

# **Victim-Offender Mediation Association**

## **Recommended Ethical Guidelines**

### ***Mission Statement:***

The mission of VOMA is to provide inspiration, leadership and information-sharing in the development and support of various models of justice which create opportunities for dialogue between victims, offenders and their communities for the purpose of healing and restoration.

### **I. Preamble**

Victim-Offender Mediation (also known as Victim-Offender Dialogue and/or conferencing) is the process of bringing together the victim of a crime and his or her offender in a safe, controlled setting that is assisted by a trained mediator. Using mediation skills and processes of voluntariness, neutrality, confidentiality, problem-solving, and self-determination, the mediator facilitates a discussion between the parties and provides a structure for the opportunity to allow grieving and healing. It should be understood that the process of mediated dialogue is not necessarily a resolution of conflict but may be a process of healing. The mediator addresses the needs of each party and helps them communicate and explore options. The purposes are to provide:

1. A restorative conflict resolution process which actively involves victim and offender in an effort to repair the emotional and material harm caused by a crime.
2. An opportunity for victim and offender to discuss the offense, get answers to their questions, express their feelings, and move toward restoration and healing to the extent possible.
3. An opportunity for victim and offender to develop a mutually acceptable plan that addresses the harm caused by the crime.\*

The underlying principles of Victim-Offender Mediation include:

1. Human beings possess untapped inner resources that, under the right circumstances, can be accessed and utilized to address issues and resolve problems of importance to them.
2. Appropriate structure (e.g. neutral third party facilitation, procedural guide-lines, ground rules, intentional seating plan) can neutralize status and power, and provide an environment conducive to meaningful dialogue, even in emotionally intense contexts.
3. The use of specific techniques and strategies by the mediator must serve the larger goals of creating a safe, respectful environment in which a facilitated mediated dialogue can occur.
4. The “personal” is powerful - genuine stories of people’s experience can be evocative of empathy, insight, and learning. The telling and hearing of these stories can be empowering, healing, and transformative for both storyteller and listener.

5. The mediator's "presence" plays an important role in facilitating a genuine dialogue in which the parties are actively engaged and doing most of the talking. "Presence" may arise through the mediator's non-verbal and verbal communication, tone of voice, openness, empathy, and authentic connectedness with each party and through relationship with both parties established in pre-mediation preparation.
6. Presenting choices to the parties whenever possible (i.e. when to meet, where to meet, etc.) maximizes their opportunities to feel empowered by the process.
7. The role of the mediator is critical for the purpose of mediation to be realized. Because direct conversation between the parties is at the core of what may be experienced by the parties as transformative, it is important for mediators "to get out of the way" when the parties are engaged in meaningful dialogue. Mediators should use caution in intervening too frequently.
8. Individual differences and conflicts can elicit creativity and a sense of possibilities otherwise unknown. The mediation process may be adapted to meet more effectively the needs of the particular parties so that they feel safe and comfortable enough to engage in a genuine dialogue. Continual attention needs to be paid to differences in communication style and meaning.
9. Discovering underlying information, needs, and interests can enhance a collaborative effort and encourage more satisfying results.
10. Well-written agreements guide and focus behavior, thereby eliciting and enhancing results. Written agreements, however, are secondary in importance to the dialogue between the victim and offender about the crime and its impact on their lives. Some mediated dialogue sessions may satisfy the needs of the parties but not result in a written agreement.\*

## **II. The Process**

Victim-Offender Mediation/Dialogue should include the following:

1. Training for Mediators in Victim Sensitivity\* and Victim Issues
2. Training for Mediators in Offender Sensitivity and Offender Issues
3. Careful Screening of Cases\*
  - a) For appropriateness as to: Victim and Offender ability and willingness to participate
  - b) Safety for both victim and offender
4. Use of Humanistic/Transformative Model of Mediation
  - a) Perspective of the Mediator
  - b) Relaxed, Positive Atmosphere

- c) Primary focus on dialogue rather than settlement
  - d) Guidelines
  - e) Feedback from Participants
  - f) Option of Follow-up Session\*
5. The Mediator has a Duty of Disclosure
- a) The mediator shall disclose to the participants biases or previous relationships with either party, friends, or families.
  - b) The mediator's education, training, and experience to mediate should be described if requested.
6. Pre-Mediation Session with Offender, Conducted in Person by Mediator
- a) Offender safety
  - b) Listen and encourage expression of feelings
  - c) Provide information and answer questions
    - About the mediation program
    - About oneself as mediator
    - About the mediation process
    - About the judicial system
    - About resources available to them
  - c) Discuss Risks/Benefits and Assist Offender in Decision-making, including freedom of both victim and offender to withdraw from process at any time.
    - Offender Choice to Participate
    - Offender Support\*
7. Careful Extensive in-Person Offender Preparation by Mediator
- a) Reality-Testing Offender Expectations
  - b) Assessment of Losses and Needs
  - c) Restitution Possibilities\*
8. Pre-Mediation Session with Victim, Conducted in Person by Mediator
- a) Victim Safety
    - Physical safety
    - Ventilation and validation of feelings
    - Clarification of needs and issues
    - Use of victim-sensitive language by the mediator
  - b) Listen and encourage expression of feelings
  - c) Provide information and answer questions
    - About the mediation program
    - About oneself as mediator
    - About the mediation process
    - About the judicial system
    - About victims' rights
    - About resources available to them
    - About the offender - keeping in mind the issues of confidentiality and neutrality\*

- d) Discuss Risks/Benefits and Assist Victim in Decision-Making, including freedom of both victim and offender to withdraw from process at any time.\*
- e) Victim Choice
  - Participation
  - Support
  - Schedule for mediation session
  - Mediation site
  - Seating
  - The option to speak first
  - Termination of session
  - The option to ask for restitution\*

9. Careful, Extensive in Person Victim Preparation by Mediator

- a) Reality Testing Victim Expectations
- b) Assessment of Losses and Needs
- c) Restitution Possibilities\*

10. Follow-up after the Mediation Session

- a) Completion of Agreement
- b) Notification of Victim Regarding Status of Agreement
- c) Scheduling Additional Sessions if Needed
- d) Phone Contact with Parties
- e) Evaluation\*

### **III. Procedures**

The mediator shall reach an understanding with the participants regarding the procedures to be followed in mediation. These include but are not limited to the practice as to separate meetings between a participant and the mediator, confidentiality, use of legal services, the involvement of additional parties, and conditions under which mediation may be terminated.

- 1. Mutual Duties and Responsibilities. The mediator and the participants shall agree upon the duties and responsibilities that each is accepting in the mediation process. This may be a written or verbal agreement.

### **IV. Impartiality and Neutrality**

1. Impartiality. The mediator is obligated to maintain impartiality toward all participants. Impartiality means freedom from favoritism or bias, either in word or action. Impartiality implies a commitment to aid all participants, as opposed to a single individual, in reaching a mutually satisfactory agreement and/or having a mutually satisfactory dialogue. Impartiality means that a mediator will not play either an adversarial or advocacy role. The mediator has a responsibility to maintain impartiality while raising questions for the parties to consider the feasibility of proposed options for settlement and dialogue.

- 2. Neutrality. Neutrality refers to the relationship that the mediator has with the disputing parties. If the mediator feels, or any one of the participants states, that the

mediator's background or personal experiences would prejudice the mediator's performance, the mediator should withdraw from the mediation unless all agree to proceed.

3. **Prior Relationships.** A mediator's actual or perceived impartiality may be compromised by social or professional relationships with one of the participants at any point in time. The mediator shall not proceed if previous legal or counseling services have been provided to one of the participants. If such services have been provided to both participants, mediation shall not proceed unless the prior relationship has been discussed, the role of the mediator made distinct from the earlier relationship, and the participants given the opportunity to choose freely to proceed.

4. **Relationship to Participants.** The mediator should be aware that post-mediation professional or social relationships may compromise the mediator's continued availability as a neutral third party.

5. **Conflict of Interest.** A mediator should disclose any circumstance to the participants that might cause a conflict of interest.

## **V. Confidentiality and Exchange of Information**

1. **Confidentiality.** Confidentiality relates to the full and open disclosure necessary for the mediation process. A mediator shall foster the confidentiality of the process.

2. **Limits of Confidentiality.** The mediator shall inform the parties at the initial meeting of limitations on confidentiality, such as statutorily or judicially mandated reporting.

3. **Appearing in Court.** The mediator shall inform the parties of circumstances under which mediators may or not be compelled to testify in court, a law which varies according to state statute.

4. **Consequences of Disclosure of Facts Between Parties.** The mediator shall discuss with the participants the potential consequences of their disclosure of facts to each other during the mediation process.

5. **Release of Information.** The mediator shall inform the participants of any necessity to release the outcome of the mediation to the referring agency or court. When materials are used for research or training purposes, the mediator shall maintain confidentiality and render anonymous all identifying information.

6. **Caucus and Pre-mediation Sessions.** The mediator shall discuss policy regarding confidentiality for individual caucuses and pre-mediation sessions.

7. **Storage and Disposal of Records.** The mediator shall maintain confidentiality in the storage and disposal of records.

## **VI. Self-Determination**

1. Responsibilities of the Participants and the Mediator. The primary responsibility for the outcome and restitution agreement rests with the participants. The mediator's obligation is to assist the disputants in reaching an informed and voluntary settlement and/or to have an informed and voluntary dialogue. At no time, shall a mediator coerce a participant into making an agreement or participating in mediation. The mediator will, at no time, make a substantive decision for any participant.
2. Responsibility to Third Parties. The mediator has a responsibility to promote the participants' consideration of not only their own interests but also the interests of other persons likely to be affected by the agreement. The mediator also has a duty to assist participants to examine, apart from their own desires, the separate and unique needs of these other individuals. The participants shall be encouraged to seek outside professional consultation when appropriate or when they are otherwise unable to agree on the needs of any individual affected by the agreement.

## **VII. Professional Advice**

1. Independent Advice and Information. The mediator shall encourage the participants to obtain independent expert information and advice when such information is needed to reach an informed agreement or to protect the rights of a participant.
2. Providing Information. A mediator shall give information only in those areas where qualified by training or experience.
3. Independent Legal Counsel. When the mediation may affect legal rights or obligations, the mediator shall advise the participants to seek independent legal counsel prior to resolving the issues and in conjunction with formalizing an agreement.

## **VIII. Parties' Ability to Participate in Mediation**

1. Juveniles. The mediator shall obtain the consent of a parent or legal guardian for participation of a juvenile in a mediation.
2. Negotiating Process. The mediator has a duty to ensure balanced negotiations and should not permit manipulative or intimidating negotiation techniques. If, at any time, the mediator feels negotiations are not proceeding in good faith, the mediator should attempt to rectify the situation and, if necessary, suspend the session.
3. Psychological Factors. The mediator shall explore whether the participants are capable of participating in informed negotiations/dialogue. The mediator may postpone mediation and the agency may refer the parties to appropriate resources if necessary. In mediating violent crimes, the mediator may ask for consent to consult participants' spiritual or mental health advisors.

## **IX. Concluding Mediation**

1. Full Agreement. The mediator shall discuss with the participants the process for formalization, implementation, and fulfillment of any agreement. This process should include “reality testing” of the terms of the agreement with both victim and offender, as appropriate.
2. Restitution. If an agreement involves restitution, the mediator shall discuss when and how restitution will be made, including a plan for follow-up and monitoring of completion and also the consequences of failing to complete restitution.
3. Termination by Participants. The mediator shall inform the participants of their right to withdraw from mediation at any time and for any reason.
4. Termination by Mediator. If the mediator believes that participants are unable or unwilling to participate meaningfully or safely in the process or that a reasonable agreement/dialogue is unlikely, the mediator may suspend or terminate mediation and should encourage the parties to seek appropriate professional help.
5. Impasse. If the participants reach a final impasse, the mediator should not prolong unproductive discussions that would result in emotional and monetary costs to the participants.

## **X. Training and Education**

1. Training. A mediator shall acquire substantive knowledge and procedural skill in the area of Victim-Offender Mediation/Dialogue. This may include but is not limited to victim sensitivity, offender sensitivity, community resources, judicial procedure, the mediation process, mediation of violent crimes, and professional ethics.
2. Continuing Education. A mediator shall participate in continuing education and be personally responsible for ongoing professional growth.

## **XI. Costs and Fees**

Most Victim-Offender Mediation/Dialogue is currently being offered by Community Mediation Centers at no fee, due in part to offenders’ inability to pay and in part to not wanting to re-victimize victims. Many programs believe payment of fees for Victim-Offender Mediation can be a revictimization of victims and may affect mediator impartiality or the perception of mediator impartiality by participants. Victims should not feel betrayed if the offender pays. In the event that fees are charged, we recommend the following.

1. Explanation of Fees. The mediator shall explain the fees to be charged for a mediation and any related costs and shall agree with the participants on how the fees will be shared and the manner of payment.

2. Reasonable Fees. When setting fees, the mediator shall ensure that they are explicit, fair, reasonable, and commensurate with the service to be performed. Unearned fees should be promptly returned to the clients.
3. Contingent Fees. It is inappropriate for a mediator to charge a contingent fee or to base fees on the outcome of the mediation.
4. Referrals and Commissions. No commissions, rebates, or similar forms of remuneration shall be given or received for referral of clients for mediation services.

## **XII. Advertising**

A mediator shall make only accurate statements about the mediation process, its costs and benefits, and the mediator's qualifications.

## **XIII. Relationship with Other Professionals**

1. The Responsibility of the Mediator Toward Other Mediators/Relationship with Other Mediators. A mediator should not mediate any dispute that is being mediated by another mediator without first endeavoring to consult with the person or persons conducting the mediation.
2. Co-mediation. 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.
3. Relationship with Other Professionals. A mediator should respect the complementary relationship between mediation and legal, mental health, and other social services and should promote cooperation with other professionals.

## **XIV. Media Policy**

Contact with the media for purposes of education and information regarding the underlying philosophies of restorative justice and VOM is generally supported. However, programs are encouraged to use great caution and care in responding to media requests to be directly involved in cases, particularly live settings or the taping of cases for later viewing. As a general rule programs are encouraged to NOT allow direct media involvement in cases as they are being mediated, particularly without full and complete disclosure and input with and from the participants. Any involvement by the media in a case should still allow for the complete control and ownership of the recorded mediation by the local program. Any doubts or disputes regarding the control or distribution of such recordings should usually be resolved in excluding the media from direct involvement in the case. Decisions on these types of issues will necessarily be made on a case-by-case basis by the local program with the full and informed consent of the participants.<sup>1</sup>

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<sup>1</sup>Sections ending with an asterisk are borrowed or adapted with permission from: "Criteria For Victim-Sensitive Mediation & Dialogue With Offenders," by Mark S. Umbreit, Ph.D. and Jean Greenwood, M. Div., prepared for The Office for Victims of Crime, U.S. Department of Justice. (Edited 9/19/98)