

# ETHICAL ISSUES: IMPARTIALITY, CONFIDENTIALITY, AND INFORMED CONSENT

Indiana Association of Mediators - 2022

David A. Hoffman, Esq.  
Lecturer on Law, Harvard Law School  
Boston Law Collaborative, LLC  
[www.BLC.law](http://www.BLC.law)

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## Ten Principles of Mediation Ethics

By David A. Hoffman

An important subject for mediators is how to distill from the various codes of mediation ethics the essential principles that these codes have in common. Such codes -- each with somewhat differing provisions -- have been developed by the Society of Professionals in Dispute Resolution, the Academy of Family Mediators, and the American Bar Association, among others. The ten principles outlined below are a compilation of what I believe are commonly accepted principles of mediation ethics.

This list, of necessity, over-simplifies the subject; a brief article cannot capture all of the nuances of ethical principles. Also, this list borrows heavily from many writing in the field -- indeed, the point of such a list is not originality but an attempt to discern the principles on which there is consensus. Finally, this list is a work in process; principles and standards are evolving as the field of mediation matures. For the moment, however, the following seem to be the basic principles of mediation ethics.

1. **Conflict of interest.** Mediators must avoid serving in cases where they have a direct personal, professional, or financial interest in the outcome of the dispute. This duty becomes more complicated where the mediator's interest is indirect -- e.g., she works in a firm with someone who has an interest in the outcome, or she is related to someone who has such an interest. In those cases, the question is *how* indirect is the interest? Is it simply a matter of disclosure or does it preclude serving in the case? Mediators should also avoid an appearance of a conflict -- Prof. Frank Sander talks about applying the "headline test": how would you feel about the potential conflict appearing on the front page of the newspaper? Mediators should err on the side of disclosure. If the disclosure is made well in advance of the mediation, so that the parties have the opportunity to choose another mediator, their acceptance of the mediator -- after full disclosure --

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## Ethical Principles

1. Conflict of Interest
2. Competence/role boundaries
3. Impartiality
4. Confidentiality
5. Voluntariness
6. Informed Consent
7. Self-Determination
8. Duties to Third Parties
9. Do No Harm
10. Honesty

Anything missing?

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## Reference Points

- AAA/ABA/ACR – Model Standards of Conduct for Mediators
- ABA Family Law Section – Model Standards of Practice for Family and Divorce Mediation
- Association for Conflict Resolution – Ethical Principles
- State Rules (e.g., Indiana Rules for Alternative Dispute Resolution)
- What other sources of guidance/authority

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## Ethical Principles - Guidance

ABA Section of Dispute Resolution:

<http://www.abanet.org/dispute/ethics.html>

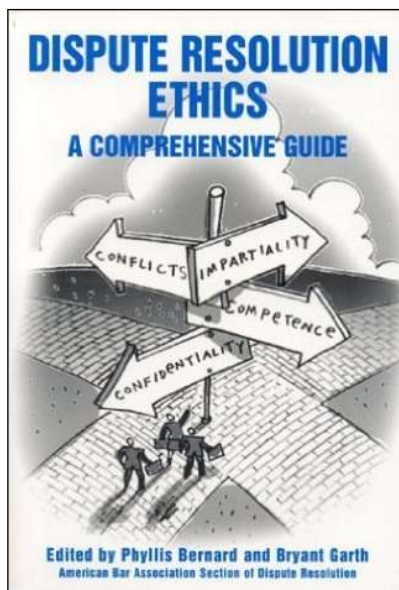
- National Clearinghouse for Mediator Ethics Opinions

Florida Courts:

- Mediator Ethics Advisory Committee Opinions

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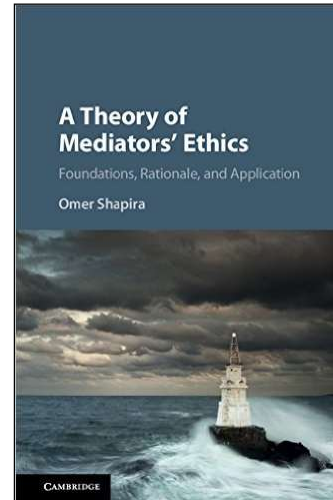
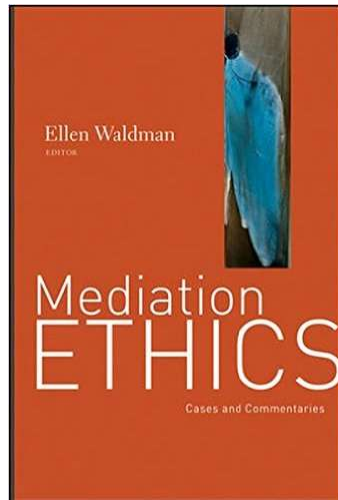
## Ethical Principles - Guidance



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## Ethical Principles - Guidance



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## Ethical Dilemmas

- Small group discussion – ~10-15 minutes
  - Pick a reporter
  - What are the duties that are in conflict?
  - What's your resolution?
  - Does not have to be unanimous
- Plenary reports and discussion

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