**1. The Preamble** defines mediation as "a process in which an impartial third party facilitates communication and negotiation and promotes voluntary decision making by the parties to the dispute." It further states that mediation provides "the opportunity for parties to define and clarify issues, understand different perspectives, identify interests, explore and assess possible solutions, and reach mutually satisfactory agreements."

That definition describes a process built on direct engagement between the parties. Yet the dominant practice in the field today looks nothing like it. In many, if not most contexts, mediation has become a process conducted almost entirely in caucus, with the mediator shuttling between separate rooms, filtering and relaying information, and in many cases functioning more as a deal broker than a facilitator of communication. The parties never sit in the same room. They never speak to each other. They never hear each other's perspective in the other person's own words.

That is not what the Preamble describes. What it describes is a facilitated dialogue. What is widely practiced is a facilitated negotiation conducted through an intermediary. These are not the same thing, and the standards should acknowledge that distinction.

Caucus has an important place. There are situations where safety concerns, power imbalances, or the emotional state of the parties make separate sessions necessary or appropriate. But caucus as the default, as the assumed structure of every mediation, represents a departure from the process these standards define. It has become the norm largely for the comfort of mediators, many of whom come from legal backgrounds where adversarial positioning and controlled information flow are familiar. Joint session requires a different set of skills: the ability to hold space for difficult emotions, to manage direct exchanges between people in conflict, and to trust the parties to do their own work. Not every mediator has developed those skills, and caucus allows them to avoid doing so.

The cost of this practice is borne by the public. When parties never engage with each other directly, we rob them of the opportunity to reconnect. We rob them of the chance to hear each other, to be heard, to experience the shift that happens when someone across the table begins to understand your perspective, not because a mediator summarized it, but because you said it and they listened. That is mediation at its best. That is the transformative potential this process carries. And it cannot happen through a closed door.

The standards should more clearly affirm that joint session is the intended norm of mediation practice, consistent with the Preamble's own definition, and that caucus is a tool to be used when circumstances require it rather than a substitute for the process itself. This would not prohibit caucus. It would simply realign practice with principle and remind the field that mediation was designed to bring people together, not keep them apart. Mediators who can't hold space for direct party dialogue may not have the skills the process actually requires. And to be honest, this applies a good bit to family mediation. We have an opportunity to help them be heard, understood and work together to move forward. Keeping them apart during decision making does not give them the opportunity to learn to do that better, or have success to fall back on.

**2. F. Subsequent to a mediation**, a mediator shall not establish another relationship with any of the participants in any matter that would raise questions about the integrity of the mediation. When a mediator develops personal or professional relationships with parties, other individuals or organizations following a mediation in which they were involved, the mediator should consider factors such as time elapsed following the mediation, the nature of the relationships established, and services offered when determining whether the relationships might create a perceived or actual conflict of interest.

**Proposed Revision:**

During a mediation, a mediator shall maintain impartiality and avoid any relationship with participants that would compromise the integrity of the mediation process. The mediator's ethical obligations regarding relationships with participants are limited to conduct that occurs during the pendency of the mediation.

**Rationale:**

The current language extends ethical oversight beyond the mediation itself and into the post-mediation professional lives of both mediators and participants. This overreach creates several problems:

First, it is unenforceable. The standard asks mediators to guard against what others might perceive, but perception cannot be controlled or consistently measured. An ethical standard should define conduct, not attempt to regulate speculation.

Second, as the field of mediation and conflict management continues to grow, this restriction increasingly limits opportunities for both practitioners and the public. Mediators are often uniquely positioned to provide coaching, training, facilitation, and other dispute resolution services to individuals and organizations they have worked with. Restricting those relationships after a mediation has concluded removes access to qualified professionals and reduces the public's opportunity to build conflict management competence.

Third, the provision conflates the mediator's duty of impartiality during the process with an indefinite monitoring of relationships after the process has ended. The ethical obligation belongs squarely within the mediation itself. What participants and mediators do professionally or personally after a mediation has concluded is outside the scope of mediation ethics, provided the mediator fulfilled their obligations during the process.

The revised language preserves the core ethical duty of impartiality where it matters, during the mediation, without overreaching into post-mediation conduct that is neither the profession's nor any regulatory body's concern.

**4. Also, in self-determination** – I can't count the times that lawyers have told clients that I cannot mediate with them because I'm not an attorney, despite the request of the parties. In one case, a Sr. lawyer told his staff if they hire a non-attorney mediator (hereby referred to as a legal-

adjacent mediator) they would be fired.  How does one enforce this when the entire country speaks to the “good-old-boy” network of mediators?

**6. Standard VI.A calls for mediation to be conducted with** "diligence, timeliness," and "procedural fairness." Standard I establishes that self-determination requires "free and informed choices." These principles should compel a harder look at the common practice of extended, full-day mediations that could be conducted more efficiently.

It is widely understood within the field that some mediators intentionally extend the mediation process across a full day, allowing a case to settle late in the afternoon or evening when the parties are fatigued, frustrated, and simply ready to be done. This is not a well-kept secret. It is discussed openly at conferences and among practitioners. And while it may produce signed agreements, it raises serious ethical concerns.

A settlement reached through exhaustion is not the product of self-determination. When parties agree to terms because they are too tired or emotionally depleted to continue, they have not made free and informed choices. They have been worn down. The mediator who knowingly extends a process to achieve this result is using time as a pressure tactic, and that is inconsistent with the principles of both Standard I and Standard VI.

This practice also raises concerns under Standard VIII, which requires that fee arrangements not impair impartiality. When a mediator's compensation is tied to a full day rate, there is a financial disincentive to resolve matters efficiently. The mediator who could facilitate a meaningful conversation and resolution in three hours but stretches the process to eight is not serving the parties. The parties are serving the mediator's fee structure.

The standards should address this more directly. Mediators have an ethical obligation to use the parties' time and resources prudently. If a matter can be resolved in two hours, it should be resolved in two hours. If meaningful progress is not being made, the mediator has a responsibility to name that honestly rather than continuing to run the clock. The current language around "diligence" and "timeliness" gestures at this obligation but does not confront the specific practice that everyone in the field knows exists.

I would encourage the committee to consider language that explicitly establishes a mediator's duty to conduct the process as efficiently as the matter allows, and to refrain from using time, fatigue, or extended process as tools to pressure settlement. Voluntary decision making means the parties choose freely, not that they outlast the process.

**7. Empowering others with mediation skills and the professional standards.** Standard IV.A.1 states that "Any person may be selected as a mediator." That is a powerful statement. It recognizes that mediation at its core is a human skill, not a professional credential. Standard IX speaks to making mediation accessible and fostering diversity within the field. The aspirations are there.

But the trajectory of the field is moving in the opposite direction. More states are adding roster requirements, hour thresholds, continuing education mandates, and approval processes. Those

aren't inherently bad, but they accumulate into barriers. And those barriers may disproportionately affect community mediators, volunteers, people from underresourced communities, and practitioners from non-legal backgrounds who bring exactly the kind of diversity the field says it wants.

The more complex and restrictive the standards become, the higher the barrier to entry, and the more mediation starts to resemble the very legal system it was originally designed to be an alternative to. Every provision added to these standards has downstream consequences for who can practice and who cannot. The committee should weigh each revision with that reality in mind.

At the same time, I share the frustration- greatly- of watching people complete a 40-hour training and present themselves as competent mediators when they clearly lack the skills to serve parties well. That is a real problem, and it harms the public and the profession alike.

But the answer is not to make mediation a privileged discipline that only a select few can practice. The answer is to build meaningful pathways for development while keeping the door open.

I would encourage the committee to consider a framework that distinguishes between entry-level community practice, where barriers should remain low and access should be broad, and higher-stakes or specialized mediation contexts, where demonstrated competence through mentorship, supervised practice, and ongoing professional development should be expected. This approach protects the public without locking out the very diversity of practitioners that Standard IX says we should be fostering.

A 40-hour training is a beginning, not an endpoint. What is missing from the current standards is any guidance on what comes after. There is no expectation of mentorship, no pathway for supervised practice, no framework for how a new mediator grows into a competent one. Standard IX encourages experienced mediators to mentor newer ones, but it is entirely aspirational. If we are serious about competence and serious about access, we need to build that bridge into the standards rather than simply raising the drawbridge higher.

**8. Final Thoughts, Finally:** The field of conflict resolution is growing beyond traditional mediation into coaching, facilitation, restorative practices, and organizational systems design. These standards should reflect that growth, support it, and ensure that the expanding reach of conflict management skills serves more people, not fewer. Overregulation of who may practice, what relationships mediators may form after a case, and how practitioners may integrate complementary services all risk turning mediation into the kind of exclusive, inaccessible institution it was originally designed to be an alternative to.

I want a world where more people can help others through conflict, not fewer. Consider how these Standards could be written with that in mind.

These standards are written as though mediation is a single, uniform process. It is not. The field today encompasses community mediation, workplace mediation, healthcare mediation, family

and elder mediation, restorative justice practices, victim-offender dialogue, peer mediation in schools, online dispute resolution, and a growing range of specialized and trauma-informed approaches. Each of these contexts carries different norms, serves different populations, and operates within different cultural and institutional frameworks.

The standards do not acknowledge this diversity in any meaningful way. A single set of provisions governs the community volunteer mediating a neighbor dispute and the retired judge mediating a multimillion-dollar commercial case. The same confidentiality framework is applied to a restorative circle involving a dozen participants and a two-party caucus-based mediation with attorneys present. The same competency standard covers a peer mediator in a middle school and a practitioner handling trauma-informed healthcare mediations.

This is not a failing of the original drafters. In 2005, the field was narrower. But twenty years later, the landscape has changed dramatically, and the standards have not kept pace.

I would ask the committee to consider how these standards can honor the diversity of practice contexts that now exist within the field. This may mean adopting a structure that distinguishes core ethical principles, which are universal, from context-specific guidance, which must vary by setting, population, and approach. It may mean creating space for supplementary standards that address specialized areas of practice. At minimum, it means acknowledging within the document itself that mediation is not one thing, and that ethical practice requires adapting these principles to the real and varied contexts in which mediators serve.

The goal should not be uniformity. The goal should be integrity across diverse practice, guided by shared principles but responsive to the communities and people we serve.