, or one that might occur after the mediation.
2. A direct conflict of interest may arise from:
    a. a personal, professional, or financial relationship between the mediator and a participant in the mediation; or
    b. the mediator's interest in a potential outcome of the mediation or the conflict.
3. An indirect conflict of interest may arise from a personal, professional, or financial relationship between the mediator and another person who, or an entity that, has:
    a. a personal, professional, or financial relationship with a participant in the mediation; or
    b. an interest in a potential outcome of the mediation or the conflict.

B. A mediator shall make a reasonable effort to identify any conflicts of interest as soon as possible after being asked to conduct a mediation.

C. If a mediator knows or learns of any relationship or circumstance that creates or might create a conflict of interest, the mediator shall promptly do one of the following:

1. If disclosure can be made without violating confidentially, disclose the relationship or circumstance to the parties. If the mediator and all parties then agree and doing so would not undermine the integrity of the mediation process, the mediator may proceed with the mediation.

2. Decline to accept the mediation, if it has not begun.

3. Withdraw from the mediation, if it has begun.

D. If a conflict of interest would undermine the integrity of the mediation process, the mediator shall decline to accept a new mediation or withdraw from an ongoing mediation, regardless of any other desire, agreement, or consent of the parties.

E. While a mediation is pending or ongoing, the mediator shall not perform professional services in any other capacity for any party without the informed consent of all parties in the mediation.

F. While a mediation is pending or ongoing, the mediator shall not establish any new relationship or involvement that might reasonably raise a question about the mediator's impartiality.

G. After a mediation has concluded, the mediator shall avoid any potential new relationship or involvement with a participant or the subject of the dispute that might reasonably raise a question about the mediator's impartiality during the mediation,

unless the parties to the mediation have consented to the new relationship or involvement.[10]

STANDARD IV. COMPETENCE

A. A mediator shall offer, agree, or undertake to mediate a matter only if the mediator has the knowledge, skills, and abilities to mediate the matter.[11]

1. A mediator shall have the ability to describe accurately the mediation skills, techniques, and processes that the mediator uses.

2. A mediator shall have the ability to perform competently the services that the mediator offers.

B. A mediator shall provide accurate and appropriately complete information about the mediator's training and experience, upon request, to potential mediation participants, to any program from which the mediator accepts referrals, and to others.

1. A mediator shall claim to meet the mediator qualifications of a public or private entity only if that entity has criteria for qualifying mediators and has determined that the mediator meets those criteria.

[10] DRAFTERS NOTE: In deciding whether a new relationship or involvement is permissible, or whether the parties' consent is required, the mediator shall consider the subject matter of the mediation, the time elapsed since the mediation, the nature of the possible new relationship or involvement, and any other relevant factors.

[11] DRAFTERS NOTE: Mediation training and experience are very important to mediate competently; however academic degrees and professional backgrounds are not necessary to mediate competently. Specialized mediation training may be required to mediate some types of conflicts. A mediator who is not competent to mediate a matter independently may be competent to do so as a co-mediator or with appropriate mentoring or other assistance.

2. Any communication stating that a mediator is or has been certified shall identify the organization or program that certified the mediator.

C. A mediator shall attend educational programs and participate in other activities to develop, maintain, and enhance the mediator's competence.[12]

D. If a mediator cannot conduct a mediation competently, the mediator shall promptly:

1. Discuss the situation with the parties and take appropriate steps to address it;

2. Obtain appropriate assistance; or

3. Withdraw from the mediation, either with or without disclosing the reason.

E. A mediator shall not conduct a mediation if the mediator's ability to mediate competently is impaired by medication, illness, drugs, alcohol, or other causes or conditions.

STANDARD V. CONFIDENTIALITY

A. A mediator shall follow all applicable mediation confidentiality statutes and rules of court, and any confidentiality agreement between the parties and the mediator that is consistent with the applicable statutes and rules.[13]

[12] DRAFTERS NOTE: The number of hours of continuing education activities is not specified in these Standards because different programs and rosters have different requirements. A mediator should satisfy the continuing education requirements of each program for which the mediator mediates.

[13] DRAFTERS NOTE: The existence and scope of mediation confidentiality in Maryland depends on the context and circumstances of the mediation. If Title 17 of the Maryland Rules applies, mediation confidentiality is established and governed by Rule 17-105. If Title 17 of the Maryland Rules does not apply, mediation confidentiality may or may not be established and governed by the Maryland Mediation Confidentiality Act.

B. A mediator shall explain mediation confidentiality, including any applicable statutes, rules, standards, and relevant exceptions, to all mediation participants as soon as practicable and at the beginning of the first mediation session.

C. A mediator shall discuss with the participants whether and to what extent the participants will maintain the confidentiality of mediation communications.

D. A mediator shall maintain the confidentiality of all mediation communications, conduct, and outcomes unless a disclosure is required or permitted by an applicable statute or provision of the Maryland Rules.[14]

E. A mediator who speaks privately with a participant during a mediation shall not reveal any information that was privately communicated without the consent of that participant, unless the disclosure is otherwise required or permitted by an applicable statute or provision of the Maryland Rules.

F. A mediator should not reveal the name of, or other identifying information about, any participant without that participant's prior consent, unless required or permitted by an applicable statute or provision of the Maryland Rules.

G. If it is necessary to identify a participant in a past, pending, or ongoing mediation to determine whether a conflict of interest exists or to disclose an actual or potential conflict of interest in another mediation:

1. the mediator should obtain the permission of the participant in the past, pending, or ongoing mediation before revealing the participant's name; and

[14] DRAFTERS NOTE: Confidentiality is important to promote communication in mediation and to preserve mediator impartiality, the appearances and perceptions of mediator impartiality, and the integrity of the mediation process.

2. if the mediator cannot obtain permission of the participant in the past, pending, or ongoing mediation, the mediator should decline or withdraw from the other mediation.

H. A mediator who participates in teaching, research, or evaluation of mediation shall protect the anonymity of the participants and shall respect their reasonable expectations about privacy and confidentiality.

STANDARD VI. QUALITY AND INTEGRITY OF THE MEDIATION PROCESS

A. A mediator shall conduct a mediation in a manner that promotes the quality and integrity of the mediation process.

1. A mediator shall not conduct a dispute resolution process other than mediation and call it mediation.

2. A mediator shall not knowingly misrepresent any material fact or circumstance in the course of a mediation.

3. A mediator shall support honesty and candor by all participants.

4. A mediator shall not schedule or conduct a mediation in a timeframe that would not allow a quality process.

B. A mediator shall follow all applicable statutes and Maryland Rules, these Standards, and the requirements of any program for which the mediator is mediating.

1. If there is a tension or a conflict between the mediator's obligations, the mediator shall consider carefully the circumstances, determine whether there is a way to reconcile the mediator's obligations, and take appropriate action. If the

mediator cannot appropriately reconcile conflicting obligations, it may be necessary for the mediator to decline, postpone, withdraw from, or terminate the mediation.

2. If the mediator knows of an applicable statute or rule that conflicts with and takes precedence over a provision of these Standards, the mediator shall follow the statute or rule, inform the participants of any conflict that may be relevant to the mediation, comply with the spirit and intent of the preempted Standard to the extent possible, and honor all remaining Standards.

3. If a program requirement conflicts with a provision of these Standards, the mediator shall follow these Standards.

C. A mediator shall agree to mediate a matter only if the mediator is able to:

1. Commit the time, attention, and resources necessary to conduct an effective mediation; and

2. Satisfy any reasonable expectations or requirements of the parties, and of any referring program, concerning the timing of the mediation.

D. A mediator should help the parties identify the people who are appropriate participants in the mediation and facilitate the participation of those people. The parties and mediator may agree that other people may be included in or excluded from some or all sessions.

E. Before or at the beginning of the first mediation session, the mediator shall give all participants a general description of the process that the mediator will provide. The mediator shall substantially provide the process that the mediator described, unless the

mediator and the parties agree to a different process in a manner that is consistent with these Standards.

F. A mediator shall not change from mediation to any other dispute resolution process without first discussing the implications with the parties and obtaining their informed consent. A mediator shall not change processes if doing so is prohibited by the requirements of the mediation program that referred the case, if any.

G. During a mediation session, the mediator shall not perform any services other than as a mediator.

H. Upon the request of a party, a mediator may provide information that the mediator is qualified by training or experience to provide, if the mediator can do so consistently with these Standards and any applicable statutes, Maryland Rules, program requirements, and other standards of conduct.

I. If a mediator has reason to believe that anything occurring in a mediation is unlawful, inconsistent with these Standards, or may undermine the quality or integrity of the mediation process, the mediator shall consider carefully the circumstances and take appropriate steps. Depending on the circumstances, these steps may include exploring the issue in private session; continuing, postponing, withdrawing from, or terminating the mediation; and reporting a situation to an appropriate person or authority, if this is consistent with the mediator's confidentiality obligations.

J. If a mediator decides to postpone, withdraw from, or terminate a mediation, the mediator shall consider the safety of the participants and the integrity of the mediation process in determining how to proceed. The mediator may inform some or all mediation

participants of the reason for postponing, withdrawing from, or terminating the mediation if this is consistent with the mediator's confidentiality and impartiality obligations.

STANDARD VII. ADVERTISING AND SOLICITATION

A. Any advertisement, solicitation of business, use of testimonials, and other communication about a mediator's services shall be consistent with these Standards.

B. A mediator shall be truthful and appropriately complete in any communications about the mediator's qualifications, experience, skills, techniques, processes, practices, services, availability, and fees.

C. A mediator shall not make any promises or representations about potential mediation outcomes.

D. A mediator shall not advertise or solicit business in any way that might reasonably create an impression that the mediator favors or disfavors any party or parties.

STANDARD VIII. FEES AND OTHER CHARGES

A. If a mediator or an organization that the mediator is associated with will charge fees or other charges, those fees and charges shall be reasonable in light of all relevant factors. These factors may include the type and complexity of the matter, the mediator's qualifications and availability, the time required to prepare for and conduct the mediation, and customary rates for similar mediation services.

B. A reasonable time before the first mediation session, the mediator shall inform each party, or the party's representative, of the fees and charges that the mediator and any organization the mediator is associated with may charge in connection with the mediation.

C. If a mediator or an organization that the mediator is associated with will charge any fees or other charges for a mediation, the fee arrangement should be in writing.

D. A mediator or an organization that the mediator is associated with shall not charge fees or other charges in a manner that might reasonably raise a question about the mediator's impartiality.

1. A mediation fee agreement shall not be contingent on the outcome of the mediation or the amount or other terms of any settlement.

2. A mediator or an organization that a mediator is associated with may accept unequal fee payments from or on behalf of the parties if the fee arrangement is disclosed to all parties and does not reasonably raise a question about the mediator's impartiality.

STANDARD IX. ADVANCEMENT OF MEDIATION PRACTICE

A. A mediator should advance the practice of mediation and may do this in many ways, including:

1. Helping to create a more diverse community of mediators;

2. Striving to make mediation accessible, including by providing mediation services at a reduced rate or without charge, when appropriate;

3. Participating in mediation research and evaluation, including by requesting participant feedback, when appropriate;
4. Promoting public understanding and appreciation of mediation; and
5. Helping other mediators as appropriate, including through co-mediation, observation, mentoring, and networking.

B. A mediator who believes that another mediator has acted inconsistently with these Standards should consider discussing this with that mediator, in a manner consistent with mediation confidentiality.

C. A mediator should engage in conversations about the practice of mediation in a respectful manner and work with others to improve the profession and better serve people in conflict.

D. A mediator should consider using mediation to address the mediator's conflicts.