



CENTER FOR DISPUTE
SETTLEMENT
peace it together

Mediator Handbook

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WELCOME TO THE CENTER FOR DISPUTE SETTLEMENT

On behalf of The Center for Dispute Settlement (CDS), I am pleased to introduce this *Mediator Handbook*. This document is a general guide that explains our policies and expectations and is designed to assist staff and volunteer mediators to comply with state regulations, ensure the quality of mediation and other alternative dispute resolution (ADR) processes, and provide a foundation for a collaborative working relationship between staff and volunteers.

One of the key characteristics of our mediation programs is our commitment to the use of volunteers as primary providers of our services. Our volunteer mediators come from all backgrounds and walks of life and are dedicated to the process of peaceful conflict resolution. CDS is proud of the caliber of mediators who have been trained and served our communities over the years. Since our founding in 1973, hundreds of volunteers have been trained to serve as third party neutrals, successfully resolving cases that might otherwise escalate or go to court.

The Mediator Handbook will be revised and updated from time to time to reflect new legislation, regulations, and procedures that are adopted by the State of New York and/or the Federal Government which impact our work.

Thank you for your interest and commitment to the field of alternative dispute resolution. We are happy to welcome you to the CDS family.

In peace,

Shira May
President/CEO

INTRODUCTION AND BACKGROUND

The Center for Dispute Settlement (CDS) is a not-for-profit organization that provides our communities with low- and no-cost alternative dispute resolution (ADR) services, including mediation, arbitration, facilitation, and restorative practices, as well as a variety of trainings and workshops, helping people save time, reduce legal expenses, and bring peace to our community.

CDS was established in 1973 as the first Community Dispute Resolution Center (CDRC) in New York State and the third in the country. Under the impetus of the Rochester public school's integration and reorganization crisis, the American Arbitration Association founded the Community Dispute Services Program in Rochester, NY. The American Arbitration Association, an organization long experienced in the resolution of labor/management conflicts, had earlier established the National Center for Dispute Settlement. The goal of the national center was to seek peaceful conflict resolution at the community level through the use of fact-finding, conciliation, negotiation, mediation and arbitration.

As the Community Dispute Services Program became more deeply immersed in the Rochester community, its programs expanded. They encompassed not only civil and criminal matters referred from Rochester's city and town courts, but also referrals from the Family Court, such as juvenile matters and custody and visitation. Training programs were also developed to provide conflict resolution techniques for various community agencies, organizations and businesses.

Recognizing that its work and mission were significantly different from those of the American Arbitration Association, the Community Dispute Services Program of Rochester legally changed its name to The Center for Dispute Settlement, Inc. and became a separate non-profit organization in October 1979. In 1983, services were expanded to the counties of Livingston, Ontario, Wayne, Seneca and Yates. In 1997, the Center expanded to include Steuben County and expanded again in 1999 to include Cayuga County. CDS now provides services to the eight counties comprising the NYS Unified Court System's 7th Judicial District.

Since 1981, the Unified Court System of New York State has provided funding and oversight for the Community Dispute Resolution Center (CDRC) network, which consists of 20 nonprofit organizations that serve the 62 counties across the state. This network was established by and operates in compliance with Article 21-A of the NYS Judiciary Law, provided in Appendix A.

MISSION

To use and promote peaceful dispute resolution processes throughout our communities

PURPOSE

- Promote peaceful resolution of community disputes through mediation and arbitration by trained professionals
- Mediate and resolve disputes between persons who might otherwise resort to resolution of such disputes through the judicial system
- Improve community relations by prompt, efficient, and competent mediation of all disputes
- Promote the public welfare and the general good through training and educating the community about the resolution of disputes through non-adversarial processes

VISION

- Provide a neutral environment that promotes peaceful resolution of disputes through a full and fair mediation or hearing of the issues, and preserve human dignity without inferring guilt or blame.
- Provide an environment where parties can resolve disputes classified as violations, misdemeanors, low level felonies, civil matters and other interpersonal conflicts
- Recruit and train dedicated, capable people representing a cross section of the community to serve as fact finders, mediators, conciliators and arbitrators for the Center
- Provide on-going training in the skills and techniques of arbitration, mediation and conflict resolution
- Encourage and assist agencies in developing mediation and other alternative dispute resolution processes and procedures
- Provide information to the community about alternative dispute resolution and collaborative problem solving processes
- Serve the community by providing conflict resolution services alone or in conjunction with other organizations. Participate in review boards, hearings and elections as requested
- Encourage the establishment of Alternative Dispute Resolution (ADR) processes within various governmental entities in New York State

DIVERSITY, EQUITY, INCLUSION, AND BELONGING (DEIB) STATEMENT

The Center for Dispute Settlement is committed to establishing an organizational culture that ensures diverse, equitable, and inclusive practices are present in all we do. Formed in 1973, the Center was established amidst the polarization occurring in Rochester and cities across the country in response to the civil rights movement. We are steadfast in our continuing commitment to support the work that engages our community towards transformative change to bring justice and equity for *all* our residents.

The following principles provide the guiding lens for this effort:

Diversity: Acknowledges all the ways people differ, where multiple identities are represented in an organization

Equity: Considers everyone's needs and ensures fair treatment, access, opportunities, and advancement for all people, while recognizing certain groups are subject to advantages and disadvantages

Inclusion: The extent to which everyone (staff, board, volunteers, and clients) feels a sense of value, where thoughts, ideas, and perspectives of individuals matter within the organization

Belonging: The extent to which everyone can thrive simply by being their authentic selves, where the organization engages the full potential of the individual, where innovation thrives, and where views, beliefs, and values are integrated.

Our agency has prioritized the following structures to support our DEIB efforts:

- In 2019, staff members created our agency's Racial Equity Leadership Committee (RELC). RELC's key pillars are Education, Encouraging and Supporting Dialogue, Alignment with Agency Strategic Plan, and Evaluation of Policies and Practices.
- Our Strategic Plan for 2021-2024 lists Integrating DEIB Principles as one of our three priority goal areas. Our operational plan will guide the work of our agency towards accomplishing specific key results in this area.

Definitions adapted with permission from Krys Burnette:

<https://medium.com/@krysburnette/its-2019-and-we-are-still-talking-about-equity-diversity-and-inclusion-dd00c9a66113>

MEDIATOR BILL OF RIGHTS

- As a mediator for CDS, I am assured of the following rights:
- To be valued and appreciated as a volunteer
- To be well-trained in mediation technique and practice
- To begin my apprenticeship as soon as possible after training
- To be given reasonable notice of a need for my services
- To be able to refuse any offered opportunity to mediate
- To have a professional staff person available whenever I mediate
- To have a suitable room and safe environment in which to mediate
- To have consent agreements prepared promptly and accurately
- To be provided constructive feedback on written agreements
- To have a staff person available with whom I may debrief my experience
- To be made regularly aware of opportunities for continuing education
- To have any concerns and/or grievances addressed in a timely fashion
- To be reimbursed for approved expenses incurred as a volunteer, per CDS policy
- To be provided an annual record of volunteer service

OUR RESPONSIBILITY TO MEDIATORS

CDS is responsible for providing the following to all mediators:

- Adequate training and apprenticeship
- In-service training to maintain and improve skills, learn new methods, and meet all requirements set forth by CDS and the Unified Court System
- Timely compensation for services, when duly authorized per CDS policy
- Appropriate space for mediators to perform their duties, with special regard to confidentiality and personal safety
- Cases screened by staff
- Supervision and assistance by staff as necessary
- Provide opportunity for a minimum of six hours of continuing education
- Opportunity for a minimum of three mediations a year
- Constructive feedback when requested or required
- Information about obligations to administering agencies, additional trainings, and educational opportunities and materials
- Timely and professional attention to administrative tasks essential to the mediation process
- Legal counsel for any mediators who have been petitioned by the judicial system regarding the agency's cases

CDS is legally responsible for the actions and decisions of its mediators and arbitrators. Should any legal action be taken against a CDS mediator or arbitrator, our agency's legal counsel will represent that person by petitioning the court for Mediator/Arbitrator Immunity as determined by the President/CEO. (See Appendix B attached.)

MEDIATION

Mediation is a process whereby parties come together voluntarily to discuss problems and explore solutions with the help of a trained neutral.

TRANSFORMATIVE FRAMEWORK

At CDS, we honor our agency's long tradition within the Transformative mediation framework (more information about this framework can be found on the website of the Institute for the Study of Conflict Transformation:

<https://www.transformativemediation.org/>)

We view conflict as an opportunity to transform the quality of the parties' interactions, from destructive to constructive, negative to positive. Mediators support parties to increase their understanding of their own views and the views of the other party, as well as assist them in making decisions based on these understandings. We consider the Transformative framework to be the foundation of our practice, and we also embrace the diversity of tools that our mediators draw from to support our clients' needs.

MEDIATOR CERTIFICATION

To become a volunteer mediator with CDS, the applicant must successfully complete:

- A volunteer application form
- A screening interview by CDS staff
- *Basic Mediation Training* of at least 35 hours, consisting of:
 - Instruction about conflict resolution mechanisms
 - Role play practice of each step of the mediation process
 - Feedback from training staff
- An apprenticeship program leading to mediator certification

Apprenticeship Program

The apprenticeship must be initiated within one year of completing the *Basic Mediation Training*, unless pre-approved by the County Director in the county that the apprenticeship will take place.

The apprenticeship program consists of:

- Three observations of mediation cases
- Three co-mediations, documented on the Mediator Assessment Form
- One solo mediation, documented on the Mediator Assessment Form

An apprentice who is inactive (has not completed any observations or co-mediations) for more than six months must attend a meeting with the County Director in the county in which they will volunteer, in order to identify barriers and assess the apprentice's commitment to completing the apprenticeship.

An apprentice who has not completed their apprenticeship within two years of taking Basic Mediation Training will be taken off the active apprentice list and must re-start the application process if they still wish to mediate with us.

Following successful completion of the apprenticeship program, the applicant is recommended for certification by the County Director. The mediator then receives a letter of certification signed by the President/CEO. Mediators are sworn in before a notary public.

Advanced Trainings

We recommend that apprentices complete the Custody & Visitation Training soon after completing the Basic Mediation Training (BMT), because the apprenticeship for Community Mediation and Custody & Visitation Mediation may be completed at the same time. Apprentices who have completed the BMT but have not completed the Custody & Visitation training must complete their apprenticeship in Community Mediation only. However, they may observe Custody & Visitation mediations.

As a general rule, Advanced Trainings are available only to certified mediators. Eligibility criteria may vary by program and exceptions to the general rule may be made on a case-by-case basis by the President/CEO or her/his designee.

Apprenticeship in areas other than Community and Custody & Visitation Mediation is only available to certified mediators. Specialized apprenticeships will consist of no less than a minimum of one observation, one co-mediation and one solo mediation. Depending on the specialty, additional requirements may apply.

Certification Maintenance

To maintain active certification status with CDS, mediators are required to:

- Complete at least 6 hours of in-services each year which may include:
 - In-services scheduled by CDS (at least 3 hours must be in this category)
 - In-services conducted by other community dispute resolution centers or the Unified Court System's Office of ADR
 - Conferences or trainings that align with the scope of work that CDS offers
- Conduct (as lead or co-mediator) a minimum of 3 mediation cases each year
- Be observed/reviewed by staff using the Mediator Assessment Form at least once every 2 years

Process for Mediators Who Are Out of Compliance

Mediators who have not met their annual certification maintenance requirements will be considered out of compliance and will not be able to mediate at CDS.

Mediators who have not met their requirements in up to two years will be required to:

- Meet with staff to discuss obstacles to completing mediator requirements
- Complete all requirements within the following fiscal year
- Complete one solo mediation while being observed by staff

Mediators who have not met their requirements for more than two years must complete all of the above plus:

- Attend another Basic Mediation Training or a Mediator Refresher class (when offered)
- Complete successful co-mediations and solo mediations to the satisfaction of the County Director/assigned staff

Mediators who do not meet these requirements to the satisfaction of the County Director will be taken off our active mediator list and must re-start the application process and repeat the apprenticeship program if they still wish to mediate with us.

MANDATED REPORTING OF SUSPECTED CHILD ABUSE

The reporting of child abuse by centers and mediators has been a topic of concern and an ethical issue for many years.

- New York State (NYS) law does not list mediation centers and/or mediators as mandated reporters for suspected child abuse
- NYS Social Services law, Section 413, does not include mediation centers and/or mediators on its long list of mandated reporters
- Mandated reporters on the NYS Social Services law, Section 413, list are required to report suspected child abuse that comes to their attention in their professional or official capacity
- As a matter of administrative policy, CDRCPs will report incidents of child abuse that surface during intake or mediation sessions. CDRCP *guidelines* for community mediation centers regarding child abuse are not a legislative mandate. The guidelines were adopted to:
 - protect children from continued abuse
 - prevent the mediation process from becoming a safe haven for parties guilty of abuse
- If child abuse becomes a concern during mediation, mediators must report the situation to CDS staff. The intent of this administrative policy is to encourage the reporting of suspected child abuse so that child protective services may be aware of the situation.

INTERPERSONAL VIOLENCE POLICY

It is CDS policy that staff must screen all mediation cases for interpersonal violence. Mediation may not take place between parties who are currently experiencing interpersonal violence, which includes domestic violence, intimate partner violence, and other relational violence. If interpersonal violence becomes a concern during mediation, mediators must stop the session and report the situation to CDS staff. Training on interpersonal violence is provided for mediators both during our Basic Mediation Training (BMT) as well as on an ongoing basis.

STANDARDS OF CONDUCT

Mediators are bound by the ethical standards of conduct for neutrals established by the State of New York Unified Court System and by CDS policies.

The standards of conduct are governed by the following principles:

- Self-Determination
- Impartiality
- Conflicts of Interest
- Competence
- Confidentiality
- Advertising and Solicitation
- Responsibilities to the Mediation Process

All of our mediators are expected to demonstrate the following at all times:

- Adhere to the principle that all parties have a right to negotiate and to determine the outcome of their own conflicts
- Be aware of their duties and obligations related to the parties involved, to the mediation process, to other mediators, and to CDS
- Maintain **impartiality and confidentiality** toward all involved parties while conducting a mediation
- Demonstrate integrity, good judgment, honesty, responsibility, objectivity, the ability to listen, the ability to communicate effectively both orally and in writing, and the ability to relate to our diverse communities with respect
- Recognize that your attitude and behaviors do not only represent yourself, but also represent the agency as a whole

In order to ensure the effectiveness and efficiency of our services, mediators are expected to:

- Inform the case manager if, for some reason, you cannot do the mediation
- Dress appropriately for your audience/clientele
- Arrive at least fifteen minutes before the scheduled mediation to allow ample time to prepare for the case
- Refrain from providing legal advice to the parties
- Elicit relevant information and address issues of importance in a dispute without imposing judgments
- Keep information **confidential** unless information is:
 - Revealed in caucus and a party agrees it may be shared in the joint session
 - Revealed about domestic violence or child abuse – these issues must be reported to the staff immediately
- Disclose any personal **conflicts of interest** if they surface in the course of the mediation, such as:
 - Professional or personal relationships with parties, witnesses and/or any attorney involved in the mediation
 - Relevant financial interests
- Not use the mediation process to solicit, encourage, or otherwise incur future

- services with either party
- Not use his/her position for personal gain or advantage
 - Not accept remuneration of any kind from the parties
 - Terminate a mediation if either party is unable to fully participate or demonstrates judgment that impairs their ability to make self-determined decisions.
 - Terminate a mediation if they cannot be impartial and fair and/or a party claims that the mediator is not impartial or fair
 - Assist parties in reaching mutually acceptable, alternative solutions to their problem
 - Inform staff if the parties have reached an impasse
 - Assist the parties in developing and writing an agreement, if they choose to have a written agreement
 - Review any written agreement with the parties and a staff member before it is finalized
 - Read the agreement aloud to the parties before they sign it (this ensures understanding for parties who may not have the literacy skills to read the agreement themselves)
 - Complete all required documentation for a case in a timely manner
 - Destroy any notes and drafts generated by all parties at the conclusion of the mediation session
 - Allow thirty (30) minutes to debrief with the case manager and/or apprentice mediator/observer

The following behaviors are deemed unacceptable and may result in disciplinary action, up to and including dismissal. This list is not all-inclusive and is meant to be a guideline only.

- Reporting to CDS under the influence of alcohol or illegal drugs
- Theft or willful waste or destruction of an individual's or agency property
- Arrest and/or conviction of a crime that prevents completion of assignments
- The submission of false, incomplete, or misleading information relating to personal and professional background
- Outside affiliations or activities that could damage the agency's reputation or interfere with the rendering of services
- Use of offensive language or threatening or violent behavior
- Sexual harassment, bullying, or other inappropriate interpersonal conduct
- Breach of client confidentiality
- Refusal to follow instructions or to complete accepted mediator assignments
- Consistently exhibiting poor performance or judgment in completing assignments
- Frequently (more than 3 times) arriving late or not at all, without notifying staff
- Unauthorized use of the agency's name, logo, funds, phones, postage, or equipment

DISCIPLINARY ACTION

Violation of any of our agency's policies or expectations may lead to disciplinary actions that may include:

- Suspension for a specified period of time
- Suspension with recommended re-training before reinstatement
- Mandatory retraining before reinstatement
- Removal as CDS mediator
- Expulsion from any activity related to the agency

CDS reserves the right to sever a professional relationship with any individual if it is determined that the individual's conduct, beliefs or actions are in opposition to the well-being and integrity of the agency. The final determination as to the level of impact of any action or misconduct by a mediator and the level of disciplinary action rests with the President/CEO.

GRIEVANCE PROCEDURE

If volunteers have problems, questions, or concerns, they should initiate a discussion with the County Director where they are a volunteer. Issues must be brought to the County Director's attention in a timely manner, normally within 2 weeks of the volunteer being aware of the problem, question, or concern.

If the matter is not resolved or the situation not corrected to the volunteer's satisfaction, the volunteer has the right to request a mediation by contacting the Director of Finance and Operations or the President/CEO. If mediation is out of the question, or a mediation session does not solve the problem to the volunteer's satisfaction, you have the right to initiate a grievance process by submitting a written complaint to the Director of Finance and Operations or President/CEO within five working days of the informal discussion with the County Director. The Director of Finance and Operations can provide further information about the steps of the grievance process.

MEDIATOR RECORDS

CDS staff will keep current, comprehensive records of all mediators. These records will be available to the mediator upon request. These records will be used for the purposes of:

- Maintaining a record of the mediator's activity for certification purposes
- Maintaining accurate, up-to-date information regarding each mediator's mailing address, phone number, email address and availability for mediations
- Data reporting to funding sources

Mediator records will be kept in an individual mediator file at the respective program office and a master file in the Administrative Offices. These files will include:

- Mediator resume (optional)
- Signed volunteer application form
- Signed confidentiality form
- Mediator assessment forms, second, third co-mediators and solo mediation
- *Mediator Policy and Procedures Handbook* signoff form
- Oath of office records

The Volunteer Coordinator will also maintain a spreadsheet that documents all mediator's trainings, in-services and completed mediation cases.

STIPENDS

Stipends are available for certain programs and rate information is available from staff.

MILEAGE REIMBURSEMENT

Mileage for necessary travel outside of registered county will be reimbursed when pre-approved by a County Director.

- Requests must be filed with the County Director before the 5th of the month following the month in which expenses were incurred
- Reimbursement will be paid within 30 days of the receipt of an approved request from the County Director

TEMPORARY LEAVE

Mediators wishing to take a temporary leave are asked to submit a request to his or her County Director.

RESIGNATION

Mediators wishing to resign from the Center are asked to write a letter to the President/CEO and their County Director

MEDIATOR'S SIGN-OFF SHEET

My signature below indicates that I have reviewed the *Mediator Handbook* and agree to abide by the policies and expectations described in it. I will ask for clarification in any area that is unclear to me and will communicate with CDS staff if I have any problems or challenges with complying with these policies and expectations.

MEDIATOR PRINT NAME DATE MEDIATOR SIGNATURE

MEDIATOR NUMBER

*Please sign, date, and return this signature page to the
Volunteer Coordinator*