

# Mediator Code of Conduct

## Mediator Responsibilities to the Parties

### 1. To help them settle their disputes

In collective bargaining, dispute mediation is a voluntary process which occurs when a third party neutral assists the two sides in reaching agreement in contract negotiations. Since 1947, FMCS mediators have been providing these services including initial contract negotiations, which take place between a company and a newly certified union representing its employees.

In dispute mediation, FMCS mediators are in touch with both parties sometimes before negotiations actually begin. The contact is triggered by the legally required notice of intent to open a collective bargaining agreement. Mediators convene and conduct joint and separate meetings of the parties and in those meetings make use of the knowledge they have of the parties and issues to guide negotiators through potential deadlocks to a settlement which both parties can accept.

Federal mediators have an absolute commitment to confidentiality in collective bargaining. The critical importance of mediator confidentiality to the collective bargaining process has been upheld in the courts. Because federal mediators know that if their confidentiality with the parties or neutrality were ever compromised, they could no longer be effective, they must never convey information without the permission of its owner.

Mediators may make suggestions, and offer procedural or substantive recommendations with the agreement of both parties. However, they have no authority to impose settlements. Their only tool is the power of persuasion. The FMCS mediator's effectiveness derives from his/her acceptability to both parties, his/her broad knowledge and experience in the process of collective bargaining and the status of FMCS mediators as largest group of respected professional labor-management neutrals in the World.

### 2. To inform them regarding the FMCS

The usefulness of the Service to the labor-management community is extended by the use of Education, Advocacy and Outreach (EAO). This public information program is the vehicle whereby the function of informing representatives of labor and management and the general public regarding the jurisdiction, coverage, assistance, services, programs and training provided by the Service is carried out.

**3. To help them in their efforts to determine the causes of poor labor-management relations and to assist in the elimination of those problems**

In today's highly competitive global economy, workplace relations are changing. An important aspect of this is the changing labor-management relationships within those workplaces. There is a growing need for strong, positive working relationships between management and union workers so that US companies and their employees can both succeed and prosper. The Labor-Management Cooperation Act of 1978 authorized and directed the FMCS to offer services to improve economic development, job security and organizational effectiveness. For companies and unions committed to, or exploring, improved labor-management relations FMCS mediators provide a variety of education and training processes and services to help break down barriers and build better working relationships which benefit employer and employee alike and add value to the collective bargaining process.

**4. To inform them regarding the FMCS policies and procedures on arbitration**

Federal mediators do not arbitrate, but the Service meets the mandate of the National Labor Relations Act by *"promoting the settlement of issues between employers and employees through the process of conference and collective bargaining...the settlement of issues through collective bargaining may be advanced by making available full and adequate government facilities for conciliation, mediation and **voluntary arbitration**."* Mediators help the parties by advising them regarding arbitration procedures and policies. They inform them of the FMCS Arbitration Program and can familiarize them with the programs of other agencies and organizations which provide qualified arbitrators.

**5. To give information and advice on a variety of labor relations problems**

Mediators make themselves available to the parties in connection with requests for information and advice. If the question at issue is one which should properly be referred to another agency or individual, the mediator's statement should be precisely that. For example, if the question is one concerning the Fair Labor Standards Act, the party is referred to the U. S. Department of Labor for an official interpretation to supplement the mediator's statement. If the question is one of union recognition, the party is referred to the National Labor Relations Board for the same reason. Even if the mediator has a law degree, great care should be exercised in providing any legal advice or opinion while in the role of a neutral since the mediator is neither advocate nor judge and the wrong advice or the parties' misinterpretation of that advice could greatly compromise the mediator's further effectiveness with one or both of the parties. There is nothing wrong with referring the parties to an appropriate source for the information. Knowing where to find correct information is worth more than providing incorrect information.

## **Mediator Responsibilities to Other Legally Constituted Mediation Agencies**

State and other mediators, as well as federal, have one common objective, labor-management peace. It is incumbent upon the federal mediator to cooperate with the other mediators, when appropriate, in the pursuit of their common goal without, however, wasting the resources of either agency through unnecessary duplication of services. FMCS maintains a liaison relationship with the Association of Labor Relations Agencies (ALRA) in furtherance of this objective. All of the member agencies of several states are signatories to the Mediator's Code of Professional Conduct which governs mediator cooperation.

## **Mediator Responsibilities to Other Governmental Agencies**

The mediator develops a close working relationship with other governmental agencies interested in the problems of labor and management. Among these are federal agencies such as the various divisions of the U. S. Department of Labor, U. S. Department of Commerce, The Federal Labor Relations Authority and the Department of Defense procurement agencies. In addition, the mediator develops familiarity with state and local government agencies handling labor-management problems other than those concerning with mediation.

## **Mediator Responsibilities to the Public**

*"It is the policy of the United States that sound and stable industrial peace and the advancement of the general welfare, health and safety of the Nation and of the best interests of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the process of conference and collective bargaining."*

The mediator is the FMCS as far as the public is concerned wherever he/she may be. He/She informs the public of the activities, the objectives, and the reasons for its existence. The Service, therefore, expects the mediator to mingle with the members of and become an integral part of the labor-management community. The mediator must know them well, and they must know the mediator. The FMCS regards attendance at forums, labor and management group meetings as part of a mediator's duties. The mediator participates in and joins professional and civic groups. The mediator gets to know the representatives of the press and develops a professional working relationship with them. This provides an opportunity to educate an opinion maker about the Service, its role in the collective bargaining process, generalities of the mediation process as well as any other programs, activities and services which FMCS offers. It is through these contacts that the mediator develops the confidence of the public in themselves and the agency and to that extent is able to be of greater service to the community.

## **Mediator Responsibilities to Themselves**

The mediator should realize his/her capabilities to the fullest extent by:

### **1. Developing their professional background**

Labor-management relations are dynamic rather than static. Concepts of collective bargaining are continually changing. The issues of today are not the issues of yesterday nor will they be the issues of tomorrow. The mediator must grow with the profession or find that the profession has outgrown them, all of which implies a flexible mediator and one who knows what is going on in the broad field of labor-management relations.

### **2. Maintaining their professional standards**

Throughout their career the mediator will constantly face situations in which one or both parties will try to use them to further their own ends. True, the mediator exists to serve the parties. But the mediator must always bear in mind that the limits of that service are reached when there are attempts made to have him/her depart from the basic standards of honesty, integrity, and principle. Carefully read the Mediator's Code of Professional Conduct and live by it! If you do, you won't have any problems.

### **3. Living a well-balanced life**

The effective mediator is not the narrow specialist, concerned only with mediation, unaware of the larger issues which confront the world today. In the interaction with company and union bargaining committees FMCS mediators come in contact with a wide spectrum of personalities and learn a great deal about the products or services provided by the people with whom they will be working. The mediator also learns a great deal about the value systems of these people which will tell much about how they think and the way they make decisions. Value these experiences as learning experiences and don't be afraid to share your own pertinent experiences. Collective bargaining is a real human process and works best when it is conducted in those terms as opposed to being treated as an academic exercise. The best mediator has no trouble relating with most of those with whom they come in contact. The best mediator is a person with excellent interpersonal skills and broad cultural, recreational, and familial interests.

## **Mediator Responsibilities to FMCS**

### **1. To carry out assignments**

The most important responsibility a mediator has to the FMCS is to carry out his/her assignments. And, of these assignments, the major one is to mediate. But in FMCS, mediation is a broad term, and it embraces a wide variety of subsidiary activities which a mediator must perform to be effective in carrying out FMCS' mission. Thus, a challenge faces the mediator to enter into fields of labor-management relations which encompass more than just the job of being the neutral party in the midst of negotiations covering a new or renewed contract. The effective FMCS mediator is the consultant, the advisor, the expert to whom the parties should be able to turn at any time for information and advice – and such information and advice is not necessarily confined to contractual problems. The FMCS mediator carries out the role which he/she has always assumed and which the parties are increasingly recognizing: A friend of the parties and the collective bargaining process who, because of his/her skills in human relations, broad experience in labor-management relations problems, impartiality and objectivity, can help the parties to collective bargaining discover, then reduce, if not eliminate, basic causes of labor-management strife.

### **2. To prepare written reports on activities**

It is a fundamental requirement of any job to record the activities of the person carrying out the job. This basic requirement is even more essential in the case of the FMCS mediator.

It is largely by means of mediator's reports that the regional leadership is kept informed of the status of the cases for which the mediator is responsible. They provide the basis for liaison between the regional and national offices. Through these reports, other federal mediators, regional and national leaders with a need-to-know are informed quickly and easily of the progress of cases. They are also the keystone on which research is built and the statistics gathered are the foundation for budget and staffing decisions which are all important in this day of finite resources and budget consciousness.

### **3. To keep informed of FMCS policies and procedures**

It is incumbent on the part of every mediator to keep informed of FMCS policies and procedures and any changes in them, both on a national and regional level. Such awareness is an essential prerequisite to continuing effective representation of the Service.

#### **4. To effectively utilize FMCS resources**

In very few organizations is the use of resources – the mediator’s time, travel allotment, telephone and office services, etc. – left as much to the employee’s judgment as in the case of the mediator in FMCS.

Such free and independent operation is predicated on the premise that the mediator is a mature person of unquestioned integrity. This is an assumption made by the national and regional offices, and it is the mediator’s responsibility to make certain that assumption is never questioned.

#### **5. To improve the operations of the Service**

Much has been said and much has been written about the “bottom-up” approach to management. The idea that suggestions for the improvement of management operations should come from the rank and file as well as from top management has been given whole-hearted acceptance in FMCS. The current FMCS strategic plan was developed by a mediator task force and multiple mediator task groups broadly representative of the Service as a whole.

Mediators and administrative employees are encouraged by their supervisors to make whatever suggestions occur to them for the improvement of the Service. Those who have the interests of the Service at heart take this invitation seriously and regard their responsibilities broadly. When they see something in the Service which they believe should be improved, rather than complain about it, they should suggest the way to improvement.

#### **6. To conduct themselves in a manner so as to reflect credit to the Service**

The FMCS mediator’s conduct is under public scrutiny and subject to criticism not only when engaged in his professional work but at all times. The mediator, therefore, is one whose personal conduct should always command the respect of the community and reflect credit to the Service. Such a mediator uses mature judgment, has a high sense of ethical and moral values, and, in general, has developed into the sort of personality that labor and management representatives and their friends can respect and which can add value to the collective bargaining process.

FMCS mediators do not wear these responsibilities lightly. Their judgments in labor-management matters bear the stamp of careful, objective, and reflective consideration. Their ethics and moral values are such that their actions are always determined by the knowledge that mediation is a profession with high standards of conduct. FMCS is proud to have been a prime mover in writing the Code of Professional Conduct for Mediators.

## **The Responsibility of the Mediator toward other Mediators**

A mediator should not enter any dispute which is being mediated by another mediator or mediators without first conferring with the person or persons conducting the mediation. The mediator should not intercede in a dispute merely because another mediator may also be participating. Conversely, it should not be assumed that the lack of mediation participation by one mediator indicates a need for participation by another mediator.

In those situations where more than one mediator is participating in a particular case, each mediator has a responsibility to keep the others informed of developments essential to a cooperative effort and should extend every possible courtesy to the mediator(s).

The mediator should carefully avoid any appearance of disagreement with or criticism of a fellow mediator. Discussions as to what positions and actions mediators should take in particular cases should be carried on solely between or among the mediators.