

# New Mexico Mediation Association Code of Ethical Conduct

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## Preamble

Mediation is a voluntary process in which persons skilled in the techniques of mediation assist people to resolve conflicts in a consensual and orderly way. Through empowerment and acknowledgement, mediation helps the parties overcome obstacles to the resolution of their dispute. The dispute may bring the parties into conflict, but the process itself should only alleviate obstacles and difficulties and not add to them. The process is the responsibility of the mediators; the outcome is the responsibility of the parties. Mutual satisfaction of the parties is the goal of mediation.

Professional mediators have ethical duties and responsibilities. These extend to the profession, the general public and the individuals or agencies for whom they may provide services. This Code is intended to be complementary to and not a substitute for other codes of ethics/conduct which guide mediators who are also members of other professions or traditions. (see New Mexico ADR Procedures Act Link Below #15) It applies from the time of the initial contact with the disputing parties.

## 1. Qualifications

A. A mediator should not mediate when s/he does not have sufficient knowledge by training or experience of the mediation process.

B. If proceeding without sufficient knowledge of the subject matter may cause harm to the parties, the mediator may proceed only with the informed consent of the parties or with the assistance of an expert in the subject matter.

## 2. Education

A mediator has a responsibility to obtain appropriate mediation training and to maintain and improve his/her professional skills.

## 3. Support of the Profession

A mediator should promote the profession and the process of mediation to the public. These efforts may include: educating the public concerning the value and use of mediation, acting as mentor in the development of new practitioners, teaching, writing, speaking and providing mediation services without fee where appropriate.

## 4. Impartiality

A. **Neutrality and impartiality:** It may not be possible for a mediator to feel completely neutral in a dispute. However, the mediator should, during the performance of professional services, act impartially towards all involved parties.

B. **Definition:** Impartiality, in word or action means: i) freedom from bias or favoritism, ii) a commitment to aid all parties equally in reaching a mutually satisfactory agreement, and iii) that a mediator will not play an adversarial role in the process of dispute resolution.

## 5. Privacy

A. **Importance of privacy:** Privacy is essential to establishing the trust of the disputants in both the mediator and the process.

B. **Maintaining privacy:** Information received by a mediator in private cannot be revealed to anyone outside of the mediation unless both parties consent. Private information received in caucus cannot be revealed in joint session without prior permission from the party from whom the information was received.

C. **Future adversarial proceedings:** Mediators should obtain agreement from participants that information divulged in the process of mediation cannot be used by the parties in future proceedings. S/he will refuse to voluntarily testify in any subsequent court proceedings, and will resist to the best of his/her ability the subpoena of either his/her notes or person.

NMMA has listings for mediators in 18 cities across New Mexico

[Find a Mediator](#)

NMMA is a non-profit member organization of mediators and others interested in mediation

[Learn about Membership](#)

### Upcoming Events

[Preparing for disabilities during mediations](#)

Thu Jul 13 2017, 12:00pm MDT - 1:30pm MDT

[Unlicensed practice of law- Dathan](#)

Thu Sep 14 2017, 12:00pm MDT - 1:30pm MDT

[Protocol for language translations](#)

Thu Nov 9 2017, 12:00pm MST - 1:30pm MST

**D. Exceptions to privacy provisions:** Where a mediator knows or has a reasonable suspicion that a child is an abused or neglected child within the meaning of 32A-4-2, s/he must inform the authorities described in that statute of that knowledge or suspicion. ii) Where a mediator knows or has reason to believe a crime has been or will be committed, the mediator may need to inform the appropriate person or authority. iii) Where a mediator knows or has a reasonable suspicion that a party intends to commit suicide, a. s/he should make the party aware of the community resources available; and b. s/he may inform his/her supervisor, clinical supervisor or representative of the ethical body of his/her organization of that knowledge or suspicion and where a minor is involved, s/he should also inform the child's parents of that knowledge or suspicion. iv) When the mediator reports information under this section, s/he should inform the parties. v) Court-ordered mediations may operate with different provisions regarding privacy.

## 6. Responsibilities of Mediator and Parties

**A. The parties:** The decision to mediate rests with the parties except where mediation is mandated by legislation, court order or contract.

ii) The resolution of a dispute rests with the parties, except as provided in section 9(b)(iii) of this Code.

**B. The mediator:** The mediator is responsible for facilitating the process in order to allow the disputants to reach a settlement. ii) The mediator must not make a substantive decision for the parties, however, the parties may agree to solicit recommendations from the mediator.

## 7. Conflict of Interest

A. A mediator must not commence a mediation if: i) s/he has previously provided legal or counseling services to one party; or ii) s/he believes for any reason that s/he is unable to act impartially because of monetary, psychological, emotional, cultural or other affiliations.

**B. Disclosure:** A mediator may commence a mediation with the parties consent after full disclosure, if: i) s/he has previously provided legal or counseling services to both parties, or ii) s/he has strong views relating to the issues to be mediated, or iii) s/he believes there is any other conflict between the interests of the mediator and of the parties that will not affect the outcome of the mediation.

## 8. Unrepresented Interests

**A. Agreement belongs to the parties:** The content of an agreement is determined by the interested parties.

**B. All parties present:** The mediator should ensure that, as far as possible, all persons necessary for reaching an effective resolution are present at the mediation.

**C. Interests of unrepresented persons:** The mediator should ensure that the parties consider fully the effect of any agreement on unrepresented persons: i) whose interests are significantly affected by the agreement; or ii) whose involvement is necessary for effective resolution of the dispute.

D. In some cases it may be appropriate for the mediator to actively advocate on behalf of an unrepresented person.

## 9. Withdrawal of a Mediator from a Mediation

**A. Mandatory withdrawal:** A mediator should withdraw from the mediation for any one of the following reasons: i) A conflict of interest prohibited by this Code. ii) Inability to act impartially.

**B. Optional withdrawal:** A mediator may at any time withdraw from the mediation if: i) s/he believes s/he has insufficient knowledge or training in the process or subject matter of the mediation, or ii) there is a significant inequality of power between the parties so that one party is clearly unable to represent him/herself effectively, or iii) the parties wish to make an agreement which the mediator feels: a. is illegal; b. is grossly inequitable to one or more of the parties; c. is the result of false information; d. is the result of bad faith bargaining; e. is impossible to effect or enforce; f. does not look as if it will hold up over time; or g. does not properly consider the interest of unrepresented persons.

**C. Explanation to the parties:** The mediator must inform the parties of the reason for his/her withdrawal.

## 10. Termination of the Mediation

The mediator should not prolong a mediation that has become unproductive. It is the responsibility of the mediator to inform the parties when a final impasse has occurred and to suggest that the mediation be terminated.

## 11. Advertising

- A. **Honesty:** Any advertising should honestly represent the services to be rendered.
- B. **No specific claims:** Advertising should not contain claims of specific results and promises.
- C. **Referrals:** The referral of clients by one mediator to another should not entail remuneration.

## 12. Time

- A. The mediator must not extend the mediation for the sole purpose of personal financial gain.
- B. When working within time constraints the mediator should address this issue as soon as possible.

## 13. Costs

Prior to the commencement of the mediation:

- A. The mediator should explain to the parties the basis for compensation, fees, charges and remuneration, if any, and;
- B. The parties should agree to the method of compensation and the payment of all costs associated with the process.

## 14. Waiver

Some provisions of this Code may be waived with the consent of all parties involved.

## 15. New Mexico ADR Procedures Act

[Mediation Act PDF](#)

**New Mexico Mediation Legislation was signed into law in 2007.**  
**All NMMA Ethics and Standards work in conjunction with this act.**

## 16. Revisions of this Code

This code may be revised after a trial period. All mediators who use this Code are encouraged to submit comments to the Ethics and Standards Committee of the New Mexico Mediation Association on an ongoing basis.

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