

**Standards of Conduct**  
**Effective Date January 1, 2012**

**III. Confidentiality: A mediator shall, subject to exceptions set forth below, maintain the confidentiality of all information obtained within the mediation process.**

- A. A mediator shall not disclose, directly or indirectly, to any non-participant, any information communicated to the mediator by a participant within the mediation process. A mediator's tendering a copy of an agreement reached in mediation pursuant to a statute that mandates such a tender shall not be considered to be a violation of this paragraph.
- B. A mediator shall not disclose, directly or indirectly, to any participant, information communicated to the mediator in confidence by any other participant in the mediation process, unless that participant gives permission to do so. A mediator may encourage a participant to permit disclosure, but absent such permission, the mediator shall not disclose.
- C. The confidentiality provisions set forth in A. and B. above notwithstanding, a mediator may report otherwise confidential conduct or statements made in preparation for, during, or as a follow-up to mediation in the circumstances set forth in sections (1) and (2) below:
  - (1) A statute requires or permits a mediator to testify, or to give an affidavit or to tender a copy of any agreement reached in mediation to the official designated by the statute.

If, pursuant to Family Financial Settlement (FFS) and Mediated Settlement Conference (MSC) Rule 5, a mediator has been subpoenaed by a party to testify about who attended or failed to attend a mediated settlement conference/mediation, the mediator shall limit his/her testimony to providing the names of those who were physically present or who attended by electronic means.

If, pursuant to FFS and MSC Rule 5, a mediator has been subpoenaed by a party to testify about a party's failure to pay the mediator's fee, the mediator's testimony shall be limited to information about the amount of the fee and who had or had not paid it and shall not include statements made by any participant about the merits of the case.

- (2) To a participant, non-participant, law enforcement personnel or other persons affected by the harm intended where public safety is an issue, in the following circumstances:
  - (i) a party or other participant in the mediation has communicated to the mediator a threat of serious bodily harm or death to be inflicted on any

person, and the mediator has reason to believe the party has the intent and ability to act on the threat; or

- (ii) a party or other participant in the mediation has communicated to the mediator a threat of significant damage to real or personal property and the mediator has reason to believe the party has the intent and ability to act on the threat; or
- (iii) a party's or other participant's conduct during the mediation results in direct bodily injury or death to a person.

If the mediator is a North Carolina lawyer and a lawyer made the statements or committed the conduct reportable under subsection C.(2) above, then the mediator shall report the statements or conduct to the North Carolina State Bar (State Bar) or the court having jurisdiction over the matter in accordance with North Carolina State Bar Rule of Professional Conduct 8.3(e).

- D.** Nothing in this Standard prohibits the use of information obtained in a mediation for instructional purposes; or for the purpose of evaluating or monitoring the performance of a mediator, mediation organization, or dispute resolution program, so long as the parties or the specific circumstances of the parties' controversy are not identified or identifiable.
- E.** Nothing in this Standard shall prohibit a mediator from revealing communications or conduct occurring prior to, during, or after a mediation in the event that a party to or a participant in a mediation has filed a complaint regarding the mediator's professional conduct, moral character or fitness to practice as a mediator and the mediator reveals the communication or conduct for the purpose of defending him/herself against the complaint. In making any such disclosures, the mediator should make every effort to protect the confidentiality of non-complaining parties to or participants in the mediation and avoid disclosing the specific circumstances of the parties' controversy. The mediator may consult with non-complaining parties or witnesses to consider their input regarding disclosures.