

Confidentiality of Interview Reports

This document reviews ethical requirements for lawyers, mediators, and arbitrators, illustrating that these professionals generally may discuss cases as long as they do not disclose identifying information. (Of course, this is not legal advice and people should get competent advice if in doubt in any particular situation.) This document also reviews the multiple steps in University of Missouri “Stone Soup” Database process to prevent confidential information from being included in the database.

Ethical Rules

In general, the ethical rules permit dispute resolution professionals to provide information about their cases as long as the information could not reasonably lead to identification of the parties.

[American Bar Association Model Rules of Professional Conduct](#)

[Rule 1.6\(a\)](#) states: “A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent.” [Comment 4](#) states: “This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person.” This implies that lawyers may disclose information that does not reveal protected information and could not reasonably lead to discovery of such information.

[Rule 1.9\(c\)\(2\)](#) states: “A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter . . . reveal information relating to the representation except as these Rules would permit or require with respect to a client.”

[Model Standards of Conduct for Mediators](#) (approved by the American Arbitration Association, American Bar Association, and Association for Conflict Resolution)

Standard V.A.3 states: “If a mediator participates in teaching, research or evaluation of mediation, the mediator should protect the anonymity of the parties and abide by their reasonable expectations regarding confidentiality.”

[Code of Professional Responsibility for Arbitrators of Labor-Management Disputes](#) (approved by the National Academy of Arbitrators, American Arbitration Association, and Federal Mediation and Conciliation Service)

Section 2.C.1.b states: “Discussion of a case at any time by an arbitrator with persons not involved directly should be limited to situations where advance approval or consent of both parties is obtained or where the identity of the parties and details of the case are sufficiently obscured to eliminate any realistic probability of identification.”

JAMS Arbitrators Ethics Guidelines

Section IV.B: “An Arbitrator should not discuss a case with persons not involved directly in the Arbitration unless the identity of the Parties and details of the case are sufficiently obscured to eliminate any realistic probability of identification.”

The [American Bar Association Code of Ethics for Arbitrators in Commercial Disputes](#) and the [JAMS Mediators Ethics Guidelines](#) do not include similar provisions. This may be an oversight considering that the other ethical rules listed above include such an explicit provision. An exception for disclosure of information that does not identify the parties or details of the case may be implicit in this code and set of guidelines. In fact, practitioners often discuss and write about their cases, being careful to avoid identifying clients.

Database Procedures Protecting Confidentiality

The University of Missouri “Stone Soup” Database Project includes the following procedures to protect confidentiality of information included in the database. It provides for collaboration between subjects, students, and faculty to assure that confidential information is not improperly communicated.

1. Course assignments must include strict instructions to protect confidentiality. Faculty must submit the assignments to the institutional review boards at their schools to assure that they have appropriate confidentiality protections.
2. Prior to the interviews, students must provide subjects with a document describing the process, instructing subjects not to disclose the names of parties or details that could identify parties, giving assurance of protection of confidentiality, and informing the subjects that they have the option of not having the interview included in the database. At the beginning of the interviews, students must review the confidentiality procedures with the subjects.
3. At the end of each interview, students must ask the subjects if they are willing to have the interview included in the database.
4. When writing interview reports, students must not include information that could identify parties. To protect confidentiality, students must use pseudonyms and change or omit facts that could identify any party. Students are specifically instructed to disguise dates, locations, and dollar amounts that could identify the parties. Students’ reports must include a legend indicating that details of the case, including the names of parties, have been omitted or changed to protect the confidentiality of the data.
5. Before submitting reports to the database, faculty must review the reports to identify potentially problematic material regarding confidentiality and to correct any problems.

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