

- 44 Grant, Kidder, Logan, McIntosh, McLean, Mercer, Morton, Oliver,
45 Sheridan, and Sioux counties:
46 b. ~~The Northeast Central Judicial District, including Grand Forks and
47 Nelson counties.~~
48 c. ~~The Southwest Judicial District, including Stark, Hettinger, Adams,
49 Bowman, Slope, Golden Valley, Billings, and Dunn counties.~~
50 d. ~~The Northwest Judicial District, including Ward, Mountrail,
51 McKenzie, Williams, Divide, and Burke counties.~~
52 e. ~~The Northeast Judicial District, including Walsh, Ramsey, Benson,
53 Pierce, McHenry, Renville, Bottineau, Rolette, Towner, Cavalier, and
54 Pembina counties.~~
55

56 21) **Program Management:**

- 57 a. A full-time Family Mediation Program Administrator will manage and
58 oversee the operation of the Program under the auspices of the North
59 Dakota Supreme Court.
60 b. The Administrator will directly report to the State Court Administrator
61 and will act as a liaison to the ~~five judicial districts~~ courts and the Joint
62 Committee on Alternative Dispute Resolution, and the Subcommittee
63 on Family Mediation.
64 c. The Administrator will be an employee of the State of North Dakota
65 and compensated at a rate commensurate with market value and state
66 policies.
67 d. The University North Dakota Conflict Resolution Center will offer
68 assistance to the Program as needed by providing expertise,
69 professional assistance, training and education. Compensation will be
70 negotiated as required.

71 32) **Research and Evaluation:** The Program will include a research and
72 evaluation component. Bids will be solicited through an Request For
73 Proposal process according to North Dakota State regulations, and require
74 approval by the Administrator and the Joint Committee on Alternative
75 Dispute Resolution.

76 43) **Implementation Model for Court Annexed Referral to Family Mediation:**

- 77 a. Within 10 days of filing, the following new cases will be referred by
78 the clerk to the Family Mediation Program Administrator:
79 i. Any ‘civil proceeding’ in which parental rights and
80 responsibilities or relocation with respect to a child is an issue;
81 this term includes an original proceeding for a divorce,
82 separation, paternity, and guardianship in which the issue may
83 appear. This term also includes a proceeding for post-
84 judgment to parental rights and responsibilities and requests to
85 remove a child from the state.
86 ii. When the proceeding is a post-judgment motion for change of
87 enforcement of parental rights and responsibilities, then the

88 referral will be made only after a court order has determined
89 that a prima facie case has been established, and if the court
90 believes mediation may be useful to the parties and the
91 children.

- 92 b. **Mediation and Orientation:** The Family Mediation Pilot Program
93 will automatically provide up to 6 hours of combined pre-mediation
94 orientations and mediation. Mediators will be compensated at the rate
95 of \$170/hour with a cap of \$1020 per case. The Family Mediation
96 Pilot Program requires that:

97 The parties will individually attend a pre-mediation orientation
98 and screening with a designated mediator, and at least one joint
99 mediation session. The Program will provide up to 6 hours of
100 mediation without charge to the parties. Should the parties
101 require additional sessions, they may purchase mediation from
102 the mediator who will offer mediation at the rate of \$170/hour.
103 Parties may also apply to the Administrator for additional
104 mediation sessions and may apply for a fee waiver or sliding
105 scale fee should they qualify based upon economic factors. If
106 the parties qualify for a fee reduction and have been approved
107 for additional mediation, any “gap” between \$170/hour and
108 their ability to pay will be paid to the mediator under this
109 program.

- 110 c. **Exclusions:** The clerk shall not refer proceedings where the parties
111 have already started mediating prior to the time frame for starting the
112 pilot program; where parental rights and responsibilities are stipulated
113 by the parties at the time of filing; or where a current domestic
114 violence protection order or other order for protection between the
115 parties currently exists.¹ In these cases, the court may not require
116 mediation except in unusual cases where:

- 117 i. Mediation is requested by the victim of the domestic violence
118 or sexual abuse, and an exception to the order of protection is
119 made by the court;
- 120 ii. The mediation is provided by a mediator trained to address the
121 needs and safety of victims where domestic violence is at
122 issue;
- 123 iii. The victim of domestic violence is provided the opportunity
124 for separate meetings during the mediation, and to mediate
125 using separate rooms if they choose;
- 126 iv. The mediation takes place in a courthouse or other building
127 where security measures are in place; and

¹ Cross Ref. NDCC 14-09.1-02. This rule is intended to comply with the statute on mediation and the exclusion for domestic violence.

128 v. The victim has an advocate or support person of their choice in
129 the mediation.

130 d. **Additions:** In addition to the clerk referrals, a district judge or referee
131 assigned to a parental rights and responsibilities proceeding may at
132 any time refer a case to family mediation, except as prohibited by this
133 or any other rule or statute.

134 e. **Court Procedures:** Upon receipt of a case from the clerk, the Family
135 Mediation Program Administrator will assign a mediator to the case
136 and prepare an order and schedule for mediation (Form A) for
137 signature by the assigned judge. The order will be sent to the parties,
138 attorneys, and the mediator, setting the following time frame for the
139 mediation to take place:

140 i. The parties must contact the mediator and attend a pre-
141 mediation orientation separately within 20 days of the date of
142 the Mediation Scheduling Order.

143 ii. The mediation sessions must take place within 90 days of the
144 date of the Mediation Scheduling Order.

145 iii. Any requests to deviate from this time frame must be
146 submitted to the judge presiding over the case in writing by the
147 mediator and the parties, and the judge may allow a time
148 extension for good cause.

149 iv. Once a case is assigned, the mediator will manage the case and
150 report to the court as required in the Family Mediation Pilot
151 Program Protocol.

152 v. Should any party fail to appear for orientation or mediation
153 sessions, the mediator shall promptly notify the administrator
154 for assistance, and who may report such violation to the court
155 which may order the party(s) to show cause.

156 vi. The mediation process is not a stay on any interim process.

157 f. **Pre-Mediation Orientation:** The Family Mediation Pilot Program
158 will provide a mediation orientation session for all parties in parental
159 rights and responsibilities disputes. The orientation sessions are
160 provided to the parties separately by the assigned mediator in a way
161 that best meets the needs of the parties. The orientation session should
162 be designed to make the parties aware of the following non-inclusive
163 list:

164 i. What mediation is and is not;

165 ii. What to expect from the mediators;

166 iii. What the parties goals are for mediation;

167 iv. Any guidelines necessary to have constructive conversations;

168 v. How to prepare for the mediation process;

169 vi. The role of the court, lawyers, and other experts;

170 vii. How fee payment works;

171 vii. The time line for mediation;

172 ix. Any relevant requirements of the Family Mediation Pilot
173 Program;

174 g. **Selection of Mediators:** In order to mediate within the Family
175 Mediation Pilot Program, mediators must meet the criteria set forth in
176 Rule 8.9 or have a minimum of 40 hours of mediation training and 4
177 years of experience in family mediation with an average of 6 cases per
178 year and follow the policies and procedures set forth. They may apply
179 to be placed on the roster of family mediators in the manner indicated
180 in Rule 8.9, and will be approved by the Family Mediation Program
181 Administrator. Mediators must carry malpractice insurance that
182 covers their mediation practice.

183 i. **Mediation Assignment:** Mediators will be assigned cases by
184 the Administrator and will manage cases assigned to them
185 from orientation and screening through conclusion of
186 mediation.

187 ii. **Conflicts of Interest & Bias:** A mediator may not be
188 removed unless the mediator and/or the parties' petition the
189 Administrator based upon bias or conflicts of interest. Parties
190 and attorneys may not request a change of mediator unless they
191 present clear evidence of bias or conflict of interest as
192 described in the standards provided in the Family Mediation
193 Pilot Program Protocol.²

194 iii. **Standards:** All mediators must agree to follow the standards
195 set forth in Protocol. Any violation of standards may be
196 reported to the Administrator.

197 h. **Confidentiality:** The pilot program shall require confidence in the
198 process by upholding highest ethical standards, including
199 confidentiality. Mediators are prohibited from discussing or revealing
200 the details of mediation discussions or about any party to any judge,
201 magistrate, or third party.³

202 i. **Program Evaluation:** All mediators and parties must cooperate with
203 the research and evaluation protocol to help measure the impact and
204 success of the pilot program. This may include written comments,
205 personal interview, and occasional observation during mediation, etc.

206 j. **Additional Sessions:** Should the parties require additional sessions,
207 they may purchase mediation from the mediator who will offer
208 mediation at the rate of \$170/hour. Parties may also submit a request
209 to the Administrator for additional mediation sessions and may apply

² The Family Mediation Pilot Program Protocol is a guide to ensure quality and efficacy of the process as well as a working document for guiding the Program as a whole.

³ Cross Ref. Rule 8.8(b); NDCC 14-09.1-06 (Confidentiality); NDCC 31-04-11 (Mediation - Inadmissibility of evidence – Exception).

210 for a fee waiver or sliding scale fee should they qualify based upon
211 economic factors. If the parties qualify for a fee reduction, any “gap”
212 between \$170/hour and their ability to pay will be paid to the mediator
213 under this program. Form B.

214 k. **Agreements and Decision Summaries/Case Closing:**

215 i. At the close of every case, the mediator and parties will create
216 a written decision summary for the parties that notes any and
217 all agreements made and uses the parties’ own language. The
218 parties will have 5 business days to reconsider the decisions
219 made in mediation. If neither party files a written request to
220 reconsider within 5 business days, the mediator shall send a
221 copy of the decision summary to the parties and their attorneys,
222 along with the Mediation Case Closing Form. (Form G). A
223 copy of the closing form shall be filed with the clerk of court
224 with a copy to the judge presiding over the case.

225 ii. At the close of every case, the mediator and the parties will
226 complete the required evaluation forms and the mediator will
227 submit them to the Administrator along with the closing form;
228 mediator log and the mediator’s invoice form. The Mediator is
229 responsible for collecting fees from the parties if appropriate.

230 l. **Case Closing/Notification:** The mediator will notify the Family
231 Mediation Program Administrator when a case has concluded for any
232 reason, and offer the following reasons: 1) Agreement has been
233 reached in whole or part; or 2) The parties were unable to reach
234 agreement. If the parties and the mediator believe more mediation
235 sessions would help to resolve the case, the parties and the mediator
236 can join in a request for additional sessions that will be paid by the
237 parties on a sliding fee basis directly to the mediator.
238

239 **Form A**

240
241 **SCHEDULE & ORDER FOR MEDIATION**

242
243 STATE OF NORTH DAKOTA

IN DISTRICT COURT

244
245 COUNTY OF _____

_____ JUDICIAL DISTRICT

246
247 CIVIL NO. _____

248 A.B.,)

249 Plaintiff,)

250 vs.)

251)

252 C.D.,)

253)

254 Defendant.)

255)

**FAMILY MEDIATION PILOT PROGRAM
SCHEDULE & ORDER FOR MEDIATION**

256
257 a) The above named parties are required to attend separate mediation orientation
258 sessions in order to prepare for mediation, and shall attend mediation sessions in order to
259 discuss and resolve issues related to their parental rights and responsibilities and related
260 issues.

261
262 b) **Mediator:** The following mediator has been assigned to this case:

263 Name:

264 Address:

265 Phone Number:

266 Email Address:

267 *If you know this mediator and have a conflict of interest, please notify the Family
268 Mediation Program Administrator at 701-328-2695 within 3 days of receipt of this order.

269
270 c) Each party must contact the mediator immediately upon receipt of this order and
271 schedule and participate in a pre-mediation orientation session within 20 days of this order.

272
273 d) The parties must complete mediation within 90 days of this order unless the
274 mediator and the parties join in a request to the Court for additional time to mediate.

275
276 e) Any failure to appear for pre-mediation orientation sessions or mediation sessions
277 may result in issuance of an Order To Show Cause to the party who failed to appear. The
278 mediator and the parties will make their best efforts to schedule orientation and mediation
279 sessions within the time frame set forth here and within reasonable times that take into
280 account each person's needs.

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Signed this ____ day of _____, 2009-2010.

By the Court:

Name/Judge

292 **Form B**

293
294 **REQUEST FOR ADDITIONAL MEDIATION SESSIONS**

295
296 STATE OF NORTH DAKOTA IN DISTRICT COURT

297
298 COUNTY OF _____ JUDICIAL DISTRICT

299
300 CIVIL NO. _____

301 A.B.,)

302 Plaintiff,)

303)

304 vs.)

305)

306 C.D.,)

307)

308 Defendant.)

**FAMILY MEDIATION PILOT PROGRAM
REQUEST FOR ADDITIONAL MEDICATION SERVICES**

309
310 The following party/parties makes the following request for additional mediation
311 sessions:

312 Names: _____

313
314 a) Reasons for additional sessions:

315
316
317 Number of additional sessions requested: _____

318
319 Proposed date for completion of mediation: _____

320
321 b) The mediator in this case (name) _____ agrees that additional
322 mediation sessions are warranted for the above-stated reasons:

323
324 Signature: _____ Date: _____

325
326 **Decision: The Family Mediation Program Administrator ___denies ___grants**
327 **addition sessions as requested above. If granted, all mediation must be completed by**
328 **the following date:**

329 _____

330
331
332 Signature _____ Date _____
333 (Family Mediation Program Administrator)

334
335 cc: Judge _____, Parties/Attorneys, Mediator

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Form B1

Family Mediation Pilot Program Fee Reduction Request

Date: _____

Name of Party Requesting Reduction/Waiver: _____

Case Number: _____

Please attach all of the following in order to have your case considered for further mediation sessions that are provided financially in whole or part by the Family Mediation Pilot Program:

- 1) Your most recent W2 from;
- 2) Your most recent Tax Return;
- 3) Proof of income from your current employers for the past 12 months;
- 4) List all property you own and the value of the property (vehicles, real estate, retirement savings, bank accounts, pension plans, etc.)
- 5) List monthly debts and provide documentation
- 6) Provide name and age of all children living with you or for whom you pay child support; provide a copy of any court order for child support, spousal support, medical and other insurance for the children, and day care expenses.
- 7) Any other documentation as required by the Family Mediation Program Administrator

Once the Family Mediation Program Administrator has made a determination of your eligibility to pay for mediation services, you will be notified of the decision. You may be required to pay in full or part for the mediation services (\$170/hour or less). The mediator in your case will provide you with an invoice if appropriate, and you are required to pay for mediation services rendered if ineligible for fee reduction.

Under penalty of perjury, I agree that I have provided full and truthful disclosure and evidence of my financial condition.

Date

Name (print)

Signature: _____

United State Department of Health and Human Services Poverty Guidelines

Legal Services of North Dakota Eligibility Requirements

Eligibility Standards Effective April 1, ~~2009~~ 2010

Financial Eligibility Standards for Persons Served By Legal Services of North Dakota Offices, General Law, Indian Law staff and Private Attorney Involvement Component

Income Limitations for additional mediation time

Standard Gross Income Level - 125% of poverty

Household Size	1	2	3	4	5	6	7
Annual Income	13,538	18,213	22,888	27,563	32,238	36,913	41,588
Monthly Income	1,128	1,518	1,907	2,297	2,687	3,076	3,466
Weekly Income	260	350	440	530	620	710	800

(Add \$4,675 yearly for each additional member in households with more than 7 Part 1611, Effective Jan 30, 2009)

For all states (except Alaska and Hawaii) and for the District of Columbia

Size of family unit	100 Percent of Poverty	110 Percent of Poverty	125 Percent of Poverty	150 Percent of Poverty	175 Percent of Poverty	185 Percent of Poverty	200 Percent of Poverty
1	\$10,830	\$11,913	\$13,538	\$16,245	\$18,953	\$20,036	\$21,660
2	\$14,570	\$16,027	\$18,213	\$21,855	\$25,498	\$26,955	\$29,140
3	\$18,310	\$20,141	\$22,888	\$27,465	\$32,043	\$33,874	\$36,620
4	\$22,050	\$24,255	\$27,563	\$33,075	\$38,588	\$40,793	\$44,100
5	\$25,790	\$28,369	\$32,238	\$38,685	\$45,133	\$47,712	\$51,580
6	\$29,530	\$32,483	\$36,913	\$44,295	\$51,678	\$54,631	\$59,060
7	\$33,270	\$36,597	\$41,588	\$49,905	\$58,223	\$61,550	\$66,540
8	\$37,010	\$40,711	\$46,263	\$55,515	\$64,768	\$68,469	\$74,020

For family units with more than 8 members, add \$3,740 for each additional person at 100% of poverty; \$4,114 at 110 %; \$4,675 at 125%; \$5,610 at 150%; \$6,545 at 175%; \$6,919 at 185% and \$7,480 at 200% of poverty.

Note: For optional use in FFY 2009 and mandatory use in FFY 2010

410 Page Last Updated: April 5, 2010

411

412

413 **How to Determine Income for Eligibility Purposes**

414 Income means total cash receipts before taxes of all persons who are resident members and
415 who contribute to the support of a household. For those with seasonal income, figure the
416 annual income before making a determination. Seasonal income should be figured on an
417 annual basis to determine eligibility. Describe type of job, length of employment, and
418 regularity of the employment.

419 **Form C**

420
421 **GUIDE FOR PARTICIPANTS IN MEDIATION**

422 (TO BE SENT TO THE PARTIES WITH THE SCHEDULING ORDER AND REVIEWED
423 WITH THE PARTIES DURING ORIENTATION AND AT THE BEGINNING OF
424 MEDIATION)

425
426 Mediation is a process in which an impartial mediator assists people in conflict to have a
427 constructive conversation about their dispute in a neutral setting. It is expected that each
428 participant say what they need to say and hear what they need to hear, so each person can
429 develop a better understanding about his/her concerns and the perspectives of other
430 participants. Through the discussion, the parties are able to make sound decisions for
431 themselves and others affected by their decisions.

432
433 Parties are asked to adhere to the following principles:

- 434
- 435 1. **Mediation is voluntary.** Participants should not feel forced into making decisions
436 during mediation and always have the option not to participate or discontinue the
437 mediation at anytime (except as provided by law or court order).
438
 - 439 2. **Mediation involves informed decision-making.** Participants are free to access any
440 information that may help them make informed decisions during the mediation.
441 Participants may want to consult with outside experts if they have specific questions or do
442 not have knowledge about a particular issue in order to help facilitate the decision-
443 making process. Attorneys are welcome to participate.
444
 - 445 3. **Participants make the decisions in mediation.** Participants are solely responsible for
446 making all decisions. There are many types of decisions that participants may make,
447 including whether or not to pursue mediation, who should be involved in the discussion,
448 how to explore additional information, what options are preferable, how parenting is
449 shared among parents, how costs are shared, and other decisions, etc. However,
450 participants should be careful to follow the law in North Dakota when making critical
451 decisions about parenting, custody, visitation, and child support.
452
 - 453 4. **Mediators are impartial.** Mediators will not make decisions for the participants or
454 make any judgments about who is right or wrong. Mediators have no stake in any
455 particular outcome and treat all participants in a fair and balanced way. Their main goal
456 is to help create a helpful environment so the parties can discuss what is important and
457 make voluntary, informed decisions. The parties will report any conflicts of interest or
458 perceived bias by the mediator directly to the mediator and/or the Family Mediation
459 Program Administrator.
460

- 461 5. **Mediation is a confidential process.** Mediators will not reveal anything that is said
 462 during mediation to any other person except as permitted by law and as required by the
 463 Family Mediation Pilot Program Research & Evaluation. Allegations of child abuse or
 464 threats of harm to any person will *not* be held confidential and may be revealed as
 465 appropriate by the mediator. Likewise, participants themselves are asked to keep
 466 confidential everything that is communicated during mediation, except as they agree
 467 otherwise or as permitted by law. No record of the mediation will be made, unless the
 468 parties reach agreements in which case a decision summary will be written by the
 469 mediator and provided to the parties, and then to the Court.
 470
- 471 6. **Summary of decisions.** Mediators will assist the parties in developing a written
 472 summary of the decisions made at the mediation table. Each party will receive a copy
 473 and the mediator will keep a copy. The writing should be in the parties' language,
 474 capture what both parties have agreed to, and follow the form attached hereto and
 475 depending on what the case requires. Parties will have 5 business days within which to
 476 reconsider decisions made at the mediation table, and to review the decision summary
 477 with their attorneys. The mediator will not draft legal documents for the parties to sign
 478 and to be presented to the Court.
 479
- 480 7. **Research & evaluation.** The Family Mediation Pilot Program requires that everyone
 481 participating in the process complete the evaluation tools provided in a timely manner.
 482 You will be asked to complete a form at the end of mediation, and may be contacted for
 483 an interview about your experiences in the process.
 484

485 I have read and understand the principles related to mediation as described in the Guide for
 486 Participants in Mediation. (Signatures are required).
 487

488 _____
 489 Signature of Participant Date

490 _____
 491 Address Phone Number

492 _____
 493 Signature of Participant Date

494 _____
 495 Address Phone Number

500 Additional Participants:
 501

502 _____
 503 Signature and relationship to the parties Date

504 _____
 505 _____
 506 _____
 507 _____
 508 _____

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Address

Phone Number

Signature and relationship to the parties

Date

Address

Phone Number

*Signatures are voluntary if mediation is mandated.

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Form D

COMPONENTS OF MEDIATION ORIENTATION

*This is a general guide for mediators to consider, leaving discretion with mediators to develop a personal style for orientation sessions

Pre-mediation orientations help build rapport with parties; help parties make voluntary, informed decisions about proceeding with mediation; provide opportunities for the parties to tell their story and become clearer about their issues and goals; and encourage parties' abilities to act and decide for themselves. It is also a time where the mediator begins to screen for ethical issues such as violence, capacity, and other issues.

Considerations

The purposes of pre-mediation orientation illustrated below, and relate primarily to ensure that each party is prepared to participate in mediation. Preparation occurs on many dimensions: emotional, intellectual, financial, legal, etc. Pre-mediation orientation sessions allow mediators to explore their clients goals, issues, fears, and other matters, including screening for violence and issues of capacity.

Build Rapport

- Introduce yourself and talk generally with the party, setting a friendly, helpful and comfortable tone for the meeting.
- Ask if you can get anything for the party coffee, water, paper/pen.
- Talk about the purpose of the orientation.
- Tell the party you are glad the party is here today and considering mediation. Let the party know you are here to help the party with the conflict.

Listening to the Parties and Explaining the Mediation Process

- Answer any questions the party may have about mediation and/or the orientation.
- Listen to the party and discuss how mediation can work with the parties' issues.
- Screen for issues that are inappropriate for mediation and/or may negatively impact the parties' decision-making.
 - ✓Incapable of making decisions (under the influence drugs/alcohol).
 - ✓Magical thinking — someone thinking the mediator or the process will “solve” the issue for them.
 - ✓Domestic violence or any fear from other party (see domestic violence screening).
- Explain the *Agreement to Mediation* and *How to Prepare for Mediation* (see sample forms in this section).
- Identify who needs to be at the table and their willingness to mediate.
- Help the parties understand how the process works.
- Explain the role of the mediator (may need to explain the difference between a mediator and an evaluator, advocate or arbitrator).
- Explain the role of the parties (decision makers).
- Explain the role of outside experts (help parties make informed decisions) and work with parties to determine what experts they may want to talk with prior to mediation.

- 564
- 565
- 566
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- 568
- Discuss confidentiality (mediator, parties, exceptions -- for more information see Section 7) and Discuss the need for disclosure (success of the process).
 - Explain the role of a caucus/separate meeting.
 - Provide forms for divorce mediation or parental rights and responsibilities mediation as appropriate.

569

570 **Help Develop Clarity**

- 571
- Help parties become clearer about:
 - ✓What issues they would like to bring to the table; helping parties reframe an issue in words they are comfortable saying to the other party or words that can be better heard by the other party.
 - ✓What will help them say what they need to say and hear what they need to hear.
 - ✓What the parties hot buttons are and whether the parties need guidelines.
 - ✓What has or has not worked in talking with the other party in the past.
 - ✓What would improve the parties' ability to communicate.
- 572
- 573
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579

580 **Help Parties Take the Perspective of Other**

- 581
- Help parties become clearer about:
 - ✓How they view the other parties' role in the conflict.
 - ✓What would help them be more open and responsive to the other party.
 - ✓What hot buttons they push in the other party.
- 582
- 583
- 584
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585

586 **Help Parties Explore What They Want**

- 587
- Ask each party what they hope to accomplish during mediation.
 - Explore any goals they have for conflict resolution.
 - Determine if parties want to continue to mediation and support the parties' decision.
- 588
- 589
- 590

590

591 **Scheduling & Fees**

- 592
- Clearly describe fees to parties.
 - Discuss availability and scheduling (possible dates and times).
 - Explain that parties will be asked to complete the Program research and evaluation forms rating their satisfaction with the process following the mediation session (see sample forms in this section).
- 593
- 594
- 595
- 596

596

597 **Form E**

598
599 **HOW TO PREPARE FOR MEDIATION**
600 (GIVEN TO PARTIES DURING ORIENTATION)

601
602 All parties will go through the pre-mediation process and should have a similar
603 understanding of how the process will work. Mediators will *not* negotiate points between the
604 parties prior to the mediation. If there are issues that need to be negotiated or clarified, the
605 parties must do that independently or wait until they come to mediation. Please be clear that
606 you may be in violation of an order of the Court should you fail to cooperate in the mediation
607 process and ask your attorney, the mediator, or the Family Mediation Pilot Program
608 Administrator if you have any questions.

609
610 **Scheduling:** The mediator will work with the parties to make arrangements for a date and
611 time that will work for all parties. Inform the mediator of any concerns or constraints that
612 you may have. If you need to cancel, reschedule, or change your availability to mediate,
613 please call the mediator as soon as possible. Failure to communicate and appear for
614 mediation could result in further action by the Court.

615
616 **Process:** As outlined in the *Agreement to Mediate*, the mediation process has several
617 components that can make this a beneficial option for parties in conflict. Some of the issues
618 to consider include:

- 619
- 620 • Voluntary nature of mediation
 - 621 • Informed decision making by the parties
 - 622 • Confidentiality
 - 623 • Family legal issues
 - 624 • The role of outside experts
 - 625 • The role of the mediators
 - 626 • The role of the parties
 - 627 • The role of attorneys

628
629 **Fees:** Fees are paid by a grant from the North Dakota Supreme Court for mediation
630 including the pre-mediation orientation sessions. Should you require more sessions, you
631 may petition the Family Mediation Program Administrator to have the fees covered in whole
632 or part if you are qualify by demonstrating your income to the Administrator. The fee paid
633 to mediators is \$170/hour. Any fees you owe must be paid to your mediator within 10 days
634 of completion of the mediation.

635
636 **Who should participate in mediation?**

637 Identify who you think should be present in order to fully discuss the issues and to help you
638 reach your goals. Should there be a conflict about who is present, that issue will be explored
639 with the participants before the first mediation session.

640
641 **Questions to consider:**

642 What do you hope to accomplish by mediating? What are your goals?

643 What are the issues or topics that you need to address to accomplish your goals?

Are there outside experts that you need to consult or is there information you need before
you come to mediation?

644 Is there anything that will help you to communicate better during the mediation?

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Form F

**MEDIATOR DOMESTIC VIOLENCE SCREENING TOOL⁴ AND
SAFETY PLANNING**

(Structure and Guidelines for Assessing Domestic Violence)

As you conduct the mediation orientation, it is important to be aware of the questions in the Mediator Screening Tool, so you can use them to assess for the presence of domestic violence. Integrate the questions in the Mediator Screening Tool so you are able to assess for the presence of domestic violence, and more importantly determine if mediation is appropriate for the party.

A. QUESTIONNAIRE

A mediator should ask the following questions during an orientation to assess for domestic violence between the parties.

Section 1: Control, Coercion, Intimidation, Fear

- (a) When you look back over time, how were decisions made in your marriage/relationship?
- (b) What happens when you speak your mind and express your point of view to the other party?
- (c) When you and the other party fight and/or are angry at each other, what happens?
- (d) Has the other party ever prevented you (or tried to prevent you) from having contact with family or friends, or your children?
- (e) Has the other party ever denied you access to money for food, shelter, clothing, medical needs, etc.?
- (f) Has the other party ever threatened to hurt or kill you or him/herself?
- (g) Do you have any concerns about sitting in the same room mediating with the other party?

If yes, ask the following questions:

- 689 (i) What are your concerns?
690
691 (ii) If your attorney or an advocate was present with you in the room would you still
692 have these concerns?
693
694 (iii) If you and the other party were in separate rooms during the mediation, would
695 you still have these concerns?
696

697 **Section 2: Violence/Fear of Violence**
698

- 699 (a) Has there ever been any physical confrontation between you and the other party? If so,
700 what happened?
701
702
703 (b) Do you ever feel afraid of the other party? What are you afraid of?
704
705
706 (c) Has the other party ever pushed, shoved, hit, kicked, choked or restrained you, or pulled
707 your hair? If so, what happened?
708
709
710 (d) Has the other party ever used or threatened to use a weapon to harm you? Are there guns
711 or weapons in your home? Does the other party have access to guns or other weapons?
712
713
714 (e) Has the other party ever damaged or destroyed your property, or harmed or threatened to
715 harm your pets?
716
717
718 (f) Have you ever had medical treatment as a result of an injury caused by the other party?
719
720
721 (g) Has the other party ever harassed you by following you, interfering with your work or
722 education, making repeated phone calls to you or sending you several unwanted letters, e-
723 mails, faxes or gifts?
724
725
726 (h) Have you ever sought to have a Personal Protection Order issued against the other party?
727 Was an order issued?
728
729
730 (i) Have you or any one else ever called the police because of problems in your home? If so,
731 what happened?
732
733 (j) Are you afraid that the other party will physically harm you during the mediation or after
734 you leave because of what you say in mediation?
735

736 (k) Are you in immediate danger?
737

738
739 **If yes, stop the screening and proceed to *Safety Planning*.**
740

741 **If a party answered “yes” to any one of questions 2(a) through 2(j), this is an indication**
742 **that mediation may not be appropriate for this party.** However, do not terminate the
743 screening process until the entire questionnaire is completed. Information gathered in the
744 following sections may be useful if the party wishes to mediate despite the mediator’s
745 advice. This will assist the mediator to make a decision about whether or not to mediate.
746

747 **Section 3: Children**

748
749 (a) How are your children doing?
750

751
752 (b) Do you have any concerns about the safety of your children?
753

754
755 (c) Has the other party ever threatened to take the children or threatened to stop you from
756 seeing them, or stopped you from seeing them?
757

758
759 **Section 4: Other Considerations Regarding Ability to Participate**
760

761 (a) Does either of you have a problem with alcohol or drugs? If so, please describe the
762 problem.
763

764
765 (b) Does either of you have a history of mental illness or emotional problems? If so, please
766 describe the history.
767

768
769 **Final Note:**
770

771 Monitoring by the mediator is a continuous responsibility throughout the mediation process.
772 On-going screening for domestic violence should take place throughout all phases of
773 mediation. It is the mediator’s responsibility to terminate the orientation and/or mediation if
774 she/he believes either of the parties is unable to mediate safely, fully and without fear or
775 intimidation. There are times when during the course of an orientation no behaviors or
776 comments suggest the presence of domestic violence, but during the course of the mediation
777 something suggests domestic violence. If the mediator determines that mediation should not
778 proceed, see *Safe Termination* .
779

780 **B. MAKING A DECISION ABOUT WHETHER OR NOT TO MEDIATE & SAFETY**
781 **PLANNING** (Based on responses to Questionnaire section in *Mediator Screening Tool*)
782

783 1) **Party is in Immediate Danger** (party answered “yes” to Question 2(k) in the *Mediator*
784 *Screening Tool*)

785
786 If a party is in immediate danger, the mediator should advise the party that mediation is not
787 appropriate. There are no circumstances under which mediation should proceed. You
788 should then help the party with Safety Planning. If during the orientation no behaviors or
789 comments suggest the presence of domestic violence, but something is revealed during the
790 mediation and the party is in danger, go to *Safe Termination of Mediation* and then to *Safety*
791 *Planning*.

792
793 2) **No Apparent Immediate Danger, but the Abused Party Disclosed Violence by or**
794 **Fear of the Other Party** (party answered “no” to Question 2(k) but “yes” to any other
795 question in Section 2 of the *Mediator Screening Tool*)

796
797 The mediator should advise the parties that mediation is not appropriate. The abusive party’s
798 willingness to proceed with mediation is irrelevant. **Advise against mediation:** “*I do not*
799 *think it is advisable for you to participate in mediation.*”

800
801 If the abused party concurs with the advice not to mediate, there are no circumstances under
802 which mediation should proceed.

803
804 If the abused party disagrees with the advice against mediation and wants to mediate, then
805 mediation should proceed only if **ALL** of the following apply:

- 806 • The situation is not dangerous for the abused party or the mediator. Consider answers
807 to Section 2 of the *Mediator Screening Tool*.
- 808 • The mediation is conducted by a skilled mediator.
- 809 • The attorney for the abused party or an advocate for the abused party (such as a
810 advocate from the local domestic violence program or a friend or family member) will
811 be present during the mediation.
- 812 • Both parties agree to these specific conditions.
- 813 • Parties wait in separate waiting areas; parties are not left alone together.
- 814 • The mediator assesses that the parties have the ability to participate voluntarily, fairly,
815 safely, fully and relatively free of fear and intimidation. Consider answers to Sections
816 1 and 2 of the *Mediator Screening Tool*.

817
818 3) **Non-Violent, but Abusive/Controlling** (party answers “no” to all questions in Section 2,
819 but “yes” to any question in Section 1(d) – 1(g) or answers in Section 1(a) – 1(c) indicate
820 the existence of control, coercion or intimidation).

821
822 The mediator must determine whether either party lacks the ability to fully participate in the
823 mediation and whether mediation could go forward under specific conditions, relatively free
824 of fear and intimidation. Mediation should proceed only if **ALL** of the following apply:

- 825 • The situation is not dangerous for the abused party or the mediator. Consider answers
826 to Section 2 of the *Mediator Screening Tool*.
- 827 • The mediation is conducted by a skilled mediator.
- 828 • The mediator assesses that the parties have the ability to voluntarily, fairly, safely and
829 fully participate, with or without an attorney or advocate present for the abused party,

830 or with or without specific conditions to address concerns for safety and ability to
831 participate and make decisions without coercion or fear. Consider answers to Sections
832 1 and 2 of the *Mediator Screening Tool*.
833 • The abused party wants to mediate.
834 • Parties wait in separate waiting areas; parties are not left alone together.
835 • If, to ensure the ability to fully participate, the abused party requires the presence of
836 an attorney or advocate during mediation, or a specialized process to which both
837 parties agree, the mediation must be conducted with those accommodations.
838

839 4) **Non-Violent, Non-Abusive and Non-Controlling, but Either Party Otherwise Lacks**
840 **Capacity to Mediate** (party answers “no” to all questions in Sections 1, 2 and 3 of the
841 *Mediator Screening Tool*, but “yes” to any question in Section 4)
842

843 Regardless of the existence of domestic violence, if screening reveals any of the following
844 the mediator must determine whether either party lacks the ability to fully participate in
845 mediation or whether mediation could go forward under specific conditions.

- 846 • There is a history of substance abuse or mental illness that is not presently controlled.
 - 847 • A party is not able to fully participate for themselves and/or articulate their needs.
- 848

849 Mediation should proceed only if **ALL** of the following apply:

- 850 • The situation is not dangerous for the parties or mediator.
 - 851 • The mediation is conducted by a skilled mediator.
 - 852 • The mediator assesses that the parties have the ability to participate voluntarily, fairly,
853 safely and fully, with or without an attorney or advocate present, or with or without
854 specific conditions to address concerns about capacity and ability to participate in
855 mediation.
 - 856 • The parties want to mediate.
 - 857 • If, to ensure the ability to participate, a party requires the presence of an attorney or
858 advocate during mediation, or a specialized process to which both parties agree, the
859 mediation must be conducted with those accommodations.
- 860

861 5) **Protection Order or Restraining Order In Effect** (one party has a protection
862 order/restraining order against the other party)
863

864 Any case between parties with a protection order or restraining order in effect should not be
865 mediated. In addition, a mediator *should not* advise a party to have the protection order or
866 restraining order temporarily rescinded in order to do mediation. Parties may believe that
867 mediation is an extension of the court and the court’s protection. Mediation cannot offer the
868 same level of protection to a party. Most courts will not refer a case to mediation if a
869 protection order or restraining order is in effect between the parties.
870

871 And finally, mediators should be concerned about potential consequences of mediating cases
872 that involve domestic violence. Mediator malpractice liability is an issue. The process may
873 do harm (physical and psychological). It may violate ethical and state laws or regulations.
874

875 C. SAFETY PLANNING

876

877 A safety plan is a tool to help an abused party identify ways to stay safe. Most victims of
878 domestic violence have a variety of methods that have helped keep them safe in the past.
879 **The mediator should take all discussions of fear and safety seriously.** If a mediator has
880 any questions at all during the course of the discussion with the abused party, call a local
881 domestic violence program (e.g., Community Violence Intervention Center, Grand Forks,
882 701-746-8900) or the National Domestic Violence Hotline at 1-800-799-SAFE(7233). Here
883 are several options to consider depending on the situation:
884

- 885 1. Ensure that there is a safe and private area in the office where the mediator can speak to
886 the abused party alone.
- 887 2. Offer the use of a telephone so that the abused party can contact the local domestic
888 violence program or the National Domestic Violence Hotline. Both of these
889 organizations have trained professionals who are able to offer confidential services and
890 should be able to the abused party create a safety plan.
- 891 3. If the abused party does not want to contract the hotlines, the mediator may ask the
892 party's permission to call one or both of the hotlines for consultation. They should be
893 able to walk the mediator through some basic safety planning strategies. The mediator
894 should assure the abused party that this information is confidential and that the mediator
895 will not disclose any of the information.
- 896 4. The party may be able to identify friends or family that have been helpful in the past or
897 who are able to offer a place to stay. The mediator should offer the use of a telephone so
898 that the party can contact family or friends, if the party wishes to do so.
- 899 5. Consider what the party will do when she/he leaves the mediator's office and where
900 she/he will go. Work with the party to ensure that she/he will be safe during the rest of
901 the day. Ask questions like: "What is your mode of transportation and is it safe? Where
902 is your car parked? Do you have a safe place to spend the night?"
- 903 6. Discuss with the party whether she/he would like to contact the police to file a report or
904 to request an escort.
- 905 7. Ask some of the following questions as you discuss safety:
 - 906 • In what way can I (and others) help you?
 - 907 • What do you feel you need to be safe?
 - 908 • What particular concerns do you have about your children's safety?
 - 909 • What have you tried in the past to protect yourself and your children (e.g., left for a
910 few days, sought help from family, friends, or a shelter, fought back, got an order for
911 protection)? Did any of these strategies help? Will any of them help you now?
 - 912 • Who in your support system will help you? How can they help? Can we involve
913 them?
- 914 8. If the party has separated from the domestic violence perpetrator, evaluate the following
915 options with the party:
 - 916 • Changing the locks on doors and windows.
 - 917 • Installing a better security system -- window bars, locks, better lighting, smoke
918 detectors and fire extinguishers.
 - 919 • Teaching the children to call the police or family and friends if violence occurs or
920 they are snatched.
 - 921 • Talking to schools and childcare providers about who has permission to pick up the
922 children and developing other special provisions to protect the children.
 - 923 • Finding a lawyer knowledgeable about family violence to explore custody, visitation,

- 924 and divorce provisions that protect the children and the adult victim.
- 925 • In rural areas where only the mailbox may be visible from the road, covering the box
- 926 with bright colored paper so that police can more easily locate the home.
- 927 • Obtaining an order of protection.
- 928 • Telling neighbors that the parties' partner is gone and asking the neighbors to inform
- 929 the party if the parties' partner returns to the area.
- 930 • Figuring out what the party can do (or is willing to do) if/when the parties' partner
- 931 returns.
- 932 9. If the party is leaving the domestic violence perpetrator review the following with the
- 933 party:
- 934 • How and when can the party most safely leave? Does the party have transportation?
- 935 Money? A safe place to go?
- 936 • Is the party comfortable calling the police if the party needs them?
- 937 • Who will the party tell or not tell about leaving?
- 938 • Who in the parties' support network does the party trust to protect the party?
- 939 • What can the party and others do so that the parties' partner will not find the party?
- 940 • How will the party travel safely to and from work or school or to pick up children?
- 941 • What parental rights and responsibilities provisions would keep the party and the
- 942 children safe?
- 943 • Would an order of protection be a viable option?
- 944 10. If the party is staying with the domestic violence perpetrator, review the following with
- 945 the party:
- 946 • In an emergency what works best to keep the party and the children safe?
- 947 • Who can the party call in a crisis?
- 948 • Would the party call the police if the violence starts again? Is there a phone in the
- 949 house or can the party work out a signal with the children or the neighbors to call the
- 950 police or get help?
- 951 • If the party needs to flee temporarily, where can the party go? Help the party think
- 952 through several places where the party can go in a crisis. Write down the addresses
- 953 and phone numbers.
- 954

955 **Suggested Text for Safety Planning Assistance**

956

957 “Based on what I’ve heard from you and observed, I am concerned for your safety. I would

958 like you to consider contacting some professionals to help you come up with a plan to stay

959 safe today. Most communities have organizations that provide services to survivors of

960 domestic violence. These services often include confidential shelter, counseling, advocacy,

961 support groups and counseling for your children. The phone number to our local domestic

962 violence program is 701-746-0405. You can also call the National Domestic Violence

963 Hotline at 1-800-799-SAFE (7233). The National Hotline can provide you with confidential

964 advocacy and support and also refer you to the nearest domestic violence program. Please

965 feel free to use my telephone.”

966

967 For additional information about mediating cases involving domestic violence, please read

968 and become familiar with the Association for Conflict Resolution’s Standards of Practice for

969 Family and Divorce Mediation, which outlines what to do in mediations that may involve

970 domestic violence.

971 **D. SAFE TERMINATION OF MEDIATION**

972
973 There are times when during the course of an orientation no behaviors or comments suggest
974 the presence of domestic violence, but during the course of the mediation something suggests
975 domestic violence. Anytime during the course of mediation, if either party decides to
976 withdraw, or the mediator finds that mediation is not safe because of domestic violence, the
977 mediation should be terminated in the following manner.

- 978
979 • If domestic violence is revealed for the first time during a mediation session, the mediator
980 should interrupt the proceeding and conduct a screening of each party separately to
981 determine whether mediation is appropriate and whether the party who has been subject
982 to the abuse understands the potential impact of abuse on the person’s ability to
983 participate in mediation fully and fairly.
- 984 • The screening sessions can occur right after the interrupted mediation or screening
985 sessions can be scheduled for future dates or the screening session for the abused party
986 can take place immediately with the screening session for the other party scheduled for
987 another day.
- 988 • In any event, talk privately with the abused party to determine whether safety
989 arrangements are necessary. If possible, make arrangements for the parties to leave
990 separately. Consider whether to alert law enforcement or other security of the potential
991 for violence and arrange for escort of the abused party to his/her transportation. Do not
992 reveal the destination or means of transportation of the abused party to the other party.
- 993 • Provide the abused party with information and referrals for assistance, including safety
994 planning.
- 995 • There are two positions to consider with regard to advising the parties about the reasons
996 for termination of mediation.
- 997 ➤ Some domestic violence victim advocates and professionals who work with batterers
998 in batterer intervention programs believe that, due to safety concerns, the mediator
999 **should not** advise the parties that the reason for termination is domestic violence,
1000 regardless of whether the victim or abuser disclosed the violence. Other valid reasons
1001 for termination that could be provided to the parties include: mediation policies and
1002 procedures, parties too far apart in positions or interests, inability to fully participate,
1003 unwillingness to participate, substance abuse or mental illness (if known by both
1004 parties).
- 1005 ➤ Some mediators believe that if the abuse is **disclosed by the abuser or by both parties**,
1006 it is appropriate to advise the parties that the reason for termination is domestic
1007 violence. If a mediator chooses this approach, the mediator must be careful to provide
1008 each party with the same information regarding the reasons for termination without
1009 violating confidentiality. If the violence is **disclosed only by the victim**, the mediator
1010 should not advise the parties that the reason for termination is domestic violence.
- 1011 ➤ **Violence should never be mediated.** In other words, never mediate when the core
1012 issues is for one party to stop abusing the other party. “I’ll stop hitting you if you stop
1013 seeing your friend, Jane.”
- 1014 ➤ The mediator must promote the safety of all parties in the mediation process, but it is
1015 important to remember not to create an artificial environment during the mediation.
1016 To say to parties “you can say whatever you want in here” may be harmful because a
1017 mediator cannot guarantee a party’s safety outside the mediation sessions.

1018 **Suggested Text to the Abused and Abusive Party: Termination of Mediation after**
1019 **Orientation**

1020
1021 “I have decided not to mediate this case. Many cases are not appropriate for mediation. It is
1022 my experience that with situations like yours, mediation may not be the best process. This
1023 orientation meeting fulfills the requirement for court ordered mediation. It is not a “failure”
1024 to terminate mediation and there are no legal repercussions for doing so. You may want to
1025 talk with an attorney about your situation.”

1026
1027 **Suggested Text: Termination of Mediation after Start of Mediation**

1028
1029 “After observing the issues between you and your interactions with each other, I know from
1030 my experience that mediation may not be best process for you. Many cases are not
1031 appropriate for mediation. So rather than taking up your time and resources, I am
1032 terminating this mediation. It is not a “failure” to terminate mediation and there are no legal
1033 repercussions for doing so. You may want to talk with an attorney about your situation.”

1034
1035 This screening tool was developed by the Michigan Supreme Court Office of Dispute Resolution. (2005).
1036 Domestic Violence and Child Abuse/Neglect Screening for Domestic Relations Mediation [On-line]. Available:
1037 <http://courts.michigan.gov/scao/resources/standards/odr/dvprotocol.pdf> It was adapted for the Family
1038 Mediation Pilot Program with the permission of the Michigan Supreme Court Office of Dispute Resolution.

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Form G

CLOSING FORM

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

CIVIL NO. _____

A.B.,)
Plaintiff,)
vs.)
C.D.,)
Defendant.)

**FAMILY MEDIATION PILOT PROGRAM
CLOSING FORM**

The above-named parties have attended pre-mediation orientation sessions individually and ___ sessions and ___ hours of mediation jointly.

Mediation Outcome - parental rights and responsibilities only

- _____ Agreement reached on all issues
- _____ Agreement reached on some issues
- _____ No agreement reached

Mediation Outcome - other issues in case

- _____ Agreement reached on all other issues raised by parties
- _____ Agreement reached on some other issues raised by parties
- _____ No agreement reached on other issues raised by parties

Mediator's Names & Signature: _____
Date _____

cc: The Judge₂ Family Mediation Program Administrator, Parties/Attorneys

1076 **Form H**

1077
1078 **ABA MODEL STANDARDS OF PRACTICE FOR FAMILY AND**
1079 **DIVORCE MEDIATION**

1080
1081 **Overview and Definitions**

1082
1083 Family and divorce mediation ("family mediation" or "mediation") is a process in which a mediator, an
1084 impartial third party, facilitates communication between people in family disputes and facilitates their voluntary
1085 and informed decision-making. The family mediator assists communication, encourages understanding and
1086 helps the participants to understand each other. The family mediator works with the participants to explore
1087 options, make decisions and reach their own decisions.

1088
1089 Family mediation is not a substitute for the need for family members to obtain independent legal advice or
1090 counseling or therapy. Nor is it appropriate for all families. However, experience has established that family
1091 mediation is a valuable option for many families because it can:

- 1092 • increase the self-determination of participants and their ability to communicate;
- 1093 • support decision making that is in the best interests of children; and
- 1094 • reduce the economic and emotional costs associated with the litigation of family disputes.

1095
1096 Effective mediation requires that the family mediator be qualified by training, experience and temperament; that
1097 the mediator be impartial; that the participants reach their decisions voluntarily; that their decisions be based on
1098 sufficient factual data; that the mediator be aware of the impact of culture and diversity; and that the best
1099 interests of children be taken into account. Further, the mediator should also be prepared to identify families
1100 whose history includes domestic abuse or child abuse.

1101
1102 **These Model Standards of Practice for Family and Divorce Mediation ("Model Standards") aim to**
1103 **perform three major functions:**

- 1104 1. to serve as a guide for the conduct of family mediators;
- 1105 2. to inform the mediating participants of what they can expect; and
- 1106 3. to promote public confidence in mediation as a process for resolving family disputes.

1107
1108 The Model Standards are aspirational in character. They describe good practices for family mediators. They
1109 are not intended to create legal rules or standards of liability.

1110
1111 The Model Standards include different levels of guidance:

1112
1113 Use of the term "may" in a Standard is the lowest strength of guidance and indicates a practice that the family
1114 mediator should consider adopting but which can be deviated from in the exercise of good professional
1115 judgment. Most of the Standards employ the term "should" which indicates that the practice described in the
1116 Standard is highly desirable and should be departed from only with very strong reason. The rarer use of the
1117 term "shall" in a Standard is a higher level of guidance to the family mediator, indicating that the mediator
1118 should not have discretion to depart from the practice described.

1119
1120 **Standard I**

1121
1122 **A family mediator shall recognize that mediation is based on the principle of self-determination by the**
1123 **participants.**

- 1124
1125 A. Self-determination is the fundamental principle of family mediation. The mediation process relies
1126 upon the ability of participants to make their own voluntary and informed decisions.
- 1127
1128 B. The primary role of a family mediator is to assist the participants to gain a better understanding of their
1129 own needs and interests and the needs and interests of others and to facilitate discussion and decision-
1130 making among the participants.

- 1131 C. A family mediator should inform the participants that they may seek information and advice from a
1132 variety of sources during the mediation process.
1133
- 1134 D. A family mediator shall inform the participants that they may withdraw from family mediation at any
1135 time and are not required to reach an agreement in mediation.
1136
- 1137 E. The family mediator's commitment shall be to the participants and the process. Pressure from outside
1138 of the mediation process shall never influence the mediator to coerce participants to settle.
1139

1140 **Standard II**

1141 **A family mediator shall be qualified by education and training to undertake the mediation.**
1142

1143 **Standard III**

1144 **A family mediator shall facilitate the participants' understanding of what mediation is and assess their**
1145 **capacity to mediate before the participants reach an agreement to mediate.**
1146

- 1147 A. Before family mediation begins a mediator should provide the participants with an overview of the
1148 process and its purposes, including:
1149
- 1150 1. informing the participants that reaching an agreement in family mediation is consensual in
1151 nature, that a mediator is an impartial facilitator, and that a mediator may not give legal
1152 advice, evaluate the case, or impose or force any settlement on the parties;
 - 1153 2. distinguishing family mediation from other processes designed to address family issues and
1154 disputes;
 - 1155 3. informing the participants that any agreements reached will be reviewed by the court when
1156 court approval is required;
 - 1157 4. informing the participants that they may obtain independent advice from attorneys, counsel,
1158 advocates, accountants, therapists or other professionals during the mediation process;
 - 1159 5. advising the participants, in appropriate cases, that they can seek the advice of religious
1160 figures, elders or other significant persons in their community whose opinions they value;
 - 1161 6. discussing, if applicable, the issue of separate sessions with the participants, a description of
1162 the circumstances in which the mediator may meet alone with any of the participants, or with
1163 any third party and the conditions of confidentiality concerning these separate sessions;
 - 1164 7. informing the participants that the presence or absence of other persons at a mediation,
1165 including attorneys, counselors or advocates, depends on the agreement of the participants and
1166 the mediator, unless a statute or regulation otherwise requires or the mediator believes that the
1167 presence of another person is required or may be beneficial because of a history or threat of
1168 violence or other serious coercive activity by a participant;
 - 1169 8. describing the obligations of the mediator to maintain the confidentiality of the mediation
1170 process and its results as well as any exceptions to confidentiality;
 - 1171 9. advising the participants of the circumstances under which the mediator may suspend or
1172 terminate the mediation process and that a participant has a right to suspend or terminate
1173 mediation at any time.
1174
- 1175
- 1176 B. The participants should sign a written agreement to mediate their dispute and the terms and conditions
1177 thereof within a reasonable time after first consulting the family mediator.
1178
- 1179 C. The family mediator should be alert to the capacity and willingness of the participants to mediate
1180 before proceeding with the mediation and throughout the process. A mediator should not agree to
1181 conduct the mediation if the mediator reasonably believes one or more of the participants is unable or
1182 unwilling to participate.
1183
- 1184 D. Family mediators should not accept a dispute for mediation if they cannot satisfy the expectations of
1185 the participants concerning the timing of the process.
1186

1187 **Standard IV**

1188
1189 **A family mediator shall conduct the mediation process in an impartial manner. A family mediator shall**
1190 **disclose all actual and potential grounds of bias and conflicts of interest reasonably known to the**
1191 **mediator. The participants shall be free to retain the mediator by an informed, written waiver of the**
1192 **conflict of interest. However, if a bias or conflict of interest clearly impairs a mediator's impartiality, the**
1193 **mediator shall withdraw regardless of the express agreement of the participants.**
1194

- 1195 A. Impartiality means freedom from favoritism or bias in word, action or appearance, and includes a
1196 commitment to assist all participants as opposed to any one individual.
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- 1198 B. Conflict of interest means any relationship between the mediator, any participant or the subject matter
1199 of the dispute that compromises or appears to compromise the mediator's impartiality.
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- 1201 C. A family mediator should not accept a dispute for mediation if the family mediator cannot be impartial.
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- 1203 D. A family mediator should identify and disclose potential grounds of bias or conflict of interest upon
1204 which a mediator's impartiality might reasonably be questioned. Such disclosure should be made prior
1205 to the start of a mediation and in time to allow the participants to select an alternate mediator.
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- 1207 E. A family mediator should resolve all doubts in favor of disclosure. All disclosures should be made as
1208 soon as practical after the mediator becomes aware of the bias or potential conflict of interest. The
1209 duty to disclose is a continuing duty.
1210
- 1211 F. A family mediator should guard against bias or partiality based on the participants' personal
1212 characteristics, background or performance at the mediation.
1213
- 1214 G. A family mediator should avoid conflicts of interest in recommending the services of other
1215 professionals.
1216
- 1217 H. A family mediator shall not use information about participants obtained in a mediation for personal
1218 gain or advantage.
1219
- 1220 I. A family mediator should withdraw pursuant to Standard IX if the mediator believes the mediator's
1221 impartiality has been compromised or a conflict of interest has been identified and has not been waived
1222 by the participants.
1223

1224 **Standard V**

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1226 **A family mediator shall fully disclose and explain the basis of any compensation, fees and charges to the**
1227 **participants.**
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- 1229 A. The participants should be provided with sufficient information about fees at the outset of mediation to
1230 determine if they wish to retain the services of the mediator.
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- 1232 B. The participants' written agreement to mediate their dispute should include a description of their fee
1233 arrangement with the mediator.
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- 1235 C. A mediator should not enter into a fee agreement that is contingent upon the results of the mediation or
1236 the amount of the settlement.
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- 1238 D. A mediator should not accept a fee for referral of a matter to another mediator or to any other person.
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- 1240 E. Upon termination of mediation a mediator should return any unearned fee to the participants.
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1242 **Standard VI**

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1244 **A family mediator shall structure the mediation process so that the participants make decisions based on**

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sufficient information and knowledge.

- A. 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.
- B. Consistent with standards of impartiality and preserving participant self-determination, a mediator may provide the participants with basic information that the mediator is qualified by training or experience to provide. The mediator shall not provide therapy or legal advice.
- C. The mediator should recommend that the participants obtain independent legal representation before concluding an agreement.
- D. If the participants so desire, the mediator should allow attorneys, counsel or advocates for the participants to be present at the mediation sessions.
- E. With the agreement of the participants, the mediator may document the participants' decisions in the form of a decision summary (vs. a legal agreement). The mediator should inform the participants that any decision summary or 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.

- 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 statutory, judicially or ethically mandated reporting.
- C. 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, and use standard exit planning strategies with the parties.
- D. 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.
- E. 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.

- A. The mediator should support the participants' exploration of 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 or an attorney may be appropriate for these purposes. The parties may be given the following list of topics for discussion (this is not an exhaustive list and there may be other topics):
 - 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

- 1302 taken to ameliorate the effects of conflict on the children;
- 1303 3. development of a parenting plan that covers the children's physical residence and decision-
- 1304 making responsibilities for the children, with appropriate levels of detail as agreed to by the
- 1305 participants;
- 1306 4. the possible need to revise parenting plans as the developmental needs of the children evolve
- 1307 over time; and
- 1308 5. encouragement to the participants to develop appropriate dispute resolution mechanisms to
- 1309 facilitate future revisions of the parenting plan.
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- 1311 B. The mediator should be sensitive to the impact of culture and religion on parenting philosophy and
- 1312 other decisions.
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- 1314 C. The local mediation administrator and/or the mediator shall inform any court-appointed representative
- 1315 for the children of the mediation. If a representative for the children participates, the mediator should,
- 1316 at the outset, discuss the effect of that participation on the mediation process and the confidentiality of
- 1317 the mediation with the participants. Whether the representative of the children participates or not, the
- 1318 mediator shall provide the representative with the resulting agreements insofar as they relate to the
- 1319 children.
- 1320
- 1321 D. Except in extraordinary circumstances, the children should not participate in the mediation process
- 1322 without the consent of both parents and the children's court-appointed representative if one exists.
- 1323
- 1324 E. Prior to including the children in the mediation process, the mediator should consult with the parents
- 1325 and the children's court-appointed representative about whether the children should participate in the
- 1326 mediation process and the form of that participation.
- 1327
- 1328 F. The mediator should inform all concerned about the available options for the children's participation
- 1329 (which may include personal participation, an interview with a mental health professional, the mediator
- 1330 interviewing the child and reporting to the parents, or a videotaped statement by the child) and discuss
- 1331 the costs and benefits of each with the participants.
- 1332

Standard IX

1333 **A family mediator shall recognize a family situation involving child abuse or neglect and take appropriate**

1334 **steps to shape the mediation process accordingly.**

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- 1338 A. As used in these Standards, child abuse or neglect is defined by applicable state law.
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- 1340 B. A mediator shall not undertake a mediation in which the family situation has been assessed to involve
- 1341 child abuse or neglect without appropriate and adequate training.
- 1342
- 1343 C. If the mediator has reasonable grounds to believe that a child of the participants is abused or neglected
- 1344 within the meaning of the jurisdiction's child abuse and neglect laws, the mediator shall comply with
- 1345 applicable child protection laws.
- 1346 1. The mediator should encourage the participants to explore appropriate services for the family.
- 1347 2. The mediator should consider the appropriateness of suspending or terminating the mediation
- 1348 process in light of the allegations.
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Standard X

1350 **A family mediator shall recognize a family situation involving domestic abuse and take appropriate steps**

1351 **to shape the mediation process accordingly.**

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- 1355 A. As used in these Standards, domestic abuse includes domestic violence as defined by applicable state
- 1356 law and issues of control and intimidation.
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- 1358 B. A mediator shall not undertake a mediation in which the family situation has been assessed to involve

1359 domestic abuse without appropriate and adequate training.

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1361 C. Some cases are not suitable for mediation because of safety, control or intimidation issues. A mediator
1362 should make a reasonable effort to screen for the existence of domestic abuse prior to entering into an
1363 agreement to mediate. The mediator should continue to assess for domestic abuse throughout the
1364 mediation process.
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1366 D. If domestic abuse appears to be present the mediator shall consider taking measures to insure the safety
1367 of participants and the mediator including, among others:
1368 1. establishing appropriate security arrangements;
1369 2. holding separate sessions with the participants even without the agreement of all participants;
1370 3. allowing a friend, representative, advocate, counsel or attorney to attend the mediation
1371 sessions;
1372 4. encouraging the participants to be represented by an attorney, counsel or an advocate
1373 throughout the mediation process;
1374 5. referring the participants to appropriate community resources;
1375 6. suspending or terminating the mediation sessions, with appropriate steps to protect the safety
1376 of the participants.
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1378 **Standard XI**

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1380 **A family mediator shall suspend or terminate the mediation process when the mediator reasonably**
1381 **believes that a participant is unable to effectively participate or for other compelling reason.**
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- 1383 A. Circumstances under which a mediator should consider suspending or terminating the mediation, may
1384 include, among others:
1385 1. the safety of a participant or well-being of a child is threatened;
1386 2. a participant has or is threatening to abduct a child;
1387 3. a participant is unable to participate due to the influence of drugs, alcohol, or physical or
1388 mental condition;
1389 4. the participants are about to enter into an agreement that the mediator reasonably believes to
1390 be unconscionable or violates public policy or law;
1391 5. a participant is using the mediation to further illegal conduct;
1392 6. a participant is using the mediation process to gain an unfair advantage;
1393 7. if the mediator believes the mediator's impartiality has been compromised in accordance with
1394 Standard IV.
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1396 B. If the mediator does suspend or terminate the mediation, the mediator should take all reasonable steps
1397 to minimize prejudice or inconvenience to the participants which may result.
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1399 **Standard XII**

1400 **A family mediator shall be truthful in the advertisement and solicitation for mediation.**

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1403 A. Mediators should refrain from promises and guarantees of results. A mediator should not advertise
1404 statistical settlement data or settlement rates.
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1406 B. Mediators should accurately represent their qualifications. In an advertisement or other
1407 communication, a mediator may make reference to meeting state, national or private organizational
1408 qualifications only if the entity referred to has a procedure for qualifying mediators and the mediator
1409 has been duly granted the requisite status.
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1411 **Standard XIII**

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1413 **A family mediator shall acquire and maintain professional competence in mediation.**

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1415 A. Mediators should continuously improve their professional skills and abilities by, among other

- 1416 activities, participating in relevant continuing education programs and should regularly engage in self-
1417 assessment.
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- 1419 B. Mediators should participate in programs of peer consultation and should help train and mentor the
1420 work of less experienced mediators.
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- 1422 C. Mediators should continuously strive to understand the impact of culture and diversity on the
1423 mediator's practice.
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**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.

- A. 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.
- B. 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.
- C. 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.

These Model Standards were developed by the Association for Conflict Resolution and were approved by the American Bar Association in February 2001.