

CENTER FOR MEDIATION & COLLABORATION RHODE ISLAND

**ETHICAL GUIDELINES AND
STANDARDS OF PRACTICE FOR MEDIATORS**

SEPTEMBER, 2006

PREFACE

The Center for Mediation & Collaboration Rhode Island (CMCRI) is a non-profit organization that provides mediation services and training to citizens of Rhode Island in the hopes of increasing peaceful resolution of conflicts.

The CMCRI Ethics Committee has reviewed organizational standards and has gathered input from practitioners, program administrators, educators and others to develop the CMCRI Ethical Guidelines and Standards of Practice for Mediators. These Guidelines and Standards are intended to guide mediators and dispute resolution providers of CMCRI.

PREAMBLE

Integrity is one of CMCRI's core values. This means we strive do the right thing and will act honestly, fairly, and in accordance with all laws applicable to our field. We will treat our colleagues and clients with the utmost respect and courtesy, deal with everyone fairly, and avoid conflicts of interest in personal and professional relationships.

As part of that commitment, the CMCRI Ethics Committee has prepared these "Ethical Guidelines and Standards Practice" as a guide for CMCRI mediators, trainers, and others affiliated with CMCRI to foster a strong ethical climate within the agency. These "Guidelines/Standards" have the full endorsement of CMCRI's Board of Directors and staff. The purpose of this document is to set forth the standards of practice and ethical guidelines which all employees and independent agents acting on behalf of CMCRI must follow. These Ethical Guidelines and Standards of Practice apply to anyone performing as a mediator on behalf of CMCRI, including volunteers and paid contract personnel.

The purposes of the CMCRI Ethical Guidelines and Standards of Practice for Mediators are to: provide model standards of conduct; inspire excellence in practice; guide mediation participants, educators and others in establishing ethical policies and practices for CMCRI's mediation program; provide a foundation for any mediation credentialing program that may be contemplated by specifying conduct that helps to define ethical, competent, appropriate and effective dispute resolution; and to promote public understanding and confidence in mediation.

In order for mediation to be effective, there must be broad public confidence in the integrity and fairness of the process. Every mediator bears the responsibility of conducting mediations in a manner that instills confidence in the process, promotes trust in the integrity and competence of mediators, and handles disputes in accordance with the highest ethical standards.

In applying these Standards to specific behavior, the context must always be considered. Context includes the social and cultural setting, the participant's relationship, the nature of the dispute, and any other factors that may help to determine an appropriate mediation process for the particular matter. A practice appropriate in one context may be inappropriate in another. These Standards of Practice are intended to apply across all types, styles and contexts of mediation.

To ensure adherence to these Ethical Guidelines and Standards of Practice, CMCRI has also established an Ethics Committee as it is recognized that these Standards will not address every situation that may be questionable. Therefore, it is important that every CMCRI volunteer/agent familiarize herself/himself with these Standards. Further, it is expected that all volunteers/agents will take affirmative steps to report potential or apparent violations of these Standards of Ethics and Practice, to staff of CMCRI or to any member of the Ethics Committee.

The Ethics Committee will convene on an ad hoc basis to issue opinions and/or resolve any ethical issues that should arise. The CMCRI Ethics Committee has created a process for determining whether the reported or observed conduct of a volunteer mediator is in violation of CMCRI's Ethical Guidelines and/or Standards of Practice. Any CMCRI staff member, volunteer or client who becomes aware of conduct by a CMCRI volunteer mediator that appears to be in violation of CMCRI's Ethical Guidelines and/or Standards of Practice may initiate a complaint concerning such conduct. The full complaint process established by the Ethics Committee is outlined in the attached document.

DEFINITIONS

Mediation – A process in which a neutral third person assists disputing parties to reach a mutually acceptable resolution.

Types of Mediation Approaches – Some examples of mediation approaches: “Facilitative” where the mediator works on assisting the parties to communicate and collaborate on their resolution; “Evaluative” where the mediator also provides an opinion as to the likely outcome of issues or of the entire dispute should it go to litigation or another adjudicative procedure.

Co-mediation – Two mediators mediating a case together.

Apprenticeship – A less experienced mediator who works under supervision before taking cases. Usually, an apprentice is allowed to observe but not participate in sessions.

Neutral Observer – A person or persons who, with the permission of the parties, observes the mediation session but does not participate.

Self-determination – The right of the parties to make their own un-coerced decisions regarding their case.

Voluntary participation in the process – The right of the parties to choose whether or not to participate in mediation.

Informed and voluntary decision-making by parties – The parties making a decision based on knowledge of the consequences of the decision and of any waiver of rights that may result.

Mediation advocate or legal representative – An individual who serves as an agent and advocate for the party, advising, counseling, and/or presenting the party's views. A representative does not make decisions on the party's behalf.

Neutrality – Freedom from bias relating to the issues in a mediation. It is generally recognized that absolute neutrality is impossible to achieve.

Impartiality – Freedom from favoritism and bias in word, action and appearance.

Mediator Conflict of Interest – A pre-existing relationship or a condition that might result in the mediator benefiting from a particular outcome of the mediation. A conflict of interest can be actual or perceived.

Confidentiality – What is said or produced in the session that the parties and/or the mediator agree not to reveal outside the mediation session. (Unless disclosure is mandatory under law).

Caucus – A private meeting between the mediator and one party and the party's representative.

Joint session – A meeting of the parties together with the mediator.

Mediation Provider Organization – Institution or organization offering, managing or administering mediation services (CMCRI).

ETHICAL GUIDELINES AND STANDARDS OF PRACTICE FOR MEDIATORS

I. VOLUNTARY PARTICIPATION AND SELF-DETERMINATION

Self-determination is the fundamental principle of mediation. It requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement. Any party may withdraw from mediation at any time.

COMMENTS:

- The mediator may provide information about the process, raise issues, and help parties explore options. The primary role of the mediator is to facilitate a voluntary resolution of a dispute. Parties shall be given the opportunity to consider all proposed options.
- A CMCRl mediator cannot personally ensure that each party has made a fully informed choice to reach a particular agreement, but it is a good practice for the mediator to make the parties aware of the importance of consulting other professionals, where appropriate, to help them make informed decisions.

II. IMPARTIALITY AND DISCLOSURE

CMCRl Mediator shall not mediate a matter in which he or she cannot do so without impartiality. A CMCRl Mediator should be committed to assisting all parties in an impartial manner. Parties may consent to use a Mediator's services after a disclosure of any known grounds which might reasonably raise a question about the Mediator's impartiality.

A. Disclosing Potential Partiality

A CMCRl Mediator should identify and disclose potential grounds upon which a mediator's impartiality might reasonably be challenged. Such disclosure should be made prior to the start of a mediation and in time to allow the parties to select an alternate mediator. Such disclosure should include the identification of any previous selection(s) as a neutral by any party during the prior three years ("Case Experience"), and any known current or past personal or professional relationship or affiliation with any participant which might reasonably raise a question as to the Mediator's impartiality ("Relationships").

A CMCRl 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 interest or relationship. The duty to disclose is a continuing obligation. A CMCRl Mediator should encourage each participant to make a similar effort to disclose any Case Experience or Relationships with the Mediator.

B. Dealing with Issues of Impartiality

Immediately upon becoming aware of any reasonable concern regarding the Mediator's impartiality, the Mediator should provide the participants with an adequate opportunity to explore the matter. If a party asks a Mediator to withdraw prior to the commencement of a mediation, or thereafter upon newly disclosed relationship information, the Mediator must do so. If a participant raises a question about a specific interest or relationship, the Mediator should proceed only after all participants consent.

If a CMCRI Mediator determines that an interest or relationship of his or hers casts doubt on the integrity of the process, or if the Mediator becomes incapable of maintaining impartiality, the Mediator shall withdraw. If the parties expressly request in writing that the Mediator continue to provide services despite the disclosure, the Mediator may elect to do so after consultation with CMCRI Executive staff.

C. Disclosures when a Neutral is to Use More than One Dispute Resolution Process

When more than one dispute resolution process is contemplated (e.g. med-arb), the neutral must clearly define the different procedures, define the neutral's role in each procedure, advise the participants of the consequences of revealing information during any one procedure, and obtain written consent to serve in a dual capacity. If the neutral has acted as a CMCRI Mediator, he or she should afford the parties an opportunity to select another neutral if they wish to engage in another process. The neutral must advise the participants when he or she is moving from one procedure to another.

D. A Mediator has a Continuing Duty to Disclose and Avoid Appearances of Partiality

A CMCRI Mediator shall not use the dispute resolution process to solicit, encourage or otherwise procure any other relationship with any participant. A Mediator shall not personally profit from, or otherwise exploit information acquired through mediation for personal gain. Without the consent of all parties, a CMCRI Mediator shall not establish a professional relationship with one of the parties, either during the mediation, or after the mediation for a period of three years in a related matter, or in an unrelated matter which would raise legitimate questions about the integrity of the mediation process. If a CMCRI Mediator is in doubt as to whether establishing certain professional relationships is appropriate, s/he shall bring the matter to the CMCRI Ethics Committee for an advisory opinion.

III. STANDARDS FOR CONDUCTING A MEDIATION

A CMCRI Mediator shall conduct mediation in an impartial and ethical manner by providing a balanced process in which each participant is given an opportunity to

participate. A CMCRI Mediator may encourage the participants to identify their interests and evaluate options for resolution in a collaborative, non-adversarial manner.

In an attempt to reach an informed, voluntary agreement, appropriate CMCRI Mediator behavior may include, but is not limited to, providing information about the process, addressing obstacles to communication, assisting the participants in defining the issues, providing impartial substantive information, exploring alternatives for resolution, and building the capacity of the parties to make an informed decision. Subject to duties of nondisclosure of confidential information, a Mediator is obligated to be truthful, and should allow participants the opportunity to consider all proposed options. A Mediator may terminate the mediation if, in the CMCRI Mediator's judgment, further discussions would be unproductive.

Mediation is not the practice of law. A CMCRI Mediator may generally discuss a party's options including a range of possible outcomes in an adjudicative process. A CMCRI Mediator should not give any participant legal or other professional advice, even if the CMCRI Mediator has legal educations and/or a license to practice law. A CMCRI Mediator should encourage participants without legal representation to seek independent legal advice before signing any legally binding agreement. If a CMCRI Mediator believes that the participants may not be capable of participating in informed negotiations, or if a CMCRI Mediator is asked for professional advice other than relating to the mediation process, the Mediator should suggest that the participants seek advice from appropriate resources. A mediator must disclose in writing any personal or financial interest or relationship if recommending the services of specific professionals.

If a CMCRI Mediator believes that the continuation of the process would harm any participant or a third party (such as children in a marital dissolution matter), or that the integrity of the process has been compromised, then the CMCRI Mediator shall inform the parties and shall discontinue the mediation, without violating the obligation of confidentiality.

IV. CONFIDENTIALITY

Confidentiality in Mediation is important to encourage all participants to speak truthfully and candidly, to enable a full exploration of issues in dispute, and to reach a complete and satisfactory resolution. Confidentiality is governed by law in Rhode Island General Laws § 9-19-44 as follows:

§ 9-19-44 Mediator confidentiality in mediation proceedings – (a) All memoranda and other work product, including files, reports, interviews, case summaries, and notes, prepared by a mediator shall be confidential and not subject to disclosure in any subsequent judicial or administrative proceeding involving any of the parties to any mediation in which the materials are generated; nor shall a mediator be

compelled to disclose in any subsequent judicial or administrative proceeding any communication made to him or her in the course of, or relating to the subject matter of, any mediation by a participant in the mediation process. For the purposes of this section, "mediation" shall mean a process in which an impartial third party who is a qualified mediator, who lacks authority to impose a solution, helps participants reach their own agreement for resolving a dispute, whether or not a judicial action has been filed; and a "mediator" shall mean an impartial person who enters into a written agreement with the parties to assist them in resolving their dispute and who has completed at least thirty (30) hours of training in mediation, or has two (2) years of professional experience as a mediator, or has been appointed to mediate by a judicial or governmental body.

A. Confidentiality of a Mediation.

A CMCRI Mediator shall preserve and maintain the confidentiality of all mediation proceedings except where required by law to disclose information. If a CMCRI Mediator or the law has established specific exceptions to the general rule of confidentiality, these exceptions must be disclosed to the participants prior to reaching an agreement to mediate. When case information is published or made public without the permission of all parties, a CMCRI Mediator shall render anonymous all identifying information. Further, no CMCRI case information and/or statistical data shall be published or made public without the express, written consent of the CMCRI Executive Director or her/his designee.

B. Confidentiality Within the Mediation Process.

If a CMCRI Mediator speaks privately with any participant(s) during the mediation, the Mediator shall first discuss with all participants his or her policy regarding confidentiality for individual communications with the participants. A CMCRI Mediator shall not disclose information to the other participants when confidentiality is requested.

C. Mediator Reporting.

The mediation process must rely upon the ability of the parties to reach a voluntary, un-coerced agreement. No mediator shall submit or threaten to submit to a court or other adjudicative body any report, assessment, evaluation, recommendation, or finding of any kind by the mediator concerning the mediation which that mediator conducted, unless all participants in the mediation expressly agree in writing to permit a broader report or statement. Where required by law or local court rule, reporting should be permitted only as to whether the parties did or did not fully resolve their dispute, unless all participants expressly agree otherwise.

V. **COMPETENCE**

Measurement of CMCRI Mediator competence should be based upon dispute resolution training, experience and performance. Mediator competence is not defined by academic degrees or professional licenses. If asked by any participant, a Mediator should provide to all participants information on his or her mediation training, education, and mediation experience, as well as the guidelines proposed for the mediation.

A CMCRI Mediator shall mediate only when he or she has the necessary skills to satisfy the reasonable expectations of the parties. A CMCRI Mediator should possess the skills, knowledge and ability to adapt to the context of the dispute, facilitate communication, assist the parties in developing options, and discuss alternatives with participants. A CMCRI Mediator should possess the awareness and experience to assess when he or she (a) is unable to render adequate mediation services, or (b) cannot meet the participants' reasonable expectations. In those cases, the CMCRI Mediator should decline the engagement or withdraw from the mediation.

Every CMCRI Mediator is personally responsible for his or her professional growth. A CMCRI Mediator should endeavor to continually improve and increase his or her knowledge about the practice of mediation and developments in relevant substantive fields through continuing education, consultation, peer review, and user feedback.

Assessing effective mediation should be a shared responsibility among practitioners, professional organizations, educators, programs and participants. No assessment should be limited to a single mode such as resolution rates.

VI. COMPENSATION AND PROHIBITED PRACTICES

CMCRI is a non-profit organization who utilizes primarily volunteer mediators to provide services. As a general rule, CMCRI mediators serve without compensation, although there may be exceptions to this rule on occasion. It is recognized that many of CMCRI's volunteer mediators also have private mediation practices. CMCRI mediators may not solicit mediation clients for their private mediation practice while performing in their capacity as a volunteer CMCRI mediator.

CMCRI Mediators shall be truthful and accurate in marketing mediation services and shall not promise nor guarantee results.

Except for occasional fees directly related to mediation services provided, a Mediator must not solicit, accept or exchange any fee, gift or favor of significant value with any participant or their affiliate in any pending, scheduled or concluded mediation for a period not less than three (3) years. A Mediator must use

judgment that reflects the high ethical standards the field requires. Any questions regarding compensation and/or prohibited practices shall be promptly referred to the CMCRI Ethics Committee for resolution.

VII. ENFORCEMENT OF STANDARDS

The Staff and Board of Directors of the Community Mediation Center of Rhode Island (CMCRI) have the primary duty and responsibility to protect the integrity of the Center and to protect the clients we serve. As stated, the CMCRI Ethics Committee has created a process for determining whether the reported or observed conduct of a mediator is in violation of CMCRI's Ethical Guidelines and/or Standards of Practice. Such violations may result in the suspension or termination of the mediator.