

## **Professional Ethics Rules Regarding Confidentiality of Interviews**

Stone Soup Dispute Resolution Knowledge Project  
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Center for the Study of Dispute Resolution

In general, ethical rules require lawyers, mediators, and arbitrators to protect the confidentiality of information from their cases. However, as illustrated below, the rules generally permit these professionals to provide information about their cases as long as the information is disguised so that it could not reasonably lead to identification of the parties. Of course, this is not legal advice and people should get competent advice if in doubt about any particular situation.

### **[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.

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