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

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This *draft* document was created as a training resource for the January 9, 2026, ADR Civil Court-Connection session.

- This document will be updated after in the future based on feedback and to answer any follow-up questions.
- Refer to the training slides and recording on the [OJD's Mediator Resources Webpage](#) for additional information.

***This resource is provided for information purposes only. It is not intended to substitute as legal advice or to replace existing published Standards of Practice or Rules (see direct links on page 3).***

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# Mediator Ethics Codes, Standards, and Disciplinary Rules

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*Refer to the full standards, or applicable rules and statutes, for additional information.*

## **Uniform Trial Court Rules:**

- [Chapter 12](#)

## **General Standards:**

- [Model Standards of Conduct for Mediators](#)

Adopted by the American Arbitration Association, the American Bar Association, and the Association for Conflict Resolution

- [Core Standards of Mediation Practice](#)

Adopted by the Oregon Mediation Association

- [Oregon Rules of Professional Conduct \(RPCs\)](#)

Rule 2.4 – Lawyer Serving as Mediator

## **Standards For Family Mediators**

**Note:** The two standards below have not been reviewed, summarized, or included in this document:

- [Model Standards for Family and Divorce Mediation](#)
  - Adopted by the Association of Family and Conciliation Courts
- [Standards of Practice for Professional Family Mediators](#)
  - Adopted by the Academy of Professional Family Mediators

## **Key Oregon Statutes to Confidentiality**

- Oregon Revised Statutes (ORS) Chapter 36 (especially, but not limited to, ORS 36.110 and ORS 36.220) (General)
- ORS 107.785 (Additional provisions for the Domestic Relations context)

## Self-Determination

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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. They should understand their options and feel free to choose what's best for them. People can make their own choices at any time during mediation. This includes:

- Picking the mediator
- Deciding how the mediation will work and the mediator's approach
- Choosing to participate or end the mediation
- Agreeing (or not agreeing) to something

### **Parties Should:**

- Know that participating in mediation is voluntary and should be reassured once they've fulfilled any mandatory mediation obligations
- Understand they can make choices. This includes making choices about:
  - The mediator\*
  - How mediation will work
  - Whether to:
    - Participate or leave the mediation
    - Agree (or not) to something
- Never be threatened or coerced into a decision in or about mediation:
  - By a mediator
  - By another party
  - By the court
- Have access to information about other modes to resolve the dispute
- Feel free to choose what's best for them

**Reminder:** Recognizing that parties generally do not get to choose their mediator in court-connected mediation, parties should be reassured that they may end the mediation at any time, including because they don't want to work with a particular mediator.

### **Key Takeaways for Mediators and Courts:**

- Mediators explain how mediation works. They help people understand the different ways it can be done and what to expect.
- Mediation is voluntary. Participating in mediation is voluntary. Parties should be free to end the mediation at any time and for any reason (including in mandatory mediation).
- 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 (i.e., to finish quickly, for personal gain, or to "please the court").

- Informed decision making. A mediator can't guarantee that everyone fully understands everything. But if needed, the mediator should remind people that they can talk to other experts (such as lawyers) to help them make informed decisions.

***Interplay with Other Core Standards of Practice: Self-Determination:***

- **Informed Consent:** Self-determination depends on informed consent—participants need clear, honest information to make voluntary decisions.
- **Impartiality:** Encourages parties to make their own choices without pressure or favoritism. Avoiding conflicts ensures parties' decisions are based on their own interests, not the mediator's.
- **Competence:** Mediators must have the skills to explain the process and options so parties can make informed choices.
- **Confidentiality:** Protecting privacy helps parties feel safe to make decisions freely without fear of outside influence.

***Self-Determination in the Court-Connected Mediation Context:***

- Even mandatory mediation is voluntary. Once mediation begins, parties fulfill the court's mandatory mediation requirement; a party may end mediation at any time and for any reason without fear of consequences from the court.
- Choice of mediator: In court-connected mediation, parties generally do not get to choose their mediator. As a reminder, a party may end mediation at any time for any reason (including because they don't want to work with a specific mediator or they prefer a different approach).

# Informed Consent (also known as Informed Decision Making)

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

## **Parties Should:**

- Know what mediation is and is not, and how it works, so they can decide whether to participate.
- Understand their role and the roles of others in mediation.
- Know what to expect from their mediator because mediators use different techniques and approaches.
- Be encouraged to seek information about, and understand the effects of their decisions, including the potential impacts of:
  - Participating in mediation (or not), and
  - Agreeing to something (or not)
- Never be misled by the mediator for any reason, including, but not limited to, because the mediator:
  - Omits information about potential or actual conflicts of interest
  - Provides inaccurate information (intentionally or unintentionally)
  - Provides unlawful legal advice

## **Key Takeaways for Mediators and Courts:**

### **Mediators should:**

- Give honest and transparent information about themselves and about how they run the mediation.
- Explain how mediation works clearly and what the mediator's role is and is not (not their lawyer, therapist, judge, or arbitrator, etc.).
- Tell parties about perceived and actual conflicts of interest. When in doubt, disclose, decline to serve, or withdraw.
- Remind parties what resources may be available to help them understand their options and the impacts of their decisions. e.g., OSB Lawyer Referral Service, Oregon Law Help, etc.
- Communicate whether they have subject-matter expertise or not.
- Have sufficient subject matter expertise to mediate competently, including being able to explain the mediation process and to understand the potential consequences of a party's decision.

**Reminder:** "Informed Consent" does not mean that parties will always make the "best" or "right" decision.

***Interplay with Other Core Standards of Practice:***

- **Self-Determination:** Informed consent helps people make decisions.
- **Impartiality:** Mediators should understand how sharing information (or withholding information) may benefit one party more than another.
- **Competence:** Mediators should be able to:
  - Understand when a party's decision could have serious consequences
  - Identify when a party may be misleading another party (intentionally or not)
  - Skillfully navigate whether and how to share additional information so parties can make informed decisions
  - Avoid telling a party incorrect (or incomplete) information
- **Quality of the Process:** Supporting people to understand what's happening helps keep the process fair and respectful.

***Informed Decision Making in the Court-Connected Mediation Context:***

- Parties need to know what to expect from their mediator and the mediation process.
- Courts may offer mediators resources (such as informational handouts for parties) to ensure parties receive accurate and consistent legal information, regardless of who the mediator is.

## Impartial Regard (also known as Impartiality)

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*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 should avoid anything that could make it appear they are biased or have a conflict of interest.*

### **Parties Should:**

- Be treated fairly by the mediator
- Know that the mediator does not have a stake in the outcome of the dispute
- Be provided information about the mediator's connections, experiences, or relationships that could affect fairness.
- Clearly see that the mediator is not favoring one party over another

**Note:** Impartiality is essential in the court-connected mediation context because the mediator is viewed, correctly or incorrectly, as a representative of the court. Mediators can leave a lasting impression on how parties perceive the court long after mediation concludes. Mediators shape how parties view the fairness, accessibility, and professionalism of the judicial branch.

### **Key Takeaways for Mediators and Courts:**

#### **Mediators should:**

- Treat parties fairly without favoritism
  - Avoid actions that could make people suspect that the mediator is unfair
  - Recognize their own biases. Withdraw from a case if they cannot treat parties fairly
- Manage Conflicts of Interest (perceived and actual)
  - Check for conflicts
  - Disclose openly
  - Seek consent from parties to continue mediating if there are any perceived or actual conflicts of interest.
  - 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 over another for any reason
- Allow their own personal opinions, beliefs, or outside pressures to affect the mediation, including but not limited to:
  - A party's status, background, identity, or relationship with the court
  - The mediator's values, including perceptions of reasonableness, how someone should communicate, and other consciously and subconsciously held beliefs
- Mislead participants or influence decisions for personal/professional gain
- Accept or give gifts that could make them seem unfair

***Interplay with Other Core Standards of Practice:***

- **Self-Determination:** Impartiality helps people make their own choices without pressure.
- **Informed Consent:** Mediators should understand how sharing information (or withholding information) could benefit (or be perceived to benefit) one party more than another.
- **Advancing mediation:** Impartial regard builds public trust in mediation.

***Impartial Regard in the Court-Connected Mediation Context:***

- Mediators may feel pressure to settle cases quickly or meet program goals, but they must not let that affect fairness.
- Courts may set expectations for court processes (for example, how much time is available for mediation), but they should not push for specific mediation outcomes.
- If you use mediators who are or were practicing attorneys, consider implementing processes so volunteers may run conflicts checks.

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# Confidentiality

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**Parties should be informed about confidentiality and any exceptions, including:**

The purpose of confidentiality is to support open, honest discussions in mediation. Oregon law uses the term “Mediation Communications.”

At its most simple level, “Mediation Communications” include:

- Anything said or written exclusively for, or during, mediation
- Materials created exclusively for, or during, mediation

In Oregon, mediation communications are generally confidential (secret), non-discoverable, and inadmissible:

<b>Secret</b>	<b>Non-discoverable</b>	<b>Inadmissible</b>
Kept hidden from everyone except for a few exceptions	Not subject to discovery <sup>1</sup>	Cannot be used as evidence in court

This includes:

- Anything said or written exclusively for, or during, mediation – all verbal and written communication (including electronic communication) to the mediator, mediation program staff (if applicable), a party to mediation, or anyone else approved to take part in mediation during the course of mediation.
- Materials created exclusively for, or during, mediation. This includes:
  - Agreements to mediate, notes, records, summaries, or recordings
  - The mediator’s work products
  - Drafts or recollections from the mediator or parties (Even materials made before mediation count if they were created only for mediation.)

**What is NOT confidential?**

- Communications before mediation starts or after it ends. (You need bright lines here.)
- Settlement terms: Unless everyone agrees in writing to keep them confidential.
- Notes or materials created outside mediation: If they weren’t prepared exclusively for mediation, they are usually subject to discovery, rules of evidence, and/or public records laws (if the state is a party).
- Attendance and outcome: The mediator can tell the court whether someone attended mediation and whether parties reached an agreement.

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<sup>1</sup> Discovery is a legal process governed by the rules of civil procedure and evidence where parties must share information and specific evidence before trial.

- Sharing with legally privileged relationships: Parties may share mediation communications with people with whom they have a legal privilege, such as:
  - Their lawyer
  - Their spouse or domestic partner
  - Other relationships protected by law
- State agency cases: Mediation is NOT confidential unless the agency has adopted special rules, which are different. The Oregon Department of Justice created a resource about confidentiality, especially for cases involving public bodies: [DOJ Confidentiality Resource](#).
- Research and training: Mediators may use information for research, training, or education as long as parties and individual cases cannot be identified.

**There are exceptions to confidentiality:**

- 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.
- If a mediator **or a person participating in the 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.
- If all parties and the mediator agree in writing, some or all mediation communications can be shared. (The mediator does not have to agree to requests.)
- There are other exceptions that occur less often. For example, disclosures can be made to the extent necessary to prosecute or defend the matter in:
  - An action for damages or other relief between a party and a mediator or mediation program.
  - Any proceeding to enforce, modify, or set aside a mediation settlement agreement.

**Key Takeaways for Mediators and Courts:**

**Mediators should:**

- Understand and comply with confidentiality laws (and exceptions):
  - What is confidential?
  - What is not confidential?
  - Any applicable exceptions.
- Explain confidentiality (and any exceptions) to parties as soon as reasonably possible.
- Have parties review and sign the agreement to mediate form, especially if deviating from the statute (see figure 1).

**Mediators should not:**

- Share confidential mediation communications (unless required to do so by law or unless parties have agreed in writing to waive certain confidentiality protections).
- Share information disclosed in a caucus with another party (unless the party agrees).

## Recommended Practices for Confidentiality

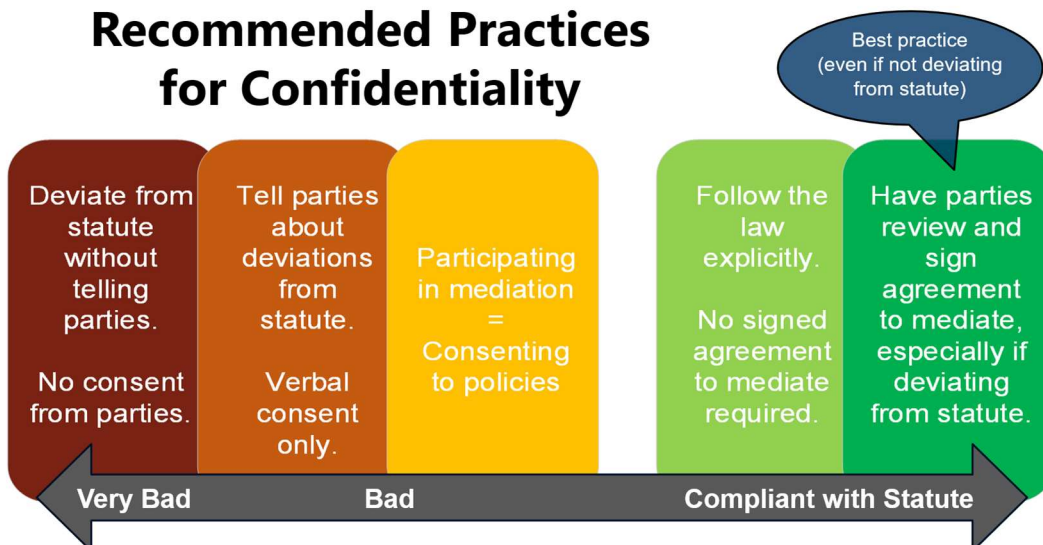


FIGURE 1

**Best practice:** When mediating between private parties, it is safer to assume confidentiality. If in doubt, reach out.

### *Interplay with Other Core Standards of Practice and the Oregon RPCs*

- **Self-Determination:** Confidentiality supports open, honest discussions in mediation.
- **Informed Consent:** Mediators explain confidentiality. Courts may find it helpful to provide parties with written information about confidentiality (and exceptions).
- **Impartiality:** Breaching confidentiality can lead to claims of partiality and malpractice. Impartial regard requires that confidentiality rules apply consistently to all parties.
- **Advancing Mediation:** Upholding confidentiality builds trust in mediation.
- **Oregon Rules of Professional Conduct:** Oregon’s mediation confidentiality laws take precedence over RPC 8.3 (Reporting Professional Misconduct) . Therefore, if someone who is licensed by the Oregon State Bar observes another lawyer engage in professional misconduct during mediation, they cannot report such misconduct (as would otherwise be expected) because section 8.3 (d) states, “This rule does not require disclosure of mediation communications otherwise protected by ORS 36.220.”

### *Confidentiality in the Court-Connected Mediation Context:*

- Define mediation boundaries: Courts should clearly define when mediation begins and ends.
- **Remember: There are limitations on what mediators can share with the court.**
  - Mediators may only report the following to the court:
    - Did the parties attend?
    - Was an agreement reached?
  - Do not ask for details about:
    - How parties behaved during mediation.

- The dispute, including disagreements about settlement terms.
- Claims of bad faith.
- Support confidentiality: Courts should help mediators uphold confidentiality by establishing protocols for volunteers, including:
  - Handling notes: Guidance on what to do with notes taken during mediation.
  - Social media usage: Prohibit posting stories or details (including indirect details) from mediation online. (Cases can be searchable by date.)
  - How to report:
    - Outcomes of mediation for Odyssey data entry only (with no other details)
      - Agreement, No Agreement, Partial Agreement, Failure to Appear, Mediation Did Not Occur
      - For court staff, see OJD Online Help System for corresponding Business Process:
        - Odyssey / Family / Mediation / Mediation Reports
        - Odyssey / Landlord-Tenant / Mediation
        - Odyssey / Small Claims / Mediation
    - Any legally required disclosures (e.g., mandatory reporters must report directly to the [Oregon Department of Human Services](#)).

# Competence

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*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.*

**Process competence** means the mediator knows how to guide the mediation fairly and skillfully. This includes being able to:

- Address issues such as: mediation structure, approach, timing, pacing, and more.
- Use various communication techniques proficiently.
- Be inclusive of cultural differences, identities, and diverse perspectives.
- Recognize power imbalances and attend to imbalances appropriately.
- Apply mediation-specific laws (for example, exceptions to confidentiality or Domestic Violence (DV) screening requirements) and standards of practice.

**Substantive competence** means the mediator understands the topic or issues being discussed. This includes knowing:

- Case-specific terminology and processes
- Potential consequences of various case outcomes and decisions
- Information about general case type or subject matter area context, laws, processes, and more

## **Parties Should:**

- Only be referred (or ordered) by the court to a mediator if the mediator has the right skills and knowledge to mediate the case.
- Be informed (by the mediator or the court) about what to expect from the mediator.
- Have access to information about their mediator's qualifications.
- Never be misled about a mediator's skills and experiences related to the mediation process and substance of the case.
- Be notified as soon as possible by the mediator if the mediator does not have the skills and knowledge to mediate the case.

## **Key Takeaways for Mediators and Courts:**

### **Mediators should:**

- Be candid and transparent about what they can and cannot do.
- Share their training and experience if asked.
- Prioritize continued learning and skill development.
- If a mediator cannot do the job well, they must tell the court and parties, get help, or stop mediating.

**Mediators should not:**

- Knowingly or unknowingly make misrepresentations during a mediation (including about themselves).

***Interplay with Other Core Standards of Practice:***

- Competence supports **self-determination** – mediators guide the process without forcing decisions.
- It also connects to **confidentiality** and **impartiality** because a skilled mediator knows how to protect private information and treat everyone fairly.
- Advancing Mediation: Without competence, trust in mediation can break down.

***Competence in the Court-Connected Mediation Context:***

- Courts should have high expectations of mediators (including volunteers).
- Courts should support competence through ongoing training, mentorship, and continuing education.

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# Advancing Mediation

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

## **Parties Should:**

- Leave mediation with greater trust in the process, confident that the mediator's conduct and behavior reflected the highest standards of integrity.

## **Key Takeaways for Mediators and Courts:**

### **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.

## **Interplay with Other Core Standards of Practice: Advancing Mediation**

- Ongoing learning and sharing knowledge improves mediators' competence and their ability to apply all standards appropriately.

## **Advancing Mediation in the Court-Connected Mediation Context**

- Courts should expect mediators to keep improving their skills and knowledge.
- Mediators should follow laws and respect different viewpoints while working with other professionals.
- Helping new mediators and educating the public about what to expect in mediation strengthens outcomes and satisfaction with court-connected mediation services.
- Courts should inform parties how to make a complaint about a mediator for any reason (e.g., if they believe the mediator violated a law, rule, or otherwise engaged outside the parameters of the core standards of practice).

# Good-Faith Participation

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*These standards relate to promoting honest participation in mediation and safeguarding mediation from misuse and abuse.*

## **Parties Should:**

- Be encouraged to participate honestly and sincerely in mediation.
- Be discouraged from using mediation for any reason other than to try to resolve the dispute. (For example, discovery, delay, harassment, increased attorney fees, etc.)

## **Key Takeaways for Mediators and Courts:**

- In Oregon, there is established case law about the term “good-faith participation.”
- Mediators should encourage parties to participate honestly in mediation.
- Mediators should discourage parties from using mediation for any purpose other than to try to resolve the dispute. Mediators should become familiar with the indications that a party might be misusing mediation and should know how to respond to such efforts.

## **Interplay with Other Core Standards of Practice:**

- **Self-Determination:** Good-faith participation supports voluntary, **informed decision-making**.
- **Confidentiality:** Reminding parties about confidentiality can support good-faith participation.
- **Impartiality:** Managing (or not managing) “bad-faith participation” could benefit one party more than another.
- **Competence:** Mediators should be able to recognize indications of potential “bad-faith participation.” Mediators should know whether and how to respond to signs of misuse.
- **Advancing Mediation:** Without good-faith participation, trust in mediation can break down.

## **Good-Faith in the Court-Connected Mediation Context:**

- Mediators should not be asked by the court or by anyone to evaluate whether someone’s participation in mediation was in “good faith.” If asked, they should not respond.

# Fees

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*This standard relates to costs charged by mediators for their services and the transparency of such fees.*

## **Parties Should:**

- Know fee arrangements upfront before mediation begins.
- Be provided information about any additional costs (e.g., administrative fees, cancellation policies) and any fee reduction or waiver options.
- Only incur costs, if any, that are fair, reasonable, and clearly communicated for all court-connected mediation services.

## **Key Takeaways for Mediators and Courts:**

### **Mediators should:**

- Disclose all fees before mediation starts.
- Avoid hidden charges or billing practices that undermine trust.

### **Interplay with Other Core Standards of Practice:**

- **Self-Determination:** Parties should be free to agree (or not) to fee terms without coercion.
- **Informed Decision Making:** Clear communication about fees supports informed consent.
- **Impartiality:** Fee structures must not favor one party or influence the outcome. Avoid conflicts of interest or perceptions of bias related to payment.
- **Competence:** Mediators must understand ethical billing practices and local court expectations about fees, if any.

### **Fees in the Court-Connected Mediation Context:**

- Courts should set clear expectations for mediators about fees.
  - Can mediators charge parties any fees?
  - Can mediators charge parties to continue mediating outside the court setting?
  - In the domestic relations context, if mediators offer services beyond what the court covers, do mediators need to inform the court whether they are collecting fees from parties for such services?
- If mediators charge fees for court-connected services, courts may want to encourage mediators to adopt pathways for fee waivers, reductions, or deferrals to support access to justice.

# Advertising

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*These standards relate to how mediators advertise and promote their services, such as through websites, brochures, or social media.*

## **Parties Should:**

- Be told if anything from their case may be used to advertise (for a mediator or court).
- Be provided the opportunity to decline or to consent in writing whether their case information can be used for advertising.
- Not be named or referenced in any way in a mediator's advertisement unless all parties have consented in writing.

## **Key Takeaways for Mediators and Courts:**

- Courts should:
  - Set expectations for mediators regarding whether they may use court-connected mediation case examples for their own advertising. **(This should be highly discouraged.)**
  - Remind mediators:
    - That the court may only approve someone to mediate in the court context. Mediators should not treat court approval to mediate as a means to inflate their own qualifications in advertisements or use their court-approved status to exaggerate their qualifications in ads, or to advertise as a form of licensure.
    - How to comply with confidentiality expectations in the context of advertising one's services.
- If the court permits mediators to use court-connected mediation cases for personal or professional advertisements:
  - All marketing materials must exclude any information that could be used to identify case participants, their dispute, or any outcomes.
  - Advertising must never disclose case details or party identities without the explicit written consent of all parties. Even indirect references (e.g., "high-profile case") can breach confidentiality.

## **Interplay with Other Core Standards of Practice:**

- **Self Determination and Informed Consent:** Knowing whether their case information may be used for future marketing helps parties make informed decisions about whether to participate in mediation and whether to work with a mediator.
- **Confidentiality:** All advertising must protect confidentiality by avoiding disclosures about parties or information about their dispute.
- **Competence:** Mediators should accurately represent qualifications in advertising.

***Advertising in the Court-Connected Mediation Context:***

- Mediators should not use court affiliation for marketing advantage. When mediating privately, mediators should avoid language that implies court endorsement. Mediators should not use their court-approved status to inflate their qualifications in advertisements or as a form of private licensure.
- E-court makes information available to the public that might not be available in the private context. Mediators should be especially cautious if permitted to advertise using court-connected cases (for any reason, including all personal or professional social media posts). For example, the date of a service (“Today I mediated a small claims case and ...”) might be used to identify parties to a specific case.

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## Dual Roles and Hybrid Processes

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*Dual roles occur when a mediator also serves in another role (such as an attorney or arbitrator) in the same case. Hybrid processes combine mediation with other dispute resolution methods, such as arbitration (e.g., Med-Arb or Arb-Med). Other examples: Therapist, Financial Planner, Spiritual advisor, etc.*

### **Parties Should:**

- Know what to expect from mediation and the mediator. This includes whether the mediator will serve dual roles and whether any hybrid processes (e.g., MED-ARB, ARB-MED, etc.) will occur.

### **Key Takeaways for Mediators and Courts:**

- Generally, dual roles and hybrid processes should not be permitted in the context of court-connected mediation.
- Dual roles and hybrid processes increase the risk of malpractice and party dissatisfaction.
- When a mediator takes on a dual role or hybrid process, they assume additional responsibilities and duties beyond standard mediation ethics and rules. (The rules of their profession of origin may come into play.)

### **Interplay with Other Core Standards of Practice:**

- **Competence:** Mediators engaging in hybrid roles need specialized training to manage ethical complexities and procedural safeguards.
- Hybrid processes can blur boundaries and raise concerns about **confidentiality and impartiality**. Mediators must ensure that information shared in mediation is not misused in arbitration.
- **Informed Consent:** Parties must fully understand and agree to any role changes or hybrid processes before they occur. Consent should be explicit and documented in writing.
- **Self-Determination:** Parties should know they can object to a mediator continuing in a different role for any reason.

### **Dual Roles in the Court-Connected Mediation Context:**

#### **Courts should:**

- Set expectations regarding whether a mediator may serve a dual role when mediating in the court context. **(It is highly recommended that courts not permit dual roles.)**
- Create referral practices that allow mediators, especially mediators who are lawyers, the opportunity to run a “conflicts check” if applicable.

## Oregon Rules of Professional Conduct (RPC 2.4)

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The [Oregon Rules of Professional Conduct](#) (RPCs) govern the conduct of licensed members of the Oregon State Bar and individuals who are otherwise authorized by the court to practice law in Oregon on a limited basis. The Rules are intended to maintain the integrity of the legal profession. The Rules are binding and enforceable. Rule 2.4 applies to lawyers serving as mediators.

### **If the Mediator is a Lawyer, Parties Should:**

- Be provided with information by the mediator about what to expect compared to what the party might expect from a lawyer outside mediation. (No representation in mediation.)
- Know that a lawyer serving as a mediator may not act as a lawyer for either party in mediation or in future proceedings.

### **Key Takeaways for Mediators and Courts:**

#### **If a mediator is authorized to practice law by the Oregon State Bar, the mediator:**

- Should:
  - Explain the difference between the role of a mediator and the role of a lawyer, and the mediator's approach.
  - Check for conflicts before serving as a mediator in a case.
- May record or file documents in court (with the consent of the parties.)

### **Interplay with Core Standards of Practice:**

- The RPCs take precedence for lawyers over the Standards of Practice for Mediators.
- Given the narrow scope of RPC 2.4, most mediators who are lawyers also subscribe to and voluntarily comply with a relevant mediator ethics code.
- **Self-Determination:**
  - RPC 2.4 supports party autonomy by requiring mediators to clarify their role.
  - Parties may expect (correctly or incorrectly) that a mediator who is a lawyer will evaluate the merits of their case (even more so than for mediators who are not lawyers.) As a result, mediators who are attorneys should be intentional and overt about their approach as mediators and about the appearance of giving legal advice.
- **Impartial Regard:** Licensed members of the Oregon State Bar have additional obligations concerning conflicts of interest under the RPCs. Such obligations support and go beyond the Impartiality Standards of Practice for mediators.
- **Competence:** Lawyers serving as mediators need to avoid creating confusion about their role, especially when completing tasks under RPC 2.4(b)(1) and RCP 2.4(b)(3) (i.e., when preparing and filing documents.)

### **Rules of Professional Conduct in the Court-Connected Mediation Context:**

- Courts should create processes so that lawyers who mediate court-connected mediation services can check for any conflicts of interest under the RPCs.

- If a party wishes to “make a complaint” to the court about a mediator who is a licensed member of the Oregon State Bar:
  - The court should first clarify their intent:
    - Does the party want to file a formal complain?
    - Or do they simply want to share concerns informally with court staff?
  - If the party wants to file a formal complaint with the Oregon State Bar, the court should redirect the party to the [Oregon State Bar](#) for details on the complaint process.

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