



## ***Utah Dispute Resolution*** **Family Mediation Best Practices**

All mediators who volunteer to assist clients in Utah Dispute Resolution's Family Mediation Program will adhere to the mediation ethical guidelines outlined in the Utah Uniform Mediation Act (UCA 78B-10), the Utah Rules of Court-Annexed ADR (Rule 101, 103, and 104), the Model Standards of Practice for Mediators (adopted by the American Bar Association, the Association for Conflict Resolution, and the American Arbitration Association) and the Model Standards of Practice for Family and Divorce Mediation adopted by the Association for Conflict Resolution. In addition, UDR Family Roster mediators will meet the standards outlined in Utah Rule 4-510 to be designated as a Court Qualified Mediator.

Mediators who volunteer for Utah Dispute Resolution (UDR) are expected to follow these best practices when conducting family mediations for UDR clients.

### **Agreement to Mediate/Mediator Opening Statement**

- Use UDR's *Agreement to Mediate* form unless the Executive Director has pre-approved use of another form.
- Follow UDR's fee structure and assessed fees for all family cases; if clients disagree with the assessed fee, mediators are welcome to ask a UDR staff member to clarify with the client.
- Confirm the assessed fee verbally and in writing for each mediation session.
- Remind clients that audio and video tape recordings of mediation sessions are not allowed.
- Disclose any conflicts of interest verbally and in writing (using the space provided on UDR's *Agreement to Mediate*).
- Obtain signatures of all participating parties on the *Agreement to Mediate*.
- Review the terms of mediation and obtain signatures/initials on the *Agreement to Mediate* of all participating parties for follow-up sessions.
- Confirm the fee structure verbally and in writing for each follow-up mediation session, especially if the assessed fee is different from the first session.

### **Conducting the Mediation**

- Conduct all caucus sessions in private; if a separate room is not available, ask the participants to exchange places using the same mediation room. Avoid holding confidential discussions in public lobby areas.

## Memorandum of Understanding

- Prepare a written Memorandum of Understanding in these instances:
  - Mediations involving Pro se clients
  - Mediations in which parties participate without their attorneys
  - Mediations in which one party is represented by counsel and the other party has no counsel present.

*NOTE:* If clients refuse to have the mediator prepare a written memorandum in these cases due to cost considerations, it is advised that the mediator prepare a hand-written summary of the agreement (“Deal Sheet”) in order to memorialize the agreement without asking parties to sign the document.
- Do not include signature lines on any Memorandum of Understanding that the mediator prepares and sends or gives to the parties.
- Facilitate the preparation of a written summary or prepare a written summary of agreements reached during the mediation session and allow signatures on this summary **ONLY** when all participants are represented by legal counsel.
- Include the following information on all memoranda:
  - Names of all parties who took part in the mediation
  - Date and time when the mediation occurred
  - Location where the mediation occurred
- Include a “disclaimer statement” on all memoranda of understanding stating that the memorandum is:
  - The mediator’s understanding of the agreements reached during mediation
  - Not legally binding on the parties
- Provide a copy of the memorandum of understanding to the participants’ counsel of record.
- Include a list of all parties to whom the mediator provides a copy of the memorandum of understanding. (Respect requests for protected information.)
- Include a statement regarding the participants’ intention for formalizing the agreement; include their decision as to who will prepare a legal stipulation, if required, and how the cost to prepare this document will be paid.
- Include the parties’ decision for handling any existing motions that stand before the court if a legal stipulation is not needed.