

# Model Standards of Practice for Family and Divorce Mediation

Developed by

The Symposium on Standards of Practice

August 2000

## **Reporter's Foreword**

The *Model Standards of Practice for Family and Divorce Mediation* ("Model Standards") are the family mediation community's definition of the role of mediation in the dispute resolution system in the twenty-first century. They are the latest milestone in a nearly twenty year old effort by the family mediation community to create standards of practice that will increase public confidence in an evolving profession and provide guidance for its practitioners. The *Model Standards* are the product of an effort by prominent mediation-interested organizations and individuals to create a unified set of standards that will replace existing ones. They draw on existing codes of conduct for mediators and take into account issues and problems that have been identified in divorce and family mediation practice.

Between 1982 and 1984 AFCC convened three national symposia on divorce mediation standards. Over forty individuals from thirty organizations attended to explore issues of certification, licensure and standards of practice. Drafts were distributed to over one hundred thirty individuals and organizations for comment and review. The result of the efforts was the *1984 Model Standards of Practice for Family and Divorce Mediation* ("*1984 Model Standards*"), which have served as a resource document for state and national mediation organizations.

In tandem with the process convened by AFCC, the American Bar Association's Family Law Section drafted *Standards of Practice for Lawyer Mediators in Family Law Disputes* (1984) ("*1984 ABA Standards*"). The *1984 ABA Standards* were primarily developed for lawyers who wished to be mediators, a role at that time some thought inconsistent with governing standards of professional responsibility for lawyers. The *1984 ABA Standards* helped define how lawyers could serve as family mediators and still stay within the ethical guidelines of the profession. Several members of the Committee who worked on the *1984 Model Standards*, particularly Jay Folberg and Tom Bishop, participated in the drafting of the *1984 ABA Standards*. As a result the *1984 ABA Standards* were basically compatible with the *1984 Model Standards*.

Following promulgation of the *1984 Model Standards* and *1984 ABA Standards* interest in mediation in all fields, and family mediation in particular, burgeoned. Interested organizations promulgated their own standards of practice. The Academy of Family Mediators, for example, promulgated its own standards of conduct based on the *1984 Model Standards*. Several states and courts have also set standards. *See, e.g.*, Florida Rules for Certified and Court-Appointed Mediators (October, 1995); Iowa Supreme Court, Rules Governing Standards of Practice for Lawyer-Mediators in Family Disputes (1986).

Other efforts were made by concerned organizations to establish standards of practice for mediation generally. For example, a joint Task Force of the American Arbitration Association, American Bar Association and the Society of Professionals in Dispute Resolution (SPIDR) published *Model Standards of Conduct for Mediators* in 1995.

In 1996, the Family Law Section of the American Bar Association came to the conclusion that interest in and knowledge about family mediation had expanded dramatically since the *1984 ABA Standards* were promulgated and a fresh look at that effort was required.\* It created a Task Force on Standards of Practice for Divorce Mediation (later renamed the Committee on Mediation) ("ABA Committee") to review the *1984 ABA Standards* and make recommendations for changes and amendments. The ABA Committee was chaired by Nancy Palmer and Phyllis Campion. Professor Andrew Schepard of Hofstra Law School was asked to serve as the Committee's Reporter. The project was conceived of as a collaboration with other interested groups; membership of the ABA Committee included non-lawyer mediators and liaisons from AFCC, AFM and SPIDR.

After intensive review and study, the ABA Committee concluded that while the *1984 ABA Standards* were a major step forward in the development of divorce and family mediation they were in need of significant revision.

First, the *1984 ABA Standards* did not address many critical issues in mediation practice that have been identified since they were initially promulgated. They did not deal with domestic violence and child abuse. The *1984 ABA Standards* also did not address the mediator's role in helping parents define the best interests of their children in their post-divorce parenting arrangements. They made no mention of the need for special expertise and training in mediation or family violence.

Second, the *1984 ABA Standards* were inconsistent with other guidelines for the conduct of mediation subsequently promulgated. The ABA Committee believed that uniformity of mediation standards among interested groups is highly desirable to provide clear guidance for family mediators and for the public. Uniformity and clarity could not be provided within the framework of the *1984 ABA Standards*. The ABA Committee therefore decided to replace the *1984 ABA Standards* with a new document.

The ABA Committee, including representatives from AFCC, AFM and SPIDR, therefore, created a new draft of standards of practice for family mediation specially applicable to lawyers who sought to involve themselves in that process. The Committee set several goals for the revised standards. First, the ABA Committee sought to insure that its revised standards were state of the art, addressing important developments in family mediation practice since the adoption of the *1984 ABA Standards* and *1984 Model Standards*. Second, the ABA Committee sought to insure that its recommended standards were consistent, as far as is possible, with other standards of practice for divorce and family mediation.

To meet these goals, the ABA Committee examined all available standards of practice, conducted research, and consulted with a number of experts on family and divorce mediation. It particularly focused on consultations with experts in domestic violence and child abuse about the appropriate role for mediation when family situations involved violence or the allegations thereof.

The Council of the ABA's Family Law Section reviewed the ABA Committee's first draft effort in November of 1997. It concluded that other interested mediation organizations should be included in the process of drafting revised standards of practice for family mediation.

Other mediation organizations also recognized that their current standards of practice for family mediation also needed review in light of developments in mediation practice since they were promulgated. In 1998, AFCC offered to re-convene the Model Standards Symposium using the draft Standards of Practice created by the ABA Committee as a beginning point of discussion. The Family Law Section of the American Bar Association and the National Council of Dispute Resolution Organizations (an umbrella organization which includes the Academy of Family Mediators, the American Bar Association Section of Dispute Resolution, AFCC, Conflict Resolution Education Network, the National Association for Community Mediation, the National Conference on Peacemaking and Conflict Resolution, and the Society of Professionals in Dispute Resolution) joined AFCC in co-convening the Model Standards Symposium.

In October, 1998 the Model Standards Symposium convened in Orlando to review the draft standards created by the ABA Committee. Representatives of over twenty family mediation organizations reviewed the ABA draft line by line during a full day session facilitated by Tom Fee. A first Draft of revised *Model Standards* for all family mediators regardless of profession of origin resulted.

The Symposium met again on February 26, 2000 in New Orleans. At that time it reviewed proposals for changes in the *Draft Standards* which were published in the January 2000 issue of the *Family and Conciliation Courts Review* and posted on the Web sites of AFCC, the ABA Family Law Section, and the ABA Dispute Resolution Section. In addition, before the February 2000 Meeting, the *Draft Standards* were mailed to over ninety (90) local and national mediation interested groups. All of these publications included requests for comments with proposals for specific language changes in the *Draft Standards*. In response, the Symposium received comments and over eighty (80) proposals for changes in the *Draft Model Standards* from numerous groups and individuals that make up the diverse membership of the family mediation community.

All of the comments and suggestions for change were made in a constructive spirit. Commentators generally supported the effort to develop *Model Standards* and expressed appreciation to the Symposium for its work.

Attendees at the February 2000 Meeting included approximately twenty-five family mediators from across the nation with years of experience in the field. Participants included leaders in national or local family mediation or dispute resolution organizations. In addition, the American Bar Association's Commission on Domestic Violence participated as an expert consultant at the February meeting.

Tom Fee again served as the facilitator for the February 2000 Meeting. The structure of the Meeting was guided by a steering committee comprised of representatives of the convening organizations. The Symposium participants were divided into three work groups, each assigned to analyze and comment on a specific number of proposed Standards. The work groups each appointed a reporter, and the whole group reconvened towards the end of the day to process the changes the work groups recommended and to see how they related to the *Draft Standards* as a whole.

Discussion was again lively and well-informed; in effect, the February 2000 Meeting was a continuation of a seminar of accomplished professionals and organizational leaders on the future of family and divorce mediation. Mediators of different professions of origin, background and orientation engaged in a discussion which bridged gaps between different perspectives. Great progress was made in developing a final set of *Model Standards* that each participating organization would be encouraged to discuss and adopt for its own purposes.

The Symposium did not finish its work at the February 2000 Meeting, a not surprising outcome given the complexity and richness of the discussion. The participants agreed that the Reporter for the Symposium, in conjunction with the Reporters for each workgroup, would collate the changes in the *Draft Standards* that had been agreed to and identify the unresolved issues. A revised Draft of the *Standards* in that format was sent to over ninety (90) interested organizations.

The Symposium completed its work at a subsequent meeting in Chicago on August 5, 2000 which followed the same organizational model as the February 2000 meeting. Tom Fee again facilitated. Eighteen (18) experienced family mediators from around the nation again participated in lively full day discussions which reviewed the Draft *Model Standards* line by line.

The *Model Standards* that follow are thus the result of extensive and thoughtful deliberation by the family mediation community with wide input from a variety of voices. Nonetheless, they should not be thought of as a final product but more like a panoramic snapshot of what is important to the family mediation community at the beginning of the new Millennium. The Symposium hopes the *Model Standards* will provide a framework for a continuous dialogue to define and refine our emerging profession. The Symposium organizers hope that the family mediation organizations, the bench and the bar and the public will use the *Model Standards* as a starting point for discussion and debate. That continuing process should result in identification of new areas of concern that additional Standards should address and proposals for revision of existing *Standards*.

On a personal level, I have never worked with better people than those who made up the Symposium. Special thanks go to the wonderful people who made this task a continuing seminar in the underlying values of family mediation and how to reach consensus among thoughtful, decent citizens of their communities. The participants in the Symposium demonstrated a cooperative, inquisitive spirit that made the Reporter's work a pleasure.

*Professor Andrew Shepard  
Hofstra University School of Law  
Hempstead, New York  
August 2000*

**The Symposium on Model Standards of Practice for Family and Divorce Mediation**

**Note:** Organizational affiliations are listed for identification only. Symposium members who represented organizations listed below functioned as liaisons. Their participation does not indicate organizational endorsement of the *Model Standards*..

**Convening Organizations:**

- The Association of Family and Conciliation Courts
- The Family Law Section of the American Bar Association
- National Council of Dispute Resolution Organizations (NCDRO), which includes:
  - The Academy of Family Mediators
  - The American Bar Association Section of Dispute Resolution
  - The Association of Family and Conciliation Courts
  - Conflict Resolution Education Network
  - The National Association for Community Mediation
  - The National Conference on Peacemaking and Conflict Resolution
  - The Society of Professionals in Dispute Resolution

**Model Standards Steering Committee**

- Phil Bushard, Association of Family and Conciliation Courts (1999-2000)
- Christie Coates, Association of Family and Conciliation Courts (1998-2000)
- Tom Fee, Facilitator, The Agreement Zone (1998-2000)
- Jack Hanna, NCDRO Secretariat and American Bar Association Dispute Resolution Section (1999-2000)
- Ann Milne, Association of Family and Conciliation Courts (1998-2000)
- Tim Walker, American Bar Association Family Law Section (1998-2000)
- Sally Pope, NCDRO Secretariat and Academy of Family Mediators (1998-1999)
- Eileen Pruet, Association of Family and Conciliation Courts (1999-2000) and Supreme Court of Ohio, Office of Dispute Resolution Programs
- Andrew Schepard, Reporter, Hofstra University School of Law (1998-2000)

<b>Model Standards Symposium Participants</b>	<b>Organization Delegate</b>
Academy of Family Mediators	Sue Costello Lowe (New Orleans) Sally Pope (Orlando) Arnold Shienvold (New Orleans) Hon. William Thomas (Chicago)
American Academy of Matrimonial Lawyers	Meredith Cohen (Orlando) Joan Patsy Ostroy (New Orleans, Chicago)
American Bar Association Section on Family Law	Timothy Walker (New Orleans) Benjamin Mackoff (Chicago)
American Bar Association Section on Dispute	Nancy Palmer (Orlando, New Orleans)

Resolution	Barbara Stark (Orlando)
American Bar Association Commission on Domestic Violence	Ann Barker (Orlando, New Orleans)
Association of Family and Conciliation Courts	Phil Bushard (Orlando, New Orleans) Christie Coates (Orlando, Chicago) Ann Milne (Orlando, New Orleans, Chicago) Eileen Pruett (Orlando, New Orleans, Chicago) Jan Shaw (Orlando) Rosemary Vasquez (Orlando)
California Administrative Office of the Court	Mimi Lyster (Orlando, New Orleans)
Colorado Council of Mediators	Silke Hansen (New Orleans)
Connecticut Council of Mediators	Frances Calafiore (Chicago) Robert Horwitz (New Orleans)
Delaware Federation for Dispute Resolution	Jolly Clarkson-Shorter (Orlando)
Family Mediation Council of Louisiana	Susan Norwood (New Orleans)
Family and Divorce Mediation Council of New York	Eli Uncyk (New Orleans)
Florida Association of Professional Family Mediators	Nancy Blanton (New Orleans) Richard Doelker (New Orleans)
Florida Dispute Resolution Center	Sharon Press (Orlando, New Orleans, Chicago)
Hofstra University School of Law	Andrew Schepard, Reporter (Orlando, New Orleans, Chicago)
Indiana Association of Mediators, Inc	Patrick Brown (Orlando) Beth Kerns (Orlando)
Mediation Association of Northwest Ohio	Richard Altman (Orlando, New Orleans, Chicago)
Mediation Association of Tennessee	Jan Walden (Orlando)
Mediation Council of Illinois	Jerald Kessler (Orlando, Chicago)
Montgomery County Mediation Center	Winnie Backlund (Orlando, Chicago)
National Association for Community Mediation	Carolee Robertson (Chicago)
National Conference on Peacemaking and Conflict Resolution	S. Y. Bowland (New Orleans, Chicago)
New York State Council on Divorce Mediation	Steven Abel (Orlando) Glenn Dornfeld (New Orleans)
New York State Dispute Resolution Association	Rosalyn Magidson (New Orleans, Chicago)

Pennsylvania Council of Mediators	Winnie Backlund (Orlando, Chicago) Grace Byler (New Orleans, Chicago)
Tennessee Superior Court, ADR Commission	Ann Barker (Orlando, New Orleans)
State Bar of Wisconsin, Alternative Dispute Resolution Section	Larry Kahn (Chicago)
Society for Professionals in Dispute Resolution	Sharon Press (Orlando, New Orleans, Chicago)
Supreme Court of Ohio Dispute Resolution Program	C. Eileen Pruett (Orlando, New Orleans, Chicago)
The Agreement Zone	Tom Fee, Facilitator (Orlando, New Orleans, Chicago)
Wisconsin Association of Mediators	Larry Kahn (Chicago)

### **Additional Organizations Providing Written Commentary**

Association of Broward County Mediators, by Amy Kirschner Hyman  
Mediation Services and ADR Referrals, Seventh Judicial Circuit of Maryland, by Ramona Buck  
Office of Dispute Resolution, Colorado Judicial Branch, by Robert Smith  
Family and Divorce Mediation Council of Greater New York, by June Jacobson