

# **Report on Best Practices for Mediating Grievances in the Corrections System**



**Mediation and Conflict Resolution Office  
Administrative Office of the Courts  
December 2024**

# Report on Best Practices for Mediating Grievances in the Corrections System

## 1. INTRODUCTION

The Act Concerning the Establishment of the Office of the Correctional Ombudsman - Establishment and Funding, passed in 2024 by Maryland General Assembly and signed into law by the Governor requires the “Mediation and Conflict Resolution Office shall report to the Office of the Correctional Ombudsman, the Governor, and, in accordance with §2-1257 of the State Government Article, the General Assembly on best practices for mediating grievances in the corrections system.”<sup>1</sup> The bill creates a provision in State Government Article 9-3805 (A) (5) which directs the Ombudsman to seek to resolve complaints against an agency through mediation or other conflict resolution methods.

In preparing this report, the Maryland Judiciary’s Mediation and Conflict Resolution Office (MACRO), a unit of the Administrative Office of the Courts (AOC), consulted with mediation and conflict resolution practitioners, correctional facilities representatives, correctional facilities ombuds, Executive branch staff, Judiciary alternative dispute resolution staff, and others, and reviewed the landscape of conflict resolution practices in correctional facilities across the United States. The consultations conducted in the preparation of this report are listed in Appendix A. The report team in the Administrative Office of the Courts included:

Lou Gieszl, MPP, Assistant State Court Administrator for Programs  
Cynthia Jurrius, Esq., Program Director, Mediation and Conflict Resolution Office  
Lisa Mannisi, Esq., Senior Program Manager, Court ADR Resources, Mediation and Conflict Resolution Office  
Nick White, Ph.D., Program Manager, Research and Evaluation, Mediation and Conflict Resolution Office

The considerations and recommendations contained herein were further grounded in the 2020 Maryland Standards of Conduct for Mediators<sup>2</sup> and the Maryland Mediator Confidentiality Act.<sup>3</sup>

---

<sup>1</sup> 2024 Maryland Laws Ch. 836 (S.B. 134).

<sup>2</sup> The Maryland Standards of Conduct for Mediators (Jan. 1, 2020), Maryland Judiciary, <https://www.courts.state.md.us/sites/default/files/import/macro/pdfs/mdstandardsconductformediators.pdf> attached at Appendix B

<sup>3</sup> Maryland Mediation Confidentiality Act. Md. Code Ann., Cts. & Jud. Proc. § 3-1801- § 3-1806.

## 2. EXECUTIVE SUMMARY

Drawing from Maryland's history of leadership in alternative dispute resolution (ADR), review of conflict resolution programs across the county and beyond, and consultation with others in the fields of dispute resolution and correctional services, this report examines mediation's potential to address grievances in correctional facility settings effectively, explores existing mediation and conflict resolution programs, and offers guidance for consideration when developing a mediation or other conflict resolution program in a correctional setting.

### Mediation as a Tool for Ombuds

Mediation is a voluntary, impartial process that empowers parties to resolve disputes non-violently and collaboratively. Mediation creates an opportunity for people to work together to solve problems, make their own decisions, and participate in crafting outcomes acceptable to all involved.

Mediation is a possible tool for addressing grievances in correctional facilities proactively and efficiently, reducing reliance on litigation and fostering a safer environment. Mediation aligns with core values of ombuds and mediators, including impartiality, confidentiality, voluntariness, self-determination, and respect, providing a foundation for constructive conflict resolution.

### National Landscape of Mediation in Correctional Facilities

There appear to be no formal programs for mediating grievances incarcerated individuals have in correctional facilities; however, mediation does have other applications in correctional settings. Examples include:

**Maryland:** Re-entry mediation programs create opportunities for incarcerated individuals to access community mediation services pre-release as part building their re-entry plans.

**New Jersey:** Ombuds programs resolve grievances informally through discussions.

**Minnesota:** Restorative justice programs have been available to address conflicts among staff and incarcerated individuals and repair harm.

**Illinois:** Community-focused mediation circles promote collaborative resolutions.

In addition, there are some court ADR programs, such as the U.S. District Court for the Western District of Michigan's Early Mediation Program, that highlight mediation's potential to reduce caseloads and facilitate settlements in correctional grievance appeals.

### Applications and Benefits

Mediation can address conflicts at multiple levels within correctional facilities:

**Incarcerated Individuals:** Provides a non-violent avenue for conflict resolution, improving communication, potentially reducing recidivism, and equipping participants with life skills.

**Staff:** Offers a mechanism for resolving workplace disputes, enhancing teamwork, and safety.

**Institutions:** Reduces the burden on grievance systems, mitigates litigation risks, and improves the overall institutional climate.

## Challenges

Implementing mediation in correctional settings faces barriers, including:

**Cultural resistance** from staff and incarcerated individuals. Staff may view mediation as lenient, while incarcerated individuals may fear stigma or retaliation.

**Trust building** particularly around confidentiality and perceived biases. Ensuring confidentiality and impartiality is essential.

**Resource constraints**, such as funding, space, and trained personnel.

**Mental health considerations**, requiring appropriate screening and alternatives.

**Power imbalances** unique to the correctional facility setting.

## Program Development and Design

A successful mediation program requires careful planning and stakeholder engagement. Establishing an effective mediation program for grievances in a correctional setting would likely benefit from the following considerations:

**Stakeholder Engagement:** Build trust with staff, incarcerated people, unions, and leadership through transparent communication and collaborative program design.

- Involve staff, incarcerated individuals, unions, and leadership in program design fosters trust and collaboration.
- Use tools such as focus groups, mini-trainings, and ambassador programs to enhance communication and buy-in across all levels.

**Mediator Training:** Provide well-trained mediators and ongoing support.

- Mediators may include ombuds staff, internal staff, or external professionals.
- Mediators should have substantial experience and receive ongoing training to address the complexities of the corrections environment.
- Comprehensive training is needed in conflict resolution, ethical standards, and corrections-specific protocols.
- Training should emphasize voluntary participation and decision-making, address safety protocols, and support cultural competency.
- Short training segments may supplement full training to meet institutional constraints while fostering skills development.

## **The Mediation Process:**

- Intake and Screening: The ombuds or a mediator can assess cases to determine appropriateness, focusing on factors including willingness to engage, ongoing relationships, and potential power imbalances. Cases involving severe violations or requiring mandatory reporting may not be suitable.
- Timing of Mediation: Early intervention is ideal, though mediation can be effective at any stage, including after an administrative process or legal proceeding.
- Process Logistics: Mediation should occur in neutral, private spaces with adequate lighting, and minimal distractions. Remote mediation may be an option with proper technological support.
- Language Access: Consider the need for interpreters or bi-lingual mediators in situations where participants do not speak the same primary languages or are limited English speakers.
- Voluntary Participation: Ensuring participants can end mediation without penalty maintains trust and engagement.

**Program Evaluation:** Provide tools for evaluating mediation programs and exit surveys for mediation participant, with established metrics aligned with program goals.

## **Conclusion**

Mediation offers the potential to improve the grievance process and institutional relationships within Maryland's correctional facilities. By prioritizing stakeholder engagement, a well-trained mediator roster, ongoing comprehensive training programs and skills workshops, and a thoughtfully designed process, the corrections system can leverage mediation to reduce conflict, foster mutual understanding, and create a safer, more cooperative environment for all stakeholders.

### 3. UNDERSTANDING MEDIATION AS A TOOL FOR OMBUDS

Mediation is a process where a trained impartial third party facilitates communication between people involved in a dispute, helping them to better understand each other's perspectives and work toward a mutually agreeable solution, without imposing a decision. Mediation provides an opportunity for people to work together to solve problems and participate in crafting outcomes acceptable to all involved.

Maryland has been recognized as a national leader in ADR since the late 1990s and early 2000s due to the work of the Maryland Judiciary's Alternative Dispute Resolution (ADR) Commission, which was charged with advancing the appropriate use of mediation and other ADR processes throughout Maryland's courts, communities, schools and universities, state and local government agencies, criminal and juvenile justice programs, and businesses. Chaired by then Chief Judge Robert M. Bell, the ADR Commission included judges, public officials, legislators, ADR practitioners, community members, lawyers, business representatives, educators, and others. Working with more than 700 people around the state, the ADR Commission developed a consensus-based practical action plan titled *Join the Resolution*, the last chapter of which called for creating a permanent state office of dispute resolution, which is now MACRO.<sup>4</sup>

Maryland has a history of utilizing mediation and conflict resolution tools within correctional facilities, in the context of re-entry mediation offered by community mediation centers across the state. The introduction of re-entry mediation in 2006 in Maryland and its subsequent formalization in 2008 through a Memorandum of Understanding between the Department of Public Safety and Correctional Services and Community Mediation Maryland serve as a testament to the practical application and benefits of mediation in a challenging environment.<sup>5</sup> Re-entry mediation, discussed further in Section 4 below, provides an opportunity for an incarcerated person, typically within six months of expected release, to meet with family members or other support people, with the help of a non-judgmental mediator, and establish a plan for moving forward productively after release. While re-entry mediation is a different context than mediation of grievances within the correctional facility, it provides a reference point.

While there are complexities that need to be considered in the corrections environment, mediation has consistently demonstrated the potential to foster healthier communities in complex settings. Mediation, therefore, has potential as a tool for improving staff and incarcerated people's engagement while positively impacting formal grievances processes.

---

<sup>4</sup> Hon. Robert M. Bell, Chief Judge, Maryland Court of Appeals, Chair, ADR Commission, *Join The Resolution: The Maryland ADR Commission's Practical Application Plan* (Dec. 1999), Maryland Courts, <https://www.mdcourts.gov/sites/default/files/import/macro/pdfs/jointheresolution.pdf>.

<sup>5</sup> Shawn M. Flower, *Community Mediation Maryland Re-entry Mediation In-Depth Recidivism Analysis*, Principal & R.C.R. Associates (2014), <https://abell.org/wp-content/uploads/2022/02/afr-cmmrecidivism1114.pdf>.

## Shared Values of Mediators and Ombuds

Ombuds typically rely on many tools, such as mediation, conflict coaching, facilitation, shuttle diplomacy, and training. This section focuses on the shared values of the mediation and ombuds professions. The purpose of this section is to highlight the interconnectedness of the professional standards and what should be foundational for an ombuds providing mediation in a correctional setting.

**Impartiality/Neutrality:** Mediators serve as impartial third parties with no vested interest in the mediation's outcome. They should provide a process that allows the parties to determine the direction and outcome of their dispute.

**Confidentiality:** Both professions emphasize the importance of confidentiality. Confidentiality provides a setting where the parties can engage in open communication that is not on the record. In the corrections context, certain institutional considerations and confidentiality exceptions will likely need to be developed for safety.

**Voluntariness:** Core to the concept of participants having ownership of any outcome is that they have the option to end the process at any time without negative repercussions.

**Self-Determination:** Mediators and ombuds seek to empower parties to speak for themselves, identify their concerns and interests, and seek appropriate solutions. The parties are the decision makers; mediators and ombuds do not impose a solution on them. To support self-determination, the mediation process being provided should be clearly laid out, and all parties should understand the role of the mediator. Every reasonable step should be taken to make clear the difference between a mediation session and the broader work being conducted by the ombud or ombud's staff.

**Respect and Dignity:** Treating all parties with respect is fundamental in mediation and ombudsman work. This helps maintain a constructive atmosphere conducive to resolving disputes.

## 4. LANDSCAPE OF MEDIATION OF GRIEVANCES IN STATE AND FEDERAL CORRECTIONAL FACILITIES

### Mediation in Ombudsman Programs in State Correctional Facilities

Review of existing ombuds programs in state correctional facilities in the United States indicates that a formal program for mediating grievances of incarcerated persons and correctional facilities has not been developed in that context in any other state. Approximately 20 states in the U.S. have established prison oversight bodies, often including ombuds programs. These programs provide independent oversight, investigate complaints, and protect the rights of incarcerated individuals. However, their structures vary widely, depending on their authority,

scope, and independence, and these variances would impact the timing, challenges, and strengths of an ADR program.

Some states, such as New Jersey, Washington, Minnesota, and now Maryland, have independent ombuds offices separate from the Department of Corrections (DOC). Other states house their ombuds programs within the DOC or a related agency. Some states, Illinois for example, rely on separate nonprofit organizations for prison oversight, in lieu of a publicly funded ombuds programs.

The scope of these programs also varies. States such as Minnesota and New Jersey provide ombuds' offices broad investigative powers, such as full access to prison records and the authority to conduct on-site visits. Other states, California for example, limit their ombuds' focus to systemic issues rather than individual grievances. Some ombuds programs oversee adult and juvenile facilities, while others, like Michigan, focus solely on adult prisons.

Complaint handling processes are another point of divergence. In some states, incarcerated individuals can file complaints directly with the ombuds without needing to exhaust administrative remedies. However, many states require that they exhaust the internal grievance process before contacting the ombuds. This can lead to conflict resolution processes being offered for fewer complaints. Michigan's Legislative Correctional Office (LCO), for example, investigates only about 15% of complaints, partially due to many not meeting procedural requirements prior to being filed.<sup>6</sup>

Despite the differences in structure, scope, and authority, ombuds programs aim to resolve grievances, often acting as intermediaries between incarcerated individuals and correctional staff. New Jersey's Office of Correctional Ombudsperson, for example, handled 10,600 complaints in 2023, resolving 9% through separate, facilitated discussions between incarcerated individuals and correctional facilities.<sup>7</sup> Similarly, Washington's Office of Correctional Ombudsman serves as a go-between, working to resolve disputes informally.<sup>8</sup>

In Illinois, the Office of the Independent Juvenile Ombudsman (OIJO) takes a more community-focused approach, promoting restorative practices such as peacekeeping circles which are conducted by non-profits. These circles bring youth and staff together to discuss issues, share perspectives, take responsibility, and find solutions for moving forward.<sup>9</sup>

---

<sup>6</sup> Michigan, National Resource Center for Correctional Oversight, June 7, 2023, <https://prisonoversight.org/oversight-bodies/prison-oversight/michigan/>.

<sup>7</sup> New Jersey Office of the Corrections Ombudsperson, 2023 Annual Report, New Jersey Department of Corrections, <http://www.nj.gov/correctionsombudsperson/documents/annual-reports/2023AnnualReport.pdf>.

<sup>8</sup> Office of the Corrections Ombuds, FY2023 Annual Report, Washington State, [https://oco.wa.gov/sites/default/files/Office\\_of\\_%20the\\_%20Corrections\\_%20Ombuds\\_FY2023\\_%20AnnualReport.pdf](https://oco.wa.gov/sites/default/files/Office_of_%20the_%20Corrections_%20Ombuds_FY2023_%20AnnualReport.pdf).

<sup>9</sup> Office of the Juvenile Independent Ombudsman, FY2023 Report, Illinois Dep't of Juvenile Justice, <https://idjj.illinois.gov/content/dam/soi/en/web/idjj/2024-documents/OIJO%20FY2023%20Annual%20Report%20Submission.pdf>.

According to Michele Deitch of the National Resource Center for Correctional Oversight, and Director of the Prison and Jail Innovation lab of the University of Texas at Austin, mediation could improve the grievance process by offering a voluntary, independent option that addresses complaints before they escalate to formal grievances or lawsuits. She emphasized that mediation should not be a bureaucratic barrier and suggested that trained mediators be integrated into correctional facilities to facilitate early dispute resolution. Educating correctional officers on the benefits of mediation, particularly to reduce their administrative burden, is also critical.

Terry Schuster, New Jersey's correctional ombudsperson, agreed with Deitch's views but highlighted challenges, including the high volume of complaints, the staff resources needed for mediation, and the necessity of building trust in the process from both incarcerated individuals and correctional staff. He also raised logistical concerns, such as where mediation would take place and the training required for mediators in a correctional setting.

### **Other Mediation and ADR Programs in Correctional Facilities**

Though mediation is not currently being practiced within an ombuds setting for incarcerated persons' grievances, there are mediation and other ADR methods being utilized in correctional facilities to resolve other issues and disputes. This provides a perspective on how mediation may work in a correctional ombuds framework.

Mediation in correctional facilities is an evolving practice aimed at addressing conflicts between incarcerated persons, their families, correction staff, and the administration in a non-adversarial way. In the correctional context, mediation serves as a tool to resolve disputes by bringing conflicting parties together, allowing them to communicate openly and work toward a mutually acceptable solution.

#### ***Re-Entry Mediation***

Re-entry mediation in correctional institutions is a structured process that facilitates communication and conflict resolution between incarcerated individuals and their families or significant others before the individual's release. The primary goal is to help incarcerated people address unresolved conflicts and establish positive relationships to support their successful reintegration into society.

Re-entry mediation is available only to incarcerated individuals who are in pre-release status. The process begins with an intake phase, where trained mediators assess the needs and circumstances of the incarcerated individual and their family members. This assessment helps identify the key issues that need to be addressed during mediation. Once the participants are prepared, mediation sessions are scheduled, typically occurring a few months before the individual's release to allow adequate time for resolution.

Re-entry mediation is voluntary, with both the incarcerated person and their family members agreeing to participate. This voluntary nature ensures that all parties are engaged and willing to work toward finding solutions.

The benefits of re-entry mediation are significant. It has been shown to reduce the likelihood of post-release arrest, with studies indicating that participants have a lower probability of recidivism compared to those who do not engage in mediation. Additionally, mediation helps to strengthen relationships, improve communication skills, and build a support network for the returning individual, all of which contribute to a smoother and more successful reintegration into the community.<sup>10</sup>

### ***Mediation between Correctional Employees***

Kay Pranis, a national leader in restorative justice and expert in peacemaking circles, served as the Restorative Justice Planner for the Minnesota DOC from 1994 to 2003. She previously worked as the Director of Research Services at the Citizen’s Council on Crime and Justice. During her time at the DOC, Pranis developed an integrated conflict management system for addressing staff conflicts and supported juvenile programs with existing resources. Her approach focused on starting initiatives with mid-level staff open to new ideas and presenting suggestions as offerings rather than directives. She emphasized active listening to uncover deeper issues, believing that improving the work environment for correctional officers would positively impact the incarcerated people they serve.

Laraine Mickelson facilitated mediation among correctional officers in Minnesota in her role at the DOC.<sup>11</sup> She recognized that conflict among staff hindered restorative justice efforts with incarcerated individuals, leading to a recommendation that restorative justice be first implemented for staff. This resulted in the Conflict Resolution Initiative (CRI), which used mediation, facilitation, conflict coaching, and circles to address workplace issues. Each correctional facility tailored its approach, utilizing either internal, external, or combined mediators, all trained in facility policies and procedures for consistency.

Initially, the mediation program faced skepticism and distrust, but partnerships with labor unions and human resources helped build trust. Internal staff were trained as ambassadors for the program, promoting its benefits. Extensive groundwork, including focus groups, ensured that participation was voluntary and non-punitive.

In Maryland, mediation and other dispute resolution opportunities may be offered to staff through the Department of Public Safety and Correctional Services, Fair Practices and Inclusion.

Key themes for successful mediation in correctional facilities include gaining buy-in from all levels, building trust, using trained internal mediators or advocates, and ensuring external mediators understand the correctional system.

### ***Mediation between Incarcerated Population***

---

<sup>10</sup> Flower, S., M. (2014). *Community Mediation Maryland Re-entry Mediation In-Depth Recidivism Analysis*. Principal & R. C. R. Associates. <https://abell.org/wp-content/uploads/2022/02/afr-cmmrecidivism1114.pdf>

<sup>11</sup> See Appendix regarding interview with Laraine Mickelson.

Peer mediation for adult incarcerated populations has been shown to have value internationally and domestically. Tanya Lalor (2017) studied a pilot in the Castlerea prison in Ireland that focused on a marginalized adult population that had poor housing and higher suicide rates outside the corrections setting and an over-represented presence in the corrections system. The research found that most of the mediation occurred outside the formal program; “it was reported that at least 32 incidents were averted as a result of informal peer mediation undertaken: 31 conflict coaching sessions had been undertaken, and one formal successful referral to peer mediation was made. It was estimated that the peer mediation had impacted 100 people, likely to result in a reduction in both conflict and prison sanctions.”<sup>12</sup> At the time of the article, discussion of expanding to other prisons had started.

Kaufer et al. (2014) conducted pre- and post-training testing of incarcerated mediation trainees and found that the program did provide the trainees with additional conflict resolution skills. The authors argue that to have a sustainable program there needed to be certified mediation trainers from within the incarcerated population supported by four factors: 1) engaged incarcerated people, 2) supportive administration, 3) skilled trainers, and 4) funding.<sup>13</sup>

Juvenile facilities have been using mediation programs for decades to de-escalate conflicts, foster new skills in youth, and reduce recidivism for those trained as mediators.<sup>14 15</sup> While a mediation program needs to be designed to work within its environment, program staff should ensure that foundational aspects are not changed. For example, juveniles should not be forced into mediation; the voluntary nature is foundational to the engagement of participants and follow-through on agreements.<sup>16</sup> Juvenile mediators do not intervene in violent situations, but afterwards they work to find a way to avoid future violence. As with any new skill, follow-up and support are important for juvenile mediators, such as weekly meetings with staff.

A recurring theme in the literature and interviews was that the frontline staff must also find value in the mediation program. The importance of this was highlighted in New Mexico when mediation staff were physically close to one facility and distant from another. With a limited budget, the distant facility received less direct engagement and presence, fewer conversations with correctional staff, and ultimately, less understanding of the value in comparison to those in the closer facility. The outside researcher hired to study the New Mexico program observed three philosophies among correctional staff. One is a treatment approach, which easily integrates mediation. The other two, the custodial role (hold offender until time served) and retribution,

---

<sup>12</sup> Tanya Lalor, *Prisoner Facilitated Mediation: Bringing Peace to Prisons and Communities*, 4(2) J. Mediation & Applied Conflict Analysis 601 (2017).

<sup>13</sup> Laurel Kaufer, Douglas E. Noll & Jessica Mayer, *Prisoner Facilitated Mediation: Bringing Peace to Prisons and Communities*, 16 Cardozo J. Conflict Resol. 187, 214-16 (2014).

<sup>14</sup> Donna Crawford & Richard Bodine, *Conflict Resolution Education: A Guide to Implementing Programs in Schools, Youth-Serving Organizations, and Community and Juvenile Justice Settings* (1996), U.S. Dep’t of Justice & U.S. Dep’t of Education.

<sup>15</sup> P.D. Steele, *Youth Corrections Mediation Program: Final Report of Evaluation Activities* (1991), Univ. of N.M. Youth Resource & Analysis Ctr.

<sup>16</sup> Donna Crawford & Richard Bodine, *Conflict Resolution Education: A Guide to Implementing Programs in Schools, Youth-Serving Organizations, and Community and Juvenile Justice Settings* (1996), U.S. Dep’t of Justice & U.S. Dep’t of Education.

required more engagement to help them understand the value of the program. This spectrum of philosophies meant that one area of an institution may embrace mediation, but other areas will not if staff are not engaged.<sup>17</sup>

## Mediation of Grievances in the Courts

Mediation and alternative dispute resolution (ADR) processes for grievances raised by incarcerated individuals typically occur in the courts after all administrative remedies have been exhausted. Some jurisdictions face a heavy caseload of incarcerated individuals' grievance appeals.<sup>18 19</sup>, and courts have introduced ADR to manage these cases earlier in the litigation process

For example, the U.S. District Court for the Western District of Michigan introduced the Pro Se Prisoner Civil Rights Litigation Early Mediation Program in federal court in 2018.<sup>20</sup> This program is available only to unrepresented parties with civil rights claims.<sup>21</sup> A neutral mediator—who may be a Magistrate Judge, Bankruptcy Judge, or volunteer attorney—facilitates the discussion without giving legal advice or making decisions.<sup>22</sup> Mediation is voluntary, requiring consent from all parties, and takes place before defendants are served. The process is confidential, and if a settlement is reached, it is recorded as final. If not, the case continues through normal litigation. Cases may leave the program if the plaintiff gains legal representation or if all parties do not consent.<sup>23</sup>

In the U.S. District Court for the Middle District of Pennsylvania, the Prisoner Litigation Settlement Program refers cases to ADR when they are trial-ready and involve smaller monetary claims.<sup>24</sup> Participation is voluntary, with an opt-out option. Mediation has a 70% resolution rate. This program has successfully settled cases involving excessive force and failure to protect, sometimes resulting in policy changes<sup>25</sup>.

---

<sup>17</sup> P.D. Steele, *Youth Corrections Mediation Program: Final Report of Evaluation Activities* (1991), Univ. of N.M. Youth Resource & Analysis Ctr.

<sup>18</sup> In the U.S. District Court for the Middle District of Pennsylvania, “[n]early a third of all civil cases filed... are filed by prisoners alleging civil rights violations.” Hon. Karoline Mehalchick, *From Handcuffs to a Handshake: Successful Mediation of Inmate Civil Rights Litigation in Federal Court*, *The Federal Lawyer*, Jan./Feb. 2018, at 6.

<sup>19</sup> In the U.S. District Court for the Eastern District of Pennsylvania, “[p]risoner litigation makes up about fifty-four percent of the civil caseload...” Michelle Burns, *The Use of Mediation to Settle Prisoner Grievances in Federal Court*, 14 *Pepp. Disp. Resol. L.J.* 6 (2014) and

<sup>20</sup> *Pro Se Prisoner Civil Rights Litigation Early Mediation Protocol*, U.S. Dist. Ct. W.D. Mich., <https://www.miwd.uscourts.gov/pro-se-prisoner-civil-rights-litigation-early-mediation-protocol> (last accessed Nov. 25, 2024).

<sup>21</sup> *Id.*

<sup>22</sup> *Pro Se Prisoner Civil Rights Early Mediation Program Description*, U.S. Dist. Ct. W.D. Mich., <https://www.miwd.uscourts.gov/sites/miwd/files/PEM%20Program%20Description.pdf> (last accessed Nov. 25, 2024).

<sup>23</sup> *Id.*

<sup>24</sup> Hon. Karoline Mehalchick, *From Handcuffs to a Handshake: Successful Mediation of Inmate Civil Rights Litigation in Federal Court*, *The Federal Lawyer*, Jan./Feb. 2018, at 6.

<sup>25</sup> See *Id.* at 7.

The U.S. District Court for the District of Nevada's ADR program automatically directs prisoner grievances to mediation.<sup>26</sup> Private attorney-mediators work to resolve disputes before cases reach summary judgment.<sup>27</sup> A second opportunity for ADR occurs during post-summary judgment settlement conferences, facilitated by magistrate judges.<sup>28</sup>

In Maryland, an estimated 200 administrative appeals of actions of correctional facilities are filed by incarcerated persons in circuit courts each year. Court-based mediation could provide opportunities for resolution in some of these cases, with proper screening.

## 5. THE POTENTIAL VALUE OF MEDIATION

### **New Tool for Incarcerated People, Staff, and Institution**

#### ***Incarcerated People***

Mediation can provide a conflict resolution process for conflicts internal within the incarcerated population, helping them get at the underlying issues and reduce the likelihood the conflict will fester and spill over into the larger population. Mediation can also allow incarcerated individuals and staff to address issues directly, giving incarcerated persons an avenue to work through issues outside of formal administrative process or court.

#### ***Staff***

Every workplace has conflict. How that conflict is dealt with influences productivity, civility, and whether people want to work there. Mediation can provide an avenue for co-workers with ongoing relationships to move beyond the symptoms of their conflict and discuss underlying issues that can contribute to reoccurring problems if not addressed.

#### ***Institution***

The correctional system's structured procedures can be an important way to provide a fair process for all, and there are times when the formal process requirements and demands on the institutions may limit its ability to respond to individual and systemic needs. Where appropriate, mediation offers a more flexible process that allows all stakeholders—incarcerated individuals, frontline staff, and leadership—to engage in meaningful conversations focused on understanding the issues at hand and seeking mutually beneficial solutions. The voluntary nature of mediation allows this to occur in an environment where anyone can end the mediation and return to the traditional path if they feel justice is not being served.

---

<sup>26</sup> Michelle Burns, *The Use of Mediation to Settle Prisoner Grievances in Federal Court*, 14 Pepp. Disp. Resol. L.J. 7-8 (2014)

<sup>27</sup> *Id.*

<sup>28</sup> See *Id.* at 8.

## Challenges of Implementing Mediation in Correctional Facilities

Implementing mediation of grievances in a correctional setting poses several challenges:

**Cultural Resistance.** Correctional staff may view mediation as potentially too lenient. The ombuds could address this concern by working closely with staff and the administration in the corrections system to determine what should and what should not be eligible for mediation.

Similarly, incarcerated individuals may be unfamiliar with mediation, and education in the process could help address any concerns they might have.

**Trust Building.** Concerns about confidentiality must be addressed to gain buy-in. Some staff may fear that the mediator is a confidential informant to the warden. However, confidentiality prevents the mediator from sharing information with the warden or other correctional staff; exceptions should be stated clearly and explicitly.

**Mental Health Considerations.** Mediation may not be suitable for some individuals, particularly those with serious mental health disorders. Appropriate screening is needed to be sure mediation participants have the capacity to understand the process and make their own decisions.

**Resource Constraints.** Some resources are required to allocate time, space, and personnel for mediation, as well as to offer any training that is required.

These and other potential challenges of implementing mediation in correctional facilities may be addressed by careful and collaborative program development.

## 6. CONSIDERATIONS FOR MEDIATION PROGRAM DEVELOPMENT

Mediation has been utilized in many settings, including in formal and structured institutional settings. When setting up a new program, it is often important to consider a framing and method of engagement that works with the culture of the institution in which the program will operate.

### Stakeholder Engagement

A stakeholder engagement plan can provide staff and the incarcerated populations with a deeper understanding of the ombud's mediation work while providing the ombuds with important insights into concerns and opportunities within the correctional setting. stakeholder engagement is essential for gaining support and increasing the likelihood of success.

When the Minnesota Department of Corrections system was implementing its staff mediation program, for example, it found that having some staff members who had gone through

mini trainings became internal advocates and educated others. Some of these individuals later on sat in on mediations as support persons who could talk through the process with staff who were unsure about the process. They provided boots on the ground and became internal spokespeople for the program. The staff with the Minnesota Department of Corrections also wanted people to see this work broader than solely when they were in a conflict and stuck. They developed modules on how to have hard and productive conversations, conflict prevention, and skill building, beyond mediation training.

In the article, *Peer Mediation Pilot Initiative in Castlerea Prison: A Process Evaluation*, Tanya Lalor evaluated a peer mediation program in Ireland for an incarcerated population and describes the following as evidence of good practice:

- Individuals resolve their own disputes without external intervention.
- Peer mediators are trusted and respected by fellow prisoners.
- Peer mediators should be involved in planning and implementing of programs.
- Peer mediators should be involved in the delivery of training.
- Buy-in, support and commitment, monitoring and evaluation.
- Continuity and sustainability.
- Stringent training, a high standard that supports learning and growth.
- Building self-esteem, empowerment, and learning life-skills.<sup>29</sup>

A similar approach for any program set up for staff might also be effective.

## **Mediator Roster**

The ombuds or other mediation program leader will need to decide on who is qualified to serve as a mediator or be on a roster of mediators. Some ombuds have the skill and time to serve as mediators, and others may have staff to serve as “in-house” mediators. Other options might include the use of outside mediators from the private sector or from community-based mediation centers, or internal mediators from within the incarcerated population.

## **Facilities and Resources**

An assessment will need to be conducted to determine what training space is available and what options there are for mediation rooms. Typically, a room big enough to convene the parties is needed, and an additional smaller room for parties to meet privately during caucusing. Some other factors for the Ombuds to consider, within the context of safety needs for all involved:

- Neutral location
- Reasonable lighting and temperature
- Private setting that minimizes distractions
- Access to restrooms and water

---

<sup>29</sup> Tanya Lalor, *Prisoner Facilitated Mediation: Bringing Peace to Prisons and Communities*, 4(2) J. Mediation & Applied Conflict Analysis (2017).

- If remote mediation is an option, power, computers, internet connections, and the possible need for additional training.

The ombuds will also need to determine if in-person and remote are both viable programs and if that will entail creating two rosters. For remote mediation in Maryland courts, Maryland Rule 17-106 includes five factors to consider:

- The accessibility of the remote platform to each party
- The technical competency of the mediator
- The ability to provide for confidentiality of data and communications.
- Party preference.
- Whether the platform can be used in a manner that does not affect substantially the fairness of the proceeding.

## **The Mediation Process**

### ***Intake and Determination of Appropriateness for Mediation***

As discussed above, ombuds have many tools available to them, with mediation being a well-tested and trusted tool. Typically, the ombuds or trained mediator will conduct an intake with the parties and then offer or recommend options. In the case of screening for mediation, the ombuds should consider the following criteria.

**Ongoing Relationship:** Parties that will be interacting in the future, such as co-workers, can benefit from a mediation about issues and interests that may challenging their relationship. Parties that are not interacting in the future can also benefit from mediation, but sometimes, other processes are more appropriate, such as conflict coaching or shuttle diplomacy.

**Willing Engagement:** The parties' willingness to negotiate in good faith. They do not need to agree on the issues in conflict before meeting, but they do need to be willing to engage in a conversation. Mediation is unlikely to succeed if either party is not willing to participate or does not intend to negotiate in good faith.

**Decision Makers:** Are the necessary parties available to negotiate, explore options, identify possible solutions, and implement the solutions? While remote technology has greatly increased the likelihood that the necessary parties can attend, the ombuds should consult with parties to determine if an in-person or remote process would be most beneficial for the parties.

**Informal Process:** The conflict does not require a traditional process such as a formal investigation and legal action.

**Confidentiality:** The corrections facility can provide a meeting space, access to remote technology, or allow travel so that the parties can participate in a confidential manner.

**Conflicts of Interest:** Is there is a significant conflict of interest, where the mediator might be perceived as biased or having a vested interest in the outcome?

**Power Imbalance:** Often, parties are not equal in a negotiation. However, it may still be in their best interest to use mediation. The mediator (or ombuds) must ensure that the process isn't being used abusively. Additionally, the potential for retaliation should be considered.

**Policy Constraints:** If the issue at hand is a mandatory reporting issue, that process needs to play out before mediation. However, there are scenarios after a formal process has played out where mediation can assist parties with an ongoing relationship in finding ways to work together going forward.

The Ombuds will understand that correctional facilities have diverse populations, and mediation will need to account for many different perspectives.

### ***Timing of Mediation***

The ombuds plays a crucial role in helping ensure that mediation is applied at the right time and in the appropriate context. Regarding timing, the concept of "ripeness" is a consideration. Are the parties at a point in the conflict where they are willing to negotiate in good faith? If not, the ombuds should have a system to remind them to check back in. At times, parties need to seek guidance from trusted advisors on the value of mediation and how best to use it in their conflict. Additionally, outside factors such as the progression of a formal process can shift parties' perspectives. For example, in the legal environment, parties that had turned down mediation earlier can become more interested as they better understand their legal standing and as a trial date approaches.

When a grievance has been filed and a case reaches a court, the timing and availability of mediation varies widely across jurisdictions. Mediation at the court level may be an option; however, mediation at earlier stages is better for saving time and money and for preventing conflict escalation.

In some states, incarcerated individuals must exhaust administrative remedies before filing a complaint with a correctional ombudsman. While this adds another step prior to litigation, mediation at this stage could still offer benefits by providing an opportunity for resolution before a court filing.

In New Jersey, the ombuds can investigate complaints without requiring administrative remedies to be exhausted. If the ombuds were to offer mediation at this stage, it would allow for earlier resolution. Early mediation could also gain more buy-in from internal stakeholders if it helps avoid the lengthy and paperwork-heavy grievance process.

### ***Selection of Mediator***

If the ombuds determines a case is appropriate for mediation, the ombuds will need to decide who will provide the mediation. The demographics of the mediators and the parties may be a worthwhile consideration.<sup>30</sup> It would be highly beneficial to have mediators who can communicate in the same language as the participants. Alternatively, providing interpreters for mediations where multiple languages may be spoken and for limited English participants would help ensure that everyone can fully engage and contribute to the process.

## 7. CONCLUSION

The search for information on mediation programs addressing grievances in correctional facilities across the country revealed a significant gap in available resources and best practices. However, existing conflict resolution initiatives in Maryland, such as re-entry mediation and workplace mediation for staff, suggest that mediation could be a valuable tool within the correctional setting. A well-designed mediation program holds substantial potential to benefit Maryland's correctional facilities by equipping individuals with conflict resolution skills, fostering trust, and offering flexible grievance resolution options. Further incorporating mediation and alternative dispute resolution methods into correctional facilities could transform grievance processes, promote sustainable conflict management, and create a more constructive environment for all stakeholders.

---

<sup>30</sup> Lorig Charkoudian & Ellen Kabcenell, *Does It Matter if My Mediator Looks Like Me? The Impact of Racially Matching Participants and Mediators*, *Dispute Resolution Magazine* (Spring 2009).

## 8. REFERENCES

International Ombuds Association. (2022). Standards of Practice. [https://ioa.memberclicks.net/assets/docs/SOP-COE/IOA\\_Standards\\_of\\_Practice\\_English.pdf](https://ioa.memberclicks.net/assets/docs/SOP-COE/IOA_Standards_of_Practice_English.pdf)

Pro Se Prisoner Civil Rights Early Mediation Program Description. (n.d.). U.S. District Court, Western District of Michigan. <https://www.miwd.uscourts.gov/sites/miwd/files/PEM%20Program%20Description.pdf>

Pro Se Prisoner Civil Rights Litigation Early Mediation Protocol. (n.d.). *U.S. District Court, Western District of Michigan*. <https://www.miwd.uscourts.gov/pro-se-prisoner-civil-rights-litigation-early-mediation-protocol>

Burns, M. (2014). The use of mediation to settle prisoner grievances in federal court. *Pepperdine Dispute Resolution Law Journal*, 14

Charkoudian, L., & Kabcenell, E. (2009). Does It Matter if My Mediator Looks Like Me? The Impact of Racially Matching Participants and Mediators. *Dispute Resolution Magazine* (Spring).

Chief Judge Bell, R. (1999). Join the Resolution: The Maryland ADR Commission's Practical Action Plan. *Maryland Judiciary*. Retrieved from <https://www.mdcourts.gov/sites/default/files/import/macro/pdfs/jointheresolution.pdf>

Crawford, D., & Bodine, R. (1996). Conflict Resolution Education. A Guide to Implementing Programs in Schools, Youth-Serving Organizations, and Community and Juvenile Justice Settings. Department of Justice and Department of Education.

Flower, S., M. (2014). *Community Mediation Maryland Re-entry Mediation In-Depth Recidivism Analysis*. Principal & R. C. R. Associates. <https://abell.org/wp-content/uploads/2022/02/afr-cmmrecidivism1114.pdf>

Kaufer, L., Noll, D., & Mayer, J. (2014). Prisoner Facilitated Mediation: Bringing Peace to Prisons and Communities. *Cardozo Journal of Conflict Resolution*, 16(187).

Lalor, T. (2017). Prisoner Facilitated Mediation: Bringing Peace to Prisons and Communities. *Journal of Mediation and Applied Conflict Analysis*, 4(2).

Michelson, L. (September 3, 2024). Maryland Corrections Ombuds - Mediation as a tool? [Interview]. Video Conference.

Moore, C., W. (1996). *The Mediation Process: Practical Strategies for Resolving Conflicts* (2nd ed.). Jossey-Bass Inc.

Maryland Judiciary. (2016). *What Works in District Court Day of Trial Mediation: Effectiveness of Various Mediation Strategies on Short- and Long-Term Outcomes*. Retrieved from <https://www.mdcourts.gov/sites/default/files/import/courtoperations/pdfs/districtcourtstrategiesfullreport.pdf>

Maryland State Archive. (2024). *Maryland Manual On-Line: A Guide to Maryland & Its Government. Department of Public Safety & Correctional Services. Origin*. Retrieved 9/16/2024 from [https://msa.maryland.gov/msa/mdmanual/22dpdscs/html/dpdcscf.html#:~:text=The%20Maryland%20Penitentiary%20\(now%20Metropolitan,nor%20more%20than%20three%20years](https://msa.maryland.gov/msa/mdmanual/22dpdscs/html/dpdcscf.html#:~:text=The%20Maryland%20Penitentiary%20(now%20Metropolitan,nor%20more%20than%20three%20years)

Mehalchick, H. K. (2018). From handcuffs to a handshake: Successful mediation of inmate civil rights litigation in federal court. *The Federal Lawyer*, Jan./Feb. 2018.

Steele, P. (1991). *Youth Corrections Mediation Program: Final Report of Evaluation Activities*. University of New Mexico Youth Resource and Analysis Center.

## **9. APPENDICES**

### **Appendix A- Consultations**

#### **Maryland**

Office of the Governor

- Myles Hicks, Deputy Legislative Officer and Sam Friedman, Policy Assistant – Public Safety & Homeland Security. Interview on July 11, 2024.

Department of Public Safety & Correctional Services, Fair Practices and Inclusion

- Mala Malhotra-Ortiz, Executive Director and Kendra Jobe, Mediator. Interview on October 2, 2024

#### **Minnesota**

Department of Corrections

- Laraine Mickelson, former Case Manager; current State Program Administrative Coordinator with the Department of Human Services. Interview on September 3, 2024.
- Kay Pranis, former Restorative Justice Planner. Interview on August 12, 2024.

#### **New Jersey**

Office of the Corrections Ombudsperson

- Terry Schuster, Corrections Ombudsperson. Interview on July 15, 2024

#### **Texas**

The University of Texas at Austin, Prison and Jail Innovation Lab

- Michele Deitch, Director and Alycia Welch, Associate Director. Interview on August 9, 2024.

**Appendix B- Maryland Standards of Conduct for Mediators (2020)**



**THE MARYLAND STANDARDS OF CONDUCT FOR  
MEDIATORS**

January 1, 2020

The **Maryland Standards of Conduct for Mediators**, effective January 1, 2020, are the same standards as the **Maryland Standards of Conduct for Court-Designated Mediators** adopted by Administrative Order of the Maryland Court of Appeals on December 6, effective January 1, 2020.

# The Maryland Standards of Conduct for Mediators

January 1, 2020

---

## 1 PREFACE

2           These revised Maryland Standards of Conduct for Mediators (the Standards) replace the  
3 Standards of Conduct for Mediators, Arbitrators and other ADR Practitioners approved by the  
4 Maryland Court of Appeals on October 31, 2001 and the Maryland Program for Mediator  
5 Excellence (MPME) Maryland Standards of Conduct for Mediators approved by the Mediator  
6 Excellence Council on April 20, 2006.

7           The revisions were initially drafted by the Maryland Judicial Council ADR Committee  
8 Work Group on Standards of Conduct for Mediators, which included representatives of the ADR  
9 Committee, Maryland mediator practitioner organizations, and the Maryland Judiciary  
10 statewide ADR offices. During the drafting process, approximately 200 Maryland mediators and  
11 mediation program administrators attended public forums across the state and online, and  
12 many made oral or written comments. The Work Group considered these comments in  
13 developing a new draft of revised Standards, which it submitted to the Judicial Council ADR  
14 Committee. The revised draft Standards were then considered, revised, and approved by the  
15 Judicial Council ADR Committee, for submission to the Judicial Council.

16           These Standards are intended to guide the conduct of mediators, to help set  
17 appropriate expectations for mediation participants, and to promote public confidence in  
18 mediation.<sup>1</sup>To accomplish these goals, the Standards should be publicized and made readily

---

<sup>1</sup> DRAFTERS NOTE: These Standards are not intended to create a basis to set aside an agreement reached in mediation or for a cause of action against a mediator. A violation of standards is not intended to excuse the mediator's obligation to follow these or any other applicable standards or to diminish confidentiality under any applicable law.

# The Maryland Standards of Conduct for Mediators

January 1, 2020

---

1 available to mediators and mediation users by mediation trainers, organizations that require or  
2 provide mediation, and mediators.

3           These Standards provide general ethical principles that should be followed by all  
4 mediators to whom they apply, regardless of the mediation framework or style being practiced.  
5 The Standards do not explicitly address all ethical issues that may arise in mediation. Mediators  
6 and organizations that provide mediation should regularly and carefully study the Standards  
7 and consider how these general principles may apply to situations that may arise in their  
8 practices.

9           These Standards shall be read in their entirety and interpreted and applied as a whole.<sup>2</sup>  
10 No one Standard is more important than another.

11

## 12 **APPLICATION AND DEFINITIONS**

13 A.       Application. These Standards apply to a mediator and to any person assisting the  
14 mediator in convening, administering, or conducting a mediation when:

15           1.       A Maryland court has ordered, directed, or referred all or part of a case to the  
16 mediator, or to an ADR organization or an ADR unit of the court that designated  
17 the mediator, and the order, direction, or referral is contained in a court record;

18           or

19           2.       The mediator has agreed to follow the Maryland Standards of Conduct for  
20 Mediators;<sup>3</sup> or

---

<sup>2</sup> DRAFTERS NOTE: In some instances, a Standard will illuminate the mediator's obligations under another Standard. In other instances, there may be a tension between the mediator's obligations under these Standards.

<sup>3</sup> DRAFTERS NOTE: For example, to invoke the Maryland Mediation Confidentiality Act the mediator must state in

# The Maryland Standards of Conduct for Mediators

January 1, 2020

- 
- 1           3.     The mediator belongs to or is mediating for a program or organization that  
2                     requires its members or mediators to follow the Maryland Standards of Conduct  
3                     for Mediators.
- 4    B.     Definitions. For purposes of these Standards:
- 5           1.     “Certification” means that a public or private entity with criteria for certifying  
6                     mediators has determined that the mediator meets those criteria. Different  
7                     entities certify mediators based on different criteria, which may include  
8                     observation and assessment of the mediator’s skills (“performance based  
9                     certification”), a review of the mediator’s training and experience (“paper based  
10                    certification”), or both. Obtaining a certificate of completion of a mediation  
11                    training does not constitute certification as a mediator.
- 12          2.     “Competent” and “competence” mean that the mediator has knowledge, skills,  
13                     and abilities to mediate.
- 14          3.     “Conflict of interest” means a past or present personal, professional, or financial  
15                     relationship or circumstance that affects or that might reasonably be seen to  
16                     affect the mediator’s impartiality or the appearance of the mediator’s  
17                     impartiality.
- 18          4.     “Impartial” and “impartiality” mean acting without favoritism, bias, or prejudice.
- 19          5.     “Maryland Rules” means the rules adopted by the Maryland Court of Appeals.

---

writing that the mediator has read and will abide by the Maryland Standards of Conduct for Mediators during the mediation. See Maryland Code, Courts and Judicial Proceedings, section 3-1802(b).

# The Maryland Standards of Conduct for Mediators

January 1, 2020

- 
- 1           6.     “Mediation” means a collaborative process in which one or more mediators  
2                     support communication and voluntary decision making by people or entities with  
3                     a current or potential conflict.<sup>4</sup> The fundamental principles of mediation are  
4                     party self-determination, mediator impartiality, and confidentiality.
- 5           7.     “Mediation communication” means any spoken, written, or nonverbal  
6                     communication made as part of a mediation, including for the purpose of  
7                     considering, initiating, convening, continuing, reconvening, or evaluating a  
8                     mediation or a mediator.
- 9           8.     “Mediator” means a person who offers or agrees to conduct or conducts a  
10                    mediation. Mediator includes a sole mediator, all co-mediators, and any person  
11                    who helps a mediator conduct a mediation.
- 12          9.     “Observer” means a person who attends a mediation for purposes of training,  
13                    mentoring, research, evaluation, or quality assurance.
- 14          10.    “Participant” means any person other than a mediator or an observer who  
15                    attends or engages in any part of a mediation. Participant includes a party.
- 16          11.    “Party” means a person, including the decision-making representative of an  
17                    entity, who attends or engages in any part of a mediation and whose agreement  
18                    is legally or practically necessary to resolve the conflict.
- 19          12.    “Self-determination” means the opportunity to make voluntary, uncoerced, and  
20                    informed decisions.

---

<sup>4</sup> DRAFTERS NOTE: Mediation is used to resolve or prevent a broad range of conflicts in a wide variety of settings.

# The Maryland Standards of Conduct for Mediators

January 1, 2020

- 
- 1           13.    “Shall” means the mediator is required to act as described.
- 2           14.    “Should” means the mediator may only depart from the described action after
- 3                   careful consideration and for a compelling reason.
- 4           15.    “The Maryland Mediation Confidentiality Act” and “the Act” mean Maryland
- 5                   Code, Courts and Judicial Proceedings, section 3-1801 et. seq.
- 6

## 7   **STANDARD I.    SELF-DETERMINATION**

- 8    A.    A mediator shall support and respect the self-determination of all parties, so that each
- 9           party may make voluntary, uncoerced, and informed decisions about their participation
- 10           in the mediation process and the mediation outcome.<sup>5</sup>
- 11        1.    A mediator should consider and explore any request that a party may make
- 12                   about the mediation process, and attempt to address the interests underlying
- 13                   the request, in a manner consistent with the mediator’s practices, qualifications,
- 14                   and other duties under these Standards.<sup>6</sup>
- 15        2.    A mediator should inform the parties that they may consult other persons to
- 16                   help them make informed choices.<sup>7</sup> If a party requests the opportunity to obtain

---

<sup>5</sup> DRAFTERS NOTE: The parties may always exercise self-determination regarding the manner and extent of their own participation in the mediation process, whether to enter an agreement, and the terms of any agreement. Unless otherwise required by a court or other agency, the parties may also exercise self-determination regarding whether to mediate, the selection of a mediator, the participants in the mediation, and whether to withdraw from, postpone, or terminate mediation.

<sup>6</sup> DRAFTERS NOTE: A mediator is responsible for giving the parties a general explanation of the mediation process that the mediator will provide and for the quality and integrity of that process. (See Standard VI.) The parties may often exercise self-determination regarding the mediation process by making an informed selection of a mediator and by telling the mediator their process preferences. However, the parties do not control the mediation process.

<sup>7</sup> DRAFTERS NOTE: The mediator must be careful to advise the parties that they may consult others at a time and in a manner that is consistent with the mediator’s obligations to act impartially and respect party self-determination.

# The Maryland Standards of Conduct for Mediators

January 1, 2020

---

1 additional information to help the party make an informed decision, the  
2 mediator should allow the party a reasonable opportunity to do this.<sup>8</sup>

3 B. A mediator shall not undermine any party's self-determination to promote or achieve a  
4 settlement. A mediator shall resist any outside pressure to achieve settlement, including  
5 any pressure from courts or other referral sources, programs or organizations that the  
6 mediator is affiliated with, employers, or funders.

7 C. If a mediator has reason to believe that a party is having difficulty understanding,  
8 participating, or exercising self-determination in a mediation, the mediator shall  
9 consider and, if appropriate, explore with the participants, possible ways to increase the  
10 party's ability to participate in mediation. If the difficulty cannot be satisfactorily  
11 addressed, the mediator should terminate the mediation.

12 D. If a mediator has reason to believe that abuse, coercion, duress, or undue influence may  
13 be preventing a party from fully participating or exercising self-determination, the  
14 mediator shall consider and, if appropriate, explore with the participants, whether there  
15 is a way to conduct the mediation in a manner that would allow the party to participate  
16 freely, safely, and without fear of retaliation. If the mediator concludes that any party  
17 cannot participate safely and without fear of retaliation, the mediator shall terminate  
18 the mediation.

---

<sup>8</sup> DRAFTERS NOTE: A mediator cannot personally ensure that each party has made informed decisions.

# The Maryland Standards of Conduct for Mediators

January 1, 2020

---

## 1 STANDARD II. IMPARTIALITY

2 A. A mediator shall conduct all aspects of a mediation in an impartial manner, which  
3 means acting without favoritism, bias, or prejudice.

4 1. A mediator shall decline a new mediation or withdraw from an ongoing  
5 mediation if the mediator cannot act in an impartial manner for any reason.

6 2. A mediator shall not favor or disfavor any participant for any reason, such as the  
7 participant's race, age, sex, gender identity, sexual orientation, disability,  
8 appearance, personal characteristics, background, values, beliefs, or actions or  
9 behavior during or outside the mediation process.

10 3. A mediator shall make an effort to be aware of the mediator's biases and should  
11 learn about unconscious and implicit biases.

12 B. A mediator shall refrain from statements and conduct, during and outside of mediation,  
13 that might reasonably raise a question about the mediator's impartiality.<sup>9</sup>

14 C. A mediator shall not offer, give, solicit, or accept any item or service of value, before,  
15 during or after a mediation, if doing so might reasonably raise a question about the  
16 mediator's impartiality.

17

## 18 STANDARD III. CONFLICTS OF INTEREST

19 A. A mediator shall not mediate a dispute in which the mediator has any direct or indirect  
20 conflict of interest that is or reasonably should be known to the mediator unless the

---

<sup>9</sup> DRAFTERS NOTE: A mediator should be aware that public statements, writings, and social media activities may give the appearance that the mediator is not impartial.

# The Maryland Standards of Conduct for Mediators

January 1, 2020

---

1 mediator has disclosed the relevant circumstances to all parties, the parties have  
2 thereafter agreed that the mediator may conduct or proceed with the mediation, and  
3 the conflict would not undermine the integrity of the mediation process.

4 1. A conflict of interest is any personal, professional, or financial relationship or  
5 circumstance that might reasonably raise a question about the mediator's  
6 impartiality. A conflict of interest may arise from a relationship or circumstance  
7 that existed before the mediation, one that exists at the time of the mediation,  
8 or one that might occur after the mediation.

9 2. A direct conflict of interest may arise from:

- 10 a. a personal, professional, or financial relationship between the mediator  
11 and a participant in the mediation; or  
12 b. the mediator's interest in a potential outcome of the mediation or the  
13 conflict.

14 3. An indirect conflict of interest may arise from a personal, professional, or  
15 financial relationship between the mediator and another person who, or an  
16 entity that, has:

- 17 a. a personal, professional, or financial relationship with a participant in the  
18 mediation; or  
19 b. an interest in a potential outcome of the mediation or the conflict.

20 B. A mediator shall make a reasonable effort to identify any conflicts of interest as soon as  
21 possible after being asked to conduct a mediation.

# The Maryland Standards of Conduct for Mediators

January 1, 2020

---

- 1 C. If a mediator knows or learns of any relationship or circumstance that creates or might  
2 create a conflict of interest, the mediator shall promptly do one of the following:
- 3 1. If disclosure can be made without violating confidentiality, disclose the  
4 relationship or circumstance to the parties. If the mediator and all parties then  
5 agree and doing so would not undermine the integrity of the mediation process,  
6 the mediator may proceed with the mediation.
- 7 2. Decline to accept the mediation, if it has not begun.
- 8 3. Withdraw from the mediation, if it has begun.
- 9 D. If a conflict of interest would undermine the integrity of the mediation process, the  
10 mediator shall decline to accept a new mediation or withdraw from an ongoing  
11 mediation, regardless of any other desire, agreement, or consent of the parties.
- 12 E. While a mediation is pending or ongoing, the mediator shall not perform professional  
13 services in any other capacity for any party without the informed consent of all parties  
14 in the mediation.
- 15 F. While a mediation is pending or ongoing, the mediator shall not establish any new  
16 relationship or involvement that might reasonably raise a question about the mediator's  
17 impartiality.
- 18 G. After a mediation has concluded, the mediator shall avoid any potential new  
19 relationship or involvement with a participant or the subject of the dispute that might  
20 reasonably raise a question about the mediator's impartiality during the mediation,

# The Maryland Standards of Conduct for Mediators

January 1, 2020

---

1 unless the parties to the mediation have consented to the new relationship or  
2 involvement.<sup>10</sup>

## 4 **STANDARD IV. COMPETENCE**

5 A. A mediator shall offer, agree, or undertake to mediate a matter only if the mediator has  
6 the knowledge, skills, and abilities to mediate the matter.<sup>11</sup>

7 1. A mediator shall have the ability to describe accurately the mediation skills,  
8 techniques, and processes that the mediator uses.

9 2. A mediator shall have the ability to perform competently the services that the  
10 mediator offers.

11 B. A mediator shall provide accurate and appropriately complete information about the  
12 mediator's training and experience, upon request, to potential mediation participants,  
13 to any program from which the mediator accepts referrals, and to others.

14 1. A mediator shall claim to meet the mediator qualifications of a public or  
15 private entity only if that entity has criteria for qualifying mediators and has  
16 determined that the mediator meets those criteria.

---

<sup>10</sup> DRAFTERS NOTE: In deciding whether a new relationship or involvement is permissible, or whether the parties' consent is required, the mediator shall consider the subject matter of the mediation, the time elapsed since the mediation, the nature of the possible new relationship or involvement, and any other relevant factors.

<sup>11</sup> DRAFTERS NOTE: Mediation training and experience are very important to mediate competently; however academic degrees and professional backgrounds are not necessary to mediate competently. Specialized mediation training may be required to mediate some types of conflicts. A mediator who is not competent to mediate a matter independently may be competent to do so as a co-mediator or with appropriate mentoring or other assistance.

# The Maryland Standards of Conduct for Mediators

January 1, 2020

---

1           2.     Any communication stating that a mediator is or has been certified shall identify  
2                     the organization or program that certified the mediator.

3 C.     A mediator shall attend educational programs and participate in other activities to  
4             develop, maintain, and enhance the mediator’s competence.<sup>12</sup>

5 D.     If a mediator cannot conduct a mediation competently, the mediator shall promptly:

6           1.     Discuss the situation with the parties and take appropriate steps to address it;

7           2.     Obtain appropriate assistance; or

8           3.     Withdraw from the mediation, either with or without disclosing the reason.

9 E.     A mediator shall not conduct a mediation if the mediator’s ability to mediate  
10           competently is impaired by medication, illness, drugs, alcohol, or other causes or  
11           conditions.

12

## 13 **STANDARD V.   CONFIDENTIALITY**

14 A.     A mediator shall follow all applicable mediation confidentiality statutes and rules of  
15           court, and any confidentiality agreement between the parties and the mediator that is  
16           consistent with the applicable statutes and rules.<sup>13</sup>

---

<sup>12</sup> DRAFTERS NOTE: The number of hours of continuing education activities is not specified in these Standards because different programs and rosters have different requirements. A mediator should satisfy the continuing education requirements of each program for which the mediator mediates.

<sup>13</sup> DRAFTERS NOTE: The existence and scope of mediation confidentiality in Maryland depends on the context and circumstances of the mediation. If Title 17 of the Maryland Rules applies, mediation confidentiality is established and governed by Rule 17-105. If Title 17 of the Maryland Rules does not apply, mediation confidentiality may or may not be established and governed by the Maryland Mediation Confidentiality Act.

# The Maryland Standards of Conduct for Mediators

January 1, 2020

- 
- 1 B. A mediator shall explain mediation confidentiality, including any applicable statutes,  
2 rules, standards, and relevant exceptions, to all mediation participants as soon as  
3 practicable and at the beginning of the first mediation session.
- 4 C. A mediator shall discuss with the participants whether and to what extent the  
5 participants will maintain the confidentiality of mediation communications.
- 6 D. A mediator shall maintain the confidentiality of all mediation communications, conduct,  
7 and outcomes unless a disclosure is required or permitted by an applicable statute or  
8 provision of the Maryland Rules.<sup>14</sup>
- 9 E. A mediator who speaks privately with a participant during a mediation shall not reveal  
10 any information that was privately communicated without the consent of that  
11 participant, unless the disclosure is otherwise required or permitted by an applicable  
12 statute or provision of the Maryland Rules.
- 13 F. A mediator should not reveal the name of, or other identifying information about, any  
14 participant without that participant's prior consent, unless required or permitted by an  
15 applicable statute or provision of the Maryland Rules.
- 16 G. If it is necessary to identify a participant in a past, pending, or ongoing mediation to  
17 determine whether a conflict of interest exists or to disclose an actual or potential  
18 conflict of interest in another mediation:
- 19 1. the mediator should obtain the permission of the participant in the past,  
20 pending, or ongoing mediation before revealing the participant's name; and

---

<sup>14</sup>DRAFTERS NOTE: Confidentiality is important to promote communication in mediation and to preserve mediator impartiality, the appearances and perceptions of mediator impartiality, and the integrity of the mediation process.

# The Maryland Standards of Conduct for Mediators

January 1, 2020

---

1           2. if the mediator cannot obtain permission of the participant in the past, pending,  
2                   or ongoing mediation, the mediator should decline or withdraw from the other  
3                   mediation.

4 H.       A mediator who participates in teaching, research, or evaluation of mediation shall  
5           protect the anonymity of the participants and shall respect their reasonable  
6           expectations about privacy and confidentiality.

7

## 8 **STANDARD VI.    QUALITY AND INTEGRITY OF THE MEDIATION PROCESS**

9 A.       A mediator shall conduct a mediation in a manner that promotes the quality and  
10         integrity of the mediation process.

11        1.       A mediator shall not conduct a dispute resolution process other than mediation  
12                   and call it mediation.

13        2.       A mediator shall not knowingly misrepresent any material fact or circumstance in  
14                   the course of a mediation.

15        3.       A mediator shall support honesty and candor by all participants.

16        4.       A mediator shall not schedule or conduct a mediation in a timeframe that would  
17                   not allow a quality process.

18 B.       A mediator shall follow all applicable statutes and Maryland Rules, these Standards, and  
19         the requirements of any program for which the mediator is mediating.

20        1.       If there is a tension or a conflict between the mediator's obligations, the  
21                   mediator shall consider carefully the circumstances, determine whether there is  
22                   a way to reconcile the mediator's obligations, and take appropriate action. If the

# The Maryland Standards of Conduct for Mediators

January 1, 2020

---

- 1 mediator cannot appropriately reconcile conflicting obligations, it may be  
2 necessary for the mediator to decline, postpone, withdraw from, or terminate  
3 the mediation.
- 4 2. If the mediator knows of an applicable statute or rule that conflicts with and  
5 takes precedence over a provision of these Standards, the mediator shall follow  
6 the statute or rule, inform the participants of any conflict that may be relevant  
7 to the mediation, comply with the spirit and intent of the preempted Standard to  
8 the extent possible, and honor all remaining Standards.
- 9 3. If a program requirement conflicts with a provision of these Standards, the  
10 mediator shall follow these Standards.
- 11 C. A mediator shall agree to mediate a matter only if the mediator is able to:
- 12 1. Commit the time, attention, and resources necessary to conduct an effective  
13 mediation; and
- 14 2. Satisfy any reasonable expectations or requirements of the parties, and of any  
15 referring program, concerning the timing of the mediation.
- 16 D. A mediator should help the parties identify the people who are appropriate participants  
17 in the mediation and facilitate the participation of those people. The parties and  
18 mediator may agree that other people may be included in or excluded from some or all  
19 sessions.
- 20 E. Before or at the beginning of the first mediation session, the mediator shall give all  
21 participants a general description of the process that the mediator will provide. The  
22 mediator shall substantially provide the process that the mediator described, unless the

# The Maryland Standards of Conduct for Mediators

January 1, 2020

---

1 mediator and the parties agree to a different process in a manner that is consistent with  
2 these Standards.

3 F. A mediator shall not change from mediation to any other dispute resolution process  
4 without first discussing the implications with the parties and obtaining their informed  
5 consent. A mediator shall not change processes if doing so is prohibited by the  
6 requirements of the mediation program that referred the case, if any.

7 G. During a mediation session, the mediator shall not perform any services other than as a  
8 mediator.

9 H. Upon the request of a party, a mediator may provide information that the mediator is  
10 qualified by training or experience to provide, if the mediator can do so consistently  
11 with these Standards and any applicable statutes, Maryland Rules, program  
12 requirements, and other standards of conduct.

13 I. If a mediator has reason to believe that anything occurring in a mediation is unlawful,  
14 inconsistent with these Standards, or may undermine the quality or integrity of the  
15 mediation process, the mediator shall consider carefully the circumstances and take  
16 appropriate steps. Depending on the circumstances, these steps may include exploring  
17 the issue in private session; continuing, postponing, withdrawing from, or terminating  
18 the mediation; and reporting a situation to an appropriate person or authority, if this is  
19 consistent with the mediator's confidentiality obligations.

20 J. If a mediator decides to postpone, withdraw from, or terminate a mediation, the  
21 mediator shall consider the safety of the participants and the integrity of the mediation  
22 process in determining how to proceed. The mediator may inform some or all mediation

# The Maryland Standards of Conduct for Mediators

January 1, 2020

---

1 participants of the reason for postponing, withdrawing from, or terminating the  
2 mediation if this is consistent with the mediator's confidentiality and impartiality  
3 obligations.

## 5 **STANDARD VII. ADVERTISING AND SOLICITATION**

6 A. Any advertisement, solicitation of business, use of testimonials, and other  
7 communication about a mediator's services shall be consistent with these Standards.

8 B. A mediator shall be truthful and appropriately complete in any communications about  
9 the mediator's qualifications, experience, skills, techniques, processes, practices,  
10 services, availability, and fees.

11 C. A mediator shall not make any promises or representations about potential mediation  
12 outcomes.

13 D. A mediator shall not advertise or solicit business in any way that might reasonably  
14 create an impression that the mediator favors or disfavors any party or parties.

## 16 **STANDARD VIII. FEES AND OTHER CHARGES**

17 A. If a mediator or an organization that the mediator is associated with will charge fees or  
18 other charges, those fees and charges shall be reasonable in light of all relevant factors.

19 These factors may include the type and complexity of the matter, the mediator's  
20 qualifications and availability, the time required to prepare for and conduct the  
21 mediation, and customary rates for similar mediation services.

# The Maryland Standards of Conduct for Mediators

January 1, 2020

- 
- 1 B. A reasonable time before the first mediation session, the mediator shall inform each  
2 party, or the party's representative, of the fees and charges that the mediator and any  
3 organization the mediator is associated with may charge in connection with the  
4 mediation.
- 5 C. If a mediator or an organization that the mediator is associated with will charge any fees  
6 or other charges for a mediation, the fee arrangement should be in writing.
- 7 D. A mediator or an organization that the mediator is associated with shall not charge fees  
8 or other charges in a manner that might reasonably raise a question about the  
9 mediator's impartiality.
- 10 1. A mediation fee agreement shall not be contingent on the outcome of the  
11 mediation or the amount or other terms of any settlement.
- 12 2. A mediator or an organization that a mediator is associated with may accept  
13 unequal fee payments from or on behalf of the parties if the fee arrangement is  
14 disclosed to all parties and does not reasonably raise a question about the  
15 mediator's impartiality.

16

## 17 **STANDARD IX. ADVANCEMENT OF MEDIATION PRACTICE**

- 18 A. A mediator should advance the practice of mediation and may do this in many ways,  
19 including:
- 20 1. Helping to create a more diverse community of mediators;
- 21 2. Striving to make mediation accessible, including by providing mediation services  
22 at a reduced rate or without charge, when appropriate;

- 1           3.       Participating in mediation research and evaluation, including by  
              requesting
- 2                       participant feedback, when appropriate;
- 3           4.       Promoting public understanding and appreciation of mediation; and
- 4           5.       Helping other mediators as appropriate, including through co-mediation,
- 5                       observation, mentoring, and networking.
- 6    B.     A mediator who believes that another mediator has acted inconsistently with  
          these
- 7           Standards should consider discussing this with that mediator, in a manner  
          consistent
- 8           with mediation confidentiality.
- 9    C.     A mediator should engage in conversations about the practice of mediation in a
- 10           respectful manner and work with others to improve the profession and better  
          serve
- 11           people in conflict.
- 12   D.     A mediator should consider using mediation to address the mediator's conflicts.