

Disclaimer: Training Recording

What Should Courts Know About Mediator Ethics?

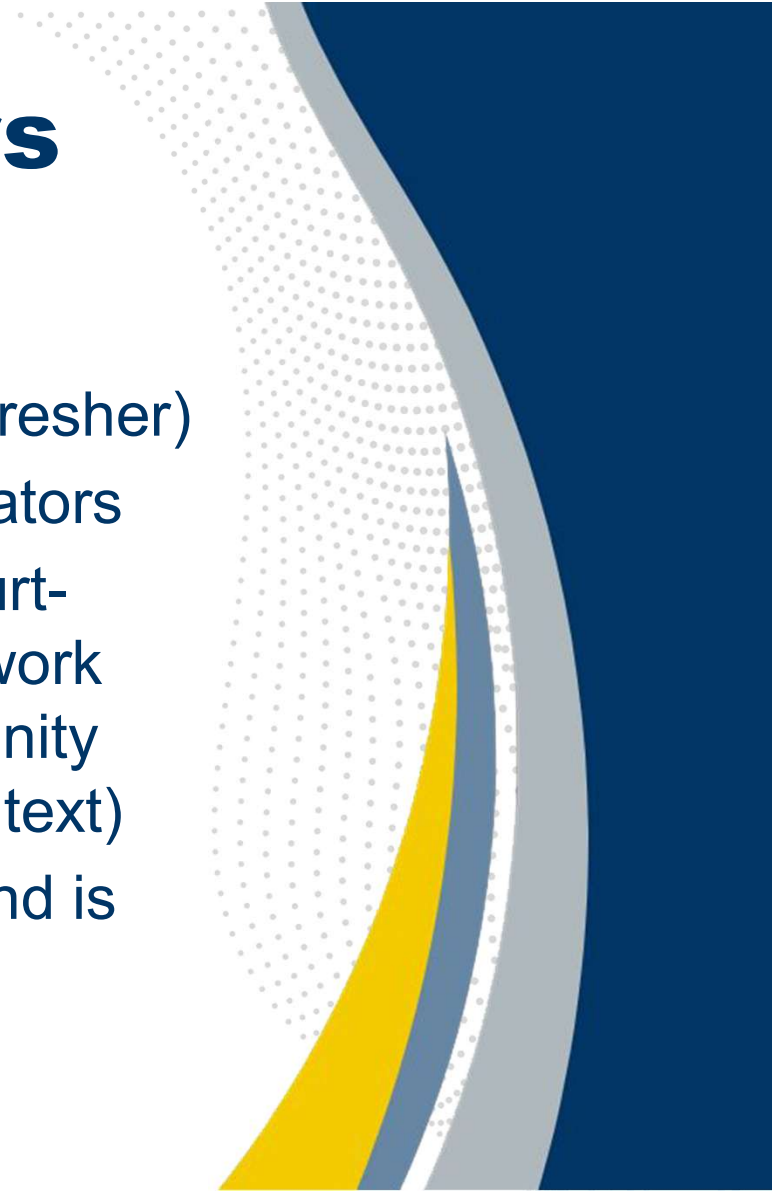
Caitlyn Jackson, ADR Analyst, Court
Programs Division, and
Sam Imperati, **ICM**resolutions

January 9, 2026



Recording Disclaimers

- Intended audience = court staff
- Designed for introductory level (or as a refresher)
- May be relevant for court-connected mediators
- Will **not** provide the full picture for non-court-connected mediators including folks who work exclusively in private practice or in community mediation programs (outside the court context)
- Material for general education purposes and is not legal advice



Civil ADR Court Connections



What Should Courts Know About Mediator Ethics?

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Welcome Announcements

- Recording from yesterday's Civil Court Connections will be posted on the Civil Law SharePoint
- Next Civil ADR Court Connections is Friday, May 8 from 11:00 a.m. to noon

Disclaimer: While Sam Imperati is a licensed member of the Oregon State Bar, this presentation does not establish an attorney-client relationship. Today's oral presentation and all presentation materials are educational – NOT to be relied upon as legal advice.

Agenda

- Mediator obligations
- Various standards of practice
- Overview of key ethical standards
- We're going to move fast. See supplemental draft resource:

What Parties, Mediators, and Courts Should Know About Mediator Ethics and Core Standards of Practice

- If you have thoughts about the draft, send feedback to:
Caitlyn.Jackson@ojd.state.or.us

We hope you will leave with a better understanding of....

- The rules and obligations for court-connected mediators
- The core ethical standards for court-connected mediators
- What types of mediator conduct are and are not okay

Ethics

Why do they matter?



Ethics Drive Quality – Quality Shapes Outcomes

- Effectiveness of mediation
- Case flow management
- Court workloads
- Access to justice and procedural fairness
- Public trust in the judicial branch
- \$\$\$

What is expected of mediators?

Chapter 12 of the [Uniform Trial Court Rules \(UTCRC\)](#) establishes the minimum qualifications, obligations, and mediator disclosures for court-connected mediators.

12.040 Mediator Ethics (highlights)

When mediating court-connected cases, mediators are required to:

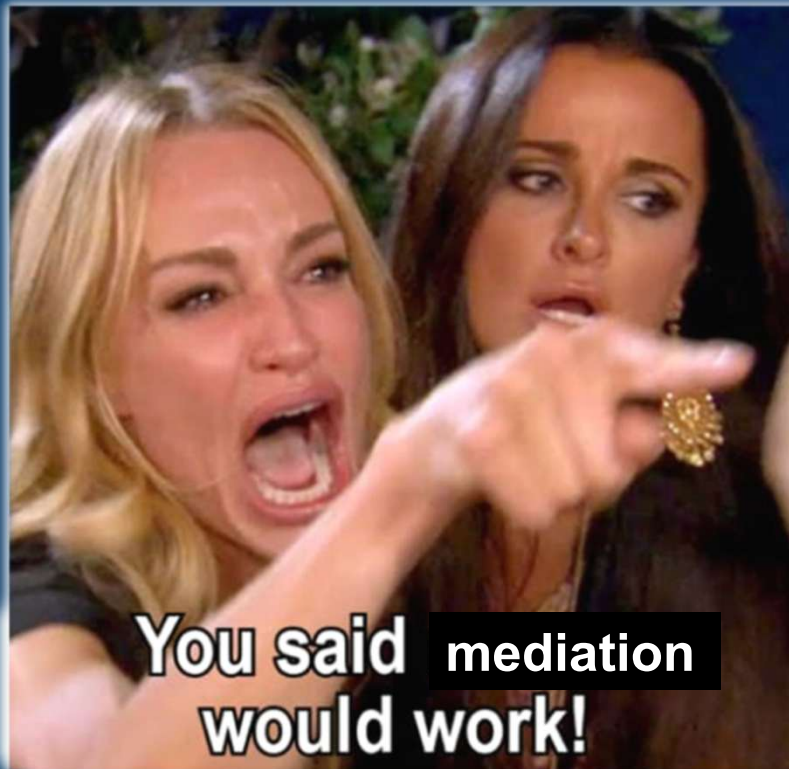
1. Tell the court and parties about their relevant mediator ethics code, standards, and relevant rules of their profession.
2. Comply with relevant laws regarding confidentiality.
3. Inform the participants about specific mediator ethics topics.

UTCRC Chapter 12.040(3)

Mediators are required to inform the participants before or at the start of mediation about:

- Basics of Mediation
- Roles, approach & process
- Voluntary nature
- Confidentiality
- Informed Consent
- Conflicts of Interest
- Appropriateness of mediation
- Good-faith participation
- Independent legal advice
- Mediator's information
(See, UTCRC 12.050)
- Any applicable supervision

What is the court's role?



Mediator Ethics Codes, Standards, and OSB Disciplinary Rules

- [Model Standards of Conduct for Mediators](#) (AAA, ABA, and ACR)
- [Core Standards of Mediation Practice](#) (Oregon Mediation Association)
- [Oregon Rules of Professional Conduct](#) (Rule 2.4 – Lawyer Serving as Mediator)



Family Mediators:

- [Model Standards for Family and Divorce Mediation](#) (AFCC)
- [Standards of Practice for Professional Family Mediators](#) (APFM)

Key Mediator Ethics Standards

Self-
Determination

Informed
Decision
Making

Impartial
Regard

Confidentiality

Mediator
Competence

See next slide for those not covered in detail today

We're not going to cover these Standards or the OSB RPC in detail

Advancement
of Mediation

Good-faith
Participation

Fees

Advertising

Dual Roles
and Hybrid
Processes

OSB Rules of
Professional
Conduct

*Oregon State Bar [Rules of Professional Conduct 2.4](#)

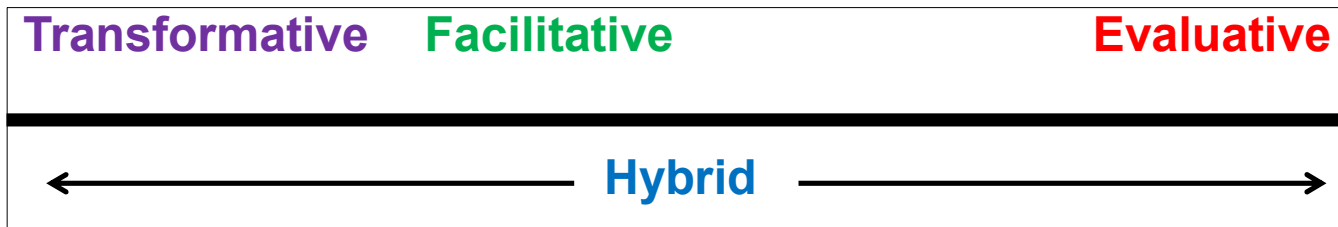
1. Self-determination



- Mediators should respect and support each person's right to make their own choices during and about mediation.
- This means each person decides what they want to do and how they want to do it without being forced.
- Parties should understand their options and feel free to choose what's best for them at any time during mediation.

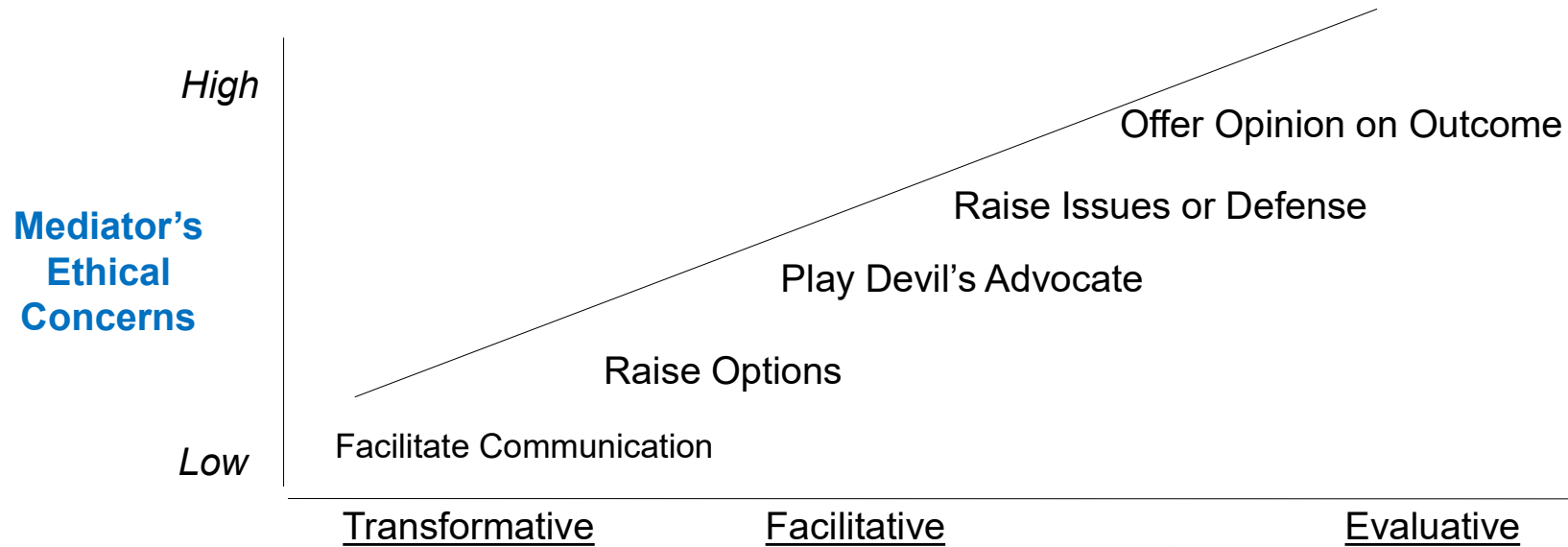


Mediator Approaches (Roles)



"So much is written, so little advanced."

The Intersection of Ethics and Approaches



Key Takeaways – Self-determination



- **Mediators explain how mediation works**
- **Mediation is voluntary**
 - (Even when mediation is “mandatory”)
- **Parties should be free to make decisions without pressure or coercion**
 - Mediators should never push people to participate in mediation or to agree (or not agree) to something
- **Informed decision making**



2. What Is Informed Consent (aka Decision Making)?



← Hint: It's not that!

This standard means that parties know how mediation works, what their process options are, and possible outcomes, so they can make informed decisions.



Key Takeaways – Informed Decision Making

Mediators should:

- **Be Transparent:** Provide honest and transparent information about themselves, how they run the mediation, and their approach.
- **Explain the Process:** Clearly describe how mediation works and the mediator's role.
- **Disclose Conflicts of Interest**
- **Share Resource Information:** Remind parties about available resources to help them understand options and impacts.
- **Clarify Expertise:** Communicate whether the mediator has subject-matter expertise.
- **Ensure Competence:** Have sufficient knowledge to mediate effectively.

TIP: “Informed Consent” does not mean that parties will always make the “best” or “right” decision

3. Impartial Regard (aka, Impartiality)



- Impartiality means a mediator does not take sides or favor one party over another.
- They treat parties fairly and have no personal/professional interest in the outcome of the dispute.
- Mediators avoid anything that could make it appear they are biased or have a conflict of interest.



Key Takeaways – Impartiality

Mediators should:

- Treat Parties Fairly
 - Avoid actions that could seem unfair.
 - Recognize personal biases
 - Withdraw if impartiality isn't possible.
- Manage Conflicts of Interest
 - Check for conflicts
 - Disclose openly
 - Seek consent
 - Continue only if parties agree despite perceived or actual conflicts.
 - Avoid creating conflicts when recommending other professionals.

Mediators should not:

- Take sides or show one party favoritism
- Allow their own personal opinions, biases, beliefs, or outside pressures to affect the mediation
- Mislead participants or influence decisions for personal gain
- Accept or give gifts that could make them seem unfair

4. Confidentiality

- The purpose of confidentiality is to support open, honest discussions in mediation.
- In Oregon, most (not all!) mediation communications are confidential (secret), non-discoverable, and inadmissible:

Secret	Non-discoverable	Inadmissible
Kept hidden from everyone minus a few exceptions	Not subject to discovery in court proceedings	Cannot be used as evidence in court

- “Mediation Communications” include:
 - Anything said or written exclusively for, or during, mediation
 - Materials created exclusively for, or during, mediation

What is NOT Confidential?

- **Communications before mediation starts or after it ends.**
- **Settlement Terms** Unless all parties agree in writing to keep terms confidential
- **Notes & Materials** If normally subject to discovery, rules of evidence, and/or public records (or if created for a purpose other than for mediation)
- **Attendance & Outcome** The mediator may report to court:
 - Who attended
 - Whether an agreement was reached
- **Sharing with Privileged Relationships** Parties can share with:
 - Lawyer
 - Spouse/domestic partner
 - Other legally protected relationships
- **State Agency Cases** Not automatically confidential unless special rules apply.
- **Training & Research** Allowed if parties/cases cannot be identified.

Exceptions to Confidentiality

- **To prevent serious harm or death:** If the mediator or a party believes someone might commit a crime that could seriously hurt or kill someone, they can share what was said in mediation to help prevent it.
- **Mandatory Reporting:** If a mediator **or person participating in mediation** is legally required to report child or elder abuse, then any mediation communication about such abuse is not confidential to the extent that the law requires reporting.
- **Written Agreement** All parties and mediator can agree **in writing** to share specific communications. The mediator does not have to agree to requests. *ORS 36.220(1)(b)*
- Other “less common” exceptions exist. See handout for more information.



Recommended Practices for Confidentiality

Deviate from statute without telling parties.

No consent from parties.

Tell parties about deviations from statute.

Verbal consent only.

Participating in mediation =
Consenting to policies

Follow the law explicitly.

No signed agreement to mediate required.

Have parties review and sign agreement to mediate, especially if deviating from statute.

Best practice (even if not deviating from statute)

Very Bad

Bad

Compliant with Statute

Extra Credit: Confidentiality Cheat Sheet

Confidentiality will vary depending on who the parties and mediator are representing....

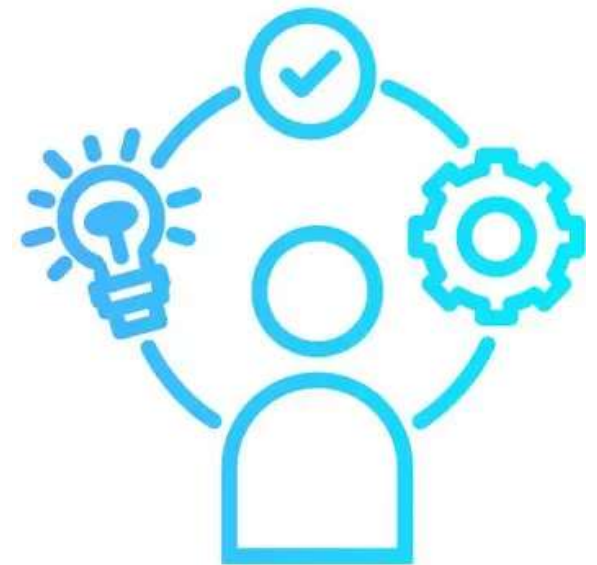
	IF THE PARTIES (as defined in ORS 36.234)	AND THE MEDIATOR (as defined in ORS 36.110(10)) IS	THEN CONFIDENTIALITY IS
1	Are all private parties	Private, public body (other than state agency) or state agency that has no regulatory authority over matter in mediation	Assumed
2	Include a public body (other than a state agency) and a private party	Private, public body (other than state agency) or a state agency that has no regulatory authority over matter in mediation.	Assumed
3	Include a public body (other than a state agency) and a private party	A state agency with regulatory authority over matter in mediation.	Only available if agency adopts an approved rule
4	Include a state agency and a private party	Any type	Only available if agency adopts an approved rule
5	Include public bodies (one of which has non-confidentiality policy/law) and a private party	Any type	Not available
6	Are all public bodies	Any type	Not available
7	Include multiple state agencies and a private party and one of the agencies has not adopted a confidentiality rule	Any type	Not available

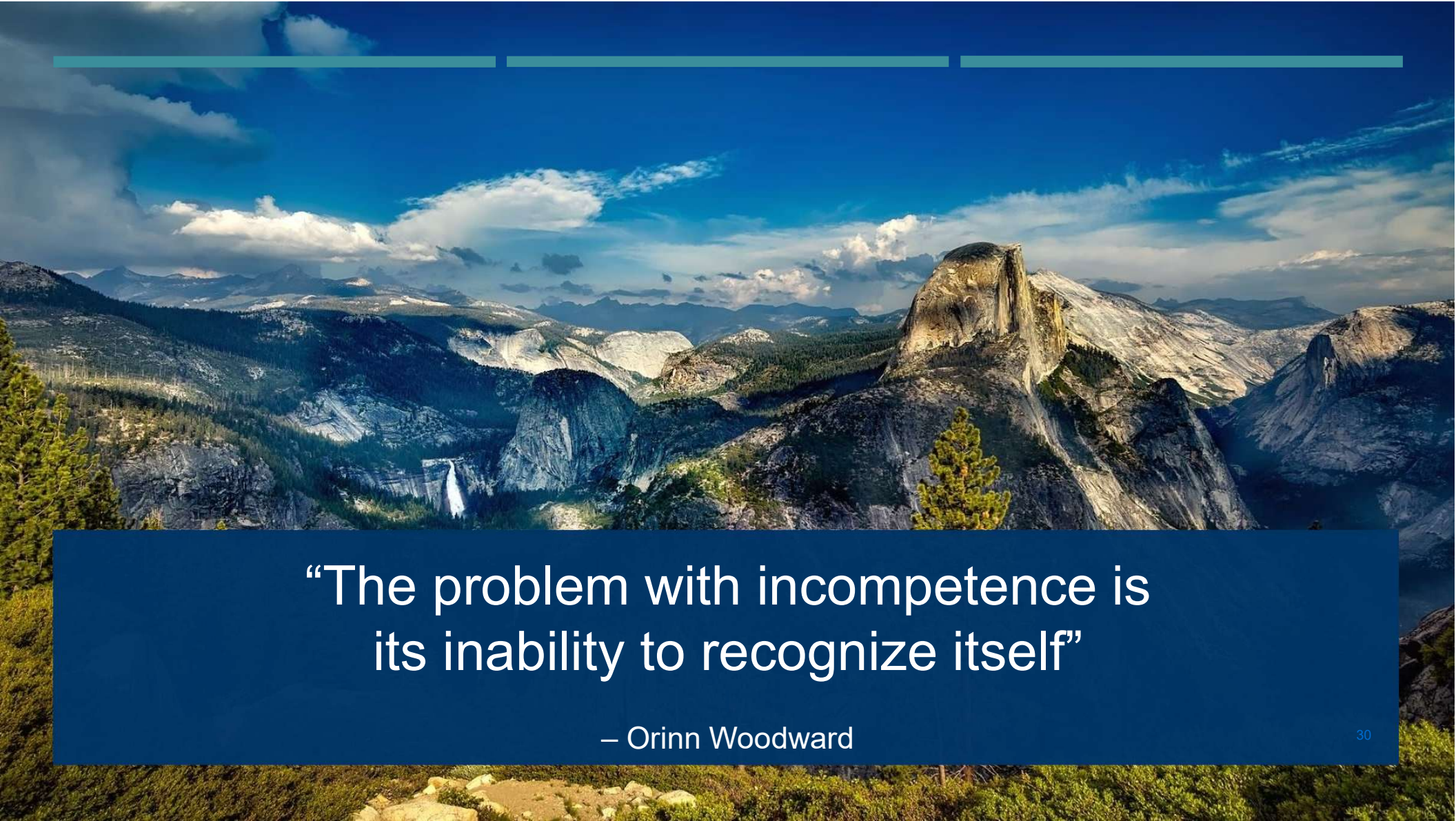
www.doj.state.or.us/wp-content/uploads/2017/08/state_agency_mediation_confidentiality.pdf

ICMRESOLUTIONS

5. Competence

- A person who offers to serve as a mediator creates the expectation that the person is competent to mediate effectively.
- Mediators should only mediate when they have the right skills and knowledge, including the ability to meet parties' expectations.

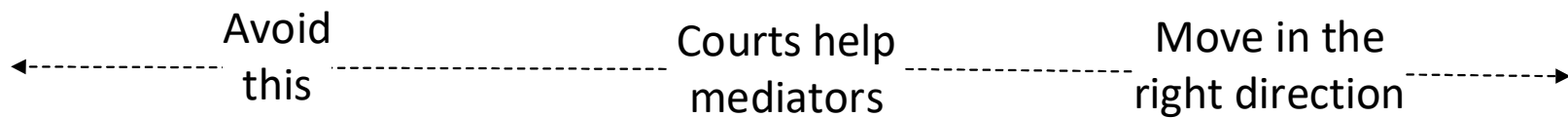
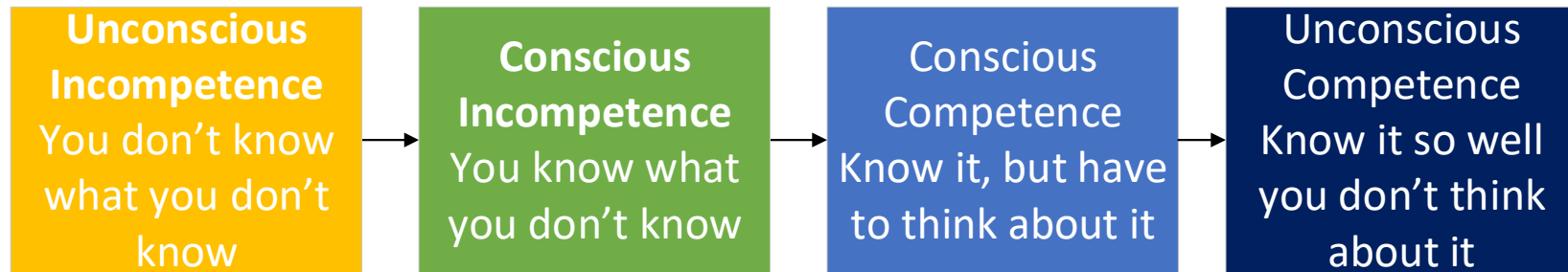




“The problem with incompetence is its inability to recognize itself”

– Orinn Woodward

Four Stages Of Learning



Speed Round

Advancement of Mediation

Good-faith Participation

Fees

Advertising

Dual Roles and Hybrid Processes

Oregon Rules of Professional Conduct

6. Mediation Practice aka the Advancement of Mediation

This means working to make mediation better and more trusted. Mediators do this by learning, sharing, and helping others understand mediation.

Mediators should:

- Act with integrity
- Model good conflict resolution skills
- Help new mediators by mentoring and sharing knowledge
- Ask for feedback to improve their skills
- Respect different opinions and work with others to improve the field





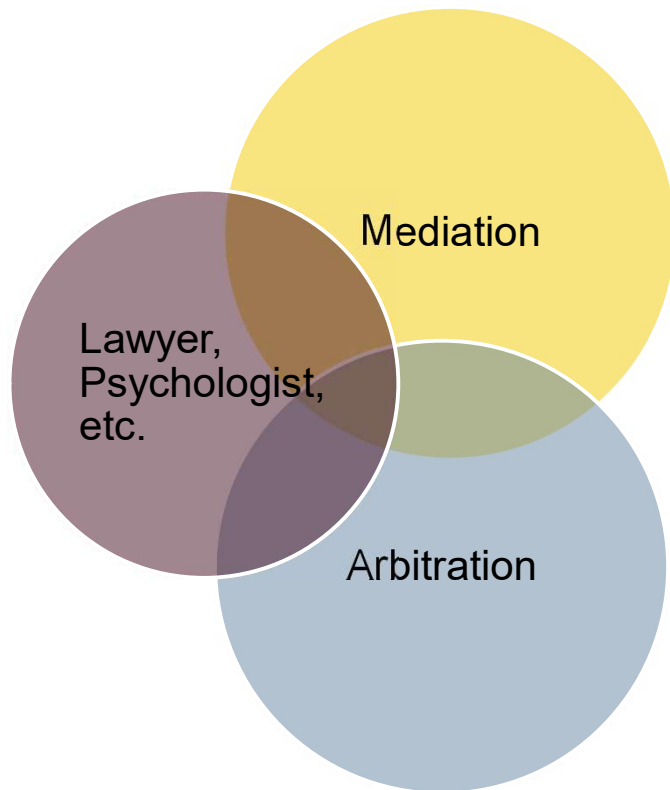
7. Good-Faith Participation



8. Fees

9. Advertising

10. Dual Roles & Hybrid Process



OSB Rules

RULE 2.4 LAWYER SERVING AS MEDIATOR

- (a) A lawyer serving as a mediator:
- (1) shall not act as a lawyer for any party against another party in the matter in mediation or in any related proceeding; and
 - (2) must clearly inform the parties of and obtain the parties' consent to the lawyer's role as mediator.
- (b) A lawyer serving as a mediator:
- (1) may prepare documents that memorialize and implement the agreement reached in mediation;
 - (2) shall recommend that each party seek independent legal advice before executing the documents; and
 - (3) with the consent of all parties, may record or may file the documents in court.
- (c) The requirements of Rule 2.4(a)(2) and (b)(2) shall not apply to mediation programs established by operation of law or court order.



Insights from Real-World Examples



Questions?

|

Comments?



“Lowering your standards is a slippery slope.”

-Moira Rose

Closing Announcements

- Consider testing your knowledge through OMA Quizzes:
 - [Confidentiality](#)
 - [Standards/Ethics](#)
- Upcoming ADR Court Connections:
 - Civil: Friday, May 8, from 11:00 a.m. to noon
 - Domestic Relations: Tuesday, January 27, from 11:00 a.m. to noon

If you have ideas for our next session, please put in the chat or send by email



Thank You!

For questions related to court-connected mediation, contact:

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To connect with or to learn more from Sam Imperati, visit:

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