

RULE 9. ETHICAL STANDARDS.

(a) Introduction. These Ethical Standards are designed to promote honesty, integrity and impartiality by all neutrals and other individuals involved in providing court-connected dispute resolution services. These standards seek to assure the courts and citizens of the Commonwealth that such services are of the highest quality, and to promote confidence in these dispute resolution services. In addition, these standards are intended as a foundation on which appellate courts and Trial Court departments can build their dispute resolution policies, programs, and procedures to best serve the public. These Standards apply to all neutrals as defined in these Standards when they are providing court-connected dispute resolution services for the Trial Court and the appellate courts, including those who are state or other public employees. State and other public employees are subject to the Massachusetts Conflict of Interest Law, M.G.L. c. 268A, and therefore, to the extent that these standards are in any manner inconsistent with M.G.L. c. 268A, the statute shall govern. In addition, to the extent that these standards are in any manner inconsistent with the Standards and Forms for Probation Offices of the Probate and Family Court Department promulgated by the Office of the Commissioner of Probation effective July 1, 1994, the Probation Standards shall govern. All courts providing dispute resolution services and all court-connected dispute resolution programs shall provide the neutrals with a copy of these Ethical Standards. These Standards shall be made a part of all training and educational programs for approved programs and shall be available to the public.

(b) Impartiality. A neutral shall provide dispute resolution services in an impartial manner. Impartiality means freedom from favoritism and bias in conduct as well as appearance.

(i) A neutral shall provide dispute resolution services only for those disputes where she or he can be impartial with respect to all of the parties and the subject matter of the dispute.

(ii) If at any time prior to or during the dispute resolution process the neutral is unable to conduct the process in an impartial manner, the neutral shall so inform the parties and shall withdraw from providing services, even if the parties express no objection to the neutral continuing to provide services.

(iii) No neutral or any member of the neutral's immediate family or his or her agent shall request, solicit, receive, or accept any in-kind gifts or any type of compensation other than the court-established fee in connection with any matter coming before the neutral.

(c) Informed Consent. The neutral shall make every reasonable effort to ensure that each party to the dispute resolution process (a) understands the nature and character of the process, and (b) in consensual processes, understands and voluntarily consents to any agreement reached in the process.

(i) A neutral shall make every reasonable effort to ensure at every stage of the proceedings that each party understands the dispute resolution process in which he or she is participating. The neutral shall explain (aa) the respective responsibilities of the neutral and the parties, and (bb) the policies, procedures, and guidelines applicable to the process, including circumstances under which the neutral may engage in private communications with one or more of the parties.

(ii) If at any time the neutral believes that any party to the dispute resolution process is unable to understand the process or participate fully in it -- whether because of mental impairment, emotional disturbance, intoxication, language barriers, or other reasons -- the neutral shall (aa) limit the scope of the dispute resolution process in a manner consistent with the party's ability to participate, and/or recommend that the party obtain appropriate assistance in order to continue with the process, or (bb) terminate the dispute resolution process.

(iii) Where a party is unrepresented by counsel and where the neutral believes that independent legal counsel and/or independent expert information or advice is needed to reach an informed agreement or to protect the rights of one or more of the parties, the neutral shall so inform the party or parties.

(iv) A neutral may use his or her knowledge to inform the parties deliberations, but shall not provide legal advice, counseling, or other professional services in connection with the dispute resolution process.

(v) The neutral shall inform the parties of their right to withdraw from the process at any time and for any reason, except as is provided by law or court rule.

(vi) In mediation, case evaluation, and other processes whose outcome depends upon the agreement of the parties, the neutral shall not coerce the parties in any manner to reach agreement.

(vii) In dispute intervention, in cases in which one or more of the parties is not represented by counsel, a neutral has a responsibility, while maintaining impartiality, to raise questions for the parties to consider as to whether they have the information needed to reach a fair and fully informed settlement of the case.

(d) Fees. A neutral shall disclose to the parties the fees that will be charged, if any, for the dispute resolution services being provided.

(i) A neutral shall inform each party in a court-connected dispute resolution process in writing, prior to the start of the process, of (aa) the fees, if any, that will be charged for the process, (bb) if there will be a fee, whether it will be paid to the neutral, court, and/or the program, and (cc) whether the parties may apply for a fee-waiver or other reduction of fees.

(ii) If a fee is charged for the dispute resolution process, the neutral shall enter into a written agreement with the parties, before the dispute resolution process begins, stating the fees and time and manner of payment.

(iii) Fee agreements may not be contingent upon the result of the dispute resolution process or amount of the settlement.

(iv) Neutrals shall not accept, provide, or promise a fee or other

consideration for giving or receiving a referral of any matter.

(v) If the court has established fees for its dispute resolution services, no neutral shall request, solicit, receive, or accept any payment in any amount greater than the court-established fees when providing court-connected dispute resolution services.

(e) Conflict of Interest. A neutral shall disclose to all parties participating in the dispute resolution process all actual or potential conflicts of interest, including circumstances that could give rise to an appearance of conflict. A neutral shall not serve as a neutral in a dispute resolution process after he or she knows of such a conflict, unless the parties, after being informed of the actual or potential conflict, give their consent and the neutral has determined that the conflict is not so significant as to cast doubt on the integrity of the dispute resolution process and/or neutral.

(i) As early as possible and throughout the dispute resolution process, the neutral shall disclose to all parties participating in the process, all actual or potential conflicts of interest, including but not limited to the following:

- (aa) any known current or past personal or professional relationship with any of the parties or their attorneys;
- (bb) any financial interest, direct or indirect in the subject matter of the dispute or a financial relationship (such as a business association or other financial relationship) with the parties, their attorneys, or immediate family member of any party or their attorney, to the dispute resolution proceeding; and
- (cc) any other circumstances that could create an appearance of conflict of interest.

(ii) Where the neutral determines that the conflict is so significant as to cast doubt on the integrity of the dispute resolution process and/or neutral, the neutral shall withdraw from the process, even if the parties express no objection to the neutral continuing to provide services.

(iii) Where the neutral determines that the conflict is not significant, the neutral shall ask the parties whether they wish the neutral to proceed. The neutral shall obtain consent from all parties before proceeding.

(iv) A neutral must avoid even the appearance of a conflict of interest both during and after the provision of services.

- (aa) A neutral shall not use the dispute resolution process to solicit, encourage or otherwise procure future service arrangements with any party.
- (bb) A neutral may not subsequently act on behalf of any party to the dispute resolution process, nor represent one such party against the other, in any matter related to the subject of the dispute resolution process.

(cc) A neutral may not subsequently act on behalf of any party to the dispute resolution process, nor represent one such party against the other, in any matter unrelated to the subject of the dispute resolution process for a period of one year, unless the parties to the process consent to such action or representation.

(v) A neutral shall avoid conflicts of interest in recommending the services of other professionals.

(f) Responsibility to Non-Participating Parties. A neutral should consider, and where appropriate, encourage the parties to consider, the interests of persons affected by actual or potential agreements and not participating or represented in the process.

(i) If a neutral believes that the interests of parties not participating or represented in the process will be affected by actual or potential agreements, the neutral should ask the parties to consider the effects of including or not including the absent parties and/or their representatives in the process. This obligation is particularly important when the interests of children or other individuals who are not able to protect their own interests are involved.

(g) Advertising , Soliciting, or Other Communications by Neutrals. Neutrals shall be truthful in advertising, soliciting, or other communications regarding the provision of dispute resolution services.

(i) A neutral shall not make untruthful or exaggerated claims about the dispute resolution process, its costs and benefits, its outcomes, or the neutral's qualifications and abilities.

(ii) A neutral shall not make claims of specific results, benefits, outcomes, or promises which imply favor of one side over another.

(h) Confidentiality. A neutral shall maintain the confidentiality of all information disclosed during the course of dispute resolution proceedings, subject only to the exceptions listed in this section.

(i) The information disclosed in dispute resolution proceedings that shall be kept confidential by the neutral includes, but is not limited to: the identity of the parties; the nature and substance of the dispute; the neutral's impressions, opinions, and recommendations; notes made by the neutral; statements, documents or other physical evidence disclosed by any participant in the dispute resolution process; and the terms of any settlement, award, or other resolution of the dispute, unless disclosure is required by law or court rule.

(ii) Confidentiality vis-à-vis nonparties. The neutral shall inform the participants in the dispute resolution process that he or she will not voluntarily disclose to any person not participating in the mediation any of the information obtained through the process, unless such disclosure is required by law.

(iii) Confidentiality within mediation. A neutral shall respect the

confidentiality of information received in a private session or discussion with one or more of the parties in a dispute resolution process and shall not reveal this information to any other party in the mediation without prior permission from the party from whom the information was received.

(iv) Neutrals who are part of a court-connected dispute resolution program may, for purposes of supervising the program, supervising neutrals, and monitoring of agreements, discuss confidential information with other neutrals and administrative staff in the program. This permission to discuss confidential information does not extend to individuals outside their program.

(v) Neutrals may, with prior permission from the parties, use information disclosed by the parties in dispute resolution proceedings for research, training, or statistical purposes, provided the materials are adapted so as to remove any identifying information.

(i) Withdrawing from the Dispute Resolution Process. A neutral shall withdraw from the dispute resolution process if continuation of the process would violate any of the Ethical Standards, if the safety of any of the parties would be jeopardized, or if the neutral is unable to provide effective service.

(i) Withdrawal must be accomplished in a manner which, to the extent possible, does not prejudice the rights or jeopardize the safety of the parties.

(ii) A neutral may withdraw from the dispute resolution process if the neutral believes that (aa) one or more of the parties is not acting in good faith; (bb) the parties' agreement would be illegal or involve the commission of a crime; (cc) continuing the dispute resolution process would give rise to an appearance of impropriety; (dd) in a process whose outcome depends upon the agreement of the parties, continuing with the process would cause severe harm to a non-participating party, or the public; and (ee) continuing discussions would not be in the best interest of the parties, their minor children, or the dispute resolution program.

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