

**Electronically Filed
Supreme Court
SCMF-25-0000394
06-MAY-2025
11:00 AM
Dkt. 3 ORD**

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

In the Matter of the

REVISED GUIDELINES FOR MEDIATION

RESOLUTION ENDORSING THE REVISED GUIDELINES FOR MEDIATION
(By: Recktenwald, C.J., McKenna, Eddins, Ginoza, and Devens, JJ.)

By resolution filed April 22, 1986, this court endorsed the Standards for Private and Public Mediators in the State of Hawai‘i. Subsequently, on June 11, 2002, this court endorsed the Guidelines for Hawai‘i Mediators.

In 2013, the Hawai‘i State Legislature adopted the Uniform Mediation Act, Hawai‘i Revised Statutes (HRS) § 658H.

In September 2024, mediation organizations across the state created a working group to develop updated guidelines for mediators, which were finalized and provided to this court for review in February 2025.

BE IT RESOLVED that this court endorses these Revised Guidelines for Mediation (Guidelines), attached hereto. These

Guidelines should be read in conjunction with HRS § 658H and thoughtfully utilized by all mediators, with appropriate flexibility provided to mediators in addressing various types of disputes.

The Guidelines are not meant as binding rules and are not intended to regulate the work of mediators.

This court continues to encourage and support high quality alternative dispute resolution, including mediation, which provides great value to our community.

DATED: Honolulu, Hawai'i, May 6, 2025.

/s/ Mark E. Recktenwald

/s/ Sabrina S. McKenna

/s/ Todd W. Eddins

/s/ Lisa M. Ginoza

/s/ Vladimir P. Devens



REVISED GUIDELINES FOR MEDIATION

I. PREAMBLE

Mediation is a dispute resolution process in which mediators facilitate communication and negotiation between parties to assist them in reaching a mutually acceptable agreement regarding their dispute. Mediation is a separate and distinct activity from other conflict resolution processes, although it may be used in conjunction with them.

In mediation, decision-making authority rests with the parties. The role of the mediator includes but is not limited to assisting the parties in improving the definition of issues; reducing obstacles to communication; maximizing the exploration of alternatives; and helping them arrive at agreements that are fair, efficient, and stable.

Mediation is based on principles of communication, negotiation, and problem solving that emphasize:

- the needs and interests of the parties;
- the integrity of the mediation process;
- procedural flexibility;
- privacy, confidentiality, and privilege;
- disclosure of possible conflicts; and
- self-determination.

As with other forms of dispute resolution, mediation must be built on public confidence and understanding. Persons serving as mediators, therefore, bear specific responsibilities to the mediation parties, to the mediation process, to the public, and to organizations under whose auspices mediation is taking place.

II. SCOPE AND LIMITATIONS

- A. These Guidelines are not meant to cover practices that are not considered by practitioners or the public to be “mediation,” such as ho`oponopono and other culturally based practices.
- B. These rules are not intended to:
 - 1. Establish a ceiling on what is considered good practice in mediation or discourage efforts by courts, mediators, or others to educate mediators about best practices;
 - 2. Create a basis for challenging a settlement agreement reached in connection with a mediation; and
 - 3. Create a basis for a civil cause of action against mediators.

III. SELF-DETERMINATION

- A. Mediators should conduct mediation based on the principle of party self-determination. Self-determination is the act of coming to a mutually acceptable, uncoerced decision in which each party makes informed choices as to process and outcome.
- B. Mediators should not undermine party self-determination for any reason, including but not limited to settlement rate, increased fees, or outside pressures from court personnel, program administrators, provider organizations, or others.

IV. IMPARTIALITY

- A. Mediators should decline a mediation if the mediator cannot conduct it in an impartial manner. Impartiality means freedom from favoritism, bias, or prejudice.
- B. Mediators should conduct mediation in an impartial manner and avoid conduct that gives the appearance of partiality.
 - 1. Mediators should neither give nor accept a gift, favor, loan, or other item of value that raises a question as to the mediator's actual or perceived impartiality.
 - 2. Mediators may accept or give de minimis gifts or incidental items or services that are provided to facilitate mediation or respect cultural norms so long as such practices do not raise questions as to mediator's impartiality.
- C. If at any time mediators are unable to conduct mediation in an impartial manner, the mediator should withdraw. After a mediation has concluded, mediators should avoid conduct that gives the appearance of partiality. Before entering a relationship with anyone who participated in the mediation, the mediator should consider factors such as time elapsed following the mediation, and the nature of the relationships established.
- D. Mediators should not at any time solicit or accept from or give to any participant or affiliate of a participant any gift, request, or favor that might reasonably raise a question concerning the mediator's impartiality.

V. COMPETENCE

- A. Mediators should only mediate cases for which the mediator possesses the necessary competence to satisfy the reasonable expectations of the parties.
 - 1. Any person may be selected or appointed as a mediator, provided that the parties or the appointing authority are satisfied with the mediator's competence and qualifications.
 - 2. Mediators should attend educational programs and related activities to maintain and enhance the mediator's knowledge and skills related to mediation.
- B. If a mediator determines during the course of a mediation that the mediator cannot conduct and conclude the mediation competently, the mediator should discuss that determination with the parties or appointing authority as soon as practicable and take appropriate steps to address the situation, including, but not limited to, withdrawing or requesting appropriate assistance.
- C. Mediators should not conduct a mediation if the mediator's ability to conduct a mediation is impaired.

VI. QUALITY OF THE PROCESS

- A. Mediators should conduct a mediation in a manner that promotes the integrity of the mediation process; procedural flexibility; privacy, confidentiality, and privilege; and self-determination.
 - 1. Mediators should agree to mediate only when the mediator is prepared to commit the attention essential to an effective mediation.
 - 2. The presence or absence of potential parties or participants at a mediation depends on the agreement of the parties and the mediator.
 - 3. Mediators should not knowingly misrepresent any material fact or circumstance in the course of mediation.
 - 4. Mediators should not conduct a dispute resolution process other than mediation and label it mediation in an effort to gain the protection of rules, statutes, or other governing authorities pertaining to mediation.

5. Mediators should not undertake an additional dispute resolution role in the same matter without the consent of all parties. Before undertaking an additional dispute resolution role in the same matter, mediators should inform the parties of the implications of the change in process and obtain their consent to the change.
 6. Mediators should terminate a mediation if it is being used to further criminal conduct.
 7. If a party appears to have difficulty comprehending the process, issues, or settlement options, or difficulty participating in a mediation, the mediator should explore the circumstances and potential accommodations, modifications or adjustments that would make possible the party's ability to comprehend, participate, and exercise self-determination, or the mediator may consider ending the mediation.
- B. If mediators believe that participant conduct, including that of the mediator, jeopardizes conducting a mediation consistent with these Guidelines, mediators should take appropriate steps including postponing, withdrawing from, or terminating the mediation.

VII. SAFETY OF MEDIATION

- A. Consistent with applicable statutes, court rules, and protocols, reasonable efforts should be made throughout the mediation process to screen for the presence of any barriers that would make mediation physically or emotionally unsafe for anyone who is participating, or that would impede the achievement of a voluntary and safe resolution of issues. Examples of barriers to the mediation process include domestic abuse, status as a protected individual or vulnerable adult, and inability to understand or communicate in the language in which mediation will be conducted.
1. In general, "reasonable efforts" may include meeting separately with the parties prior to a joint session, administering screening tools, and providing an interpreter.
 2. In domestic relations cases, "reasonable efforts" should include meeting separately with the parties prior to a joint session and screening for domestic violence.
 3. If a barrier to mediation exists and cannot be overcome by accommodations that specifically mitigate it, the mediation process should not be continued unless:
 - a. After being provided with information about the mediation process, parties who are potentially at risk freely request mediation or give informed consent to it;

- b. The mediator has training, knowledge, or experience to address the barrier;
 - c. The mediator has discussed with parties potentially at risk whether an attorney, advocate, interpreter or other support person should attend the mediation; and
 - d. The mediator has assessed that parties potentially at risk can determine and safely convey and advocate for their needs and interests without coercion, fear of violence, or other repercussions or consequences that would put the party at risk.
- B. When it appears that minor children and/or vulnerable adults may be affected by an agreement, mediators should encourage them to consider their safety.

VIII. SETTLEMENT AGREEMENTS

- A. Mediators may present possible settlement options and terms for discussion in the course of mediation. Mediators may also assist the parties in preparing a written settlement agreement, provided that in doing so the mediator confines the assistance to stating the settlement as determined by the parties.
- B. Mediators should inform parties they are not acting as a lawyer or performing any professional services other than mediation.

IX. ADVERTISING AND SOLICITATION

- A. Mediators should be truthful and accurate in marketing their mediation services. Mediators are responsible for ensuring that their marketing activities and any marketing activities carried out on their behalf by others comply with this rule.
- B. Mediators should not misrepresent their qualifications.
- C. In marketing their mediation services, mediators should not:
 - (1) Promise or guarantee results; or
 - (2) Make statements that directly or indirectly imply bias in favor of one party or participant over another.
- D. Mediators should not accept business from a party or participant in a mediation proceeding while that mediation is pending unless disclosure of such other business is made to the other people participating in the initial proceeding, and they waive any objection.

X. COMPENSATION

- A. Before commencing a mediation, the mediator and parties should agree in a record on fees, costs, and charges to be paid to the mediator by the parties.
- B. The amount or nature of a mediator's fee should not be contingent on the outcome of the mediation.