CHAPTER 6:
APPLY STANDARDS FOR COURT ADR
Your planning committee can draw on decades of court ADR experience and experimentation as you design or update your program. Much of this collected wisdom is reflected in standards of practice.

STANDARDS OF PRACTICE

Standards fall into one of two categories: those that guide you in developing and conducting court ADR programs and those that guide neutrals. There is some overlap in family ADR because some standards for neutrals also include guidance for programs.

Standards have been developed by U.S. and international groups addressing many aspects of ADR practice. These standards have been adapted and adopted by courts, professional organizations, ADR provider companies, individual neutrals and other entities. This guide addresses only national U.S. standards and guidelines.

You also will need to look for your own jurisdiction’s standards and rules to see what is in effect. Your jurisdiction may have used standards to design other court ADR programs or the program you are overhauling. Or you may have current court rules that require neutrals to follow a particular set of standards.

Note that standards are revised from time to time. Be sure you are working with the most up-to-date version of the standards, especially if your rules will require neutrals to perform their duties according to a set of standards.

PITFALLS TO AVOID WHEN WORKING WITH STANDARDS

Something that’s important to understand about standards is that these sets of standards are not enforceable until they are adopted by an entity with the power to enforce them. While some standards have been adopted by local entities, none are currently enforced on the national level. The Model Standards of Conduct for Mediators, for example, specifically state, “These Standards, unless and until adopted by a court or other regulatory authority do not have the force of law.” This means you can use the standards in many ways. For example, they can be a source of advice as you write your rules, you can require neutrals to agree to abide by them, or you can adapt the standards for neutrals into requirements for a grievance process.
This list of general standards, family program standards, and standards for neutrals may seem like an overwhelming group of standards, but there really is a limited number that will relate to your program. If you are doing mediation, start with the National Standards for Court-Connected Mediation Programs. From there, use whichever standards apply to your particular type of case. Whichever ADR process you are using, pick the appropriate standards for your neutrals. If you are working in family ADR, use the standards that relate to your chosen process, such as mediation or parenting coordination. Just be careful not to adopt them in whole without considering how they will play out in your setting.

STANDARDS FOR COURT ADR GENERALLY

**National Standards for Court-Connected Mediation Programs**

These are the standards you should start with. They provide detailed guidance for your program and the commentary for each standard helps explain why the standard is important. They were written in 1999 by the Center for Dispute Settlement in Washington, DC and the Institute of Judicial Administration in New York City, with support of the State Justice Institute. The Standards have held up well over time. Your planning committee can use the outline of the Standards as a checklist for ensuring you consider all the issues needed in program design or improvement:

- Access to mediation
- Court’s responsibility for mediation programs
- Selection of cases and timing of referral
- Mandatory attendance
- Qualification and selection of mediators
- Ethical standards for mediators
- Confidentiality
- The role of lawyers
- Inappropriate pressure to settle
- Communications between mediators and the court
- Funding of programs and compensation of mediators
- Mediators’ liability
- The enforceability of mediated agreements
- Evaluation of programs

Don’t stop with the outline of the Court ADR Standards. The full text of the Standards identifies issues to consider and how they might be decided. They provide thoughtful guidance about balancing competing benefits of court ADR.

**ADA Mediation Guidelines**

The guidelines for ADA mediations are not just useful for programs that specifically mediate disability-related matters. They provide sound advice to all court ADR programs about how to ensure accessibility of court mediation and other ADR processes for people of all abilities and disabilities. Topics include training of staff and mediators, party capacity and additional mediation participants. Because any ADR program is likely to serve individuals with disabilities, it is advisable to review these standards and decide what to incorporate.
STANDARDS FOR PARTICULAR APPLICATIONS OF COURT ADR

Standards for Family ADR
There are four sets of standards related to family court ADR. The first two cover court programs – child protection mediation and brief focused assessment. The other two sets of standards are for neutrals serving families – mediators and parenting coordinators – whether in court programs or otherwise. These last two sets of standards each include an appendix with guidance to courts about how to administer these services.

All the standards discussed here for family ADR come from AFCC, the Association of Family and Conciliation Courts, a multi-disciplinary membership organization. AFCC is a leader in developing standards, educating stakeholders in their application and building multidisciplinary understanding among the various professionals serving families through the courts.

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The Guidelines for Child Protection Mediation were developed by the Association of Family and Conciliation Courts in 2012. They define child protection mediation as “a collaborative problem solving process involving an impartial and neutral person who facilitates constructive negotiation and communication among parents, lawyers, child protection professionals, and possibly others, in an effort to reach a consensus regarding how to resolve issues of concern when children are alleged to be abused, neglected or abandoned.” The process values inclusion of the child’s voice either directly or by other means. No agreement is reached unless all the involved parties agree.

These Guidelines then go on to explain the principles of child protection mediation, the essentials of program design and operation, how to conduct child protection mediation and issues when doing so, and monitoring and evaluation. This is a very thorough guide for any stakeholder group that is planning to develop a child protection mediation program.

Guidelines for Brief Focused Assessment
The Guidelines for Brief Focused Assessment were developed by the Association of Family and Conciliation Courts in 2009. Brief Focused Assessments (BFAs) are a close cousin of child custody evaluations (CCEs), so these standards rely heavily on AFCC’s 2006 Model Standards of Practice for Child Custody Evaluation for such aspects of assessment as data gathering and report writing.

Both CCEs and BFAs are used to assist in better informing judicial decision-making, however, BFAs typically address different types of issues and phases of a family dispute and generally utilize a more descriptive approach versus the analytic mode used in conducting a CCE. BFA is the more appropriate when, for example, issues in dispute are narrowly defined. Sometimes either could be useful, but the BFA is ordered due to economic or institutional constraints. The Guidelines point out the importance of not using a BFA in place of a CCE simply to avoid the associated cost. This could create a two-tiered system in which low income families do not always receive the services they need.

Guidelines for Parenting Coordination, Appendix B, Best Judicial and Program Practices
The Guidelines for Parenting Coordination were developed by the Association of Family and Conciliation Courts in 2005. Parenting Coordination is a special ADR process for high conflict parents in which a mental health or legal professional mediates parents’ disputes, educates them about children’s needs, and makes decisions when the parents are unable to reach agreement. If you are developing or improving court parenting coordination program, the important part of these Guidelines is Appendix B, Best Judicial and Program Practices. Some items the Appendix raises that the planning committee should address include:
Scope of Authority
Thoroughly research local law to determine what can and cannot be handled by a Parenting Coordinator (PC)

Qualifications of Parenting Coordinators (PC)
Establish a way to confirm the qualifications and training of PCs

Standard Order
Develop a standard order describing the legal authority, duties, and responsibilities of the PC, issues to be decided, fees, grievance process, and term of service

Reports to Court
Develop a process for the PC to send all recommendations, reports, and orders of decision to the court, as well as to each parent and any attorney

Parent Grievances Regarding and Objections
Establish clear procedures to handle parent grievances and objections to the PC’s recommendations.

Model Standards of Practice for Family and Divorce Mediation, Appendix
The Model Standards of Practice for Family and Divorce Mediation were developed in 2000 through a symposium on Standards of Practice convened by the Association of Family and Conciliation Courts. These Standards include an appendix, “Special Policy Considerations for State Regulation of Family Mediators and Court Affiliated Programs.” The appendix first recognizes the importance of the National Standards for Court-Connected Mediation. It goes on to make three additional recommendations.

Jurisdictions should:
- Set standards and qualifications for family mediators that include procedures for evaluations and handling grievances against mediators
- Publicize the qualifications to be appointed as mediators and try to insure that each mediator is qualified
- Construe confidentiality to enable effective monitoring, research, evaluation or monitoring of mediation programs by responsible individuals or academic institutions

STANDARDS FOR NEUTRALS

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CONCLUSION
In court ADR, we are fortunate to have many well-written standards available that provide in-depth guidance to our field. Seek out the standards that are most appropriate to your program and they will provide a wealth of information.

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GUIDE TO PROGRAM SUCCESS

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Even by rock star standards, I was pretty awful.

Rod Stewart
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