

i. Introduction

Thank you for attending our program on mediation with a focus on parties with disabilities.

Please feel free to contact me any time at dan@mhmediate.com with any questions and I will do my best to answer you as promptly as I can.



ii. Resources Empowering You to Pick a Mediator and Self-Advocate

A. Understand Mediation

1. Jeff Kichaven's Bill of Rights

<https://jeffkichaven.com/wp-content/uploads/2017/10/BillOfRightsWebsite.pdf>

This is one example of a Mediation Bill of Rights to remind yourself what mediation is meant to be, and what rights you have. It was written by a private mediator and posted in 2017.

2. Party Bill of Rights

https://sjbe.s3.us-east-2.amazonaws.com/SJBE_Volume_11_2019.pdf (pg 53)

There is another “Bill of Rights” document in an academic article: Charles Bultena et al., “Mediation Madness v. Misfit Mediators”, 11 S.J. BUS. ETHICS 53, 53-75 (2019). It is designed to help parties recognize possible misconduct from mediators.

3. Research on Misunderstanding of Mediation

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3878988

Another helpful reference is a 2020 article called “ADR Is Not a Household Term: Considering the Ethical and Practical Consequences of the Public's Lack of Understanding of Mediation and Arbitration.” It provides some information about a problem in the mediation profession where parties are not understanding what mediation is. Though it is written from the professional or academic perspective, it can give some context to this well-documented issue and remind folks of the need to learn more about what to expect in mediation.

4. EEOC Q&A About Mediation

<https://www.eeoc.gov/questions-and-answers-about-mediation>

The EEOC provides some guidance about what to expect in EEOC mediation.

5. DOJ Mediation Program Q&A

https://archive.ada.gov/mediation_docs/mediation-q-a.htm

The DOJ provides some guidance about what to expect in DOJ mediation

6. EEOC, NCD, and DOJ Q&A on Mediation with Disabilities

https://archive.ada.gov/ada_mediators.html

The EEOC, NCD, and DOJ answer questions specifically related to disabilities in mediation.

7. Model Standards of Conduct for Mediators (ABA, AAA, ACR)

https://www.adr.org/sites/default/files/document_repository/AAA-Mediators-Model-Standards-of-Conduct-10-14-2010.pdf

This document from the American Bar Association, American Arbitration Association, and Association for Conflict Resolution provides some consensus ethical standards for mediators

8. Orienting Toward Party Choice: A Simple Self-Determination Tool for Mediators

<https://scholarship.law.missouri.edu/jdr/vol2023/iss1/5/>

This 2023 article co-written with Baruch Bush, the founder of Transformative Mediation, provides a 10-item checklist mediators can use to ensure they are focusing on the choices of the parties. It is a helpful tool to help parties understand the types of empowerment that may happen in mediation.

B. Self-Advocate in Mediation and Stigma Conflicts

1. Signs Your Mediator May Be Treating You Differently

<https://bit.ly/NoticeMediatorDiscrimination>

This is a set of tools meant to help parties notice if a mediator may be discriminating against them and to make complaints. While it is specifically targeting discrimination based on the mediator regarding the party has being “difficult” due to showing potential personality disorder symptoms, the lessons can be used for any kind of disability discrimination.

2. Conflict Resolution Skills for Self-Advocacy

<https://mhsafe.org/about>

The Mental Health Safe Project presents free workshops teaching people with psychiatric disabilities ways they can use conflict resolution skills in their own self-advocacy. This About page has a replay of a program for the National Alliance on Mental Illness.

Follow-Up Resources from PHRC Conference (July 9 2024)

Feel free to contact Dan Berstein with questions any time at dan@mhmediate.com

3. Stigma Resolvers Program

<https://conflictcompass.com/stigma/>

The Stigma Resolvers program was funded by the NYC Department of Health and Mental Hygiene and the NY Office of Mental Health, and it provides two free training sessions in a 5-step model for addressing conflicts related to mental illness (and other disability) stigmas. The 5C's include clarifying what happened, coping with trauma, collecting evidence, cultivating support, and considering your options, rights, and limitations.

4. Overcome Everyday Discrimination

<https://mhsafe.org/discrimination/>

This Mental Health Safe Project website presents a number of options for addressing everyday discrimination.

iii. Resources for Mediators to Improve Their Practices

Below are a set of resources that mediators can use to improve their best practices. It provides a lot of information beyond the scope of what we discussed in our workshop, but it can be helpful in providing mediators with tools to help them improve their practices and in providing you with some context of issues to watch out for from mediators. There is no need to review any of this – it is presented as an extra resource.

A. Trauma-Informed and Bias-Resistant Resources

Trauma-informed practices assume that anyone we encounter may have experienced trauma so we therefore want to have practices that make everyone feel safe and supported as they access our services. **Bias-resistant** practices assume that it is not enough to be aware of our biases, but we must also develop procedurally fair, consistent practices that can help us mitigate the biases we do know as well as our unconscious biases.

The American Arbitration Association – International Centre for Dispute Resolution Foundation funded the CUNY Dispute Resolution Center and MH Mediate to create a free online resource platform, called **BiasResistantCourts.org**. The website provides free access to one-page skills guides and companion videos for twelve key skills for being trauma-informed, bias-resistant, equitable, accessible, and procedurally fair. Designed with court-connected dispute resolvers and staff in mind, these resources can be used by any practitioner looking to become trauma-informed and bias-resistant:

BiasResistantCourts.org

12 SKILLS TO BECOME TRAUMA-INFORMED AND BIAS-RESISTANT

- **Appreciate Trauma**
- **Use Trauma-Informed Practices**
- **Understand Power Dynamics**
- **Be Sensitive to Diverse Experiences**
- **Apply Accessibility Principles**
- **Have Equitable E-mail Practices**
- **Avoid Microaggressions**
- **Recognize Improper Questions**
- **Respond to Challenging Behaviors**
- **Address Capacity Concerns Without Stigmatizing Conditions**
- **Respond Effectively to Complaints**
- **Practice Self-Care**

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B. Equity Resources

Equity can be defined differently by different people. For our purposes, we are defining equity as ensuring people have equal access, opportunities, and treatment under formal and informal policies and practices from an organization or a professional. The focus is on having fair procedures that are applied consistently for people with different diversity backgrounds.

BiasResistantCourts.org includes a number of equity resources. Here are some more:

1. **Prevent Inadvertent Discrimination Checklist**

<https://bit.ly/PreventDiscriminationChecklist>

This a checklist of a variety of strategies to prevent inadvertent discrimination that may occur related to screening, questions, comments, disparate treatment, professionalism norms, and mistaken guidance as well as some general reminders. It was originally developed as part of a 2022 American Bar Association Webinar Program, “How You Can Prevent Inadvertent Discrimination in Dispute Resolution” accessible at

<https://www.americanbar.org/events-cle/ecd/ondemand/427068031/>

2. **Model E-mail Equity Checklist and Policy**

<https://bit.ly/EmailEquity>

These are tips on how to have consistent, unbiased e-mail practices. It was initially created during a collaboration between the ABA Commission on Disability Rights and the ABA DR Section Diversity Committee, and presented on in a 2021 American Bar Association Webinar Program, “Bias in Your Inbox: Tools for Equitable E-mail Communication” accessible at <https://qa.americanbar.org/events-cle/ecd/ondemand/416183776/>

3. **Preventing Unintentional Discrimination in Dispute Resolution**

<https://bit.ly/ABADiscrimination>

This is a 2023 article from the *ABA Dispute Resolution Magazine* teaching how to recognize discrimination and avoid inappropriate questions, screening, disparate treatment, and microaggressions

4. **Ending the Epidemic of Accidental Personality Disorder Discrimination by Well-Meaning Mediators**

<https://scholarship.law.missouri.edu/jdr/vol2024/iss1/5/>

This is a 2024 Journal of Dispute Resolution article that explores why mediators discriminate against parties with personality disorder symptoms and diagnoses without even realizing it, and how we as a field can make some simple changes to stop it from happening. It provides tools you can use right now. And it helps readers understand why sometimes rejecting someone as "toxic," "difficult," "high conflict," or "narcissist" can be disability discrimination so you know better ways to address challenging behaviors.

C. Accessibility Resources

Providing accommodations means responding to someone's request for adjustments, while **accessibility** means that you design a process that is already accessible to people with diverse needs and abilities without their needing to make a request or disclose their disability.



1. **The Dispute Resolution in Mental Health Initiative**

<https://www.drmhinitiative.org>

The DRMH Initiative is a project funded by the AAA-ICDR Foundation and developed by the CUNY Dispute Resolution Center and MH Mediate. Using funds from six grants over seven years, we designed free resource platforms helping conflict resolvers, family-focused organizations, housing providers, libraries, police, and courts to incorporate conflict resolution best practices into empowering mental health communication. All of these programs are freely available through the DRMH Initiative website and they include some modules on accessibility.

2. **Preventing Mental Illness Discrimination in Mediation Resources Page**

<https://www.mhsafe.org/preventing>

The Mental Health Safe Project provides many resources to help people prevent mental illness discrimination, and other kinds of discrimination, in mediation and more broadly. This page includes a 13-minute replay of Dan's program at the Mediate.com mental health conference and a "Preventing Mental Illness Discrimination" resource guide with links to many tools for noticing and preventing biases as well as tools for developing procedurally fair practices (<https://bit.ly/MediationDiscrimination>). Section E of that guide focuses on accessibility. This MH Safe page also includes a 48-minute program on how "Toxic, Difficult, and High Conflict" labels can inadvertently target people with personality disorders and other mental disorders in discriminatory ways, along with resources to help.

D. Accountability Resources

1. Pre-Session Preparation to Prevent Misconduct

<https://bit.ly/PreventADRMisconduct>

This is a set of three checklists of resources to help you promote informed party choices, mediator competence, and freedom from biased actions. It was developed in response to John Lande's Real Practice Systems project and related calls for resources to help mediators prep.

2. Vetting Dispute Resolution Guidance

www.mhsafe.org/drguidance

The Mental Health Safe Project has a resource page to help you learn ways to vet and address problematic dispute resolution guidance. This includes an article from *CPR's Alternatives to the High Cost of Litigation* that teaches you how to evaluate training and guidance to avoid learning to perpetrate inadvertent misconduct (<https://bit.ly/VetGuidance>) and other resources.

3. Overcoming Avoidance

www.mhmediate.com/avoidance

Access a replay of the 2023 ACR-GNY conference program on "Overcoming Avoidance of Diversity Tools in Dispute Resolution", and a copy of the 2023 AALS WIP Conference paper draft "**Overcoming Avoidance: A Model for Moving Forward**" along with other tools for avoidance.

4. Self-Advocacy Tools for Discrimination

www.mhsafe.org/about

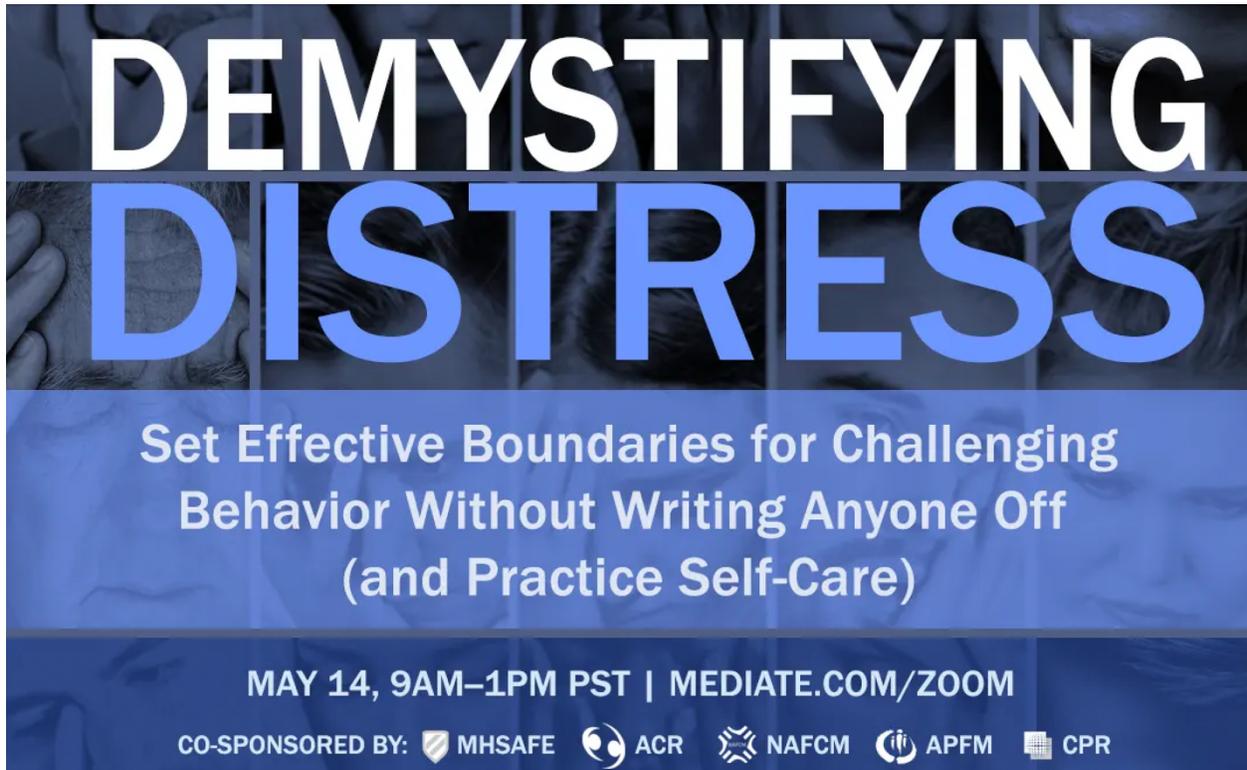
The MH Safe "About" page contains a replay of the **Speak Up: Conflict Resolution Skills for Self-Advocacy** program, for the National Alliance on Mental Illness (NAMI). You can also access resources for responding to everyday discrimination at www.mhsafe.org/discrimination

5. Recent Advocacy Updates

<https://mediate.com/ending-mental-illness-discrimination-in-dispute-resolution-and-beyond-some-2023-updates/>

This 2024 Mediate.com article summarizes recent 2023 updates (**Ending Mental Illness Discrimination in Dispute Resolution and Beyond**).

E. Distress Resources

A promotional banner for a webinar titled "Demystifying Distress". The background is a dark blue collage of people's faces. The title "DEMYSTIFYING DISTRESS" is prominently displayed in large, bold, white and blue letters. Below the title, the subtitle "Set Effective Boundaries for Challenging Behavior Without Writing Anyone Off (and Practice Self-Care)" is written in white. The date and time "MAY 14, 9AM-1PM PST | MEDIATE.COM/ZOOM" are listed in white. At the bottom, it says "CO-SPONSORED BY:" followed by logos for MHSafe, ACR, NAFCM, APFM, and CPR.

**DEMYSTIFYING
DISTRESS**

Set Effective Boundaries for Challenging
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CO-SPONSORED BY:  MHSafe  ACR  NAFCM  APFM  CPR

On May 14, 2024, Mediate.com co-sponsored a “Demystifying Distress” program with the Association for Conflict Resolution (ACR), the National Association for Community Mediation (NAFCM), the Academy of Professional Family Mediators (APFM), the International Institute for Conflict Prevention and Resolution (CPR), and MH Mediate’s Mental Health Safe Project (MH Safe).

Visit www.mediate.com/demystifying-distress to watch a replay of the four-hour program and visit <https://bit.ly/DemystifyingDistress> to download the takeaway tools.