

Nebraska Restorative Justice Facilitator Standards of Practice

The Nebraska Restorative Justice Facilitator Standards of Practice were adopted by the Nebraska Office of Dispute Resolution in August 2020. These Standards are adopted under the Office's charge to "adopt policies and procedures" to determine "best practices" in restorative justice. Neb. Rev. Code 25-2912.02. These standards are adapted from existing codes of conduct and standards for mediators, including the AAA/ABA/ACR Model Standards of Conduct for Mediators (2005). The purpose of these Nebraska Restorative Justice Facilitator Standards is fourfold: 1) to inform the practice of individual facilitators; 2) to guide the training of new facilitators; 3) to provide confidence to the participants in restorative processes; and 4) to promote public confidence in these practices.

Under Nebraska law, restorative justice practices include, but are not limited to "victim youth conferences, victim-offender mediation, family group conferences, circles, peer-to-peer mediation, truancy mediation, victim or community panels, and community conferences. Restorative justice programs may involve restorative projects or classes and facilitated meetings attended voluntarily by the victim, the victim's representatives, or a victim surrogate and the victim's supporters, as well as the youth or adult individual who caused harm and that individual's supporters, whether voluntarily or following a referral for assessment by court order. These meetings may also include community members, when appropriate." Neb. Rev. Code 25-2912.01. These processes intend to: 1) hold an individual who caused the harm accountable, 2) provide voice for the victim, 3) provide an opportunity to repair the harm, and 4) enable the parties to agree on the consequences to repair the harm. *Id.*

The Nebraska Legislature recognized many of the benefits of restorative practices. Neb. Rev. Code 25-2902. In particular, the Legislature found that "[e]mploying restorative justice can provide an avenue for repair, healing, accountability, and community safety to address the harm experienced by victims as a result of an offense committed by youth or adult individuals," and "[t]here is a compelling need in a complex society for dispute resolution and restorative justice whereby people can participate in creating comprehensive, lasting, and realistic resolutions to conflicts and offenses." Neb. Rev. Code 25-2902(4) & (9).

In these Standards, the use of the term "shall" indicates that the facilitator must follow the practice described. The use of the term "should" indicates that the practice described in the standard is highly desirable, but not strictly required.

The use of the term "facilitator" is understood to apply to co-facilitator models.

The Office of Dispute Resolution recognizes that programs falling under the category of "restorative justice" use different terms and labels for those participating in the various processes. To the extent possible, these standards refer collectively to all of those attending as "participants."

The term "harmed party" is intended to include those who might also be classified as a "victim," "survivor," or similar status within a case or program.

The term “party causing harm” is intended to include those who might also be classified as an “offender,” “defendant,” “client,” “probationer,” or similar status within a case or program.

Unless otherwise noted, the term “third party” is intended to include all additional participants in a restorative justice case or program including, but not limited to, surrogates, attorneys, guardians ad litem, case workers, family members, support persons for the participants, and other stakeholders.

The term “face-to-face” includes any opportunity for the participants to engage in a synchronous dialogue with each other, whether that be in person or through technology.

STANDARD I. PARTICIPATION

- A. A restorative justice facilitator shall conduct a restorative justice process based on the principle of voluntary participation for all participants. Voluntary participation means that the participants in the process have come to and remain in the meeting by choice. If suitable, all participants will participate in face-to-face dialogue.
- B. All participants retain the choice to participate, even if one or more of them are incarcerated or acting in accordance with a court order.
- C. In all cases, the facilitator must make a determination as to whether face-to-face dialogue is appropriate. If the facilitator determines that the process is not appropriate for the party causing harm, but the harmed party wants to participate, the facilitator should explore other options.
- D. Prior to making a choice regarding participation, each participant must receive a full explanation of what the restorative justice process is and what their role will be. Participants may choose to withdraw from the process at any time.
- E. If any participant is a legal minor or a vulnerable adult, the restorative justice facilitator shall also obtain the consent of the parent or legal guardian for the minor or vulnerable adult to participate. The parent or legal guardian may also attend the restorative process.
- F. A restorative justice facilitator shall assess the participants in a case to assure that there is very low possibility that the harmed party could be re-victimized. If the facilitator determines there is a likely possibility that the harmed party could be re-victimized by a face-to-face meeting with the party causing harm, the facilitator shall explore other restorative ways to meet the needs of the harmed party, and offer those alternatives to the participants.
- G. Every participant in a restorative process has the right to have an attorney accompany the party to, and participate in, the restorative process. Additional participants may be invited by mutual agreement of the parties and the facilitator.

STANDARD II. IMPARTIALITY

- A. A restorative justice facilitator shall decline to facilitate a restorative justice process if the facilitator cannot conduct it in an impartial manner. Impartiality means freedom from favoritism, bias or prejudice.
- B. A restorative justice facilitator shall conduct a restorative justice process in an impartial manner and avoid conduct that gives the appearance of partiality.
 - 1. A restorative justice facilitator shall not act with partiality or prejudice based on any participant's personal characteristics, background, values and beliefs, or performance at a restorative justice process, or any other reason.
 - 2. A restorative justice facilitator should neither give nor accept a gift, favor, loan or other item of value that raises a question as to the facilitator's actual or perceived impartiality.
 - 3. A restorative justice facilitator may accept or give minimal gifts or incidental items or services that are provided to facilitate a process or respect cultural norms so long as such practices do not raise questions as to a facilitator's actual or perceived impartiality.
 - 4. If at any time a restorative justice facilitator is unable to conduct a restorative justice process in an impartial manner, the facilitator shall withdraw.

STANDARD III. CONFLICTS OF INTEREST

- A. A restorative justice facilitator shall avoid a conflict of interest or the appearance of a conflict of interest during and after a restorative justice process. A conflict of interest can arise from involvement by a facilitator with the subject matter of the dispute or from a significant relationship between a facilitator and any participant in the restorative justice process, whether past or present, personal or professional, that reasonably raises a question of a facilitator's impartiality.
- B. A restorative justice facilitator shall disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the facilitator and could reasonably be seen as raising a question about the facilitator's impartiality. After disclosure, if all parties agree, and this agreement has been reduced to writing, the facilitator may proceed with the restorative justice process.
- C. The duty to disclose conflicts of interest is a continuing duty. If a restorative justice facilitator learns any fact after starting a restorative justice process that raises a question with respect to that facilitator's service creating a potential or actual conflict of interest, the facilitator shall disclose it as soon as practicable. After disclosure, if all parties agree, and this agreement has been reduced to writing, the facilitator may proceed with the restorative justice process.
- D. If a restorative justice facilitator's conflict of interest might reasonably be viewed as undermining the integrity of the restorative justice process, a facilitator shall withdraw from or decline to proceed with the restorative justice process.

STANDARD IV. SURROGATES

- A. A surrogate is a third party in the restorative process who stands in the place of one of the participants. A surrogate, however, shall not role play the missing person or act as an additional facilitator. Instead, the surrogate should participate and contribute the surrogate's own thoughts, feelings, and experiences.
- B. If the person causing harm can participate but the harmed party is unwilling or unable to attend but is willing for the conference to take place, the restorative justice facilitator should move forward with the conference with a surrogate. Th actual harmed party then can request, through the facilitator or surrogate, for answers to questions or make suggestions for any contract item to repair harm.
- C. A restorative process conducted with a surrogate should be conducted in the same manner as a process involving all parties in interest.
- D. If a surrogate is provided by the restorative justice facilitator, the surrogate should have qualities similar to the person who is not participating. The qualities to consider involve both demographic information as well as past experience in a similar situation.
- E. Restorative justice programs should maintain a wide roster of surrogates to best ensure that the surrogate used in any given case is appropriate. The program coordinator should recruit surrogates of various ages, genders, sexual orientations, races, religions, cultural groups, vocations, and life experiences. In appropriate circumstances and if appropriately screened, previous participants in a restorative process may be recruited to be a surrogate in future cases.
- F. Restorative justice programs may require surrogates to undergo training in restorative philosophies, restorative processes, and ethics prior to serving as a surrogate in a restorative justice program.
- G. If a surrogate discovers a conflict of interest as discussed in Standard III, the surrogate shall make appropriate disclosures.

STANDARD V. COMPETENCE

- A. Restorative justice facilitators shall comply with the qualification requirements set out in Neb. Rev. Stat. §25-2913.
- B. A restorative justice facilitator shall facilitate only when the facilitator has the necessary competence to assure a safe and restorative process and to satisfy the reasonable expectations of the participants.
 - 1. Any person may be selected as a restorative justice facilitator, provided that
 - a. The facilitator has completed at least thirty hours of basic mediation training, and
 - b. In addition to the basic mediation the facilitator has completed specialized training in restorative justice and has experience in restorative justice practices, skills, cultural understandings and other qualities are often necessary for restorative justice facilitator competence.
 - c. If appropriate, additional training may be required in areas such as family systems, trauma-informed care, power dynamics, child welfare and child development, and other specialized topics.
 - 2. A person who offers to serve as a facilitator creates the expectation that the person is competent to facilitate effectively.
 - 3. A restorative justice facilitator should strive to improve their professional skills by continuing educational programs and related activities to maintain and enhance the facilitator's knowledge and skills related to restorative justice practices and facilitation on a regular basis.
 - 4. A restorative justice facilitator and their affiliated center should have available for the participants and referring agencies information relevant to the facilitator's training, education, experience and approach to conducting a restorative justice process.
 - 5. Facilitators should participate in regular peer review and peer consultations. Facilitators should maintain a network of peers or colleagues for support and references. Facilitators should work in teams of two or more on cases involving serious injury or harm or in cases where there are multiple victims.
- C. If a restorative justice facilitator, during the course of a restorative justice process, determines that the facilitator cannot conduct the restorative justice process competently, the facilitator shall discuss that determination with the appropriate person at their affiliated center. If the center cannot appropriately staff the case with another facilitator, the center will notify the referring agencies as soon as is practicable and take appropriate steps to address the situation, including, but not limited to, withdrawing or requesting appropriate assistance.

STANDARD VI. SAFETY

- A. A restorative justice facilitator shall make reasonable efforts to determine that the restorative process is safe for all participants. Safety includes not only physical safety but also emotional and psychological safety. Many participants have lost a sense of safety due to the harm; therefore, safety for all parties is paramount.
- B. Indicia of a safe space include, but are not limited to, participants answering the facilitator's questions and prompts, participants disclosing information relevant to the process, participants sharing their emotions, and participants working on solutions and reparation agreements.
- C. A restorative justice facilitator shall meet with each party individually to determine whether the case is appropriate for a restorative process. The assessment shall include a determination regarding the level of risk of re-victimization through the facilitative process. The facilitator shall not hold a face-to-face restorative justice process, if the facilitator determines there is significant probability that any participant may be victimized by the process.
- D. A restorative justice facilitator has a continuing duty to assess and monitor risk to involved parties and make determination of the safety and integrity of the process. If at any point during the process, the facilitator determines that a safe space cannot be maintained, the facilitator shall terminate the session.
- E. A facilitator shall terminate the process if any participant withdraws consent to participate due to safety concerns.

STANDARD VII. CONFIDENTIALITY

- A. A restorative justice process shall be confidential and privileged, as provided under Nebraska Revised Code 25-2914.01.
- B. A restorative justice facilitator shall respect the privacy of all participants and information obtained during the process unless otherwise agreed to by the participants or required by applicable law. Facilitators are expected to report to appropriate authorities when there is concern for any participant regarding harm to self, others or a new criminal act.
 - 1. If the participants in a restorative justice process agree that the facilitator may disclose information obtained during the process, the facilitator may do so.
 - 2. A facilitator shall not communicate to any non-participant information about how the parties acted in the restorative justice process. A facilitator may report, if required, whether parties appeared at a scheduled session and whether or not the parties reached an agreement.
 - 3. If a restorative justice facilitator participates in teaching, research or evaluation of a restorative justice process, the facilitator should protect the anonymity of the participants and abide by their reasonable expectations regarding confidentiality.
- C. A facilitator who meets with any persons in a private session, or caucus, during a restorative justice process 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.
- D. A facilitator shall promote understanding among the participants to the extent to which the participants will maintain confidentiality of information they obtain in a restorative justice process.
- E. Depending on the circumstance of a restorative justice process, the participants may have varying expectations regarding confidentiality that a facilitator should address. The parties may make their own rules with respect to confidentiality, or the accepted practice of a restorative justice facilitator or institution may dictate a particular set of expectations. Such agreements modifying confidentiality shall be considered a waiver under Nebraska Revised Code 25-2914.01.

STANDARD VIII. QUALITY OF THE PROCESS

- A. A restorative justice facilitator shall conduct a restorative justice process in accordance with these Standards and in a manner that promotes repairing the harm caused by the incident, meeting the needs and concerns of all participants, creating a safe space for all participants, accountability on the part of the party causing harm, honest and meaningful dialogue for all participants, and healing and understanding for all participants.

A restorative justice facilitator should:

1. Only agree to facilitate a process when the facilitator is prepared to commit the attention essential to an effective restorative justice process (from initial screening through post completion feedback).
 2. Only accept cases when the facilitator can satisfy the reasonable expectation of the participants and referring agencies, concerning the timing of a restorative justice process.
 3. Promote honesty and candor between and among all participants, and a facilitator shall not knowingly misrepresent any material fact or circumstance in the course of a restorative justice process.
 4. Provide a means whereby participants may anonymously provide feedback about the process, after participating, to the appropriate agencies and/or individuals who can use the information to inform the facilitator and improve the process.
 5. Provide a process for filing of grievances to someone, other than themselves, for all participants in the restorative justice process.
 6. Assess and monitor risk to involved parties and make determination of the safety and integrity of the process.
- B. If a victim wants to participate in a restorative justice process, and the restorative justice facilitator determines that the case is not appropriate for a face-to-face meeting, the facilitator should not hold the meeting. The facilitator may recommend other restorative measures short of a face-to-face meeting, including: letters of apology, requested service or projects, answering questions important to the harmed party in writing or through a third party.
- C. A restorative justice facilitator should only hold the meeting after careful preparation, and after determining that the offender is appropriate and the victim is willing and prepared to participate. Preparation must include an interview or screening. The facilitator shall make this determination independently, even if face-to-face dialogue is a strong preference by a referring agency or less than all participants.

- D. If the restorative justice process is appropriate for the party causing harm, but not the harmed party, the process should move forward with a surrogate representing the harmed party. The harmed party may request, through the facilitator or surrogate, answers to questions or make suggestions for specific contract items designed to repair harm.
- E. If a participant appears to have difficulty comprehending the process, issues, or options, or has difficulty participating, the facilitator should explore the circumstances and determine whether accommodations, modifications or adjustments would enhance the participant's capacity to comprehend and voluntarily participate. The facilitator should look to the American Disabilities Act standards (ADA) for guidance in these situations.
- F. If a participant appears to have difficulty comprehending the process, the facilitator should ensure that all participants are speaking in their first or comfortable language, or provide interpretation services. The facilitator shall arrange for the interpreter or translator, who is otherwise competent to interpret or translate. The facilitator shall ensure that the translator or interpreter is an unbiased resource and not a party to the case or relative or a participant, unless all participants agree.
- G. If a restorative justice facilitator believes that participant conduct, including that of the facilitator, jeopardizes conducting a restorative justice process consistent with these Standards, a facilitator shall take appropriate steps including, if necessary, postponing or withdrawing from, or terminating the restorative justice process.

STANDARD IX. ADVERTISING AND SOLICITATION

- A. A restorative justice facilitator shall be truthful and not misleading when advertising, soliciting or otherwise communicating the facilitator's qualifications, experience, services and fees.
 - 1. A restorative justice facilitator should not include any promises regarding outcomes of services. These standards apply to all advertising, including but not limited to, letters, commercials, billboards, print advertisements, business cards, stationary, or computer based communications such as website, and social media.
 - 2. A restorative justice facilitator should only claim to meet the restorative justice facilitator qualifications of a governmental entity or private organization if that entity or organization has a recognized procedure for qualifying restorative justice facilitators and it grants such status to the facilitator.
- B. A restorative justice facilitator shall not solicit in a manner that gives an appearance of partiality for or against a participant or otherwise undermines the integrity of the process.
- C. A restorative justice facilitator shall not communicate to others, in promotional materials or through other forms of communication, the names of persons served without their permission.

STANDARD X. FEES AND OTHER CHARGES

- A. A restorative justice facilitator shall not charge fees to participants where prohibited by law.
- B. A restorative justice facilitator shall provide each participant and/or referring agency true and complete information about fees, expenses and any other actual or potential charges that may be incurred in connection with a restorative justice process.
 - 1. A restorative justice facilitator who is working on behalf of an ODR-approved mediation center shall follow the center's policies on fees, including the sliding fee scale.
 - 2. A restorative justice facilitator who is not working on behalf of an ODR-approved center should develop a fee structure based in light of all relevant factors, including the type and complexity of the matter, the qualifications of the facilitator, the time required and the rates customary with such restorative justice process. Restorative justice facilitators are encouraged to consider the participants' ability to pay when determining fees.
- C. A restorative justice facilitator shall not charge fees in a manner that impairs a facilitator's impartiality.
 - 1. A restorative justice facilitator should not enter into a fee agreement contingent upon the result or any outcomes of the restorative justice process.
 - 2. A restorative justice facilitator shall not pay commissions or give any other form of reward for referrals of a client for a restorative justice process.

STANDARD XI. ADVANCEMENT OF RESTORATIVE JUSTICE PRACTICES

- A. A restorative justice facilitator should act in a manner that advances the practice of restorative justice. A facilitator promotes this Standard by engaging in some or all of the following:
 - 1. Fostering diversity and inclusion within the field of restorative justice.
 - 2. Striving to make restorative justice more accessible in the community.
 - 3. Participating in research when given the opportunity, including obtaining participant feedback and gathering additional data from participants or about the process, as appropriate.
 - 4. Participating in outreach and education efforts to assist the public in developing an improved understanding of, and appreciation for, restorative justice.
 - 5. Assisting newer restorative justice facilitators through training, mentoring and networking, to assure fidelity to the particular model.

- B. A restorative justice facilitator should demonstrate respect for differing points of view within the field, seek to learn from other restorative justice practitioners and work together with other practitioners to improve the profession and better serve victims, offenders and their communities.