

**COMPARISON DOCUMENT FOR
THE MODEL STANDARDS OF CONDUCT FOR MEDIATORS**

1994 MODEL STANDARDS OF CONDUCT FOR MEDIATORS	AUGUST 2005 MODEL STANDARDS OF CONDUCT FOR MEDIATORS
Introductory Note	<i>Effective Month Day, 2005</i>
<p>The initiative for these standards came from three professional groups: the American Arbitration Association, the American Bar Association (Section of Dispute Resolution)¹, and the Society of Professionals in Dispute Resolution.</p> <p>The purpose of this initiative was to develop a set of standards to serve as a general framework for the practice of mediation. The effort is a step in the development of the field and a tool to assist practitioners in it - a beginning, not an end. The standards are intended to apply to all types of mediation. It is recognized, however, that in some cases the application of these standards may be affected by laws or contractual agreements.</p>	<p>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 Resolution². A joint committee consisting of representatives from the same successor organizations revised the Model Standards in 2005.³ Both the original 1994 version and the 2005 revision have been approved by each participating organization.⁴</p>

¹ The views set out in this publication have not been considered by the American Bar Association House of Delegates and do not constitute the policy of the American Bar Association.

² 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.

³ 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.

⁴ Proposed language. As of August 12, 2005 only the ABA has reviewed and approved the 2005 Revision.

<p style="text-align: center;">1994 MODEL STANDARDS OF CONDUCT FOR MEDIATORS</p>	<p style="text-align: center;">AUGUST 2005 MODEL STANDARDS OF CONDUCT FOR MEDIATORS</p>
<p style="text-align: center;">Preface</p> <p>The Model Standards of Conduct for Mediators are intended to perform three major functions: to serve as a guide for the conduct of mediators; to inform the mediating parties; and to promote public confidence in mediation as a process for resolving disputes. The standards draw on existing codes of conduct for mediators and take into account issues and problems that have surfaced in mediation practice.</p> <p>They are offered in the hope that they will serve an educational function and provide assistance to individuals, organizations, and institutions involved in mediation.</p> <p>Mediation is a process in which an impartial third party – a mediator – facilitates the resolution of a dispute by promoting voluntary agreement (or "self-determination") by the parties to the dispute. A mediator facilitates communications, promotes understanding, focuses the parties on their interests, and seeks creative problem solving to enable the parties to reach their own agreement. These standards give meaning to this definition of mediation.</p>	<p style="text-align: center;">Preamble</p> <p>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.</p> <p>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.</p> <p>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.</p>

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<p><i>[There is no comparable section in 1994 Model Standards of Conduct for Mediators.]</i></p>	<p style="text-align: center;">Note on Construction</p> <p>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.</p> <p>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.</p> <p>The use of the term “mediator” is understood to be inclusive so that it applies to co-mediator models.</p> <p>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.</p> <p>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 sources.</p> <p>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.</p>

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<p>I. Self-Determination: A Mediator Shall Recognize that Mediation is Based on the Principle of Self-Determination by the Parties.</p> <p>Self-determination is the fundamental principle of mediation. It requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement. Any party may withdraw from mediation at any time.</p> <p>COMMENTS:</p> <ul style="list-style-type: none"> • The mediator may provide information about the process, raise issues, and help parties explore options. The primary role of the mediator is to facilitate a voluntary resolution of a dispute. Parties shall be given the opportunity to consider all proposed options. • A mediator cannot personally ensure that each party has made a fully informed choice to reach a particular agreement, but it is a good practice for the mediator to make the parties aware of the importance of consulting other professionals, where appropriate, to help them make informed decisions. 	<p>STANDARD I. SELF-DETERMINATION</p> <p>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.</p> <ol style="list-style-type: none"> 1. 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. 2. 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. <p>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.</p>

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<p>II. Impartiality: A Mediator Shall Conduct the Mediation in an Impartial Manner.</p> <p>The concept of mediator impartiality is central to the mediation process. A mediator shall mediate only those matters in which she or he can remain impartial and evenhanded. If at any time the mediator is unable to conduct the process in an impartial manner, the mediator is obligated to withdraw.</p> <p>COMMENTS:</p> <ul style="list-style-type: none"> • A mediator shall avoid conduct that gives the appearance of partiality toward one of the parties. The quality of the mediation process is enhanced when the parties have confidence in the impartiality of the mediator. • When mediators are appointed by a court or institution, the appointing agency shall make reasonable efforts to ensure that mediators serve impartially. • A mediator should guard against partiality or prejudice based on the parties' personal characteristics, background or performance at the mediation. 	<p>STANDARD II. IMPARTIALITY</p> <p>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.</p> <p>B. A mediator shall conduct a mediation in an impartial manner and avoid conduct that gives the appearance of partiality.</p> <ol style="list-style-type: none"> 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. <p>C. If at any time a mediator is unable to conduct a mediation in an impartial manner, the mediator shall withdraw.</p>

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<p>III. Conflicts of Interest: A Mediator Shall Disclose all Actual and Potential Conflicts of Interest Reasonably Known to the Mediator. After Disclosure, the Mediator Shall Decline to Mediate Unless all Parties Choose to Retain the Mediator. The Need to Protect Against Conflicts of Interest Also Governs Conduct that Occurs During and After the Mediation.</p> <p>A conflict of interest is a dealing or relationship that might create an impression of possible bias. The basic approach to questions of conflict of interest is consistent with the concept of self-determination. The mediator has a responsibility to disclose all actual and potential conflicts that are reasonably known to the mediator and could reasonably be seen as raising a question about impartiality. If all parties agree to mediate after being informed of conflicts, the mediator may proceed with the mediation. If however, the conflict of interest casts serious doubt on the integrity of the process, the mediator shall decline to proceed.</p> <p>A mediator must avoid the appearance of conflict of interest both during and after the mediation. Without the consent of all parties a mediator shall not subsequently establish a professional relationship with one of the parties in a related matter, or in an unrelated matter under circumstances which would raise legitimate questions about the integrity of the mediation process.</p> <p>COMMENTS:</p> <ul style="list-style-type: none"> • A mediator shall avoid conflicts of interest in recommending the services of other professionals. A mediator may make reference to professional referral services or associations which maintain rosters of qualified professionals. 	<p>STANDARD III. CONFLICTS OF INTEREST</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>E. If a mediator’s conflict of interest might reasonably be viewed as undermining the</p>

<ul style="list-style-type: none">• Potential conflicts of interest may arise between the administrators of mediation programs and mediators and there may be strong pressures on the mediator to settle a particular case or cases. The mediator's commitment must be to the parties and the process. Pressures from outside of the mediation process should never influence the mediator to coerce parties to settle.	<p>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.</p> <p>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.</p>
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<p>IV. Competence: A Mediator Shall Mediate only When the Mediator Has the Necessary Qualifications to Satisfy the Reasonable Expectations of the Parties.</p> <p>Any person may be selected as a mediator, provided that the parties are satisfied with the mediator qualifications. Training and experience in mediation, however, are often necessary for effective mediation. A person who offers herself or himself as available to serve as a mediator gives parties and the public the expectation that she or he has the competency to mediate effectively. In court-connected or other forms of mandated mediation, it is essential that mediators assigned to the parties have the requisite training and experience.</p> <p>COMMENTS:</p> <ul style="list-style-type: none"> • Mediators should have available for the parties information relevant to training, education and experience. • The requirements for appearing on a list of mediators must be made public and available to interested persons. • When mediators are appointed by a court or institution, the appointing agency shall make reasonable efforts to ensure that each mediator is qualified for the particular mediation. 	<p>STANDARD IV. COMPETENCE</p> <p>A. A mediator shall mediate only when the mediator has the necessary competence to satisfy the reasonable expectations of the parties.</p> <ol style="list-style-type: none"> 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. <p>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.</p> <p>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.</p>

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<p>V. Confidentiality: A Mediator Shall Maintain the Reasonable Expectations of the Parties with Regard to Confidentiality.</p> <p>The reasonable expectations of the parties with regard to confidentiality shall be met by the mediator. The parties' expectations of confidentiality depend on the circumstances of the mediation and any agreements they may make. The mediator shall not disclose any matter that a party expects to be confidential unless given permission by all parties or unless required by law or other public policy.</p> <p>COMMENTS:</p> <ul style="list-style-type: none"> • 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. Since the parties' expectations regarding confidentiality are important, the mediator should discuss these expectations with the parties. • If the mediator holds private sessions with a party, the nature of these sessions with regard to confidentiality should be discussed prior to undertaking such sessions. • In order to protect the integrity of the mediation, a mediator should avoid communicating information about how the parties acted in the mediation process, the merits of the case, or settlement offers. The mediator may report, if required, whether parties appeared at a scheduled mediation. • Where the parties have agreed that all or a portion of the information disclosed during a mediation is confidential, the parties' agreement should be respected by the mediator. 	<p>STANDARD V. CONFIDENTIALITY</p> <p>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.</p> <ol style="list-style-type: none"> 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. <p>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.</p> <p>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.</p> <p>D. Depending on the circumstance of a mediation, the parties may have varying expectations regarding confidentiality</p>

<p>the mediator.</p> <ul style="list-style-type: none">• Confidentiality should not be construed to limit or prohibit the effective monitoring, research, or evaluation, of mediation programs by responsible persons. Under appropriate circumstances, researchers may be permitted to obtain access to statistical data and, with the permission of the parties, to individual case files, observations of live mediations, and interviews with participants.	<p>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.</p>
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<p>VI. Quality of the Process: A Mediator Shall Conduct the Mediation Fairly, Diligently, and in a Manner Consistent with the Principle of Self-Determination by the Parties.</p> <p>A mediator shall work to ensure a quality process and to encourage mutual respect among the parties. A quality process requires a commitment by the mediator to diligence and procedural fairness. There should be adequate opportunity for each party in the mediation to participate in the discussions. The parties decide when and under what conditions they will reach an agreement or terminate a mediation.</p> <p>COMMENTS:</p> <ul style="list-style-type: none"> • A mediator may agree to mediate only when he or she is prepared to commit the attention essential to an effective mediation. • Mediators should only accept cases when they can satisfy the reasonable expectations of the parties concerning the timing of the process. A mediator should not allow a mediation to be unduly delayed by the parties or their representatives. • The presence or absence of persons at a mediation depends on the agreement of the parties and mediator. The parties and mediator may agree that others may be excluded from particular sessions or from the entire mediation process. • The primary purpose of a mediator is to facilitate the parties' voluntary agreement. This role differs substantially from other professional client relationships. Mixing the role of a mediator and the role of a professional advising a client is problematic, and mediators must strive to distinguish 	<p>STANDARD VI. QUALITY OF THE PROCESS</p> <p>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.</p> <ol style="list-style-type: none"> 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

<p>mediators must strive to distinguish between the roles. A mediator should therefore refrain from providing professional advice. Where appropriate, a mediator should recommend that parties seek outside professional advice, or consider resolving their dispute through arbitration, counseling, neutral evaluation, or other processes. A mediator who undertakes, at the request of the parties, an additional dispute resolution role in the same matter assumes increased responsibilities and obligations that may be governed by the standards of other professions.</p> <ul style="list-style-type: none"> • A mediator shall withdraw from a mediation when incapable of serving or when unable to remain impartial. • A mediator shall withdraw from the mediation or postpone a session if the mediation is being used to further illegal conduct or if a party is unable to participate due to drug, alcohol, or other physical or mental incapacity. • Mediators should not permit their behavior in the mediation process to be guided by a desire for a high settlement rate. 	<p>to provide, only if the mediator can do so consistent with these Standards.</p> <ol style="list-style-type: none"> 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.
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	<p>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.</p> <p>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.</p>
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<p>VII. Advertising and Solicitation: A Mediator Shall Be Truthful in Advertising and Solicitation for Mediation.</p> <p>Advertising or any other communication with the public concerning services offered or regarding the education, training, and expertise of the mediator shall be truthful. Mediators shall refrain from promises and guarantees of results.</p> <p>COMMENTS:</p> <ul style="list-style-type: none"> • It is imperative that communication with the public educate and instill confidence in the process. • In an advertisement or other communication to the public, a mediator may make reference to meeting state, national, or private organization qualifications only if the entity referred to has a procedure for qualifying mediators and the mediator has been duly granted the requisite status. 	<p>STANDARD VII. ADVERTISING AND SOLICITATION</p> <p>A. A mediator shall be truthful and not misleading when advertising, soliciting or otherwise communicating the mediator’s qualifications, experience, services and fees.</p> <ol style="list-style-type: none"> 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. <p>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.</p> <p>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.</p>

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<p>VIII. Fees: A Mediator Shall Fully Disclose and Explain the Basis of Compensation, Fees, and Charges to the Parties.</p> <p>The parties should be provided sufficient information about fees at the outset of a mediation to determine if they wish to retain the services of a mediator. If a mediator charges fees, the fees shall be reasonable, considering, among other things, the mediation service, the type and complexity of the matter, the expertise of the mediator, the time required, and the rates customary in the community. The better practice in reaching an understanding about fees is to set down the arrangements in a written agreement.</p> <p>COMMENTS:</p> <ul style="list-style-type: none"> • A mediator who withdraws from a mediation should return any unearned fee to the parties. • A mediator should not enter into a fee agreement which is contingent upon the result of the mediation or amount of the settlement. • Co-mediators who share a fee should hold to standards of reasonableness in determining the allocation of fees. • A mediator should not accept a fee for referral of a matter to another mediator or to any other person. 	<p>STANDARD VIII. FEES AND OTHER CHARGES</p> <p>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.</p> <ol style="list-style-type: none"> 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. <p>B. A mediator shall not charge fees in a manner that impairs a mediator’s impartiality.</p> <ol style="list-style-type: none"> 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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<p>IX. Obligations to the Mediation Process: Mediators have a duty to improve the practice of mediation.</p> <p>COMMENTS:</p> <ul style="list-style-type: none"> • Mediators are regarded as knowledgeable in the process of mediation. They have an obligation to use their knowledge to help educate the public about mediation; to make mediation accessible to those who would like to use it; to correct abuses; and to improve their professional skills and abilities. 	<p>STANDARD IX. ADVANCEMENT OF MEDIATION PRACTICE</p> <p>A. A mediator should act in a manner that advances the practice of mediation. A mediator promotes this Standard by engaging in some or all of the following:</p> <ol style="list-style-type: none"> 1. Fostering diversity within the field of mediation. 2. Striving to make mediation accessible to those who elect to use it, including providing services at a reduced rate or on a pro bono basis as appropriate. 3. Participating in research when given the opportunity, including obtaining participant feedback when appropriate. 4. Participating in outreach and education efforts to assist the public in developing an improved understanding of, and appreciation for, mediation. 5. Assisting newer mediators through training, mentoring and networking. <p>B. A mediator should demonstrate respect for differing points of view within the field, seek to learn from other mediators and work together with other mediators to improve the profession and better serve people in conflict.</p>