

# CODE OF CONDUCT FOR MAINE JUDICIAL BRANCH ADR NEUTRALS

Adopted 11/27/01

## PREAMBLE

This CODE OF CONDUCT FOR MAINE JUDICIAL BRANCH ALTERNATIVE DISPUTE RESOLUTION NEUTRALS (hereinafter Code) is founded on the premise that Maine Judicial Branch Alternative Dispute Resolution Neutrals (hereinafter referred to collectively as "Neutrals" and individually as a "Neutral"), individually and collectively, must respect and honor their position as a public trust and must strive to maintain and enhance public confidence in our legal system. This Code is intended to establish basic standards to govern the conduct of all judicially-rostered ADR Neutrals.

## CANON 1

**A Neutral should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the Alternative Dispute Resolution (ADR) process will be preserved.**

- A. A Neutral shall achieve and maintain professional competence in the field of ADR and in the particular ADR process which he or she conducts.
- B. A Neutral shall fully and accurately respond to the Judicial Branch concerning the Neutral's qualifications, availability, background, and any other relevant inquiry.
- C. A Neutral shall observe all applicable administrative policies and procedures, local rules of court, applicable procedural rules and statutes.
- D. A Neutral shall be responsible to the Judicial Branch for the propriety of the Neutral's activities and must observe applicable standards of fidelity and diligence.
- E. A Neutral shall not convey, or permit others to convey, the impression that he or she is in a special position to influence any judicial official or decision outside of the scope of the Neutral's responsibilities for ADR in a specific case.

## CANON 2

### **A Neutral Shall Perform All Duties Impartially and Diligently.**

#### **A. Duties in General.**

- (1) A Neutral shall respect and comply with the law and applicable rules and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of ADR. A Neutral shall act in a just, neutral, independent, fair and impartial manner and advise all participants of any circumstances bearing on possible bias, prejudice, or partiality.
- (2) A Neutral shall not be swayed by partisan interests, public clamor, or fear of criticism.
- (3) A Neutral shall promptly hear and address matters assigned to the Neutral, except those in which disqualification is required.
- (4) A Neutral shall accept an assignment only in cases where the Neutral has or obtains sufficient training, skill, and any substantive knowledge relevant to the dispute and the ADR process employed. A Neutral shall decline assignment, or either withdraw or request technical assistance when it becomes apparent that the case is beyond the Neutral's competence.

#### **B. Proceedings - Impartiality, Confidences, and Diligence**

- (1) A Neutral shall require order and decorum in any proceedings before the Neutral.
- (2) A Neutral shall be patient, dignified, and courteous to litigants, witnesses, lawyers, and others with whom the Neutral deals in an official capacity, and a Neutral should require similar conduct of others while subject to the Neutral's direction.
- (3) A Neutral shall perform his or her duties without bias or prejudice. A Neutral shall not, in the performance of ADR, by words or conduct manifest bias or prejudice, including, but not limited to, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.
- (4) A Neutral shall require parties in proceedings with the Neutral to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, against parties, witnesses, counsel or others. This subsection does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status are issues in the proceeding.
- (5) A Neutral shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard.

(6) A Neutral shall preserve the confidentiality of conduct and communications of the participants except if disclosure is required by rule or law. Confidentiality may be waived by the consent of all participants.

(7) A Neutral shall not disclose or use, for any purpose unrelated to ADR duties, nonpublic information acquired in the capacity as an Neutral. A Neutral shall abstain from public comment on an ADR process except where confidentiality is waived by the consent of all participants.

(8) A Neutral shall take reasonable measures to assure the prompt disposition of matters and the proper performance of all ADR responsibilities.

### **C. Conflicts of Interest and Relationships; Required Disclosures; Prohibitions.**

(1) A Neutral shall decline to accept an assignment as a Neutral, or shall withdraw from any proceeding in which the Neutral believes, or there is a reasonable basis to believe, that:

- (a) he or she could not act with complete impartiality;
- (b) a conflict of interest exists for the Neutral; or
- (c) the Neutral's impartiality might reasonably be questioned.

(2) A Neutral shall disclose any social, professional, or financial relationship or interest with any participant or representative involved in the process that may affect objectivity or impartiality or which might create an appearance of partiality or bias. Unless the Neutral withdraws, disclosures shall be made as soon as practical after the Neutral becomes aware of the relationship or interest. The burden of disclosure of any potential conflict of interest rests on the Neutral. Following such a disclosure, a Neutral must obtain consent of all participants to continue to serve as a Neutral to conduct an ADR process in the case. However, if a conflict of interest clearly impairs a Neutral's impartiality, the Neutral shall withdraw regardless of the express agreement of the participants.

(3) A Neutral may withdraw at any time on the Neutral's own initiative with or without disclosing the reason.

### **D. Employment and Fees**

(1) A Neutral shall not unnecessarily or inappropriately commence or prolong an ADR process if it becomes apparent that the case is unsuitable for the particular method of dispute resolution, or if one or more of the participants is unwilling or unable to meaningfully participate in the process.

(2) A Neutral shall not charge an unreasonable fee or expense. A Neutral has a duty to fully inform the participants of all fees and expenses, and, if requested, to account in writing for said fees and expenses.

(3) A Neutral shall not charge or receive a contingent fee or a fee based on an outcome of any ADR process.

### **CANON 3**

**A Neutral shall conduct all of the Neutral's ADR and other professional activities so that they do not:**

- (1) cast reasonable doubt on the Neutral's capacity to act impartially as a Neutral;
- (2) demean the position of a Neutral; or
- (3) interfere with the proper performance of duties as a Neutral.

### **CANON 4**

**A Neutral, and an applicant to become a Neutral, shall comply with all provisions of this Code, applicable rules and procedures promulgated by the judicial branch governing the ADR process, and any other professional code that governs the activities of the Neutral.**