

**Child Protection Mediation (CPM)
Model Mediator Competencies**

Final

August 23, 2019

Acknowledgements

The Child Protection Mediation (CPM) Model Mediator Competencies were contemplated, drafted, edited and produced because of the extraordinary commitment and diligence of a core group of individuals who comprised the Child Protection Mediation Model Mediator Competencies Workgroup.

Special thanks go to Susan Storcel, J.D. for convening and keeping the group moving forward, always with a sense of humor, over the years the document was in development. Susan's insistence on inclusion of a broad spectrum of opinions contributed greatly to the thoroughness of the final product.

Thanks also to Laura Bassein, J.D. for taking on the task of recording changes and updating drafts after each Workgroup conference call and for editing and producing the final draft. We recognize that hers was no easy task given the level of detail the Workgroup demanded.

Along the way the Workgroup consulted with and was advised by a number of subject matter experts and individuals. A particular "shout out" to Susan Butterwick, J.D. and Douglas Van Epps, J.D. for their close examination and extensive comments on emerging drafts.

Finally, many thanks to the Child Protection Mediation (CPM) programs and practitioners who are committed to providing high quality mediation services to the families and children who are involved in the child welfare system around North America and beyond.

Our hope is that the Child Protection Mediation Model Mediator Competencies will aid in the recognition and furtherance of CPM practice.

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Child Protection Mediation (CPM) Model Mediator Competencies

Preamble:

The inspiration to develop “Child Protection Mediation Model Mediator Competencies” arose from the work completed on “The Guidelines for Child Protection Mediation¹,” referred to in this document as, “The Guidelines.” “The Guidelines” were developed by a diverse group of experts in the field of child protection mediation (CPM) who are members of the Child Welfare Collaborative Decision-Making Network (CWCDMN) convened under the auspices of the Association of Family and Conciliation Courts (AFCC). “The Guidelines” have been adopted by the AFCC and endorsed by the National Council of Juvenile and Family Court Judges (NCJFCJ) and the Association for Conflict Resolution (ACR).

These “Child Protection Mediation Model Mediator Competencies” are based on a CWCDMN workgroup review of the portion of “The Guidelines” that addresses “Mediator Recruitment and Training.” It was determined that delineating the skills and proficiencies that an effective child protection mediator should possess is an important foundational antecedent to the development of CPM training.² As such, the competencies listed below represent what CPM programs should expect their mediators to know and what the mediators should be able to do in the mediations.

The model competencies described here identify the knowledge, skills, and abilities of effective CPM mediators. Training is critical to the development of CPM mediators and these model competencies provide a roadmap to create and deliver quality training with the goal that a skilled mediator will demonstrate these competencies on a regular and consistent basis.

These model competencies function as more than a training guide for CPM mediators. Mediators and their programs may use model competencies to assess and enhance their knowledge, skills, and abilities through mentoring, supervision, self-study, and self-assessment. Whether they acquire knowledge, skills, and abilities through their initial training or through other professional development, effective CPM mediators will demonstrate these competencies in their work with families and professionals.

The term “should” is used throughout this document, in the phrase “CPM mediators should,” with the meaning used in the Model Standards of Practice for Family and Divorce Mediation³: the competency described is highly desirable and should be departed from only with very strong reason. These

¹ The Guidelines for Child Protection Mediation may be found at:

<http://www.afccnet.org/Portals/0/Guidelines%20for%20Child%20Protection%20Mediation.pdf>

² The CWCDMN workgroup reviewed training standards and competencies set forth in various child protection state, court and local mediation programs, including child protection mediation learning objectives found in the Florida ADR Resource Handbook on pages 281-289,

<http://www.flcourts.org/core/fileparse.php/549/urlt/ADRResourceHandbook.pdf> Guiding this review was an awareness of the competencies necessary to mediate in a manner consistent with “The Guidelines” as well as the extensive child protection mediation experience of the CWCDMN workgroup.

³ The Model Standards of Practice for Family and Divorce Mediation (© Association of Family and Conciliation Courts 2000) were approved in 2001 by the American Bar Association House of Delegates and can be found at: <https://www.afccnet.org/Portals/0/PublicDocuments/CEFCP/ModelStandardsOfPracticeForFamilyAndDivorceMediation.pdf>.

competencies are not in and of themselves regulatory in nature; if a jurisdiction chooses to adopt the competencies that jurisdiction might choose to change the term “should” to “must” or “shall” as they deem appropriate.

The CPM Model Mediator Competencies were reviewed and endorsed by the Board of Directors of the Association of Family and Conciliation Courts at its May 2019 Meeting. The model competencies are available, along with the Guidelines for Child Protection Mediation, on the AFCC website at:

<https://www.afccnet.org/Resource-Center/Center-for-Excellence-in-Family-Court-Practice/ctl/ViewCommittee/CommitteeID/13/mid/495>.

The workgroup hopes that the model competencies will serve existing and emerging CPM programs and practitioners as a resource for best practices in the training and professional development of CPM mediators.

I. Conflict Resolution Concepts in CPM

Child Protection Mediation (CPM), as defined by “The Guidelines,” is 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 consensus regarding how to resolve issues of concern when children are alleged to be abused, neglected or abandoned.” CPM is one of several multi-person dispute resolution methods and collaborative decision making processes in the child protection system.

CPM mediators should:

- a. implement principles and practices of CPM as described in “The Guidelines;”*
- b. recognize the importance of self-determination in CPM;*
- c. be able to identify and distinguish among methods of dispute resolution, including but not limited to: negotiation, mediation, arbitration (binding and non-binding), facilitated meetings, litigation, family group conferencing, family teaming models, and child protection agency case review processes; and*
- d. be able to describe the differences among various dispute resolution methods.*

II. Court Process in CPM

CPM may occur at any stage in a child protection case and within the framework of a child protection system that includes child protection agencies, courts, and community and private service providers. Some referrals to CPM may occur before a case is filed in court, others following the filing of a court action, still others as a diversion from the court process, and others after a court case has closed.

CPM mediators should:

- a. *be able to describe and work within the structure of the state or provincial child protection agency and court(s), including family or juvenile court(s) where applicable;*
- b. *be familiar with the jurisdiction’s rules, statutes, procedures, and forms governing child protection cases and especially CPM;*
- c. *comprehend the complexity of the child protection system;*
- d. *distinguish among the roles and responsibilities of parents, judges, other judicial officers, lawyers, experts, mediators, guardians ad litem (GALs), child protection case workers, service providers, and others in their own jurisdiction;*
- e. *identify the various types of issues in dispute which may be presented in child protection cases;*
- f. *know the route or manner by which a case is referred to CPM, and be cognizant of the procedural and structural differences that might exist for each referral; and*
- g. *distinguish between court-ordered/referred and non-court ordered/referred mediation and between voluntary and mandatory mediation.*

III. Mediation Process and Techniques in CPM

CPM is based upon the fundamentals of traditional mediation and requires that mediators possess unique skills and techniques to manage a multi-person mediation process. The mediation process begins when first considering whether a case is suitable for CPM through completion of all mediation sessions, including any mediation session follow-up.

CPM mediators should:

- a. *determine whether the case and the issues presented are appropriate for mediation and whether the case has been referred to mediation at an appropriate time;*
- b. *schedule mediation in a manner that respects mediation participants⁴ needs and concerns;*
- c. *be cognizant of how the dynamics of the conversation might change when some mediation participants are represented by counsel and others are not;*
- d. *determine whether all necessary mediation participants are present or represented at the mediation table;*
- e. *design, on a case by case basis, a mediation process in light of each particular family’s characteristics;*
- f. *conduct the mediation responsive to the needs and concerns of each mediation participant;*
- g. *present a clear, concise opening statement that explains the mediator’s role and ethical obligations, how the discussion will be structured, the goal of the session, and the local*

⁴ In this document the term “mediation participant” includes both parties and non-party participants. Also, in this document the terms “party” and “parties” refer to “mediation party” as defined in the Uniform Mediation Act (<http://www.uniformlaws.org/>): A mediation party means a “person that participates in mediation and whose agreement is necessary to resolve the dispute.” Also as defined in the Uniform Mediation Act: A non-party participant means a “person, other than a party or mediator, that participates in mediation.” “Party” and “parties” do not refer to a litigant in a child protection legal action unless expressly so stated.

- laws and rules relating to the protections, constraints and exceptions of confidentiality, privacy and/or privilege as they apply to CPM;*
- h. be attentive to mediation participants' initial statements that shape the agenda for the discussion;*
 - i. manage the joint discussion by setting a collaborative tone and supporting direct and productive exchange of information among mediation participants;*
 - j. encourage a future-focused dialogue aimed at helping the mediation participants remain focused and explore solutions to unresolved issues, evaluate positive and negative consequences of solutions presented, and reality test and reconsider their positions when appropriate;*
 - k. manage tensions, conflict, power imbalances and aggression in a neutral, impartial and controlled manner;*
 - l. recognize the value of caucusing when appropriate;*
 - m. identify and track points of agreement throughout the discussion, and if the parties reach consensus, help the parties craft their agreement;*
 - n. articulate to mediation participants any mediation-related court procedures which may apply; and*
 - o. know when and how to adjourn, conclude and terminate a mediation session.*

IV. Communication Skills in CPM

Effective communication, including listening, is essential throughout the mediation process.

CPM mediators should:

- a. communicate in a neutral and impartial manner;*
- b. set a tone which encourages all mediation participants to be engaged and empowered to express ideas and propose solutions;*
- c. acknowledge emotions and reframe statements in a neutral and impartial manner;*
- d. communicate in an understandable and inclusive manner with all mediation participants including young children, cognitively challenged adults, and professionals, and avoid the use of legalese, acronyms and jargon which inhibit the communication process, and help others to do the same;*
- e. explain CPM to all mediation participants;*
- f. build rapport, establish trust, and support mediation participants throughout the mediation process; and*
- g. help the mediation participants identify, clarify and fully discuss issues.*

V. Standards of Conduct/Ethics for Mediators in CPM

CPM relies upon mediators who conduct themselves in a professional and ethical manner. Many jurisdictions have statutory or rule based ethical guidelines for mediators. In jurisdictions that do not, mediators should consult the Model Standards of Conduct for Mediators and the

Model Standards of Practice for Family and Divorce Mediation to the extent these standards are applicable in child protection cases.⁵

CPM mediators should:

- a. *practice within accepted ethical guidelines and practice standards promulgated by the local jurisdiction, or those provided by accredited professional organizations;*
- b. *identify potential ethical dilemmas, recognize when such a dilemma exists and take appropriate action which might include recusing oneself from the mediation and the case;*
- c. *remain neutral and impartial throughout intake, screening, mediation and outcome;*
- d. *explain clearly the extent to which communications made during the mediation process are confidential and/or privileged as well as the existence of exceptions to confidentiality and/or privilege which may require or permit disclosure;*
- e. *recognize that it is more important for the mediator to conduct CPM in a professional and ethical manner than it is for the parties to reach agreement;*
- f. *adhere to ethical, legal, and other mediation practice obligations to screen and assess the appropriateness of conducting mediation in cases where domestic violence may compromise safety, self-determination, or other aspects of the mediation process;*
- g. *recognize the interplay between ethical obligations, practice standards, and other legal requirements;*
- h. *recognize that a mediator may provide information that the mediator is qualified by training or experience to provide only if such can be done in a manner consistent with the standards of mediator neutrality and impartiality, and the preservation of self-determination of mediation participants;*
- i. *refrain from offering a personal or professional opinion intended to coerce or unduly influence the mediation participants, decide the dispute, direct a resolution of any issue, or indicate how the court in which the case has been filed will resolve the dispute;*
- j. *accurately describe their qualifications, avoid promising results, and adhere to fair billing practices;*
- k. *decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of the case are beyond the mediator's skill or experience;*
- l. *promote awareness by the mediation participants of the interest of persons who are not present at mediation, but may be affected by agreements reached;*
- m. *know when and how to inform mediation participants of the right to consult independent legal counsel;*

⁵ The Model Standards of Conduct for Mediators were adopted in 2005 by the American Arbitration Association, the American Bar Association, and the Association for Conflict Resolution, https://www.americanbar.org/groups/dispute_resolution/policy_standards.html. The Model Standards of Practice for Family and Divorce Mediation (© Association of Family and Conciliation Courts 2000) were approved in 2001 by the American Bar Association House of Delegates, <http://www.afccnet.org/Resource-Center/Practice-Guidelines-and-Standards>.

- n. recognize the ethical and professionalism issues related to interacting with mediation participants who may or may not repeatedly participate in CPM; and*
- o. recognize the importance of continuing education for CPM mediators.*

VI. Treatment Options and Community Resources in CPM

CPM occurs within the larger contextual framework of a child protection system that includes child protection agencies, public and private service providers, the court, and others.

CPM mediators should:

- a. be aware of the types of resources that can be provided by the child protection agency to families as well as those available from within the community;*
- b. be familiar with the types of services and treatments in which parents or caregivers are typically expected to participate, or may be part of an agency service plan; and*
- c. be aware of the amount of time generally allocated for parents or caregivers to successfully complete recommended services and treatments as this relates to children achieving timely permanency.*

VII. Diversity Issues in CPM

Issues of diversity, such as culture, race, ethnicity, age, education, gender, gender identity, sexual orientation, religion, socioeconomic status and others, must be respected, understood and appreciated in all aspects of CPM. Mediation participants come to the table with wide-ranging backgrounds and may not be fluent in the English language.

CPM mediators should:

- a. demonstrate sensitivity and competence mediating with people from diverse backgrounds throughout the mediation process;*
- b. respect the cultural and religious principles and traditions of the mediation participants;*
- c. assure that language is not a barrier to participation and include, as needed, use of professional, qualified, and competent interpreters who understand the need for precise interpreting and translating;*
- d. explain to interpreters the importance of self-determination, confidentiality, neutrality, and impartiality; and*
- e. possess a working knowledge of the Indian Child Welfare Act (ICWA)⁶, as well as state statutes that relate to ICWA, and recognize when they apply to CPM.*

⁶ For additional information regarding the Indian Child Welfare Act visit <https://www.bia.gov/bia/ois/dhs/icwa>.

VIII. Family Dynamics, Child Development and Psychological Issues in CPM

Behavioral health and mental health concerns, substance abuse, family dynamics and child development may affect the CPM process. Some mediation participants' capacity to fully engage in the CPM process and exercise self-determination may be limited or compromised. The interplay between the age and needs of the child(ren) and the stage at which CPM takes place is an important consideration for the CPM mediator as well as the mediation participants.

CPM mediators should:

- a. recognize and acknowledge the unique characteristics of each family and utilize strategies that encourage active engagement of all family member mediation participants;*
- b. understand the relationship between child development and safety, permanency, stability, and well-being;*
- c. recognize the impact of trauma and adverse childhood experiences on anyone involved in CPM;*
- d. appreciate the direct and indirect impact that domestic violence may have on children;*
- e. be able to identify when and how an individual's mental state or substance abuse might affect their capacity to participate in mediation; and*
- f. continually assess whether a mediation participant has the capacity to mediate and whether adjustments can be made to enhance the ability of a mediation participant to meaningfully participate in CPM.*

IX. Domestic Violence Issues in CPM

Domestic violence exists in many CPM cases and can impact safety, self-determination, and capacity to participate in CPM even when no history of domestic violence has been reported or revealed. Domestic violence includes domestic violence as defined by applicable local law and other issues including control and intimidation.

CPM mediators should:

- a. understand the dynamics of domestic violence as they relate to child protection cases;*
- b. recognize that domestic violence can impact the safety of both those participating in mediation and others outside the mediation process, before, during and after mediation;*
- c. recognize that domestic violence can impact an individual's capacity to participate in mediation;*
- d. recognize that domestic violence can significantly impact the balance of power among the mediation participants;*
- e. screen and assess throughout the mediation process whether domestic violence endangers safety of anyone or compromises self-determination or the capacity of mediation participants to meaningfully participate in CPM;*

- f. determine on a case by case basis whether CPM can proceed without endangering safety or compromising mediation participants' abilities to meaningfully participate in CPM;*
- g. create a mediation process in light of each family's characteristics, such as using separate rooms, conference telephones, mediating on separate days and other similar design features to address domestic violence related concerns;*
- h. safely excuse mediation participants from mediation; and*
- i. know when and how to adjourn, conclude and terminate a mediation session.*

X. Working with Multiple Participants in CPM

CPM typically includes parents, child protective services (CPS) staff, CPS agency attorneys, attorneys for parents, attorneys and/or guardians ad litem (GALs) for children, foster/adoptive parents and when appropriate children. Additional mediation participants may include other family members, service providers, or others who are agreed upon and may be supportive or helpful during the mediation.

CPM mediators should:

- a. use large group mediation skills to help the mediation participants move the discussion forward;*
- b. create a process where all mediation participants are afforded the opportunity to exercise self-determination and fully engage in CPM, including appropriate management of repeat players;*
- c. recognize which persons are court-ordered, necessary, or helpful to the resolution of the issues in mediation whether or not they are parties to a legal action, including any tribal representatives as required by ICWA;*
- d. be aware of the multiple power imbalances that may exist and manage the mediation process accordingly;*
- e. assess how remote participation by some individuals by phone or other electronic means may impact the discussion, confidentiality/privilege, and execution of any agreement;*
- f. recognize the value of meeting separately with some of the mediation participants and do so when appropriate;*
- g. manage individual or group caucusing in large groups involving multiple mediation participants; and*
- h. balance inclusion of mediation participants with the need to manage disruptive individuals.*

XI. Issues Concerning the Needs of Children in the Context of Child Protection Proceedings

A philosophical underpinning of CPM is that the safety, permanency, stability, and well-being of children are paramount. Children are emotionally and psychologically affected not only by abuse, neglect or conflict they have been exposed to, but also by separation from family and involvement with the child protection and court systems.

CPM mediators should:

- a. recognize that child protection proceedings impact children, whether or not a child participates in CPM;*
- b. appreciate the importance of the child's "voice," including the child's concerns and preferences, being considered by mediation participants;*
- c. include the child's "voice" and perspective in every mediation whether or not the child is present;*
- d. work with the child's representative to determine when it is necessary and/or appropriate for a child to participate in mediation, and if so, identify the nature and extent of that participation;*
- e. understand and appropriately address issues related to safety, permanency, stability, and well-being of children, including the impact of trauma and adverse childhood experiences;*
- f. recognize aspects of basic child development and how a child's development and behavior are impacted by many issues such as abuse, neglect, abandonment and family instability;*
- g. be aware that a child's sense of time is not the same as that of adults and know the state and federal timelines for permanence;*
- h. understand that temporary or permanent removal from family, placement in foster care, and adoption have short- and long-term effects on children and their relationships with others;*
- i. understand a child's need for a permanent stable home, including when reunification with parents cannot be achieved in a timely manner;*
- j. be prepared to assist mediation participants to develop visiting plans and parenting arrangements that serve the children's best interests and well-being; and*
- k. engage with children at their level of comprehension and development.*

XII. Child Protection Laws

Countries, states, provinces, and other jurisdictions have laws that govern child protection cases. These laws can be amended from time to time. Child protection proceedings are civil in nature although respondents may face concurrent criminal charges. Many jurisdictions have laws that regulate general mediation practice. Rules and procedures governing CPM programs and practice should comply with general mediation laws as well as child protection laws. The legal rights afforded individuals participating in CPM vary among jurisdictions.

CPM mediators should:

- a. possess a working knowledge of the child protection laws applicable in their jurisdiction and stay abreast of changes to those laws;*
- b. recognize and appropriately use legal terms, definitions, and acronyms pertinent to child protection cases and proceedings;*

- c. acknowledge the impact of CPM on any other present or future civil or criminal proceedings, and the impact of these civil or criminal proceedings on CPM;*
- d. understand mediation rules and laws that apply to mediating a child protection case;*
- e. be able to identify any potential conflicts between child protection laws and laws relating to mediation practice in their jurisdiction; and*
- f. distinguish between legal information and legal advice, and refrain from providing legal advice.*

XIII. Role of Parties and Participants in CPM

CPM is a multi-person mediation process that typically includes a wide variety of family members, professionals, including tribal representatives as required by ICWA, and others. Who attends CPM may vary depending on court rule, statutes, program practices, the nature of the case, and preferences of the parties to the legal action.

CPM mediators should:

- a. recognize the various roles and responsibilities of mediation participants including any mediation participants who are mandated reporters;*
- b. recognize that mediation participants' roles and responsibilities in mediation might differ from their roles and responsibilities in litigation; and*
- c. recognize and understand the differences between parties to the legal action and other mediation participants.*