

Montana Mediation Association Standards of Practice: Mediator Qualifications for Full Membership

These Standards of Practice are intended for all mediators considered “Full Members” of the Montana Mediation Association (MtMA). These qualifications are considered basic in training content and skills, and presuppose a solid foundation of competencies gained through training, observation, practice, supervision, experience and continuing education.

Once a mediator learns skills through effective training, those skills become the groundwork for the development of mediator competencies. Competencies, such as maintaining neutrality, balancing power, being sensitive to cultural values, controlling the process and practicing within one’s competencies, are difficult to measure.

This document is designed to set forth the minimum skills, training and experience and competencies for a mediator.

These Standards are recommended for all mediators with the exception of those mediators whose functions are already recognized and prescribed in statutes, in executive, judicial or administrative rule, or through qualifications established by executive branch agencies providing mediation assistance. Family mediators, although currently recognized by statute, are intended to be included in these Standards.

MtMA requires “Full Members”:

- (1) to have effective communication skills;
- (2) to be trained in “basic” mediation skills;
- (3) to have had observations of mediations, mentoring/consultations, supervised mediations, co-mediation and solo-mediation experience;
- (4) to have continuing educational experiences annually;
- (5) to ascribe to MtMA Ethical Guidelines for Full Members;
- (6) to fulfill the additional requirements for specialized practice.

(1) COMMUNICATION SKILLS

Mediators must have effective communication skills.

(2) MEDIATION TRAINING CONTENT AND SKILLS

Training content for “full members” will consist of the following:

- (a) A minimum of 40 hours/5 working days of mediation training, or its equivalent*, to include:
 - Ethics (minimum of 2 hours)
 - Principles and Philosophy of Mediation
 - Mediation Fundamentals
 - Skills
 - Role Play
 - Conflict Theory
 - Assessment - External Evaluation

OR

- (b) A minimum of 24 hours/3 working days of mediation training, or its equivalent*, and participation in a community mediation program which includes the following supervised experience:

Observation:

A minimum of at least 3-4 mediations and post-mediation briefings.

Co-Mediation or Supervised Mediation:

A minimum of at least 5 mediations and post-mediation briefings.

(3) EXPERIENCE

After training, experience shall consist of the following:

Observation:

A minimum of 8 hours to include observation of at least two mediations and post-mediation briefings conducted by a minimum of at least two Full Members approved by the MtMA Qualifications Committee.

Co-Mediation or Supervised Mediation:

A minimum of 8 hours participation in at least 2 supervised or co-mediations and post-mediation briefings with a Full Member approved by the MtMA Training Committee; and

Mentoring/Consultation:

A minimum of 5 hours mentoring/consultation with a Full Member approved by the MtMA Training Committee, preferably regular consults and debriefings with said mentor.

The foregoing experience is to be completed within one year of completion of Basic Mediator Training.

(4) CONTINUING EDUCATION

MtMA requires a minimum of 15 hours per year of continuing education in mediation, conflict resolution and related topics. This may include workshops, reading, peer consultation, video or audio tape review, and lecture as well as a mentoring component.

(5) MtMA ETHICAL STANDARDS

The MtMA Ethical Guidelines for Full Members is a separate document.

(6) TRAINING AND EDUCATIONAL REQUIREMENTS FOR SPECIALIZED PRACTICE

The qualifications for specialized practice, such as family mediation, are contained in separate documents.

***EQUIVALENCY**

In exceptional cases, applicants may be admitted for Full Membership upon their request to submit alternative training or experience or to have a requirement waived. This will be considered when the applicant has demonstrated an exceptional and long term commitment, competency and involvement in the field of mediation. A review of the applicant's competency may include direct or recorded observation. Such exceptions shall be reviewed on a case by case basis by the Qualifications Committee and shall be approved by a consensus of the full Board of Directors.

COMPETENCIES

Some of the competencies we expect a practicing mediator to have and for which we do not have the ability to measure. We can only assume these will be gained through the above training, observation, practice, supervision/mentoring, experience and continuing education:

Information Gathering:

Intake, screen, conflict assess, fact find, identify issues, explore interests, deal with complex factual situations, and track information.

Relationship Skills:

Have empathy, build rapport, establish trust, maintain neutrality, listen sympathetically, question appropriately, recognize and handle power imbalances, function as a fulcrum to achieve equity for the disputants.

Communication Skills:

Listen “actively”, paraphrase, reframe, question, clarify, identify areas of common ground.
Advanced skills include: guide, use neutral language, understand nonverbal communication.

Problem Solving Skills:

Identify, analyze, prioritize, deconstruct and brainstorm potential solutions to issues, collect data, frame issues, “reality test” the consequences of proposed solutions to issues, identify areas of agreement and disagreement, and identify and explore other alternatives (where do we go from here?) if mediation is unsuccessful.

Interaction and Conflict Management:

Reduce tensions, balance power, refocus, confront, strategize, caucus, empower, redirect, handle strong emotions, and control the process.

Professional Skills:

Write a lucid, coherent, specific and balanced agreement or memorandum of understanding; know and keep current with applicable laws; know the institutional context (i.e. for family mediators: the court system, laws and legal procedure for divorce and parenting plans); know mediator’s responsibility; answer questions concerning the processes of mediation, arbitration, adjudication, and counseling intelligently; work with other professionals.

Ethics/Values:

Be sensitive to parties’ cultural values; be honest and nonjudgmental; have respect for the mediation process; have respect for the parties’ rights to self-determination and empowerment, respect for the individual’s responsibility for her/himself, and respect for the importance of the individual’s participation; abide by the MtMA’s Standards of ethical practice; practice within one’s competency; know appropriate resources; have appropriate boundaries both within the mediation process and beyond; be conscious of and practice neutrality, confidentiality, voluntarism and empowerment.

Self Knowledge:

Have an aware, secure self concept, a sense of humor, patience, emotional stability; have the ability to handle high degrees of conflict; know one’s boundaries and competencies; be able to accept feedback and self-correct (learn from one’s experiences); be able to attend well to other’s needs without projection of own biases or hidden agendas; have empathy and compassion, neutrality and impartiality, and attentiveness; have life skills and common sense (“grey-hair factor”).

MONTANA MEDIATION ASSOCIATION STANDARDS OF PRACTICE

ETHICAL GUIDELINES FOR FULL MEMBERS

Introduction

It is recognized that MtMA members resolve disputes in various sectors within the disciplines of dispute resolution and have their own codes of professional conduct. These standards have been developed as general guidelines of practice for neutral disciplines represented in MtMA membership. Ethical considerations relevant to some, but not to all, of these disciplines are not covered by these standards.

General Responsibilities

Neutrals have a duty to the parties, to the profession, and to themselves. They should be honest and unbiased, act in good faith, be diligent, and not seek to advance their own interests at the expense of their parties'.

Neutrals must act fairly in dealing with the parties, have no personal interest in the terms of the settlement, show no bias toward individuals and institutions involved in the dispute, be reasonably available as requested by the parties, and be certain that the parties are informed of the process in which they are involved.

Responsibilities to the Parties

1. **Impartiality.** The neutral must maintain impartiality toward all parties. Impartiality means freedom from favoritism or bias either by word or by action, and a commitment to serve all parties as opposed to a single party. A neutral shall disclose any biases or strong views related to the issues presented.

2. **Informed Consent.** The neutral has an obligation to assure that all parties understand the nature of the process, the procedures, the particular role of the neutral, and the parties' relationship to the neutral.

3. **Confidentiality.** Maintaining confidentiality is critical to the dispute resolution process. Confidentiality encourages candor, a full exploration of the issues, and a neutral's acceptability. There may be some types of cases, however, in which confidentiality is not protected. In such cases, the neutral must advise the parties, when appropriate in the dispute resolution process, that the confidentiality of the proceedings cannot necessarily be maintained. Except in such instances, the neutral must resist all attempts to cause him or her to reveal any information outside the process. A commitment by the neutral to hold information in confidence within the process also must be honored. A neutral shall inform participants of any circumstances wherein he/she is compelled by law or regulation to report to appropriate authorities information about spousal or child abuse, neglect or abandonment, or criminal activity. A neutral may report any conduct to the appropriate authorities if the possibility of such a reporting has previously been disclosed to the participants in writing.

4. **Conflict of Interest.** The neutral must refrain from entering or continuing in any dispute if he or she believes or perceives that participation as a neutral would be a clear conflict of interest and any circumstances that may reasonably raise a question as to the neutral's impartiality. The duty to disclose is a continuing obligation throughout the process.

5. **Promptness.** The neutral shall exert every reasonable effort to expedite the process.

6. **The Settlement and Its Consequences.** The dispute resolution process belongs to the parties. The neutral has no vested interest in the terms of a settlement, but must be satisfied that agreements in which he or she has participated will not impugn the integrity of the process. The neutral has a responsibility to see that the parties consider the terms of a settlement. If the neutral is concerned about the possible consequences of a proposed agreement, and the needs of the parties dictate, the neutral must inform the parties of that concern. In adhering to this standard, the neutral may find it advisable to educate the parties, to refer one or more parties for specialized

advice, or to withdraw from the case. In no case, however, shall the neutral violate Section 3, Confidentiality, of these standards.

Unrepresented Interests

The neutral must consider circumstances where interests are not represented in the process. The neutral has an obligation, where in his or her judgment the needs of parties dictate, to assure that such interests have been considered by the principal parties.

Use of Multiple Procedures

The use of more than one dispute resolution procedure by the same neutral involves additional responsibilities. Where the use or more than one procedure is initially contemplated, the neutral must take care at the outset to advise the parties of the nature of the procedures and the consequences of revealing information during any one procedure which the neutral may later use for decision making or may share with another decision maker. Where the use of more than one procedure is contemplated after the initiation of the dispute resolution process, the neutral must explain the consequences and afford the parties an opportunity to select another neutral for the subsequent procedures. It is also incumbent upon the neutral to advise the parties of the transition from one dispute resolution process to another.

Background and Qualifications

A neutral should accept responsibility only in cases where the neutral has sufficient knowledge regarding the appropriate process and subject matter to be effective. A neutral has a responsibility to maintain and improve his or her professional skills. A neutral's education, training and experience to act in a matter should be accurately described to the participants.

Disclosure of Fees

It is the duty of the neutral to explain to the parties at the outset of the process the bases of compensation, fees, and charges, if any.

Support of the Profession

The experienced neutral should participate in the development of new practitioners in the field and engage in efforts to educate the public about the value and use of neutral dispute resolution procedures. The neutral should provide *pro bono* services, where appropriate.

Responsibilities of Neutrals Working on the Same Case

In the event that more than one neutral is involved in the resolution of a dispute, each has an obligation to inform the others regarding his or her entry in the case. Neutrals working with the same parties should maintain an open and professional relationship with each other.

Advertising and Solicitation

A neutral must be aware that some forms of advertising and solicitations are inappropriate and in some conflict resolution disciplines, such as labor arbitration, are impermissible. All advertising must honestly represent the services to be rendered. No claims of specific results or promises which imply favor of one side over another for the purpose of obtaining business should be made. No commissions, rebates, or other similar forms of remuneration should be given or received by a neutral for the referral of clients.