

MAINE ASSOCIATION OF MEDIATORS

OMBUDS PROCESS

10/11/2012

I. Purpose and Definitions:

A. **Purposes.**

1. To provide members of the Maine Association of Mediators (MAM) and non-member practitioners with a voluntary means of addressing issues raised by consumers who are dissatisfied with a practitioner's services as a mediator or facilitator. MAM members are required to participate in the process if the need arises.
2. To provide an easily accessible, low-cost means for dissatisfied consumers of private mediation and facilitation services to resolve concerns.

B. **Applicability.** This process does not apply to mediation and facilitation that is conducted under the auspices or administration of a program or agency that has established its own procedures for resolution of complaints or grievances concerning mediators or facilitators, unless specially requested by that program, agency or the parties.

C. **Definitions.**

1. "Practitioner" means a mediator or facilitator who is the subject of a particular consumer's dissatisfaction;
2. "Consumer" means a person, or legal entity, who has participated in a mediation or facilitation process;
3. "Ombudsperson" means an impartial neutral who will assist a consumer in exploring possible means to address dissatisfaction with the Practitioner who

provided such services to the consumer. The Ombudsperson is an advocate for problem-solving but not an advocate for the Consumer or Practitioner.

II. Description of Ombuds Process:

A. **Intake.**

1. A Consumer who contacts MAM or a MAM member will be referred to the President of MAM. The President shall contact the Consumer, discuss the Consumer's concerns, offer an overview of the ombuds process and offer to make the ombuds process available, if appropriate.
2. If the Consumer raises issues about a mediation or facilitation process conducted under the auspices of, or administered by, a program or agency that has established its own procedures for the resolution of complaints or grievances, the President will refer the Consumer to that program or agency unless the program director or agency so requests and/or the Consumer and Practitioner agree to participate.
3. If the Consumer raises issues about a Practitioner's performance while a mediation or facilitation is still on-going, the President will inform the Consumer that use of an ombuds process could affect the process and impair the Practitioner's neutrality.
4. If the Consumer is offered the opportunity to participate in an ombuds process but does not elect to participate, the President will ask the Consumer for consent to advise the Practitioner of the Consumer's contact with the President, including the identity of the Consumer and the Consumer's concerns; if the Consumer consents, the President will so advise the Practitioner.

B. Appointment of Ombudsperson. If the Consumer requests to participate in the ombuds process, the President will inform the Practitioner of the issues raised. The President will appoint an ombuds person who is mutually acceptable to the Consumer and the Practitioner to assist in seeking to resolve the matter.

C. Ombuds Process.

1. The Ombudsperson will contact the Consumer, listen to the issues and concerns and confirm that the Consumer wishes to participate in the ombuds process.
2. If the Consumer wishes to pursue the ombuds process, the Ombudsperson will contact the Practitioner, explain the nature of the issues raised, and offer to facilitate discussions between the Consumer and Practitioner.
3. The Ombudsperson will sign a mutually agreeable confidentiality agreement with the Consumer and Practitioner.
4. The Ombudsperson will facilitate communications between the Consumer and the Practitioner, assist in exploring and understanding their respective points of view, assist in the mutual resolution of outstanding issues and the setting up of a mediation, if desired.

III. Selection of Ombudsperson:

A. Pool of Ombudspersons: The nominating Committee of MAM will annually nominate one to three persons to offer their services to MAM as Ombudspersons for a one year term. Ombudspersons will be appointed by the Board of Governors. Ombudspersons may, but are not required to be, a member of the Board of Governors and may serve for more than one year.

- B. **Appointment by President:** The Ombudsperson for any requested referral will be selected by the President of MAM in consultation with the Consumer and Practitioner.
 - C. **Appointment Outside the Pool:** The President may appoint an Ombudsperson from beyond the existing available pool of appointed Ombudspersons if deemed necessary and appropriate by the President.
- IV. Role of Ombudsperson:
- A. **Activities Permitted:** The Ombudsperson shall listen to the Consumer's concerns, explain the ombuds process, and, if appropriate, educate the Consumer about mediation and facilitation processes. The Ombudsperson shall also contact the Practitioner, explain the nature of the dissatisfaction expressed, explore options for resolving the issues raised by the Consumer and the Practitioner and assist in setting up a conference or mediation between the Consumer and the Practitioner if desired.
 - B. **Activities Not Permitted:** The Ombudsperson may not provide the Consumer with an evaluation of the Practitioner's performance or serve as a paid mediator or facilitator between the Consumer and the Practitioner in the dispute in which the Practitioner's performance is at issue. The Ombudsperson may, but shall not be required to, conduct a mediation with the Consumer and Practitioner without compensation.
- V. Confidentiality of Process:
- A. **Confidentiality Agreement:** The ombuds process, per Article II(C)(3), cannot go forward without a signed confidentiality agreement among the President, Consumer, Practitioner and Ombudsperson.

B. **Scope:** The confidentiality agreement must protect the following from disclosure to any person or entity not participating in the ombuds process or related mediation, except as provided in subsection C of this Section V:

1. Information concerning the mediation or facilitation at issue;
2. Communications between or among the Consumer, Practitioner, President, Practitioner and Ombudsperson regarding the Consumer's issues at any time during any stage of the intake or ombuds process whether or not an ombuds process occurs or is completed. The obligation of confidentiality shall bind the President and Ombudsperson regardless of whether an ombuds process is undertaken.
3. Information from any mediation or facilitation process undertaken as part of, or as a consequence of, the ombuds process.

C. **Exceptions:** Exceptions may be made only if:

1. The Consumer, Practitioner and Ombudsperson all agree to disclosure;
2. Disclosure is necessary to prevent physical harm to a person, including child abuse or elder abuse; or,
3. Disclosure is required by statute, court order or court rule.

D. **Records:** No written records will be kept by MAM, the President or Ombudspersons about Consumer contacts to the President, issues referred to the ombuds process, the ombuds process conducted or any subsequent mediation of issues raised in an ombuds process, except that,

1. The signed confidentiality agreements may be kept; and,

2. Statistical data about the number of complaints received and the number of ombuds processes conducted may be reported.

Nothing contained herein shall prohibit the Ombudsperson from referring any generic policy issue raised in the ombuds process to the President for discussion and possible improvement, or clarification, of the standards of conduct applicable to MAM members.