

Ethical Guidance for Members of the Environment and
Public Policy Section,
Association for Conflict Resolution

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Introduction

This document offers a collection of guides to ethical behavior for members of the Association for Conflict Resolution's (ACR's) Environment and Public Policy (EPP) Section. It contains one set of voluntary guidance from the EPP Section and two sets of guidance adopted by the full association.

The first guide, "Voluntary Guidance for EPP Section Members," reflects six years of discussions within the section's ethics committee, with feedback from Section members, peer review, and advice and direction from the Section's Leadership Council. The Leadership Council adopted these voluntary guidelines in 2011, considering them as a practical resource and tool for Section members.

The Voluntary Guidance consists of definitions, principles, guidelines, and discussions. This document also summarizes the principles separately, on a single page for easy reference, in Annex I.

The other two guides, from the full association, are the Model Standards of Conduct for Mediators (Annex II) and the ACR Ethical Principles (Annex III). The Model Standards stem from a collaboration of ACR, the American Bar Association, and the American Arbitration Association. The Model Standards apply to ACR members when they mediate. The Ethical Principles are a 2010 product of the ACR ethics committee. By their terms, they are "universal Ethical Principles for ACR that will guide practice standards for all ACR neutrals and be in compliance with existent behavioral standards for dispute resolution processes contemplated by the various Sections of the organization."

History of the EPP Section Voluntary Guidance

In January 2005, the Ethics Committee of the EPP Section began to consider drafting standards for Section members involved in public policy processes. The Model Standards of Conduct for Mediators were and still are the pre-eminent set of standards for *mediators*. However, the Model Standards do not fit the work of EPP Section members very well. Section members sometimes mediate, but they do more. Also, on some topics, like confidentiality, the Model Standards just do not fit the open world of public policymaking.

Ethics Committee members, with encouragement from the Section leadership, sought standards to guide neutrals involved in processes beyond mediation. These would be useful not only in guiding member's actions, but also in helping to explain good practice to clients, employers, and the public.

The ethics committee produced a draft set of standards for “facilitators” in 2005. The committee vetted this set among section members and received strong feedback urging reconciliation, if possible, with the Model Standards.

The committee re-examined the Model Standards to understand which sections functioned well only for mediation and which sections could apply to a wider class of consensus-seeking activities led by a neutral. The committee came to call this leader a “non-decision-making neutral” (NDN) to distinguish these consensus-based activities from arbitration, trials, or parliamentary processes.

In 2007, the committee’s chair and reporter produced an “85% consensus” document recording how the committee proposed to change the Model Standards for Mediators to make those standards apply to a broader class of processes. Committee members shared this document in sessions at that year’s EPP Section conference and full ACR conference. The committee collected comments and turned to job of revision.

In 2009, the committee presented the Section Leadership Council with a new draft of Model Standards for Non-Decision-Making Neutrals. The committee also made the draft standards available through the web.

The Leadership Council sent the draft out for peer review. It also invited comments from all section members through a web survey.

Based on that feedback, the Leadership Council reached some important conclusions about how to proceed with finalizing the working document. First, the Council decided the Section was not ready to adopt an enforceable set of ethics standards. The Section did not have the capacity to do enforcement, and there was no clear call within the Section for enforceable standards. Second, many in the membership were interested in some guidance simpler than the nearly twenty pages of standards and discussion offered by the committee.

The Leadership Council directed the committee to produce instead a set of voluntary guidelines. The Section will not directly oversee the application of these guidelines, but each member will be free to adopt them. Further, the Council asked the committee to produce the guidelines in two forms: a simple form suitable for quickly conveying the essence of professional conduct to clients and the public, and a detailed form containing more guidance for members.

Included in the detailed version are discussion notes from the Ethics Committee. These notes help explain the guidelines and also point out where the Model Standards of Conduct for Mediators do not fit the typical practice of Section members.

The Guides for Good Professional Conduct

Although this document offers three formal ethical guides for EPP Section members, these are hardly the only source of guidance for responsible practices. As ethics expert Michael Josephson has pointed out, professionals should consider at least five sources of requirements that shape good behavior.

The first source is **laws**. Some of these are general laws that apply to everyone. For example, a public policy professional should not defraud clients or employers. Some of these are more specific to the profession: a public policy professional should abide by open meeting and sunshine laws.

The second source is **formal standards of professional conduct**. These include the principles and guidelines offered here.

The third source is informal standards of conduct based on **core values of the profession**. For example, our profession is committed to peaceful resolution of differences. A member who employed pistols at twenty paces as a policy dispute resolution tool would be considered out of bounds. The guidance in this document embodies many of the Section's core values, such as self-determination and professional competence. But colleagues may expect professionals to do more—to honor all the values of the profession, even if those values are not set down in writing.

The fourth source is standards of **good character**. Josephson identifies trustworthiness, respect, responsibility, fairness, caring, and citizenship as the six pillars of character. These are not unique to any profession. We hope to find them in all good people.

And the fifth source is **virtue**. This term encompasses behavior that goes beyond the minimum standard. For Section members, examples would include volunteering to serve on Section committees or campaigning to improve community awareness of alternative dispute resolution.

The larger point is, to understand the essence of professional behavior, do not stop at the guidance here; look beyond it. The voluntary guidelines for Section members discuss many tenets that Section members value: self-determination, impartiality and avoiding of conflicts of interests; confidentiality; and competence. In a sense, the first six principles in the guidelines present these and related “core” standards. But following these alone won't assure your reputation as an ethical professional. Keep a wider perspective. Try to honor the full spectrum of norms—mandatory and voluntary, formal and informal.

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Note: The Leadership Council of the Environment and Public Policy (EPP) Section released this set of voluntary guidance for Section members in 2011. It includes definitions, principles, guidelines, and a discussion of the guidelines by the EPP Ethics Committee.

The heart of the guidance is in the guidelines and discussion. The guidelines largely follow the organization of the Model Standards of Conduct for Mediators. Their content also reflects the Model Standards, with modifications to better fit the practice of EPP members. The discussion explains why modifications were necessary.

The principles are short restatements of the guidelines. As such, they often repeat key phrases from the guidelines. Readers who wish a quick overview of the guidance can look at the first annex of this document, on page 24, which collects the ten principles on one page.

Although the guidance is divided into ten parts, note that some themes like neutrality, candor, and trustworthiness underlie multiple principles.

Voluntary Ethics Guidance for EPP Section Members

Definitions & Construction

Readers should construe this guidance in its entirety. The order of principles does not indicate priority or relative importance.

In this guidance, the following definitions apply:

A **process** is a structured activity in which stakeholders jointly address an issue, problem, or dispute with the aim of building consensus and reaching a decision. It also includes structured activities where stakeholders build toward consensus and decision-making, such as consultations or mutual fact-finding or monitoring. Conveners (defined below) might hire Section members to help design or conduct a process.

Convener means an individual, agency, organization, or other entity that brings persons together to address an issue, problem, or dispute—in other words, the convener initiates a process. This term also includes process sponsors (the entities paying a Section member to design or conduct a process) and referring courts.

Participant means an individual (1) who is a decision-maker or a representative of a decision-maker and (2) who takes part in deliberations “at the table” in a process guided by a Section member.

Comment: The term does not include the section member or any observers or advisors present, even if they have occasional opportunity to make comments or provide expertise. “At the table” includes physically meeting together or meeting by telephone, video, or other means. The convener may or may not be a participant.

Constituency means a group or entity represented by a participant.

Comment: Sometimes the guidelines refer to those with a direct voice in the substantive outcome of the process (the participants) and sometimes to a larger group involved in the process (the constituencies).

Others, when used in conjunction with participants, means anyone else besides the Section member “in the room” during deliberations and decision-making.

Comment: “Others” may include staff, experts, observers, and so forth. “In the room” means physically present or linked via telephone, video, or similar means. “Others” includes persons whether or not they have opportunity to make comments or provide input to the group.

Impartiality means freedom from favoritism, bias, or prejudice in word, action, or appearance.

Self-determination means the ability to make free and informed choices about process and substance.

The use of “**shall**” in a guideline indicates that a Section member abiding by these guidelines must follow the practice described.

The use of “**should**” indicates that the practice is highly desirable, but not mandatory; however, departures require strong reasons and deliberate exercise of judgment and discretion.

Includes means “includes, but is not limited to.”

The use of singular or plural nouns does not limit the scope of a principle or guideline. A principle or guideline discussing the obligations of a Section member applies equally to a team of Section members. A principle or guideline discussing a Section member’s obligations to the convener applies equally if there are multiple conveners.

These principles and guidelines follow the organization, and often draw on the text, of the Model Standards of Conduct for Mediators. References in the Committee Discussion to the “Model Standards” are to the 2005 version of the Model Standards of Conduct for Mediators from the American Bar Association, American Arbitration Association, and Association for Conflict Resolution.

Principle I. Self-Determination

In designing or conducting a process, a Section member shall strive to let people make their own, informed decisions. A member may encourage people to keep open minds and reconsider their positions, but a member shall not undermine self-determination to achieve consensus or settlement, to satisfy egos, to justify increased fees, or to respond to outside pressures.

GUIDELINES

- A. When designing a process or conducting it as a neutral, a Section member shall honor the principle of participant and constituency self-determination.
 - 1. Although participant and constituency self-determination for process design is a fundamental principle of dispute prevention and resolution practices, a Section member's ability to ensure self-determination varies with the nature of the process. A Section member may need to balance such participant and constituency self-determination with the member's duty to conduct a quality process in accordance with these Principles and Guidelines.
 - 2. A Section member cannot personally ensure that each participant and constituency has made free and informed choices to reach particular decisions, but, where appropriate, a Section member should make the participants and constituencies aware of the importance of consulting other sources and qualified advisors to help them make informed choices.
- B. A Section member shall not undermine participant or constituency self-determination to achieve consensus or settlement, to satisfy egos, to justify increased fees, or to respond to outside pressures.

EPP Ethics Committee Discussion: Applying the principle of self-determination can be difficult in the public policy arena. Government agencies may participate under order of higher authority. Participants and constituencies may have little choice regarding selection of the neutral; a Section member may be hired to begin conflict assessment or advise on process design before anyone other than the convener is aware a process is being planned.

Although circumstances may constrain the participants' ability to make their own choices in the above matters, a Section member should not further constrain them, even in matters such as initial selection, approval, or rejection of the neutral.

A Section member should consider a variety of ways for participants to become informed. The ideal, though not always practical, is a level information playing field.

Other groups have addressed the problem of creating an “informed process,” and members may find some guidance in those discussions. For example, the Council on Environmental Quality’s Basic Principles for Agency Engagement suggest seeking agreement on how to share, test, and apply information, while ensuring information is accessible and understandable. The International Association for Public Participation’s code of ethics commits members to encouraging public disclosure of relevant information. The Ethical Standards for Professional Responsibility from the Society of Professionals in Dispute Resolution, one of ACR predecessor organizations, emphasized the special importance of participants understanding the consequences of proposed settlements. To that end, the Ethical Standards directed members to consider educating the parties, referring them to experts, or withdrawing if the lack of knowledge impugned the integrity of the process.

Pressures to bring a process to resolution may come from internal sources, such as the Section member’s desire to have a “successful” track record, or from external sources, such as conveners, administrators, or government officials. The Section member should not succumb to these pressures at the expense of participant or constituency self-determination.

* * *

Principle II. Impartiality

When acting as a neutral, a Section member shall be impartial and shall avoid conduct that gives the appearance of partiality. If a member is engaged to act as a neutral and later finds that he or she cannot be impartial, the member shall withdraw from the work.

GUIDELINES

- A. When called upon to act as a neutral, a Section member shall decline to design or conduct a process if the Section member cannot do so in an impartial manner.
- B. When acting as a neutral, a Section member shall design and conduct processes in an impartial manner and avoid conduct that gives the appearance of partiality.
 - 1. A Section member shall not act with partiality or prejudice based on personal characteristics, background, values and beliefs, performance at a process, or any other reason.
 - 2. A Section member shall neither give nor accept a gift, favor, loan, or other item of value that raises a question as to the member’s actual or perceived

impartiality. A Section member may accept or give de minimus gifts or incidental services to assist with a process or respect cultural norms so long as such practices would not cause a reasonable observer to question the member's impartiality.

- C. When acting as a neutral, if at any time the Section member is unable to conduct a process in an impartial manner, the member shall withdraw from the process.

EPP Ethics Committee Discussion: Maintaining impartiality and avoiding the appearance of partiality may present particular challenges in a public policy process.

For example, payment for the Section member's services often comes from a single source, and sometimes repeatedly from the same source. The member's loyalty must always be to the process, without regard to the source of payment. [The best practice for the source or sponsor is to support the independence of the neutral. For more on this point, see the SPIDR document, *Best Practices for Government Agencies: Guidelines for Using Collaborative Agreement-Seeking Processes* (1997). SPIDR was one of the predecessor organizations that merged to create ACR.]

Impartiality is a key factor marking a Section member serving as a neutral. A convener might hire anyone to conduct a meeting, but when the convener hires a Section member explicitly to serve as a neutral, the member must remain impartial and place loyalty to the process over loyalty to the convener.

Public policy processes are often lengthy, offering opportunities to form social ties. Often too, the neutral's experience in a particular area may create personal or professional relationships. These could lead to bias or the appearance of partiality.

An objection of partiality from a single participant or other person does not always indicate a violation of this principle or its guidelines. The issue is what a reasonable person would consider likely to create bias in the particular context. If a serious objection is raised, a Section member should discuss it with the convener and participants.

* * *

Principle III: Conflicts of Interest

When designing or conducting a process, a Section member shall avoid conflicts of interest or the appearance of a conflict of interest. Members who know of conflicts or apparent conflicts shall disclose them to clients and participants and shall withdraw from the work if a serious and reasonable objection is raised.

GUIDELINES

- A. When acting as a neutral, a Section member shall avoid a conflict of interest or the appearance of a conflict of interest during (that is, in the design and conduct) and after a process. A conflict of interest can arise from involvement by a member with the subject matter of the dispute or from any relationship between a member and any person whether past or present, personal or professional, that reasonably raises a question of a member's impartiality.
- B. When acting as a neutral, a Section member shall make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for the member.
- C. When acting as a neutral, a Section member shall disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the member and could reasonably be seen as raising a question about the member's impartiality.
- D. When acting as a neutral, if a Section member learns any fact after accepting a process that raises a question with respect to that member's service creating a potential or actual conflict of interest, the member shall disclose it as soon as practicable.
- E. When acting as a neutral, if a Section member's conflict of interest might reasonably be viewed as undermining the integrity of the process, the member shall withdraw from or decline to proceed with the process regardless of the expressed desire or agreement of the convener, participants, or constituencies to the contrary.
- F. Subsequent to a process where a Section member has acted as a neutral, the member shall not establish any other relationship in a manner that would raise questions about the integrity of the process or create a perceived or actual conflict of interest. When a member develops personal or professional relationships with anyone following a process in which they were involved, the member should consider factors such as time elapsed following the process, the nature of the relationships established, and services offered when determining whether the relationships might create a perceived or actual conflict of interest.

EPP Ethics Committee Discussion: ACR's Ethical Principles, which apply to all ACR members, state that, "A Neutral must decline all cases where there is a conflict of interest or where there is the appearance of an impropriety."

The committee believes that a single *allegation* of conflict of interest does not necessarily disqualify a Section member. The test to apply is in III(E): whether the Section member's interest could be reasonably viewed as undermining the integrity of the process. If, for example, a Section member's interest could lead the member to skew the outcome of the process or to limit the full participation of some because they had opposing interests, that would undermine the integrity of the process.

In the public policy arena because the issues are public, they affect the Section member as a member of the public. Ordinarily the Section member's status as a citizen is not enough to constitute a conflict of interest. To be considered the source of a conflict, the outcome must affect the member on a significant personal or financial level. For example, past electoral support for or opposition to an official involved in the conflict would not be a conflict of interest unless the support or opposition was notably strong or public.

Public policy can be a "small world," and Section members often are asked to conduct processes involving people they know. The convener may have hired the member before or even be the member's employer. The member may have social ties to people who work for the convener, the participants, or the constituencies. These relationships should be disclosed, but they do not necessarily give rise to an incurable conflict. Whether they create an actual conflict and whether the conflict can be cured through disclosure depends on the nature of the relationship and sometimes the nature of the policy issue.

This "small world" concern applies equally to relationships formed after a process closes. It may be acceptable to form professional or social relationships with previous conveners, participants, and constituencies. It is unacceptable if the new relationships raise an appearance that the Section member may have had an interest in the outcome of a completed process. Unacceptable examples include taking a high-paying job with a convener, participant, or constituency soon after a process, or investing in a commercial development after a process resolved the terms for its zoning.

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Principle IV. Competence

A Section member shall take on work only when the member is competent to do the work.

GUIDLINES

- A. A Section member shall provide services only when the member has the necessary competence to satisfy the reasonable expectations of the convener, participants, and constituencies.

1. When designing or conducting a process, a Section member shall either have or promptly acquire enough familiarity with the subject matter to do so effectively.
 2. Training, experience in the process, skills, cultural understandings, and other qualities are often necessary for competence in designing or conducting a process. A Section member who offers to design or conduct a process creates the expectation that the person is competent to perform effectively.
 3. A Section member who is active in process design and conduct shall, through educational programs or other means, maintain and enhance the member's knowledge and skills in the processes for which the member provides services.
 4. A Section member shall make available, upon request, information relevant to the member's training, education, experience, and approach to designing and conducting the process for which the member was retained.
- B. If a Section member, engaged in providing services, cannot provide the services competently, the member shall discuss the situation with the participants and, if appropriate, the convener as soon as possible and take appropriate steps such as withdrawing or requesting assistance.
- C. If a Section member's ability to provide services is impaired by drugs, alcohol, medication, or otherwise, the member shall not serve.

EPP Ethics Committee Discussion: In public policy processes it is important for the Section member to have some knowledge of the underlying subject matter, at least enough to listen and intervene intelligently about the topic. If the member does not have this knowledge initially, the member must acquire it early in the process.

There are many ways a Section member may acquire this knowledge. Most commonly, the member will talk to the convener, participants, and constituencies to identify key issues, jargon, acronyms, processes, or context likely to come up in the process. Further, in public policy processes, it may be acceptable to expand the process team to include people with complementary knowledge or experience. For example, a Section member with experience in land use planning might partner with a person with public health knowledge to co-facilitate a case on redevelopment of a brownfield. Finally, a Section member might engage a subject matter expert as an advisor. However, the member should take care not to let the expert advisor bias the member in the conduct of the process.

Often the full scope and subject matter of a process are unclear at the outset, and sometimes the role of the Section member changes during the process. If changes in

scope or role require additional skills or knowledge, the Section member must respond to this challenge.

In deciding whether to continue where concerns about competency are raised, the Section member should consider whether the concerns have objective merit. If the answer is yes, the member must address the concerns by adding competence or withdrawing. Even if the concerns have no merit, if the member can serve the process better by withdrawing than by staying, the member should put the process ahead of pride and professional interest.

Guideline IV(A)(4) requires Section members to respond promptly, fully, and candidly to inquiries about training and experience. The guideline does not require the member to initiate disclosure.

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Principle V. Confidentiality

When designing or conducting a process, a Section member shall encourage clients and participants to come to an early understanding about confidentiality. A member shall abide by those understandings as well as any laws regarding access to information or keeping of confidences.

GUIDELINES

- A. Early in a process, before substantive discussions begin, a Section member shall promote understanding among the convener, participants, and others regarding confidentiality.
- B. A Section member shall abide by confidentiality and openness laws and related legal requirements. A Section member shall abide by the ground rules and agreements adopted with the convener and participants on these matters, unless the member has obtained specific permission of the convener and participants to deviate from the ground rules or agreements.
- C. If a Section member participates in peer consultation, teaching, evaluation, or research, the member should protect and abide by the convener, participants, and constituencies' reasonable expectations regarding anonymity and confidentiality.

EPP Ethics Committee Discussion: A public policy process may be almost entirely public, by law. Many times, keeping group discussions confidential is simply not an option. In order to encompass a broad range of processes, Principle V and its guidelines differ significantly from Model Standard V on confidentiality.

The Section member must have a grasp of confidentiality in the context of sunshine law and openness requirements. The member needs to know enough to operate day-to-day, to explain the basics to others, and to recognize when a situation calls for expert advice.

The convener, participants, and others must come to understand any external rules governing confidentiality. The Section member must promote awareness and understanding of the consequences of any external rules before addressing substantive matters. Sunshine or other laws may set the basic rules for confidentiality of meetings, but to those matters left to conveners or participants, such as private discussions with the Section member, disclosures by the member to the convener, attributions in any reports of the meeting prepared by the member, or public statements made outside the process, the conveners or participants may want to adopt additional understandings.

ACR's Ethical Principles, applicable to all ACR members, state that, "An ACR conflict resolution process should emphasize ... keeping all information shared in the process private unless such privilege is waived by all participants." The words "should emphasize" give this principle flexibility. It can bend to accommodate sunshine laws, open meetings, and other constraints on public processes. However, it implies a general duty to be discreet. When in doubt, a Section member should treat matters as confidential. For example, a member may consult a colleague privately for advice; the colleague giving advice should treat the matter as confidential unless some other understanding is reached.

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Principle VI. Quality Of The Process

When designing or conducting a process, a Section member shall be diligent and attentive to the task; shall encourage broad representation of stakeholders; shall promote the safety, engagement, and competency of the participants; and shall promote mutual respect among all participants.

GUIDELINES

- A. When design or conducting a process, a Section member shall act in accordance with these Principles and Guidelines and in a manner that promotes diligence, timeliness, safety, presence of the appropriate participants and others, participant engagement, procedural fairness, participant competency, and mutual respect among all.
 1. A Section member shall agree to serve only when the member is prepared to commit the attention essential to an effective process.

2. A Section member shall only accept cases when the member can satisfy the reasonable expectation of the convener and participants concerning the timing of a process.
 3. A Section member should promote honesty and candor between and among all involved, and a member shall not knowingly misrepresent a material fact or circumstance in the course of a process.
 4. A Section member shall ensure that the purpose, limitations, duties, and costs of the participants and others in the process are stated clearly so that they do not have unrealistic expectations of their role or impact.
 5. The role of a neutral designing or conducting a process differs substantially from other professional roles. Mixing the role of a neutral with another role can confuse those interested or involved in the process, and thus, a Section member taking on multiple roles should distinguish between them. A Section member may provide information to the participants that the member is qualified by training or experience to provide, only if the member can do so consistent with these Principles and Guidelines.
 6. A Section member designing or conducting a process as a non-decision-making neutral shall not undertake substantive decision-making roles in the same matter without the consent of the participants. Before providing such service, Section member shall inform the participants of the implications of the difference in process under the two roles. A Section member who undertakes a decision-making role assumes different duties and responsibilities that may be governed by other guidelines or standards.
 7. A Section member shall not mischaracterize a process to avoid legal constraints or claim undeserved legal protections.
 8. If a process is being used to further criminal conduct, a Section member shall take appropriate steps including, if necessary, postponing, withdrawing from, or terminating the process.
 9. If a participant has difficulty actively participating in a process, a Section member conducting the process shall explore how to improve the participant's capacity to participate, comprehend, and exercise self-determination.
- B. If Section member learns of behavior that jeopardizes conducting a process consistent with these Principles and Guidelines, the member shall take appropriate steps, including, if necessary, postponing, withdrawing from, or terminating the process.

EPP Ethics Committee Discussion: To cover a broader set of processes and address Quality of Process in the public policy context, this Principle and its guidelines differ significantly from the Model Standard on Quality of the Process.

Guideline VI(A)(1), requiring attention to the process, is worthy of a mandatory “shall” rather than an advisory “should” as in the Model Standards. Guideline VI(A)(2), concerning meeting timing expectations, is really a part of the requirement in VI(A)(1), and also deserves to be mandatory.

Model Standard VI(A)(3) states—

The presence or absence of persons at a mediation depends on the agreement of the parties and the mediator. The parties and mediator may agree that others may be excluded from particular sessions or from all sessions.

In many public processes, participants may have no control over who sits at the table. If sunshine laws apply, they also may not be able to exclude observers. The committee has omitted language equivalent to Model Standard VI(A)(3).

The committee omitted Model Standard VI(A)(7), regarding recommending arbitration or other neutral processes. The committee determined it does not need to be an ethical standard. The committee agrees, though, that when appropriate, a Section member may recommend that parties consider resolving their dispute through other processes.

Guideline VI(A)(5) touches on a potentially difficult area. ACR Ethical Principles, applicable to all ACR members, state that, “A Neutral must promote informed decision making among the participants in the process, without offering legal, psychological or any other advice associated with the Neutral’s background and training.” This principle might be read to prevent a Section member from taking on multiple roles. Indeed, some committee members believe that the best practice is for a neutral never to take on additional roles. However, Guideline VI(A)(5) reflects that it is sometimes possible for a member to manage multiple roles and maintain neutrality. To be consistent with the ACR Principles, a member acting as a neutral should never offer substantive advice to participants, however the member may offer information, not tailored to the interests of a particular participant or stakeholder, if it can be done without compromising the member’s neutrality or the integrity of the process.

Model Standard VI(A)(8) is the basis for Guideline VI(A)(6). The revisions here to Model Standard VI(A)(8) restrict it to the situation where the neutral takes on a decision-making role. Although Guideline VI(A)(6) specifically mentions informing only participants, there is no bar on providing information to the conveners, constituencies, or others.

Guideline VI(A)(9), which is based on Model Standard VI(A)(10), raises some complex issues in public policy situations. The duty in Guideline VI(A)(9) extends only to those actively participating in the process, not to those who have an interest but who

choose to participate through a representative or fail to participate at all. However it is not meant to bar contacting the constituency of a participant.

Guideline VI(B) combines Model Standard VI(B), which requires a response to signs of domestic abuse or violence, and Model Standard VI(C), which requires responses to other conduct that jeopardizes the quality of the process. The resulting guideline applies to a broad set of circumstances; it requires a Section member to respond appropriately to domestic abuse and violence, as well as to other disruptive behaviors more likely to be encountered in public policy processes.

If the conduct of any person is harming the integrity of the process, the Section member should take appropriate steps to restore productivity. In a public policy process, this may mean discussing the behavior with the convener and participants.

* * *

Principle VII. Advertising and Solicitation

When seeking work, a Section member shall be open and honest about qualifications, experience, services, and fees. A member shall not promise consensus or otherwise imply that the member will conduct a process in violation of these principles. In communicating with potential clients and participants, a member shall respect past clients' and participants' reasonable expectations regarding anonymity and confidentiality.

GUIDELINES

- A. A Section member shall be truthful and not misleading when advertising, soliciting, or otherwise communicating the member's qualifications, experience, services, and fees.
 - 1. A Section member shall not include any promises as to process outcome in communications, including business cards, stationery, or those that are computer-based.
 - 2. A Section member shall not claim to meet the professional qualifications of a governmental entity or private organization unless that entity or organization has a recognized procedure for qualification and grants such status to the member.
 - 3. A Section member shall not claim a qualification that the member does not have. A Section member shall not represent that competence in one process assures competence in a process requiring different skills.

- B. A Section member shall not advertise or solicit in a manner that undermines the integrity of any of the processes for which the member is advertising.
- C. In advertising and promotional materials, a Section member shall protect and abide by conveners and participants' reasonable expectations regarding anonymity and confidentiality.

EPP Ethics Committee Discussion: Note that the Model Standards VII(A)(1) and (2) use “should”. Guidelines VII(A)(1) and (2) use “shall”.

Under Guideline VII(A)(2), it is reasonable for a Section member to list professional memberships. However, the member should not suggest that membership in an organization or listing on an agency roster of neutrals is the same as holding a license or certification. This guideline prohibits Section members from making claims of certification when the only fair claim is membership or listing. Beyond claiming membership, a member may promise in advertising to abide by a group's ethical guidelines or standards, whether or not they are enforced.

Guideline VII(A)(3) recognizes that a Section member who is qualified in one process may not be qualified in others. Competence as a mediator, for example, does not necessarily make one competent as a public policy facilitator, and vice versa. Similar statements can be framed involving those with qualifications for the bench or bar. Guideline VII(A)(3) will not stop a retired judge from including judicial experience in advertising herself as process designer and facilitator. However, the judge should not suggest that experience as a judge qualifies her in those fields.

In general under Guideline VII(A), a Section member who highlights past work should be careful not to mislead potential clients concerning the magnitude of the member's contribution or involvement.

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Principle VIII. Fees and Other Professional Charges

When conducting a process, a Section member shall be reasonably candid about who is paying for the member's services and related expenses. Early in the process, the member shall make participants aware of any fees they may owe.

GUIDELINES

- A. When conducting a process, a Section member shall make available information regarding who is paying for the member's services. When requested by any

participant or constituency a Section member shall provide specifics about the member's fees and other charges related to the process.

1. If a Section member charges fees, the member should develop them in light of all relevant factors, including the type and complexity of the matter, the qualifications of the member, the time required, and the rates customary for such services.
 2. If a Section member charges fees, a member's fee arrangement should be in writing.
- B. A Section member shall not charge fees in a manner that impairs the member's impartiality.
1. A Section member shall not enter into a fee agreement that is contingent upon the result of the process.
 2. While a Section member may accept unequal fee payments, the member shall not allow such a fee arrangement to adversely impact the member's ability to conduct a process in an impartial, efficient, and competent manner.
- C. If a Section member volunteers services or reduces fees in the public interest, the member shall not allow that difference in compensation to affect the quality of the process.

EPP Section Ethics Committee discussion: If not disclosed, fees and expenses can become a source of distrust, disagreement, disappointment, and conflict. To avoid surprises and misunderstandings that might damage the process, the participants should know early on who is paying. The Section member can tell them directly, or someone else can brief them. The requirement to disclose to participants and constituencies does not prohibit disclosure to others.

Sometimes a salaried employee's duties include conducting a process, and the employee earns no special compensation for that service. In those situations, the Section member should disclose the name of the employer and may refer people with questions about fees to the employer.

Contingent fee agreements pave the way for conflicts of interest and corrode impartiality. The committee has made avoiding them an absolute requirement, unlike the Model Standard VIII(B)(1).

Guideline VIII(B)(2) deletes the words "from the parties" from the Model Standard language. In public policy processes there is often a single payer, which is often the convener. Unequal fee arrangements do not automatically create bias and are acceptable if they do not harm the Section member's credibility and effectiveness. The

Section member should be sure that the conveners and the participants understand that regardless of who is paying, the member works on behalf of all participants.

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Principle IX. Advancement of the Practice

Section members shall advance the profession by supporting diversity, access to dispute resolution services, research, education, and mentoring.

GUIDELINES

- A. A Section member should act in a manner that advances the practice of dispute prevention and resolution. A Section member promotes this Principle by engaging in some or all of the following:
 - 1. Fostering diversity in the profession of dispute prevention and resolution.
 - 2. Striving to make dispute prevention and resolution services accessible to those who elect to use them, including providing services at a reduced rate or on a pro bono basis as appropriate.
 - 3. When given the opportunity, participating in research, evaluation, and feedback.
 - 4. Participating in outreach and education efforts to assist the public in developing an improved understanding of, and appreciation for, dispute prevention and resolution.
 - 5. Assisting newer professionals through training, mentoring, and networking.

- B. A Section member should demonstrate respect for differing points of view within the profession of dispute prevention and resolution, seek to learn from others, and work together with others to improve the profession and better serve people in need of the member's services.

EPP Section Ethics Committee discussion: The committee encourages Section members to see their profession as embracing not just process activities but also larger endeavors that include training, research, and public education.

Guideline IX(A)(2) encourages Section members to provide services at a reduced rate or on a pro bono basis. Members who regularly undertake this kind of work should offer these services to a variety of groups, to avoid creating an appearance of bias.

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Principle X. Maintaining the Integrity of the Profession

When designing or conducting a process, a Section member shall place the integrity of the process above personal interest and the interests of the client. In all professional endeavors, a member shall act in ways that demonstrate honesty, trustworthiness, and fitness to serve.

GUIDELINES

- A. In designing or conducting a process, a Section member shall place the interests of the process and all associated with it above personal interest.
 - 1. A Section member shall place the interests of the process above the interests of a convener.
 - 2. A Section member shall not prolong a process or otherwise compromise its quality for personal gain.
 - 3. A Section member shall not voluntarily withdraw from an ongoing, constructive process in a way that unreasonably disrupts the process.
- B. A Section member shall not engage in conduct that reflects adversely upon honesty, trustworthiness, or fitness to serve as a neutral.
 - 1. A Section member shall not knowingly lie, conceal a fact, or exploit a misunderstanding to get a membership, license, or similar professional benefit.
 - 2. If a Section member acquires confidential information while serving as a neutral, the member shall not use the information to gain advantage over others.
- C. A Section member shall not knowingly assist another to violate these Principles or Guidelines.

EPP Section Ethics Committee discussion: This Principle and its guidelines have no clear antecedent in the Model Standards. The committee believes that the points here are part of professional conduct.

In Guideline X(A)(3) whether a disruption is unreasonable depends both on the circumstances prompting the withdrawal and the nature of the disruption. Note the use of “constructive” as a qualifier in this guideline. If a process is being manipulated or otherwise warped to the point of not promoting decision-making, this guideline does not prevent a member from withdrawing. In fact, withdrawal may then be the proper thing to do.

Guideline X(B)(2) is about not taking advantage of “inside information.” Guideline V, Confidentiality, limits what a neutral can disclose. This guideline limits how a neutral can act.

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Annex I: Summary of Ethical Principles for EPP Section Members

1. **Self-Determination:** In designing or conducting a process, a Section member shall strive to let people make their own, informed decisions. A member may encourage people to keep open minds and reconsider their positions, but a member shall not undermine self-determination to achieve consensus or settlement, to satisfy egos, to justify increased fees, or to respond to outside pressures.

2. **Impartiality:** When acting as a neutral, a Section member shall be impartial and shall avoid conduct that gives the appearance of partiality. If a member is engaged to act as a neutral and later finds that he or she cannot be impartial, the member shall withdraw from the work.

3. **Conflicts of Interest:** When designing or conducting a process, a Section member shall avoid conflicts of interest or the appearance of a conflict of interest. Members who know of conflicts or apparent conflicts shall disclose them to clients and participants and shall withdraw from the work if a serious and reasonable objection is raised.

4. **Competence:** A Section member shall take on work only when the member is competent to do the work.

5. **Confidentiality:** When designing or conducting a process, a Section member shall encourage clients and participants to come to an early understanding about confidentiality. A member shall abide by those understandings as well as any laws regarding access to information or keeping of confidences.

6. **Quality of the Process:** When designing or conducting a process, a Section member shall be diligent and attentive to the task; shall encourage broad representation of stakeholders; shall promote the safety, engagement, and competency of the participants; and shall promote mutual respect among all participants.

7. **Advertising and Solicitation:** When seeking work, a Section member shall be open and honest about qualifications, experience, services, and fees. A member shall not promise consensus or otherwise imply that the member will conduct a process in violation of these principles. In communicating with potential clients and participants, a member shall respect past clients' and participants' reasonable expectations regarding anonymity and confidentiality.

8. **Fees and Other Professional Charges:** When conducting a process, a Section member shall be reasonably candid about who is paying for the member's services and related expenses. Early in the process, the member shall make participants aware of any fees they may owe.

9. **Advancement of the Practice:** Section members shall advance the profession by supporting diversity, access to dispute resolution services, research, education, and mentoring.

10. **Maintaining the Integrity of the Profession:** When designing or conducting a process, a Section member shall place the integrity of the process above personal interest and the interests of the client. In all professional endeavors, a member shall act in ways that demonstrate honesty, trustworthiness, and fitness to serve.

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Note: ACR, the American Bar Association, and the American Arbitration Association drafted the standards reprinted below. The ACR Board adopted them in 2005. They apply to all ACR members when acting as mediators.

Annex II: Model Standards of Conduct for Mediators

Model Standard I: Self-Determination

A. A mediator shall conduct a mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome. Parties may exercise self-determination at any stage of a mediation, including mediator selection, process design, participation in or withdrawal from the process, and outcomes.

1. Although party self-determination for process design is a fundamental principle of mediation practice, a mediator may need to balance such party self-determination with a mediator's duty to conduct a quality process in accordance with these Standards.

2. A mediator cannot personally ensure that each party has made free and informed choices to reach particular decisions, but, where appropriate, a mediator should make the parties aware of the importance of consulting other professionals to help them make informed choices.

B. A mediator shall not undermine party self-determination by any party for reasons such as higher settlement rates, egos, increased fees, or outside pressures from court personnel, program administrators, provider organizations, the media or others.

Model Standard II: Impartiality

A. A mediator shall decline a mediation if the mediator cannot conduct it in an impartial manner. Impartiality means freedom from favoritism, bias or prejudice.

B. A mediator shall conduct a mediation in an impartial manner and avoid conduct that gives the appearance of partiality.

1. A mediator should not act with partiality or prejudice based on any participant's personal characteristics, background, values and beliefs, or performance at a mediation, or any other reason.

2. A mediator should neither give nor accept a gift, favor, loan or other item of value that raises a question as to the mediator's actual or perceived impartiality.

3. A mediator may accept or give de minimis gifts or incidental items or services that are provided to facilitate a mediation or respect cultural norms so long as such practices do not raise questions as to a mediator's actual or perceived impartiality.

C. If at any time a mediator is unable to conduct a mediation in an impartial manner, the mediator shall withdraw.

Model Standard III: Conflicts of Interest

A. A mediator shall avoid a conflict of interest or the appearance of a conflict of interest during and after a mediation. A conflict of interest can arise from involvement by a mediator with the subject matter of the dispute or from any relationship between a mediator and any mediation participant, whether past or present, personal or professional, that reasonably raises a question of a mediator's impartiality.

B. A mediator shall make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for a mediator. A mediator's actions necessary to accomplish a reasonable inquiry into potential conflicts of interest may vary based on practice context.

C. A mediator shall disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality. After disclosure, if all parties agree, the mediator may proceed with the mediation.

D. If a mediator learns any fact after accepting a mediation that raises a question with respect to that mediator's service creating a potential or actual conflict of interest, the mediator shall disclose it as quickly as practicable. After disclosure, if all parties agree, the mediator may proceed with the mediation.

E. If a mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, a mediator shall withdraw from or decline to proceed with the mediation regardless of the expressed desire or agreement of the parties to the contrary.

F. Subsequent to a mediation, a mediator shall not establish another relationship with any of the participants in any matter that would raise questions about the integrity of the mediation. When a mediator develops personal or professional relationships with parties, other individuals or organizations following a mediation in which they were involved, the mediator should consider factors such as time elapsed following the mediation, the nature of the relationships established, and services offered when determining whether the relationships might create a perceived or actual conflict of interest.

Model Standard IV: Competence

A. A mediator shall mediate only when the mediator has the necessary competence to satisfy the reasonable expectations of the parties.

1. Any person may be selected as a mediator, provided that the parties are satisfied with the mediator's competence and qualifications. Training, experience in mediation, skills, cultural understandings and other qualities are often necessary for mediator competence. A person who offers to serve as a mediator creates the expectation that the person is competent to mediate effectively.
2. A mediator should attend educational programs and related activities to maintain and enhance the mediator's knowledge and skills related to mediation.
3. A mediator should have available for the parties' information relevant to the mediator's training, education, experience and approach to conducting a mediation.

B. If a mediator, during the course of a mediation determines that the mediator cannot conduct the mediation competently, the mediator shall discuss that determination with the parties as soon as is practicable and take appropriate steps to address the situation, including, but not limited to, withdrawing or requesting appropriate assistance.

C. If a mediator's ability to conduct a mediation is impaired by drugs, alcohol, medication or otherwise, the mediator shall not conduct the mediation.

Model Standard V: Confidentiality

A. A mediator shall maintain the confidentiality of all information obtained by the mediator in mediation, unless otherwise agreed to by the parties or required by applicable law.

1. If the parties to a mediation agree that the mediator may disclose information obtained during the mediation, the mediator may do so.
2. A mediator should not communicate to any non-participant information about how the parties acted in the mediation. A mediator may report, if required, whether parties appeared at a scheduled mediation and whether or not the parties reached a resolution.

3. If a mediator participates in teaching, research or evaluation of mediation, the mediator should protect the anonymity of the parties and abide by their reasonable expectations regarding confidentiality.

B. A mediator who meets with any persons in private session during a mediation shall not convey directly or indirectly to any other person, any information that was obtained during that private session without the consent of the disclosing person.

C. A mediator shall promote understanding among the parties of the extent to which the parties will maintain confidentiality of information they obtain in a mediation.

D. Depending on the circumstance of a mediation, the parties may have varying expectations regarding confidentiality that a mediator should address. The parties may make their own rules with respect to confidentiality, or the accepted practice of an individual mediator or institution may dictate a particular set of expectations.

Model Standard VI: Quality of the Process

A. A mediator shall conduct a mediation in accordance with these Standards and in a manner that promotes diligence, timeliness, safety, presence of the appropriate participants, party participation, procedural fairness, party competency and mutual respect among all participants.

1. A mediator should agree to mediate only when the mediator is prepared to commit the attention essential to an effective mediation.

2. A mediator should only accept cases when the mediator can satisfy the reasonable expectation of the parties concerning the timing of a mediation.

3. The presence or absence of persons at a mediation depends on the agreement of the parties and the mediator. The parties and mediator may agree that others may be excluded from particular sessions or from all sessions.

4. A mediator should promote honesty and candor between and among all participants, and a mediator shall not knowingly misrepresent any material fact or circumstance in the course of a mediation.

5. The role of a mediator differs substantially from other professional roles. Mixing the role of a mediator and the role of another profession is problematic and thus, a mediator should distinguish between the roles. A mediator may provide information that the mediator is qualified by training or experience to provide, only if the mediator can do so consistent with these Standards.

6. A mediator shall not conduct a dispute resolution procedure other than mediation but label it mediation in an effort to gain the protection of rules, statutes, or other governing authorities pertaining to mediation.
7. A mediator may recommend, when appropriate, that parties consider resolving their dispute through arbitration, counseling, neutral evaluation or other processes.
8. A mediator shall not undertake an additional dispute resolution role in the same matter without the consent of the parties. Before providing such service, a mediator shall inform the parties of the implications of the change in process and obtain their consent to the change. A mediator who undertakes such role assumes different duties and responsibilities that may be governed by other standards.
9. If a mediation is being used to further criminal conduct, a mediator should take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.
10. If a party appears to have difficulty comprehending the process, issues, or settlement options, or difficulty participating in a mediation, the mediator should explore the circumstances and potential accommodations, modifications or adjustments that would make possible the party's capacity to comprehend, participate and exercise self-determination.

B. If a mediator is made aware of domestic abuse or violence among the parties, the mediator shall take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.

C. If a mediator believes that participant conduct, including that of the mediator, jeopardizes conducting a mediation consistent with these Standards, a mediator shall take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.

Model Standard VII: Advertising and Solicitation

A. A mediator shall be truthful and not misleading when advertising, soliciting or otherwise communicating the mediator's qualifications, experience, services and fees.

1. A mediator should not include any promises as to outcome in communications, including business cards, stationery, or computer-based communications.

2. A mediator should only claim to meet the mediator qualifications of a governmental entity or private organization if that entity or organization has a recognized procedure for qualifying mediators and it grants such status to the mediator.

B. A mediator shall not solicit in a manner that gives an appearance of partiality for or against a party or otherwise undermines the integrity of the process.

C. A mediator shall not communicate to others, in promotional materials or through other forms of communication, the names of persons served without their permission.

Model Standard VIII: Fees and Other Charges

A. A mediator shall provide each party or each party's representative true and complete information about mediation fees, expenses and any other actual or potential charges that may be incurred in connection with a mediation.

1. If a mediator charges fees, the mediator should develop them in light of all relevant factors, including the type and complexity of the matter, the qualifications of the mediator, the time required and the rates customary for such mediation services.

2. A mediator's fee arrangement should be in writing unless the parties request otherwise.

B. A mediator shall not charge fees in a manner that impairs a mediator's impartiality.

1. A mediator should not enter into a fee agreement which is contingent upon the result of the mediation or amount of the settlement.

2. While a mediator may accept unequal fee payments from the parties, a mediator should not allow such a fee arrangement to adversely impact the mediator's ability to conduct a mediation in an impartial manner.

Model Standard IX: Advancement of Mediation Practice

A. A mediator should act in a manner that advances the practice of mediation. A mediator promotes this Standard by engaging in some or all of the following:

1. Fostering diversity within the field of mediation.

2. Striving to make mediation accessible to those who elect to use it, including providing services at a reduced rate or on a pro bono basis as appropriate.

3. Participating in research when given the opportunity, including obtaining participant feedback when appropriate.

4. Participating in outreach and education efforts to assist the public in developing an improved understanding of, and appreciation for, mediation.

5. Assisting newer mediators through training, mentoring and networking.

B. A mediator should demonstrate respect for differing points of view within the field, seek to learn from other mediators and work together with other mediators to improve the profession and better serve people in conflict.



Note: In October 2010, the ACR Board adopted a set of ethical principles that apply to all ACR members. These are reprinted here.

Annex III: ACR Ethical Principles

- **Principles of Professionalism:** An ACR Neutral must adhere to the highest standards of integrity, impartiality and professional competence in rendering her or his professional service.
 1. A Neutral must not accept any engagement, perform any service, or undertake any act which would compromise the Neutral's integrity.
 2. A Neutral must maintain professional competence in dispute resolution skills by staying informed of, and abiding by, all relevant practice statutes, rules, and administrative orders and by regularly engaging in educational activities that inform as to professional practices and promote professional growth.
 3. A Neutral must decline appointment, withdraw, or request technical assistance when the Neutral feels that a case is beyond the Neutral's competence.
 4. A Neutral must decline all cases where there is a conflict of interest or where there is the appearance of an impropriety.
 5. A Neutral must not engage in conduct that is considered contrary to professional standards of justice, honesty and ethics, including but not limited to misrepresentation of credentials, crossing of professional boundaries and truth in advertising.

- **Principles of Role:** An ACR Neutral must respect the principle of individual integrity by ensuring that in dispute resolution proceedings, other than arbitration or other leader-directed models of dispute resolution, decision-making authority rests with the participants. The role of the Neutral shall include assisting participants in identifying issues, reducing obstacles to communication, maximizing the exploration of alternatives and helping the participants reach voluntary agreements.
 1. A Neutral must promote a balanced process and must promote mutual respect among the participants throughout the conflict resolution process.
 2. A Neutral must not coerce or unfairly influence a participant into any settlement agreement.
 3. A Neutral must not intentionally nor knowingly misrepresent material facts or circumstances in the course of conducting the conflict resolution proceeding.
 4. A Neutral must be impartial and advise all participants of any circumstances bearing on possible bias, prejudice, or impartiality. Impartiality means freedom from favoritism or bias in word, action, and appearance. Impartiality implies a commitment to aid all participants, as opposed to an individual participant in conducting the conflict resolution process.

5. A Neutral must promote informed decision making among the participants in the process, without offering legal, psychological or any other advice associated with the Neutral's background and training.
- **Principles of Process:** An ACR conflict resolution process should emphasize the following principles:
 1. Participants' Self-determination: The act of participants coming to informed, voluntary and uncoerced decisions.
 2. Client Centered Negotiation: The needs and interests of the participants form the basis upon which resolution is sought.
 3. Neutral's Impartiality: Freedom from favoritism or bias in word, action, attitude and appearance; ensuring a commitment to aid all participants, as opposed to an individual participant, in conducting the conflict resolution process.
 4. Fairness of the Process: The balancing of the process to meet the needs and interests of the participants.
 5. Procedural Flexibility: Designing the process to fit the circumstances of the situation, wishes and needs of the participants.
 6. Confidentiality: Keeping all information shared in the process private unless such privilege is waived by all participants.
 7. Full Disclosure: All information necessary for making informed decision by the participants.
 8. Informed Decision Making: The capacity to make decisions with full understanding of all the information needed and shared.

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