

Effective March 1, 2010

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 ~~non~~-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 has discretion to report otherwise confidential conduct or statements made in preparation for, during, or as a follow-up to mediation to a participant, non-participant, law enforcement personnel, or other officials or to give an affidavit, or to testify about such conduct or statements in the following circumstances:
 - (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.
 - (2) Where public safety is an issue:
 - (i) a party to 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 to 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 conduct during the mediation results in direct bodily injury or death to a person.
- 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.