

MEDIATOR QUALIFICATIONS AND STANDARDS OF PRACTICE—JANUARY 7, 2000

Minimum Qualifications

Employment: federal employment; mediation services provided as a collateral duty.¹

Training: a minimum of 20 hours of basic mediation skills training. Documentation of training is requested.

Experience: for lead mediators, at least three documented co-mediations or five independent mediations with positive evaluations from a qualified mediator/evaluator.

References: at least two letters of recommendation from individuals who are familiar with the applicant's abilities as a dispute resolver/mediator.

Supervisory Approval: Supervisor's Approval form signed by mediator's supervisor.

Agreement to Uphold Ethical Principles: agree to uphold basic standards of conduct (e.g., SPIDR/AAA Model Standards of Conduct for Mediators), the confidentiality provisions of the Administrative Dispute Resolution Act of 1996, and the Sharing Neutrals Standards of Practice. In addition, as federal employees, participants should not use their position for personal gain.

Standards of Practice

These standards are modeled on the Standards of Practice for Postal Service Mediators. Modifications were made to reflect both the voluntary nature of Sharing Neutrals and the fact that mediators are federal employees.

While the standards refer primarily to mediators, all participants are encouraged to review them carefully. Policies and practices that uphold these standards will help ensure fairness for the parties and the process.

¹Federal and other government retirees, who are experienced mediators, may volunteer their services through Sharing Neutrals.

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Competency: Mediators shall meet the basic qualifications for participation in the program. In addition, mediators will strive to enhance their skills. If a mediator feels s/he is lacking the skills necessary for a particular case, the mediator shall decline to serve or shall withdraw from the case.

- § Mediators are encouraged to participate in training, attend professional conferences and meetings to upgrade their skills and enhance their professional development.
- § Mediators shall disclose to parties the limits of their skills or substantive expertise whenever this may be relevant to handling of a case.
- § Beyond disclosure, mediators should exercise their own judgement regarding whether their expertise and skills are adequate to meet the demands of a case. Mediators should decline to serve or withdraw from a case when their skills and expertise are inadequate.

Impartiality: Mediators shall, in word and action, maintain impartiality toward the parties and the issues in dispute. Where the mediator's impartiality is in question, the mediator shall decline to serve or withdraw from the case.

- § Impartiality is central to mediation as it directly affects the mediator's ability to function as a neutral.
- § Mediators shall not display favoritism or bias toward any party or position taken by a party. Mediators shall be committed to aid all parties, as opposed to a single party, in exploring possibilities for resolution.
- § At the earliest possible opportunity, mediators shall disclose any conflicts of interest and/or any present or prior relationship with any of the parties or their representatives. If any of the parties or representatives objects to the mediator's serving as the result of such disclosure, the mediator shall withdraw. If the mediator believes that a previous relationship will compromise impartiality or appears to do so, the mediator shall withdraw. If the mediator or any party believes that and so states, apart from relationships, the fact or appearance of impartiality is compromised, the mediator shall withdraw.
- § Mediators should exercise discretion and due regard for the appearance of impartiality in establishing new relationships with parties to past mediations.

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Confidentiality: mediators shall, subject to statutory obligations to the contrary, meet the reasonable expectations of the parties regarding the confidentiality of all communications made within the mediation process.

- § Sharing Neutrals mediators agree to become familiar with and practice consistently the confidentiality provisions of the Administrative Dispute Resolution Act of 1996.
- § Apart from statutory duties to report certain kinds of information, a mediator is obligated not to disclose to a nonparty, directly or indirectly, any information communicated to the mediator by a party to the mediation process.
- § Absent statutory duties, a mediator must not disclose, directly or indirectly, to any party to a mediation, information communicated to the mediator in confidence by any other party unless that party gives permission to do so.
- § The mediator must limit information given to the referring agency (other than a party) to the fact of whether or not a settlement was reached.²
- § A mediator cannot ensure the confidentiality of statements parties make to each other or of any documents or other tangible evidence shared during the mediation.
- § Where confidential information from one party might, if known to the other party, change the second party's decision about whether to accept or reject certain terms of settlement, a mediator should encourage the first party to permit disclosure of the information, but absent such permission, the mediator must not disclose it.

Consent: mediators shall make reasonable efforts to assure that parties understand the mediation process and their options, and that parties are able to make choices regarding their participation in mediation generally or regarding specific settlement options.

- § A mediator is obligated to explain the mediation process to the parties at the outset, including the role and function of the neutral, and to inform the parties of their rights to refuse any offer of settlement or to withdraw from mediation at

² AReferring agency@ applies to the office or entity requesting mediator referrals from Sharing Neutrals.

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any time and for any reason. This obligation continues throughout the mediation process.

§ A mediator must not exert undue pressure on a party to continue mediation or accept an offer. A mediator, however, should encourage parties to consider both the benefits of participation and settlement and the costs of withdrawal or impasse.

§ Where a party appears to be acting under coercion or fear, or without capacity to comprehend the process, issues or options for settlement, the mediator must explore the circumstances with the party and, unless the party objects, discontinue mediation. If the party insists on continuing, the mediator may do so, but should continue to raise the question and check for willingness to proceed.

Self-Determination: mediators shall respect and encourage self-determination by the parties in their decision to resolve their dispute, and on what terms. Mediators shall refrain from being directive or judgmental regarding the issues in dispute or the options for settlement.

§ The parties have the responsibility for deciding whether and on what terms to resolve their dispute. The mediator may and should assist them in making informed and thoughtful decisions. The mediator must not impose his or her personal views or beliefs with regard to any aspect of the dispute or potential settlement.

§ Subject to the above, the mediator should assist the parties in considering proposed options for settlement, including their acceptability, sufficiency, feasibility and impact on third parties. Furthermore, the mediator may make neutral suggestions for the parties' consideration. However, at no time should the mediator make decisions for the parties or express his or her opinions about or advise for or against any proposal under consideration.

§ If a party to mediation declines to consult an attorney or counselor after the mediator has raised this option, the mediator is obligated to permit the mediation to go forward according to the party's wishes.

§ If the mediator is aware that an agreement desired by the parties could not be enforced, because it is illegal or unenforceable, or for any other reason, the mediator is obligated to inform the parties. If the parties insist on the agreement, the mediator must discontinue mediation but should not violate the obligation of confidentiality.

Separation of Mediation from Counseling and/or Providing Legal Advice: mediators must limit their role solely to that of mediator. They should refrain from giving legal or therapeutic information or advice.

- § A mediator may, in areas where s/he is knowledgeable and experienced, raise questions regarding the information presented by the parties, including information about the law.
- § A mediator should never provide professional advice to the parties or express a professional or personal opinion on an issue or option for settlement. The mediator may provide relevant information, including information about the law.
- § If the mediator believes a party is acting without adequate information or legal advice on legal or psychological aspects of the issues presented, the mediator must raise the option of obtaining independent expert advice prior to resolving issues and afford the parties the opportunity to do so.
- § A mediator must limit his or her role to that of mediator, and must never assume the role of advocate for either party's interests or provide counseling or therapy to either party during the mediation process.

Promotion of Respect and Control of Abuse of the Process: mediators shall encourage an atmosphere of mutual respect and shall take reasonable steps subject to the principle of self-determination, to limit abuse of the mediation process.

- § Mediators should be mindful that parties participate in good faith and that potential for abuse of the process is present in any mediation.
- § The mediator should make reasonable efforts to prevent manipulation and intimidation by either party.
- § The mediator should assist the parties in establishing a dialogue that promotes the understanding and respect for the other's positions and concerns even if the parties cannot agree.
- § Where a mediator discovers intentional abuse of the process, such as non disclosure or lying, the mediator has an obligation to encourage the abusing party to alter their conduct. The mediator is not obligated to reveal the conduct or to discontinue the process, but the mediator may discontinue mediation as long as this does not violate the obligation of confidentiality.

Conflicts of Interest: mediators shall, as far as possible, avoid conflicts of interest and, in any event, shall resolve all such conflicts in favor of their primary obligation to serve impartially the parties in the dispute.

- § A mediator who is a lawyer must not advise or represent either of the parties in future proceedings concerning the subject matter of the dispute. Likewise the mediator who is a therapist or trained counselor must not provide future therapy or counseling to either of the parties or both of them regarding the subject matter of the dispute.
- § Mediators are encouraged to contact the Sharing Neutrals administrator for answers to specific questions related to potential conflicts of interest or abuse of government position. If applicable, they also may want to contact their respective Agency Ethics Officer.
- § Mediators are obligated to put the interests of the parties above the interest of the referring agencies if the two come into conflict.
- § Where a party is represented or advised by a professional advocate or counselor, the mediator is obligated to put the interests of the party over his/her own interest in maintaining cordial relations with the other professional if the two come into conflict.

Maintenance of Program Integrity: mediators shall accept and carry out their assignments consistent with Sharing Neutrals policies and procedures.

- § Mediators should not accept assignments from an agency unless the assignment is generated by a Sharing Neutrals referral; mediators who knowingly do so, are not functioning as Sharing Neutral mediators.
- § Mediators should be aware that mediating outside the Sharing Neutrals program could result in a charge of abuse of official time and/or otherwise affect their rights and benefits as federal employees.

SHARING NEUTRALS: AN INTERAGENCY COLLABORATIVE EFFORT IN SUPPORT OF ADR

POLICY GUIDELINES--JANUARY, 1999

Purpose: these guidelines are the result of a series of meetings held with various stakeholders (mediators, agencies representatives, other interested parties) during the fall of 1998. They are intended to address several issues that emerged since Sharing Neutrals was originally begun as a pilot in 1995. In addition, the goal statement has been revised slightly to reflect the increased availability of trained mediators. Existing policies such as mediator qualifications, guidance for parties, remain unchanged.

Sharing Neutrals Goal and Concept

The goal is to provide low cost, high quality neutrals to federal agencies. Sharing Neutrals has a pool of trained and experienced neutrals who mediate cases and mentor less experienced neutrals, from a variety of agencies, on a collateral duty basis. Participating Agency's benefit from the program is roughly approximate to its contribution. Those agencies unable to commit mediators to the effort for various reasons (e.g., size, mission), may still participate in the program by agreeing to contribute in alternative ways (e.g., logistics, administrative support).

Sharing Neutrals provides federal agencies with a low cost option when they have few or no "in-house" mediators or when a party to a dispute with an agency questions the neutrality of a mediator employed by the agency. In other instances, the Sharing Neutrals pool may be able to provide neutrals with technical or other substantive expertise not readily available elsewhere.

The following principles apply:

Sharing Neutrals Supports the Co-Mediation Model

Cases referred to Sharing Neutrals will be co-mediated whenever possible. There a number of benefits to co-mediation. For example, co-mediation can help "balance the table." Mediators who reflect the make-up of the parties whether by gender, race, professional background or other characteristics can assist building trust and open communication. Co-mediation is used to train and develop new or less experienced mediators; the hands-on approach is one of the best ways to learn. Co-mediators can provide feedback and support to each other. Mediation is hard work; shared responsibility can help mediators do their jobs more effectively.

Participating Agencies May Use Sharing Neutrals Mediators to Mentor New Agency Mediators Providing Agencies Agree to Contribute to the Interagency Effort

Since its inception, Sharing Neutrals mediators have provided co-mediation experience to individuals in the Sharing Neutrals co-mediator pool. More recently, SN mediators have been asked to mentor individual agency apprentice mediators. In order to give these individuals experience, agencies are requesting Sharing Neutrals mediators to mediate cases using their agency staff as co-mediators. Sharing Neutrals will allow agencies this flexibility provided the SN mediator agrees and the requesting agency indicates how they intend to contribute to the interagency effort. This contribution might consist of agreeing to make the individuals available to the mediator pool when they have sufficient experience, accepting Sharing Neutrals co-mediators for certain cases or other alternatives that are mutually acceptable.

Sharing Neutrals Mediators Are Available Only Through Sharing Neutrals

Supervisory approval is required for all Sharing Neutrals mediators. It is important that agencies contact Sharing Neutrals for mediator referrals and not “contract” with the mediators directly; to do so may jeopardize the neutral who has received approval “...to participate in the Interagency Program on Sharing Neutrals.” Agencies may request that certain neutrals be referred, and where possible, those requests will be accommodated.

In Order to Support this Collaborative Effort, Agencies, Mediators and Sharing Neutrals Have Certain Responsibilities

As with any collaboration, success depends on the willingness of the various participants to assume responsibility for the overall effort. The following are the primary responsibilities of the participants:

Sharing Neutrals Administration: receives and responds to requests for mediation services. Maintains roster of neutrals. Maintains list of Participating Agencies and responds to inquiries from agencies seeking information about Sharing Neutrals. Collects information about use of program including types of cases mediated; requesting agencies; agencies providing mediation services; case outcomes (e.g., settled, not settled, withdrawn). Collects user assessment forms, reviews and makes administrative adjustments when necessary. Convenes meetings of interested participants at least twice annually.

Requesting Agencies: requests mediator referrals in writing, providing basic information such as type of case, time frames, any special considerations that should be considered in referring mediators. Contacts referred mediators to determine interest and availability. Works with the assigned mediators in handling logistics. Follows up

with Sharing Neutrals and provides names of mediators used, outcomes. Works with mediators to ensure user surveys are completed and returned to Sharing Neutrals.

Mediators: responds to Agency contacts in a timely manner. Works with the agency in handling logistics such as scheduling for initial session. Contacts co-mediator prior to initial mediation session. Conducts mediation. At close of mediation, notifies agency contact. May agree to draft settlement. Provides co-mediator with feedback and written evaluation. Notifies Sharing Neutrals of address, phone number, e-mail changes.

SN Policy Guidelines
January, 1999