

SUMMARY OF ETHICAL STANDARDS

Introduction. There are eight (8) Ethical Standards for neutrals providing court-connected dispute resolution services. They are intended to promote high quality service and public confidence. They apply to all neutrals providing dispute resolution services for the Trial Court and the appellate courts, including state and other public employees. The full text of the Ethical Standards appears as Rule 9 of the Supreme Judicial Court Rules on Dispute Resolution.

1. Impartiality.

- Impartiality means freedom from favoritism or bias in conduct and appearance.
- A neutral must provide dispute resolution services only in disputes in which she or he can be impartial with respect to the parties and the subject matter.
- If the neutral is unable to be impartial, she or he must withdraw even if the parties express no objection to the neutral's provision of services.
- A neutral must not solicit or accept any gifts or compensation other than the court-established dispute resolution fee.

2. Informed Consent.

- A neutral must make every reasonable effort to ensure that each party understands and consents to the dispute resolution process (including such characteristics as private conversations with the neutral); and any agreement reached.
- If the neutral believes that a party is unable to understand or participate effectively in the process, the neutral must either limit the scope of the process or terminate it. In taking these actions, the neutral should safeguard the confidentiality and interests of the person in need of assistance and maintain impartiality.
- A neutral should inform an unrepresented party if the neutral believes that the party needs expert information or advice in order to protect the party's rights or reach an informed agreement.
- A neutral may provide information to the parties but must not provide legal advice, counseling or other professional services in connection with the dispute resolution process.
- The neutral must inform the parties of their right to redraw from the process at any time and for any reason, except as provided by law or court order.
- In dispute resolution processes which depend upon the agreement of the parties, the neutral must not coerce the parties to reach agreement.

3. Fees.

- A neutral must inform each party, before the process begins, of any fees that will be charged, to whom the fee will be paid, and whether the parties may apply for a fee-waiver or reduction of fees.
- A neutral must enter into a written agreement with the parties, before the process begins, stating any fees and the time and manner of payment.
- Fee agreements may not be contingent upon the result of the dispute resolution process or the amount of the settlement.
- A neutral must not accept, provide or promise a fee for giving or receiving a referral of any matter.
- A neutral must not solicit or accept any payment above the court-established fee when providing court-connected dispute resolution services.

4. Conflict of Interest.

- A neutral must disclose to all parties all actual or potential conflicts of interests, including circumstances that could give rise to an appearance of conflict.
- A neutral must not serve as a neutral in a process after he or she knows of a conflict, unless the parties, after being informed, consent to the neutral's service and the neutral determines that the conflict is not so significant as to cast doubt on the integrity of the dispute resolution process and/or the neutral.
- Examples of Conflict:
 - Current or past personal or professional relationship with a party or a party's attorney;
 - Any financial interest in the subject matter of the dispute or financial relationship with the parties, their attorneys or an immediate family member of a party or attorney;
 - Any circumstances that could create an appearance of conflict of interests.
- If a conflict is so significant as to cast doubt on the integrity of the process or the neutral, the neutral must withdraw even if the parties express no objection.
- If a neutral is not significant, the neutral must ask the parties whether they wish for the neutral to proceed, and the neutral may proceed only upon the consent of all parties.
- A neutral must avoid even the appearance of a conflict of interest both during and after the provision of services.

- A neutral must not solicit future service arrangements with a party.
 - A neutral may not act on behalf of a party or represent one party against another in any matter related to the subject of the dispute resolution process for a period of one year, unless the parties all consent to such action or representation.
 - A neutral should avoid conflicts of interest in recommending the services of other professionals.
5. Responsibility to Non-Participating Parties. A neutral should consider and, where appropriate, encourage the parties to consider, the interests of persons – especially children – who are not participating in the process but are affected by actual or potential agreements.
 6. Advertising, Soliciting or Communications by Neutrals. Neutrals must be truthful in advertising, soliciting or other communications regarding the provision of dispute resolution services. Neutrals must not make claims of specific results, benefits, outcomes or promises which imply favor of one side over another.
 7. Confidentiality. A neutral must maintain the confidentiality of all information disclosed during a dispute resolution proceeding except for particular exceptions included in the Standard.

Confidential information includes at least the following: the identity of the parties; the nature and substance of the dispute; the neutral's impressions, opinions and recommendations; the neutral's notes; statements, documents or other physical evidence disclosed by any participant; and the terms of any settlement award or other resolution of the dispute, unless disclosure is required by law or court rule.

- The neutral must inform the parties that the neutral will not voluntarily disclose information unless the disclosure is required by law.
- The neutral must not disclose information obtained in a private discussion with a party unless the party permits disclosure.
- The neutral may, for supervisory and monitoring purposes, discuss confidential information with supervisors, administrative staff and other neutrals in the court-connected dispute resolution program with which the neutral is affiliated.
- The neutral may, with prior permission of the parties and after removing identifying information, use information disclosed by the parties for research, training or statistical purposes.

8. Withdrawal

- A neutral must withdraw from a dispute resolution process if continuing in the process would violate an Ethical Standard or jeopardize the safety of a party, or if the neutral is unable to provide effective services.
- The neutral must conduct a withdrawal, to the extent possible, so that the parties' safety and are rights are protected.
- A neutral may withdraw if she or he believes one of the following: a party is not acting in good faith; the agreement would be illegal or involve the commission of a crime; continuing the process would give rise to an appearance of impropriety; the process could cause severe harm to a non-participating party or the public; or continued discussions would not be in the best interest of the parties, their minor children, or the dispute resolution program.