

# MEDIATION: *BASIC SKILLS TRAINING*

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Class One:

**Principles of Mediation**  
**Nature of Conflict**  
**Ethical Standards of Mediation**



*“We create positive change”*

# *Icebreaker*

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Break into 6 pairs

Talk for 3 minutes

Come back to the main room and introduce your partner

# *Class One Goals*

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- Discuss Cape Mediation's philosophy and approach to mediation
- Introduction to the Mediation Process and Steps
- Explore conflict and how to frame it as an opportunity for change

# *Class One Objectives*

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- Learn the definitions of mediation and conflict
- Describe the principles and values of mediation
- Develop an understanding of alternative dispute resolutions (ADR)
- Review our mediation model
- Describe the benefits and drawbacks of conflict
- Identify the steps in negative and positive conflict spirals
- Assess your own conflict styles
- Demonstrate creating a positive communication climate
- Describe ethical standards
- Develop an understanding of when not to mediate

# *What is mediation?*

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MEDIATION is a **voluntary**, **confidential** and **informal** dispute resolution process in which a **neutral** person, with no power to impose a resolution, helps the parties to a dispute try to reach a **mutually acceptable** settlement of their dispute.

# *The Role of the Mediator*

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Provide chance to be heard

Focus on problem-solving

Move to interests rather than positions

Clarify priorities

# *A Mediator's Responsibilities*

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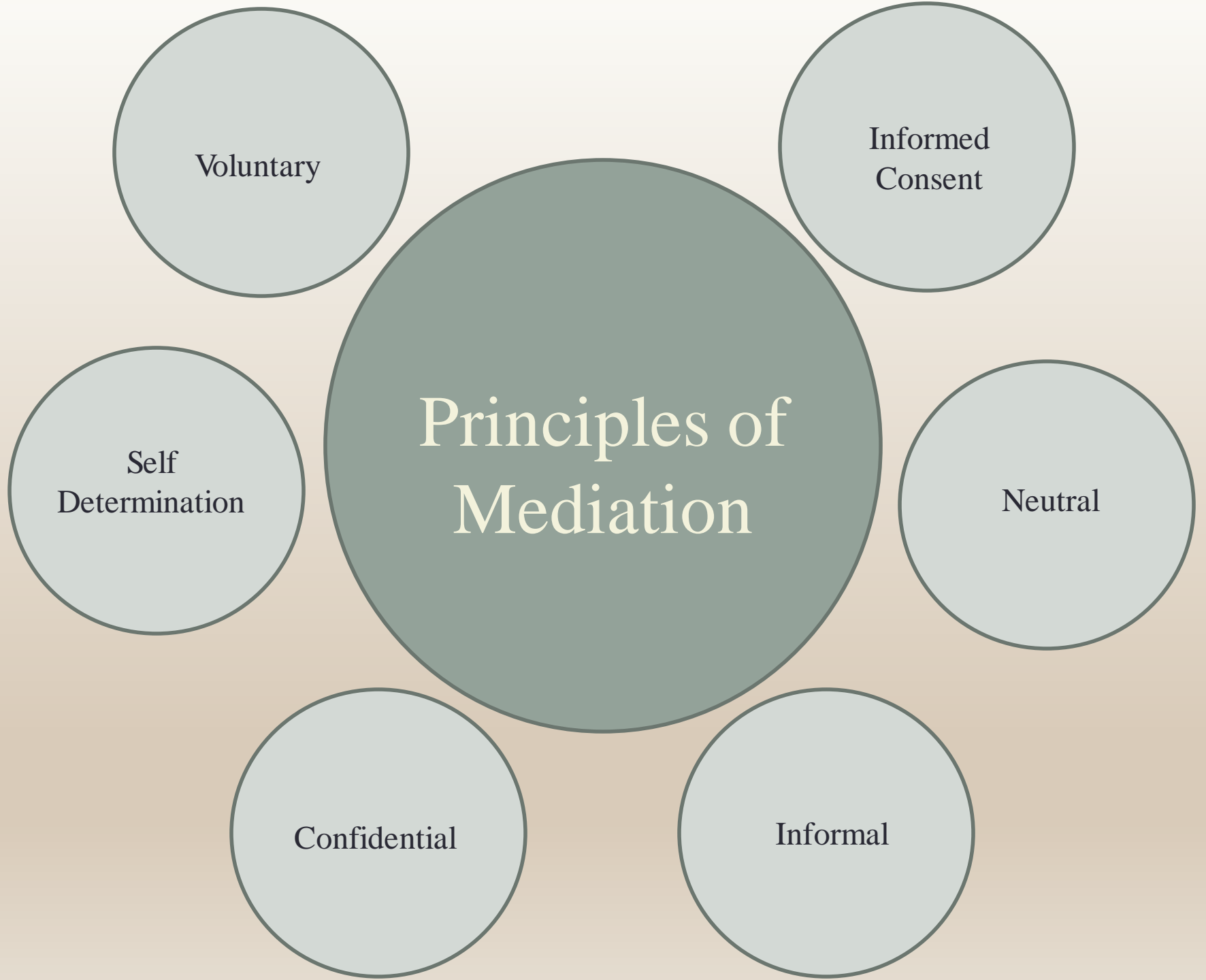
Assists parties in making good decisions

Follows and controls the process

Gives power to the parties involved

Does not impose a solution

Ensures the resolution is mutually acceptable



Voluntary

Informed  
Consent

Principles of  
Mediation

Neutral

Self  
Determination

Informal

Confidential



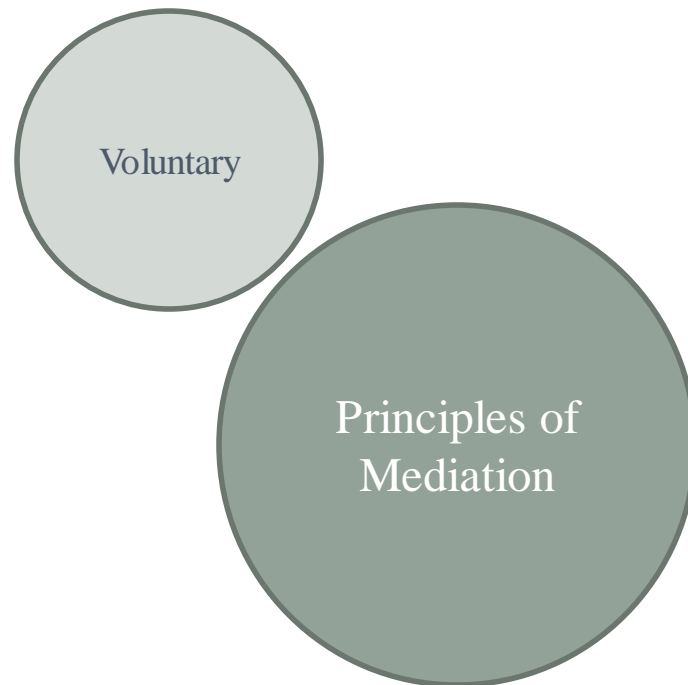
# *What Does it Mean to be Voluntary?*

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Parties agree to participate

Have the right to withdraw

They are not pressured



# *What Does “Informed Consent” Mean?*

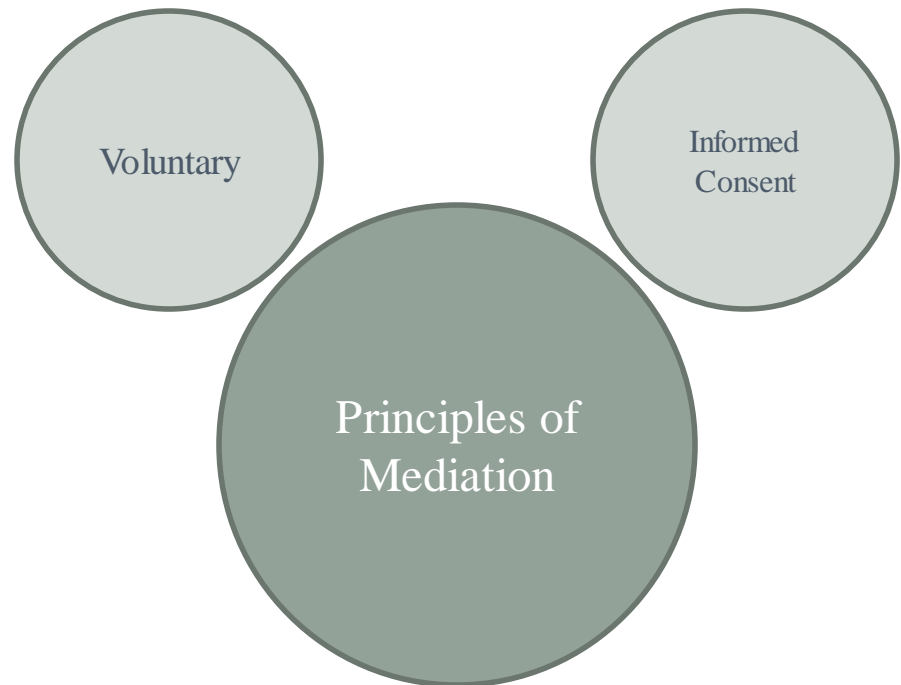
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Parties are informed about:

- the process
- the dispute
- their rights, options, and resources

And to participate have:

- the authority (legal)
- and capacity (mental)



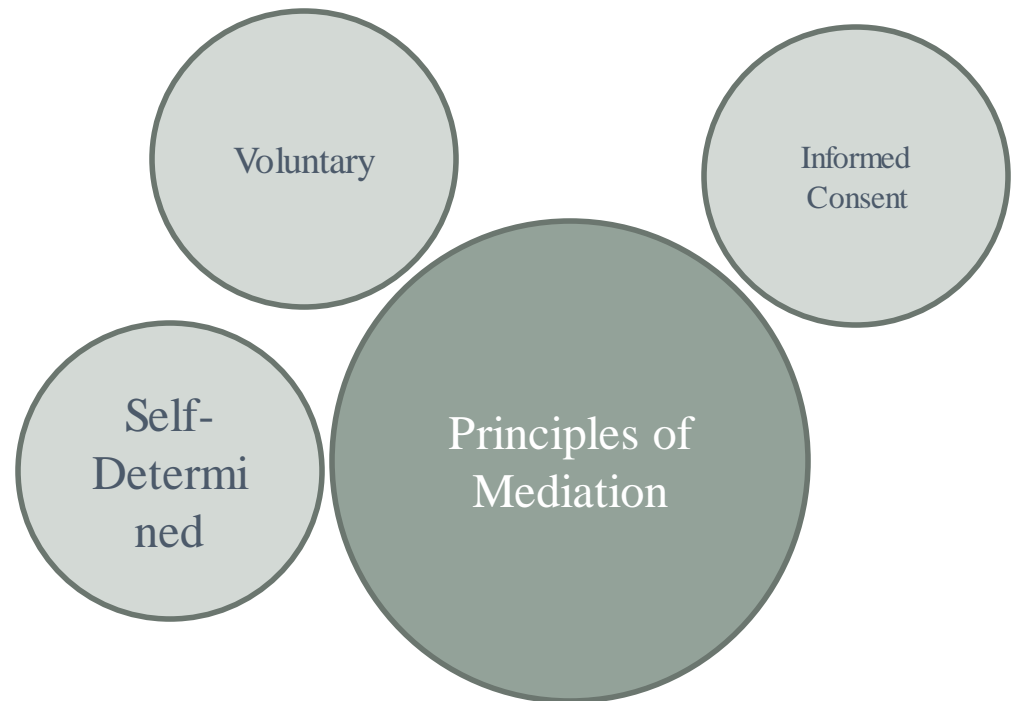
# *What Does Self Determination Mean?*

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Parties have:

- the right
- the ability

to solve their own disputes

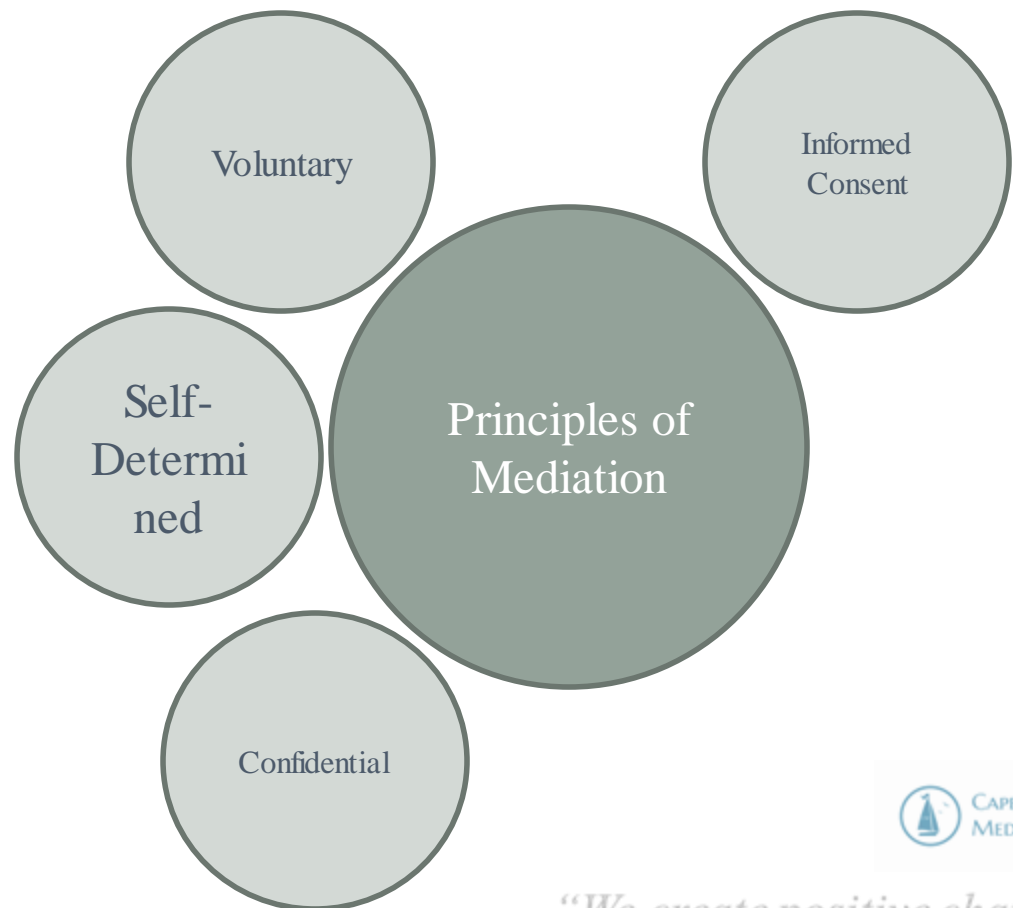


# *What it Means to be Confidential...*

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Mediators won't:

- Discuss out of session
- Repeat private information to other parties



# *To be Informal Means...*

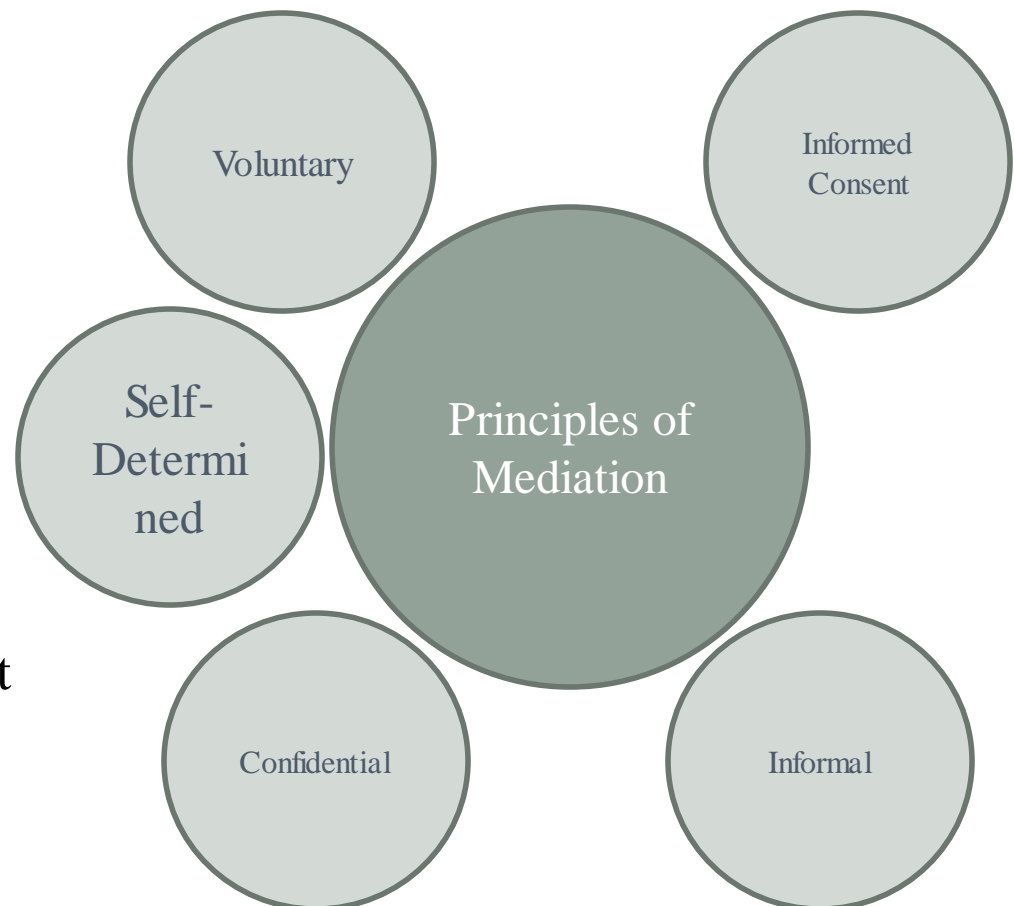
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Casual

Flexible

Relaxed

Non-binding until the agreement



# *What it Means to be Neutral...*

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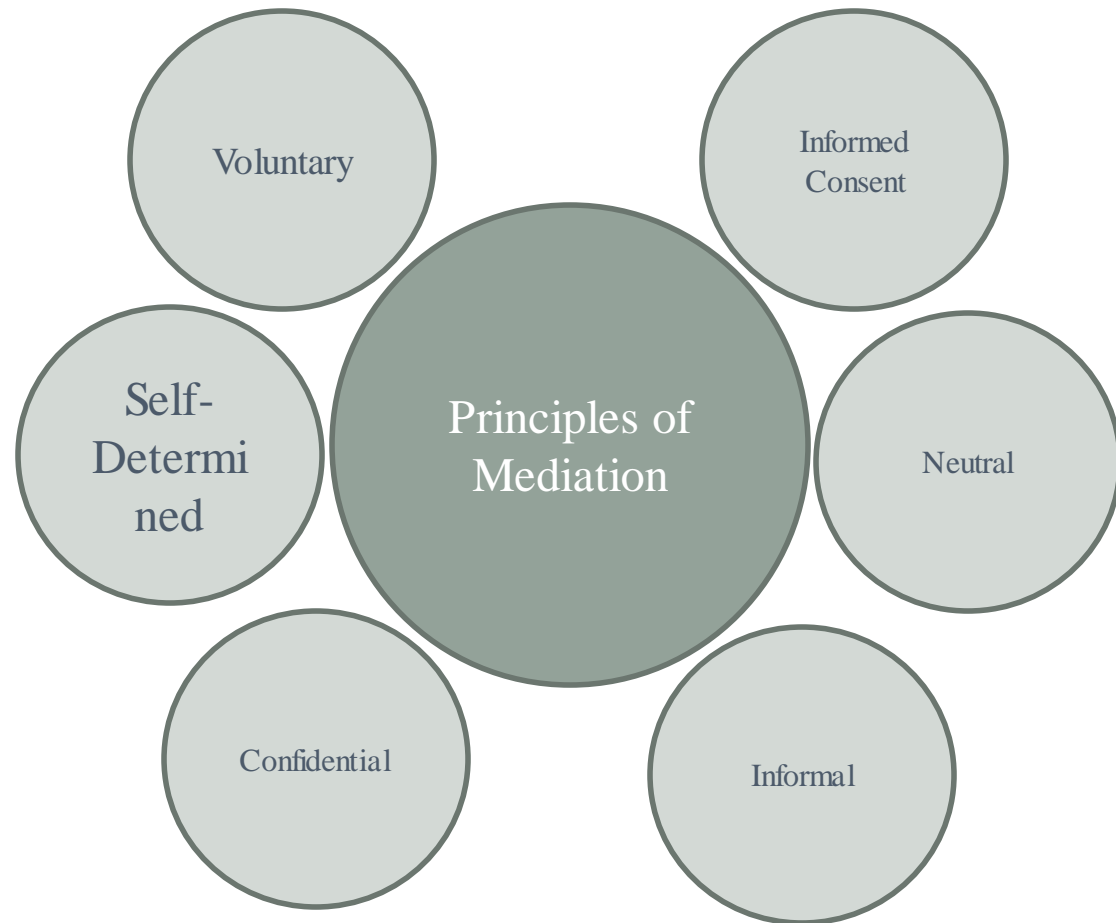
NO favoritism

NO conflict of interest

NO personal stake

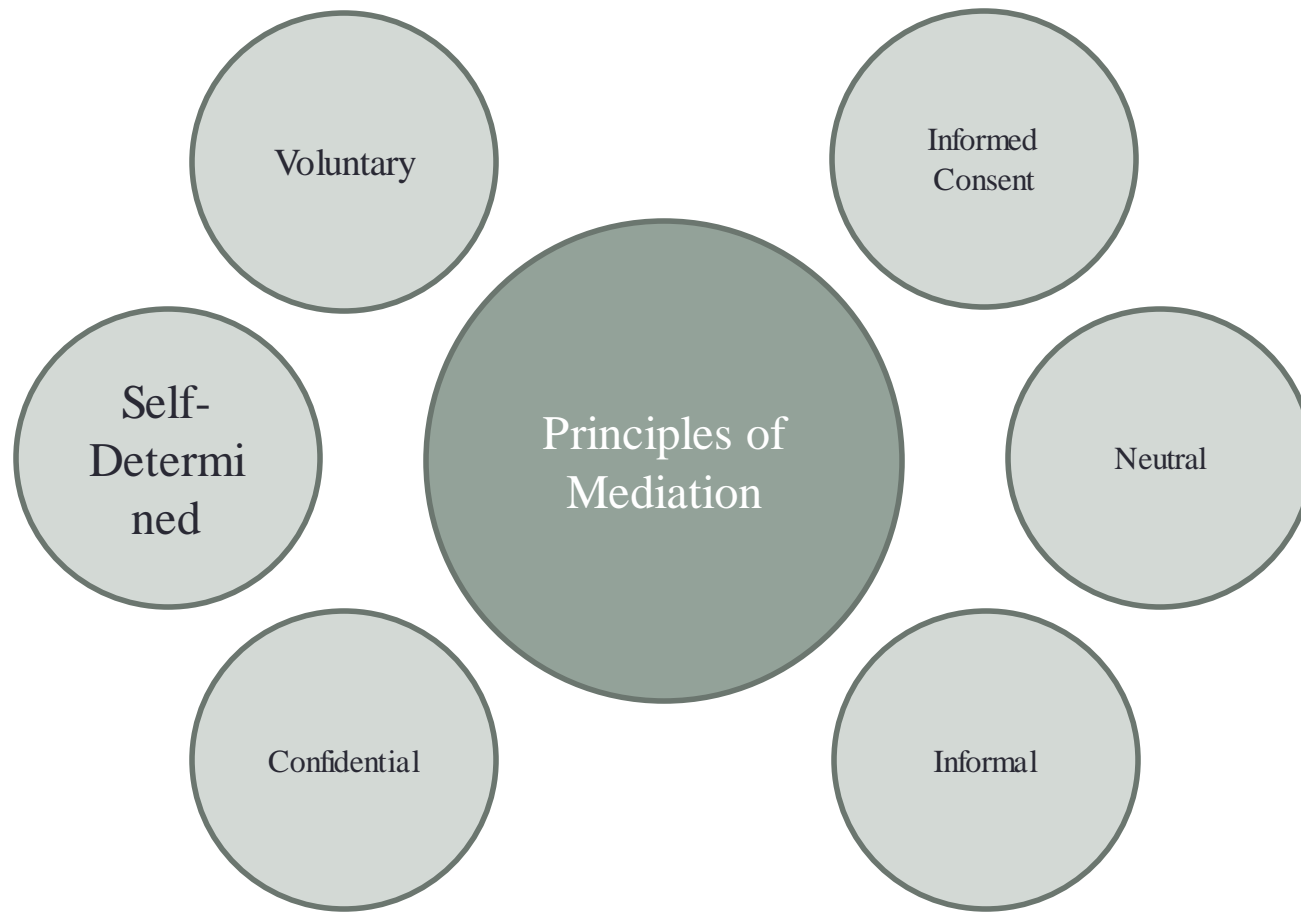
NO bias in word or in deed

**applies to both the parties  
and the subject matter**



# *Any Questions?*

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# *Why is Mediation a Valuable Tool?*

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Mediation allows for:

- Creative solutions
- Win-win opportunities
- Sustainable agreements
- A solution the parties have created
- Improved communication
- Improved relationships



*"We create positive change"*



# *Mediation Value!*

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And mediation:

- Saves time
- Saves money
- Is constructive
- Can shift the negative to positive



*“We create positive change”*

# *Mediation Scenario*

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## **Key Points**

- Communication Improvement
- Relationship Improvement

There is no downside - it is time well spent  
- even if there is no agreement.

# *Alternative Dispute Resolutions...*

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Some examples include:

- Negotiation
- Collaborative law
- Arbitration

Mediation is also an alternative dispute resolution process.



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# *Mediation is Not...*

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Arbitration

Conciliation

Facilitation

Mini-Trial

Summary Jury Trial

Case Evaluation

Negotiation



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# *Ask Yourself?*

- What are the principles of mediation?
- Why are these important to the process?

# The Lily Pads of Mediation...



## Step one:

Introduction -  
welcome and  
explain process.

*First Mediator's Break - time  
to make a plan.*

## Step Two:

First joint session  
- ask each party  
what happened.

## Step Three:

First private  
sessions - ask  
each individual  
party what this  
has been like  
for them

*Second Mediator's Break -  
time to make a plan.*



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# *The Lily Pads of Mediation: (continued...)*

---



**Step Four:**  
Later private sessions -transmit information, what do you want to do?



**Step Five:**  
Last Joint Session  
-bring everyone together, decide what to do.



*Final Mediator's Break - time to make a plan.*




**Step Six:**  
Final Step - Write an agreement

# *The Lily Pads of Mediation: (continued...)*

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# *Mediation Steps*

## **Steps**

1. Introduction
2. First Joint Session
3. First Private Session
4. Later Private Sessions
5. Last Joint Session
6. Write Agreement



# *Mediation Steps*

## **Process**

1. What happened?
2. What has this been like?
3. What do you want to do?
4. Here's what you agree to:

# *Mediation Steps*

## **Process**

- A mediator is **educated** by the parties
- A mediator manages the process not the **outcome**
- **Stick** to the principles

# *Defining Conflict...*

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"to be different, opposed, or contradictory : to fail to be in agreement or accord"

Merriam Webster Dictionary



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# *Elements of Conflict...*

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Expressed struggle

Perception of incompatible goals

Perception of scarce resources

Interference from the other party

Interdependence

# *Types of Conflict...*

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Content

Value

Ego and Identity

Pseudo

# *Dimensions*

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1. Who & How
2. What?
3. Relationships
4. History
5. Process

# Reflection and Discussion:

## *Understanding your own approach to conflict...*

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Think about a conflict, argument or fight in which you were directly involved.

- What happened?
- What did you feel?
- How did you behave?
- Did you try to avoid?
- Was it a kitchen sink fight?
- How was your listening?
- What was your language like?
- How about your tone?
- What was the result?

# Reflection and Discussion:

## *Understanding your own approach to conflict...*

---

Now consider what this situation would have been like if *a neutral third party* had been involved. How would the following have changed?

Language choices

Tone of voice

Your ability to listen

What could a neutral party have done to improve this conflict?



# *Negative Conflict Spirals:*

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Disagreements can spiral out of control as parties:

Focus on the person

Behave increasingly negatively

React with passive aggression

Stop trusting

Become hostile



# *Positive Communication Spirals:*

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Disagreements can spiral out of control as parties:

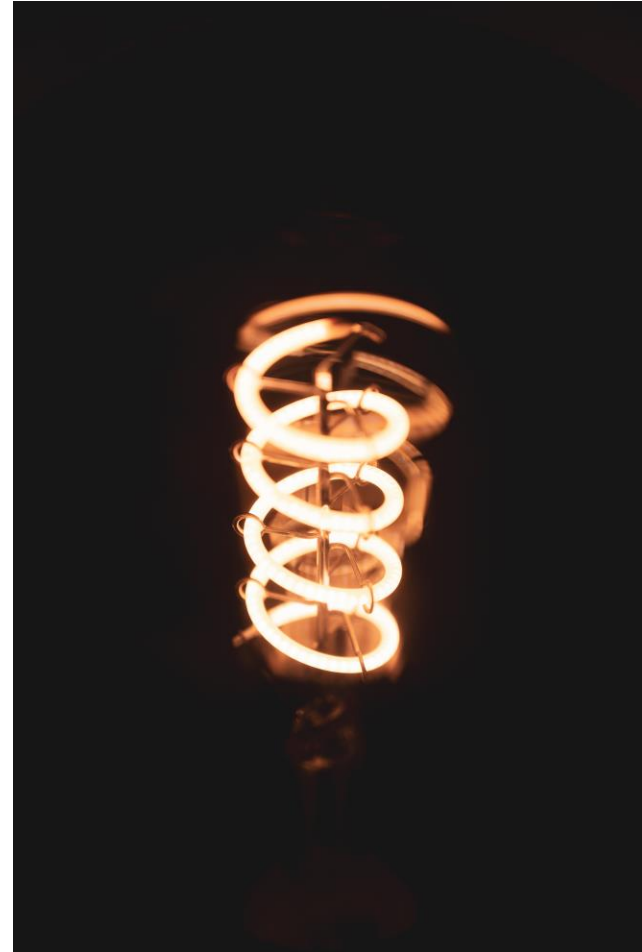
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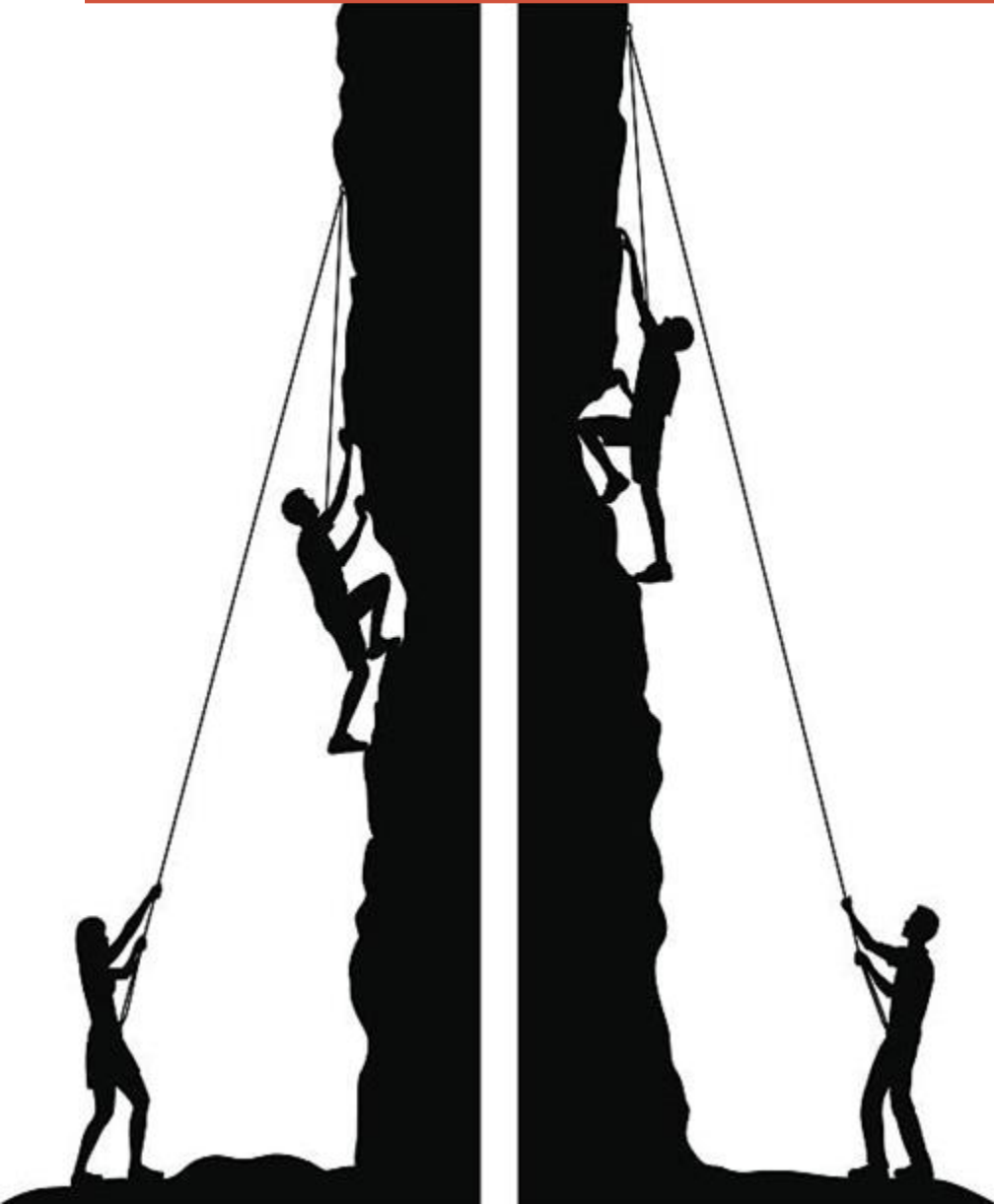
Stop trusting

Become hostile



# *Positive Communication Climbs*

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Mediation allows the parties to create a positive communication climb by:

- Opportunity to be heard
- Summarizing
- Common ground
- Create solutions

# Tools to Combat *Negative Communication Spirals:*

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Acknowledge what is said

Stay Objective

Recognize non-verbal cues that indicate feelings

Understand the content

Respect the feelings

Communicate the Understanding

# The Cape Mediation Problem Solving Model

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**What happened?**

**What has this been like for you?**

**What do you want to do about it?**



# *Mediation moves parties past conflict with...*

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Increased clarity and self-confidence

A greater understanding and respect between individuals

Improved communication between participants

An opportunity for a positive shift in relationships

Movement towards solutions

Creative and sustainable conflict resolution



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# *Shifts in Thinking with Mediation...*

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## Before

- Unsettled →
- Confused →
- Fearful →
- Disorganized →
- Self protective →
- Defensive →
- Suspicious →
- Self-centered →

## After

# *Shifts in Thinking with Mediation...*

---

## Before

- Unsettled →
- Confused →
- Fearful →
- Disorganized →
- Self protective →
- Defensive →
- Suspicious →
- Self-centered →

## After

- Calmer
- Clearer
- More confident
- Focused
- More attentive to others
- More open
- More trusting
- Able to see other perspectives



# *Setting the Stage for Conflict De-escalation...*

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With the first meeting and introductions, the mediators can:

Build trust

Set the tone

Manage the process



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# *The Basics of Ethics...*

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## ➤ Moral principles

- Right and wrong.
- Driven by our value system.



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# *Ethical Standards for Mediators...*

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- Why do we have ethical standards?
  - Eight ethical standards for neutrals providing court connected dispute resolution services
  - Critical in any mediation context
  - Promote *high quality service* and *public confidence*
  - Whether your certification requires adherence to ethical standards or not,  
these are good rules to follow
- Ethical standards are the key to the effective practice of mediation.



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# *Ethical Topics for Mediators*

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- The *eight* topics of ethical standards for mediators:
  - Impartiality
  - Informed consent
  - Fees
  - Conflict of Interest
  - Responsibility to Non-Participating Parties
  - Advertising, soliciting or other communications by neutral parties
  - Confidentiality
  - Withdrawal

# *i. Impartiality...*

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## ➤ Objective Criteria

- As mediators, we act as neutrals.
- Self Determination
- Neutral



## *ii. Informed Consent...*

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- ***Mediators*** must understand
  - Comprehension challenges.
  - Need to ensure that the parties are not coerced.
  - Need to consider independent counsel.
- ***Parties*** must understand
  - The process.
  - That mediation is consensual.
  - The terms of any agreement.
  - Their consent to the agreement.
  - Their right to withdraw at any time.
  - Self Determination
  - Voluntary



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## *iii. Fees...*

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- When and how

## *iv. Conflict of Interest...*

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- Conflict of interest is another enemy of neutrality.
  - Personal interests – could compromise his or her judgment, decisions, or actions.





# *Conflict of Interest...*

*(continued)*

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Must disclose all actual and potential conflicts of interest

Neutral



## *v. Responsibility to Non-Participating Parties...*

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- Where appropriate- encourage parties to consider the interests of persons not represented in the process.
- This is very important when children or people not capable of protecting their own interests are involved.



## *vi. Advertising or Soliciting by Neutral...*

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- When marketing their services, mediators and neutrals must remember that:
  - i. Truthful in advertising or other communications
  - ii. Do not make claims of specific results, benefits or promises.

## *vii. Confidentiality...*

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- What are the exceptions to confidentiality?
- Why is confidentiality important?
- A mediator must inform the parties of limits and exceptions to confidentiality that include the threat to hurt oneself or others.
- Always maintain confidentiality unless:
  - i. Discussing with staff for supervisory purposes within a circle of confidentiality.
  - ii. Info is used for research, training purposes with parties' consent and after removing identifying information.

## viii. Withdrawal...

### *Should I Stay or Should I go?*

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- There will be times when a mediator may withdraw from a case.
- There are times when a mediator must withdraw from a case.

➤ A mediator **must** withdraw

Ethical standards

Safety

Is unable to give effective service

What do you think?



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# *Recusal...*

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- Recusal means to *remove oneself* from participation to avoid a conflict of interest or lack of impartiality
  - i. When *confidentiality* becomes challenging, mediators *must* recuse themselves.
  - ii. Withdrawal or recusal must be accomplished in a manner which, to the extent possible, does not prejudice the rights or jeopardize the safety of the parties.

# *Ethical Reasons for Recusal*

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- Impartiality
- Conflict of Interest

# *Mediator's Ethical Principles...*

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- Integrity
- Accessibility
- Diversity of Mediators
- Qualified Neutrals
- Accessibility/Quality go hand in hand



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# *Ethical Challenges and Reasons for Recusal...*

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➤ I'm going to give you some different scenarios/hypothetical situations, and ask yourselves:

- i. Is this an ethical challenge?
- ii. If so, what is the appropriate response?
- iii. Is it sufficient to disclose and seek consent?
- iv. Is it significant enough to withdraw?
- v. If you think you should withdraw, how will you do that?



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