

National Conference of Bankruptcy Judges
Wreck-onciliation: Mediation Guardrails and
the Risks of Veering Off
(Presented by ABI)
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Mediation is a cornerstone of modern bankruptcy practice, but its success depends on ethical guardrails that keep the process impartial, confidential, and enforceable. This session examines the ethical and procedural rules that govern neutrals, advocates, and judges serving as neutrals and the distinct considerations that apply to each role. Panelists will also explore what happens when mediations veer off course.

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Materials can be accessed here:

<https://drive.google.com/drive/folders/1JR1XaDdsQP27tDVY4aWgyR8bL7XDrZqX?usp=sharing>

1. ABA Opinion 518 on Mediator's Ethical Obligations.
2. ABA Opinion 06-439 on Lawyer's Obligation of Truthfulness in Mediation.
3. ABA/AAA/ACR Model Standards of Conduct for Mediators.
4. ABA Litigation Section – Ethical Guidelines for Settlement Negotiations
5. Sylvia Mayer, *Ethics and the Art of Mediation*, XLI *ABI Journal* 4, 28-29, April 2022 (ABI reprint).
6. Ellen Waldman, *Lawyer-Mediators and ABA Opinion 518: Ethics in Evolution*.
7. Sylvia Mayer, *Ethics and the Art of Mediation*, XLI *ABI Journal* 4, 28-29, April 2022 (ABI reprint).
8. Ed Schnitzer and Connor Bifferato, *The Hypothetical Hits of Mediation*, XXXIX *ABI Journal* 9, 22-23, 63, September 2020 (ABI reprint).
9. Sylvia Mayer, *Summary of Certain Ethical Rules and Guidelines for Mediation*.
10. Texas Disciplinary Rules of Professional Conduct (Effective March 7, 2025).
11. Texas Lawyer's Creed.
12. Texas Supreme Court's Ethical Guidelines for Mediators.
13. Texas Alternative Dispute Resolution Procedures Act, *Tex. Civ. Prac. & Rem. Code* § 154.001, *et seq.*
14. Association of Attorney-Mediators' Ethical Guidelines.
15. Texas Mediator Credentialing Association's Standards and Ethics.
16. Ed Schnitzer, *To Report or Not to Report*, ABI Mediation Section Newsletter, August 2018.
17. *Summary of Cases Addressing Alleged "Bad Faith" in Mediations*.
18. Sylvia Mayer, *Mediator Insights: Breaching the Bully Barrier in Mediation*.

19. *In re Elkins*, 5 Cal. State Bar Ct. Reporter 160 (Review Dept. 2009).
20. California Rules of Professional Conduct, Rule 3.10.
21. Florida Rules for Certified & Court-Appointed Mediators (eff. Jan. 1, 2025).
22. Supreme Court of Florida, Order Amending the Florida Rules for Certified & Court-Appointed Mediators (Sept. 12, 2024).
23. 9th Circuit Judicial Template: *Agreement Regarding Settlement Process*.
24. U.S. Bankruptcy Courts for the Northern District of California, Bankruptcy Local Rule 9039-1 (Bankruptcy Judge Acting as Mediator or Settlement Judge).
25. U.S. Bankruptcy Courts for the Southern District of Texas, Bankruptcy Local Rule 2014-2 (Judges Acting in a Settlement Capacity).