

## Standards of Practice

### Ontario Association for Family Mediation Code of Professional Conduct

*Approved June 3, 1986*

*Revised June 5, 1987*

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This replaces the Codes of Ethics/Codes of Professional Conduct approved June 3/86 and revised June 5/87.

The following Standards of Practice are intended to govern the relations of family mediators with their clients, their professional colleagues, and the general public so that all will benefit from high standards of practice in family mediation.

For the purposes of this Standards of Practice summary, family mediation is defined as a voluntary, non-adversarial process in which a qualified and independent third party (the mediator) assists family members to resolve their disputes. Family Mediation does not include arbitration.

## Competence

It is the obligation of anyone acting as a family mediator to ensure that he or she is fully qualified to deal with the specific issues involved.

- a. Family mediators come from a variety of professional backgrounds (with a diversity of education and training), and are obligated to refrain from rendering services outside the limits of the family mediator's qualifications, education and experience.
- b. Family mediators shall engage in continuing education to ensure that their mediation knowledge and skills are current.
- c. In the event that any party expresses dissatisfaction with the impartiality of the mediator, then it is the duty of the mediator to advise the parties of their right to terminate the process.
- d. The mediator must disclose any known prior involvement with a party either directly or through his or her partners or associates. Mediation may only proceed following such disclosure with the express written consent of all the parties.
- e. Following the conclusion of the mediation, the mediator shall remain available as a neutral to assist the parties in the future and shall therefore refrain from assisting the parties in any other capacity without the express written consent of the parties.

## Duty of Confidentiality

The mediator shall not voluntarily disclose to anyone who is not a party to the mediation any information or documents obtained through the mediation process except:

- a. non-identifying information for research or education purposes;  
or
- b. upon the written consent of all the parties to the mediation

- contract, which includes the mediator; or
- c. when ordered by the court or required by law; or
  - d. when the information discloses an actual or potential threat to human life or safety.

The mediator has an obligation to report to the Children's Aid Society when he/she has a reasonable belief that a child is in need of protection.

An Agreement to Mediate shall be signed by the mediator. The mediator shall comply with the terms of confidentiality contained in the signed Agreement to Mediate.

The mediator shall inform the parties of any limits to confidentiality in relation to the process, including information received in intake, caucuses and break-out meetings.

The mediator shall maintain confidentiality in the storage and dispersal of mediation notes, records and files, both paper and electronic, and other provisions of the Privacy Act.

## **Impartiality and Procedural Fairness**

1. The mediator has a duty to be impartial with respect to the issues to be mediated.
2. The mediator shall assist the parties to make informed decisions recognizing that client self-determination is a fundamental principle of mediation.
3. The mediator has a duty to procedural fairness
4. In the event that any party expresses dissatisfaction with the impartiality of the mediator, then it is the duty of the mediator to advise the parties of their right to terminate the process.
5. The mediator must disclose any known prior involvement with a

party either directly or through his or her partners or associates. Mediation may only proceed following such disclosure with the express written consent of all the parties.

6. Following the conclusion of the mediation, the mediator shall remain available as a neutral to assist the parties in the future and shall therefore refrain from assisting the parties in any other capacity without the express written consent of the parties.

## **Agreement to Mediate**

The mediator has a duty to explain the mediation process clearly to the participants before they sign an agreement to mediate. The mediator shall not proceed to mediate without a signed Agreement to Mediate.

As a minimum, the Agreement to Mediate shall:

- a. Outline the confidentiality of the mediation process in particular that all statements made or documents produced in mediation are for the purpose of settlement and cannot be disclosed or provided to a court or arbitrator.
- b. Define whether the mediation is open or closed.
- c. Include the right for any party, including the mediator, to suspend or terminate the process at anytime.
- d. Set out disclosure requirements.
- e. Acknowledgement by the parties that they have been advised to seek independent legal advice with respect to the issues to be mediated.
- f. Outline the costs associated with the mediation services.
- g. Highlight the mediator's specific procedures and practices, including the right of any party to request an individual, joint or

shuttle meeting.

## **Information, Disclosure and Advice**

1. It is the duty of a mediator to encourage the participants to make decisions based upon sufficient information, knowledge and advice.
2. Every family mediator has an ongoing obligation to advise participants of the desirability and availability of independent legal advice. While neutral legal information may be made available to the parties, each should be encouraged to obtain legal advice. Where financial or property issues are involved, the mediator shall include in the Agreement to Mediate a requirement that the parties shall make frank and full disclosure of their financial and related circumstances.

## **Independent Legal Advice**

It is the obligation of every family mediator to advise clients:

- a. of the availability of independent legal advice for each spouse;
- b. of the advisability of obtaining it from the outset of the mediation;
- c. to obtain independent legal advice prior to signing the mediated agreement.

## **Duty to Minimize Harm or Prejudice to Participants**

It is the obligation of the mediator to suspend or terminate mediation whenever continuation of the process would harm or prejudice one or more of the participants.

- a. The mediator shall suspend or terminate mediation where either of the parties is unwilling or unable to effectively participate in the process.
- b. The mediator shall suspend or terminate mediation when its usefulness is exhausted.
- c. If the mediator has suspended or terminated the process, he or she may suggest that the participants obtain appropriate professional services.
- d. If the mediator in good conscience, cannot support the agreement reached by the parties, he or she will so advise the participants and may terminate the mediation process without issuing a report.
- e. Notwithstanding impartiality, the mediator has the duty to promote the best interests of the children and to assist the parents to examine the separate and individual needs of each child.

**I confirm that I have read and will adhere to the OAFM Standards of Practice:**

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_