

JERIMY L. KIRSCHNER, ESQ.
Nevada Bar No. 12012
JERIMY KIRSCHNER & ASSOCIATES, PLLC
5550 Painted Mirage Rd., Suite 320
Las Vegas, NV 89149
Telephone: (702) 563-4444
Fax: (702) 563-4445
jerimy@jkirschnerlaw.com

Attorney for Kyla Duckworth

Electronically Filed
May 17 2021 10:23 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

SUPREME COURT OF NEVADA

In the Matter of the

THE DUCKWORTH FAMILY TRUST

Dated March 12, 2015

Nevada Supreme Court Case # 82314
Case No.: P-20-103183-T
Dept: 26

MOTION TO RECUSE SETTLEMENT JUDGE

COMES NOW, Appellant Kyla Duckworth ("Appellant"), by and through her attorneys of record, Jeremy Kirschner & Associates, PLLC., and hereby submits this Motion to Recuse the Settlement Judge John Boyer ("Motion"). This Motion is based on the Memorandum of Points and Authorities attached hereto, any exhibits attached hereto, the papers and pleadings filed in this action and any oral argument that will be heard in this matter.

I. INTRODUCTION

Appellant reluctantly brings forth this Motion to recuse Settlement Judge John Boyer ("Judge Boyer"). A potential/actual conflict of interest was identified which Appellant has refused to waive, and Appellant's repeated requests for recusal have thus far fallen on deaf ears. As such, Appellant moves this Court to request Judge Boyer's recusal and to have this matter assigned to a new settlement judge.

II. STATEMENT OF FACTS

1. On March 22, 2021, the parties to this appeal held their mediation via Zoom with Judge Boyer. *See, Exhibit 1 – Declaration of Jerimy Kirschner, Esq.*

2. In meeting with Appellant and the undersigned, Judge Boyer disclosed that he had a long-standing relationship with a material witness in this matter who is adverse to Appellant, Diane Short, C.P.A. (“Ms. Short”). *Id.*

3. Ms. Short has been identified as a witness in both parties 16.1 disclosures. *Id.*

4. Ms. Short had already submitted an affidavit in the lower action which was adverse to Appellant. *Id.*

5. Judge Boyer disclosed that Ms. Short was his personal Certified Public Accountant (CPA), that he had shared office space with her in the past, and that he had known her for many years. *Id.*

6. Appellant’s counsel immediately brought up the conflict and argued that it was not waivable, but unfortunately it did not cause Judge Boyer to recuse. *Id.*

7. While mediation was ongoing, Appellant’s counsel sent an email directly to Judge Boyer:

I know you are in the other room with the Cary Duckworth and Tara Kassity, but I want to send this email before your return to our meeting room. During our discussions you described your long standing relationship with Diane Short, specifically that you have known her for years, she was your CPA and you previously shared office space together.

Diane Short has been listed as a potential witness in this action and has also submitted an affidavit in support of Cary Duckworth in his briefings. Diane Short is likely to be a critical and adverse witness against my client at trial and we would not be surprised if she was mentioned in Cary & Tara's settlement briefs.

We believe this creates a genuine conflict of interest that my client is unwilling to waive and we are requesting a new settlement judge be appointed.

1 *See, Exhibit 2 - Email to Judge Boyer (March 22, 2021 11:34AM)* (emphasis added)

2 8. Upon Judge Boyer returning to the room, the undersigned notified Judge Boyer of the
3 email and asked Judge Boyer if he had seen it. Judge Boyer stated at first that he had not seen it, and
4 as such the undersigned went over the content and again raised in person the issues of the conflict of
5 interest and asked that he terminate the mediation and recuse. Unfortunately, Judge Boyer was non-
6 responsive almost as if Appellant's counsel had not spoken at all. *Id.*

7
8 9. Upon Judge Boyer again leaving the room, a second email was sent, stating

9 Hello Judge Boyer,

10 Just to follow up on what we stated in our conference just now. We are
11 continuing to assert that there is a conflict of interest based on your
12 connection to Diane Short, a key witness that is adverse to my client in this
13 matter.

14 **We want to appear for mediation in good faith, but we believe this is a**
15 **non-waivable conflict and even if it were waivable Kyla Duckworth**
16 **does not waive the conflict. We are asking for mediation to be ceased**
17 **immediately and for a new mediator to be assigned. We do not want to**
18 **walk out of the mediation, but we are concerned about your attempts**
19 **to continue the mediation over my client's protest about your conflict.**

20 *See, Exhibit 2, at March 22, 2021 1:14PM* (emphasis added).

21 10. The mediation ended without resolution or recusal. *See, Exhibit 1.*

22 11. Judge Boyer did not respond to either email from Appellant's counsel. The emails
23 were sent to the same email account that Appellant's counsel has used to communicate with Judge
24 Boyer throughout mediation. *Id.*

25 12. Judge Boyer ordered a status conference on the mediation be held on May 5, 2021.

26 13. In the intervening time, Respondent Cary Duckworth produced an accounting
27 document generated by Ms. Short which contained unfounded allegations of inappropriate transfers
28 against Appellant. *Id.*

14. At the May 5, 2021 status conference, Appellant's counsel again raised the conflict and sought recusal, to which Judge Boyer was once again non-responsive. *Id.*

15. Judge Boyer again sought to continue the mediation to a later date. *Id.*

16. Appellant now files this Motion seeking reassignment of this matter to a new settlement judge.

III. LEGAL ARGUMENT

The Code of Conduct For Supreme Court Settlement Judges adopted by Order of this Court on March 10, 2006 states that:

A settlement judge shall avoid a conflict of interest or the appearance of a conflict of interest. A conflict of interest can arise from involvement by a settlement judge with the subject matter of the dispute or from any relationship between a settlement judge and any mediation participant, whether past or present, personal or professional, that reasonably raises a question of a settlement judge's impartiality.

See, Exhibit 3 – March 10, 2006 Order, Section III (A).

if a settlement judge's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, the settlement judge shall decline to proceed with the case regardless of the expressed desire or agreement of the parties to the contrary and request the program administrator to assign the case to another settlement judge.

Id. at Section III (F).

Appellant understands the gravity of her request and does so reluctantly. While Judge Boyer appropriately disclosed the potential conflict during the mediation, so far he has continued on in a role in which there is an actual conflict of interest. The nexus of Ms. Short to this action and the adverse role as a material witness creates a conflict and should see this matter assigned to a new settlement judge. Appellant can have no faith in the mediation process when a material adverse witness is also the CPA for the settlement judge.

//

1 **IV. CONCLUSION**

2 Appellant respectfully requests that this matter be assigned to a new settlement judge to
3 ensure fail

4
5
6 DATED this 17th day of May 2021

7 JERIMY KIRSCHNER & ASSOCIATES, PLLC

8 /s/Jerimy L. Kirschner, Esq.
9 JERIMY L. KIRSCHNER, ESQ.
10 Nevada Bar No. 12012
11 5550 Painted Mirage Rd., Suite 320
12 Las Vegas, NV 89149
13 *Attorney for Appellant*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Jerimy Kirschner & Associates, PLLC, and on May 17, 2021, I caused a copy of the foregoing **MOTION TO RECUSE SETTLEMENT JUDGE** to be served through the electronic court filing system, email, or USPS upon the following persons/entities:

Dawson and Lordhal PLLC

Attn: Elizabeth Brickfield

8925 West Post Road, Suite 210

Las Vegas, Nevada 89148

Email: EBrickfield@dlnevadalaw.com, Mdouglas@dlnevadalaw.com,
KFriedrich@dlnevadalaw.com

Attorney for Trustee Cary Duckworth

Jolley Urga Woodbury & Holthus

Attn: R. Gardner Jolley

330 S Rampart Blvd #380

Las Vegas, NV 89145

Email: rgj@acjolleyurga.onmicrosoft.com, nt@juwlaw.com

Attorney for Trustee Cary Duckworth

HAYES WAKAYAMA

Attn: Liane Wakayama

4735 S Durango Dr #105

Las Vegas, NV 89147

Email: lkw@hwlawnv.com, julia@hwlawnv.com

Attorney for Counter-Petitioner Tara Duckworth

/s/Lindsay Clay

An Employee of JERIMY KIRSCHNER & ASSOCIATES, PLLC

EXHIBIT 1

JERIMY L. KIRSCHNER, ESQ.
Nevada Bar No. 12012
JERIMY KIRSCHNER & ASSOCIATES, PLLC
5550 Painted Mirage Road, Suite 320
Las Vegas, Nevada 89149
Tel: (253)240-4444
jerimy@jkirschnerlaw.com

Attorney for Kyla Duckworth

SUPREME COURT OF NEVADA

In the Matter of the

THE DUCKWORTH FAMILY TRUST

Nevada Supreme Court Case # 82314
Case No.: P-20-103183-T
Dept: 26

Dated March 12, 2015

DECLARATION OF JERIMY L. KIRSCHNER, ESQ.

I, JERIMY L. KIRSCHNER, ESQ., being first duly sworn, deposes and states under oath
and penalty of perjury:

1. I am an attorney licensed to practice in the State of Nevada;
2. I am an attorney with the law firm of JERIMY KIRSCHNER & ASSOCIATES, PLLC ("JKA").
3. Our firm represents the Appellant Kyla Duckworth ("Appellant").
4. On March 22, 2021, the parties to this appeal held their mandatory mediation via Zoom with Judge Boyer.
5. At the mediation, Settlement Judge John Boyer disclosed that he had a long-standing relationship with a material witness in this matter who is adverse to Appellant, Diane Short, C.P.A. ("Ms. Short").
6. Ms. Short has been identified by Respondent Cary Duckworth as a witness in their 16.1 disclosures.

1 7. Ms. Short has submitted an affidavit in the underlying action which was adverse to
2 Appellant.

3 8. Judge Boyer disclosed that Ms. Short was his personal Certified Public Accountant
4 (CPA), that he had shared office space with her in the past, and that he had known her for many
5 years.

6 9. I immediately brought up the conflict in person and argued that it was not waivable
7 but unfortunately it did not cause Judge Boyer to recuse.

8 10. While mediation was ongoing, I sent an email directly to Judge Boyer identifying the
9 conflict and requested that he recuse himself from the matter.

10 11. Upon Judge Boyer returning to the room, I notified Judge Boyer of the email I sent
11 and asked Judge Boyer if he had seen it. Judge Boyer stated at first that he had not seen it, so as
12 such, I went over the content and again I raised the issues of the conflict of interest and requested
13 that he terminate the mediation and recuse himself. Unfortunately, Judge Boyer was non-responsive
14 almost as if I had not spoken; it was unusual.

15 12. After Judge Boyer again left the room, I sent a second email stating that Appellant
16 was appearing in good faith, and raised the conflict of interest an additional time while asking that
17 he immediately recuse.

18 13. Judge Boyer did not respond to either of my emails. The emails were sent to the
19 same email address that I used to communicate with Judge Boyer throughout mediation.

20 14. Judge Boyer ended the mediation shortly thereafter without resolution or recusal.

21 15. Judge Boyer ordered a status conference on the mediation be held on May 5, 2021.

22 16. In the intervening time, Respondent Cary Duckworth produced an accounting
23 document generated by Ms. Short which contained unfounded allegations of inappropriate transfers
24 against Appellant.
25
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1 17. At the May 5, 2021 status conference, I raised the conflict and sought recusal once
2 more, which was flat ignored by Judge Boyer.

3 18. Judge Boyer has yet again sought to continue the mediation to a later date.
4

5 Dated this 17th day of May 2021.
6

7 JERIMY KIRSCHNER & ASSOCIATES, PLLC

8 /s/Jerimy Kirschner, Esq.

9 JERIMY L. KIRSCHNER, ESQ.

10 Nevada Bar No. 12012

11 5550 Painted Mirage Rd, Suite 320

12 Las Vegas, NV 89149

13 Telephone: (702) 563-4444

14 *Attorney for Appellant*
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EXHIBIT 2



Re: Diane Short - Conflict of Interest

2 messages

Jeremy Kirschner <jerimy@jkirschnerlaw.com>
To: john boyer <boyeresq@yahoo.com>
Cc: kyladuckworth183@yahoo.com

Mon, Mar 22, 2021 at 11:34 AM

Hello Judge Boyer,

I know you are in the other room with the Cary Duckworth and Tara Kassity, but I want to send this email before your return to our meeting room. During our discussions you described your long standing relationship with Diane Short, specifically that you have known her for years, she was your CPA and you previously shared office space together.

Diane Short has been listed as a potential witness in this action and has also submitted an affidavit in support of Cary Duckworth in his briefings. Diane Short is likely to be a critical and adverse witness against my client at trial and we would not be surprised if she was mentioned in Cary & Tara's settlement briefs.

We believe this creates a genuine conflict of interest that my client is unwilling to waive and we are requesting a new settlement judge be appointed.

—
Jeremy Kirschner, Esq.
Managing Partner
Jeremy Kirschner & Associates PLLC

WASHINGTON

2302 S. Union Ave. Suite C-30	12505 Bel Red Road, Suite 212
Tacoma, WA 98405	Bellevue, WA 98005
Phone: (253) 240-4444	Phone: (206) 623-4444
Fax (206) 538-2008	Fax (206) 538-2008

NEVADA

5550 Painted Mirage Rd., Suite 320
Las Vegas, NV 89149
Phone: (702) 563-4444
Fax (702) 563-4445

Notice: This fax or email is from a law firm, Jeremy Kirschner & Associates ("JKA"), and is intended solely for the use and review of the individual(s) to whom it is addressed. If you have received this fax or email in error, please notify the sender immediately. In addition, please destroy the fax and/or delete the email from your computer. Please do not copy or disclose it to anyone else as it may contain important private information.

If you are not an existing client of JKA, it is not the intent of this fax or email to make you a client unless it contains a specific written statement to that effect and do not disclose anything to JKA in reply that you expect it to hold in confidence. If you are counsel in litigation with JKA, either associated or opposing, and would like to participate in facsimile service of future pleadings, please contact us at (702)563-4444 or (253)240-4444 to arrange for a reciprocal facsimile agreement.

Jeremy Kirschner <jerimy@jkirschnerlaw.com>
To: john boyer <boyeresq@yahoo.com>
Cc: kyladuckworth183@yahoo.com

Mon, Mar 22, 2021 at 1:14 PM

Hello Judge Boyer,

Just to follow up on what we stated in our conference just now. We are continuing to assert that there is a conflict of interest based on your connection to Diane Short, a key witness that is adverse to my client in this matter.

We want to appear for mediation in good faith, but we believe this is a non-waivable conflict and even if it were waivable Kyla Duckworth does not waive the conflict. We are asking for mediation to be ceased immediately and for a new mediator to be assigned. We do not want to walk out of the mediation, but we are concerned about your attempts to continue the mediation over my client's protest about your conflict.

[Quoted text hidden]



Re: Diane Short - Conflict of Interest

Jeremy Kirschner <jerimy@jkirschnerlaw.com>
To: john boyer <boyeresq@yahoo.com>
Cc: kyladuckworth183@yahoo.com

Mon, Mar 22, 2021 at 1:14 PM

Hello Judge Boyer,

Just to follow up on what we stated in our conference just now. We are continuing to assert that there is a conflict of interest based on your connection to Diane Short, a key witness that is adverse to my client in this matter.

We want to appear for mediation in good faith, but we believe this is a non-waivable conflict and even if it were waivable Kyla Duckworth does not waive the conflict. We are asking for mediation to be ceased immediately and for a new mediator to be assigned. We do not want to walk out of the mediation, but we are concerned about your attempts to continue the mediation over my client's protest about your conflict.

[Quoted text hidden]

EXHIBIT 3

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ADOPTION
OF RULE 16 OF THE NEVADA RULES
OF APPELLATE PROCEDURE
GOVERNING SETTLEMENT
CONFERENCES IN CIVIL APPEALS.

ADKT No. 244

FILED

MAR 10 2006

ORDER ADOPTING CODE OF CONDUCT FOR
SUPREME COURT SETTLEMENT JUDGES

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

WHEREAS, this court adopted Rule 16 of the Nevada Rules of Appellate Procedure on December 27, 1996, and implemented the settlement conference program in 1997;

WHEREAS, although the program has been successful in meeting the court's original goals, an evaluation was needed to ensure the program meets the court's current goals;

WHEREAS, Nancy Neal Yeend of the John Paul Jones Group conducted a comprehensive review of the program and submitted a report with 32 recommendations;

WHEREAS, the report was submitted to the Settlement Judges Core Committee for comment;

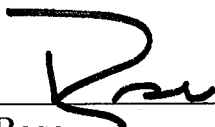
WHEREAS, the court also solicited written comments from the settlement judges and the public at large and, on May 5, 2005, held a public hearing to receive oral comment on the report;


WHEREAS, the court entered an order on November 18, 2005, regarding those 32 recommendations; and

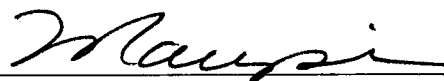
WHEREAS, in that order the court, among other things, accepted Recommendation 25 to adopt a Code of Conduct for Settlement Judges;


IT IS HEREBY ORDERED that this court adopts the Code of Conduct for Supreme Court Settlement Judges attached to this order and identified as Exhibit A.

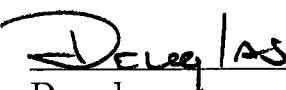
It is so ORDERED.

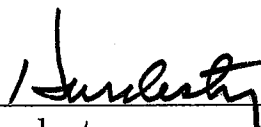

_____, C.J.
Rose

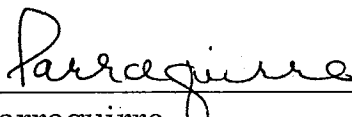

_____, J.
Becker


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

cc: All Settlement Judges
Nancy Neal Yeend

Code of Conduct for Supreme Court Settlement Judges

Introduction

The Supreme Court Settlement Conference Program is a mediation program that was implemented to assist parties to resolve their dispute on their own terms without the expense and uncertainty of going through the appellate process. The program is administered according to the procedures and requirements set forth in Rule 16 of the Nevada Rules of Appellate Procedure. This Code of Conduct is intended to serve as a fundamental ethical guideline for persons appointed as Supreme Court Settlement Judges who act as mediators for the Supreme Court. The Code serves three primary goals: to guide the conduct of Settlement Judges; to inform the mediating parties; and to promote public confidence in the court's settlement conference program as a process for resolving disputes.

Mediation is a process in which an impartial third party (the Settlement Judge) facilitates communication and negotiation and promotes voluntary decision-making by the parties to the dispute.

Mediation serves various purposes, including providing the opportunity for parties to define and clarify issues, understand different perspectives, identify interests, explore and assess possible solutions, and reach mutually satisfactory agreements, when desired.

Note on Construction

The use of the term "shall" throughout the Code indicates that the settlement judge must follow the practice described. The use of the term "should" indicates that the practice described in the Code is highly desirable, but not required, and is to be departed from only for very strong reasons and requires careful use of judgment and discretion.

Various aspects of a mediation, including some matters covered by this Code, may also be affected by applicable law, court rules, regulations, other applicable professional rules to which the parties have agreed and other agreements of the parties. These sources may create conflicts with, and may take precedence over, this Code. However, a settlement judge should make every effort to comply with the spirit and intent of this Code in resolving such conflicts.

STANDARD I. SELF-DETERMINATION

- A. A settlement judge shall conduct a mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome.
 - 1. Although party self-determination for process design is a fundamental principle of mediation practice, a settlement judge may need to balance such party self-determination with a settlement judge's duty to conduct a quality process in accordance with this Code.
 - 2. A settlement judge cannot personally ensure that each party has made free and informed choices to reach particular decisions, but, where appropriate, a settlement judge should make the parties aware of the importance of consulting other professionals to help them make informed choices.
- B. A settlement judge shall not undermine party self-determination by any party for reasons such as higher settlement rates, egos, or outside pressures from court personnel, the program administrator, the media or others.

STANDARD II. IMPARTIALITY

- A. A settlement judge shall decline a case if the settlement judge cannot conduct it in an impartial manner. Impartiality means freedom from favoritism, bias or prejudice.
- B. A settlement judge shall conduct a mediation in an impartial manner and avoid conduct that gives the appearance of partiality.
 - 1. A settlement judge should not act with partiality or prejudice based on any participant's personal characteristics, background, values and beliefs, or performance at a mediation, or any other reason.

2. A settlement judge should neither give nor accept a gift, favor, loan or other item of value that raises a question as to the settlement judge's actual or perceived impartiality.
- C. If at any time the settlement judge is unable to conduct a mediation in an impartial manner, the settlement judge shall request the program administrator to reassign the case to another settlement judge.

STANDARD III. CONFLICTS OF INTEREST

- A. A settlement judge shall avoid a conflict of interest or the appearance of a conflict of interest. A conflict of interest can arise from involvement by a settlement judge with the subject matter of the dispute or from any relationship between a settlement judge and any mediation participant, whether past or present, personal or professional, that reasonably raises a question of a settlement judge's impartiality.
- B. A settlement judge shall make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for a settlement judge. A settlement judge's actions necessary to accomplish a reasonable inquiry into potential conflicts of interest may vary based on circumstances or context.
- C. If the nature of the conflict is such that the settlement judge is unable to disclose it, the settlement judge shall request the program administrator to reassign the case.
- D. A settlement judge shall disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the settlement judge and could reasonably be seen as raising a question about the settlement judge's impartiality. After disclosure, if all parties agree, the settlement judge may proceed with the mediation.
- E. If a settlement judge learns any fact after accepting a case that raises a question with respect to that settlement judge's service creating a potential or actual conflict of interest, the settlement

judge shall disclose it as quickly as practicable. After disclosure, if all parties agree, the settlement judge may proceed with the mediation.

- F. If a settlement judge's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, the settlement judge shall decline to proceed with the case regardless of the expressed desire or agreement of the parties to the contrary and request the program administrator to assign the case to another settlement judge.
- G. After mediation, a settlement judge shall not establish another relationship with any of the participants in any matter that would raise questions about the integrity of the mediation. When a settlement judge develops personal or professional relationships with parties, other individuals or organizations following a mediation in which they were involved, the settlement judge should consider factors such as time elapsed following the mediation, the nature of the relationships established, and services offered when determining whether the relationships might create a perceived or actual conflict of interest.

STANDARD IV. COMPETENCE

- A. A settlement judge shall mediate only when the settlement judge has the necessary competence to satisfy the reasonable expectations of the parties.
 - 1. A settlement judge shall attend educational programs and related activities to maintain and enhance the settlement judge's knowledge and skills related to mediation, and comply with any mandatory continuing education requirements set by the Supreme Court.
 - 2. All settlement judges' professional biographies will be on file with the Supreme Court and made available to parties upon request. Settlement judges have a duty to ensure their biography is current and accurate.

- B. If a settlement judge, during the course of a mediation, determines that the settlement judge cannot conduct the mediation competently, the settlement judge shall discuss that determination with the parties as soon as is practicable and take appropriate steps to address the situation, including, but not limited to, requesting the program administrator to assign the case to another settlement judge.

STANDARD V. CONFIDENTIALITY

- A. A settlement judge shall maintain the confidentiality of all information obtained by the settlement judge in mediation, unless otherwise agreed to by the parties or required by applicable law.

- 1. A settlement judge shall not communicate to any non-participant information about how the parties acted in the mediation. A settlement judge may report whether parties appeared at a scheduled mediation and whether or not the parties reached a resolution.

- 2. If a settlement judge participates in teaching, research or evaluation of mediation, the settlement judge shall protect the anonymity of the parties and shall abide by their reasonable expectations regarding confidentiality.

- B. A settlement judge who meets with any persons in private session during a mediation shall not convey directly or indirectly to any other person, any information that was obtained during that private session without the consent of the disclosing person.
- C. A settlement judge shall promote understanding among the parties of the extent to which the parties will maintain confidentiality of information they obtain in a mediation.

STANDARD VI. QUALITY OF THE PROCESS

- A. A settlement judge shall conduct a mediation in accordance with this Code and any applicable Supreme Court Rule or Procedure and in a manner that promotes diligence, timeliness, safety, presence of the appropriate participants, party participation,

procedural fairness, party competency and mutual respect among all participants.

1. A settlement judge should agree to mediate only when the settlement judge is prepared to commit the attention essential to an effective mediation.
 2. A settlement judge should promote honesty and candor between and among all participants, and a settlement judge shall not knowingly misrepresent any material fact or circumstance in the course of a mediation.
 3. The role of a settlement judge as a mediator differs substantially from other professional roles. Mixing the role of a settlement judge and the role of another profession is problematic and thus, a settlement judge should distinguish between the roles. A settlement judge may provide information that the settlement judge is qualified by training or experience to provide, only if the settlement judge can do so consistent with this Code.
 4. If a mediation is being used to further criminal conduct, a settlement judge shall take appropriate steps including those required by any applicable statutes, rules or regulations and, if necessary, postpone the mediation, or recommend that the case be removed from the program.
 5. If a participant appears to have difficulty comprehending the process, issues, or settlement options, or difficulty participating in a mediation, the settlement judge should explore the circumstances and potential accommodations, modifications or adjustments that would make possible the participant's capacity to comprehend, participate and exercise self-determination.
- B. If a settlement judge becomes aware of domestic abuse or violence among the parties, the settlement judge shall take appropriate steps including, if necessary, postponing the mediation, or recommending to the court that the case be removed from the program.

- C. If a settlement judge believes that participant conduct, including that of the settlement judge, jeopardizes conducting a mediation consistent with this Code, the settlement judge shall take appropriate steps including, if necessary, postponing the mediation, requesting the program administrator to assign the case to another settlement judge, or recommending to the court that the case be removed from the program.