

**Baltimore Federal Executive Board
Alternative Dispute Resolution Council
Mediation Services Program (MSP)**

Mediator Qualifications and Standards of Practice

Minimum Qualifications:

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

Training: a minimum of 40 hours of basic mediation skills training. Documentation of training is required.

Experience: at least three documented independent mediations; in some circumstances, individuals with three co-mediations will be considered with proper evaluation from qualified, lead mediators.

References: at least two written references from individuals familiar with the applicant's skills and abilities in conflict resolution and mediation.

Supervisory Approval: Supervisor's Approval Form signed by mediator's supervisor or manager.

Agreement to Uphold Ethical Principles: agree to uphold basic standards of conduct (e.g., ACR/AAA Model Standards of Conduct for Mediators), the confidentiality provisions of the Administrative Dispute Resolution Act of 1996, and the Baltimore Federal Executive Board Mediation Services Program Standards of Practice. In addition, as federal employees, MSP mediators must adhere to their employing agency standards of conduct and should avoid any potential conflict of interest and not use their position for personal gain.

Standards of Practice

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 the parties any limits of their skills or substantive expertise whenever this may be relevant to handling of a case.

- Beyond disclosure, mediators should exercise their own judgment 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 appropriate.

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.

- At the earliest possible time, 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 with any of the parties and/or representatives will compromise impartiality or appears to do so, the mediator shall withdraw.
- 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 assist all parties in exploring possibilities for resolution.
- If the mediator or any party believes that his/her impartiality may be compromised, the mediator shall withdraw.

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

- MSP mediators agree to adhere to 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 any statutory duty, 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 office that requested mediation (other than a party) to whether or not a settlement was reached and to provide a copy of the executed written agreement.

- 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 including the role of the mediator, and that parties are able to make choices regarding their participation in mediation generally and their consideration of or agreement to 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 any time and for any reason. This obligation continues throughout the mediation process.
- A mediator exercises control of the mediation process but cannot exert undue pressure on a party to continue mediation or to accept a settlement offer. A mediator, however, should encourage parties to consider both the benefits of participation and any potential settlement as well as 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. The mediator always retains the authority to end the mediation.

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 responsibility for deciding whether and on what terms to resolve their dispute. The mediator may and should assist them in making informed, thoughtful and realistic decisions. The mediator must not impose his or her personal views or beliefs with regard to any aspect of the dispute or any discussion of 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 suggestions for the parties to consider. 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 serving as a 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, in an effort to ensure that the parties are aware of the realistic nature of any settlement proposals.
- A mediator may never provide professional advice to any party 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 substantive aspects of the issues presented, the mediator must raise the option of that party 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. A mediator cannot provide counseling or therapy to either party during the mediation process.

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

- While the parties are required to participate in the mediation process in good faith Mediators should be aware that, there is the potential for abuse of the process 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 constructive 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, if appropriate, while safeguarding 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 MSP for guidance on 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 MSP policies and procedures.

- Mediators should not accept assignments directly from an agency. All assignments will be made by MSP referral. Any mediator, who knowingly does so, is not functioning as an MSP mediator.
- Mediators should be aware that mediating outside the MSP could result in concerns being raised by their employing agency regarding such activities. Accepting such assignments will result in their exclusion from participation in the MSP.