

A GUIDE FOR FEDERAL EMPLOYEE MEDIATORS

PUBLIC COMMENTS AND RESPONSES

Comments on the Guide for Federal Employee Mediators (“Guide”) were received from two individuals. The following presents those comments and the responses thereto – that is, how they were reflected within the final version of the Guide.

(1) Commenter #1

In the A Guide for Federal Employee Mediators, at the top of page 6 it provides that "Government ethics regulations prohibit the solicitation and receipt of gifts, and this includes the gift of travel."

Does this mean that if a mediator who was employed by Agency A and was going to do a mediation for Agency B, the mediator could not accept reimbursement of any travel expenses from Agency B? (This question assumes that the mediator incurred travel expenses for the mediation, and such expenses were not being reimbursed to him by his employer, Agency A).

Response: Although reference to the prohibition regarding travel “gifts” was not intended to apply to travel expense reimbursement in connection with performing mediation services, the Guide’s Federal Guidance Note 2 following Standard II, Impartiality, has been revised to insert an appropriate clarification.

(2) Commenter #2

Add in Standard I, paragraph A.1.: A mediator may offer a party his or her evaluation of that party's position as a means of assisting that party to realistically assess the party's position.

[This is addressed in the Federal Guidance Note to Standard III, but it should be in a Standard.](#)

Response: The Guide includes the AAA/ABA/ACR Standards in their entirety, *i.e.*, in the precise form approved by the three issuing organizations **without revision**, and then goes on to supplement and annotate the Standards with Federal Guidance Notes aimed at tailoring the Standards to unique aspects of federal mediator practice. This was done, first, because the Interagency ADR Working Group Steering Committee has no authority to revise the language of Standards issued by the three non-governmental organizations.

Secondly, the Standards were maintained in their original form and segregated from the Federal Guidance Notes, so that those using the Guide would be able to distinguish between the two and know the source of specific language. The language of the Federal Guidance Note following Standard III, Conflicts of Interest, referenced in this comment, reads as follows:

Depending on the policies of their sponsoring program and the desires of the parties, federal employee mediators may offer evaluation of, for example, the strengths and weaknesses of positions, the value and cost of alternatives to settlement or the barriers to settlement (collectively referred to as evaluation) only if such evaluation does not interfere with the mediator's impartiality or the principle of self-determination of the parties.

Although this language is considered properly included as part of that Federal Guidance Note – which addresses limitations with respect to the role of the mediator, in terms of potential conflicts of interest, the commenter's apparent concern about that role being unduly limited in connection with the Self-Determination Standard (Standard I) is a legitimate concern. Accordingly, appropriate language has been inserted within a new paragraph 3 of the Federal Guidance Notes following Standard I as well, in order to address this concern. A cross-reference to that new paragraph has also been inserted within the Federal Guidance Note following Standard III.