

TEXAS DISPUTE RESOLUTION CENTER DIRECTORS' COUNCIL

CODE OF ETHICS FOR MEDIATORS

Mediation is a conflict resolution process in which an impartial third party, the mediator, facilitates communication between parties to promote reconciliation, settlement or understanding among them. Decision-making authority for any agreement or settlement rests with the parties themselves. While a large percentage of cases settle in mediation, mediation can also serve as just one of several steps to a later reconciliation, agreement or settlement.

Mediation is based on principles of communication, negotiation, facilitation and problem-solving techniques that emphasize the need and interests of the participants, as well as fairness, procedural flexibility, privacy, confidentiality, full disclosure and self-determination. Mediation should never interfere with an individual's right to act on his or her own behalf.

This Code, in conjunction with the Alternative Dispute Resolution Procedures Act (TEX. CIV. PRAC. & REM. CODE, CHAPTER 154) is intended to serve as the foundation for the ethical conduct of Mediators at the Dispute Resolution Centers of Texas. It represents standards of ethical behavior for mediators in relationship with the disputants, colleagues and the community as a whole. Successful mediation programs are built on public confidence and understanding; therefore, Mediators must observe the highest standards of conduct so the integrity and fairness of the mediation process will be preserved.

1. GENERAL PRINCIPLES

- 1.1. A mediator shall assist the parties in reaching an informed and voluntary settlement. Decisions are to be made voluntarily by the parties themselves.
- 1.2. A mediator shall not coerce or unfairly influence a party into a settlement and shall not make substantive decisions for any party in a mediation process.
- 1.3. A mediator shall promote a balanced process and shall encourage the parties to be non-adversarial in the mediation.
- 1.4. A mediator shall not intentionally or knowingly misrepresent material, facts or circumstances in the course of conducting the mediation.
- 1.5. A mediator shall promote mutual respect among the parties throughout the mediation process.
- 1.6. The goal of mediation is not only settlement, but also facilitation of communication, which promotes understanding, reconciliation, agreement or settlement. (Not all cases are appropriate to settle through mediation.)

2. PROFESSIONALISM

- 2.1 A mediator shall adhere to the highest standards of integrity, impartiality and professional competence.
- 2.2 A mediator shall make only accurate statements about the mediation process, its benefits and the mediator's qualifications.
- 2.3 A mediator shall make only accurate statements about himself or herself and shall exercise decorum and prudence in promotional activities.
- 2.4 A mediator shall be courteous toward a co-mediator and shall avoid any appearance of conflict with, or criticism of, a co-mediator in the presence of the parties.

- 2.5 A mediator shall respect and promote cooperation and understanding among all parties involved in mediation, including, but not limited to disputants, mediators, attorneys and mental health and social service professionals.
- 2.6 A mediator shall consult with DRC staff and/or colleagues if unsure how to handle a procedural or ethical problem.
- 2.7 A mediator shall decline appointment, withdraw or request technical assistance when the mediator decides that a case is beyond his or her competence.

3. PROCESS

- 3.1 A mediator is responsible for directing and protecting the mediation process. The role of the mediator includes, but is not limited to, assisting the parties in facilitating communication, clarifying issues, reducing obstacles, evaluating options and encouraging and voluntary agreement.
- 3.2 A mediator shall not prolong a mediation session if it becomes apparent that the case is unsuitable for mediation or if one or more of the parties is unwilling or unable to participate in the mediation process in a meaningful manner.
- 3.3 A mediator shall promote balance between the parties to ensure a safe and neutral environment.

4. IMPARTIALITY/NEUTRALITY

- 4.1 A mediator has a continuing duty to disclose anything that may affect, or might appear to affect, the mediator's ability to be impartial. With regard to mediation, impartiality means freedom from favoritism or bias in word, action and appearance and implies a commitment to aid all parties, as opposed to an individual party, in working toward an agreement.
 - a. A mediator shall determine his or her ability to maintain impartiality before beginning a mediation involving a party with whom the mediator has or may have had a previous relationship.
 - b. A mediator shall disclose to all parties any affiliation or previous relationship with any of the parties.
 - c. A mediator shall withdraw from the mediation if the mediator believes that he or she can no longer be impartial toward the parties or the subject matter.
- 4.2 A mediator shall not practice, condone or facilitate any form of discrimination against a party on the basis of any characteristic, condition, preference belief or status of such party.
- 4.3 A mediator shall obtain confirmation from the parties as to the acceptability of the mediator to conduct the mediation. The determination of acceptability rests solely with the parties. A mediator shall withdraw from the mediation in the event that any party objects to his/her service as a mediator.
- 4.4 A mediator shall maintain impartiality while raising questions for the parties to consider the reality, fairness, equity and feasibility of proposed options for settlement.
- 4.5 A mediator shall not have private conversations relating to the dispute with any party to the mediation without informing the other parties.

5. NON-ADVOCACY

- 5.1 A mediator shall assist the parties in examining the advantages and disadvantages of all options suggested during the mediation, but shall not advocate a particular solution.
- 5.2 A mediator shall not offer any type of personal or professional opinion to the parties, nor shall he or she provide counseling, therapy, legal, financial or any other type of advice regarding the issues or merits of the case to the parties.
- 5.3 A mediator shall never coerce, make a decision for or impose his or her own judgment on the parties.
- 5.4 A mediator shall see that the interests of unrepresented third parties, such as children, are considered by the disputing parties. However, a mediator shall not act as an advocate for any unrepresented parties.

6. CONFIDENTIALITY

- 6.1 A mediator shall inform the parties of the confidential nature of the mediation and of any exceptions.
- 6.2 A mediator shall not disclose to any party or other persons information given by a party to the mediation in confidence, either in caucus or in joint session, except as expressly authorized by the disclosing party or as required by law.

7. CONFLICT OF INTEREST

A mediator shall disclose any current, past or possible future relationship with anyone involved in the mediation. Disclosure shall be made as soon as practical after the mediator becomes aware of any such relationship. After disclosure, the mediator may serve if the parties so desire.

A mediator shall withdraw if he or she perceives that there is a clear conflict of interest, irrespective of the expressed desires of the parties.

A mediator shall not use his or her role as a mediator or the mediation process to solicit, encourage, provide or receive future professional services with either party.

8. PRIVILEGE TO MEDIATE

- 8.1 Qualification to mediate at the DRC confers no permanent right to the individual, but is a conditional privilege that can be revoked by the DRC.
- 8.2 Violation of this Code may result in automatic disqualification to mediate at the DRC and loss of the privilege to be listed as a DRC mediator.