

WEST VIRGINIA MODEL STANDARDS FOR FAMILY COURT MEDIATION OF PARENTING PLANS

INTRODUCTION

Family Court Mediation is a process in which a family mediator, an impartial third party, facilitates the parties' voluntary resolution of disputes in establishing a parenting plan. The family mediator assists communications, encourages understanding, and focuses the parties on their individual and common interests. The family mediator helps the parties explore options, make decisions, and reach their own agreed upon parenting plan.

Family mediation is not a substitute for independent legal advice or therapy and is not appropriate for all families. However, family mediation is a valuable option for many families because it has the potential to: (1) increase the self-determination of parties and their ability to communicate, (2) amplify the voice of the child(ren), and (3) reduce the emotional toll associated with establishing an agreed parenting plan.

Family mediation is most likely to lead to durable outcomes and party satisfaction when the parties make voluntary decisions based on sufficient information while maintaining focus on the best interest of the child(ren).

Family mediation is a participant-centered process grounded in the values of integrity and fairness and designed to ensure that all participants are supported, respected and valued. It aims to promote safety and wellbeing; achieving realistic outcomes; and support equity and full participation engagement regardless of gender, age, culture, religion, immigration status, or socio-economic status.

SCOPE OF THE MODEL STANDARDS

The West Virginia Model Standard for Family Court Mediation ("Model Standards") seek to: (1) provide guidance for family mediators regarding responsible practice; (2) inform participants, professionals, and others what they can expect of the family mediation process; and (3) promote public confidence in family mediation as a process for resolving parenting plan disputes.

Further reference of mediation and/or mediators within the Model Standards shall be interpreted as family mediation and/or family mediators.

In 2026, the Division of Circuit and Family Court Services, along with representatives from the West Virginia Family Court Judges' Association and the Administrative Office of Courts, was tasked to draft model standards for family court mediation of parenting plans.

The Model Standards include different levels of guidance:

The term *may* indicates a practice that the mediator can consider adopting but which can be deviated from in the exercise of good professional judgement.

The term *should* indicates that the practice is highly desirable, to be departed from only with very strong reason.

The term *shall* signals a stronger level of guidance, indicating that the family mediator does not have discretion to depart from the practice as described.

DEFINITIONS AND DESCRIPTIONS

Conflict of Interest: Conflict of interest means any relationship between the mediator and the participants or the subject matter of the dispute that compromises or appears to compromise the mediator's impartiality.

Culture: Culture is defined as the norms, values, beliefs, customs, historical narratives, and behavioral patterns common to a particular group of people.

Domestic Violence: Domestic violence or domestic abuse means the occurrence of one or more of the following acts between family or household members, as the term is defined in West Virginia Code §48-27-204:

1. Attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons;
2. Placing another in reasonable apprehension of physical harm;
3. Creating fear of physical harm by harassment, stalking, psychological abuse or threatening acts;
4. Committing either sexual assault or sexual abuse as those terms are defined in West Virginia Code §61-8B and §61-8D, et al.
5. Holding, confining, detaining or abducting another person against that person's will.

Impartiality: Impartiality means freedom from favoritism or bias in word, action, or appearance, and it includes a commitment to assist all participants as opposed to any individual.

Online Dispute Resolution (ODR): ODR refers to the use of technology to facilitate resolution processes that are not conducted face to face, such as videoconferencing, phone, email, chat and text-based applications, and other online platforms.

Participants: in addition to the parties, participants may include the parties' lawyers and/or another third party as agreed upon by the parties and mediator.

Parties: Parties in parent plan mediation are limited to individuals with rights or obligations in a case, such as petitioner(s) and respondent(s). While all parties are participants in the mediation process, not all participants are parties.

Technology: In the mediation process, technology refers to the broad and evolving array of digital tools, platforms, and systems that facilitate, enhance, and support any aspect of the mediation process. This includes secure communication methods; case and docket management systems; videoconferencing and ODR platforms; data security measures; agreement drafting and execution tools; analytical and decision-support technologies; educational and training resources; and emerging technologies, such as artificial intelligence (AI), large language models (LLM), algorithmic decision-making tools, and similar technology integrated into the mediation practice.

Third Parties: Third parties are any agreed upon participant(s) of the mediation process that is not the mediator or parties. Third parties may include but not limited to: attorney(s) for the parties, guardian ad litem, grandparent(s), and/or child(ren) of the parties. Provided, however, the court shall enter an order allowing children and/or non-party grandparents to participate in mediation as determined appropriate and necessary to achieve an agreed upon parenting plan.

THE MODEL STANDARDS

STANDARD I: SELF-DETERMINATION

A family mediator shall recognize that mediation is based on the principle of self-determination by the participants.

- A. Self-determination is the fundamental principle of family mediation. The mediation process relies upon the ability of participants to make their own voluntary and informed decisions.
- B. The primary role of a mediator is to facilitate agreement among participants by assisting the participants to gain a better understanding of their own needs, and interests and the needs and interests of their children, and the needs and interests of others.
- C. During the mediation process, a mediator shall inform the participants that they may seek information and advice from a variety of sources.

- D. The mediator's commitment shall be to the participants and the process. A mediator shall not allow anything outside the mediation to influence the process. The mediator shall not coerce participants to settle.
- E. The mediator shall inform the participants that they may withdraw from the mediation at any time.

STANDARD II: TRAINING AND PROFESSIONAL COMPETENCE

A family mediator shall be qualified by education, training, and experience to undertake the mediation.

- A. To perform the family mediator's role, a mediator shall:
 - 1. Have a 4-year degree from an accredited college or university;
 - 2. Complete a forty-hour family mediation course pre-approved by the Supreme Court consisting of:
 - a. the mediation process and mediation ethics;
 - b. West Virginia family law and jurisdiction;
 - c. child development and the potential impact of divorce and family conflict on parents, children, and other participants;
 - d. identifying and assessing the impact of domestic abuse and child abuse/maltreatment on the participants and on the mediation process;
 - e. understanding and addressing power disparities between the parties;
 - f. parent-child contact problems and resist-refuse dynamics including possible underlying causes such as compromised parenting, child abuse/maltreatment, and exposure to domestic violence/abuse among others causes;
 - g. recognizing the impact of culture and diversity;
 - h. conducting online mediation, including skills to address online privacy and security issues, party safety and self-determination, mediation confidentiality and privilege, participant communication preference, and platform access, among others; and

- i. the responsible and ethical use of technology in mediation, ensuring competence in managing the confidentiality of digital information and an understanding of best practices for data security, privacy laws, and ethical considerations. Mediators should be aware of the potential impact of technology on communication, decision-making, and participant engagement, adapting their approach as necessary to preserve the integrity of the mediation process.
 3. Complete two co-mediation appointments with self-identified experienced family court mediators or as ordered by a family court judge;
 4. Agree to complete 7 hours of AOC approved family court mediator continuing education every two years.
- B. If requested, mediators shall provide information to the participants about the mediator's relevant training, education, and experience.
- C. Mediators should continuously improve their professional skills and abilities by, among other activities, participating in relevant continuing education, peer consultation programs, and regularly engaging in self-assessment.
- D. Mediators should help train and mentor the work of less experienced mediators, including but not limited to co-mediations.
- E. Mediators shall continuously strive to understand the impact of culture and diversity on the mediator's practice.

STANDARD III: EDUCATION OF PARTIES

A family mediator shall facilitate the participants' understanding of the mediation process.

- A. Before family mediation begins, a mediator shall provide the participants with an overview of the process, including:
 1. Informing the participants that reaching an agreement in mediation is consensual in nature, that a mediator is an impartial facilitator whose role is to encourage and assist the parties to reach their own, mutually acceptable agreement, and that a mediator has no authority to force any settlement upon the parties;
 2. Informing parties that the participation of attorneys at mediation depends upon the agreement of all parties or by order of the presiding family court judge;
 3. Distinguishing family mediation from other processes designed to address family issues and disputes;
 4. Informing the participants that any agreements reached in mediation are not binding until they have been approved by the Family Court Judge;

5. Informing the participants that they may obtain independent advice from attorneys, therapists or other professionals during mediation process;
 6. Advising the participants that they may obtain the independent advice of religious figures or other significant persons whose opinions they value;
 7. Discussing the circumstances in which a mediator may meet alone with any participants, or with any third party and the conditions of confidentiality concerning these separate sessions;
 8. Informing the participants that the presence of third parties at a mediation, depends upon the agreement of all participants;
 9. Describing the obligations of a mediator to maintain the confidentiality of the mediation process and its results as well as any exceptions to confidentiality; and
 10. Advising the participants of the circumstances under which a mediator may terminate the mediation process and that a party also has the right to terminate the mediation process at any time.
- B. A family mediator should be alert to the capacity and willingness of the participants to mediate before proceeding with the mediation and throughout the process. A mediator should not agree to conduct the mediation if the mediator reasonably believes that one or more of the participants is unable or unwilling to participate.
- C. A family mediator should not accept a dispute for mediation if the mediator cannot satisfy the expectations of the participants or the court concerning the timely completion of the mediation process.
- D. Once the participants understand the family mediation process and have agreed to mediate, they shall sign a written agreement (Mediation Process Document) setting forth the terms and conditions of the mediation before the mediation proceeds.

STANDARD IV: IMPARTIALITY AND CONFLICT OF INTEREST

A family mediator shall conduct the mediation process in an impartial manner, free from favoritism, bias, prejudice, and conflicts of interest.

- A. A family mediator shall not accept a dispute for mediation if the family mediator cannot be impartial or if an actual or potential conflict of interest might undermine the integrity of the mediation.
- B. A family mediator shall identify all actual or potential conflicts of interest or grounds of bias reasonably known to the mediator, resolving doubts in favor of recognizing the presence of a conflict or bias.

- C. If the family mediator identifies an actual or potential conflict of interest or ground of bias, the mediator shall withdraw or promptly disclose them to the parties prior to the start of a mediation or, if the mediation has commenced, immediately upon becoming aware.
- D. Upon disclosure of a conflict of interest, and if the family mediator believes impartiality can be maintained, the mediator may proceed with the mediation if all parties explicitly agree and sign an informed, written waiver of the conflict of interest. However, if the mediator's impartiality is compromised, the mediator shall withdraw regardless of the express agreement of the parties.
- E. If the family mediator's conflict of interest or bias might reasonably be viewed as undermining the integrity of the mediation, the mediator should withdraw or decline to proceed with mediation regardless of the expressed desire or agreement of the parties to the contrary.
- F. A family mediator shall guard against bias or partiality based on personal characteristics, background, or conduct at the mediation.
- G. A family mediator shall avoid conflicts of interest in recommending the services of other professionals.
- H. A family mediator shall not use information about participants obtained in a mediation for personal gain or advantage.
- I. A family mediator shall withdraw pursuant to Standard XI if the mediator believes the mediator's impartiality has been compromised or a conflict of interest has been identified and has not been waived by the participants.

In the same case, a family mediator shall not also serve as a parent educator, attorney, guardian ad litem, pre-mediation screener, or any other capacity for any of the participants.

STANDARD V: MEDIATION FEES, COMPENSATION, AND TIMING

A family mediator shall fully disclose and explain the basis of any compensation, fees, and charges to the participants.

- A. The family mediator shall provide participants with sufficient information about fees at the outset of mediation to determine if they wish to retain the services of the mediator.
- B. Court-ordered mediation fees are set by the judge applying the current sliding scale criteria. This information will be provided to the parties in the form of an Order to Mediation.
- C. A family mediator shall not enter into a fee agreement which is contingent upon the results of the mediation.
- D. A family mediator shall not accept a fee for referring a matter to another mediator or to any other person.

- E. Upon termination of the family mediation a mediator shall return any unearned fee to the participants.
- F. The family mediator shall not accept a mediation referral if they cannot satisfy the participants' and/or court's expectations concerning timing of the process.

STANDARD VI: INFORMED DECISION MAKING

A family mediator shall structure the mediation process to ensure that the participants have access to sufficient information and knowledge to make decisions.

- A. The family mediator shall facilitate safe and accurate disclosure of information during family mediation so that the participants can make informed decisions. Before and during mediation, the mediator should allow time for participants to consult with appropriate experts and support persons, including attorneys, advocates, financial experts, therapists, religious figures, educators, elders or friends, among others.
- B. Consistent with standards of impartiality and preservation of participant self-determination, a family mediator may provide the participants with information that the mediator is qualified by training or experience to provide, including but not limited to information relevant to the issues in the family mediation and the court process. The mediator shall not provide therapy or legal advice.
- C. If the participants agree, the family mediator should allow professionals or other significant persons to participate in the mediation process; however, the mediator may determine the manner in which other persons participate in the mediation process. When only one party has an attorney present at the family mediation, the mediator should consider the power disparity and take steps to address the potential imbalance, including but not limited to pausing or terminating the session.
- D. If the participants reach agreement during the family mediation process, the agreement shall be documented. The mediator should inform the participants that their written agreement should be reviewed by independent attorneys if there are any questions before it is signed. Any agreements reached in mediation are not binding until they have been approved by the Family Court Judge.

STANDARD VII: CONFIDENTIALITY

A family mediator shall maintain the confidentiality of all information acquired in the mediation process, unless the mediator is permitted or required to reveal the information by agreement of the participants or by law.

- A. The family mediator shall explain to the participants the meaning and purposes of confidentiality and privilege in the mediation process. Any written agreement to mediate shall include provisions concerning confidentiality.

- B. The family mediator shall inform the participants of the limitations of confidentiality and privilege including but not limited to legal provisions waiving privilege and statutorily, judicially, or ethically mandated reporting.
- C. The family mediator shall disclose, as required by law, a credible threat of suicide or violence, or credible information concerning child abuse and neglect. The mediator shall comply with the reporting requirements of West Virginia Code §49-2-803 and §48-9-202(c), and other applicable laws.
- D. If the family mediator holds private sessions with a participant, the mediator shall discuss the obligations of confidentiality concerning those sessions. The mediator shall not reveal any information that either parent has disclosed during mediation under a reasonable expectation of confidentiality, unless otherwise agreed.
- E. If subpoenaed or otherwise noticed to testify or to produce documents the family mediator should inform the participants immediately. The mediator should not testify or provide documents in response to a subpoena without an order of the court.
- F. A family mediator may disclose information deemed to be confidential to the extent necessary to address allegations of mediator bias or misconduct.
- G. The family mediator shall implement robust data security measures to protect all digital information related to the mediation process from unauthorized access.

STANDARD VIII: CHILD-CENTERED PROCESS

A family mediator shall assist participants in discussing the best interests of the child and determining how to include a child’s voice in the family mediation process.

- A. The family mediator should encourage the participants to explore the range of options available for separation or post-divorce parenting arrangements and their respective costs and benefits. Referral to a specialist in child development may be appropriate for those purposes. The topics for discussion may include, among others:
 - 1. Information about community resources and programs that could help participants, and their children cope with the realities of family reorganization, parental conflict, family violence, and child abuse/maltreatment;
 - 2. Problems that continuing conflict create for children’s development and what steps might be taken to reduce the effects of conflict on the children;
 - 3. Development of a parenting plan that covers the children’s physical residence and decision-making responsibilities for the children, with appropriate levels of detail as agreed to by the participants;
 - 4. The possible need to revise parenting plans as the developmental needs of the children evolve over time; and

5. Encouragement to the participants to develop appropriate dispute resolution mechanisms to facilitate future revisions of the parenting plan.
- B. The family mediator should be sensitive to the impact of culture and religion on parenting philosophy and other parenting decisions, as well as their impact on the mediation process.
- C. The family mediator should inform any court-appointed guardian ad litem that the mediation is taking place. If a guardian ad litem for the child(ren) participates in mediation, the mediator shall, at the outset, discuss with the guardian ad litem the effects of that participation on the mediation process and the confidentiality of the mediation. Whether the child's guardian ad litem participates or not, the mediator shall provide the guardian ad litem with the resulting agreements insofar as they relate to the children.
- D. Except in extraordinary circumstances, the children should not participate in the mediation process without the consent of both parents and, if applicable, the children's court appointed guardian ad litem.
- E. Prior to any child participation or input in the family mediation process, the mediator should consult with the parents; the child's therapist, if applicable; and the child's court-appointed guardian ad litem if applicable, about whether the child(ren) should participate in the mediation process and the form of that participation.
- F. The family mediator should inform all concerned about the available options for the children's participation (which may include personal participation, an interview with a mental health professional, or the mediator reporting to the parents, or a videotape statement) and discuss the costs and benefits of each with the participants.
- G. The family mediator should inform the participants that the child does not decide the parenting plan but that the child's input can be useful as a factor to consider in a child-centered parenting plan. The mediator should explain the potential positive and negative consequences of the child's input.

STANDARD IX: CHILD ABUSE AND NEGLECT (CHILD MALTREATMENT)

A family mediator shall take appropriate steps to safeguard the wellbeing of the child(ren) if the mediator recognizes a family situation involving child abuse or neglect.

- A. As used in these standards, child abuse or neglect is defined by West Virginia Code §49-1-201.
- B. Some cases are not suitable for family mediation because of safety, control or intimidation issues. While pre-mediation screeners make a reasonable effort to identify the existence of child abuse and neglect, the mediator should continue to assess child abuse and neglect throughout the mediation process.

- C. If the family mediator has reasonable grounds to believe that a child of the participants is abused or neglected as set forth in Paragraph A above, the mediator shall comply with West Virginia Code §49-2-803.
- D. If the family mediator reports abuse and neglect or causes a report to be made, the mediator shall terminate the mediation process.

STANDARD X: DOMESTIC VIOLENCE

A family mediator shall recognize a family situation involving domestic violence and take appropriate steps to shape the mediation process accordingly.

- A. As used in these Standards, domestic abuse includes domestic violence as defined by applicable state law and issues of control and intimidation.
- B. Some cases are not suitable for family mediation because of safety, control or intimidation issues. While pre-mediation screeners make a reasonable effort to identify the existence of domestic violence prior to mediation, the mediator should continue to assess domestic violence throughout the mediation process.
- C. The family mediator should facilitate the participants' formulation of parenting plans that protect the physical safety and psychological well-being of the participants and their children.
- D. If domestic violence appears to be present, the family mediator shall consider taking measures to ensure the safety of participants. The mediator may consider the following among others:
 - 1. Establish appropriate security arrangements;
 - 2. Holding separate sessions with the participants upon their agreement;
 - 3. Allowing a friend, representative, advocate, counsel or attorney to attend their mediation sessions, upon agreement of all participants;
 - 4. Encouraging the participants to be represented by an attorney, counsel, or an advocate throughout the mediation process;
 - 5. Referring the participants to appropriate community resources;
 - 6. Suspending or terminating the mediation sessions, with appropriate steps to protect the safety of the participants.

STANDARD XI: TERMINATION

A family mediator shall suspend or terminate the mediation process when the mediator reasonably believes that a participant is unable or unwilling to safely and effectively participate or for other compelling reasons.

- A. Circumstances under which a family mediator should suspend or terminate the mediation may include, among others, the following:

1. The safety of a participant or well-being of a child is threatened;
 2. A participant has or is threatening to abduct a child;
 3. A participant is unable or unwilling to participate and maintain the integrity of the process for any reason, including but not limited to any form of domestic violence, substance use, or physical or mental condition;
 4. The participants are about to enter into an agreement that the mediator reasonably believes to be unconscionable or unsafe;
 5. A participant is using mediation to further illegal or otherwise inappropriate conduct, including harassment, delay or unnecessary intrusion among others;
 6. A participant is using the mediation process to gain an advantage;
 7. The family mediator cannot conduct the mediation in an impartial manner, or an actual or potential conflict of interest might undermine the integrity of the mediation in accordance with Standard IV; and
 8. A party withholds information needed for informed decision-making.
- B. If the family mediator suspends or terminates the mediation, the mediator should take all reasonable steps to minimize any resulting prejudice or inconvenience to the participants and utilize a termination process that reduces the risk of harm to the participants during or following the termination.

STANDARD XII: ADVERTISEMENT, SOLICITATION, AND MARKETING

A family mediator shall be truthful in all advertisements, solicitations, and communications for family mediation services.

- A. A family mediator shall refrain from making inaccurate statements about the mediation process, its costs, and benefits. A mediator should not advertise statistical settlement data or settlement rates and should refrain from promises and guarantees of results.
- B. The family mediator shall accurately represent their qualifications. In an advertisement or other communication, the mediator may refer to meeting state, national, or private professional or governmental qualifications only if that entity referred to has a procedure for qualifying mediators and if the mediator has been duly granted the requisite status.

STANDARD XIII: TECHNOLOGY USE AND TECHNOLOGY COMPETENCE

A family mediator shall use technology competently and keep abreast of updates, innovations, ethical consideration, and potential challenges.

- A. Prior to the use of technology in family mediation, the mediator should assess the participants' abilities to use technology and obtain informed consent to use it from all parties in the mediation process. The mediator should provide clear and accessible information about the technology's benefits and challenges and available alternatives.
- B. The family mediator should obtain and maintain training and experience necessary to utilize technology competently. Mediators should have a strong working knowledge and an understanding of the capabilities, limitations, and challenges associated with the use of technology. Mediators should also be aware of how technological tools may impact participant engagement, communication dynamics, and the decision-making process.
- C. The family mediator shall treat all data processed, stored, and transmitted using technology with the same level of confidentiality as information shared in traditional mediation settings. The mediator shall implement robust data security measures, including but not limited to end-to-end encryption to protect digital mediation communications, records, and participant information from unauthorized access, loss, or misuse.
- D. The family mediator should conduct regular evaluations of the technological tools they utilize. These evaluations should assess the ethical, legal, and practical implications of their use in mediation.
- E. The family mediator should ensure that technology serves as a tool to enhance the mediation process rather than define it. The mediator should remain attentive to participants' needs and adapt technology use accordingly to preserve the core values of mediation, including safety, impartiality, self-determination, and informed decision-making.