

Commercial Division

[What's New](#) | [History](#) | [Publications](#) | [Statewide Rules](#) | [Contact Us](#)

New York County


Ethical Standards for Arbitrators and Neutral Evaluators

[Back to NY County](#)
[Brief Overview](#)
[Guide to the Alternative Dispute Resolution Program](#)
[Rules of the Alternative Dispute Resolution Program](#)
[ADR Initiation Form](#)
[Ethical Standards for Mediators](#)
[Ethical Standards for Arbitrators and Neutral Evaluators](#)

[I - Impartiality](#) | [II - Conflicts of Interest](#) | [III - Arbitrators Appointed by One Party](#) | [IV - Competence](#) | [V - Confidentiality](#) | [VI - Quality of the Process](#) | [VII - Self-Determination in Cases in Which the Settlement is Discussed](#) | [VIII - Compensation](#) | [IX - Obligations to the ADR Process](#)

The following Standards of Conduct shall govern all who serve as neutrals in arbitration or neutral evaluation proceedings conducted pursuant to the rules of any alternative dispute resolution program hereafter established by this court ("ADR Programs"). These Standards shall not, however, apply to the full-time court staff who conduct the ADR proceedings heretofore known as Mediation I and Mediation II. The Commercial Division has issued separate Standards of Conduct for Mediators in mediations conducted pursuant to the Division's Rules of the Alternative Dispute Resolution Program.

ROSTER OF NEUTRALS:

 [A to F](#)
 [G to L](#)
 [M to S](#)
 [T to Z](#)
 [Application to Join the Roster of Neutrals](#)
 [Links require Adobe Acrobat](#)

The ADR Programs aim to provide an alternative to the formal litigation process that is sound, fair, efficient, expeditious, and inexpensive. To achieve this objective, the Programs must have the confidence of the Bar and the public. All activities undertaken pursuant to the rules of the Programs ("the ADR Rules") will reflect upon the Programs, this court, and the court system as a whole. Therefore, the Programs must be marked at all times by the highest possible standards of integrity, honesty, fairness, openness, intelligence, and diligence.

STANDARD I

IMPARTIALITY

An arbitrator or neutral evaluator should conduct the ADR proceeding in an impartial manner.

An arbitrator or neutral evaluator should act at all times with the utmost impartiality and evenhandedness. An arbitrator or neutral evaluator should handle only those matters in which the neutral can remain impartial and evenhanded. The arbitrator or neutral evaluator should withdraw if unable to do so at any time.

Ethical Considerations

1. An arbitrator or neutral evaluator should avoid all conduct that gives the appearance of partiality toward one of the parties. The quality of the ADR process is enhanced and the reputation of the

ADR Programs protected when the parties have confidence in the impartiality of the arbitrator or neutral evaluator.

2. The role of the arbitrator or evaluator is to issue a determination or an evaluation based solely upon the objective facts and merits of the case. An arbitrator or neutral evaluator should avoid partiality or prejudice based on the parties' background, prominence, personal characteristics, economic importance, performance at the ADR proceeding, or any other factors.



STANDARD II

CONFLICTS OF INTEREST

An arbitrator or neutral evaluator should decline any appointment if acceptance would create a conflict of interest. An arbitrator or neutral evaluator who determines to accept an appointment should disclose all potential conflicts of interest. After such disclosure, the neutral may accept the appointment if all parties so request. The arbitrator or neutral evaluator should avoid conflicts of interest during and even after the ADR proceeding.

An arbitrator or neutral evaluator offered an appointment in a case should comply with the ADR Rules regarding conflicts of interest. An arbitrator or neutral evaluator should review his/her past or present professional and other relationships, including those with attorneys for parties and parents, subsidiaries, and affiliates of corporate parties, and should decline the appointment if that review reveals the existence of a conflict of interest. An arbitrator or neutral evaluator who contemplates accepting an appointment should disclose to counsel for all parties all potential conflicts of interest that could reasonably be seen as raising a question about impartiality. If in doubt, the neutral should err on the side of disclosure. If all parties agree to accept that arbitrator or evaluator after such disclosure, the neutral may proceed. If, however, the conflict of interest would cast serious doubt on the integrity of the process or the Programs, the neutral should decline the appointment.

An arbitrator or neutral evaluator should avoid conflicts of interest during and even after the ADR proceeding. Before or during the ADR proceeding, the arbitrator or evaluator should not discuss with any party future retention in any capacity.

Ethical Considerations

1. If, during an arbitration or evaluation, the neutral discovers a conflict, the neutral should notify the Program Administration and counsel for the parties. Unless the neutral, the parties, and the Program Administration all give their informed consent to the neutral's continuation, and continuation would not cast serious doubt on the integrity of the process or the Program, the neutral

should withdraw from the proceeding.

2. An arbitrator or neutral evaluator should not recommend the services of particular professionals to assist the parties and counsel in the ADR proceeding unless a request for a recommendation is made jointly by all parties and provided that in so recommending the neutral does not engage in a conflict of interest. A neutral may make reference to professional referral services or associations that maintain rosters of qualified professionals.



STANDARD III

ARBITRATORS APPOINTED BY ONE PARTY

Rules governing court-annexed arbitration may provide that in certain cases each side may select an arbitrator, with the third to be selected jointly by the two or by the Program Administration. An arbitrator chosen by one side only in these cases may, notwithstanding the foregoing Standards, be generally familiar with that party or its counsel and may be a specialist in the same field of law as that counsel. Such relationships shall not require that arbitrator to decline to accept an appointment or to withdraw provided that the arbitrator is able to conduct the arbitration fairly, in good faith, and without bias or prejudice against another party. Except to this extent, these Standards shall apply to arbitrators chosen by one side only.



STANDARD IV

COMPETENCE

An arbitrator or neutral evaluator should conduct an ADR proceeding only when he/she has the qualifications necessary to satisfy the reasonable expectations of the parties.

In principle, any person may be selected as an arbitrator or neutral evaluator provided that the parties are satisfied with the neutral's qualifications. However, training and experience are necessary for an effective ADR process. Parties in the Programs may be free to utilize neutrals not listed in the rosters of neutrals maintained for the Programs. Any person who offers to serve as an arbitrator or neutral evaluator represents that he/she has the training and competency to handle an arbitration or evaluation effectively. If a neutral in fact lacks that ability, due to the complexity or difficulty of the matter or other factors, the neutral should decline the appointment.

Ethical Considerations

1. All members of the rosters of neutrals should supply the Program Administration with information on their backgrounds and ADR training and experience so that parties will have the information they need to make a fully informed choice of neutral for their case.
 2. A neutral should cooperate with the Program Administration to assist in the determination of whether the neutral is qualified for a particular arbitration or evaluation.
-

**STANDARD V****CONFIDENTIALITY**

An arbitrator or neutral evaluator should comply with the ADR Rules regarding confidentiality and should respect the reasonable expectations of the parties on that subject.

Certain ADR Rules provide for confidentiality. Neutrals should at all times comply with these Rules unless otherwise required by law. The parties' expectations of confidentiality generally depend on the Rules and any other rules or law providing for confidentiality, the circumstances of the ADR proceeding, and agreements they may make. The parties may provide for additional levels of confidentiality beyond that guaranteed in the Rules and such agreement should be respected. The arbitrator or neutral evaluator should not disclose any information that a party, in accordance with the foregoing, expects to be confidential unless given permission by the confiding party or unless required by law.

Ethical Considerations

1. At the outset, the arbitrator or neutral evaluator should explain to all parties the principle of confidentiality as set forth in the ADR Rules.
2. A neutral should not disclose confidential information to the Program Administration or the assigned Justice, including with regard to the merits of the case, settlement offers, and how the parties acted in the process, except that, as provided in the ADR Rules, a neutral may report violations of the Rules to the Program Administration.
3. Confidentiality should not be construed to prohibit effective monitoring or evaluation of the Programs by the Program Administration. Under appropriate circumstances, the Program Administration may allow researchers access to general statistical data and, with the specific permission of all parties, individual case files, observations of live proceedings, and interviews with participants. Similarly, mentors and trainees may observe live

proceedings, but only with permission of all parties and subject to the ADR Rules on confidentiality.

4. An arbitrator or neutral evaluator should not, at any time, use confidential information acquired during the ADR proceeding to gain personal advantage or advantage for others, or to affect adversely the interests of another.

5. It is improper for an arbitrator or neutral evaluator to disclose the determination or evaluation in advance of its distribution to all parties. In any case in which there are three arbitrators, it is improper for an arbitrator to reveal to anyone the deliberations of the arbitrators.



STANDARD VI

QUALITY OF THE PROCESS

An arbitrator or neutral evaluator should conduct the ADR proceeding fairly, diligently, judiciously and in a manner respectful of all parties and the Programs.

An arbitrator or neutral evaluator should work to ensure a process of high quality. This requires a commitment by the arbitrator or neutral evaluator to fairness, high standards of due process, diligence, sensitivity toward the parties, and maintenance of an atmosphere of respect among the parties. The arbitrator or neutral evaluator should provide an adequate and fair opportunity for counsel for each party to prepare for and to make presentations and to challenge those of adversaries. The neutral should determine the matter or issue a recommendation or evaluation upon the basis of the presentations of the parties on the merits. The arbitrator or neutral evaluator should observe deadlines and handle responsibilities with diligence and expedition. The arbitrator or neutral evaluator should be vigilant to ensure that parties do not delay the process. In a non-binding process, the parties decide when and under what conditions they will reach an agreement.

Ethical Considerations

1. A neutral should agree to accept an appointment as arbitrator or neutral evaluator only when able to commit the time and attention essential to a fair and effective process. If the neutral may be too busy with other matters to do these things, then the proposed appointment should be declined. If, after acceptance of the appointment, circumstances develop that prevent the neutral from serving, the neutral should withdraw. Withdrawal may cause significant inconvenience for the parties; therefore, the neutral should exercise diligence to determine availability in advance of commencement of the proceeding.

2. An arbitrator or neutral evaluator should keep the Program Administration informed about the schedule for the process. An arbitrator or neutral evaluator should not allow a proceeding to be unduly delayed and should consult with the Program Administration if delay substantially threatens the process.

3. An arbitrator or neutral evaluator should treat parties and counsel with sensitivity, civility and respect and should encourage parties and counsel to treat each other in the same way. As appropriate to the nature of the ADR proceeding, an arbitrator or neutral evaluator should foster cooperation and work to build reasonable trust among the parties. An arbitrator or neutral evaluator should provide counsel for all parties an adequate and fair opportunity to prepare and to make their presentations.

4. The role of an arbitrator or a neutral evaluator is to make a determination or an evaluation. This function can be analogized to that of a judge. An arbitrator or neutral evaluator should refrain from providing professional advice and should at all times strive to distinguish between the roles of arbitrator or evaluator and that of adviser. An arbitrator or evaluator may in a proper case recommend that counsel and parties seek outside professional advice.

5. An arbitrator or neutral evaluator should explain to all participants at the outset of the process the procedures that will be followed in the process.

6. In binding arbitration, the arbitrator should not engage in *ex parte* communications about the merits of a case. Discussions may be had with counsel for a party concerning scheduling. However, the arbitrator should promptly inform each other attorney of the discussion and provide that attorney an opportunity to state his/her position on scheduling before making any decision thereon. In addition, the arbitrator may discuss the merits of a case with parties present at a hearing if another party fails to appear after having received due notice. Written or electronic communications from the arbitrator should be sent to counsel for all parties as nearly simultaneously as practicable.

7. An arbitrator or neutral evaluator should withdraw or postpone a session if the ADR proceeding is being used to further illegal activity or if a party or counsel to a party is unable to participate due to physical or mental incapacity.

8. Where the use of more than one ADR procedure is permissible under the ADR Rules and is contemplated by the parties, the neutral should take care at the outset to inform them of the nature of the procedures. It is also incumbent upon a neutral to advise the parties of the transition from one procedure to another.

9. It is not improper for an arbitrator or neutral evaluator to suggest that the parties discuss settlement. If all parties agree, a non-binding arbitration or an evaluation may be converted to a mediation at any stage in the process. The neutral may take part in settlement discussions or assume the role of mediator if the parties wish. An arbitrator/evaluator in a non-binding process who at the

request of the parties agrees to undertake an additional dispute resolution role in the same matter may be governed by other Standards of Conduct. In particular, if an arbitrator or evaluator assumes the role of mediator, the neutral should adhere to the Standards of Conduct for Mediators of the Commercial Division.

10. A non-binding process may be converted to a binding arbitration upon consent of all parties and the neutral. If the neutral has received any confidential information *ex parte*, the neutral should permit the parties to designate a different person as arbitrator, as provided in the ADR Rules.

11. In non-binding proceedings in which the parties seek the neutral's assistance in reaching a settlement, the neutral's behavior should not be distorted by a desire for a high settlement rate.

12. If the neutral discovers an intentional abuse of the process, he/she may discontinue the process.

13. The neutral should be mindful of the needs of persons with disabilities, including, but not limited to, obligations, if any, under the Americans with Disabilities Act.



STANDARD VII

SELF-DETERMINATION IN CASES IN WHICH SETTLEMENT IS DISCUSSED

In cases of evaluation or non-binding arbitration, the neutral may become involved in efforts to facilitate settlement, as permitted by these Standards. The arbitrator or neutral evaluator in these circumstances, or in cases in which the parties have requested that the process be transformed into mediation, should at all times recognize that settlement must be based on the principle of self-determination. The parties in such cases have the right to communicate, assess facts, events, and issues, and make choices for themselves, and, if they wish, to reach an agreement, voluntarily and free of coercion.

Ethical Considerations

1. A neutral in these situations should provide information about the process to the parties. The neutral may also identify issues and help parties to communicate and explore options. The neutral should never do anything to undermine an atmosphere of free exchange of views and ideas, to impose opinions, or to coerce an agreement. See also the Standards of Conduct for Mediators of the Commercial Division.

2. The neutral should encourage balanced discussion and discourage intimidation by either party. The neutral should work to promote

each party's understanding of and respect for the perspective, interests, feelings, concerns, and position of each of the other parties, even if they cannot agree.

3. The neutral cannot personally ensure that each party has made a fully informed choice to reach a particular agreement. However, a party in the ADR Programs will usually be represented by counsel and the neutral should provide full opportunity to parties and their attorneys to consult with each other and, if necessary, for both to consult with outside professionals.



STANDARD VIII

COMPENSATION

If compensation is permitted under but is not fixed by the ADR Rules, the arbitrator or neutral evaluator should, at the outset, fully disclose and explain the basis of compensation charged to the parties. An arbitrator or neutral evaluator should not seek compensation in other circumstances.

An arbitrator or neutral evaluator should comply with the requirements of the relevant Program as to the minimum necessary commitment of services on a pro bono basis. To the extent that payment for services is permitted by the ADR Rules, the arbitrator or neutral evaluator should comply with those Rules. An arbitrator or neutral evaluator permitted to charge a fee should, before the process begins, refer the parties to the relevant Rules and explain the compensation being sought. Any fee not fixed by the Rules should be reasonable considering, among other things, the dispute resolution service, the type and complexity of the matter, the expertise of the neutral, the time required, and the rates customary in the community. Any agreement as to fees should be in writing and signed by all parties.

Ethical Considerations

1. An arbitrator or neutral evaluator who accepts a pro bono appointment should not, directly or indirectly, request from the parties any compensation as a condition to continuing to perform ADR services in that matter. Such a neutral should not withdraw, terminate the process, or threaten to do so because he/she is not being paid. However, all parties, at their own initiative, may volunteer to compensate a pro bono arbitrator or neutral evaluator and the neutral may accept that compensation if, in the neutral's judgment, the manner in which compensation is offered, the nature of the compensation, and the division of responsibility for such compensation among the parties do not compromise the impartiality of the neutral or the appearance of impartiality.

2. An arbitrator or neutral evaluator who withdraws from an ADR proceeding should return any unearned fee to the parties.

3. A neutral should not accept a fee or any other benefit for referral of a matter to anyone.
4. All discussions of fees should take place in the presence of counsel for all parties, or, if a party is self-represented, in the presence of that party.
5. An arbitrator or neutral evaluator who joins a court-sponsored roster of neutrals should provide ADR services on a pro bono basis to the extent required by the Rules. Such a neutral should not unreasonably decline to accept appointments upon request of the Program Administration.



STANDARD IX

OBLIGATIONS TO THE ADR PROCESS

Arbitrators and neutral evaluators should use their expertise to help educate the public about ADR; to make ADR accessible to those who would like to use it; to correct abuses; and to improve their professional skills and abilities. Arbitrators and neutral evaluators should conduct themselves so as to protect and promote the integrity and standing of the Programs.

Dated: March 1, 2000

HON. STEPHEN G. CRANE
ADMINISTRATIVE JUDGE

