Overview and Definitions

Family and divorce mediation (“family mediation” or “mediation”) is a process in which a mediator, an impartial third party, facilitates the resolution of family disputes by promoting the participants’ voluntary agreement. The family mediator assists communication, encourages understanding and focuses the participants on their individual and common interests. The family mediator helps the participants to explore options, make decisions and reach their own agreements.

Family mediation is neither a substitute for the need for family members to obtain independent legal advice or counseling or therapy, nor is it appropriate for all families. However, experience has established that family mediation is a valuable option for many families because it can:

(A) Increase the self-determination of participants and improve their ability to communicate;

(B) Promote the best interests of children; and

(C) Reduce the economic and emotional costs associated with the resolution of family disputes.

Effective mediation requires that the family mediator be qualified by training, experience and temperament; that the mediator be impartial; that the participants reach their decisions voluntarily; that their decisions be based on sufficient factual data; that the mediator be aware of the impact of culture and diversity issues that impact the mediation process; and that the best interests of children be taken into account. Further, the mediator should also be prepared to identify families whose history includes domestic abuse or child abuse.

These Model Standards of Practice for Family and Divorce Mediation (“Model Standards”) aim to perform three major functions:

(A) To serve as a guide for the conduct of family mediators;

(B) To inform the mediating participants of what they can expect; and
To promote public confidence in mediation as a process for resolving family disputes.

The Model Standards are aspirational in character. They describe good practices for family mediators. They are not intended to create legal rules or standards of liability.

The Model Standards include different levels of guidance:

Use of the term “may” in a Standard is the lowest strength of guidance and indicates a practice that the family mediator should consider adopting but which can be deviated from in the exercise of good professional judgment.

Most of the Standards employ the term “should” which indicates that the practice described in the Standard is highly desirable and should be departed from only with very strong reason.

The term “shall” in a Standard is a higher level of guidance to the family mediator, indicating that the mediator should not have discretion to depart from the practice described.

**Standard I**

*A family mediator shall recognize that mediation is based on the principle of self-determination by the participants.*

(A) Self-determination is the fundamental principle of family mediation. The mediation process relies upon the ability of participants to make their own voluntary and informed decisions.

(B) The primary role of a family mediator is to assist the participants to gain a better understanding of their own needs and interests and the needs and interests of others and to facilitate agreement among the participants.

(C) A family mediator shall inform the participants that they may seek information and advice from a variety of sources during the mediation process.

(D) A family mediator shall inform the participants that they may withdraw from family mediation at any time and are not required to reach an agreement in mediation.
(E) The family mediator’s commitment shall be to the participants and the process. Pressure from outside of the mediation process shall never influence the mediator to coerce participants to settle.

Standard II

_A family mediator shall be qualified by education and training to undertake the mediation._

(A) To perform the family mediator’s role, a mediator should:

(1) have knowledge of family law;

(2) have knowledge of and training in the impact of family conflict on parents, children and other participants, including knowledge of child development, domestic abuse and child abuse and neglect;

(3) have education and training specific to the process of mediation; and

(4) Be able to recognize the impact of culture and diversity.

(B) Family mediators shall provide information to the participants about the mediator’s relevant training, education and expertise.

Standard III

_A family mediator shall facilitate the participants’ understanding of what mediation is and assess their capacity to mediate before the participants reach an agreement to mediate._

(A) Before family mediation begins, a mediator shall provide the participants with an overview of the process and its purposes, including:

(1) informing the participants that reaching an agreement in family mediation is consensual in nature, that a mediator is an impartial facilitator, and that a mediator may not impose or force any settlement on the parties;

(2) distinguishing family mediation from other processes designed to address family issues and disputes;

(3) informing the participants that any agreements reached will be reviewed by the court when court approval is required;
(4) informing the participants that they may obtain independent advice from attorneys, counsel, advocates, accountants, therapists or other professionals during the mediation process;

(5) advising the participants, in appropriate cases, that they can seek the advice of religious figures, elders or other significant persons in their community whose opinions they value;

(6) discussing, if applicable, the issue of separate sessions with the participants, a description of the circumstances in which the mediator may meet alone with any of the participants, or with any third party and the conditions of confidentiality concerning these separate sessions;

(7) Informating the participants that the presence or absence of other persons at mediation, including attorneys, counselors or advocates, depends on the wishes of the participants. The mediator shall take controlling statutes or rules into consideration. The mediator may encourage the presence of another person when there is a history or threat of violence or other serious coercive activity by a participant;

(8) describing the obligations of the mediator to maintain the confidentiality of the mediation process and its results as well as any exceptions to confidentiality;

(9) Advising the participants of the circumstances under which the mediator may suspend or terminate the mediation process and that a participant has a right to suspend or terminate mediation at any time.

(B) The family mediator should have participants sign a written agreement to mediate their dispute and the terms and conditions thereof within a reasonable time after first consulting the family mediator, if they desire to mediate.

(C) The family mediator should be alert to the capacity and willingness of the participants to mediate before proceeding with the mediation and throughout the process. A mediator shall not agree to conduct the mediation if the mediator reasonably believes one or more of the participants are unable or unwilling to participate.

(D) Family mediators should not accept a dispute for mediation if they cannot satisfy the expectations of the participants concerning the timing of the process.
Standard IV

A family mediator shall conduct the mediation process in an impartial manner. A family mediator shall disclose all actual and potential grounds of bias and conflicts of interest reasonably known to the mediator. The participants shall be free to retain the mediator by an informed, written waiver of the conflict of interest. However, if a bias or conflict of interest clearly impairs a mediator’s impartiality, the mediator shall withdraw regardless of the express agreement of the participants.

(A) Impartiality means freedom from favoritism or bias in word, action or appearance, and includes a commitment to assist all participants as opposed to any one individual.

(B) Conflict of interest means any relationship between the mediator, any participant or the subject matter of the dispute that compromises or appears to compromise the mediator’s impartiality.

(C) A family mediator should not accept a dispute for mediation if the family mediator cannot be impartial.

(D) A family mediator shall identify and disclose potential grounds of bias or conflict of interest upon which a mediator’s impartiality might reasonably be questioned. Such disclosure should be made prior to the start of mediation and in time to allow the participants to select an alternate mediator.

(E) A family mediator shall resolve all doubts in favor of disclosure. All disclosures shall be made as soon as practical after the mediator becomes aware of the bias or potential conflict of interest. The duty to disclose is a continuing duty.

(F) A family mediator shall guard against bias or partiality based on the participants’ personal characteristics, background or performance at the mediation.

(G) A family mediator shall avoid conflicts of interest in recommending the services of other professionals.

(H) A family mediator shall not use information about participants obtained in mediation for personal gain or advantage.
(I) A family mediator shall withdraw pursuant to Standard XI if the mediator believes the mediator’s impartiality has been compromised or a conflict of interest has been identified and has not been waived by the participants.

**Standard V**

A family mediator shall fully disclose and explain the basis of any compensation, fees and charges to the participants.

(A) The participants shall be provided with sufficient information about fees at the outset of mediation to determine if they wish to retain the services of the mediator.

(B) The participants’ written agreement to mediate their dispute shall include a description of their fee arrangement with the mediator.

(C) A mediator shall not enter into a fee agreement that is contingent upon the results of the mediation or the amount of the settlement.

(D) A mediator shall not accept a fee for referral of a matter to another mediator or to any other person.

(E) Upon termination of mediation a mediator shall return any unearned fee to the participants.

**Standard VI**

A family mediator shall structure the mediation process so that the participants can make decisions based on sufficient information and knowledge.

(A) The mediator should facilitate full and accurate disclosure and the acquisition and development of information during mediation so that the participants can make informed decisions. This may be accomplished by encouraging participants to consult appropriate experts.

(B) Consistent with standards of impartiality and preserving participant self-determination, a mediator may provide the participants with information that the mediator is qualified by training or experience to provide. The mediator shall not provide therapy or legal advice.
(C) If the participants so desire, the mediator shall allow attorneys, counsel or advocates for the participants, or other individual designated by the participants, to be present at the mediation sessions.

(D) With the agreement of the participants, the mediator may document the participants’ resolution of their dispute. The mediator should inform the participants that any agreement should be reviewed by an independent attorney before it is signed.

Standard VII

A family mediator shall maintain the confidentiality of all information acquired in the mediation process, unless the mediator is permitted or required to reveal the information by law or agreement of the participants.

(A) The mediator should discuss the participants’ expectations of confidentiality with them prior to undertaking the mediation. The written agreement to mediate should include provisions concerning confidentiality.

(B) Prior to undertaking the mediation the mediator shall inform the participants of the limitations of confidentiality such as statutory, judicially or ethically mandated reporting.

(C) As permitted by law, the mediator shall disclose a participant’s threat of suicide or violence against any person to the threatened person and the appropriate authorities if the mediator believes such threat is likely to be acted upon.

(D) If the mediator holds private sessions with a participant, the obligations of confidentiality concerning those sessions should be discussed and agreed upon prior to the sessions.

(E) If subpoenaed or otherwise noticed to testify or to produce documents the mediator should inform the participants immediately. The mediator shall not testify or provide documents in response to a subpoena without an order of the court that is pursuant to O.R.C. 3109.52, if the mediator reasonably believes doing so would violate an obligation of confidentiality to the participants.
Standard VIII

A family mediator shall assist participants in determining how to promote the best interests of children.

(A) The mediator should encourage the participants to explore the range of options available for separation or post divorce parenting arrangements and their respective costs and benefits. Referral to a specialist in child development may be appropriate for these purposes. The topics for discussion may include, among others:

1. Information about community resources and programs that can help the participants and their children cope with the consequences of family reorganization and family violence;

2. Problems that continuing conflict creates for children’s development and what steps might be taken to ameliorate the effects of conflict on the children;

3. Development of a parenting plan that covers the children’s physical residence and decision-making responsibilities for the children, with appropriate levels of detail as agreed to by the participants;

4. The possible need to revise parenting plans as the developmental needs of the children evolve over time; and

5. Encouragement to the participants to develop appropriate dispute resolution mechanisms to facilitate future revisions of the parenting plan.

(B) The mediator shall be sensitive to the impact of culture and religion on parenting philosophy and other decisions.

(C) The mediator shall inform any court-appointed representative for the children of the mediation. If a representative for the children participates in mediation, the mediator should, at the outset, discuss the effect of that participation on the mediation process and the confidentiality of the mediation with the participants. Whether the representative of the children participates or not, the mediator shall provide the representative with the resulting agreements insofar as they relate to the children.

(D) Except in extraordinary circumstances, the children shall not participate in the mediation process without the consent of both parents and, if applicable, the children's court-appointed representative.
(E) Prior to including the children in the mediation process, the mediator shall consult
with the parents and the children’s court-appointed representative, if applicable, about whether
the children should participate in the mediation process and the form of that participation.

(F) The mediator shall inform all concerned about the available options for the
children's participation (which may include personal participation, an interview with a mental
health professional, the mediator interviewing the child, or a videotaped statement by the child)
and discuss the costs and benefits of each with the participants.

**Standard IX**

*A family mediator shall take reasonable steps to ascertain a family situation involving child
abuse or neglect and take appropriate steps to shape the mediation process accordingly*

(A) As used in these Standards, child abuse or neglect is defined by applicable state
law.

(B) A mediator shall not undertake a mediation in which the family situation has been
assessed to involve child abuse or neglect without having completed appropriate and
adequate training.

(C) If the mediator has reasonable grounds to believe that a child of the participants is
abused or neglected within the meaning of the jurisdiction’s child abuse and neglect laws, the
mediator shall comply with applicable child protection laws.

(1) The mediator should encourage the participants to explore appropriate services for
the family.

(2) The mediator shall consider the appropriateness of suspending or terminating the
mediation process in light of the allegations.

**Standard X**

*A family mediator shall take reasonable steps to ascertain a family situation involving domestic
abuse and take appropriate steps to shape the mediation process accordingly.*
(A) As used in these Standards, domestic abuse includes domestic violence as defined by applicable state law and issues of control and intimidation.

(B) A mediator shall not undertake a mediation in which the family situation has been assessed to involve domestic abuse without having completed appropriate and adequate training.

(C) Some cases are not suitable for mediation because of safety, control or intimidation issues. A mediator shall make a reasonable effort to screen for the existence of domestic abuse prior to entering into an agreement to mediate. The mediator shall continue to assess for domestic abuse throughout the mediation process.

(D) If domestic abuse appears to be present the mediator shall consider taking measures to insure the safety of participants and the mediator including, among others:

1. establishing appropriate security arrangements;
2. holding separate sessions with the participants even without the agreement of all participants;
3. allowing a friend, representative, advocate, counsel or attorney to attend the mediation sessions;
4. encouraging the participants to be represented and or accompanied by an attorney, counsel or an advocate throughout the mediation process;
5. referring the participants to appropriate community resources;
6. Suspending or terminating the mediation sessions, with appropriate steps to protect the safety of the participants.

The mediator should facilitate the participants’ formulation of parenting plans that protect the physical safety and psychological well being of the participants and their children.

**Standard XI**

*A family mediator shall suspend or terminate the mediation process when the mediator reasonably believes that a participant is unable to effectively participate or for other compelling reason.*
(A) Circumstances under which a mediator should consider suspending or terminating the mediation, may include, among others:

(1) the safety of a participant or well-being of a child is threatened;

(2) a participant has or is threatening to abduct a child;

(3) a participant is unable to participate due to the influence of drugs, alcohol, or physical or mental condition;

(4) the participants are about to enter into an agreement that the mediator reasonably believes to be unconscionable;

(5) a participant is using the mediation to further illegal conduct;

(6) a participant is using the mediation process to gain an unfair advantage;

(7) If the mediator believes the mediator’s impartiality has been compromised in accordance with Standard IV.

(B) If the mediator does suspend or terminate the mediation, the mediator shall take all reasonable steps to minimize prejudice or inconvenience to the participants, which may result.

Standard XII

A family mediator shall be truthful in the advertisement and solicitation for mediation.

(A) Mediators should refrain from promises and guarantees of results. A mediator should not advertise statistical settlement data or settlement rates.

(B) Mediators shall accurately represent their qualifications. In an advertisement or other communication, a mediator may make reference to meeting state, national, or private organizational qualifications only if the entity referred to has a procedure for qualifying mediators and the mediator has been duly granted the requisite status.

Standard XIII

A family mediator shall acquire and maintain professional competence in mediation.
(A) Mediators should continuously improve their professional skills and abilities by, among other activities, participating in relevant continuing education programs and should regularly engage in self-assessment.

(B) Mediators should participate in programs of peer consultation and should help train and mentor the work of less experienced mediators.

(C) Mediators should continuously strive to understand the impact of culture and diversity on the mediator’s practice.