

Standards of Practice for Postal Service Mediations

Introduction

Purpose of the Standards

The purpose these standards is to provide a guide for mediators when mediating Postal Service disputes. These standards are intended to be instructional and to provide assistance when mediators are faced with ethical dilemmas. These standards are drawn from several existing codes, particularly the code developed by Professor Robert A. Baruch Bush in his *The Dilemmas of Mediation Practice — A Study of Ethical Dilemmas and Policy Implications*, and the code developed jointly by the American Arbitration Association and the Society of Professionals in Dispute Resolution in their “Model Standards of Conduct for Mediators”

The Mediation Process and the Mediator’s Role

Mediation is a process in which an impartial third party with no decision-making authority or power to impose a resolution works with the disputing parties to help them explore, and if possible reach, a mutually acceptable resolution of some or all of the issues in dispute.

The mediator’s role is (1) to encourage and assist the parties in deciding whether and how to resolve their dispute and (2) to promote the parties’ mutual understanding of each other’s positions, interests, and perspectives, despite their conflict.

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Standard I: Competency

Mediators shall maintain professional competency in mediation skills and, where lacking the skills necessary for a particular case, shall decline to serve or withdraw from serving as mediator.

Comments:

- Mediators must meet the Postal Service's criteria before mediating a Postal Service case.¹
- The Postal Service maintains the right to require mediators to have subject matter expertise prior to mediating certain disputes.
- Mediators should maintain and upgrade skills and substantive training, appropriate to their areas of practice.
- Mediators should disclose to the parties the limits of their skills or substantive expertise wherever this may be relevant to the handling of the case.
- Beyond disclosure, a mediator should exercise their own judgment regarding whether their skills or expertise are sufficient to the demands of the case and, if they are not, should decline to serve (or, if the case has begun, withdraw from serving) as the mediator.

¹ See document entitled "Minimum Criteria for Mediating Postal Service Disputes."

Standard II: Impartiality

Mediators shall, in word and action, maintain impartiality toward the parties and the issues in the dispute, and where their impartiality is in question, decline to serve or withdraw from serving as mediator.

Comments:

- The concept of impartiality is central to the mediation as it directly affects a mediator's ability to facilitate a neutral and balanced process.
- *Impartiality* means absence of favoritism or bias — i.e., expressed sympathy or antipathy — toward any party or any position taken by a party to a mediation. In addition, it means a commitment to aid all parties, as opposed to a single party, in exploring the possibilities for resolution.
- To ensure not only the fact but the appearance of impartiality, a mediator is obligated to disclose to the parties, at the earliest moment, any conflicts of interest, any present or prior relationship, personal or professional, between the mediator and any party or party representative.
- A mediator is obligated to decline to serve (or, if the case has begun, withdraw from serving) as mediator, if:
 1. as a result of disclosure of relationship, any party (or representative) objects to the mediator's serving;
 2. the mediator's own judgment is that a relationship with a party will compromise impartiality, or appear to do so, even after full disclosure to the parties; or
 3. the mediator or any party believes that, apart from relationships, the fact or appearance of impartiality is compromised, either by the mediator's personal reaction to any party (or party position) or by the mediator's background and experience.

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- A mediator should make every effort not to show partiality or prejudice based on a party's behavior, appearance, or actions at the mediation.
- A mediator should exercise discretion, and due regard for the appearance of impartiality, in establishing new relationships with parties to past mediations.

Standard III: Confidentiality

Mediators shall, subject to statutory obligations to the contrary, meet the reasonable expectations of the parties regarding the confidentiality of all communications made within the mediation process.

Comments:

- Apart from statutory or regulatory duties to report certain kinds of information, a mediator is obligated not to disclose to a nonparty, directly or indirectly, any information communicated to the mediator by a party to the mediation process.
- Where a case is referred to mediation from any agency, a mediator must limit the information given to the referring agency to the sole fact of whether or not a settlement was reached.
- Absent statutory or regulatory duties, a mediator must not disclose, directly or indirectly, to any party to a mediation, information communicated to the mediator in confidence by any other party, unless that party gives permission to do so.
- Where confidential information from one party might, if known to the other party, change the second party's decision about whether to accept or reject certain terms of settlement, a mediator should encourage the first party to permit disclosure of the information; but absent such permission, the mediator must not disclose it.
- The mediator cannot ensure the confidentiality of statements parties make to each other or any other memoranda, documents, and other tangible evidence shared during the mediation.

Standard IV: Consent

Mediators shall make reasonable efforts to ensure that all parties understand the mediation process and the options available to them and that the parties are free and able to make whatever choices they desire regarding participation in mediation generally or specific settlement options.

Comments:

- A mediator is obligated to explain the mediation process to the parties, including the role and function of the mediator, and to inform the parties of their right to refuse any offer of settlement and to withdraw from mediation at any time and for any reason. This obligation continues throughout the mediation of any case.
- A mediator is obligated to avoid exerting undue pressure on a party — whether to participate in mediation or to accept a settlement. Nevertheless, a mediator may and should encourage parties to consider both the benefits of participation and settlement and the costs of withdrawal and impasse.
- Where a party appears to be acting under coercion or fear, or without capacity to comprehend the process, issues, or options for settlement, the mediator must explore the circumstances with the party and, unless the party objects, discontinue the mediation. If the party insists on continuing, the mediator may do so, but should continue to raise the question and check for willingness to proceed.

Standard V: Self-Determination

A mediator shall respect and encourage self-determination by the parties in their decision to resolve their dispute, and on what terms, and shall refrain from being directive and judgmental regarding the issues in dispute and options for settlement.

Comments:

- Mediators must leave to the parties full responsibility for deciding whether, and on what terms, to resolve their dispute. The mediator may and should assist them in making informed and thoughtful decisions, but should never substitute their personal judgment for that of the parties, with regard to any aspect of the mediation.
- Subject to the above, and Standard VI below, mediators must raise questions for the parties to consider regarding the acceptability, sufficiency, and feasibility, for all sides, of proposed options for settlement — including their impact on affected third-parties. Furthermore, the mediator may make neutral suggestions for the parties' consideration. However, at no time are mediators allowed to make decisions for the parties, or directly express their opinion about or advise for or against any proposal under consideration.
- Subject to Standard VI below, if a party to mediation declines to consult an attorney or counselor after the mediator has raised this option, the mediator is obligated to permit the mediation to go forward according to the party's wishes.
- If in the mediator's informed judgment an agreement desired by the parties is an agreement that could not be enforced because of illegality, substantive unconscionability, or any other reason, the mediator is obligated to so inform the parties. If the parties insist on that agreement, the mediator must

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discontinue the mediation in such circumstances, but should not violate the obligation of confidentiality.

Standard VI: Separation of Mediation Ethical Standards of Practice From Counseling and Legal Advice

Mediators shall limit themselves solely to the role of mediator, and shall refrain from giving legal or therapeutic information or advice and otherwise engaging in counseling or advocacy during mediation.

Comments:

- Mediators may, in areas where they are qualified by training and experience, raise questions regarding the information presented by the parties in the mediation session, including information about the law.
- Even in areas where a mediator is qualified by professional training and experience, a mediator is never allowed to offer professional advice² to the parties or express a professional or personal opinion on an issue or option for settlement, but may offer relevant legal information.
- When a mediator believes a party is acting without adequate information or advice on legal or psychological aspects of the issues presented, the mediator must raise the option of obtaining independent expert advice prior to resolving the issues, and must afford the parties the opportunity to do so.
- Mediators must limit their role to that of mediator, and must never assume the role of advocate for either party's interests or provide counseling or therapy to either party during the mediation process.

² Professional advice includes, but is not limited to, financial or legal advice or counseling or therapy

Standard VII: Promotion of Respect and Control of Abuse

Mediators shall encourage mutual respect between the parties, and shall take reasonable steps, subject to the principle of self-determination, to limit abuse of the mediation process.

Comments:

- At the outset of mediation, a mediator should remind the parties that they are agreeing to participate in good faith. Mediators are obligated to make reasonable efforts not only to ensure a balanced dialogue and prevent manipulation or intimidation by either party, but also to encourage each party to understand and respect the concerns and positions of the other, even if they cannot agree.
- Where a mediator discovers an intentional abuse of the process, such as nondisclosure of vital information or lying, the mediator is obligated to encourage the abusing party to alter the conduct in question. The mediator is not obligated to reveal the conduct to the other party, nor to discontinue the mediation, but the mediator may discontinue, so long as this does not violate the obligation of confidentiality.

Standard VIII: Conflicts of Interest

A mediator shall, as far as possible, avoid conflicts of interest, and, in any event shall resolve all such conflicts in favor of his primary obligation to impartially serve the parties to the dispute.

Comments:

- A mediator who is a lawyer must not advise or represent either of the parties in future proceedings concerning the subject matter of the dispute; and a mediator who is a therapist must not provide future therapy to either of the parties or both of them regarding the subject matter of the dispute.

A mediator must not give or receive any commission, rebate, or other monetary or nonmonetary form of consideration in return for referral of clients for postal mediation services.