

1 **Rule 2.4. Lawyer Serving as Third-Party Neutral.**

2 (a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not
3 clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them.

4 Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity
5 as will enable the lawyer to assist the parties to resolve the matter.

6 (b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not
7 representing them. When the lawyer knows or reasonably should know that a party does not understand
8 the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-
9 party neutral and a lawyer's role as one who represents a client.

10 (c) A lawyer serving as a mediator in a mediation in which the parties have fully resolved all issues:

11 (c)(1) may prepare formal documents that memorialize and implement the agreement reached in
12 mediation;

13 (c)(2) shall recommend that each party seek independent legal advice before executing the
14 documents; and

15 (c)(3) with the informed consent of all parties confirmed in writing, may record or may file the
16 documents in court, informing the court of the mediator's limited representation of the parties for the
17 sole purpose of obtaining such legal approval as may be necessary.

18 **Comment**

19 [1] Alternative dispute resolution has become a substantial part of the civil justice system. Aside from
20 representing clients in dispute-resolution processes, lawyers often serve as third-party neutrals. A third-
21 party neutral is a person, such as a mediator, arbitrator, conciliator or evaluator, who assists the parties,
22 represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction.
23 Whether a third-party neutral serves primarily as a facilitator, evaluator or decisionmaker depends on the
24 particular process that is either selected by the parties or mandated by a court.

25 [2] The role of a third-party neutral is not unique to lawyers, although, in some court-connected
26 contexts, only lawyers are allowed to serve in this role or to handle certain types of cases. In performing
27 this role, the lawyer may be subject to court rules or other law that apply either to third-party neutrals
28 generally or to lawyers serving as third-party neutrals. Lawyer-neutrals may also be subject to various
29 codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint
30 committee of the American Bar Association and the American Arbitration Association or the Model
31 Standards of Conduct for Mediators jointly prepared by the American Bar Association, the American
32 Arbitration Association and the Society of Professionals in Dispute Resolution.

33 [3] Unlike nonlawyers who serve as third-party neutrals, lawyers serving in this role may experience
34 unique problems as a result of differences between the role of a third-party neutral and a lawyer's service
35 as a client representative. The potential for confusion is significant when the parties are unrepresented in
36 the process. Thus, paragraph (b) requires a lawyer-neutral to inform unrepresented parties that the
37 lawyer is not representing them. For some parties, particularly parties who frequently use dispute-

38 resolution processes, this information will be sufficient. For others, particularly those who are using the
39 process for the first time, more information will be required. Where appropriate, the lawyer should inform
40 unrepresented parties of the important differences between the lawyer's role as third-party neutral and a
41 lawyer's role as a client representative, including the inapplicability of the attorney-client evidentiary
42 privilege. The extent of disclosure required under this paragraph will depend on the particular parties
43 involved and the subject matter of the proceeding, as well as the particular features of the dispute-
44 resolution process selected.

45 [4] A lawyer who serves as a third-party neutral subsequently may be asked to serve as a lawyer
46 representing a client in the same matter. The conflicts of interest that arise for both the individual lawyer
47 and the lawyer's law firm are addressed in Rule 1.12.

48 [5] Lawyers who represent clients in alternative dispute-resolution processes are governed by the
49 Rules of Professional Conduct. When the dispute-resolution process takes place before a tribunal, as in
50 binding arbitration (see Rule 1.0(e)(d)), the lawyer's duty of candor is governed by Rule 3.3. Otherwise, the
51 lawyer's duty of candor toward both the third-party neutral and other parties is governed by Rule 4.1.

52 [5a] Rule 2.4(c) is intended to permit a lawyer-mediator for parties who have successfully resolved all
53 issues between them to draft a legally binding agreement and, to the extent necessary or appropriate,
54 record or file related papers or pleadings with an appropriate tribunal. In so doing, the lawyer will be jointly
55 representing the parties in their common goal of effecting proper legal filings or obtaining judicial approval
56 of their fully resolved issues. Because the parties in this situation have fully resolved their issues, they are
57 not considered "adverse" under Rule 1.7(a)(1). ABA Model Rule 2.4 does not address the lawyer's
58 drafting of documents to implement the parties' agreement.