

# AN AI INQUIRY INTO MEDIATOR ETHICS

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Because this article is about mediator ethics, we begin with disclosures. To assist with researching and writing this article, we used two AI paid subscriptions available in September 2025: subscriptions to OpenAI's GPT 5.0 and Anthropic's Claude Opus 4.1. In the spirit of full disclosure, we also made use of other aids to writing: a yellow legal pad, a pen, a pencil, a laptop, an iPhone, Google Docs, a printer, and cups of coffee.

As ADR neutrals, we set out to experiment with how AI as a tool might assist us in exploring the principles of mediator ethics. Separately, we were curious about the substantive answers AI would generate as content when presented with specific questions about mediator ethics.

And finally, what advice could we offer about using the AI programs based on our own experience?

So that we will not be accused of plagiarism, we attribute the generously copied responses from the AI programs to Claude Opus 4.1. Copying AI responses without attribution is problematic, even though it is copying the response of a nonhuman entity. Perhaps a benign way to think of this article is not as an act of plagiarism, but as an interview. The interviewer who asked all the questions and added comments is human. The interviewee providing the answers is an AI program. We can certainly consider the answers of an interviewee critically.

Both AI programs we used were remarkably fast. Each program allowed us to upload documents to analyze, up to approximately 500 pages according to information about Claude Opus 4.1. The expense of the two AI subscriptions was the same. Claude Opus 4.1 appeared to be somewhat more grammatical with its responses. The responses to our queries were very similar, though Claude Opus 4.1 tended to offer more detail. If we had to subscribe to one program instead of the other, we would have been pleased with either subscription. We used answers from only one program for this article simply for the sake of consistency. The experiment was a modest one, so we are reluctant to extrapolate from our experience. Nevertheless, the results were eye-opening for us.

We asked the AI programs to analyze sets of ethical rules California private mediators who are attorneys can consult in California to follow best ethical practices for mediators. Anthropomorphizing GPT 5.0 and Claude Opus 4.1, we asked "them": imagine you are a law professor in California analyzing the rules. Please do not hallucinate, and please be objective. Write for an audience of first-year law students. We also double-checked responses from Claude Opus 4.1 against responses from GPT 5.0.

The first task was to identify rules for California mediators to consult, and then to summarize them. Because there are many private mediation forums in California, we specifically asked the

AI programs to include the rules of JAMS, which we, rather than the AI programs, chose. With more time and effort, we could have included additional sets of rules. The most tedious task, once the rules were identified, was mechanical: find the texts of rules on the Internet, download them to our laptop, and upload them to each of the two AI programs, a task that took an hour. Claude Opus 4.1 then provided the following summaries of rules:

## JAMS MEDIATORS ETHICS GUIDELINES

These guidelines provide basic ethical guidance for JAMS mediators conducting voluntary, nonbinding mediation processes. Key areas covered include ensuring informed consent, protecting voluntary participation, maintaining competence, preserving confidentiality, conducting proceedings impartially, refraining from providing legal advice, knowing when to withdraw, and ethical marketing practices. The guidelines emphasize flexibility in mediation approaches while maintaining ethical standards.

## ASSOCIATION OF CONFLICT RESOLUTION (ACR) ETHICAL PRINCIPLES

The ACR principles focus on three core areas: professionalism (maintaining integrity, impartiality, and competence), role definition (respecting party self-determination while assisting communication), and process principles (emphasizing self-determination, client-centered negotiation, impartiality, fairness, flexibility, confidentiality, full disclosure, and informed decision-making). These principles are brief and high level.

## MODEL STANDARDS OF CONDUCT FOR MEDIATORS (2005)

Developed jointly by the American Arbitration Association (AAA), American Bar Association (ABA), and ACR, these standards provide comprehensive ethical guidelines across nine areas: self-determination, impartiality, conflicts of interest, competence, confidentiality, quality of process, advertising/solicitation, fees, and advancement of mediation practice. They distinguish between mandatory (*shall*) and aspirational (*should*) conduct.

## CALIFORNIA EVIDENCE CODE SECTIONS 1115 TO 1129

These statutes establish the legal framework for mediation confidentiality in California. They define key terms, specify what communications are protected, outline exceptions to confidentiality, establish when mediation ends for confidentiality purposes, and require attorneys to provide written disclosure about confidentiality restrictions to clients before mediation.

## CALIFORNIA DISPUTE RESOLUTION COUNCIL STANDARDS OF PRACTICE FOR CALIFORNIA MEDIATORS

Created by the California Dispute Resolution Council, these standards (CDCR) address voluntary participation/self-determination, impartiality/bias/disclosure, conducting mediation, confidentiality, competence, and marketing/compensation. They emphasize context-sensitivity and apply across all mediation types and styles in California.

## CALIFORNIA RULES OF COURT, RULES 3.850 ET SEQ.

These rules establish minimum standards for mediators in court-connected civil mediation programs. They cover application scope, voluntary participation, confidentiality, impartiality/conflicts, competence, quality of process, marketing, compensation, and complaint procedures. They apply specifically to court-program mediators but not to judges or settlement conferences.

We asked a follow-up question to understand whether the Model Standards of Conduct for Mediators (2005) was a single collaborative effort by the AAA, ABA, and ACR, or three variants of Model Standards, and confirmed that it was a single model collaboratively created.

Taking advantage of the ability of GPT 5.0 and Claude Opus 4.1 to analyze text, we asked the programs to synthesize core mediator ethical principles that emerge from reviewing the six sets of rules above and received the following response:

**Self-determination and Voluntary Participation**—Parties must make free, uncoerced decisions about participation and outcomes. **Impartiality**—Mediators must remain neutral and avoid favoritism toward any party. **Informed**

**Consent**—Parties must understand the mediation process, mediator’s role, and settlement terms. **Confidentiality**—Communications during mediation must remain confidential with limited exceptions. **Competence**—Mediators must possess necessary skills and withdraw if unable to serve effectively. **Disclosure of Conflicts**—Mediators must disclose potential conflicts of interest and relationships. **No Legal Advice**—Mediators should not provide legal advice or represent parties. **Process Integrity**—Mediators must conduct fair proceedings and withdraw if integrity is compromised. **Truthful Marketing**—Advertising must be accurate without guaranteeing results. **Fair Compensation**—Fees cannot be contingent on outcomes.

We asked whether there were any internal contradictions or tensions within any sets of rules and received the following response:

**CDRC Standards:** There’s tension between maintaining impartiality while also being able to provide “impartial substantive information” and offer “personal evaluation or opinion” when requested by parties.

**Court Rules:** Rule 3.857(d) creates ambiguity about what information mediators can provide without engaging in unauthorized practice of law, while simultaneously stating mediators may provide information they’re qualified to give.

While we thought we could make sense of the responses about CDRC standards and court rules, a third response sent us down the rabbit hole, looking for further explanation:

**Model Standards:** Tension exists between promoting self-determination (Standard I) and ensuring quality process (Standard VI). The mediator must balance party autonomy with the duty to maintain procedural fairness.

We will not burden you with AI’s further clarifications of this response about Model Standards, except to mention that it flattered us by replying “You’re right to question this characterization.”

We queried: what is most distinctive about each set of rules?

**JAMS Guidelines:** Unique provision about co-mediating with nonattorneys. Specific guidance for attorney mediators and former judges. 90-day document destruction timelines. **ACR Principles:** Uniquely emphasizes “client-centered negotiation” as a core

principle. Most general and brief of all sets. **Model Standards:** Only set with “Advancement of Mediation Practice” standard encouraging diversity, pro bono work, and professional development. Distinguishes between “shall” (mandatory) and “should” (aspirational). **Evidence Code:** Only legally binding requirements. Unique attorney disclosure requirement (§ 1129) with specific form language. Defines when mediation ends for confidentiality purposes. **CDRC Standards:** Explicitly applies across all mediation contexts and styles. Three-year prohibition on establishing professional relationships postmediation, most detailed marketing restrictions. **Court Rules:** Attendance sheet requirement. Specific disclosure requirements for public discipline and criminal matters. Only set addressing mediators with disabilities (Americans with Disabilities Act (ADA) considerations).

We asked: What is the most thorough set of mediator rules? The answer: The Model Set of Conduct for Mediators (2005). (But caution: It is not binding on California mediators.)

Thus far, we had asked the AI programs to analyze a specific set of documents. However, we also asked questions requiring AI to reach for information outside the uploaded documents. For example, we asked for suggestions about other sources California mediators should consider. Part of the answer follows:

**California State Bar Ethics Opinions** regarding attorney-mediators. **Local court rules** for specific county requirements. **Professional liability insurance requirements** and guidelines.

**ADA** requirements for accommodations. **Industry-specific standards** (family law, employment, construction). **International mediation standards** for cross-border disputes. **Cultural competency guidelines** for diverse populations. **Online dispute resolution ethical standards** **Restorative justice principles** where applicable.

And this is the tip of the iceberg. Just as we asked for internal contradictions within a set of rules, we also asked for contradictions among sets of rules. We asked which rules were most problematic. We asked AI to identify ethical opinions relevant to the use of AI. We asked about national guidance on the use of AI relevant to California practitioners.

Until binding AI rules are approved in California, Claude Opus 4.1 made the following practical recommendations for California mediators: 1. **Apply existing rules**

**conservatively** when using AI. 2. **Maintain human oversight** of all AI-generated content. 3. **Avoid inputting confidential mediation information** into AI systems. 4. **Document AI use** and verification processes. 5. **Consider disclosure** in mediation agreements. 6. **Stay informed** about emerging guidance.

We wanted further explanation of what conservative application of existing rules means and received this reply: This recommendation means that when using AI tools, California attorneys should interpret and apply current ethical rules **more cautiously and strictly** than they might in traditional practice contexts, erring on the side of greater protection for clients and the integrity of the legal/mediation process.

“Existing rules” simply referred to California Rules of Professional Conduct that govern all attorneys. What factors favor conservative application of existing rules regarding competence, communication, confidentiality, and so forth? Claude Opus 4.1 provided the following factors: **Regulatory uncertainty**—No specific AI ethics rules exist yet in California. **Technology risks**—AI presents novel risks not contemplated when current rules were written. **Irreversible consequences**—Once confidential information enters an AI system, you cannot reliably retrieve or delete it. **Liability concerns**—Malpractice insurance may not cover AI-related errors. **Evolving standards**—What seems acceptable today might be deemed unethical tomorrow as standards develop.

Only limits on space and patience stop us from providing more responses.

Our research was far from comprehensive. Different jurisdictions will impose different mediation rules. Our AI queries were directed to mediation practice in California, and we do not yet have a uniform set of binding ethical rules in California. The rules that apply to court-related mediations do not apply to judges, and those rules, while legally binding, do not yet apply to private mediations.

Other AI programs for legal research exist. AI programs can hallucinate when doing legal research and we tried to minimize that problem by instructing the programs not to hallucinate, and by giving them a limited set of documents to analyze. Also, AI users are not always focused on how recently the AI program has been trained on information, so asking a question that requires knowledge of case law and statutes developed in 2025 may come up with a goose egg or flawed information if the program was only trained on available information up to 2024.

After our experience conducting legal research with AI, we have some suggestions: (1) It was a helpful place to begin our research, because it was fast, inexpensive, and useful. (2) The responses are uncanny and seductive, because they are logical, and they make sense. It does not guarantee that they are correct. (3) Double-check AI responses with independent research. Two AI programs do not necessarily provide identical responses. We only have a general idea of how they arrive at answers. Answers of one AI program can be cross-checked against another program, against our own experience and knowledge, against Google research, against Westlaw or Lexis research, and against our own reading of documents, statutes, and cases. Our professional duties cannot be delegated to AI. We remain responsible for our work product and conduct. (4) Even spending time double-checking results, you may still save much time. Our research with AI tools took us perhaps two hours, and another 1.5 hours to double-check the answers. But starting from scratch without AI tools would have taken longer to generate the responses to our questions. (5) The depth to which we go to confirm the accuracy of results should depend on the importance of our need to rely on the results. Before using our information in a brief, we would need to further confirm, just as we would confirm the accuracy of a case citation and the proposition for which it stands. Because this article is not intended as legal advice, it has not been double-checked as deeply as if it were intended as legal advice to rely upon. (6) You can easily go down the rabbit hole with AI research, always asking “just one more question” like Lieutenant Columbo.

In 40 years of practice, we have seen how changing technology affects legal practice. Where once a fax caused an irksome speeding up in the pace of attorney activity, we now deal with encrypted e-mail and messaging. Where once we learned to use Shepard’s volumes, LexisNexis and Westlaw for legal research, we now learn the benefits and risks of using AI research. AI research will affect legal education, legal research, legal writing, legal staffing, and legal billing. This article is intended to whet your curiosity about the application of AI tools to legal research.

Finally, one more way to learn is to crowd-source answers to a question. The better to learn, we invite readers to send us comments and corrections to this article.

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