

(b) *Suspension.* Under Civil Service and Federal Mediation and Conciliation Service regulations, an employee or special Government employee may be suspended without pay during the course of an investigation of alleged criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct. Also, an employee may be suspended without pay for a definite period of time because of some offense of a less serious nature for which more drastic action is not justified.

(c) *Demotion.* When such action will "promote the efficiency of the Service," an employee or special Government employee may be demoted because of some offense for which more drastic action is not justified.

(d) *Separation.* The Service is responsible for the prompt dismissal of unsatisfactory, incompetent, or unfit employees. Separation (dismissal or removal) can be the penalty for a single breach of conduct that is extremely serious in nature.

§ 1400.735-61 Notice to and appeal of employee.

The Director of Administrative Management will prepare charges and institute proceedings, which in all cases will be in accordance with Civil Service procedures for disciplinary actions against status employees. Such proceedings will include notification to the employee of his appeal rights.

APPENDIX TO PART 1400—CODE OF PROFESSIONAL CONDUCT FOR LABOR MEDIATORS

PREAMBLE

The practice of mediation is a profession with ethical responsibilities and duties. Those who engage in the practice of mediation must be dedicated to the principles of free and responsible collective bargaining. They must be aware that their duties and obligations relate to the parties who engage in collective bargaining, to every other mediator, to the agencies which administer the practice of mediation, and to the general public.

Recognition is given to the varying statutory duties and responsibilities of the city, State and Federal agencies. This code, however, is not intended in any way to define or adjust any of these duties and responsibilities, nor is it intended to define when and in what situations mediators from more than one agency should participate. It is, rather,

a personal code relating to the conduct of the individual mediator.

This code is intended to establish principles applicable to all professional mediators employed by city, State or Federal agencies or to mediators privately retained by parties.

I. *The responsibility of the mediator to the parties.* The primary responsibility for the resolution of a labor dispute rests upon the parties themselves. The mediator at all times should recognize that the agreements reached in collective bargaining are voluntarily made by the parties. It is the mediator's responsibility to assist the parties in reaching a settlement.

It is desirable that agreement be reached by collective bargaining without mediation assistance. However, public policy and applicable statutes recognize that mediation is the appropriate form of governmental participation in cases where it is required. Whether and when a mediator should intercede will normally be influenced by the desires of the parties. Intercession by a mediator on his own motion should be limited to exceptional cases.

The mediator must not consider himself limited to keeping peace at the bargaining table. His role should be one of being a resource upon which the parties may draw and, when appropriate, he should be prepared to provide both procedural and substantive suggestions and alternatives which will assist the parties in successful negotiations.

Since mediation is essentially a voluntary process, the acceptability of the mediator by the parties as a person of integrity, objectivity, and fairness is absolutely essential to the effective performance of the duties of the mediator. The manner in which the mediator carries out his professional duties and responsibilities will measure his usefulness as a mediator. The quality of his character as well as his intellectual, emotional, social and technical attributes will reveal themselves by the conduct of the mediator and his oral and written communications with the parties, other mediators and the public.

II. *The responsibility of the mediator toward other mediators.* A mediator should not enter any dispute which is being mediated by another mediator or mediators without first conferring with the person or persons conducting such mediation. The mediator should not intercede in a dispute merely because another mediator may also be participating. Conversely, it should not be assumed that the lack of mediation participation by one mediator indicates a need for participation by another mediator.

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 which are essential to a cooperative effort,

and should extend every possible courtesy to his fellow mediator.

The mediator should carefully avoid any appearance of disagreement with or criticism of his fellow mediator. Discussions as to what positions and actions mediators should take in particular cases should be carried on solely between or among the mediators.

III. *The responsibility of the mediator toward his agency and his profession.* Agencies responsible for providing mediation assistance to parties engaged in collective bargaining are a part of government. The mediator must recognize that, as such, he is part of government. The mediator should constantly bear in mind that he and his work are not judged solely on an individual basis but that he is also judged as a representative of his agency. Any improper conduct or professional shortcoming, therefore, reflects not only on the individual mediator but upon his employer and, as such, jeopardizes the effectiveness of his agency, other government agencies, and the acceptability of the mediation process.

The mediator should not use his position for private gain or advantage, nor should he engage in any employment, activity or enterprise which will conflict with his work as a mediator, nor should he accept any money or thing of value for the performance of his duties—other than his regular salary—or incur obligations to any party which might interfere with the impartial performance of his duties.

IV. *The responsibility of the mediator toward the public.* Collective bargaining is in essence a private, voluntary process. The primary purpose of mediation is to assist the parties to achieve a settlement. Such assistance does not abrogate the rights of the parties to resort to economic and legal sanctions. However, the mediation process may include a responsibility to assert the interest of the public that a particular dispute be settled; that a work stoppage be ended; and that normal operations be resumed. It should be understood, however, that the mediator does not regulate or control any of the content of a collective bargaining agreement.

It is conceivable that a mediator might find it necessary to withdraw from a negotiation, if it is patently clear that the parties intend to use his presence as implied governmental sanction for an agreement obviously contrary to public policy.

It is recognized that labor disputes are settled at the bargaining table; however, the mediator may release appropriate information with due regard (1) to the desires of the parties, (2) to whether that information will assist or impede the settlement of the dispute and (3) to the needs of an informed public.

Publicity shall not be used by a mediator to enhance his own position or that of his agency. Where two or more mediators are

mediating a dispute, public information should be handled through a mutually agreeable procedure.

V. *Responsibility of the mediator toward the mediation process.* Collective bargaining is an established institution in our economic way of life. The practice of mediation required the development of alternatives which the parties will voluntarily accept as a basis for settling their problems. Improper pressures which jeopardize voluntary action by the parties should not be a part of mediation.

Since the status, experience, and ability of the mediator lend weight to his suggestions and recommendations, he should evaluate carefully the effect of his suggestions and recommendations and accept full responsibility for their honesty and merit.

The mediator has a continuing responsibility to study industrial relations to improve his skills and upgrade his abilities.

Suggestions by individual mediators or agencies to parties, which give the implication that transfer of a case from one mediation “forum” to another will produce better results, are unprofessional and are to be condemned.

Confidential information acquired by the mediator should not be disclosed to others for any purpose, or in a legal proceeding or be used directly or indirectly for the personal benefit or profit of the mediator.

Bargaining positions, proposals or suggestions given to the mediator in confidence during the course of bargaining for his sole information, should not be disclosed to another party without first securing permission from the party or person who gave it to him.

[31 FR 5423, Apr. 6, 1966]

PART 1401—PUBLIC INFORMATION

Subpart A—Information in Response to Subpoenas

Sec.

- 1401.1 Purpose and scope.
- 1401.2 Productions of records or testimony by FMCS employees.
- 1401.3 Procedure in the event of a demand for production, disclosure, or testimony.

Subpart B—Production or Disclosure of Information

- 1401.20 Purpose and scope.
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