

**Effective March 1, 2010**

**IV. Consent: A mediator shall make reasonable efforts to ensure that each party understands the mediation process, the role of the mediator, and the party's options within the process.**

- A. A mediator shall discuss with the participants the rules and procedures pertaining to the mediation process and shall inform the parties of such matters as applicable rules require. ~~A mediator shall also inform the parties of the following:~~
- ~~(1) that mediation is private;~~
  - ~~(2) that mediation is informal;~~
  - ~~(3) that mediation is confidential to the extent provided by law;~~
  - ~~(4) that mediation is voluntary, meaning that the parties do not have to negotiate during the process nor make or accept any offer at any time;~~
  - ~~(5) the mediator's role; and~~
  - ~~(6) what fees, if any, will be charged by the mediator for his/her services.~~
- B. A mediator shall not exert undue pressure on a participant, whether to participate in mediation or to accept a settlement; nevertheless, a mediator ~~may and~~ shall encourage parties to consider both the benefits of participation and settlement and the costs of withdrawal and impasse.
- ~~C. Where a party appears to be acting under undue influence, or without fully comprehending the process, issues, or options for settlement, a mediator shall explore these matters with the party and assist the party in making freely chosen and informed decisions.~~
- C. If a party appears to have difficulty comprehending the process, issues, or settlement options, or difficulty participating in a mediation, the mediator shall explore the circumstances and potential accommodations, modifications or adjustments that would facilitate the party's capacity to comprehend, participate and exercise self-determination. If the mediator then determines that the party cannot meaningfully participate in the mediation, the mediator shall recess or discontinue the mediation. Before discontinuing the mediation, the mediator shall consider the context and circumstance of the mediation, including subject matter of the dispute, availability of support persons for the party and whether the party is represented by counsel.
- ~~D. If after exploration the mediator concludes that a party is acting under undue influence or is unable to fully comprehend the process, issues or options for settlement, the mediator shall discontinue the mediation.~~
- E.D In appropriate circumstances, a mediator shall ~~encourage~~ inform the parties ~~to seek of~~ the importance of seeking legal, financial, tax or other professional advice before, during or after the mediation process. ~~A mediator shall explain generally to pro se parties that there may be risks in proceeding without independent counsel or other professional advisors.~~