

MEDIATING AT METRO COURT: A HANDBOOK FOR MEDIATORS



“An ounce of mediation is worth a pound of arbitration
and a ton of litigation!”

- Joseph Grynbaum



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BACKGROUND

Mediation Division began as a pilot program in 1986 and has evolved into the largest, ongoing court mediation program in the State of New Mexico.

The Mediation Division provides mediation services in an effort to help parties resolve their small claims civil case so they don't have to go to court.

LOCATION

- All mediation sessions are held at Metropolitan Court, located at the northwest corner of 4th Street and Lomas.
- The entrance to the building faces 4th street (east, towards the mountains).
- Once you get through security, take the escalator to the 2nd floor. Turn to your left at the top of the escalator. Walk straight down the hallway. Mediation Division is in room 210 (last door on the left).

PARKING

- Parking is available in the Metro Park garage. Take Lomas to 5th St., go north on 5th and take the 2nd right. (5th is a one-way street going north)
- Bring your ticket with you when you leave your vehicle.
- Someone in the Mediation Division office will validate your ticket before you leave.
- Present the ticket as you exit the garage. Parking is *gratis*.

Note: if you arrive after 5:00 pm to mediate, the parking garage may be closed. Once you make the 2nd right off of 5th St., you will notice some outdoor parking spaces on your left. You may park in one of those spaces. Please let security know you've parked there. There may also be street parking available. Please, please have security escort you to your car after the mediation – particularly if it's dark!



If it is dark when you leave mediation, ask a security guard at the security desk on the first floor to escort you to your car. He or she will be happy to do so.

SECURITY AT METRO COURT

Mediators may go through the “Employee” line at Security. Put your purse or bag as well as your coat if you’re wearing one on the conveyor for x-ray screening. Tell them you’re a mediator; they will have your name on the list of mediators scheduled for that day. They may ask to see your driver’s license or picture I.D.

- No cell phones, other electronics or sharp objects are permitted. These must be left at home or in your car.
- If you have a ‘Mediator Badge’ (available to those who mediate on a regular basis), you will be allowed to bring in your phone, iPad or other electronics.
- If you “beep” while going through the portal, you may be “wanded.”
- Retrieve your personal items once you’re through the portal.

Each of the tables in the mediation rooms has a **“panic button”** to be used in the event of an emergency (including a medical emergency, if one should occur). On your first visit, locate that button on the underside of the table. When the button is pushed, several guards are immediately summoned and arrive quickly.



Note: Just so you know, no one has ever had to ‘push the panic button’– but hopefully it’s comforting to know it is there!

WHY MEDIATION?

Approximately 90% of the time, parties abide by the terms of their mediated agreement because they set the terms; the terms are not imposed upon them.

Judges must look at the legal aspects of each case and make decisions based upon the law and the evidence presented.

The mediation process allows time for the parties to discuss the “whole story,” potentially clearing the air of miscommunication, misunderstanding, hurt feelings, resentment, and anger.

Mediation and mediators help each party hear the other’s perspective, while providing each party an opportunity to tell his or her own story in a safe, non-judgmental, informal environment.

The best resolution to any problem is usually one worked out by the people involved!

HOW A CASE GETS TO MEDIATION

CASES GET TO MEDIATION ONE OF THE FOLLOWING WAYS:

- The Mediation Division reviews all answered civil complaints and selects those which seem appropriate for mediation. *(Those not initially selected include cases involving large corporations, auto accidents or companies/attorneys who have previously opted out of consideration)*
- One of the parties requests mediation at any time before the actual trial.
- The assigned judge refers parties to mediation when they appear for pretrial. Even in this situation, mediation is still voluntary.
- Once a case comes to the Mediation Division, parties are contacted by letter and sent an informational pamphlet explaining the mediation process. Mediation is voluntary, so either party can decline to participate. However, most people are willing to give the process a try.
- Criminal cases such as neighbor disputes, barking dogs, etc. can also be mediated, but these must be referred directly by the assigned judge and comprise a very small percentage of those seen in mediation.

QUALIFICATIONS TO MEDIATE AT METROPOLITAN COURT

You're interest and enthusiasm in serving as a volunteer mediator at Metro Court is vital. Because of the program's reputation, we recruit mediators from a variety of approved trainings including the UNM Law School, Cynthia Olson & Associates, the State of New Mexico ADR Bureau, and the UNM Anderson School of Management.

VOLUNTEERS MUST:

- ☒ Successfully complete a minimum of 40 hours of training in the facilitative model of mediation
- ☒ Provide evidence of course completion
- ☒ Observe 2-3 Metro Court mediations and debrief with the mediators
- ☒ Read this handbook to familiarize yourself with the procedures of the Mediation Division

- ☑ Strictly adhere to a code of ethics (Section XII of this handbook)
- ☑ In addition, we urge mediators to
- ☑ Pre-brief and debrief with each other before and after every mediation session
- ☑ Mediate “solo” if you have the opportunity (once you’ve mediated 8-10 times and feel comfortable)
- ☑ Share any concerns you may have regarding a co-mediator’s skill level or behavior (This is not about ‘telling’ on anyone! We can’t support someone’s skill development if we don’t know they’re struggling. It also gives us ideas about areas or issues we need to address in future emails, trainings or workshops.)
- ☑ Share any concerns regarding a particular case (Once again, we can probably help.)
- ☑ Inform the office if your status becomes inactive and turn in your mediator badge if you have one.

WHY CO-MEDIATION?

METRO COURT USES THE CO-MEDIATION MODEL BECAUSE:



- Two heads are better than one! If you’re not sure how to proceed or what to say, chances are your co-mediator has an idea.
- It can help provide gender, cultural or linguistic balance.
- We can pair mediators whose styles complement each other.
- We can schedule newly trained mediators with mediators who are more experienced.

ABOUT THE MEDIATION DIVISION

ALL OFFICE STAFF MEMBERS ARE TRAINED MEDIATORS. SOME ARE ALSO BILINGUAL IN SPANISH.

The Mediation Division staff has a variety of roles and responsibilities that assist both mediators and those coming to mediation (the disputing parties, their attorneys, family members, etc.).

HERE’S SOME OF WHAT WE DO...

IN SUPPORT OF THE MEDIATORS THE OFFICE STAFF:

- Maintains a daily/weekly/monthly schedule of mediations
- Schedules mediators and call or email mediators to fill vacant slots
- Makes reminder calls to mediators the day before their scheduled mediation
- Prepares mediation “files” for each session consisting of a folder with the parties’ names, necessary forms, pens, paper, and a calculator
- Confirms who will attend the mediation (attorneys, spouse, etc.) and make sure everyone agrees
- Prepares mediation room (water, cups, etc.)
- Validates parking garage tickets
- Serves as co-mediator in the event of a last minute cancellation
- Debriefs with mediators afterwards, if needed
- Answers just about any question regarding court process or procedure

IN SUPPORT OF THE PARTIES COMING TO MEDIATION THE OFFICE STAFF:

- Schedules (and frequently re-schedules) mediation sessions
- Fields numerous phone calls from parties coming to mediation to answer questions, concerns, and queries
- Mediates many cases by phone and mail (primarily debt collection cases)
- Conducts phone mediation when one or both parties reside out of town or out of state
- Greets parties who arrive for their mediation session and gives them the Agreement to Mediate to review
- Reviews each agreement for logic, clarity and the necessary details
- Processes the necessary paperwork for all mediated cases, file agreements and dismissals
- Provides the first line of follow up for mediated agreements that are not being followed or adhered to
- Answers just about any question regarding court process or procedure

OTHER SERVICES AVAILABLE WITHIN THE MEDIATION DIVISION

The Bernalillo County Metropolitan Court Self-Help Center assists people who wish to represent themselves in small claims cases. The Self-Help Center provides forms and procedural information and maintains a community/legal resource list to help customers find additional assistance.

Informational pamphlets are on the wall in the Mediation Division lobby. Feel free to give out any of the pamphlets before, during or after the mediation session.

Remember: You can always refer mediation participants to the self-help center if they have questions or need assistance. They can walk right out of the mediation and talk with someone or, if it's after 5:00 pm, reference the phone number on the wall in the mediation conference rooms.

The Self-Help Center acts as a liaison with several outside community and legal organizations/service providers. If you believe a mediation participant could benefit from community or legal services, please refer them to the Self-Help Center @ (505) 841-9817

SIGNING UP TO MEDIATE

- Call (505) 841-8167 to schedule OR schedule in person with any of the Mediation Division staff. *(Mediations are generally scheduled Mon-Fri during the day and Mon-Thurs. at 5:30 p.m.)*
- You will receive a reminder call the day before unless you've indicated you don't need one.
- Be sure to check your voicemail messages as mediations do cancel.

Note: If you're expecting a reminder call and didn't get one, please call us! We may have made a mistake.



COURT CASE NOTIFICATION FOR MEDIATORS

Any time a volunteer mediator, intern or their household member is involved (as a plaintiff, defendant or witness) in any CIVIL, CRIMINAL, TRAFFIC, PARKING OR ANY OTHER MATTER within the jurisdiction of the Bernalillo County Metro Court, they *must* notify us within 24 hours and fill out a "Court Case Notification Form." **(The form has been included after this section)**

A Pro Tem (substitute) judge will be assigned to the case so there is not an appearance of favoritism towards the mediator.

THE ONLY EXCEPTIONS ARE IF YOU CHOOSE TO PAY THE TRAFFIC OR PARKING TICKET RATHER THAN GO TO COURT.

SNOW DAYS OR OTHER DELAYS/CLOSINGS

- Metro Court normally follows whatever Albuquerque Public Schools (APS) do.
- However, the final decision rests with the Court Administrator and Chief Judge so it's important to check the morning news to see what Metro Court is doing.
- We will also change our voice mail to reflect any delays or closings.
- If Metro Court is on a two-hour delay, our office will open by 10:00 am. Mediations scheduled before 10:00 am will be canceled and rescheduled. Mediations scheduled at 10:00 am or later will take place as scheduled.



COURT CASE NOTIFICATION FORM)

Bernalillo County Metropolitan Court
Notification of Pending Court Case
Human Resource Form No. HR 601.1

Pursuant to Human Resource SOP No. 601, Court Personnel must complete this form if they or a Household Member is a party to a case pending before the Court. Please submit an original, signed form to Court Administration.

Court Personnel Name: _____

Division Name: _____

Case No. or Citation No. (If Available): _____

Name of Plaintiff or Defendant who is the Employee's or TCAA's Household Member (If Applicable):

Has the Employee/TCAA/Household Member been notified to attend a scheduled Traffic Arraignment?

Yes _____ No _____

Court Personnel Signature

Date _____

Court Personnel Printed Name

Received in Court Administration By:

Signature

Date _____

Print Name

Administration Use Note: Upon receipt of completed, signed original form, send a copy to the Human Resource Division and retain the original in Court Administration.

Notification of Pending Court Case Human Resource Form No. HR 601.1
Drafted 10/02; Revised 02/04, 11/05, 07/08, 5/09
Page 1 of 1

THE MEDIATION PROCESS AT METRO COURT

DRESS CODE

Dress code is “office casual.” If you’re not sure what this means, ask one of the staff.



WHEN YOU COME TO MEDIATE...

Please arrive 15 minutes early to meet/pre-brief with your co-mediator. Pick up the “mediation tray” which will have a file containing an intake sheet with the parties’ names. We do not give any detailed information regarding the case. It’s been our experience that if mediators have too much information prior to the mediation they might develop a bias or opinion regarding the case. The parties will ultimately let you know what the case is about and what is important to them.

Also included in the mediation tray are pens, paper, Agreement to Mediate form, calculator and a Stipulation of Dismissal after Mediated Settlement form (also signed when parties reach a Mediated Agreement). See detailed instructions in the tray.

The Mediation Division Staff will initially greet the parties and give them the Agreement to Mediate to read. They will let you know when all parties have arrived and if there are any special circumstances you should be aware of.

Following this section see Co-Mediation Discussion worksheet with sample questions for pre-briefing with your co-mediator. (Courtesy of Anne Lightsey, Mediator and Mediation Trainer.)



Please do not keep the parties waiting. Parties appreciate it when mediation begins on time. If everyone is here early, go ahead and get started. If you arrive late and the mediation has already started please do not interrupt the session.

CO-MEDIATION DISCUSSION WORKSHEET

Some things to discuss with your co-mediator before the mediation begins:

- How might you define a **successful mediation**? Here's how I tend to define it...
- What are your thoughts about **making content suggestions**? Here are my thoughts (and why)...
- What are your thoughts about asking **fact-finding questions**? Here are my thoughts (and why)...
- What are your thoughts about how to **share the mediator opening statement**?
- How do you feel about allowing **silence**? Here are my thoughts (and why)...
- How comfortable are you when things get **heated**? What do you tend to do when things get heated? Here are my thoughts (and why)...
- Do you typically set **ground rules**? If so, what are they? Here's what I typically do...
- When do you feel it's appropriate to use **caucus**? Here's when I feel it's appropriate...
- How should we let one and another know that we think caucus might be a good idea?
- Do you tend to be a **more passive or active mediator**? Here's what I think I am...
- Can we take the time to **debrief after** the mediation - talk about what we feel we did well and where we might be able to improve?
- How would you like to set up the room to facilitate a sense of safety for the participants while at the same time encouraging their communication with each other?



GREETING THE PARTIES

- If you discover you know one of the parties *personally*, or for *any* reason feel you can't remain objective as a mediator, you are ethically obligated to excuse yourself before the mediation begins. Your co-mediator can either mediate solo, or one of the office staff can co-mediate with them.
- If you know one of the parties slightly or through a mutual friend/acquaintance and feel you can still remain objective and mediate, disclose this to the parties, let them know you feel comfortable mediating and ask if they're comfortable with you mediating. If one or both parties object to you mediating *for any reason*, graciously excuse yourself. Once again, your co-mediator can either mediate 'solo' or one of the office staff can co-mediate with them.
- If one of the parties is late, let the other party know we usually give people 15 minutes in case there was traffic, etc. However, if the other party does not want to wait, let them know they're free to go.
- If one of the parties doesn't show up for mediation (which rarely happens), the case is routed to the judge for a hearing.

Things to keep in mind when you initially greet your parties and introduce yourselves:

- Sometimes we have 'return players' or 'frequent flyers.' If you've previously mediated one of the parties, try not to be too friendly or personal with them. The other party may view this as you showing favoritism.
- Do not take one of the parties into the mediation room or sit in the lobby with one party while you're waiting for the other party. It just doesn't look good when the other party arrives. Wait until both parties are here before you really engage them.
- Let the parties know when there is an observer in the mediation room. Ask litigants if it's okay for that person to observe. (You might say something like, "*We have a new mediator who would like to observe us as mediators and the mediation process. Is that okay with both of you?*") Normally people are willing, but if they're not, the observer will leave and try again later.) **(See Observer Guidelines following this Section.)**

Usually the staff will know ahead of time who's attending the mediation (attorneys, spouse, etc.) and whether or not everyone is in agreement. HOWEVER, occasionally people show up with extra people that weren't expected and you as the mediators may have to do a little 'pre-mediation mediation!'

**BERNALILLO COUNTY
METROPOLITAN COURT
MEDIATION DIVISION**

OBSERVER GUIDELINES

1. Please arrive 15 minutes prior to the scheduled mediation time. Occasionally, the parties and the mediators arrive a little early and want to get started. We will not interrupt a mediation once it has begun.
2. We will check with the parties to make sure they are willing to let you observe. Most times people are willing, however, if they are not comfortable having an observer present, be gracious. There will be other opportunities.
3. While observing, do not get “stuck” in the content. Be a “process observer.” Notice what worked and what didn’t. Notice where the “shifts” (if any) occurred.
4. Please do not take notes during the mediation. However, take as many notes as you want after the mediation while you are “debriefing” with the mediators.
5. Please do not speak with the participants during or after the mediation. (Sometimes the parties will try to “pull you in”- be courteous, but let them know you are there only as an observer.) Even the most innocent of remarks can affect the process!
6. During the mediation, please do not make any facial expressions or do anything that would be distracting to the mediators or participants.
7. After the mediation, be willing to share your observations with the mediators. This is also a good time for them to get some objective feedback. Feel free to ask any questions you have about what you observed.

To schedule your observation, please call The Mediation Division (505) 841-8167.

WHAT ABOUT WITNESSES?

If anyone tells you they have brought their witness(es) with them, explain we do not require witnesses for mediation (only trial). If they still want to have that person in the mediation room, then follow instructions/suggestion below:

Sample dialog *"If someone unexpected shows up at Mediation"*

To Party A: "I see you've brought someone with you. Who is/are they?" "Do you want them to go into the mediation with you?"

To Party B: "Is that okay with you?" (If it's okay with them, great!)

If it's not okay with Party B: "Everyone has to agree about who's going to be at the table and we're not going to make either one of you do anything you're not comfortable with so...if you're unable to agree on who will be in the room, we'll need to cancel the mediation and send this case on to court."

Sometimes one of the parties will give their consent. Let everyone know it is acceptable to end the mediation at any time for any reason.

If people cannot agree to the presence of additional persons in the room, you might make the following *process* suggestion to Party A: "What if we have _____ wait in the reception area? If at some point everyone agrees it would be helpful to her in the mediation room, we can bring her in at that time. Or, if you want to come out and talk with her anytime during the mediation, you can."

THE ACTUAL MEDIATION: WHAT TO TELL THE DISPUTANTS

As part of your mediation training, you were coached on making an opening statement to set the stage for the session. While parties coming to mediation at Metro Court do receive a pamphlet with information on the mediation process, do not assume that they have read or fully understood it.

(Pamphlet verbiage follows after this Section.)

It is helpful to review the process and expectations at the start of the session. Some information to include:

- ☑ The mediators' roles
- ☑ Mediation is a voluntary process
- ☑ Let the parties know they do not have to make a final decision today if they need more information or just want a few days to think about it.
- ☑ Confidentiality (Mediators will not make a report to the judge or discuss the case.)
- ☑ Regarding hand-written notes: (Please see item #5 on the Agreement to Mediate, Appendix D.) Find out up front how the parties want to handle the notes at the end of the session. Keep them? Tear them up? Mediators will always tear their notes up unless there's going to be a 2nd session. Parties cannot use their notes as evidence in court.)
- ☑ Breaks and caucuses (some mediators include caucus, some don't; some prefer not to mention caucus as an option ahead of time—your call!)
- ☑ If an agreement is reached, mediators will type up the agreement for the parties to sign and give each party a copy; if no agreement is reached, case will go on to court.
- ☑ Anything else you believe will put the disputants at ease.

"Creative ideas reside in people's minds but are trapped by fear of rejection. Create a judgment free environment and you'll unleash a torrent of creativity."
-Unknown

Note: Share the introduction with your co-mediator. Try not to make it too long. Remember, you can always bring something up during the process if it becomes necessary.

Caucusing Etiquette

- ☑ You must caucus with both parties even if your strategy or reason for caucusing only involves one of the parties.
- ☑ Keep your caucuses as brief as possible. The other party will be waiting.
- ☑ Caucuses are confidential, however you can ask each party if there's anything they'd like you to share with the other party.

MEDIATION PAMPHLET VERBIAGE



This pamphlet is general in nature and is not designed to give legal advice. The Court does not guarantee the legal sufficiency of this pamphlet or that it meets your specific needs. Also, as the law is constantly changing, the information in this pamphlet may not be current. Therefore, you may wish to seek the advice and assistance of an attorney.

WHAT IS MEDIATION?

If you are involved in a lawsuit at the Metropolitan Court, you may be able to resolve it by participating in **Mediation**.

Mediation is one way for people to settle disputes. In **Mediation**, the people involved in a dispute talk about solutions that might work for them. The people who help them work out a solution are called **Mediators**.

Mediators do not decide who's right or wrong or who wins or loses. The purpose of a **Mediation** is to find solutions that meet the needs of the people involved in the dispute.

*Mediations can last anywhere between
30 minutes and 2 hours.*

WHAT CAN MEDIATION DO FOR ME?

Mediation can help you resolve the problem that has brought you to Court. The best resolution to any problem is usually the one worked out by the people involved.

Through **Mediation**, people often arrive at a resolution more quickly than by going to **Trial** and asking a **Judge** and/or a **Jury** to decide their case.

Mediation is informal, although the **Mediator** does provide structure. Most people find it a comfortable and productive procedure.

WHO WILL ATTEND THE MEDIATION?

Typically, only the parties involved in the lawsuit and their attorneys, if any, attend the **Mediation**. Persons attending the **Mediation** should have the authority to negotiate and enter into a settlement agreement (if one is reached). ***Please do not bring witnesses or children to the Mediation.***

If you want to bring anyone else who is not a party to the lawsuit to the Mediation, it must be okay with the other party. Everyone has to agree about who will attend the Mediation before it takes place.

Sometimes an attorney will participate in **Mediation** without a client when the client is a large corporation, collection agency or insurance company. Some people will choose to attend **Mediation** without their attorney. They will be given the opportunity to consult with their attorney before any potential Agreement is signed.

WHO WILL BE THE MEDIATOR(S)?

The Metropolitan Court's Mediation Division has a pool of approximately 75 professionally trained **Mediators** who offer their services free of charge. The **Mediators** are not employees of the Court. They do not take sides and they know how to deal with situations that can sometimes be tense or emotional. The staff in the Mediation Division are also trained Mediators.

Mediators **DO NOT** give legal advice, provide legal services, decide who's right or wrong, or decide who wins or loses.

HOW DOES MY CASE GET TO MEDIATION?

After the **Defendant** files an **Answer**, the Mediation Division reviews the case. If the case is selected, a **Mediation** is scheduled and letters are mailed to the parties.

You can also request **Mediation** by writing "request mediation" either on the **Complaint** form or **Answer** form when you file it with the Court Clerk. If you forget to write it on the form, you can also call the Mediation Division.

The **Judge** who is assigned to your lawsuit also may refer your case to **Mediation**.

If **Mediation** is scheduled on a date or time that won't work for you, please call the Mediation Division. **Mediation** can be rescheduled for a date and time that works for both parties.

REMEMBER, MEDIATION IS A VOLUNTARY PROCESS. IF YOU DON'T WANT TO HAVE A MEDIATION, CALL THE MEDIATION DIVISION AND IT WILL BE CANCELED.

DO I HAVE TO BE WILLING TO COMPROMISE?

No. Sometimes agreements will include compromises, but not always.

Even if the parties don't reach an agreement through **Mediation**, they've had the opportunity to talk about the situation and share their perspective about the dispute. It may help you be better prepared to go to Court.

WHAT SHOULD I BRING TO THE MEDIATION?

Bring any documents – statements, invoices, photographs, etc. – that are related to, or support your claim or defense.

HOW CAN I PREPARE MYSELF FOR THE MEDIATION?

Think about what you want to discuss and what's important to you. Think about the following questions:

What is the best result I can hope for?

What is the worst result that could happen?

What might be some sensible, realistic ideas for a fair resolution?

WHAT WILL HAPPEN AT THE MEDIATION?

The **Mediators** and the parties will sit around a table in one of the Metropolitan Court's Mediation Conference Rooms. Some mediations may take place by telephone/conference call.

You and the other party will have the opportunity to talk about what's happened and what's important to you. You'll talk about different ways the case might be resolved. The **Mediators** will ask questions, try to help clarify issues, and try to make sure each party is understood and acknowledged.

ANY AGREEMENT YOU REACH IN MEDIATION IS VOLUNTARY. YOU WON'T BE REQUIRED TO AGREE TO ANYTHING UNLESS YOU WANT TO.

Whatever is said in **Mediation** (offers, etc.) cannot be used as evidence in Court.

Before entering into a settlement agreement, you may want to think about it for a day or two. You may want to talk with an attorney, your spouse, a family member, or friend, etc. before you make a final decision.

If you resolve your case through **Mediation**, an agreement will be signed by all parties and will become part of the case file unless the parties want the agreement to be confidential. The case will not have to proceed to **Trial** and a Stipulation of Dismissal will be signed.

WHAT IF THE OTHER PARTY DOES NOT ABIDE BY THE AGREEMENT?

Most people follow through on their Mediated Agreements. But if they don't, call the Mediation Division. We will follow up and try to salvage the Agreement. If that doesn't work, a party may, within five (5) years of the Dismissal, file a ***Motion for Judgment and Statement of Non-Compliance***, together with a copy of the ***Mediated Agreement*** with the Court. The Court will reopen the case. The other party (who has not followed the Agreement) will have fifteen (15) days (after service of the Motion) to respond and request a hearing be set before the assigned **Judge**. If the party does not respond or request a hearing, the Court may enter a Judgment against the party who did not follow the Agreement without holding a hearing.

WHAT IF MEDIATION DOES NOT RESOLVE THE CASE?

The case will be sent on to the assigned **Judge** and set for hearing or **Trial** (if one has not already been set). The **Mediators** do not report to the **Judge** about what happened in the **Mediation**. They report that a **Mediation** was held, but no agreement was reached.

IF YOU HAVE ANY OTHER QUESTIONS ABOUT MEDIATION, YOU CAN CALL THE COURT'S MEDIATION DIVISION AT 841-8167.

PRE-MEDIATION CAUCUS

Occasionally the Mediation Division Staff may have information regarding the case or the parties leading them to believe a pre-mediation caucus could be helpful. Maybe the parties are particularly contentious; maybe one of the parties has safety concerns (physical or emotional) or a capacity issue.

Meet with each party separately (and briefly – 10 minutes or so). Allow them to give their ‘opening statement.’ Reflect and acknowledge as usual. Avoid asking too many questions.

Once you’ve met with each party, you and your co-mediator may gain knowledge that helps you strategize about how best to proceed.

As with any caucus, be clear on what information the parties want to be confidential and what can be shared.

When (and if) you bring the parties together, you can start from a place of summary while maintaining agreed upon confidentiality. Summarize what you heard from each of them during the caucus using acknowledgment and reframing skills. Proceed with the process as usual.

CAPACITY AND COMPETENCY

Occasionally, there may be a party who seems to have a mental health, capacity or competency issue.

Some things to keep in mind:

- Just because someone may have a mental health, capacity or competency issue does not necessarily mean mediation can’t take place.
- Each case must be assessed individually (and continually throughout the process).
- Mediation may not be appropriate if one or more parties do not have the capacity to mediate.

All participants in mediation must be able to:

- ☑ Recognize their own best interest and represent it accurately
- ☑ Advocate for themselves
- ☑ Understand what is going on in the mediation
- ☑ Understand the consequences of their decision
- ☑ Follow the mediation process
- ☑ Be willing to talk and listen
- ☑ Problem solve
- ☑ Articulate more than one solution to the problem
- ☑ Make decisions
- ☑ Enter into and honor an agreement

Mediation Division Staff will usually be aware ahead of time if there may be a capacity issue with one or more of the parties and will be able to brief you.

Sometimes it will not become apparent that there's a mental health, capacity or competency issue until you're in the middle of mediation.

If a party appears to lack one or more of the above bulleted behaviors, **CONSIDER WHETHER YOU SHOULD CONTINUE THE MEDIATION**. If you feel it's better to end the mediation, do so as soon and as gracefully as you can – something like “It appears it's going to be difficult for this case to be resolved today. We appreciate your willingness to give this process a try. Thank you for coming...etc.”

Even if some capacity is lacking, mediation **MAY** still be appropriate **WITH SUITABLE ACCOMMODATIONS**.

WHAT WOULD BE SUITABLE PROCESS ACCOMMODATIONS?

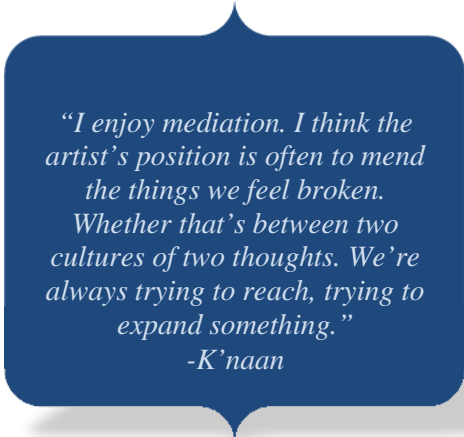
- ☑ The party may need an advocate, family member or mental health professional to assist him/her. (Just make sure the advocate or support person has the capacity to mediate!)
- ☑ Caucus and/or separate rooms
- ☑ Frequent or planned breaks
- ☑ Flexible scheduling
- ☑ Other things as requested by the party or their advocate/support person

Questions for the Party and/or Advocate:

- What happens in daily situations?
- What is the desired outcome? (in case another venue may be more appropriate)

Questions for the Advocate/Mental Health Professional:

- What role will this person play in mediation?
- What is the party's capacity to mediate?
- Is there anything in the mediation process that could be detrimental to the party?
- What is the desired outcome?



“I enjoy mediation. I think the artist’s position is often to mend the things we feel broken. Whether that’s between two cultures of two thoughts. We’re always trying to reach, trying to expand something.”
-K’naan

Remember, as mediator it's okay to make a **process** suggestion as opposed to a **content** or **outcome** suggestion.



Participants may want to talk about issues not included in the case description or beyond the scope of the case. Remember, they are in charge of the content and outcome of the mediation.

ALWAYS CONSULT WITH THE MEDIATION STAFF IF YOU ARE UNSURE

LEGAL ADVICE

As a mediator **NEVER** give legal advice, even if you *are* an attorney or you think you know the law regarding a particular situation. Never indicate you know how a judge will rule. You don't. What or how people present in court might be very different than what you see in mediation.

If there is a court process or procedure in question, you can consult with any staff member.

Encourage people to seek legal advice if they have questions about the law. The Self-Help Center can give them information or referrals on how to get legal advice. ***See helpful handout regarding legal advice following this section.***

WELCOME TO THE BERNALILLO COUNTY METROPOLITAN COURT

We are happy to help you if we can, and we will treat everyone equally. However, as court staff we must be fair to everyone and we do not take sides. By law, we can help you only in certain ways:

We Can encourage you to seek legal advice from a licensed attorney.

We Cannot endorse specific lawyers or community resources, or contact them for you.

We Can provide you information about available free civil legal service programs.

We Cannot perform legal research by applying the law to specific facts or expressing an opinion about what law applies to your circumstances, or whether you should file a case.

We Can provide court-approved forms and instructions without advising any specific course of action.

We Cannot create documents for you.

We Can provide information as to what is being requested on forms **WITHOUT** suggesting specific words to put in the forms.

We Cannot fill in forms for you.

We Can provide general information about Court rules, available citations, legal terminology, administrative orders, procedures and practices.

We Cannot provide interpretation or application of court or administrative rules or regulations, constitutional or statutory provisions, legal terminology and case law based on specific facts.

We Can provide publicly available information on cases that have been filed with the court.

We Cannot provide you with information that must be kept confidential by court order, statute, rules or regulations or case law.

We Can provide general information about court processes, procedures and practices, including court schedules and how to get matters scheduled.

We Cannot explain court orders or decisions, or assist or participate in unauthorized or improper communications with the judge.

We Can provide general information about community resources.

We Cannot predict the outcome of a case filed in court or tell you what you should do.

We Can provide information about proper courtroom conduct and decorum.

We Cannot advise you what to say in court.

We Can provide any other appropriate information approved by the court about court alternatives and services.

We Cannot advise you whether you should bring your case to court or give you an opinion about what may occur.

We want to respond with current and accurate information, but not all court staff will know the answers to all questions about court rules, terminology, procedures, and practices. When not certain of the answer, court staff has been instructed to suggest that you contact an attorney or you may check with the State Bar of New Mexico at: 797-6066 or www.nmbar.org

Rule 23-113 NMRA effective January 22, 2008
CY-006 Providing Court Information to Self-Represented Litigants (01/09)

DOS AND DON'TS - SOME PRACTICAL ADVICE

HOW LONG DOES MEDIATION TAKE?

Mediation sessions vary in length. Parties have been previously advised to allow two hours. If a session is productive but lengthy, the parties can schedule a second mediation. (Typically we schedule the same mediators unless there is some reason we should not.) If possible, try to set up a date and time while everyone is present.

WHAT IF SOMEONE SAYS, "I DON'T WANT TO MEDIATE!"

It doesn't happen often, but sometimes one of the parties will come into the mediation stating "I didn't know this was voluntary. I don't want mediation!" Let them know it *is* a voluntary process. They are not required to participate. Ask them if they see any value in spending a few minutes talking to see where it goes. If they remain adamant about not wanting to mediate, let them go. Do not try to force them or talk them into it.

TIME CONSTRAINTS

Sometimes one of the parties will come into the mediation stating "I only have 30 minutes for this. I have to get back to work/pick up my kids, etc." See if parties want to begin and see how far they get, or reschedule.

CAUCUS

Caucus may be requested by the mediators or the parties. Some mediators prefer not to mention caucus in the introduction and only bring it up if they decide to use it. Some mediators prefer not to call it "caucus," but describe it as talking briefly with each party individually. The set-up is flexible, so tailor it to the situation.

TAKING BREAKS

Parties are free to stop the mediation process for a break, to phone their attorney, spouse, etc., or confer with someone who has come to mediation with them. The mediators can also request a break. (Sometimes a break can be strategically helpful if the process is particularly long or people are getting increasingly angry or frustrated.)

- 🗣️ **Be aware the walls between the mediation rooms are not soundproof, so if parties are using one of the conference rooms to confer with their attorney for example, please advise them. .**

MAKING COPIES

There is a printer/copier in the workroom/kitchen near the rear of the office.

REACHING AND DOCUMENTING AN AGREEMENT

REQUIRED FORMS

- ☑ **Agreement to Mediate**: This is signed at the beginning of the mediation. Each party is provided with a brief list of the ‘guidelines’ for mediation. All parties should sign the same physical piece of paper. This form goes in the mediation file and any party who wants a copy may be given one. *(See sample forms following this section)*
- ☑ **Mediation Agreement**: At the conclusion of the mediation, there is usually one of two possible outcomes—an agreement was reached OR an agreement was not reached and the parties want to go to court. *(See sample forms following this section)*
- ☑ **Mediation Agreement**:
- ☑ If the parties reach an agreement, one of the mediators usually types up the agreement making sure to be as specific as possible. (Use the laptop provided and be prepared to tweak the language as mediators and the parties make adjustments.)
- ☑ Send the agreement to the printer/copier. If you encounter technical problems hand write the agreement on the form provided in the mediation tray/binder. *(See sample forms following this section.)*

Make sure to include the following information in the agreement, if applicable:

- ☑ Total amount to be paid
- ☑ Form the payments will take: check, money order, cash?
- ☑ When payments will begin
- ☑ Frequency of payments: e.g., monthly. every other week, weekly (Postmarked date of payments, date mailed OR date received)
- ☑ Delivery of payments: mailed, dropped off, etc.
- ☑ Grace period (if any) 3 days? 5 days?
- ☑ What will happen if the party who owes money defaults on payment?
- ☑ **Sometimes people will want to be able to pursue the original amount of their claim, if there’s a default. If that’s the case, it needs to be noted clearly on the agreement, or the judgment will be entered for the “settled amount.”)**

Wording and details must be agreed to by all parties. Sometimes the parties may have difficulty agreeing on the wording. You may find yourself back in the middle of the mediation process. Take the time necessary to make sure the parties are truly in agreement and concur on the wording. Ask necessary questions to reach the point of complete clarity.

Don't force or rush the parties to an agreement. Don't use "going to court" as a way to coerce the parties into an agreement. (Some cases may require a judge's decision.). Rushed or coerced agreements are usually destined to fail. Sometimes parties will ask if they can send their payment to our office and have us send it to the other party. We prefer not to do this. Payments should be sent directly to the party being paid.

WHAT IF THERE'S NO AGREEMENT?

- If the parties do not reach an agreement, encourage them to continue thinking about what's been discussed and the ideas that have been presented. Sometimes, people will have an idea *after* the mediation.
- Encourage them to call the Mediation Division if that happens. Returning to mediation or asking the Mediation office to help negotiate an agreement is always an option. There are MANY instances where parties don't settle at the mediation table, but do end up working things out before trial.
- If an agreement has not been reached, the agreement form can still be completed. A statement indicating the parties were unable to reach an agreement is all that is necessary. No further explanation or information is required.
- Having the parties sign a "no agreement" form is not mandatory, however, it's a good way to bring the process to a close. It can be noted if parties worked particularly hard, or agree to continue thinking about possible resolutions. It's also an excellent way of getting someone back to the table who is threatening to leave.

As an example:

Party A: *"I'm outta here! Let's just go to court!"*

Mediator: *"Before you leave, we need to fill out and have you sign this form indicating there was no agreement reached."*

Party A sits back down and while you're filling out the form, you or your co-mediator can continue mediating. (Summarize, acknowledge, ask a particularly thoughtful question, or say something like, "I know this was a difficult process." OR "Both of you really worked hard..." OR "You really did make progress," etc.)

It's possible the mediation might end – it's possible the mediation might continue...

OTHER AGREEMENT OPTIONS

- Occasionally, parties will enter into an ***interim*** agreement. Sometimes they need to gather information before coming back for a second mediation session. (Typically, we schedule the same mediators. If possible, coordinate a date/time with everyone at the table.)
- An interim agreement might also include what their potential agreement or options might be and indicate they will contact the mediation office with their final decision. (Include a 'call by' date on the agreement.)
- Sometimes people will want to put their offers in writing and indicate by what date they'll make their decision. Parties don't need to sign it unless they want to. It's not an agreement or contract. It's for the parties' use only.
- Rarely, there may be a ***partial agreement*** where the parties agree to some aspects of their dispute, but want the unresolved issues to go before a judge.
- Occasionally the parties want the terms of their ***agreement to remain confidential*** (unless someone defaults). In this case each party would still get their own copy of the agreement, but no copy of the agreement would be forwarded to the court file (which is public record). Remind the parties it will be their responsibility to maintain a copy of the agreement since the court will not retain a copy.

A word of caution about multiple mediation sessions: Over the years we've had a handful of cases where parties came back for three or four mediations and it became clear they were using the process (maybe unknowingly) in order to keep the dispute going – or to keep seeing each other. If you suspect this may be the case, talk with your co-mediator and discuss a strategy/plan of action. You may need to 'draw the line' at some point and let the parties know they need to make some decisions, as hard as that may be.

DISMISSAL

- ☑ When parties enter into a Mediated Agreement, they are required to also sign a 'STIPULATION OF DISMISSAL AFTER MEDIATED SETTLEMENT AGREEMENT.' A copy of this form and an instruction sheet will be in the mediation tray. ***(See form following this section.)***

The case will be dismissed 'without prejudice' (which means it can be reopened if enforcement of the agreement is necessary). An instruction on how a party can 'enforce' an agreement follows on the next page:

AGREEMENT ENFORCEMENT

Since the parties are required to sign a dismissal at the time they sign the agreement, they may want to know how the agreement can be enforced (if needed). You can tell the parties the following:

- Mediated Agreements are considered legally binding contracts and can be enforced and turned into judgments.
- Call the Mediation Division (505) 841-8167 if the terms of the agreement are not being followed; the Mediation Division will contact the party who is not meeting the terms of the agreement.
- If the agreement cannot be salvaged or renegotiated, the complaining party can file a 'motion for judgment / statement of non-compliance' asking the judge to turn the mediated agreement into a judgment. They can call the mediation division and we will send them the motion form. ***(See form following this section.)***

Agreement to Mediate



State of New Mexico
Bernalillo County
Metropolitan Court

Mediation Division

401 Lomas Blvd. NW
Albuquerque, NM 87102
P.O. Box 133
Albuquerque, NM 87103
Telephone (505) 841-8167
Fax (505) 222-4827

AGREEMENT TO MEDIATE

1. The role of the mediator(s) is to help the parties look for a satisfactory and realistic solution through communication and problem solving. The mediators do not provide legal services or advice. They are not judges or arbitrators. They do not decide who's right or wrong. The parties are responsible for making their own decisions. No one will be forced to agree to anything they are not comfortable with.
2. Each party must be willing to fully participate in the process (talk and listen). It is the responsibility of each party to bring up all issues necessary to completely resolve the case (for example: court costs, past and future interest, etc.).
3. Mediation is a private and confidential process. Therefore, the mediators will not reveal what was said in the mediation except (as required by law) to report suspected child abuse, threat of physical harm, or threat of damage to property. The parties agree all notes taken during the mediation will be thrown away at the end of the session *unless all parties agree otherwise. This includes attorney's notes.* The parties and/or their legal representatives agree the mediators or other observers will *not* be called to testify should future judicial (court) proceedings occur in this case.
4. The Court will retain jurisdiction over the case. If no agreement is reached in mediation, the case will proceed through Court. If an agreement is reached in mediation, it will be considered a legally binding and enforceable contract, which per Rule of Civil Procedure 3-806 shall be signed by the parties and filed with the Court unless the parties decide not to file the Agreement with the Court in which case each party is responsible for keeping a copy of the Agreement. When the Agreement is signed, per Rule 3-806, the parties shall file a Stipulation of Dismissal of the case with the Court.
5. If the terms of an agreement reached in mediation are not fulfilled, per Rule 3-806, the parties agree that the non-breaching party may, within five (5) years of the date on which the Stipulation of Dismissal was filed with the Court, file a Motion for Judgment and Statement of Non-Compliance with the Court, together with a copy of the mediated agreement. If such a Motion is filed with the Court, the case will be re-opened, and the breaching party has fifteen (15) days to respond to the Motion and request a hearing so the matter can be heard by the Judge. If the breaching party does not respond or request a hearing, the parties agree that the Court may enter a Judgment against the party who breached without holding a hearing.
6. Please note Metropolitan Court Judges do not have legal authority to enforce a Mediated Agreement which includes the performance of a service or exchange of items. If a Mediated Agreement includes either one or both of these items and the Mediated Agreement is breached, then the parties agree the Judge may convert the performance of a service or exchange of items into a monetary form and enter a judgment. The parties are encouraged to determine what that amount should be and include that as a part of their Mediated Agreement.

WE AGREE TO THE ABOVE TERMS

Signature Date

Signature Date

Signature Date

Signature Date

CV-212 Agreement to Mediate (revised 3/12; 12/14)



Phone 505-841-8167

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
IN THE METROPOLITAN COURT
MEDIATED AGREEMENT

FILED IN
METROPOLITAN COURT

2018 MAY -7 AM 11:18

T-4-CV

Date: April 30, 2018

PLAINTIFF: (

DEFENDANT:

MEDIATOR: Charles McElwee

Cheri Plavnick

THE PARTIES AGREE TO THE FOLLOWING:

The size of the water pipe is an issue. It must be inspected. This agreement will be binding if the inspection shows the water pipe is OK. If the inspection shows that the water pipe is not ok, then I agree to make corrections as required for the pipe to pass inspection. I will request inspection right away and the results, as available. The pipe issue will be resolved within two weeks from today or sooner. After the pipe issue is resolved, I is to pay the total sum of \$1,250 in two installments of \$625 each. The first installment is to be postmarked May 22, 2018 and the second installment is to be postmarked by June 12, 2018. Payment will be made by check and sent by mail. I is to provide to the phone number and e mail address for on May 1, 2018. I did tonight see receipts for supplies as provided to her by I will not be required to pay any money to I. His counterclaim is dismissed. The address I is to use to send payments to I is Albuquerque, NM 87104.

Communication between I and I, will take place through the Mediation Office: 841-8167

PARTIES: I

Date

Date

Date

Date

Sample Agreement 2



Phone 505-841-8167

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
IN THE METROPOLITAN COURT
MEDIATED AGREEMENT

FILED IN
METROPOLITAN COURT

2018 APR -9 PM 1:22

FILED IN
T-4-CV-2018-003339

Date: April 4, 2018

PLAINTIFF: ;

DEFENDANT: ;

MEDIATOR: John Edwards

Dana Ball

THE PARTIES AGREE TO THE FOLLOWING:

: will pay a minimum of \$155.00 in money order to
month, starting May 7th, 2018 and will mail it to
NW, Albuquerque, NM 87120 by the 10th of each month.
monthly payments to via email to (_____) full (\$1860.00) has been received.

: purchased on the 7th of each
month.
will provide proof of receipt of
well as a receipt when payment in

PARTIES: _____

Date

Date

Date

Date

Stipulated Dismissal after Mediated Settlement Agreement

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
IN THE METROPOLITAN COURT

_____, Plaintiff,

v.

No. _____

_____, Defendant.

STIPULATION OF DISMISSAL AFTER MEDIATED SETTLEMENT AGREEMENT

The parties have entered into a Mediated Settlement Agreement. The parties stipulate that this case should be dismissed because the Mediated Settlement Agreement fully and finally resolves all of the issues in this case. However, if the terms of the Mediated Settlement Agreement are not fulfilled, the parties reserve the right to ask the court to reopen this case within five years from the filing date of this document for the limited purpose of entering a judgment to enforce the terms of the Mediated Settlement Agreement and for such other relief as the court deems just and proper.

The parties have agreed (*check one*):

- ☐ To file the Mediated Settlement Agreement in this case; or
- ☐ To waive filing the Mediated Settlement Agreement in this case.

Each party will take responsibility for retaining a copy of the Mediated Settlement Agreement. In any action related to the Mediated Settlement Agreement, the responsibility to produce a copy of the Mediated Settlement Agreement belongs to the parties and not to the court.

Plaintiff or Attorney for Plaintiff

Defendant or Attorney for Defendant

Rule 4-833 NMRA; adopted by Supreme Court Order No. 14-8300-012, effective for all cases filed or pending on or after 12/31/14
CV-223 Stipulation of Dismissal; Mediated Agreement (created 12/14)

Motion for Judgment and Statement of Noncompliance

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
IN THE METROPOLITAN COURT

_____, Plaintiff,

v.

No. _____

_____, Defendant.

MOTION FOR JUDGMENT AND STATEMENT OF NONCOMPLIANCE

I request that the court reopen this case and enter a judgment enforcing the terms of a Mediated Settlement Agreement. In support of this request, I state as follows:

1. ☐ The parties entered a Mediated Settlement Agreement, and a Stipulation of Dismissal After Mediated Settlement Agreement was filed on _____ (date).
2. ☐ Plaintiff/Defendant has breached the terms of the Mediated Settlement Agreement.
3. ☐ A copy of the Mediated Settlement Agreement was filed with the court on _____ (date); or
☐ A copy of the Mediated Settlement Agreement was not filed, but is attached.

(check all that apply)

4. ☐ Under the terms of the Mediated Settlement Agreement, Plaintiff/Defendant agreed to pay \$ _____.
- ☐ Under the terms of the Mediated Settlement Agreement, Plaintiff/Defendant agreed to the following: _____

_____.

(check all that apply)

5. ☐ As of today's date, Plaintiff/Defendant has paid a total of \$ _____.
- ☐ As of today's date, Plaintiff/Defendant has done the following: _____

_____.

(check all that apply)

6. ☐ Under the terms of the Mediated Settlement Agreement, Plaintiff/Defendant still owes a total of \$ _____.
- ☐ Under the terms of the Mediated Settlement Agreement, Plaintiff/Defendant still needs to do the following: _____

_____.

7. ☐ I request that the court reopen this case and enter judgment in the amount listed below and for any other relief that the court deems just and proper.

Rule 4-834 NMRA; adopted by Supreme Court Order No. 14-8300-012, effective for all cases filed or pending on or after 12/31/14
CV-222 Motion for Judgment and Statement of Noncompliance (created 12/14)

FREQUENTLY ASKED QUESTIONS

WHAT IF I CAN'T MAKE MY MEDIATION APPOINTMENT OR SOMETHING COMES UP AT THE LAST MINUTE?

Keep the phone number of the Mediation Division (841-8167) handy or programmed into your cell phone. Always call if you are unable to make the session. The co-mediator can either mediate alone or one of the staff can substitute, if needed.

WHAT IF MY CO-MEDIATOR DOESN'T SHOW UP?

We don't like to make parties wait for a late mediator. 5 minutes or so would be the maximum. Decide if you feel comfortable mediating by yourself. If not, one of the trained staff members can co-mediate with you. Sometimes parties have arrived early and been waiting for a while. Typically, we do not have staff available to co-mediate 5:30 pm mediations. As a last resort, we can always reschedule the mediation if absolutely necessary.

WHAT IF THE PARTIES DON'T WANT TO ENTER THE MEDIATION ROOM TOGETHER?

While a rare occurrence, this can happen. If both mediation rooms are available, you can place the parties in separate rooms and you and your co-mediator can shuttle between them. If it appears appropriate, you can suggest that the parties come together in one room. You can ask people if it would be possible to begin with everyone in the room for the mediators' introduction and then go into separate rooms, if needed. (Sometimes after the introduction, the mediation begins and parties end up staying in the same room.) If it feels safer to keep them apart, you can continue the mediation separately. While the Mediation Division advocates face-to-face conversations, the ability to be flexible is what sets it apart from the courtroom.

WHAT IF ONE OF THE PARTIES GOES 'ON AND ON AND ON' DURING THEIR OPENING STATEMENT?

Sometimes it can help by asking each party to give a BRIEF description of what the case is about. If that doesn't work and the person has talked for more than 10 minutes, interrupt them and say something like, "I know you have a lot you want to say. Let me see if I understand what you've said up to this point. Then we can hear from _____. Then we can go from there..."

WHAT IF ONE OR MORE OF THE PARTIES EXHIBITS THREATENING BEHAVIOR?

Every mediator has a different level of tolerance when it comes to emotions. Expect that some parties may become emotional or angry. Expressing feelings is a normal part of the process. As a mediator, use your judgment in calling a caucus or break to give each of the parties time to cool off. If the venting seems to go on too long or escalates, take the time to really ACKNOWLEDGE THOSE FEELINGS! (Don't allow parties to use the process to verbally abuse each other!)

WHAT IF I DON'T AGREE WITH SOMETHING MY CO-MEDIATOR HAS DONE OR SAID?

During a mediation session, you can call a caucus if you think your co-mediator is on the wrong track or the two of you are not working well together. Talk briefly with your co-mediator and try to come to an understanding about how to proceed. Tell the truth without blame or judgment.

Alternatively, you can use it as an opportunity to model collaborative problem solving in front of the parties. Try some of the following statements:

- *"I'm hearing something different..."*
- *"I'm thinking it would be helpful to _____. What do you think?"*
- *"Would you be willing to 'hold that thought? I'd like to see where the parties are going with what they're discussing right now.' OR 'There's something I'd really like to check out before they answer that question.'"*
- *"I'd like to try _____. Would that be okay?"*

Or...check in with the parties

- *"How is this process working for you right now?"*
- *"What would be helpful?"*

You can discuss the process when debriefing with your co-mediator. Be open to feedback (even from new mediators and observers). All of us, including experienced mediators, have an interest in elevating our skills to a higher level.

Though they don't occur often, inappropriate statements or behaviors can be brought to the attention of the Director.

WHAT IF IT BECOMES CLEAR DURING THE PROCESS THERE'S A PARTY WHO SHOULD BE THERE, BUT ISN'T?

Sometimes you will discover (either by one of the parties stating it or just by listening) there is a 'key player' who isn't present. Say something like:

- *"I've heard you talk about _____'s role in this. Should they be a part of this process? How should we proceed? What do you think?"*

Or

- *"Based on what I'm hearing, it seems as though it's going to be hard to move forward unless _____ is part of the process. What do you think? Do you think they'd be willing to participate?"*

Or

- *"Does that person need to be here in order for a final decision to be made?"*

Ultimately, let the parties decide what they'd like to do.

WHAT IF I DON'T THINK THE PARTIES SHOULD LEAVE TOGETHER?

If it has been a particularly difficult and heated mediation, you may feel the parties should not leave at the same time. If this happens, decide which party should leave first. This will typically be the one who is less angry or less threatening. Tell the other party, *"Can you wait a minute?"* While the first party is leaving, spend a few minutes with the party you've kept behind. Use this as an opportunity to acknowledge, summarize and perhaps help them de-escalate.

SHOULD I SHARE WITH THE PARTIES THAT I HAVE PARTICULAR KNOWLEDGE OR EXPERTISE?

Probably not. If you do, the parties may look to you for a solution or opinion based on your expertise. It may be hard to steer them back to problem solving based on their own needs and interests. What if you share your expertise and you're wrong? What if they take your recommendation and decide later it was poor advice?

On the other hand, having certain expertise or knowledge may provide you the opportunity to ask more probing questions regarding the subject matter and elicit more helpful information from the parties.

I UNDERSTAND I SHOULD DEBRIEF WITH MY CO-MEDIATOR, TIME PERMITTING. WHAT SHOULD WE TALK ABOUT?

We absolutely want mediators to take the time to debrief together (and with observers if there are any). A debriefing session should focus on the process, not the content or your opinion about the outcome or the so-called 'truth.'

Some questions others have found useful to ask themselves and each other during the debrief include:

- *"What worked well?"*
- *"What didn't work so well?"*
- *"What could I have done differently?"*
- *"Is there anything I did that caused a problem?"*
- *"How do you feel we worked as a team?"*
- *"The next time I mediate, I'm going to try ____."*

Please be open to feedback. If someone says, 'It appeared as though you were taking sides...or...It seemed as though you were really focused on getting an agreement...or You were making outcome suggestions...YOU DON'T GET TO DISAGREE!

You may truly believe you weren't doing a particular thing, but if that's the impression you were making or if someone else's perception is that you were doing something in particular, then that's what you need to pay attention to. Ask your co-mediator to say some more about their concern and then have a conversation about it.

And as the person giving the feedback, BE SPECIFIC. It will be helpful to your co-mediator if you can give specific examples of what you're talking about.

HOW CAN I FIND OUT THE JUDGE'S DECISION IF A CASE I MEDIATED WAS NOT RESOLVED?

All cases are a matter of public record. You can call the Mediation Division or search (if you know the case number) on line by visiting **nmcourts.gov** and clicking on 'On line case lookup.'

CAN I OBSERVE METRO COURT PROCEEDINGS?

Yes. Court proceedings are open to the public. Check with staff in the Mediation Division regarding day and time. **However, a note of caution about observing a case you mediated:** Be extremely discreet. The parties may recognize you and want to engage, which could be very uncomfortable for everyone as well as being disruptive to the court.

MEDIATOR LANGUAGE

Most of us (especially new mediators) struggle with how to say things in a way that maintains our integrity as mediators as well as the integrity of the process. Mark Bennett, master mediator and trainer, has given his permission to share some language he has included in many of his training manuals. The following are just a few examples. Thanks Mark!

INTRODUCTION

Participants in mediation and conflict resolution trainings often want specific behavioral suggestions. There is no “cookbook” for effective behavior that will ensure success. Each situation calls for its own response. Words that work “magically” in one situation may backfire in another. With this caution, here are some words that can be helpful.

LEARNING, CLARIFICATION AND UNDERSTANDING

- I want to make sure I have this right...
- Here's where I'm having trouble following you...
- Help me understand what's involved from your point of view...
- Could you say more about...?
- What else would you like to add?
- What is most important to you in this situation?

VALUES AND MEANING

- Why is this important to you?
- What is important here that we need to look at?
- What do you think lies at the heart of the matter?

STAYING ON TRACK

- Let's summarize what we've covered so far and what remains to be addressed.
- I don't want to lose any solutions, but I think we are still working to define the problem.

REDIRECTION

- You've identified a number of problems from the past, what would you like to see happen next?
- Instead of telling him, please tell me.
- Instead of telling me, would you be willing to tell her?
- I sense that we are getting stuck on this issue...let's move on to XX and come back to this later. Or...would you be willing to move on to XX and come back to this later?

FEEDBACK AND ACKNOWLEDGMENT

- If I understand you correctly, you think/ feel/ believe/ need/ want/ hope/ see...
- In other words, you're saying that...
- So you wish that...
- So you feel that...
- So, from your perspective...
- Let me see if I can paraphrase...
- I'm not sure I'm with you; do you mean that?
- Let me see if I understand...
- That must have been difficult for you...
- I heard a couple of things that I want to check out with you...
- It sounds to me like _____ is the heart of the matter for you.
- So you are concerned/ upset/ angry/ worried/ bothered about _____ because _____...

GENERATING OPTIONS

- What if we___?
- How can we___?
- What might we___?
- What is it going to take for you to put this behind you?
- What are some other ways this could be resolved?
- What would you do if it were your decision? Why?
- What ideas do you have for moving forward?

EMPOWERMENT

- Who is there that you trust and can talk to about this situation?
- What resources do you have (people, financial, spiritual, property) that might help you deal with this situation?
- Are there ways we can be helpful to you so you can communicate and negotiate effectively for yourself?

CHANGING PERSPECTIVE

- What did you understand from what she (the other disputant) just said?
- How do you think we can move forward from here?
- If you were in his (the other disputant's) shoes, what would you do?

IDENTIFYING COMMON GROUND

- We've talked about where we disagree? Are there places where we agree?
- I think___and___are areas of shared interests and possible agreement. What do you think?

REALITY TESTING

- What do you think/feel/sense will happen if this isn't resolved?
- What are you going to do if there is no agreement?
- What are the consequences for you (time, money, emotions/stress)?

And now here is my secret, a very simple secret; it is only with the heart that one can see rightly, what is essential is invisible to the eye.

—Antoine de Saint-Exupery

LANGUAGE TO AVOID IN MEDIATION

Conversely, there are questions and language you should AVOID using. Some of those might include:

- Anything that sounds like you're 'cross examining' someone or anything that would make them feel like they're on the 'witness stand.'
- Focusing too much on people's positions.
- Focusing too much on 'fact finding,' finding the 'truth,' or figuring out who's 'lying.'
- "Why don't you...?" "Why didn't you...?" "Why did you...?"
- "I agree." "I understand."
- "Why can't you pay _____?" "How much do you make?" "What do you spend it on?"
- "How about if you split it?"
- "Yes, but..." "OK, but..." "Sure, but..." ".....but....."
- "You always (never, must, ought to, can't)..."
- "You'd better..." "You'd better not..."
- "You really should...." "You really shouldn't..."
- "If I were you, I'd..."
- "Don't feel that way."
- "You're acting _____."
- "You're being _____."
- "You need to..."
- "If you'll just calm down."
"I don't believe you." "I believe you."
- "How could you have _____?"
- "That's silly."
- "That won't work."
- "That sounds great!"

OPEN ENDED QUESTIONS-A SAMPLING BY ANNE LIGHTSEY

- Tell me more about that?
- Can you say a little more about how you see things?
- How do you see it differently?
- How are you feeling about that?
- Say more about why this is important to you?
- How would you like things to be?
- What was most hurtful (frustrating, etc.) for you in that situation?
- What impact have his/her actions had on you?
- What would you like to say to him, if you could?
- What have you been doing about that?
- What can you do to change things?
- What is your worst fear?
- What would you do differently?
- What are some of your alternatives?
- What might be other alternative?



MEDIATOR CODE OF ETHICS

Mediation is a profession (even when performed on a pro bono or volunteer basis) with ethical responsibilities and duties. Those who mediate for the Metropolitan Court are expected to abide by this code of ethics.

ETHICAL RESPONSIBILITIES TO THE PARTIES:

- The mediator will ensure the parties are willing to participate in mediation.
- The mediator will make sure the parties understand the mediation process and the mediator role.
- The mediator will **not** make '**outcome**' or '**resolution**' suggestions and will allow the parties to be responsible for their own decisions.
- The mediator will not suggest a 'settlement figure' to either party.
- A mediator will excuse him/herself if s/he knows either one of the parties (personally or professionally), or, for any reason does not feel s/he can remain objective.
- The mediator will ensure the parties understand all terms listed on the Agreement to Mediate form and sign the form before the mediation begins.
- When a mediator meets separately with one of the parties, they must maintain the confidentiality of anything said in that private session unless that party gives express permission for the mediator to disclose certain information.

ETHICAL RESPONSIBILITIES TO THE PROCESS:

- The mediator will ensure the mediation is a participatory process for the parties.
- The mediator will ensure mediation is appropriate for the circumstances.
- The mediator will be active in managing the process (*not the outcome*).
- The mediator will remain impartial regarding the parties.
- The mediator will maintain confidentiality except for the following circumstances:
 - suspected or admitted child or elder abuse
 - threat of physical harm or threat to damage property

- The mediator will empower the parties to advocate effectively for their own interests.
- The mediator will preserve the *harmlessness* of the process (psychological well-being of the parties).
- The mediator will not offer legal advice, analysis, or evaluation.
- The mediator will terminate the mediation when it is appropriate to do so.

ETHICAL RESPONSIBILITIES TO CO-MEDIATORS

- The mediator will not mediate when unable to participate fully.
- The mediator will arrive at least 15 minutes prior to the scheduled mediation time.
- The mediator will be willing to spend time pre-briefing before a mediation
- The mediator will be willing to spend time debriefing with their co-mediator after mediation.
- The mediator will be open to constructive feedback.
- The mediator will provide constructive feedback.

ETHICAL RESPONSIBILITIES TO THE METROPOLITAN COURT

- Mediators will act at all times in a manner that promotes public confidence in the integrity and impartiality of the mediation process and the judiciary.
- Mediators shall not use or attempt to use their affiliation with the Court to secure special privileges or exemptions for themselves or any other person.
- Mediators shall perform their duties without bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, gender identification or socioeconomic status.
- The Mediator will inform the Mediation Division and complete a Court Case Notification Form when required if they are a plaintiff, defendant or witness (including traffic and parking tickets)
- The mediator will inform the Mediation Division Staff of any concerns s/he may have, including, but not limited to:
 - Unprofessional or unethical behavior of a co-mediator
 - Suspected child or elder abuse and physical harm by or of the parties.

- The mediator will inform the Mediation Division staff of any concerns with Mediation Division procedures and/or suggestions for improvement.
- The mediator will participate in additional trainings/workshops and other skills enhancement processes offered by the Mediation Division and Metropolitan Court in order to maintain and further develop their mediation skills/techniques.

LEGAL TERMINOLOGY (CIVIL)

Complaint – The initial pleading in a civil action which states the claim for which relief is sought. (In small claims court, typically money is being claimed. Must be \$10,000 or less.)

Plaintiff – The person or entity filing a complaint/lawsuit.

Defendant – The person or entity responding to a complaint/lawsuit.

Summons – A writ informing the person or entity named in a lawsuit they are being sued. (In Metro Court must be served by a disinterested person, sheriff, or private process server.)

Answer – The defendant's written response to a complaint/lawsuit.

Counterclaim – When a defendant claims in their answer the plaintiff owes them money.

Motion – A request asking a judge to make a ruling or take some other action

Continuance – Postponement of a hearing or trial. (If both parties agree a case can be continued, most likely the judge will also agree. If both parties cannot agree, the judge will ultimately make the decision.)

Pro Se – "In one's own behalf." A person who is representing himself/herself in a court action instead of being represented by an attorney.

Judgment – The official decision of a court. In civil actions, a judgment is automatically entered on a person's/entity's credit report. A judgment is also "good" (can be used for collection purposes) for 14 years.

Default Judgment – Can be entered against a party when they either fail to file an answer to a civil complaint (typically defendant) or fail to appear in court.

Writ – A formal legal document ordering or prohibiting the performance of some action. Some examples include:

Writ of Restitution – A court order authorizing the sheriff to remove tenants who have been evicted.

Writ Garnishment: When a person's wages or money in a bank account are seized and delivered to a person to whom a debt is owed. Typically, up to 25% of a person's take home wages can be garnished. Some common exemptions are Social Security benefits, SSI benefits, Welfare benefits, Veteran's benefits and Workers and unemployment compensation.

Writ of Execution: The legal process of enforcing a Judgment by seizing and selling the Debtor's property. Permits the County Sheriff to take and sell property of the Debtor. The proceeds are then paid to the Creditor and applied towards the amount owed in the Judgment. (Certain types of property can be claimed as exempt from execution/seizure.)

THE MEDIATION PROCEDURES ACT

History

The MPA was originally proposed in 2005 as the “Alternative Dispute Resolution Procedures Act.” This version incorporates legislative recommendations designed to provide maximum protection in New Mexico citizens covered by its terms

Purpose – Mediation Confidentiality

- Mediation is increasingly used for public and private dispute resolution.
- Parties need to speak openly for mediation to work.
- Confidentiality is needed in order to protect mediation communications covered by the MPA.

How the Act Works (Generally)

- **SCOPE, Section 3.** *There is a clear threshold to be covered by the MPA, either a written agreement to mediate, or a written requirement to mediate by court, administrative agency or arbitrator.*
- **OPTION NOT TO BE COVERED, Section 3(B)(4).** A writing is required to “opt out” either by the parties and the mediator, or by a mediation program, court or other government entity.
- **CONFIDENTIALITY, Section 4.** *All mediation communications are by default confidential.*
- **EXCEPTIONS, Section 5(A).** The MPA lists nine exceptions to confidentiality.
- **DISCLOSURE IN COURT, Section 5(B).** *A disclosure of a mediation communication maybe allowed by the court for good cause and if the evidence is not otherwise available. This provision applies to contractual defenses to an agreement.*
- **MEDIATOR TESTIMONY, Section 5(C).** *A mediator by default shall not be required to testify, with limited exceptions.*
- **EFFECT OF AGREEMENT, Section 6.** *A signed agreement evidenced by a record is as enforceable as any other written contract.*

The confidentiality of mediation communications had never been protected by law in the State of New Mexico—until the *Mediation Procedures Act* (MPA) was passed in the 2007 legislative session.

We attempted to protect Metropolitan Court mediations and mediators by including a clause in our Agreement to Mediate prohibiting people from calling mediators as witnesses. This was successful; however, it is much better to have a relatively clear law on the books. This law went into effect **July 1, 2007**.

Section 4. CONFIDENTIALITY.—Except as otherwise provided in the Mediation Procedures Act or by applicable judicial court rules, all mediation communications are confidential, and not subject to disclosure and shall not be used as evidence in any proceeding. (See Appendix B for a copy of the law in its entirety.)

Frequently Asked Question:

If a mediation starts on or after that date, what is needed in order to be covered by the Act?

The Act specifies two circumstances under which mediation is covered: If the parties are required to mediate, paragraph (1), below, applies; if the parties and the mediator agree to mediate, paragraph (2) applies.

Mediation Procedures Act, Section 3, SCOPE

A. Except as otherwise provided in Subsection B of this section, the Mediation Procedures Act applies to all mediators, nonparty participants, mediation parties and a mediation in which:

(1) the mediation parties are required to mediate by statute or court or administrative agency rule or are referred to mediation by a court, administrative agency or arbitrator, or

(2) the mediation parties and the mediator agree to mediate and the agreement to mediate is evidenced by a record that is signed by the mediation parties.

EXCEPTIONS: Remember the Mediation Procedures Act provides how a required mediation or an agreed-upon mediation may be excluded from coverage. Other paragraphs of the Act explain how to be excluded from coverage. The Act is designed so that if you have a written agreement to mediate, or if you are required to mediate, you are automatically covered unless a proper exclusion is done.

PRACTICE TIP #1: A written or other record is required to cover an agreed upon mediation—a verbal statement that a process is a mediation is not enough.

PRACTICE TIP #2: Clarity helps—state in your paperwork and forms that your mediation is covered by the Mediation Procedures Act.

PRACTICE TIP #3: If a required or an agreed upon mediation is excluded from coverage, state in your paperwork that the Mediation Procedures Act does not apply.

. The complete text of the MPA is online at our Web site.

Caution: *This general summary does not substitute for reading the Mediation Procedures Act itself and forming your own opinion or seeking legal or other advice as to how the Act may apply to you.*

The preceding summary was prepared by David Levin and Jocelyn M. Torres, May 8, 2007

GUIDELINES FOR COURT-CONNECTED MEDIATION SERVICES

THE SUPREME COURT ALTERNATIVE DISPUTE RESOLUTION COMMISSION DEVELOPED THE FOLLOWING GUIDELINES FOR USE BY NEW MEXICO STATE COURTS.

THE MODEL STANDARDS OF CONDUCT FOR MEDIATORS SET FORTH STANDARDS IN NINE AREAS, INCLUDING SELF-DETERMINATION, IMPARTIALITY, CONFLICTS OF INTEREST, COMPETENCE, CONFIDENTIALITY, QUALITY OF THE PROCESS, ADVERTISING AND SOLICITATION, FEES AND OTHER CHARGES, AND ADVANCEMENT OF MEDIATION PRACTICE.

THE MODEL STANDARDS OF PRACTICE FOR FAMILY AND DIVORCE MEDIATION PROVIDE STANDARDS ADDRESSING SELF-DETERMINATION, QUALIFICATIONS OF MEDIATORS, IMPARTIALITY, FEES, CONFIDENTIALITY, ADVERTISING, COMPETENCE, AND SEVERAL OTHER STANDARDS RELATING TO THE QUALITY OF PROCESS AND FAMILIES IN PARTICULAR.

GUIDELINES FOR COURT-CONNECTED MEDIATION SERVICES

GUIDELINE I. Introduction.

These Guidelines for Court-Connected Mediation Services (“Guidelines”) are intended to assist the New Mexico Judiciary’s efforts to provide court-connected mediation services. Because each local court has unique needs and limitations, these Guidelines may not be applicable in all courts and should not be considered mandatory directives. However, all courts and the Administrative Office of the Courts are encouraged to implement the standards set forth below to the fullest extent possible.

GUIDELINE II. Definitions.

For purposes of these Guidelines, the following definitions apply.

A. “Court-connected mediation services” means any service that provides mediation in court cases and is created or administered by a court or the Administrative Office of the Courts. These services may be provided by a private entity to which a court refers a case for mediation, but do not include mediation services that have not been referred by a court or arranged by the Administrative Office of the Courts.

B. “Mediation” means a process in which a mediator

(1) facilitates communication and negotiation between mediation parties to assist them in reaching a voluntary agreement regarding their dispute; or

(2) promotes reconciliation, settlement, or understanding between and among mediation parties.

C. “Mediation communication” means a statement—whether oral, written, or nonverbal—that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.

D. “Mediation party” means a person, who participates in a mediation and whose agreement is necessary to resolve a dispute.

E. “Mediator” means an individual who is designated by a court or the Administrative Office of the Courts as a mediator and who conducts a mediation.

F. “Non-party participant” means a person, other than a mediation party or mediator, who is present and who may participate in the mediation. This definition may include a person who is being consulted by a mediation party to assist with evaluating, considering, or generating offers of settlement; who is an observer present to watch and listen to the mediation for educational or other administrative purposes; or who is a mediation program administrator.

G. “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government or governmental subdivision, agency or instrumentality, public corporation, or any other legal or commercial entity.

Comment

General

The definitions of “mediation,” “mediation communication,” “mediation party,” “mediator,” “non-party participant,” and “person” are derived from the Mediation Procedures Act (“MPA”), NMSA 1978, §§ 44-7B-1 to -6.

The term “mediation” is broad. Throughout the nation the term encompasses many methods, sometimes known as styles, for the practice of mediation. The range of methodology includes facilitative, evaluative, transformative, and other approaches, as well as combinations of approaches. The format for mediation also has a wide range of possibilities, including joint session based mediation, shuttle diplomacy, time limited dispute resolution sessions, and many more.

The definition of “mediation” in these Guidelines encompasses both mediation and settlement facilitation, the terms commonly used in New Mexico to describe mediation services. Although some view mediation and settlement facilitation as different processes and formats, the national consensus is that they both fall within the single term of “mediation.”

Referral by a judge or other court personnel

Paragraph A sets forth the determining characteristic of court-connected mediation services, which is a specific referral by a judge or other court personnel to a particular mediator. The referral may be formal, as in a referral order, informal, as in a direction from the bench, or otherwise. The dispositive question does not turn on who the mediator is, but rather on whether the parties are acting in accordance with specific direction from a court. *See also* Guideline IV (Qualifications of mediators).

Mediation participants

The people who may participate in mediation may have different roles. Paragraph D covers those participants whose agreement is necessary to resolve a dispute. However, in court-connected mediation services, the participants whose agreement is necessary may include the participants who are formally listed as a party to the legal action and may include participants who are not parties to the legal action. There are also participants whose agreement is not necessary, such as legal representatives, subject matter consultants, and others. The Guidelines address these different roles, while providing that certain requirements, such as confidentiality, apply to every participant regardless of role.

Mediation party

The definition of “mediation party” in Paragraph D is adapted from the definition of the same term in the MPA. The definition is much broader than the standard legal definition of “party.” *See, e.g.,* Black’s Law Dictionary 1010 (5th ed. 1979) (“‘Party’ is a technical word having a precise meaning in legal parlance; it refers to those by or against whom a legal suit is brought, whether in law or in equity, the party plaintiff or defendant, whether composed of one or more individuals and whether natural or legal persons; all others who may be affected by the suit, indirectly or consequently, are persons interested but not parties.”); *cf.* Rule 1-004(B) NMRA (“The summons shall be substantially in the form approved by the Supreme Court and must contain: (1) the name of the court in which the action is brought, the name of the county in which the complaint is filed, the docket number of the case, the name of the first party on each side, with an appropriate indication of the other parties, and the name of each party to whom the summons is directed; . . .”).

Participants who are not parties to the legal action

The definitions of “mediation party” and “non-party participant,” in Paragraphs D and F respectively, are adapted from the definitions of the same terms in the MPA. These terms originated in the literature, such as the Uniform Mediation Act, where the distinction between those parties who are named in the caption of a legal action were not distinguished from those parties whose agreement is necessary to resolve a dispute. In some circumstances, the resolution of a dispute may require the participation in mediation of persons not a party to the legal action to reach an agreement that will resolve the issues. Courts and mediators may consider, under some circumstances, inviting these persons to participate in mediation. These persons are therefore included in the definition set forth in Paragraph D of “mediation party.”

In some circumstances, there may be participants in the mediation who are neither named in the caption of a legal action, nor whose agreement is necessary to resolve a dispute. These participants are covered in Paragraph F as a “non-party participant,” and may include the following:

- Non-party participants may include attorneys, counselors, or advocates present at the request of the named parties in accordance with Guideline III(C), below.
- If the mediation parties agree, courts may also provide for the presence of observers for administrative or educational purposes. For instance, a court may provide for mentoring or coaching of less-experienced mediators through attendance and observation of mediation sessions, subject to the agreement of the mediation parties.
- Non-party participants should be bound by the confidentiality provisions set forth in Guideline III(D), below. Non-party participants by definition are not bound by the mediation agreement, if any.

Because mediation party self-determination is the core value of court-connected mediation services, the mediation parties have control of who is present during the mediation. Ideally, mediation parties who want to include a non-party participant in the mediation will raise the question with the other mediation parties and the mediator before the mediation session. Sometimes, however, a mediation party will simply bring a non-party to the mediation session without prior disclosure or discussion. If the presence and participation of non-parties has not been worked out in advance of mediation, reaching consensus on the presence and participation of non-parties is one of the first issues to be addressed at the mediation. If the mediation parties cannot reach consensus as to the presence and participation of the non-parties, the objecting mediation party ultimately has the right to opt out of the mediation.

In the case of observers, any mediation party may decline to have them present.

GUIDELINE III. General principles.

These Guidelines suggest minimum standards for all courts offering court-connected mediation services. Nothing in these Guidelines is intended to preempt any Supreme Court rule that addresses mediation or settlement facilitation.

A. Applicability. These Guidelines apply only to court-connected mediation services. They are not intended to apply to settlement conferences held by judges or to mediations in which disputants independently retain a private mediator.

B. Court-connected mediation services policies and procedures. Courts or the Administrative Office of the Courts in offering court-connected mediation services should adopt written policies and procedures consistent with these Guidelines for the implementation and conduct of their programs.

C. Self-determination. In self-determination, the decision-making authority rests with the mediation parties themselves. Self-determination is the core value of court-connected mediation services.

(1) Courts may mandate referral to mediation, but should not require mediation parties to settle. There should be no adverse response by courts to non-settlement by the mediation parties. For that reason, mediation parties should be permitted to opt out of mediation at any time.

(2) A mediator should facilitate negotiations between mediation parties and assist them in trying to reach a settlement, but should not have the authority to impose a settlement on the mediation parties or to coerce them into settlement.

D. Confidentiality. Except as otherwise provided in the Mediation Procedures Act, NMSA 1978, §§ 44-7B-1 to -6, or by applicable law, all mediation communications should be deemed confidential, should not be subject to disclosure, and should not be used as evidence in any proceeding. Mediators, mediation parties, and non-party participants should be bound by a rule of confidentiality. Nothing in these Guidelines, however, should prevent the discovery or admissibility of any evidence that is otherwise discoverable or admissible, merely because the evidence was presented during a mediation.

E. Immunity of mediators. A mediator, as defined in these guidelines, should be considered an arm of the court and as such should be immune from liability for conduct within the scope of the mediator's appointment.

F. Access to court-connected mediation services. All litigants should have access to court-connected mediation services without discrimination on the basis of race, ethnicity, color, creed, gender, gender identity, sexual orientation, marital status, national origin, or physical or mental ability.

G. Compliance with Language Access Plan. Court-connected mediation services and information to the public, the bar, judges, and court personnel about these services should be provided in a manner that complies with the court's Language Access Plan.

H. Information. A court should provide information to the public, the bar, judges, and court personnel about the availability and procedures of its court-connected mediation services.

Comment

General

These Guidelines set forth recommendations to courts for providing court-connected mediation services. These Guidelines recognize that court-connected mediation services need to be designed and implemented in ways that accommodate local needs and circumstances while maintaining consistently high quality.

Confidentiality

Courts should be certain that their court-connected mediation services comply with the confidentiality requirements of the Mediation Procedures Act.

Domestic Relations Mediation

The Domestic Relations Mediation Act (DRMA), NMSA 1978, §§ 40-12-1 to -6, allows courts to, among other things, establish domestic relations mediation programs. Rule 1-125 NMRA, applies to court-connected mediation services established under the DRMA. Where applicable, these Guidelines complement Rule 1-125. Additional statutes address mediation in family cases. *See* NMSA 1978, §§ 40-4-8(B), 40-4-9.1(G). These statutes direct courts to refer contested custody cases to mediation "if feasible."

Additional Service Areas and Fees

Courts are encouraged to be knowledgeable regarding the statutes and rules which will apply to their specific program(s), including whether there is authority to assess fees to the user(s) of the service. For example, there are different statutes and rules which apply to Magistrate Courts and the Metropolitan Court, and there are different statutes and rules which apply to fees for civil, domestic relations, and other cases.

Standards

Courts are encouraged to exceed the minimum standards set forth in these Guidelines whenever possible. When developing or modifying existing court-connected mediation services, courts are encouraged to refer to various relevant national standards, including those set forth below.

- The National Standards for Court-Connected Mediation Programs were developed in 1993 by the Center for Dispute Settlement in Washington, D.C., and the Institute of Judicial Administration in New York City, through a grant from the State Justice Institute. The National Standards are available at <http://courtadr.org/files/NationalStandardsADR.pdf>.
- The Model Standards of Practice for Family and Divorce Mediation were developed in 2000 by the Symposium of Standards of Practice and are available at: <http://www.afccnet.org/ResourceCenter/CenterforExcellenceinFamilyCourtPractice/ctl/ViewCommittee/CommitteeID/17/mid/495>.
- The Model Standards of Conduct for Mediators (2005) were developed by the American Arbitration Association, the American Bar Association's Section of Dispute Resolution, and the Association for Conflict Resolution and are available at: http://www.americanbar.org/content/dam/aba/migrated/dispute/documents/model_standards_conduct_april2007.

GUIDELINE IV. Policies and procedures.

A. **Minimum standards.** Each court and the Administrative Office of the Courts, if offering court-connected mediation services, should adopt written policies and procedures for the services and the qualifications of mediators. The policies and procedures should at a minimum address the following:

- (1) eligibility requirements for cases referable to mediation;
- (2) referral procedures;
- (3) mediator qualifications and assignment, including how mediators are selected and how an assigned mediator may be replaced;
- (4) payment of fees (if any) by the mediation parties, including provisions to make mediation available regardless of the mediation parties' ability to pay;
- (5) collection of administrative data;
- (6) management of grievances about the services or mediators;
- (7) pre-mediation review of cases for capacity issues including domestic abuse;
- (8) management of capacity issues—including issues arising from domestic abuse—which are identified at any time during the court-connected mediation services; and
- (9) opt-out procedures for legal parties and mediation parties who choose not to participate in mediation.

B. **Qualifications of mediators.** Written policies and procedures should be developed in the following areas to aid in ensuring that the mediators are qualified.

- (1) **Minimum qualifications.** A mediator's qualifications should be based on the skills needed for the type of case. Different categories of cases may require different types and levels of skills. Skills can be acquired through training and experience.
- (2) **Evaluation.** To ensure that mediators' performance is of consistently high quality, procedures should be established to evaluate the mediators' performance.
- (3) **Professional development.** A mediator should be required to participate in educational programs and related activities to maintain and enhance the mediator's knowledge and skills related to mediation.

C. Disclosure of information from mediation.

(1) **In general.** Policies and procedures regarding mediation services should not require disclosure of information from a mediation pursuant to Paragraph III(D).

(2) **Exceptions.** Notwithstanding Subparagraph (C)(1) of this Guideline, disclosure may be required of information pursuant to the Mediation Procedures Act, whether as an exception stated in the Mediation Procedures Act or as an additional or different exception which is created pursuant to an authorizing provision of the Mediation Procedures Act.

D. Supervision of court-connected mediation services. The court should designate a particular person or persons to be responsible for administration of its court-connected mediation services or to act as liaison with private, court-referred mediators.

Comment

General

This Guideline is intended to encourage courts to consider and determine how best to address the listed items given the needs and resources of a particular court. It is not intended to instruct courts on how to exercise their discretion. For example, policies and procedures for child custody court-connected mediation services in one district court may refer all divorce and parentage cases involving minor children to court staff to develop custody and timesharing agreements. Another district court might refer all such cases to private mediators for the same purpose. And yet another district court might refer only cases in which the parents have filed a request for referral to mediation.

Capacity to mediate

Subparagraph (A)(8), together with Guideline V(G), concerns the mediation parties' capacity to mediate. Subparagraph (A)(8) of this Guideline encourages courts to consider capacity issues when developing court-connected mediation services. Guideline V(G) addresses mediators' potential obligations regarding capacity issues that may be identified during mediation.

"Capacity" in its broadest sense refers to "the ability to understand the nature and effects of one's acts." Black's Law Dictionary 188 (5th ed. 1979). In mediation, capacity includes the ability to understand and to participate in the mediation process. Capacity is therefore crucial to expression of the core mediation value of mediation party self-determination. If mediation parties do not understand the process, issues, or settlement options, or have difficulty participating in mediations, their capacity to mediate, and by extension, their ability to make decisions in their own best interests, are adversely affected.

- Mediation should only take place in cases, or regarding issues, where all mediation parties have the capacity to exercise self-determination during the mediation process.
- The concept of capacity to mediate is neither intended to be a mental health diagnosis nor a specific judicial finding.

- Capacity to mediate potentially implicates a wide array of impediments. For example, the mediation process may be impeded by domestic abuse; neglect or abuse of a child; status as a protected individual or vulnerable adult; mental illness, brain injuries, or other mental impairment; and impairment from alcohol or other substances.
- Some forms of incapacity to mediate may be temporary, such as intoxication, and mediation may be rescheduled for another time. Other forms of incapacity to mediate may be longer term, such as mental illness, brain injury, or a history of domestic abuse, and may mean that mediation should be avoided altogether.
- Assessment of a mediation party's capacity to mediate is an on-going process in each case in which both courts and mediators have a role.

Courts should recognize that capacity issues may impact a mediation party's ability to exercise self-determination in the mediation process. They should consider whether and what kind of pre-referral review should be performed, and how and whether mediation should proceed in each case. States and mediation programs vary greatly in their approach to pre-referral review and may decide, for instance, to adopt a wide range of options, including any of the practices or procedures listed below. Courts should recognize that the range of options is extensive, and that continuing advances in the field are causing best practices regarding capacity issues to evolve. Some options in current use include:

- All cases should be reviewed prior to referral and throughout mediation.
- Only a certain type of case, e.g., domestic relations, should be reviewed prior to a referral and throughout mediation.
- When a review of the pleadings suggests a concern regarding capacity, a case would be reviewed prior to referral and throughout mediation.
- When a mediation party is unrepresented by counsel, regardless of the type of case, the case should be reviewed prior to referral and during mediation.
- The burden of informing the court and the mediator of capacity issues rests entirely on a mediation party, or the burden is a shared responsibility among the mediation parties, their advisors, and the mediator and court.
- Review for capacity issues may be as rudimentary as an Odyssey search or a questionnaire given to the legal parties and mediation parties, or as in-depth as a face to face meeting with each person potentially participating in the mediation with the mediator or program staff.

Mediators should be trained to recognize capacity issues including domestic abuse so that they can take appropriate action if such an issue appears during mediation.

Domestic abuse and capacity

"Domestic abuse" can be defined in a variety of ways. It can mean different things in different contexts, and various statutes define it differently. The U.S. Department of Justice, Office on Violence Against Women, defines domestic violence as follows:

[A] pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of

actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.

<http://www.ovw.usdoj.gov/domviolence.htm>.

Although other issues may affect the capacity to mediate, domestic abuse is an issue specifically identified in statutes or rules in New Mexico and in other states.

Some states by statute, court rule, or Supreme Court publication, either explicitly or implicitly, require screening for domestic abuse.

- The Nebraska legislature requires mediators to screen for enumerated capacity issues prior to meeting with the parties. *See* Neb. Rev. Stat. § 43-2939 (2007).
- The New Mexico Legislature has prohibited mediation in child custody cases where “a party asserts or it appears to the court that domestic violence or child abuse has occurred,” unless certain enumerated conditions are met. NMSA 1978, § 40-4-8(B) (Emphasis added.)
- The Ohio Supreme Court requires that local mediation rules include “[p]rocedures for screening for domestic violence both before and during mediation.” Sup. R. 16(B)(1) (Rules of Superintendence for the Courts of Ohio).
- Michigan Supreme Court’s Office of Dispute Resolution has authored a publication (revised June 2014) entitled “Domestic Violence Screening Protocol for Mediators of Domestic Relations Conflicts.”

Courts also should be aware that there are many terms which are used to describe domestic abuse or domestic violence. The following statutes provide some examples of other definitions:

- Family Violence Protection Act, NMSA 1978, § 40-13-2(D), (C);
- Crimes Against Household Members Act, NMSA 1978, §§ 30-3-10 to -18 (enumerated crimes);
- NMSA 1978, § 40-4-8; and
- Violence Against Women Act, 42 U.S.C. § 1392(a)(6).

Notably, domestic abuse may influence parties not only in family cases but also in such seemingly unrelated cases as landlord-tenant or personal injury. For example, the injured party in a personal injury case may be in a relationship where domestic violence is present, and the non-party partner is controlling the injured party’s decisions regarding procedure of the case.

Courts may decide that cases involving domestic abuse or other capacity issues should not be referred to mediation; they may decide to leave the door open to judicial discretion in referral decisions; or they may decide specific approaches to be used in handling a referral.

Screening for capacity issues

Screening for capacity to mediate is an evolving concept in the mediation field, and development of screening protocols and tools is on-going. At this time, some screening protocols

have been developed for domestic abuse, and additional protocols continue to emerge. Screening for domestic abuse may enhance both the quality of court-connected mediation services provided and the safety of mediation participants. The extent of screening will vary according to the nature of each case and the resources available to a court. Screening alone, however, is insufficient; the decisions made, based upon the screening results, are critical.

Some states, including Michigan, use screening in mediation to identify domestic abuse.

□ The Michigan Supreme Court's Domestic Violence Screening Protocol opens with the following:

The purpose of this screening protocol is to protect the safety of mediation participants and the integrity of the mediation process. The protocol is designed to identify parties involved in divorce or child custody actions for when mediation may be inappropriate because of domestic violence or child abuse, and to maximize safety in the mediation process.

Michigan Supreme Court, State Court Administrative Office, Office of Dispute Resolution, *Domestic Violence Screening Protocol for Mediators of Domestic Relations Conflicts* (June 2014),

<http://courts.mi.gov/Administration/SCAO/Resources/Documents/standards/odr/Domestic%20Violence%20Screening%20Protocol.pdf>.

Some states, including New Mexico, have statutory language that can only be fulfilled with sufficient screening:

- NMSA 1978, Section 40-4-8(B), directs that contested child custody cases be referred to mediation,

If feasible unless a party asserts or it appears to the court that domestic violence or child abuse has occurred, in which event the court *shall* halt or suspend mediation *unless* the court *specifically finds* that:

(a) the following three conditions are satisfied: 1) the mediator has substantial training concerning the effects of domestic violence or child abuse on victims; 2) a party who is or alleges to be the victim of domestic violence is capable of negotiating with the other party in mediation, either alone or with assistance, without suffering from an imbalance of power as a result of the alleged domestic violence; *and* 3) the mediation process contains appropriate provisions and conditions to protect against an imbalance of power between the parties resulting from the alleged domestic violence or child abuse; *or*

(b) in the case of domestic violence involving parents, the parent who is or alleges to be the victim requests mediation and the mediator is informed of the alleged domestic violence.

(Emphasis added.)

Opting out of mediation

Mediation party self-determination is the core value of court-connected mediation services. For this reason, Guideline III(C) incorporates a strong opt-out provision to allow mediation parties who do not feel comfortable going forward for any reason to opt out of the mediation rather than be coerced into attending. Paragraph (A)(9) of this Guideline explicitly encourages courts to develop procedures to allow mediation parties to opt-out of mediation.

Further, in light of *Carlsbad Hotel Associates, L.L.C. v. Patterson-UTI Drilling Company*, 2009-NMCA-005, 145 N.M. 385, 199 P.3d. 288, good faith participation should not be required by any court-connected mediation services.

In the event a court is considering whether and how to enforce an order to mediation, the court should give careful consideration to the critical distinction between “objectively measurable noncompliance” and a “subjective determination of bad faith.” See ABA Section of Dispute Resolution, *Resolution on Good Faith Requirements for Mediators and Mediation Advocates in Court-Mandated Mediation Programs* (Aug. 7, 2004), <http://www.abanet.org/dispute/draftres2.doc>.

Qualifications of mediators

Many states with rules governing court-connected mediation services require a minimum of a 40-hour basic mediation training plus annual continuing education for mediators providing court-connected mediation services. Given the limited availability of mediation training outside of Santa Fe and Albuquerque, and the consequent shortage of trained mediators outside of Santa Fe and Albuquerque, these Guidelines do not recommend specific training or recommend how courts should qualify their mediators. Paragraph B of this Guideline, however, encourages courts to consider the qualifications a mediator should have to competently mediate and whether qualifications should be tailored for case type.

There presently is no single, commonly accepted body that certifies or establishes qualifications or credentials for mediators

Professional development

Examples of professional development for mediators may include mentoring and observation by skilled and experienced mediators, workshops, emailed “tips” and information, roundtable discussions, advanced mediation training, webinars, conference calls, email ‘list serves,’ participant surveys, books, and written articles.

Disclosure of information from mediation

In addition to the recommended limitations on the disclosure of information set forth in Paragraph C of this Guideline, Guideline III(D) provides that mediation communications should be

deemed confidential, should not be subject to disclosure, and should not be used as evidence in any proceeding. Further, court-connected mediation services are within the scope of the Mediation Procedures Act. Courts should be certain that their court-connected mediation services comply with the confidentiality requirements of the Mediation Procedures Act.

Supervision of court-connected mediation services

Designation of a specific person or persons to be responsible for administering the court-connected mediation services ensures consistency of application, thereby avoiding any appearance of arbitrariness or capriciousness while still protecting the discretion of judges to refer or not refer cases to mediation.

GUIDELINE V. Ethical standards for mediators.

Each court and the Administrative Office of the Courts if offering court-connected mediation services should adopt a set of ethical standards for mediators. The standards should at a minimum address the issues set forth in this Guideline. The standards should apply only to mediators who mediate in court-connected mediation services. Failure to comply with an obligation or prohibition imposed by a standard may be a basis for removal of a mediator from a court roster. These standards should not give rise to a cause of action for enforcement of these Guidelines or for damages caused by alleged or perceived failure to comply with an obligation or prohibition imposed by a standard set forth in these Guidelines.

A. Impartiality. Impartiality is at the heart of a mediator's ethical responsibilities. A mediator should maintain impartiality toward all mediation parties. Impartiality means freedom from favoritism or bias either by appearance, word, or action, and a commitment to serve all mediation parties as opposed to a single mediation party. At a minimum, a mediator should comply with the following:

(1) a mediator should not accept or give a gift, request, favor, loan, or any other item of value to or from a mediation party or non-party participant involved in any pending or scheduled mediation process, except that a mediator may accept payment of fees for court-connected mediation services; however, a mediator may accept or give de minimis gifts or incidental items or services that are provided to facilitate a mediation or respect cultural norms so long as such practices do not raise questions as to a mediator's actual or perceived impartiality;

(2) a mediator should not use information disclosed during the mediation process for private gain or advantage, nor should a mediator seek publicity from a mediation effort to enhance the mediator's position; and

(3) if at any time a mediator is unable to conduct a mediation in an impartial manner, the mediator should withdraw.

B. Conflict of interest. A conflict of interest arises when any relationship between the mediator and the mediation parties or non-party participants, or the subject matter of the dispute compromises or appears to compromise the mediator's impartiality. A mediator should refrain from entering into or continuing in any dispute if he or she perceives that participation as a mediator would be a conflict of interest or create an appearance of a conflict of interest. A mediator should avoid a conflict of interest or the appearance of a conflict of interest during and after a mediation.

(1) A mediator should disclose a known, significant relationship with any mediation party or non-party participant involved in the mediation, whether the relationship is current or past, or personal, professional, or pecuniary in nature. If a mediator has represented, treated, or advised any mediation party or non-party participant in any capacity, the mediator should disclose that professional relationship. A mediator should disclose any clear or potential conflict of interest as soon as practical after the mediator becomes aware of it.

(2) After a mediator discloses a current or prior personal or professional relationship or pertinent pecuniary interest, the mediation parties may choose to continue with the mediator.

(3) The duty to disclose should be a continuing obligation throughout the mediation process.

C. Representations by mediator. A mediator should not make inaccurate statements about the mediation process, its costs and benefits, or the mediator's qualifications, including the following:

(1) a mediator should not make claims of specific results or promises which imply favor of one mediation party over another;

(2) a mediator should not offer any promises about the outcome of a mediation in a communication, including on a business card, stationery, or in a computer-based communication;

(3) a mediator should refrain from promises and guarantees of results and should not advertise statistical settlement data or settlement rates; and

(4) a mediator should accurately represent her or his qualifications. A mediator should only claim to meet the mediator qualifications of a governmental entity or private organization if that entity or organization has a recognized procedure for qualifying mediators and it specifically grants such status to the mediator.

D. Disclosure of Fees. When costs and fees are paid by the mediation parties directly to the mediator, the mediator should provide written information to the mediation parties that includes costs, fees, and time and manner of payment. The mediation parties and the mediator should enter into a written agreement that describes costs, fees, and time and manner of payment before beginning the mediation—even if the mediator's fees are set by court order. The assessment of fees should comply with the following:

(1) no commissions, rebates, or other similar forms of remuneration should be given or received by a mediator for the referral of clients; and

(2) fees should not be based on the outcome of the mediation. A mediator should not enter into a fee agreement which is contingent upon the result of the mediation or the amount of the settlement.

E. Confidentiality. Mediators for court-connected mediation services should comply with the confidentiality requirements of the Mediation Procedures Act.

F. Role of mediator.

(1) A mediator should not make decisions for the mediation parties. At no time and in no way should a mediator coerce any mediation party into an agreement or make a

substantive decision for any mediation party. Depending on the mediation model being utilized, a mediator may make suggestions for the mediation parties' consideration, but all decisions should be made voluntarily by the mediation parties themselves.

(2) The role of a mediator differs substantially from other professional roles. Mixing the role of a mediator and the role of another profession is problematic and should be avoided.

(3) A clear, complete, written documentation of any agreements made by the mediation parties during mediation is a beneficial service a mediator may offer. If the court requires or the mediation parties request, a mediator may document any agreements made by the mediation parties. Such documentation may be on forms approved by the court, where such forms are available. In documenting an agreement a mediator should be aware of the limitations imposed on the process by the unauthorized practice of law requirements, any applicable ethical requirements, and any other applicable requirements.

(4) If the mediation parties are not represented by counsel at the mediation, the mediator should afford them the opportunity for review of any agreement by an independent attorney or other consultant before it is signed.

G. Capacity to mediate.

(1) If a mediation party appears to have difficulty comprehending the process, issues, or settlement options, or difficulty participating in a mediation, the mediator should explore the circumstances and potential accommodations, modifications, or adjustments that would make possible the mediation party's capacity to comprehend, participate, and exercise self-determination.

(2) If a mediator is made aware of domestic abuse or violence among the mediation parties or non-party participants, the mediator should take appropriate steps including, if necessary, postponing, withdrawing from, or terminating the mediation.

Comment

This Guideline draws from the sources set forth below, as well as from provisions in New Mexico statutes and mediator ethical codes from other states. Standard 8.1 of the National Standards for Court-Connected Mediation Programs provides: "Courts should adopt a code of ethical standards for mediators, together with procedures to handle violations of the code." The Commentary to Standard 8.1 elaborates: "In creating a code of ethics, courts should consider the dual purposes of such a code: the promotion of honesty, integrity and impartiality in mediation, and the effective operation of a mediation program. . . . Each court should consider existing standards when drafting its code." After reference to many codes of ethics adopted by courts and professional associations throughout the country, Standard 8.1 concludes that any set of standards for mediators should address the following six areas: impartiality, conflict of interest, advertising by mediators, disclosure of fees, confidentiality, and role of mediators in settlement.

ACKNOWLEDGEMENTS

Many people contributed to creating and maintaining this handbook over the years. Without their help and input this handbook would not have been possible.

Joan March, Mediator and Metro Court and Magistrate Court Volunteer, created the original Metro Court Mediator Handbook several years ago. This handbook is now used statewide by mediators and trainers. **THANK YOU JOAN!**

Others who have contributed:

Cynthia Olson

Mark Bennett

Anne Lightsey

Moses Reyes

Susan Barnes-Anderson

Every mediator who has volunteered their time since 1986



YOUR FEEDBACK

Your feedback is very important to us. After you've had a chance to read through this handbook, let us know what you liked and how we can improve future revisions. Also let us know if you spot any errors, typos, etc. Feel free to print off this page and scan/email, mail, or bring to anyone in the Mediation Division.

1. Please provide us with some information:

Your name:

Your email address:

Your phone number:

How long have you been mediating?

2. How would you rate the usefulness of this handbook?

☐ Extremely useful. I learned many things I didn't know before.

☐ Fairly useful. There were a few things I wasn't aware of.

☐ Possibly useful for others. I already knew everything in this handbook.

☐ Could be more useful to me if

3. What did you think of the handbook's format?

☐ Very readable. I liked the way the sections were divided.

☐ Overall okay, though it could be improved by

☐ Confusing and hard to read

4. What about the level of detail?

☐ Just the right amount.

☐ Not enough detail

☐ Too much detail

5. The part of the handbook I liked the best is

6. The part of the handbook that could probably be eliminated is
7. The chances that I'll refer back to this handbook again are
- ☐ Very high
- ☐ Moderate
- ☐ Unlikely
8. Do you have a "frequently asked question" that you would like to add to those in the handbook?
9. Any other comments about any aspect of the handbook? Use the back of this sheet if necessary.

Forms can be mailed to:
Bernalillo County Metropolitan Court, Mediation Division,
P.O. Box 133, Albuquerque, NM 87103 or
Emailed to:
metrmediation-grp@nmcourts.gov