Model Standards of Practice for Family and Divorce Mediation

Developed by

The Symposium on Standards of Practice

Approved by the ABA House of Delegates February 2001

MODEL STANDARDS OF PRACTICE FOR FAMILY AND DIVORCE MEDIATION

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

STANDARD II
A family mediator shall be qualified by education and training to undertake the mediation.

STANDARD III
A 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 family mediator shall conduct the mediation process in an impartial manner. A family mediator shall disclose all actual and potential grounds of bias and conflicts of interest reasonably known to the mediator. The participants shall be free to retain the mediator by an informed, written waiver of the conflict of interest. However, if a bias or conflict of interest clearly impairs a mediator=s impartiality, the mediator shall withdraw regardless of the express agreement of the participants.

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

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

STANDARD VII
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

STANDARD VIII
A family mediator shall assist participants in determining how to promote the best interests of children.

STANDARD IX
A family mediator shall recognize a family situation involving child abuse or neglect and take appropriate steps to shape the mediation process accordingly.

STANDARD X
A family mediator shall recognize a family situation involving domestic abuse and take appropriate steps to shape the mediation process accordingly

STANDARD XI
A 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 XII
A family mediator shall be truthful in the advertisement and solicitation for mediation.

STANDARD XIII
A family mediator shall acquire and maintain professional competence in mediation.

Reporter=s Foreword

The *Model Standards of Practice for Family and Divorce Mediation* are the family mediation community's definition of the role of mediation in the dispute resolution system in the twenty-first century. They are the latest milestone in a nearly twenty-year-old effort by the family mediation community to create standards of practice that will increase public confidence in an evolving profession and provide guidance for its practitioners. The *Model Standards* are the product of an effort by prominent mediation-interested organizations and individuals to create a unified set of standards that will replace existing ones. They draw on existing codes of conduct for mediators and take into account issues and problems that have been identified in divorce and family mediation practice.

Between 1982 and 1984 AFCC convened three national symposia on divorce mediation standards. Over forty individuals from thirty organizations attended to explore issues of certification, licensure and standards of practice. Drafts were distributed to over one hundred thirty individuals and organizations for comment and review. The result of the efforts was the 1984 *Model Standards of Practice for Family and Divorce Mediation* (*A1984 Model Standards*≅) which have served as a resource document for state and national mediation organizations.

In tandem with the process convened by AFCC, the American Bar Association's Family Law Section drafted *Standards of Practice for Lawyer Mediators in Family Law Disputes* (1984) (A*1984 ABA Standards*≅). The *1984 ABA Standards* were primarily developed for lawyers who wished to be mediators, a role at that time some thought inconsistent with governing standards of professional responsibility for lawyers. The *1984 ABA Standards* helped define how lawyers could serve as family mediators and still stay within the ethical guidelines of the profession. Several members of the Committee who worked on the *1984 Model Standards*, particularly Jay Folberg and Tom Bishop, participated in the drafting of the *1984 ABA Standards*. As a result the *1984 ABA Standards* were basically compatible with the *1984 Model Standards*.

Following promulgation of the 1984 *Model Standards* and *1984 ABA Standards* interest in mediation in all fields, and family mediation in particular, burgeoned. Interested organizations promulgated their own standards of practice. The Academy of Family Mediators, for example, promulgated its own standards of conduct based on the *1984 Model Standards*. Several states and courts have also set standards. *See, e.g.*, Florida Rules for Certified and Court-Appointed Mediators (October, 1995); Iowa Supreme Court, Rules Governing Standards of Practice for Lawyer-Mediators in Family Disputes (1986).

Other efforts were made by concerned organizations to establish standards of practice for mediation generally. For example, a joint Task Force of the American Arbitration Association, American Bar Association and the Society of Professionals in Dispute Resolution (SPIDR) published *Model Standards of Conduct for Mediators* in 1995.

In 1996, the Family Law Section of the American Bar Association came to the conclusion that interest in and knowledge about family mediation had expanded dramatically

since the *1984 ABA Standards* were promulgated and a fresh look at that effort was required.* It created a Task Force on Standards of Practice for Divorce Mediation (later renamed the Committee on Mediation) (AABA Committee≅) to review the *1984 ABA Standards* and make recommendations for changes and amendments. The ABA Committee was chaired by Nancy Palmer and Phyllis Campion. Professor Andrew Schepard of Hofstra Law School was asked to serve as the Committee's Reporter. The project was conceived of as a collaboration with other interested groups; membership of the ABA Committee included non-lawyer mediators and liaisons from AFCC, AFM and SPIDR.

After intensive review and study, the ABA Committee concluded that while the *1984 ABA Standards* were a major step forward in the development of divorce and family mediation they were in need of significant revision.

First, the *1984 ABA Standards* did not address many critical issues in mediation practice that have been identified since they were initially promulgated. They did not deal with domestic violence and child abuse. The *1984 ABA Standards* also did not address the mediator's role in helping parents define the best interests of their children in their post-divorce parenting arrangements. They made no mention of the need for special expertise and training in mediation or family violence.

Second, the *1984 ABA Standards* were inconsistent with other guidelines for the conduct of mediation subsequently promulgated. The ABA Committee believed that uniformity of mediation standards among interested groups is highly desirable to provide clear guidance for family mediators and for the public. Uniformity and clarity could not be provided within the framework of the *1984 ABA Standards*. The ABA Committee therefore decided to replace the *1984 ABA Standards* with a new document.

The ABA Committee, including representatives from AFCC, AFM and SPIDR, therefore, created a new draft of standards of practice for family mediation specially applicable to lawyers who sought to involve themselves in that process. The Committee set several goals for the revised standards. First, the ABA Committee sought to insure that its revised standards were state of the art, addressing important developments in family mediation practice since the adoption of the *1984 ABA Standards* and *1984 Model Standards*. Second, the ABA Committee sought to insure that its recommended standards were consistent, as far as is possible, with other standards of practice for divorce and family mediation.

---

* The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

To meet these goals, the ABA Committee examined all available standards of practice, conducted research, and consulted with a number of experts on family and divorce mediation. It particularly focused on consultations with experts in domestic violence and child abuse about the appropriate role for mediation when family situations involved violence or the allegations thereof.

The Council of the ABA's Family Law Section reviewed the ABA Committee's first draft effort in November of 1997. It concluded that other interested mediation organizations should be included in the process of drafting revised standards of practice for family mediation.

Other mediation organizations also recognized that their current standards of practice for family mediation also needed review in light of developments in mediation practice since they were promulgated. In 1998, AFCC offered to re-convene the Model Standards Symposium using the draft Standards of Practice created by the ABA Committee as a beginning point of discussion. The Family Law Section of the American Bar Association and the National Council of Dispute Resolution Organizations (an umbrella organization which includes the Academy of Family Mediators, the American Bar Association Section of Dispute Resolution, AFCC, Conflict Resolution Education Network, the National Association for Community Mediation, the National Conference on Peacemaking and Conflict Resolution, and the Society of Professionals in Dispute Resolution) joined AFCC in co-convening the Model Standards Symposium.

In October 1998 the Model Standards Symposium convened in Orlando to review the draft standards created by the ABA Committee. Representatives of over twenty family mediation organizations reviewed the ABA draft line by line during a full day session facilitated by Tom Fee. A first Draft of revised *Model Standards* for all family mediators regardless of profession of origin resulted.

The Symposium met again on February 26, 2000 in New Orleans. At that time it reviewed proposals for changes in the *Draft Standards* which were published in the January 2000 issue of the *Family and Conciliation Courts Review* and posted on the Web sites of AFCC, the ABA FLS, and the ABA ADR Section. In addition, before the February 2000 Meeting, the Draft *Standards* were mailed to over ninety (90) local and national mediation interested groups. All of these publications included requests for comments with proposals for specific language changes in the Draft *Standards*. In response, the Symposium received comments and over eighty (80) proposals for changes in the Draft *Model Standards* from numerous groups and individuals that make up the diverse membership of the family mediation community.

All of the comments and suggestions for change were made in a constructive spirit. Commentators generally supported the effort to develop *Model Standards* and expressed appreciation to the Symposium for its work.

Attendees at the February 2000 Meeting included approximately twenty-five family mediators from across the nation with years of experience in the field. Many of the participants are leaders in national or local family mediation or dispute resolution organizations. In addition,

the American Bar Association's Commission on Domestic Violence participated as an expert consultant at the February meeting.

Tom Fee again served as the facilitator for the February 2000 Meeting. The structure of the Meeting was guided by a steering committee compromised of representatives of the convening organizations. The Symposium participants were divided into three work groups, each assigned to analyze and comment on a specific number of proposed Standards. The work groups each appointed a reporter, and the whole group reconvened towards the end of the day to process the changes the work groups recommended and to see how they related to the *Draft Standards* as a whole.

Discussion was again lively and well-informed; in effect, the February 2000 Meeting was a continuation of a seminar of accomplished professionals and organizational leaders on the future of family and divorce mediation. Mediators of different professions of origin, background and orientation engaged in a discussion which bridged gaps between different perspectives. Great progress was made in developing a final set of *Model Standards* that each participating organization would be encouraged to discuss and adopt for its own purposes.

The Symposium did not finish its work at the February 2000 Meeting, a not surprising outcome given the complexity and richness of the discussion. The participants agreed that the Reporter for the Symposium, in conjunction with the Reporters for each workgroup, would collate the changes in the *Draft Standards* that had been agreed to and identify the unresolved issues. A revised Draft of the *Standards* in that format was sent to over ninety (90) interested organizations.

The Symposium completed its work at a subsequent meeting in Chicago on August 5, 2000 which followed the same organizational model as the February 2000 meeting. Tom Fee again facilitated. Eighteen (18) experienced family mediators from around the nation again participated in lively full day discussions which reviewed the Draft *Model Standards* line by line.

The *Model Standards* that follow are thus the result of extensive and thoughtful deliberation by the family mediation community with wide input from a variety of voices. Nonetheless, they should not be thought of as a final product but more like a panoramic snapshot of what is important to the family mediation community at the beginning of the new Millennium. The Symposium hopes the *Model Standards* will provide a framework for a continuous dialogue to define and refine our emerging profession. The Symposium organizers hope that the family mediation organizations, the bench and the bar and the public will use the *Model Standards* as a starting point for discussion and debate. That continuing process should result in identification of new areas of concern that additional Standards should address and proposals for revision of existing *Standards*.

On a personal level, I have never worked with better people than those who made up the Symposium. Special thanks go to the wonderful people who made this task a continuing seminar

in the underlying values of family mediation and how to reach consensus among thoughtful, decent citizens of their communities. The participants in the Symposium demonstrated a cooperative, inquisitive spirit that made the Reporter's work a pleasure.

Professor Andrew Schepard
Hofstra University School of Law
Hempstead, New York
August, 2000

The Symposium on Model Standards of Practice for Family and Divorce Mediation

Note: Organizational affiliations are listed for identification only. Symposium members who represented organizations listed below functioned as liaisons. Their participation does not indicate organizational endorsement of the *Model Standards*.

Convening Organizations:
The Association of Family and Conciliation Courts
The Family Law Section of the American Bar Association
National Council of Dispute Resolution Organizations
which includes:
The Academy of Family Mediators
The American Bar Association Section of Dispute Resolution
The Association of Family and Conciliation Courts
Conflict Resolution Education Network
The National Association for Community Mediation
The National Conference on Peacemaking and Conflict Resolution
The Society of Professionals in Dispute Resolution

Model Standards Steering Committee

Phil Bushard, Association of Family and Conciliation Courts (1999-2000)
Christie Coates, Association of Family and Conciliation Courts (1998-2000)
Tom Fee, Facilitator, The Agreement Zone (1998-2000)
Jack Hanna, NCDRO Secretariat and American Bar Association Dispute Resolution Section (1999-2000)
Ann Milne, Association of Family and Conciliation Courts (1998-2000)
Tim Walker, American Bar Association Family Law Section (1998-2000)
Sally Pope, NCDRO Secretariat and Academy of Family Mediators (1998-1999)
Eileen Pruett, Association of Family and Conciliation Courts (1999-2000) ask her???
Andrew Schepard, Reporter, Hofstra University School of Law (1998-2000)

Model Standards Symposium Participants

Organization	**Delegate**
Academy of Family Mediators	Sue Costello Lowe (New Orleans) Sally Pope (Orlando) Arnold Shienvold (New Orleans) Hon. William Thomas (Chicago)
American Academy of Matrimonial Lawyers	Meredith Cohen (Orlando) Joan Patsy Ostroy (New Orleans, Chicago)
American Bar Association Section on Family Law	American Bar Association Section on

Dispute Resolution

Timothy Walker (New Orleans)
Benjamin Mackoff (Chicago)

Nancy Palmer (Orlando, New Orleans)
Barbara Stark (Orlando)

American Bar Association Commission on Domestic Violence

Ann Barker (Orlando, New Orleans)

Association of Family and Conciliation Courts

Phil Bushard (Orlando, New Orleans)
Christie Coates (Orlando, Chicago)
Ann Milne (Orlando, New Orleans, Chicago)
Eileen Pruett (Orlando, New Orleans, Chicago)
Jan Shaw (Orlando)
Rosemary Vasquez (Orlando)

California Administrative Office of the Court

Mimi Lyster (Orlando, New Orleans)

Colorado Council of Mediators

Silke Hansen (New Orleans)

Connecticut Council of Mediators

Frances Calafiore (Chicago)
Robert Horowitz (New Orleans)

Delaware Federation for Dispute Resolution

Jolly Clarkson-Shorter (Orlando)

Family Mediation Council of Louisiana

Susan Norwood (New Orleans)

Family and Divorce Mediation Council of New York

Eli Uncyk (New Orleans)

Florida Association of Professional Family Mediators

Nancy Blanton (New Orleans)
Richard Doelker (New Orleans)

Florida Dispute Resolution Center

Sharon Press (Orlando, New Orleans, Chicago)

Hofstra University School of Law

Andrew Schepard, Reporter (Orlando, New Orleans, Chicago)

Indiana Association of Mediators, Inc.

Patrick Brown (Orlando)

Beth Kerns (Orlando)

Mediation Association of Northwest Ohio

Richard Altman (Orlando, New Orleans, Chicago)

Mediation Association of Tennessee

Jan Walden (Orlando)

Mediation Council of Illinois

Jerald Kessler (Orlando, Chicago)

Montgomery County Mediation Center

Winnie Backlund (Orlando, Chicago)

National Association for Community Mediation

Carolee Robertson (Chicago)

National Conference on Peacemaking and Conflict Resolution

S. Y. Bowland (New Orleans, Chicago)

New York State Council on Divorce Mediation

Steven Abel (Orlando)
Glenn Dornfeld (New Orleans)
Rosalyn Magidson (New Orleans, Chicago)

New York State Dispute Resolution Association

Pennsylvania Council of Mediators
Winnie Backlund (Orlando, Chicago)
Tennessee Superior Court, ADR Commission
(Grace Byler (New Orleans, Chicago)
Ann Barker (Orlando, New Orleans)
State Bar of Wisconsin, Alternative Dispute Resolution Section
Larry Kahn (Chicago)
Society for Professionals in Dispute Resolution
Sharon Press (Orlando, New Orleans, Chicago)
Supreme Court of Ohio Dispute Resolution Program
C. Eileen Pruett (Orlando, New Orleans, Chicago)
The Agreement Zone
Tom Fee, Facilitator (Orlando, New Orleans, Chicago)
Wisconsin Association of Mediators

Larry Kahn (Chicago)

Additional Organizations Providing Written Commentary

Association of Broward County Mediators, by Amy Kirschner Hyman
Mediation Services and ADR Referrals, Seventh Judicial Circuit of Maryland, by Ramona Buck
Office of Dispute Resolution, Colorado Judicial Branch, by Robert Smith
Family and Divorce Mediation Council of Greater New York, by June Jacobson

Model Standards of Practice for
Family and Divorce Mediation

Overview and Definitions

Family and divorce mediation is a process in which a mediator, an impartial third party, facilitates the resolution of family disputes by promoting 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 decisions and reach their own agreements.

Family mediation is not a substitute for the need for family members to obtain independent legal advice or counseling or therapy. Nor is it appropriate for all families. However, experience has established that family mediation is a valuable option for many families because it can:

- increase the self-determination of participants and their ability to communicate;
- promote the best interests of children; and
- reduce the economic and emotional costs associated with the resolution of family disputes.

Effective mediation requires that the family mediator be qualified by training, experience and temperament; that the mediator be impartial; that the participants reach their decisions voluntarily; that their decisions be based on sufficient factual data; that the mediator be aware of the impact of culture and diversity; and that the best interests of children be taken into account. Further, the mediator should also be prepared to identify families whose history includes domestic abuse or child abuse.

These *Model Standards of Practice for Family and Divorce Mediation* aim to perform three major functions:

1. to serve as a guide for the conduct of family mediators;
2. to inform the mediating participants of what they can expect; and
3. to promote public confidence in mediation as a process for resolving family disputes.

The *Model Standards* are aspirational in character. They describe good practices for family mediators. They are not intended to create legal rules or standards of liability.

The *Model Standards* include different levels of guidance:

- Use of the term Amay in a *Standard* is the lowest strength of guidance and indicates a practice that the family mediator should consider adopting but which can be deviated from in

the exercise of good professional judgment.

- Most of the *Standards* employ the term Ashould≅ which indicates that the practice described in the *Standard* is highly desirable and should be departed from only with very strong reason.

- The rarer use of the term Ashall≅ 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.

Standard I

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

1. Self-determination is the fundamental principle of family mediation. The mediation process relies upon the ability of participants to make their own voluntary and informed decisions.

2. The primary role of a family mediator is to assist the participants to gain a better understanding of their own needs and interests and the needs and interests of others and to facilitate agreement among the participants.

3. A family mediator should inform the participants that they may seek information and advice from a variety of sources during the mediation process.

4. 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.

E. The family mediator's commitment shall be to the participants and the process. Pressure from outside of the mediation process shall never influence the mediator to coerce participants to settle.

Standard II

A family mediator shall be qualified by education and training to undertake the mediation.

5. To perform the family mediator's role, a mediator should:

    1. have knowledge of family law;

    2. have knowledge of and training in the impact of family conflict on parents, children and other participants, including knowledge of child development, domestic abuse and child abuse and neglect;

3. have education and training specific to the process of mediation;

4. be able to recognize the impact of culture and diversity.

6. Family mediators should provide information to the participants about the mediator=s relevant training, education and expertise.

Standard III

A 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.

7. Before family mediation begins a mediator should provide the participants with an overview of the process and its purposes, including:

   1. informing the participants that reaching an agreement in family mediation is consensual in nature, 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 or other professionals during the mediation process;

   5. advising the participants, in appropriate cases, that they can seek the advice of religious figures, elders or other significant persons in their community whose opinions they value;

   6. discussing, if applicable, the issue of separate sessions with the participants, a description of the circumstances in which the mediator may meet alone with any of the participants, or with any third party and the conditions of confidentiality concerning these separate sessions;

   7. informing the participants that the presence or absence of other persons at a mediation, including attorneys, counselors or advocates, depends on the agreement of the participants and the mediator, unless a statute or regulation otherwise requires or the mediator believes that the presence of another 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;

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.

8. The participants should sign a written agreement to mediate their dispute and the terms and conditions thereof within a reasonable time after first consulting the family mediator.

9. The family mediator should be alert to the capacity and willingness of the participants to mediate before proceeding with the mediation and throughout the process. A mediator should not agree to conduct the mediation if the mediator reasonably believes one or more of the participants is unable or unwilling to participate.

10. Family mediators should not accept a dispute for mediation if they cannot satisfy the expectations of the participants concerning the timing of the process.

Standard IV

A family mediator shall conduct the mediation process in an impartial manner. A family mediator shall disclose all actual and potential grounds of bias and conflicts of interest reasonably known to the mediator. The participants shall be free to retain the mediator by an informed, written waiver of the conflict of interest. However, if a bias or conflict of interest clearly impairs a mediator=s impartiality, the mediator shall withdraw regardless of the express agreement of the participants.

1. 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.

2. Conflict of interest means any relationship between the mediator, any participant or the subject matter of the dispute, that compromises or appears to compromise the mediator=s impartiality.

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

4. 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.

5. 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.

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

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

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

9. A family mediator should withdraw pursuant to *Standard IX* 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

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

10. 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.

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

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

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

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

Standard VI

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

15. The mediator should 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 experts.

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

17. The mediator should recommend that the participants obtain independent legal representation before concluding an agreement.

18. If the participants so desire, the mediator should allow attorneys, counsel or advocates for the participants to be present at the mediation sessions.

19. With the agreement of the participants, the mediator may document the participants= resolution of their dispute. The mediator should inform the participants that any agreement should be reviewed by an independent attorney before it is signed.

Standard VII

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.

20. 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.

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

22. As permitted by law, the mediator shall disclose a participant's threat of suicide or violence against any person to the threatened person and the appropriate authorities if the mediator believes such threat is likely to be acted upon.

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

24. 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

A family mediator shall assist participants in determining how to promote the best interests of children.

11. The mediator should encourage the participants to explore the range of options available for separation or post divorce parenting arrangements and their respective costs and benefits. Referral to a specialist in child development may be appropriate for these purposes. The topics for discussion may include, among others:

    1. information about community resources and programs that can help the participants and their children cope with the consequences of family reorganization and family violence;

    2. problems that continuing conflict creates for children's development and what steps might be taken to ameliorate the effects of conflict on the children;

    3. development of a parenting plan that covers the children's physical residence and decision-making responsibilities for the children, with appropriate levels of detail as agreed to by the participants;

    4. the possible need to revise parenting plans as the developmental needs of the children evolve over time; and

    5. encouragement to the participants to develop appropriate dispute resolution mechanisms to facilitate future revisions of the parenting plan.

12. The mediator should be sensitive to the impact of culture and religion on parenting philosophy and other decisions.

13. The mediator shall inform any court-appointed representative for the children of the mediation. If a representative for the children participates, the mediator should, at the outset, discuss the effect of that participation on the mediation process and the confidentiality of the mediation with the participants. Whether the representative of the children participates or not, the mediator shall provide the representative with the resulting agreements insofar as they relate to the children.

14. Except in extraordinary circumstances, the children should not participate in the mediation process without the consent of both parents and the children's court-appointed representative.

15. Prior to including the children in the mediation process, the mediator should consult with the parents and the children's court-appointed representative about whether the children should participate in the mediation process and the form of that participation.

16. The mediator should inform all concerned about the available options for the children's participation (which may include personal participation, an interview with a mental health professional, the mediator interviewing the child and reporting to the parents, or a videotaped statement by the child) and discuss the costs and benefits of each with the participants.

Standard IX

A family mediator shall recognize a family situation involving child abuse or neglect and take appropriate steps to shape the mediation process accordingly.

17. As used in these Standards, child abuse or neglect is defined by applicable state law.

18. A mediator shall not undertake a mediation in which the family situation has been assessed to involve child abuse or neglect without appropriate and adequate training.

19. If the mediator has reasonable grounds to believe that a child of the participants is abused or neglected within the meaning of the jurisdiction's child abuse and neglect laws, the mediator shall comply with applicable child protection laws.

    1. The mediator should encourage the participants to explore appropriate services for the family.

    2. The mediator should consider the appropriateness of suspending or terminating the mediation process in light of the allegations.

Standard X

A family mediator shall recognize a family situation involving domestic abuse and take appropriate steps to shape the mediation process accordingly.

20. As used in these Standards, domestic abuse includes domestic violence as defined by applicable state law and issues of control and intimidation.

21. A mediator shall not undertake a mediation in which the family situation has been assessed to involve domestic abuse without appropriate and adequate training.

22. Some cases are not suitable for mediation because of safety, control or intimidation issues. A mediator should make a reasonable effort to screen for the existence of domestic abuse prior to entering into an agreement to mediate. The mediator should continue to assess for domestic abuse throughout the mediation process.

23. If domestic abuse appears to be present the mediator shall consider taking measures to insure the safety of participants and the mediator including, among others:

1. establishing appropriate security arrangements;

2. holding separate sessions with the participants even without the agreement of all participants;

3. allowing a friend, representative, advocate, counsel or attorney to attend the mediation sessions;

4. encouraging the participants to be represented by an attorney, counsel or an advocate throughout the mediation process;

5. referring the participants to appropriate community resources;

6. suspending or terminating the mediation sessions, with appropriate steps to protect the safety of the participants.

24. The mediator should facilitate the participants= formulation of parenting plans that protect the physical safety and psychological well-being of themselves and their children.

Standard XI

A 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.

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

1. the safety of a participant or well-being of a child is threatened;

2. a participant has or is threatening to abduct a child;

3. a participant is unable to participate due to the influence of drugs, alcohol, or physical or mental condition;

4. the participants are about to enter into an agreement that the mediator reasonably believes to be unconscionable;

5. a participant is using the mediation to further illegal conduct;

6. a participant is using the mediation process to gain an unfair advantage;

7. if the mediator believes the mediator's impartiality has been compromised in accordance with *Standard IV*.

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

Standard XII

A family mediator shall be truthful in the advertisement and solicitation for mediation.

27. Mediators should refrain from promises and guarantees of results. A mediator should not advertise statistical settlement data or settlement rates.

28. Mediators should accurately represent their qualifications. In an advertisement or other communication, a 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.

Standard XIII

A family mediator shall acquire and maintain professional competence in mediation.

29. Mediators should continuously improve their professional skills and abilities by, among other activities, participating in relevant continuing education programs and should regularly engage in self-assessment.

30. Mediators should participate in programs of peer consultation and should help train and mentor the work of less experienced mediators.

31. Mediators should continuously strive to understand the impact of culture and diversity on the mediator's practice.

Appendix:
Special Policy Considerations for
State Regulation of Family Mediators and Court Affiliated Programs

The *Model Standards* recognize the *National Standards for Court Connected Dispute Resolution Programs* (1992). There are also state and local regulations governing such programs and family mediators. The following principles of organization and practice, however, are especially important for regulation of mediators and court-connected family mediation programs. They are worthy of separate mention.

32. Individual states or local courts should set standards and qualifications for family mediators including procedures for evaluations and handling grievances against mediators. In developing these standards and qualifications, regulators should consult with appropriate professional groups, including professional associations of family mediators.

33. When family mediators are appointed by a court or other institution, the appointing agency should make reasonable efforts to insure that each mediator is qualified for the appointment. If a list of family mediators qualified for court appointment exists, the requirements for being included on the list should be made public and available to all interested persons.

5. Confidentiality should not be construed to limit or prohibit the effective monitoring, research or evaluation of mediation programs by responsible individuals or academic institutions provided that no identifying information about any person involved in the mediation is disclosed without their prior written consent. Under appropriate circumstances, researchers may be permitted to obtain access to statistical data and, with the permission of the participants, to individual case files, observations of live mediations, and interviews with participants.