

Introduction to the Model Agreement to Mediate Form and Mediation Process Description

The attached model Agreement to Mediate form and Mediation Process description were drafted after a careful review of:

- The Model Standards of Conduct prepared by a joint committee of the American Arbitration Association, American Bar Association, and the Society of Professionals in Dispute Resolution,
- The Uniform Mediation Act and its comments, and
- A survey of agreements to mediate and other documents used by various mediation programs and mediation professionals.

There are three principles essential to a successful mediation program. They are:

- Promoting candor of parties through confidentiality of the mediation process, subject only to the need for disclosure to accommodate specific and compelling societal interests;
- Encouraging prompt, economical, and amicable resolution of disputes in accordance with principles of integrity of the mediation process, active party involvement, and informed self-determination by the parties; and
- Advancing the policy that decision-making authority in the mediation process rests with the parties.

We developed the attached model Agreement to Mediate form and Mediation Process description in a way that not only incorporates these principles but also conveys their substance to the parties. In many instances the parties will have no prior experience with mediation and the documents they receive in connection with the mediation session will be their main source of instruction. Even documents whose primary function is not instructive can help the parties to understand mediation and how best to participate in the process. Thus, for instance, the confidentiality clause in the Agreement to Mediate not only defines the parties' and the mediators' rights and obligations but also briefly explains that the purpose of confidentiality is to promote open and honest communication.