

Academy of Professional Family Mediators

Standards of Practice for Professional Family Mediators

After a year of input from members, the APFM adopted STANDARDS OF PRACTICE FOR PROFESSIONAL FAMILY MEDIATORS at its board meeting February 2, 2014.

If you have any comments, contact Steve Erickson, chair of the Standards Committee at steve@ericksonmediation.com.

Overview and Goals of These Standards

The professional practice of Family Mediation draws practitioners from other fields such as mental health, business, law, education and other existing professions, but is a unique and separate profession. These Standards are meant to serve as a foundation for defining the Professional Practice of Family Mediation. High quality services are expected and covered by these standards, regardless of whether or not a fee is received.

The founding board members of the Academy of Professional Family Mediators are responsible for the content of these standards and are promulgating these standards as the core principles of the practice of family mediation. In doing so, we are serving as a foundation for establishing and maintaining competency of practitioners, with the goal toward certification and licensing of professional family mediators.

The professional practice of family mediation draws on theories and skills that routinely are used by professionals in other fields of practice. However, the unique nature of family mediation and the diversity of skills needed to provide competent, professional family mediation services require that no other profession be allowed to control the delivery of professional family mediation services, or to license or certify its practitioners.

The Standards – Stated Briefly

STANDARD I: A professional family mediator shall recognize that mediation is based upon the principle of self-determination by the participants.

STANDARD II: A professional family mediator shall be qualified by education and training to undertake the mediation. A family mediator shall acquire and maintain professional competence in mediation.

STANDARD III: A professional family mediator shall facilitate the participants' understanding of what mediation is and assess their capacity to mediate before the participants reach an agreement to mediate.

STANDARD IV: A professional family mediator shall conduct the mediation process in an impartial manner. A professional family mediator shall disclose all actual and potential grounds of bias and conflicts of interest reasonably known to the mediator.

STANDARD V: A professional family mediator shall fully disclose and explain the basis of any compensation, fees and charges to the participants.

STANDARD VI: A professional family mediator shall structure the mediation process so that the participants make decisions based on sufficient information and knowledge.

STANDARD VII: A professional family mediator shall maintain the confidentiality of all information acquired in the mediation process, unless the mediator is required to reveal the information by law or permitted to reveal the information by agreement of the participants.

Standard VIII: A professional family mediator shall acquire specialized training and be competent in order to mediate disputes between parents regarding the special needs and circumstances of their children.

Standard IX: A professional family mediator shall acquire special training to screen, set protocols, and mediate when domestic violence is at issue for either party.

STANDARD X: A professional family mediator shall suspend or terminate the mediation process when the mediator reasonably believes that a participant is unable to effectively participate, or for other compelling reason.

STANDARD XI: A professional family mediator shall be truthful in advertising and soliciting for mediation.

STANDARD XII: A professional family mediator shall act in a manner that advances the professional practice of family mediation.

Overview and Definitions

Family mediation is a process in which a mediator, functioning as an impartial third party, facilitates the resolution of family disputes and supports the participants' voluntary agreement. The family mediator assists communication, encourages understanding, and focuses the participants on their individual and common interests. The family mediator works with the participants to explore options, make their own decisions, and reach their own agreements.

Family mediation is a valuable primary dispute resolution process because it can:

- increase the self-determination of participants and their ability to communicate with one another;
- provide for creative, constructive resolutions of family disputes;
- offer a constructive reformulation of parenting roles and responsibilities;

- reduce the economic and emotional costs associated with adversarial methods for resolution of family disputes.

Standards of Practice for Family Mediation Have Four Major Functions:

1. To serve as a guide for the conduct of family mediators;
2. To inform the mediating participants as to what they can expect;
3. To promote public confidence in mediation as a process for resolving family disputes;
4. To maintain the integrity of the mediation process by creating and maintaining boundaries between family mediation and other adjudicative ADR processes.

The Standards of Practice are aspirational, not regulatory in nature. They describe good practices for family mediators. They are not intended to create legal rules or standards of liability.

The Standards of Practice include different levels of guidance:

- Use of the term “may” in a Standard is the lowest strength of guidance and indicates a practice that the family mediator should consider adopting but from which the mediator can deviate in the exercise of good professional judgment.
- Use of the term “should” (which most of the Standards employ) indicates that the practice described in the Standard is highly desirable and should be departed from only with very strong reason.
- Use of the term “shall” (in rarer usage in a Standard) is a higher level of guidance to the family mediator, indicating that the mediator should not have discretion to depart from the practice described.

continued on next page

Full Statement of Standards of Practice for Family Mediation

Standard I: Self Determination

A family mediator shall recognize that mediation is based on the principle of self-determination by the participants.

A. Self-determination is the fundamental principle of family mediation. A mediator shall conduct a mediation based on the principle of participant self-determination. Self-determination is defined as “the act of coming to a voluntary, uncoerced decision in which each participant makes free and informed choices as to process, decisions, and outcome.”

Participants may exercise self-determination at any stage of mediation, including mediator selection, process design, participation in or withdrawal from the process and outcomes.

B. Of primary importance for a family mediator are to assist the participants in gaining a better understanding of their own needs and interests and the needs and interests of the other participants, and to facilitate agreement among the participants.

C. The family mediator’s obligation is to assist the participants in reaching informed decisions and to inform the participants that they may seek information and advice from a variety of sources during the mediation process. A family mediator shall inform the participants that they may withdraw from family mediation at any time and are not required to reach an agreement in mediation.

D. The family mediator’s commitment shall be to the participants and the process. Pressure from outside of or within the mediation process shall never influence the mediator to coerce participants to settle.

Standard II: Competence

A family mediator shall be qualified by education and training to undertake the mediation and shall acquire and maintain professional competence in family mediation.

A. To perform the family mediator’s role, a mediator shall:

1. Have education and training specific to the professional practice of family mediation.
2. Have knowledge of family law;
3. Have training in the impact of family conflict on parents and children, including knowledge of child development, adult psychopathology, domestic abuse and child abuse and neglect;

B. Family mediators shall provide information to the participants about the mediator’s professional training, education and expertise.

- C. Family mediators shall continuously improve their professional skills and abilities by participating in relevant continuing education courses and programs.
- D. Family mediators shall regularly engage in self-assessment of their skills and practices.
- E. Beginning family mediators should participate in peer consultation, mentorship or supervision.
- F. Experienced family mediators should offer to train and mentor the work of less experienced mediators.
- G. When available, experienced family mediators should undergo competency testing of their work.
- H. Family mediators shall continuously strive to understand the impact of culture and diversity on the mediator's professional practice.

Standard III: Informing Clients About Mediation

A family mediator shall facilitate the participants' understanding of what mediation is and how it differs from other, similar processes. If a participant appears to have difficulty comprehending the process, issues, or settlement options, or have difficulty participating in mediation, the mediator should explore the circumstances and potential accommodations, modifications or adjustments that would improve the participant's capacity to comprehend, participate and exercise self-determination.

A. Before family mediation begins, a mediator shall provide the participants with an overview of the process and its purposes, which include:

1. Informing the participants that reaching an agreement in family mediation must be consensual, that a mediator is an impartial facilitator, and that a mediator may not impose or force any settlement on the parties;
2. Distinguishing family mediation from other processes designed to address family issues and disputes;
3. Informing the participants that any agreements reached will be reviewed by the court when court approval is required;
4. Informing the participants that they may obtain independent advice from attorneys, counsel, advocates, accountants, therapists and/or other professionals during the mediation process;
5. Advising the participants, in appropriate cases, that they may seek the advice of clergy, elders or other significant persons in their community whose opinions they value;
6. Discussing, if applicable, the circumstances in which the mediator may meet alone with any of the participants, or with any third party, and the conditions of confidentiality with regards to these separate sessions;

7. Informing the participants that the presence or absence of persons other than the participants at a mediation session, including attorneys, counselors, or advocates, requires the agreement of all the participants and the mediator, unless otherwise required by a statute or regulation. Additional persons may also be present if the mediator believes that the presence of another support person is required or may be beneficial because of a history or threat of violence or other serious coercive activity by a participant;

8. Describing the obligations of the mediator to maintain the confidentiality of the mediation process and its results, as well as any exceptions to confidentiality, such as mandatory reporting laws;

9. Advising the participants of the circumstances under which the mediator may suspend or terminate the mediation process, and that a participant has a right to suspend or terminate mediation at any time.

B. The participants shall sign a written agreement to mediate their dispute that includes the terms and conditions thereof.

Standard IV: Impartiality

A family mediator shall conduct the mediation process in an impartial manner.

A family mediator shall disclose all actual and potential grounds for bias and conflicts of interest reasonably known to the mediator. The participants shall be free to retain the mediator, regardless, as long as they sign an informed, written waiver of the conflict(s) of interest. However, if a bias or conflict of interest clearly impairs a mediator's impartiality, the mediator shall withdraw from the case, regardless of the express agreement of the participants.

A. Impartiality means freedom from favoritism or bias in word, action or appearance, and includes a commitment to assist all participants, as opposed to any one individual.

B. Conflict of interest means any relationship between the mediator and any participant or the subject matter of the dispute that compromises or appears to compromise the mediator's impartiality.

C. A family mediator should not accept a dispute for mediation if the family mediator cannot be impartial.

D. A family mediator should identify and disclose potential grounds of bias or conflict of interest upon which a mediator's impartiality might reasonably be questioned. Such disclosure should be made prior to the start of a mediation and in time to allow the participants to select an alternate mediator.

E. A family mediator should resolve all doubts in favor of disclosure. All disclosures should be made as soon as practical after the mediator becomes aware of the bias or potential conflict of interest. The duty to disclose is a continuing duty.

F. A family mediator should guard against bias or partiality based on the participants' personal characteristics, background or performance at the mediation.

G. A family mediator should avoid conflicts of interest in recommending the services of other professionals.

H. A family mediator shall not use information about participants obtained in a mediation for personal gain or advantage.

I. A family mediator should withdraw, pursuant to Standard XI, sub. A(7), if the mediator believes the mediator's impartiality has been compromised, or a conflict of interest has been identified and has not been waived by the participants.

Standard V: Full Disclosure of Fees

A family mediator shall fully disclose and explain the basis of any compensation, fees and charges to the participants.

A. The participants should be provided with sufficient information about fees at the outset of mediation to determine if they wish to retain the services of the mediator.

B. The participants' written agreement to mediate their dispute should include a description of the fee arrangement with the mediator.

C. A mediator should not enter into a fee agreement that is contingent upon the results of the mediation or the amount of the settlement.

D. A mediator should not accept a fee for referral of a matter to another mediator or to any other person.

E. Upon termination of mediation, a mediator should return any unearned fee to the participants.

Standard VI: Quality of the Process

A family mediator shall structure the mediation process so that the participants make decisions based upon sufficient information and knowledge.

A. The Family Mediator shall facilitate full and accurate disclosure and the acquisition and development of information during mediation so that the participants can make informed decisions. This may be accomplished by encouraging participants to consult appropriate neutral experts.

B. Consistent with standards of impartiality and preserving participant self-determination, a mediator may provide the participants with information as to how the mediator is qualified by training or experience to mediate their case. The mediator shall not provide therapy or legal advice to the participants.

C. The role of the mediator differs substantially from other professional roles. Combining the role of the a mediator with another professional role within the same case is prohibited and thus, a mediator shall not undertake an additional dispute resolution role in the same matter with the same participants, because such change in role may result in carrying out duties and responsibilities that could be in conflict with those of the mediator (this shall not prohibit the mediator from drafting agreements of the parties so long as allowable under state law or ethics rules).

1. A family mediator shall not conduct psychotherapy, engage in the practice of law, or engage in any adjudicatory role with any of the participants during a mediation process. (This shall not prohibit the mediator from arbitrating issues when requested by the parties under a separate contract, so long as allowable under state law or ethics rules).

2. Boundaries between the various professions should be respected by a family mediator, and, when appropriate, the mediator should refer the participants to neutral experts, attorneys, therapists or other professionals for appropriate advice, representation, or treatment.

3. The mediator may suggest that the participants obtain independent legal representation before concluding an agreement.

4. The mediator should inform the participants that any agreement can be reviewed by an independent attorney before the agreement is signed.

5. If all the participants so desire, the mediator should allow attorneys, therapists, coaches, support persons, relatives, significant others, and/or other advocates for the participants to be present at the mediation sessions.

6. The Family Mediator may prepare a memorandum of understanding/agreement documenting the decisions made by the participants.

7. A Family Mediator shall not participate in any mediation process when the mediator knowingly promotes illegal activity.

Standard VII: Confidentiality

A family mediator shall maintain the confidentiality of all information acquired in the mediation process, unless the mediator is permitted or required to reveal the information by law or agreement of the participants.

A. The mediator should discuss the participants' expectations of confidentiality with them prior to undertaking the mediation. The written agreement to mediate should include provisions concerning confidentiality.

B. Prior to undertaking the mediation, the mediator should inform the participants of the limitations of confidentiality, such as statutorily, judicially or ethically mandated reporting.

C. A family mediator should include in the Agreement-to-Mediate contract an exception to confidentiality that allows the mediator to disclose information communicated during mediation about a threat of harm to self or others, or if a claim is brought against the mediator by a client.

D. If the mediator holds private sessions with a participant, the obligations of confidentiality concerning those sessions should be discussed and agreed upon by all the parties prior to the private sessions.

E. A Family Mediator shall not communicate to any non-participant information about what transpired during the mediation process. When required to report, under a statute or court referral rule, a mediator may only report whether participants appeared at a scheduled mediation and whether or not the participants reached a resolution.

F. If subpoenaed or otherwise noticed to testify or to produce documents, the mediator should inform the participants immediately. The mediator should not testify or provide documents in response to a subpoena without an order of the court if the mediator reasonably believes doing so would violate an obligation of confidentiality to the participants.

Standard VIII: Minor children

At all times, mediators should have special regard for the welfare of all children of any family in mediation. Mediators should encourage participants to focus on the needs and interests of their children, as well as on the participants' own interests. Mediators should acquire special training and education concerning the effects of separation and divorce on children and how children normally and abnormally respond to their parents' separation and divorce. Mediators should also learn when and how to appropriately refer children for treatment, if needed.

In addition to helping families create a parenting plan that takes into account the importance of the parent-child relationships, the mediator may also help the parents to consider how they will share the costs of raising the minor children while the parents live apart.

Prior to commencing mediation, a mediator should inform the participants under what circumstances the mediator will need to breach confidentiality and report suspected abuse of children to the proper authorities.

Standard IX: Domestic Violence

Mediators should screen for domestic abuse, prior to commencing mediation and throughout the process, to determine whether or not there is current and/or on-going fear of abuse or harm. If, in the face of such fear, a participant voluntarily chooses to engage in mediation, the mediator shall establish special protocols that attempt to ensure the safety of the parties on arrival and departure and throughout the mediation process.

Mediators shall attempt to maintain the mediation process as a safe environment in which to conduct discussions. In order to allow all parties an opportunity to safely and fully participate in the mediation, the mediator shall actively address and actively manage any threatening or intimidating behavior by one party towards the other.

Standard X: Termination of Mediation

A mediator may suspend or terminate the mediation process when the mediator reasonably believes that a participant is unable to effectively participate, or for other compelling reasons. A mediator shall inform participants that they may withdraw from mediation at any time and that they are not required to reach an agreement in mediation.

A. Circumstances under which a mediator may consider suspending or terminating the mediation, include, among others:

1. When the safety of a participant or well-being of a child or vulnerable adult is threatened.
2. When a participant is threatening to abduct a child or a vulnerable adult.
3. When a participant is unable to participate, due to the influence of drugs, alcohol, or of a debilitating physical or mental condition.
4. When the participants are about to enter into an agreement that the mediator believes to be unconscionable.
5. When a participant is using mediation to knowingly promote illegal conduct.
6. When a participant is using the mediation process to gain an unfair advantage over the other participant.
7. If the mediator believes his or her impartiality has been compromised, in accordance with Standard IV above.
8. When a participant fails to abide by the terms of the mediation contract.

B. If the Mediator does suspend or terminate the mediation, the mediator should take all reasonable steps to minimize prejudice or inconvenience to the participants that may result.

Standard XI: Advertising and Solicitation

A family mediator shall be truthful in advertising and soliciting for mediation. A professional family mediator shall accurately describe the process it offers to the public.

A. Family Mediators should refrain from promises and guarantees of results. A professional family mediator is strongly encouraged to advertise only as a mediator and not attach “mediator” or “mediation” to any other professional designation in advertisements, literature, brochures, calling cards, websites or other forms of communication with the public.

Representing oneself as a “Therapist-Mediator”, “Attorney-Mediator”, or “Retired Judge-Mediator” is confusing to the public and mixes the roles of different professions.

B. Family Mediators should accurately represent their qualifications. In an advertisement or other communication to the public, a family mediator may make reference to meeting state,

national or private organizational qualifications only if the entity referred to has a procedure for qualifying mediators and the mediator has been duly granted the requisite status.

C. A family mediator shall not communicate to others, in promotional materials or through other forms of communication, the names of persons served without their prior consent and permission.

D. A family mediator shall not label or describe a dispute resolution process it offers to the public as mediation when such process is adjudicative, coercive, or predicts outcomes in court.

E. A family mediator shall not conduct or offer a dispute resolution procedure other than mediation, while labeling it as mediation, in an effort to gain a marketing advantage, or to gain the protection of rules, statutes, or other governing authorities pertaining to mediation.

Standard XII: Advancement of the Practice

A mediator should advance the practice of mediation.

A. A mediator promotes this Standard by engaging in some or all of the following:

1. Fostering diversity within the field of mediation.
2. Striving to make mediation accessible to those who elect to use it, which includes providing services at a reduced rate.
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, supervising, mentoring and networking.

B. A mediator should demonstrate respect for differing points of view within the field and seek to learn from and work together with other mediators to improve the profession.