Rule 1
Scope of Rules

With the exceptions stated in Rule 3, these rules govern court-annexed Alternative Dispute Resolution (ADR) processes in South Carolina Circuit Courts in civil suits, and in South Carolina Family Courts in domestic relations actions in counties designated by the Supreme Court of South Carolina for mandatory ADR or as required by statute. They shall be construed to secure the just, speedy, inexpensive and collaborative resolution of every action.

These rules shall also govern all mediations in Medical Malpractice actions as required by S.C. Code § 15-79-120 and S.C. Code § 15-79-125(C).

Note

The counties designated by the Supreme Court of South Carolina for mandatory ADR are set forth in Circuit Court Arbitration and Mediation and Family Court Mediation.

Rule 2
Definitions

(a) Mediation. An informal process in which a third-party mediator facilitates settlement discussions between parties. Any settlement is voluntary. In the absence of settlement, the parties lose none of their rights to trial.

(b) Mediator. A neutral person who acts to encourage and facilitate the resolution of a dispute. The mediator does not decide the issues in controversy or impose settlement.

(c) Arbitration. An informal process in which a third-party arbitrator issues an award deciding the issues in controversy. The award may be binding or non-binding as specified in these rules.

(d) Arbitrator. A neutral person who acts to decide the issues in controversy of a dispute.

(e) Neutral. A mediator or arbitrator.

(f) Certified. A mediator or arbitrator who is approved by the Board of Arbitrator and Mediator Certification to be eligible for court appointment pursuant to these rules.

(g) Alternative Dispute Resolution (ADR) Conference. A mediation or arbitration. Arbitration conferences may also be referred to as hearings.

(h) Roster. The official list of certified neutrals maintained and published by the South Carolina Supreme Court Board of Arbitrator and Mediator Certification.

(i) Board. The South Carolina Supreme Court Board of Arbitrator and Mediator Certification.

Rule 3
Actions Subject to ADR

(a) Mediation. All civil actions filed in the circuit court, all cases in which a Notice of Intent to File Suit is filed pursuant to the provisions of S.C. Code §15-79-125(A), and all contested issues in domestic relations actions filed in family court, except for cases set forth in Rule 3(b) or (c), are subject to court-ordered mediation under these rules unless the parties agree to conduct an arbitration. The parties may select their own neutral and may mediate or arbitrate at any time.

(b) Exceptions. ADR is not required for:

(1) special proceedings, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

(2) requests for temporary relief;

(3) appeals;

(4) post-conviction relief (PCR) matters;

(5) contempt of court proceedings;

(6) forfeiture proceedings brought by governmental entities;

(7) mortgage foreclosures;

(8) family court cases initiated by the South Carolina Department of Social Services; and

(9) cases that have been previously subjected to an ADR conference, unless otherwise required by this rule or by statute.

(c) Motion to Refer Case to Mediation. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

Last amended by Order dated May 3, 2007.

Rule 4
Selection or Appointment of Neutral

(a) Eligibility. A neutral may be a person who:

(1) is a certified neutral under Rule 15; or

(2) is not a certified neutral but in the opinion of all of the parties is otherwise qualified by training or experience to mediate or arbitrate all or some of the issues in the action.

(b) Roster of Certified Neutrals. The Board shall maintain a current roster ("Roster") of neutrals certified under Rule 15 who are willing to serve in each county. The Board shall make the Roster available to the clerks of court for each county. A certified neutral shall notify the Supreme Court's Board of Arbitrator and Mediator Certification if the neutral desires to be added to or deleted from the Roster. The Board and clerk of court for each county shall make this roster available to the public.

(c) Appointment of Mediator by Circuit Court. In circuit court cases subject to ADR in which no Proof of ADR has been filed on the 210th day after the filing of the action, the Clerk of Court shall appoint a primary mediator and a secondary mediator from the current Roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed. A Notice of ADR appointing the mediators shall be issued upon a form approved by the Supreme Court or its designee. In the event of a conflict of interest with the primary mediator, the secondary mediator shall serve. In the event of a conflict of interest with the secondary mediator, and if the parties have not agreed to the selection of an alternative mediator, the plaintiff or the plaintiff's attorney shall immediately file with the Clerk of Court a written notice advising the court of this fact and requesting the appointment of two more mediators. In lieu of mediation, the parties may select non-binding arbitration pursuant to these rules.

In medical malpractice cases subject to pre-suit mediation as required by S.C. Code § 15-79-125(C), the Notice of Intent to File Suit shall be filed in accordance with procedures for filing a lis pendens and requires the same filing fee as provided by S.C. Code § 8-21-310(11)(b). The Notice of Intent to File Suit shall contain language directed to the defendant(s) that the dispute is subject to pre-suit mediation within 120 days and must contain a place for the names of the primary and secondary mediators. At the time the Notice of Intent to File Suit is filed, the Clerk of Court shall appoint a primary mediator and a secondary mediator in the manner set forth in the paragraph above. The plaintiff shall serve the defendants with the Notice of Intent to File Suit containing the mediator appointment. Notwithstanding the clerk's appointments, the parties by agreement may choose a different mediator at any time.

(d) Appointment of Mediator by Family Court. In family court cases subject to ADR, early mediation is encouraged.

(1) If there are unresolved issues of custody or visitation, an early mediation of those issues is required. In such event, the court shall appoint a mediator at a temporary hearing. If there is no temporary hearing, then the parties shall agree upon a mediator or notify the court for the appointment of a mediator within fifteen (15) days of the joinder of the issues of custody or visitation. In the event a mediation has not already been held to attempt resolution of the issues of custody and visitation, the temporary order shall designate a mediator in language substantially complying with the form approved by the Supreme Court or its designee. The designation shall include the name, address and phone number of the primary mediator, whether the mediator was selected or appointed, and if appointed, the name, address and phone number of a secondary mediator. E-mail addresses shall be included, if available.

(2) If issues other than custody or visitation are in dispute and no Proof of ADR has been filed certifying that the issues have been mediated, the parties must mediate those issues prior to the scheduling of a hearing on the merits; provided, however, the parties may submit the issues of property and alimony to binding arbitration in accordance with subparagraph (5). A mediator shall be designated in the following manner:

(A) When the parties file a request for a merits hearing, the request shall include the name of the stipulated mediator or a request for appointment of a mediator. The court shall not schedule a hearing on the merits until a Proof of ADR has been filed.

(B) If a mediator has not been stipulated in the request for merits hearing, the clerk of court shall appoint a primary mediator and a secondary mediator from the current Roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed. A Notice of ADR appointing the mediators shall be issued upon a form approved by the Supreme Court or its designee.

(3) In the event of a conflict of interest with the primary mediator, the secondary mediator shall serve. In the event of a conflict of interest with the secondary mediator, and if the parties have not agreed to the selection of an alternative mediator, the plaintiff or the plaintiff's attorney shall immediately file with the Clerk of Court a written notice advising the court of this fact and requesting the appointment of two more mediators.

(4) An initial mediation conference must occur within thirty (30) days of appointment or selection. The parties must complete mediation and file a Proof of ADR with the clerk's office before a merits hearing can be scheduled.

(5) In lieu of mediation, the parties may elect to submit issues of property and alimony to binding arbitration in accordance with the Uniform Arbitration Act, S.C. Code § 15-48-10 et seq.

(e) By agreement. By agreement, the parties may choose a neutral at any time. In any event, the ADR conference shall be held on or before the deadlines provided for in these rules.

(f) Notice to Neutral. The parties shall notify the selected or appointed neutral to initiate scheduling of the ADR Conference.

Last amended by Order dated May 3, 2007.

Rule 5
The ADR Conference

(a) Location of the Conference. The ADR Conference is to be held within the county where the case is filed at a site designated by the neutral or any other site agreed upon by the parties and the neutral.

(b) Discovery and Motions. The ADR conference shall not be cause for delay of other proceedings in the case, including the completion of discovery, the filing and hearing of motions, or any other matter that would delay preparation of the case for trial, except by order of the court.

(c) Recesses. The neutral may recess the ADR conference at any time and may set times for reconvening. No further notification is required for persons present at the recessed conference.

(d) Privacy. ADR conferences are private. Other persons may attend only with the permission of the parties, their attorneys and the mediator.

(e) Motion to Defer or Exempt from ADR. A party may file a motion to defer an ADR conference or exempt a case from ADR for case specific reasons. For good cause, the Chief Judge for Administrative Purposes of the circuit may grant the motion. For example, it may be appropriate to defer an ADR conference or completely exempt a case from the requirement of ADR where a party is unable to participate due to incarceration or mental or physical condition.

(f) Deadline for the ADR Conference in Circuit Court. The ADR conference shall be held on or before three hundred (300) days from the date of the filing of the action. The case shall not be on the circuit court trial roster until a Proof of ADR is filed.

Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the Notice of Intent to File Suit or as the Court directs.

(g) Scheduling in Family Court. The parties shall contact and cooperate with the mediator to set the schedule for conferences and the mediator may recess a conference at any time and may set times for reconvening. No further notification is required for persons present at the recessed conference. The case shall not be docketed in family court for trial until a Proof of ADR is filed.

Last amended by Order dated May 3, 2007.

Rule 6
Duties of the Parties, Representatives and Attorneys – Mediation

(a) Duty to Inform. In cases subject to ADR under these rules, all attorneys should fairly and objectively inform their clients about mediation and arbitration.

(b) Attendance. The following persons shall physically attend a mediation settlement conference unless otherwise agreed to by the mediator and all parties or as ordered or approved by the Chief Judge for Administrative Purposes of the circuit:

(1) The mediator;

(2) All individual parties; or an officer, director or employee having full authority to settle the claim for a corporate party; or in the case of a governmental agency, a representative of that agency with full authority to negotiate on behalf of the agency and recommend a settlement to the appropriate decision-making body of the agency;

(3) The party's counsel of record, if any; and

(4) For any insured party against whom a claim is made, a representative of the insurance carrier who is not the carrier's outside counsel and who has full authority to settle the claim.

(c) Identification of Matters in Dispute. The mediator may require, prior to the scheduled mediation conference, that each party provide a brief memorandum setting forth their position with regard to the issues that need to be resolved. The memorandum should be no more than five (5) pages in length unless permitted by the mediator. With the consent of all parties, such memoranda may be mutually exchanged by the parties.

(d) Cooperation. The parties and their representatives shall cooperate with the mediator.

(e) Confidentiality. Communications during the mediation settlement conference shall be confidential in accordance with Rule 8.

(f) Agreement in Circuit Court. Upon reaching an agreement, the parties shall, before the adjournment of the mediation, reduce the agreement to writing and sign along with their attorneys. If the parties envision a more formal agreement, the mediator shall assign one of the parties' attorneys to prepare the agreement. A consent judgment or voluntary dismissal shall be filed with the court by such persons as may be designated by the mediator.

(g) Agreement in Family Court. Parties must participate in at least three (3) hours of mediation unless an agreement is reached sooner. Upon the parties reaching an agreement, the mediator shall provide a Memorandum of Agreement to the parties, attorneys of record, and guardians ad litem of record. It is the obligation of the parties to seek approval of the agreement by the family court.

Rule 7
Authority and Duties of Mediators

(a) Authority of Mediators. The mediator shall at all times be authorized to control the conference and the procedures to be followed.

(b) Duties. The mediator shall set up the mediation conference. The mediator shall define and describe the following to the parties:

(1) The mediation process, including the difference between mediation and other forms of conflict resolution;

(2) The facts that the mediation conference is not a trial; the mediator is not a judge, jury or arbitrator; and the parties retain the right to trial if they do not reach a settlement;

(3) The inadmissibility of conduct and statements as evidence in any arbitral, judicial or other proceeding;

(4) The circumstances under which the mediator may meet alone with either of the parties or with any other person;

(5) Whether and under what conditions communications with the mediator will be held in confidence during the conference;

(6) The duties and responsibilities of the mediator and the parties;

(7) The fact that any agreement must be reached by mutual consent of the parties; and

(8) The costs of the mediation settlement conference.

(c) Confidentiality. The mediator must comply with Rule 8 regarding confidentiality.

(d) Duty of Impartiality/Disclosure. The mediator has a duty to be impartial and to disclose any circumstance likely to affect impartiality or independence, including any bias, prejudice or financial or personal interest in the result of the mediation or any past or present relationship with the parties or their representatives.

(e) Declaring Impasse. It is the duty of the mediator to timely determine when the mediation is not viable, that an impasse exists, or that the mediation should end. A mediation cannot be unilaterally ended without the permission of the mediator.

(f) Reporting Results of Conference. Within ten (10) days of conclusion of the conference, the mediator shall file with the Clerk of Court a Proof of ADR on a form approved by the Supreme Court or its designee. Any request for a final hearing in a contested case subject to ADR under these rules shall include a copy of a Proof of ADR. South Carolina Court Administration or the South Carolina Commission on Alternative Dispute Resolution may require the mediator to provide additional statistical data for evaluation of the program.

In pre-suit medical malpractice mediations required by S.C. Code §15-79-125, the Clerk of Court shall serve notice of entry of the Proof of ADR by first class mail upon all attorneys and unrepresented parties. The 60-day period in which to file a summons and complaint in accordance with S.C. Code §15-79-125(E)(1) shall commence upon receipt of written notice of entry of the Proof of ADR from the Clerk of Court.

(g) Immunity. The mediator shall have immunity from liability to the same extent afforded judicial officers of this state.

Last amended by Order dated May 3, 2007.

Rule 8
Confidentiality

(a) Confidentiality. Communications during a mediation settlement conference shall be confidential. Additionally, the parties, their attorneys and any other person present must execute an Agreement to Mediate that protects the confidentiality of the process. To that end, the parties and any other person present shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial or other proceeding, any oral or written communications having occurred in a mediation proceeding, including, but not limited to:

(1) Views expressed or suggestions made by another party or any other person present with respect to a possible settlement of the dispute;

(2) Admissions made in the course of the mediation proceeding by another party or any other person present;

(3) Proposals made or views expressed by the mediator;

(4) The fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator; or

(5) All records, reports or other documents created solely for use in the mediation.

(b) Limited Exceptions to Confidentiality. This rule does not prohibit:

(1) Disclosures as may be stipulated by all parties;

(2) A report to or an inquiry from the Chief Judge for Administrative Purposes regarding a possible violation of these rules;

(3) The mediator or participants from responding to an appropriate request for information duly made by persons authorized by the court to monitor or evaluate the ADR program;

(4) Threats of harm or attempts to inflict physical harm made during the mediation sessions; and

(5) Any disclosures required by law or a professional code of ethics.

(c) Private Consultation/Confidentiality. The mediator may meet and consult individually with any party or parties or their counsel during a mediation conference. The mediator without consent shall not divulge confidential information disclosed to a mediator in the course of a private consultation.

(d) No Waiver of Privilege. No communication by a party or attorney to the mediator in private session shall operate to waive any attorney-client privilege.

(e) Mediator Not to be Called as Witness. The mediator shall not be compelled by subpoena or otherwise to divulge any records or to testify in regard to the mediation in any adversary proceeding or judicial forum. All records, reports and other documents received by the mediator while serving in that capacity shall be confidential.

Last amended by Order dated May 1, 2008.

Rule 9
Compensation of Neutral

(a) By Agreement. When the parties stipulate the neutral, the parties and the neutral shall agree upon compensation.

(b) By Court Order – Mediation. When the mediator is appointed by the court, the mediator shall be compensated by the parties at a rate of $175 per hour, provided that the court-appointed mediator shall charge no greater than one hour of time in preparing for the initial mediation conference. Travel time shall not be compensated. Expense reimbursement shall be limited to actual expenses not exceeding $50, unless otherwise ordered by the Chief Judge for Administrative Purposes of the circuit. An appointed mediator may charge no more than $175 for cancellation of an ADR Conference.

(c) Payment of Compensation by the Parties. Unless otherwise agreed to by the parties or ordered by the court, fees and expenses for the ADR conference shall be paid in equal shares per party. Payment shall be due upon conclusion of the conference unless other arrangements are made with the neutral, or unless a party advises the neutral of his or her intention to file a motion to be exempted from payment of neutral fees and expenses pursuant to Rule 9(d).

(d) Indigent Cases. Where a mediator has been appointed, a party may move before the Chief Judge for Administrative Purposes to be exempted from payment of neutral fees and expenses based upon indigency. Applications for indigency shall be filed no later than ten (10) days after the ADR conference has been concluded. Determination of indigency shall be in the sole discretion of the Chief Judge for Administrative Purposes.

Rule 10
Sanctions

(a) Proof of ADR. If by the time required by these rules, no Proof of ADR has been filed with the Office of the Clerk of Court and the case has not been exempted or deferred from ADR by court order, the court may issue a Rule to Show Cause why sanctions should not be imposed, including the dismissal of an action without prejudice or the striking of a pleading. The court may also manage such cases through status conferences and/or scheduling orders.

(b) Sanctions. If any person or entity subject to the ADR Rules violates any provision of the ADR Rules without good cause, the court may, on its own motion or motion by any party, impose upon that party, person or entity, any lawful sanctions, including, but not limited to, the payment of attorney's fees, neutral's fees, and expenses incurred by persons attending the conference; contempt; and any other sanction authorized by Rule 37(b), SCRCP.

Rule 11
Duties of the Parties, Representatives and Attorneys – Arbitration

(a) Attendance. The following persons shall physically attend an arbitration unless otherwise agreed to by the arbitrator and all parties or as ordered or approved by the Chief Judge for Administrative Purposes:

(1) The arbitrator;

(2) All individual parties; or an officer, director, or employee for a corporate party; or in the case of a governmental agency, a representative of that agency; and

(3) The party's counsel of record, if any.

(b) Identification of Matters of Dispute. The arbitrator may require, prior to the scheduled arbitration conference, that each party provide a brief memorandum setting forth their position with regard to the issues that need to be resolved. The memorandum should be no more than five (5) pages in length unless permitted by the arbitrator. Such memoranda shall be exchanged by the parties at the same time and in the same manner as the memoranda are furnished to the arbitrator.

(c) Cooperation. The parties and their representatives shall cooperate with the arbitrator.

Rule 12
Non-Binding Arbitration Hearing and Award

(a) Scope. This rule applies only to non-binding arbitrations. Nothing in this rule shall be construed to apply to binding arbitration pursuant to the Uniform Arbitration Act as adopted in South Carolina. Arbitrations selected by the parties under these rules are deemed non-binding arbitrations unless otherwise expressly agreed by the parties.

(b) Arbitration Hearings. The following shall apply to arbitration hearings, unless otherwise expressly agreed by the parties:

(1) Witnesses may be compelled to testify under oath or affirmation and produce evidence by the same authority and to the same extent as if the hearing were at trial. The arbitrator is empowered and authorized to administer oaths and affirmations.

(2) Rule 45, SCRCP, shall apply to subpoenas for attendance of witnesses and production of documentary evidence at an arbitration hearing under these rules.

(3) The arbitrator shall have the authority of a trial judge to govern the conduct of hearings, except for the power to punish for contempt. The arbitrator shall refer all contempt matters to the Chief Judge for Administrative Purposes.

(4) The South Carolina Rules of Evidence do not apply, except as to privilege, in an arbitration hearing but shall be considered as a guide toward full and fair development of the facts. The arbitrator shall consider all evidence presented and give it the weight and effect the arbitrator determines appropriate.

(5) No ex parte communications between the parties or their counsel and the arbitrator are permitted.

(6) The arbitration hearing shall be limited to two hours unless the arbitrator determines that more time is necessary to insure fairness and justice to the parties. The arbitrator is not required to receive repetitive or cumulative evidence.

(7) No recording or transcript of an arbitration hearing shall be made.

(c) Award. Unless otherwise expressly agreed by the parties:

(1) The award shall be in writing, signed by the arbitrator. Within ten (10) business days after the hearing is concluded, the arbitrator shall serve the original award on the prevailing party, copies of the award on all other parties, and a Proof of ADR with the court, together with a certificate of service. The arbitration hearing is concluded when all the evidence is in and any arguments or post-hearing briefs the arbitrator permits have been completed or received.

(2) The award must resolve all issues raised by the pleadings.

(3) Findings of facts and conclusions of law or opinions supporting an award are not required.

(d) Trial De Novo as a Right. Any party not in default for a reason subjecting that party to judgment by default who is dissatisfied with an arbitrator's award may have a trial de novo of right upon filing a written demand for trial de novo with the court, and service of the demand on all parties on a form approved by the Supreme Court or its designee within thirty (30) days after receipt of the arbitrator's award. No evidence that there has been an arbitration proceeding or any fact concerning the arbitration may be admitted in a trial, or in any subsequent proceeding involving any of the issues in or parties to the arbitration, without the consent of all parties and the court's approval.

(e) Judgment Entered on Award. If the case is not terminated by agreement of the parties, and no party files a demand for trial de novo under Rule 12(d), the prevailing party shall submit to the Chief Judge for Administrative Purposes a proposed order directing the entry of judgment on the award, which when entered, shall have the same effect as a consent judgment in the action and may be enforced accordingly.

Rule 13
Authority and Duties of Arbitrators

(a) Authority of Arbitrators. The arbitrator shall at all times be authorized to control the hearing and the procedures to be followed.

(b) Duties. The arbitrator shall set up the arbitration hearing. The arbitrator shall define and describe the following to the parties:

(1) The non-binding arbitration process, including the difference between arbitration and other forms of conflict resolution;

(2) The duties and responsibilities of the arbitrator and the parties; and

(3) The cost of the arbitration hearing.

(c) Arbitrator Not to be Called as Witness. The arbitrator shall not be compelled by subpoena or otherwise to divulge any records or to testify in regard to the arbitration in any adversary proceeding or judicial forum. All records, reports and other documents received by the arbitrator while serving in that capacity shall be confidential.

(d) Duty of Impartiality/Disclosure. The arbitrator has a duty to be impartial and to disclose any circumstance likely to affect impartiality or independence, including any bias, prejudice or financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives.

(e) Reporting Results of Hearing. Within ten (10) days of conclusion of the hearing as set forth in Rule 12(c), the arbitrator shall file with the Clerk of Court Proof of ADR on a form approved by the Supreme Court or its designee. South Carolina Court Administration or the South Carolina Commission on Alternative Dispute Resolution may require the arbitrator to provide additional statistical data for evaluation of the program.

(f) Immunity. The arbitrator shall have immunity from liability to the same extent afforded judicial officers of this state.

Rule 14
Board of Arbitrator and Mediator Certification

There is hereby established a Board of Arbitrator and Mediator Certification. The Board will be composed of five (5) persons appointed by the Supreme Court for a term of three (3) years or until a replacement member is appointed. In the event of a vacancy on the Board, the Supreme Court shall appoint someone to fill the unexpired term. Three members of the Board shall constitute a quorum. In the event that members of the Board disqualify themselves in a pending matter leaving less than a quorum, the Supreme Court may appoint ad hoc members to restore the Board to full membership in that matter.

Rule 15
Certification of Court-Appointed Neutrals

The Board of Arbitrator and Mediator Certification ("Board") shall receive and approve applications for certifications of persons to be appointed as mediators or arbitrators. The application shall be on a form approved by the Supreme Court or the Board.

(a) Circuit Court Certification. For circuit court certification, a person must:

(1) Either:

(A) Be admitted to practice law in this State for at least three (3) years and be a member in good standing of the South Carolina Bar; or

(B) Be admitted to practice law in the highest court of another state or the District of Columbia for at least three (3) years and:

(i) Be at least 21 years old;

(ii) Have received a juris doctorate degree or its equivalent from a law school approved by the American Bar Association;

(iii) Be a member in good standing in each jurisdiction where he or she is admitted to practice law;

(iv) Be an associate member of the South Carolina Bar in good standing; and

(v) Agree to be subject to the Rules of Professional Conduct, Rule 407, SCACR, and the Rule on Disciplinary Procedure, Rule 413, SCACR, to the same extent as an active member of the South Carolina Bar.

(2) Be of good moral character;

(3) Have not, within the last five (5) years, been:

(A) Disbarred or suspended from the practice of law;

(B) Denied admission to a bar for character or ethical reasons; or

(C) Publicly reprimanded or publicly disciplined for professional conduct;

(4) Pay all administrative fees and comply with all procedures established by the Supreme Court, the Board and the Commission on Alternative Dispute Resolution; and

(5) Agree to provide mediation/arbitration to indigents without pay.

(6) To be certified as a Mediator, a person must also:

(A) Have completed a minimum of forty (40) hours in a civil mediation training program approved by the Board, or any other training program attended prior to the promulgation of these rules or attended in other states and approved by the Board; and

(B) Demonstrate familiarity with the statutes, rules and practice governing mediation settlement conferences in South Carolina.

(7) To be certified as an Arbitrator, a person must also:

(A) Have served as a Master-in-Equity, Circuit or Appellate Court Judge; or

(B) Have completed a minimum of six (6) hours in a civil arbitration training program approved by the Board, or any other training program attended prior to the promulgation of these rules or attended in other states and approved by the Board; and

(C) Demonstrate familiarity with the statutes, rules and practice governing arbitration hearings in South Carolina;

(b) Family Court Mediator Certification. For family court mediator certification, a person must:

(1) Either:

(A) Be admitted to practice law in this State for at least three (3) years and be a member in good standing of the South Carolina Bar;

(B) Be admitted to practice law in the highest court of another state or the District of Columbia for at least three (3) years and:

(i) Be at least 21 years old;

(ii) Have received a juris doctorate degree or its equivalent from a law school approved by the American Bar Association;

(iii) Be a member in good standing in each jurisdiction where he or she is admitted to practice law;

(iv) Be an associate member of the South Carolina Bar in good standing; and,

(v) Agree to be subject to the Rules of Professional Conduct, Rule 407, SCACR, and the Rule on Disciplinary Procedure, Rule 413, SCACR, to the same extent as an active member of the South Carolina Bar; or,

(C) Be a psychologist, master social worker, independent social worker, professional counselor, associate counselor, marital and family therapist, or physician specializing in psychiatry, licensed for at least three (3) years under Title 40 of the 1976 Code of Laws, as amended.

(2) Have completed a minimum of forty (40) hours in a family court mediation training program approved by the Board, or any other training program attended prior to the promulgation of these rules or attended in other states and approved by the Board;

(3) Demonstrate familiarity with the statutes, rules and practice governing mediation settlement conferences in South Carolina;

(4) Be of good moral character;

(5) Have not, within the last five (5) years, been:

(A) Disbarred or suspended from the practice of law or a profession set forth in Rule 15(b)(1)(C);

(B) Denied admission to a bar or denied a professional license for character or ethical reasons; or

(C) Publicly reprimanded or publicly disciplined for professional conduct;

(6) Pay all administrative fees and comply with all procedures established by the Supreme Court, the Board and the Commission on Alternative Dispute Resolution; and

(7) Agree to provide mediation to indigents without pay.

Rule 16
Approval of Training Programs

A training program must be approved by the Supreme Court or its designee, the Board of Arbitrator and Mediator Certification, before the program can be used for compliance with Rule 15(a)(6)(A) (certification of circuit court mediators), Rule 15(b)(2) (certification of family court mediators), or Rule 15(a)(7)(B) (certification of circuit court arbitrators). Approval need not be given in advance of training attendance. The Supreme Court may set administrative fees, which must be paid in advance of approval.

(a) Approval of Circuit Court Mediator Training Programs

(1) An approved training program for mediators of the Court of Common Pleas civil actions shall consist of a minimum of forty (40) hours of instruction, unless otherwise provided by these rules. The curriculum of such programs shall at a minimum include:

(A) Conflict resolution and mediation theory;

(B) Mediation processes and techniques, including the process and techniques of trial court mediation;

(C) Standards of conduct and ethics for mediators;

(D) Statutes, rules and practice governing mediation settlement conferences in South Carolina;

(E) Demonstrations of mediation settlement conferences;

(F) Simulations of mediation settlement conferences, involving student participation as mediator, attorneys and disputants, which simulations shall be supervised, observed and evaluated by program faculty; and

(G) Such other requirements as the Supreme Court from time to time may decide are appropriate.

(2) Training programs completed in South Carolina or other states may be approved by the Board if:

(A) The program consisted of a minimum of 37 hours of instruction;

(B) The program covered all the topics enumerated in paragraph (a)(1) of this Rule except subparagraph (D) related to South Carolina law; and

(C) The applicant takes at least three (3) hours of supplemental training pre-approved by the Supreme Court or the Board, covering the South Carolina law topics enumerated in paragraph (a)(1), subparagraph (D) of this Rule.

(b) Approval of Family Court Mediator Training Programs

(1) An approved training program for mediators in the Family Court shall consist of a minimum of forty (40) hours of instruction, unless otherwise provided by these rules. The curriculum of such programs shall at a minimum include:

(A) Statutes, rules and practice concerning family and related law in South Carolina, including the law regarding custody, visitation, support, division of property and alimony;

(B) Conflict resolution, family dynamics, and mediation theory in general, as well as specific training regarding domestic violence;

(C) Mediation processes and techniques, including the process and techniques of trial court mediation;

(D) Standards of conduct and ethics for mediators;

(E) Statutes, rules and practice governing mediation settlement conferences in South Carolina;

(F) Demonstrations of mediation conferences;

(G) Simulations of mediation settlement conferences, involving student participation as mediator, attorneys and disputants, which simulations shall be supervised, observed and evaluated by program faculty; and

(H) Such other requirements as the Supreme Court from time to time may decide are appropriate for good instruction.

(2) Training programs completed in South Carolina or other states may be approved by the Board if:

(A) The program consisted of a minimum of 37 hours of instruction;

(B) The program covered all the topics enumerated in paragraph (b)(1) of this Rule except subparagraphs (A) and/or (E) related to South Carolina law; and

(C) The applicant takes at least three (3) hours of supplemental training pre-approved by the Supreme Court or the Board, covering the South Carolina law topics enumerated in paragraph (b)(1), subparagraphs (A) and (E) of this Rule.

(c) Approval of Circuit Court Arbitrator Training Programs

(1) An approved training program for arbitrators of the Court of Common Pleas civil actions shall consist of a minimum of six (6) hours of instruction, unless otherwise provided by these rules. The curriculum of such programs shall at a minimum include:

(A) Conflict resolution and arbitration theory;

(B) Arbitration processes and techniques, including the process and techniques of both binding and non-binding arbitration;

(C) Standards of conduct and ethics for arbitrators;

(D) Statutes, rules and practice governing arbitration hearings in South Carolina;

(E) Demonstrations of arbitration hearings; and

(F) Such other requirements as the Supreme Court from time to time may decide are appropriate.

(2) Training programs completed in South Carolina or other states may be approved by the Board if:

(A) The program consisted of a minimum of 6 hours of instruction;

(B) The program covered all the topics enumerated in paragraph (c)(1) of this Rule except subparagraph (D) related to South Carolina law; and

(C) The applicant takes at least three (3) hours of supplemental training pre-approved by the Supreme Court or the Board, covering the South Carolina law topics enumerated in paragraph (c)(1), subparagraph (D) of this Rule.

Rule 17
Standards of Conduct, Decertification and Discipline of Neutrals

(a) Standards of Conduct for Mediators. Any person serving as a mediator, whether certified or not, shall comply with the Standards of Conduct for Mediators, which is attached as Appendix A to these rules.

(b) Standards of Conduct for Arbitrators. Any person serving as an arbitrator, whether certified or not, shall comply with the Code of Ethics for Arbitrators, which is attached as Appendix B to these rules.

(c) Decertification of Neutrals. Certification under Rule 15 may be revoked at any time if it is shown that the neutral no longer meets the requirements to be certified under Rule 15 or that the neutral has failed to faithfully observe these rules, the ethical standards of Rules 17(a) or (b), or has engaged in any conduct showing an unfitness to serve as a neutral.

(d) Discipline of Neutrals. A neutral who violates these rules, the ethical standards of Rules 17(a) or (b), or who has engaged in any conduct showing an unfitness to serve as a neutral may, in addition to decertification under Rule 17(c), be subject to discipline by the Supreme Court. This discipline may include any sanction the Supreme Court determines is appropriate, to include an order publicly reprimanding the neutral for the conduct, an order barring the neutral from serving as a neutral in any court of this State for a definite or indefinite period of time, an order requiring the neutral to complete additional training, and/or the assessment of a fine. The fact that discipline is taken against an attorney under this Rule shall not preclude action against the attorney under Rule 413, SCACR, if the conduct is misconduct under that rule. The fact that discipline is taken under this Rule against a licensed professional listed in Rule 15(b)(1)(C) shall not preclude action against the professional under the rules or statutes governing that profession, if the conduct is misconduct under that rule or statute.

(e) Processing Complaints of Misconduct by Neutrals. Persons alleging that a neutral has engaged in misconduct may file a complaint with the Board of Arbitrator and Mediator Certification. Misconduct includes any conduct or other circumstances that would warrant decertification or discipline under Rule 17(c) or (d). Complaints of misconduct shall be investigated by the Board and, upon a finding of probable cause, forwarded to the Commission on Alternate Dispute Resolution for a hearing before a Hearing Panel consisting of three (3) members of the Commission. Subject to the requirements of Rule 422(d), SCACR, the Commission shall promulgate regulations governing the processing of these complaints.

Last amended by Order dated May 3, 2007.

Rule 18
Clerks of Court

All circuit and family court Clerks of Court in each county shall perform whatever duties are required pursuant to these rules relating to record keeping, notification to the court, parties, or attorneys, docket control, maintenance of rosters, and service of orders.

Rule 19
Local Rule-Making

These rules shall be uniform for all counties in which they are applicable. Local rules may be allowed only upon approval of the Supreme Court. Unless otherwise specified by these rules, all motions related to ADR or to these rules should be directed to the Chief Judge for Administrative Purposes.

Rule 20
Application of Rules

These rules shall apply to cases filed in circuit or family court on or after the effective date of any statute mandating ADR or Supreme Court order designating that county or court as subject to these rules.

APPENDIX A
Code of Ethics for Arbitrators[1]

CANON I
An Arbitrator Should Uphold the Integrity and Fairness of the Arbitration Process.

A. Fair and just processes for resolving disputes are indispensable in our society. Commercial arbitration is an important method for deciding many types of disputes. In order for commercial arbitration to be effective, there must be broad public confidence in the integrity and fairness of the process. Therefore, an arbitrator has a responsibility not only to the parties but also to the process of arbitration itself, and must observe high standards of conduct so that the integrity and fairness of the process will be preserved. Accordingly, an arbitrator should recognize a responsibility to the public, to the parties whose rights will be decided, and to all other participants in the proceeding. The provisions of this code should be construed and applied to further these objectives.

B. It is inconsistent with the integrity of the arbitration process for persons to solicit appointment for themselves. However, a person may indicate a general willingness to serve as an arbitrator.

C. Persons should accept appointment as arbitrators only if they believe that they can be available to conduct the arbitration promptly.

D. After accepting appointment and while serving as an arbitrator, a person should avoid entering into any financial, business, professional, family or social relationship, or acquiring any financial or personal interest, which is likely to affect impartiality or which might reasonably create the appearance of partiality or bias. For a reasonable period of time after the decision of a case, persons who have served as arbitrators should avoid entering into any such relationship, or acquiring any such interest, in circumstances which might reasonably create the appearance that they had been influenced in the arbitration by the anticipation or expectation of the relationship or interest.

E. Arbitrators should conduct themselves in a way that is fair to all parties and should not be swayed by outside pressure, by public clamor, by fear of criticism or by self-interest.

F. When an arbitrator's authority is derived from an agreement of the parties, the arbitrator should neither exceed that authority nor do less than is required to exercise that authority completely. Where the agreement of the parties sets forth procedures to be followed in conducting the arbitration or refers to rules to be followed, it is the obligation of the arbitrator to comply with such procedures or rules.

G. An arbitrator should make all reasonable efforts to prevent delaying tactics, harassment of parties or other participants, or other abuse or disruption of the arbitration process.

H. The ethical obligations of an arbitrator begin upon acceptance of the appointment and continue throughout all stages of the proceeding. In addition, wherever specifically set forth in this code, certain ethical obligations begin as soon as a person is requested to serve as an arbitrator and certain ethical obligations continue even after the decision in the case has been given to the parties.

CANON II
An Arbitrator Should Disclose Any Interest or Relationship Likely to Affect Impartiality or Which Might Create an Appearance of Partiality or Bias.

Introductory Note

This code reflects the prevailing principle that arbitrators should disclose the existence of interests or relationships that are likely to affect their impartiality or that might reasonably create an appearance that they are biased against one party or favorable to another. These provisions of the code are intended to be applied realistically so that the burden of detailed disclosure does not become so great that it is impractical for persons in the business world to be arbitrators, thereby depriving parties of the services of those who might be best informed and qualified to decide particular types of cases.[2]

This code does not limit the freedom of parties to agree on whomever they choose as an arbitrator. When parties, with knowledge of a person's interests and relationships, nevertheless desire that individual to serve as an arbitrator, that person may properly serve.

Disclosure

A. Persons who are requested to serve as arbitrators should, before accepting, disclose

(1) any direct or indirect financial or personal interest in the outcome of the arbitration;

(2) any existing or past financial, business, professional, family or social relationships which are likely to affect impartiality or which might reasonably create an appearance of partiality or bias. Persons requested to serve as arbitrators should disclose any such relationships which they personally have with any party or its lawyer, or with any individual whom they have been told will be a witness. They should also disclose any such relationships involving members of their families or their current employers, partners or business associates.

B. Persons who are requested to accept appointment as arbitrators should make a reasonable effort to inform themselves of any interests or relationships described in the preceding paragraph A.

C. The obligation to disclose interests or relationships described in the preceding paragraph A is a continuing duty which requires a person who accepts appointment as an arbitrator to disclose, at any stage of the arbitration, any such interests or relationships which may arise, or which are recalled or discovered.

D. Disclosure should be made to all parties unless other procedures for disclosure are provided in the rules or practices of an institution which is administering the arbitration. Where more than one arbitrator has been appointed, each should inform the others of the interests and relationships which have been disclosed.

E. In the event that an arbitrator is requested by all parties to withdraw, the arbitrator should do so. In the event that an arbitrator is requested to withdraw by less than all of the parties because of alleged partiality or bias, the arbitrator should withdraw unless either of the following circumstances exists.

(1) If an agreement of parties, or arbitration rules agreed to by the parties, establishes procedures for determining challenges to arbitrators, then those procedures should be followed; or,

(2) if the arbitrator, after carefully considering the matter, determines that the reason for the challenge is not substantial, and that he or she can nevertheless act and decide the case impartially and fairly, and that withdrawal would cause unfair delay or expense to another party or would be contrary to the ends of justice.

CANON III
An Arbitrator in Communicating with the Parties Should Avoid Impropriety or the Appearance of Impropriety.

A. If an agreement of the parties or applicable arbitration rules referred to in that agreement establishes the manner or content of communications between the arbitrator and the parties, the arbitrator should follow those procedures notwithstanding any contrary provision of the following paragraphs B and C.

B. Unless otherwise provided in applicable arbitration rules or in an agreement of the parties, arbitrators should not discuss a case with any party in the absence of each other party, except in any of the following circumstances.

(1) Discussions may be had with a party concerning such matters as setting the time and place of hearings or making other arrangements for the conduct of the proceedings. However, the arbitrator should promptly inform each other party of the discussion and should not make any final determination concerning the matter discussed before giving each absent party an opportunity to express its views.

(2) If a party fails to be present at a hearing after having been given due notice, the arbitrator may discuss the case with any party who is present.

(3) If all parties request or consent to it, such discussion may take place.

C. Unless otherwise provided in applicable arbitration rules or in an agreement of the parties, whenever an arbitrator communicates in writing with one party, the arbitrator should at the same time send a copy of the communication to each other party. Whenever the arbitrator receives any written communication concerning the case from one party which has not already been sent to each other party, the arbitrator should do so.

CANON IV
An Arbitrator Should Conduct the Proceedings Fairly and Diligently.

A. An arbitrator should conduct the proceedings in an evenhanded manner and treat all parties with equality and fairness at all stages of the proceedings.

B. An arbitrator should perform duties diligently and conclude the case as promptly as the circumstances reasonably permit.

C. An arbitrator should be patient and courteous to the parties, to their lawyers and to the witnesses and should encourage similar conduct by all participants in the proceedings.

D. Unless otherwise agreed by the parties or provided in arbitration rules agreed to by the parties, an arbitrator should accord to all parties the right to appear in person and to be heard after due notice of the time and place of hearing.

E. An arbitrator should not deny any party the opportunity to be represented by counsel.

F. If a party fails to appear after due notice, an arbitrator should proceed with the arbitration when authorized to do so by the agreement of the parties, the rules agreed to by the parties or by law. However, an arbitrator should do so only after receiving assurance that notice has been given to the absent party.

G. When an arbitrator determines that more information than has been presented by the parties is required to decide the case, it is not improper for the arbitrator to ask questions, call witnesses, and request documents or other evidence.

H. It is not improper for an arbitrator to suggest to the parties that they discuss the possibility of settlement of the case. However, an arbitrator should not be present or

otherwise participate in the settlement discussions unless requested to do so by all parties. An arbitrator should not exert pressure on any party to settle.

I. Nothing in this code is intended to prevent a person from acting as a mediator or conciliator of a dispute in which he or she has been appointed as arbitrator, if requested to do so by all parties or where authorized or required to do so by applicable laws or rules.

J. When there is more than one arbitrator, the arbitrators should afford each other the full opportunity to participate in all aspects of the proceedings.

CANON V
An Arbitrator Should Make Decisions in a Just, Independent and Deliberate Manner.

A. An arbitrator should, after careful deliberation, decide all issues submitted for determination. An arbitrator should decide no other issues.

B. An arbitrator should decide all matters justly, exercising independent judgment, and should not permit outside pressure to affect the decision.

C. An arbitrator should not delegate the duty to decide to any other person.

D. In the event that all parties agree upon a settlement of issues in dispute and request an arbitrator to embody that agreement in an award, an arbitrator may do so, but is not required to do so unless satisfied with the propriety of the terms of settlement. Whenever an arbitrator embodies a settlement by the parties in an award, the arbitrator should state in the award that it is based on an agreement of the parties.

CANON VI
An Arbitrator Should Be Faithful to the Relationship of Trust and Confidentiality Inherent in That Office.

A. An arbitrator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the arbitration proceeding to gain personal advantage or advantage for others, or to affect adversely the interest of another.

B. Unless otherwise agreed by the parties, or required by applicable rules or law, an arbitrator should keep confidential all matters relating to the arbitration proceedings and decision.

C. It is not proper at any time for an arbitrator to inform anyone of the decision in advance of the time it is given to all parties. In a case in which there is more than one arbitrator, it is not proper at any time for an arbitrator to inform anyone concerning the

deliberations of the arbitrators. After an arbitration award has been made, it is not proper for an arbitrator to assist in postarbitral proceedings, except as is required by law.

D. In many types of arbitration it is customary practice for the arbitrators to serve without pay. However, in some types of cases it is customary for arbitrators to receive compensation for their services and reimbursement for their expenses. In cases in which any such payments are to made, all persons who are requested to serve, or who are serving as arbitrators, should be governed by the same high standards of integrity and fairness as apply to their other activities in the case. Accordingly, such persons should scrupulously avoid bargaining with parties over the amount of payments or engaging in any communications concerning payments which would create an appearance of coercion or other impropriety. In the absence of governing provisions in the agreement of the parties or in rules agreed to by the parties or in applicable law, certain practices, relating to payments are generally recognized as being preferable in order to preserve the integrity and fairness of the arbitration process. These practices include the following.

(1) It is preferable that before the arbitrator finally accepts appointment the basis of payment be established and that all parties be informed thereof in writing.

(2) In cases conducted under the rules or administration of an institution that is available to assist in making arrangements for payments, the payments should be arranged by the institution to avoid the necessity for communication by the arbitrators directly with the parties concerning the subject.

(3) In cases where no institution is available to assist in making arrangement for payments, it is preferable that any discussions with arbitrators concerning payments should take place in the presence of all parties.

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[1] This code is based on the Code of Ethics for Arbitrators promulgated by the American Bar Association and the American Arbitration Association.

[2] In applying the provisions of this code relating to disclosure, it might be helpful to recall the words of the concurring opinion, in a case decided by the US Supreme Court, that arbitrators "should err on the side of disclosure" because "it is better that the relationship be disclosed at the outset when the parties are free to reject the arbitrator or accept him with knowledge of the relationship." At the same time, it must be recognized that "an arbitrator's business relationships may be diverse indeed, involving more or less remote commercial connections with great numbers of people." Accordingly, an arbitrator "cannot be expected to provide the parties with his complete and unexpurgated business biography," nor is an arbitrator called on to disclose interest

or relationships that are merely "trivial" (a concurring opinion in Commonwealth Coatings Corp. v. Continental Casualty Co., 393 US 145,131-152,1968).

APPENDIX B

Standards of Conduct for Mediators [1]

I. Self-Determination: A Mediator Shall Recognize that Mediation Is Based on the Principle of Self-Determination by the Parties.

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.

COMMENTS:

* 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 an 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.

II. Impartiality: A Mediator Shall Conduct the Mediation in an Impartial Manner.

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.

COMMENTS:

* 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.

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.**

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.

A mediator must avoid the appearance of conflict of interest both during and after the mediation. Without 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.

COMMENTS:

* 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.

* Potential conflicts of interest may arise between 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 the parties to settle.

IV. Competence: **A Mediator Shall Mediate Only When the Mediator Has the Necessary Qualifications to Satisfy the Reasonable Expectations of the Parties.**

Any person may be selected as a mediator, provided that the parties are satisfied with the mediator's 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.

COMMENTS:

* Mediators should have available for the parties information regarding their relevant 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.

V. Confidentiality: A Mediator Shall Maintain the Reasonable Expectations of the Parties with Regard to Confidentiality.

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. A 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.

COMMENTS:

* 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.

* 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.

V1. 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.**

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.

COMMENTS:

* 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 primary purpose of a mediator is to facilitate the parties' voluntary agreement. This role differs significantly 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 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.

* A mediator shall withdraw from a mediation when incapable of serving or when unable to remain impartial.

* A mediator shall withdraw from a 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.

VII. Advertising and Solicitation: A Mediator Shall Be Truthful in Advertising and Solicitation for Mediation.

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.

COMMENTS:

* 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.

VIII. Fees: A Mediator Shall Fully Disclose and Explain the Basis of Compensation, Fees, and Charges to the Parties.

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.

COMMENTS:

* A mediator who withdraws from a mediation should return any unearned fees 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.

IX. Obligations to the Mediation Process. **Mediators have a duty to improve the practice of mediation.**

COMMENTS:

*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.

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[1] These standards are taken from the Standards of Conduct for Mediators proulgated by the American Bar Association, the American Arbitration Association and the Society of Professionals in Dispute Resolution.