

Between Neutrality and Persuasion: Mediator Ethics in Civil and Common Law Traditions

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ABSTRACT

This article provides a comprehensive comparative analysis of mediator ethics within civil and common law systems, emphasizing three pivotal dimensions: the mediator's role in formulating settlement proposals, the relationship between facilitative and evaluative mediation approaches, and the ethical considerations guiding the advertising of mediation services. Focusing on Italy as the principal civil law case study, and placing it in dialogue with selected European civil law jurisdictions such as France and Germany, the article argues that mediator ethics should not be understood merely as a set of universal professional duties, but as the product of distinct regulatory, institutional, and cultural environments. To avoid a purely descriptive comparison, the article adopts a structured analytical framework based on five variables: source of ethical authority, degree of legal formalization, mediator intervention in settlement, accountability mechanisms, and market-facing professional communication. The discussion is further grounded in selected empirical literature and case-based illustrations concerning court-connected mediation, mediator pressure, party self-determination, and online or hybrid mediation.

INTRODUCTION

Mediator ethics are a fundamental component shaping the integrity, legitimacy, and efficacy of mediation as a distinct mode of dispute resolution. Unlike mere professional decorum or individual integrity, mediator ethics directly influence parties' trust, the fairness of the process, and the quality of consensual outcomes (Antich, 2012). The Italian experience, codified in Legislative Decree No. 28/2010 and Ministerial Decree No. 150/2023, illustrates a civil law paradigm in which ethical principles—impartiality, confidentiality, and procedural fairness—are enshrined in binding legal statutes, supported by comprehensive training and organizational standards.

International frameworks, including the European Code of Conduct for Mediators, the International Mediation Institute's Code of Professional Conduct, and the American-based Model Standards of Conduct, articulate a globally resonant ethical core. Yet the manner in which these principles are institutionalized diverges substantively between civil law and common law jurisdictions, raising significant theoretical and practical questions regarding mediator roles, ethical boundaries, and public representation.

This article examines these dynamics through three focal lenses: the mediator's authority and ethics surrounding settlement proposals; the comparative analysis of facilitative versus evaluative mediation conduct; and the ethical parameters governing the advertising and promotion of mediation services. The paper concludes with reflections on the ethical challenges posed by remote and hybrid mediation models in an increasingly digital dispute-resolution landscape.

Methodology and Comparative Framework

This article adopts a functional comparative method. Rather than treating "civil law" and "common law" as internally homogeneous categories, it examines how different legal systems organize the same ethical problems: mediator neutrality, party self-determination, confidentiality, evaluative intervention, and public representation of mediation services. Italy is used as the principal civil law case study because of its highly regulated mediation

framework, but the analysis is supplemented by references to other European civil law jurisdictions, notably France and Germany, in order to avoid overgeneralizing from a single national model.

The comparison is organized around five analytical variables:

1. the source of ethical authority, whether statutory, institutional, professional, or contractual;
2. the degree of legal formalization of ethical obligations;
3. the permitted intensity of mediator intervention in settlement discussions;
4. the mechanisms of accountability and enforcement; and
5. the ethical regulation of market-facing conduct, including advertising and public communication.

This framework also allows cultural and institutional factors to be considered. Court-connected mediation, lawyer participation, public trust in adjudication, professional market competition, and the degree of state oversight all influences how mediator ethics are understood and practiced. The analysis, therefore, does not assume that ethical principles operate identically across jurisdictions, even when they are expressed through similar language.

Foundations of Mediator Ethics in Civil and Common Law Systems

Mediator ethics emerge at the intersection of legislation, professional norms, cultural practices, and dispute-resolution philosophies, manifesting differently in civil and common-law contexts.

In a civil law jurisdiction, exemplified by the Italian legal system, mediator ethics are embedded directly within procedural law. Legislative Decree No. 28/2010 not only outlines mediation as a consensual dispute-resolution process but also imposes detailed obligations on mediators regarding confidentiality, impartiality, neutrality, and process fairness. Complemented by Ministerial Decree No. 150/2023 on training and registration standards, this model represents a legalistic, institutional approach emphasizing state oversight, procedural uniformity, and enforceability (Legislative Decree No. 28/2010; Antich, 2012).

This integration enforces ethical conduct as a structural prerequisite for the legitimacy of mediation, aiming to foster public trust through transparent, enforceable obligations and organizational accountability. Nonetheless, it creates inherent tensions: the mediator is expected to facilitate agreement while strictly preserving party autonomy and neutrality under robust ethical guardrails. Such an arrangement underscores the mediator's dual role as a neutral process manager and a regulated professional whose ethical compliance is subject to procedural safeguards.

Conversely, common law systems typically regulate mediator ethics through professional codes and voluntary standards rather than prescriptive procedural statutes. Codes such as the Model Standards of Conduct (2005), promulgated by American mediation associations, emphasize principles—impartiality, confidentiality, self-determination—to guide mediator behavior without exhaustive legal prescription. This approach stems from the common law's preference for flexible, party-driven processes supplemented by professional self-regulation rather than detailed statutory frameworks (Moore, 2014; Boule, 2011).

Here, ethics serves to define and limit the mediator's role, preventing unauthorized influence and protecting the parties' freedom to make decisions. The regulatory environment trusts individual mediators and institutions to uphold ethical standards, supported by professional accountability mechanisms. Although less prescriptive, this model allows responsive, context-sensitive mediation practice but places greater ethical responsibility on mediators themselves.

These differing traditions also reflect broader jurisprudential attitudes: civil law's procedural integration views mediation as an adjunct to judicial resolution, requiring enforceable ethical rules; common law's procedural

autonomy situates mediation as an independent, voluntary forum emphasizing party-centered facilitation constrained by ethical standards rather than legal mandates (Antill & Cussens, 2018; Mayer, 2012).

The CEM Code of Ethics: An Exemplary Model of the Italian Civil Law System

A concrete and up-to-date example of the civil law paradigm in mediator ethics is represented by the 2024 Code of Ethics of the Centre de Médiation de l'Europe, de la Méditerranée et du Moyen Orient (CEM) – Italian Delegation. This Code establishes 12 clear and binding canons that comprehensively regulate mediator conduct, encompassing mandatory training, declarations of impartiality, strict confidentiality, and detailed operational rules (CEM Code of Ethics, 2024).

Prominent principles include:

- The formal obligation for the mediator to maintain continuous professional development (Canon 1);
- The requirement to formally declare independence, impartiality, and neutrality prior to each mediation session (Canon 3);
- Absolute prohibitions against exerting pressure on parties (Canon 6) and accepting direct compensation from them (Canon 12);
- Emphasis on ensuring parties' awareness, representation, and active participation (Canons 4 and 5), alongside rigorous controls over confidentiality both within and outside mediation (Canons 7 and 8);
- A meticulous verification of the legitimacy and substantive grounds for any settlement proposals made (Canon 10).

This normative framework, integrated into the Organizational Regulation, reflects a highly procedural approach to ethics, providing a structured and organized safeguard for the integrity of the entire process, consistent with the civil law view of mediation as often a ritualized extension of ordinary judicial procedures (Legislative Decree No. 28/2010).

Beyond Italy: Selected Civil Law Variations

Although Italy offers a particularly sophisticated example of statutory and institutional regulation of mediation ethics, it should not be treated as representative of all civil law systems. Other European civil law jurisdictions show different balances between legislation, judicial integration, and professional self-regulation.

Germany, for example, defines mediation as a confidential and structured process in which the parties voluntarily and autonomously seek to reach an amicable resolution with the assistance of one or more mediators. The Mediation Act places strong emphasis on confidentiality and party autonomy, but does not reproduce the same level of procedural integration found in the Italian model.

France offers a different model again. Court-appointed mediation is embedded within the judicial system, and French public legal information describes the court-appointed mediator as a qualified, impartial, and independent third party. Yet French mediation ethics remain less centralized than the Italian model, with important space left to professional practice, institutional rules, and sectoral regulation.

These examples suggest that the relevant contrast is not simply between civil law and common law, but between more or less formalized models of ethical governance. Italy stands toward the highly institutionalized end of the spectrum; Germany and France illustrate intermediate arrangements in which statutory recognition coexists with greater professional or institutional flexibility.

The following matrix clarifies that ethical divergence does not arise from a single rule in isolation, but from the interaction among legal sources, institutional settings, the mediator role, enforcement mechanisms, and professional market culture.

Table 1 – Comparative Variables in Mediator Ethics

Variable	Italy	Germany	France	United States / Common Law
Primary source of ethical standards	Statutes, ministerial decrees, mediation provider regulations	Federal legislation + professional obligations	Procedural rules, courts, mediation institutions	Professional codes and voluntary standards
Degree of formalization	High	Medium	Medium	Variable, generally more flexible
Mediator's proposal	Permitted and regulated	Less institutionalized	Depends on the context and practice	Permitted only with significant ethical caution
Accountability	Mediation providers, Ministry, courts, lawyers	Legal and professional obligations	Judicial and institutional oversight	Professional and institutional responsibility
Advertising of services	Regulated by professional ethics and mediation institutions	Controlled professional information	Deontological and institutional approach	Greater freedom, but prohibition of misleading claims
Institutional culture	Mediation integrated into civil procedure	Autonomy and confidentiality	Judicially connected mediation	Party autonomy and professional self-regulation

Settlement Proposals: Comparative Insights

The mediator's issuance of settlement proposals epitomizes a central ethical and procedural divergence between civil and common law approaches.

In the Italian civil law model, the mediator's authority to formulate settlement proposals forms a normative part of the mediation process itself. Articles 11 and 14 of Legislative Decree No. 28/2010 authorize mediators to present proposals upon joint party request, subject to conditions including explicit notification of legal consequences and conformity with public order and mandatory legal provisions. Ethical codes, such as the CEM Code of Ethics, further require mediators to carefully verify the procedural and substantive appropriateness of proposals, ensuring they do not coerce parties or undermine the principle of voluntariness (Legislative Decree No. 28/2010; CEM Code of Ethics, 2024).

This regulated evaluative role integrates mediation, conciliation, and judicial settlement modalities, leveraging mediator expertise to potentially advance resolution without compromising neutrality or party empowerment. The proposal serves as a tool to stimulate progress in negotiations when parties agree to it, with safeguards to prevent undue influence.

By contrast, common law systems approach settlement proposals with heightened caution. Core ethical frameworks prioritize the unconditional self-determination of parties, requiring that any mediator input be non-binding, transparent, and party-authorized. The Model Standards of Conduct (2005) explicitly emphasize that mediators must avoid compromising voluntariness or exerting pressure through suggestions or proposals. Settlement proposals, if employed, are viewed not as institutionalized powers but as optional, party-driven techniques, meriting careful ethical scrutiny to prevent role confusion or perceived partiality (Moore, 2014; Riskin & Westbrook, 2014).

The hesitation stems from concerns that unsolicited proposals may alter parties' perceptions of the mediator's neutrality and restrict their freedom to make decisions. Further, evaluative input risks reinforcing existing power imbalances or pressuring parties to accept terms prematurely.

A practical illustration may clarify the ethical distinction. In a technically complex commercial mediation concerning defective machinery, a mediator with legal or technical expertise may help the parties test competing assumptions about causation, repair costs, delivery delays, and litigation risk. In the Italian model, this may legitimately culminate, within the statutory safeguards, in a formal proposal. In a common law setting, the same intervention would more likely take the form of reality-testing, risk analysis, or option generation, unless the parties expressly authorize a more evaluative role. The ethical difference does not lie in whether the mediator influences the negotiation environment — all mediators inevitably do so — but in the transparency, consent, and institutional framing of that influence.

The comparative divergence thus highlights how shared ethical commitments are operationalized through distinct legal and cultural lenses: civil law provides a legal-ethical framework that normatively supports limited evaluation; common law foregrounds a purely facilitative ethos, limiting evaluative engagement to party consent and full transparency.

The CEM Code of Ethics and the Formulation of Settlement Proposals

Regarding the mediator's role in making settlement proposals, the CEM Code of Ethics (Canon 10) imposes a strict obligation to thoroughly verify the informational and substantive elements that justify a valid, balanced, and non-coercive proposal. This provision underscores the importance of avoiding pressure or undue influence on the parties, preserving their decisional autonomy and transparency principles.

This regulatory provision supports the civil law position on the legitimacy and regulated role of the mediator as an evaluative figure, albeit within a consensual and impartial process.

Facilitative versus Evaluative Mediation Approaches

The facilitative-evaluative dichotomy reveals critical nuances in mediator conduct philosophies and attendant ethical considerations.

The facilitative approach, widely embraced as an ethical standard, conceptualizes the mediator as a neutral process facilitator who manages communication, clarifies roles and procedures, promotes balanced participation, and assists parties in articulating interests without influencing substantive outcomes (European Code of Conduct for Mediators, 2004; IMI Code of Conduct, 2018). This model robustly protects party autonomy, ensuring consent is fully informed and voluntary.

Facilitative mediators also attend to power imbalances, communication barriers, and fairness—addressing conditions necessary for legitimate consensual decision-making (Boulle, 2011; Welsh & Hollett, 2000). The ethical imperative is to safeguard the process environment without imposing substantive judgments or preferred outcomes.

Conversely, the evaluative approach involves mediators assessing the strengths and weaknesses of the parties' positions, offering legal or technical insights, suggesting possible resolutions, or even proposing settlements themselves. This can be particularly beneficial in complex, commercial, or technically nuanced disputes where expertise may assist parties but introduces ethical complexity due to potential undue influence (Riskin, 2003; Bush & Folger, 2005).

Ethical codes recognize evaluative mediation as permissible only under stringent conditions: it must be conducted transparently, parties must be fully informed and consenting, and the mediator must avoid coercive or manipulative tactics (Coben, 2004). The risk is that evaluative interventions may morph into disguised adjudication, eroding trust, impartiality, and the consensual nature of mediation.

The increasing acknowledgment of hybrid or blended mediation models, which fluidly integrate facilitative and evaluative techniques responsive to context and party preferences, demands heightened ethical awareness. Mediators must clarify their shifting roles, secure party consent for evaluative interventions, and vigilantly preserve voluntary participation (Antill & Cussens, 2018).

Ethically, a non-negotiable boundary persists: mediators cannot compel settlements. The Model Standards state that pressure to increase settlement rates or satisfy institutional goals at the expense of party autonomy violates fundamental ethical tenets.

Managing Neutrality and Pressure: A Comparison between CEM and the U.S. Model Standards

Within the debate between facilitative and evaluative mediation models, the CEM Code tightly regulates both pressure on the parties (Canon 6) and conflicts of interest or subsequent activities involving the same parties (Canon 11), imposing precise standards that reinforce the mediator's perceived and actual neutrality.

In contrast, the U.S. common law model, exemplified by the Model Standards of Conduct for Mediators (2005), relies primarily on voluntary self-regulation and professionally developed best practices, featuring fewer legal constraints and greater flexibility (Moore, 2014). This difference reflects divergent juridical and ethical cultures that favor adaptability and mediator autonomy.

Empirical and Case-Based Perspectives on Mediator Intervention

The ethical debate on facilitative and evaluative mediation should also be tested against empirical and case-based evidence. Studies on court-connected mediation suggest that parties often value mediation not only because it produces a settlement, but because it is perceived as procedurally fair, participatory, and less coercive than adjudication. Empirical research summarized by Wissler, for example, reports high levels of perceived procedural fairness among parties and attorneys in court-connected mediation programs.

At the same time, empirical literature also cautions against assuming that settlement itself is a sufficient ethical indicator. A mediation may settle and still raise concerns if the agreement is reached through pressure, information asymmetry, or institutional expectations that favor docket reduction over party autonomy. Recent scholarship on court-connected mediation has therefore emphasized the persistent tension between self-determination and subtle coercion in institutional settings.

European research also shows that mediation practice varies significantly across Member States. A qualitative empirical study concerning civil and commercial mediation service providers in France, Italy, and Belgium examined perceived benefits, barriers, online mediation, expertise, and market-related issues, confirming that ethical practice is shaped by institutional design and professional culture rather than by legal rules alone.

These findings support a more nuanced conclusion: evaluative interventions are not unethical per se, but their legitimacy depends on context, transparency, party consent, mediator competence, and the absence of direct or indirect coercive pressure.

Beyond the Facilitative/Evaluative Binary

The sharpest critique of the facilitative/evaluative opposition remains Jeffrey W. Stempel's attack on what he called a false dichotomy. His point was not that mediation should become adjudication. It was that legal and institutional discourse often becomes distorted when it assumes that "good" mediation must fit one pure model and that any deviation necessarily corrupts the process. In Stempel's view, such formalism risks both descriptive inaccuracy and practical unfairness, especially where one party is weaker, less informed, or less able to protect its own interests within an informal setting.

That critique remains persuasive in comparative terms. Even systems that speak in strongly facilitative language often tolerate, or in practice rely upon, reality-testing, risk analysis, and structured interventions that have an evaluative effect. Conversely, systems that openly permit proposal-making do not thereby collapse mediation

into adjudication, so long as the mediator remains without power to impose a result and continues to operate within a framework of informed consent, neutrality, and confidentiality.

The real issue, then, is not whether evaluation exists. It plainly does. The issue is whether the forms of evaluation used by the mediator remain compatible with mediation's non-decisional character and with the ethical commitments that justify trust in the process.

Ethical Standards in Advertising Mediation Services

Ethical scrutiny of advertising mediation services addresses an area where professionalism and public perception intersect, critically shaping confidence in the neutrality of mediators and the mediation process.

Ethical frameworks, including the European Code of Conduct and the IMI Code, permit advertising that is truthful, dignified, and sufficiently informative about mediator qualifications, experience, methods, and fees, while expressly prohibiting exaggerated or misleading claims (European Commission, 2004; IMI, 2018).

Advertising rhetoric suggesting mediators can “convince,” “pressure,” or “guarantee rapid resolution” conflicts with the fundamental principle of mediation that parties retain autonomy in decision-making and risks fostering unrealistic expectations (Boulle, 2011). Moreover, such claims can distort the public's perception of the neutral mediator role, compromising trust and undermining the profession's credibility.

Commercial pressures inherent in the growing mediation market heighten ethical risks, as mediators may feel compelled to adopt promotional language to gain a competitive advantage. Codes of ethics serve as critical safeguards against the commodification of mediation, insisting upon restrained, accurate representation that emphasizes neutrality and procedural fairness (Moore, 2014; Riskin, 2003).

Responsible advertising also plays an educative function, clarifying the nature of mediation, the mediator's role, and managing client expectations to promote informed choice and trust in dispute resolution services.

The Selection of the U.S. Model Standards as a Comparative Reference and Observations on Its Ongoing Revision

The Model Standards of Conduct for Mediators, promulgated by American organizations such as the American Bar Association, is frequently selected as the principal benchmark for comparative analysis with civil law systems due to its widespread adoption and authoritative status within the common law context (Riskin & Westbrook, 2014).

It is recent news that the Model Standards are currently undergoing revision by a U.S. interdisciplinary committee (Indisputably, 2026). This process may provide an opportunity to reassess whether the 2005 Model Standards remain adequate in light of developments in online mediation, hybrid practice, mediator advertising, diversity of mediation styles, and increased institutional use of mediation.

The CEM Code of Ethics presents valuable insights for this update, potentially benefiting the Model Standards by proposing:

- Greater precision and binding nature regarding declarations of impartiality and conflicts of interest (as in Canons 3 and 11 of the CEM);
- More stringent confidentiality rules, especially for digital procedures, including explicit prohibitions on unauthorized use or disclosure of information (Canons 7 and 8 of CEM);
- An explicit and binding obligation for ongoing professional training and development (Canon 1);
- Clear prohibitions against accepting direct compensation from parties, enhancing transparency and mitigating conflicts of interest (Canon 12);

- Detailed regulations on coordination with co-mediators and expert consultants to ensure an efficient and respectful process for all parties (Canon 5).

Integrating these elements into the common law framework could elevate ethical standards by balancing flexibility and self-regulation with greater certainty and party protection.

Cultural, Institutional, and Regulatory Factors Shaping Mediator Ethics

Mediator ethics are not produced by legal doctrine alone. They are shaped by the institutional environment in which mediation operates. In jurisdictions where mediation is closely connected to the courts, ethical concerns often arise around voluntariness, judicial pressure, and the risk that mediation becomes an instrument of case management rather than party empowerment. In systems where mediation is primarily market-driven, ethical concerns more often concern advertising, mediator selection, fee transparency, professional competence, and the risk of overpromising settlement outcomes.

Civil law systems with strong public regulation may promote trust through formal guarantees, accreditation, training requirements, and enforceable procedural safeguards. The CEPEJ European Handbook for Mediation Lawmaking similarly emphasizes training, quality standards, impartiality, confidentiality and the role of the European Code of Conduct for Mediators as elements of effective mediation governance. However, legal formalization may also encourage ritualization, especially where mediation is perceived as a procedural precondition rather than a genuinely party-centered process.

Common law systems, by contrast, often rely more heavily on professional self-regulation, institutional reputation, mediator reputation, and party choice. The Model Standards of Conduct for Mediators expressly protect self-determination and warn against undermining party autonomy for reasons such as settlement rates, fees, or outside pressures. This flexibility may encourage adaptation to the dispute, but it may also generate uneven ethical enforcement where standards remain voluntary or institution-specific.

Cultural factors also matter. Legal communities differ in their expectations of the mediator's role. Some parties expect the mediator to remain strictly facilitative; others expect robust reality-testing or even a substantive proposal. Lawyer participation, public confidence in courts, delays in civil justice, the availability of accredited mediation bodies, and the economic structure of the mediation market all affect how neutrality, independence, and persuasion are perceived. The same conduct may therefore be regarded as helpful expertise in one jurisdiction and as improper pressure in another.

Mediation Modalities: In-Person, Online, Mixed, and Remote Caucus – Ethical Principles, Risks, and Operational Precautions

Mediation practice today encompasses diverse modes of conducting sessions: entirely in-person, fully online (telematic), hybrid/mixed, where some parties attend physically and others remotely, and remote caucuses within online or mixed settings. Each modality offers distinct operational benefits but also heightens the vulnerability of specific ethical principles, creating recurrent risks that require mediators' vigilant management.

Entirely In-Person Mediation

Operational Advantages:

- Maximum control of physical space and environment.
- Richer access to non-verbal cues and interaction subtleties.
- Direct, immediate verification of participant identity, attendance, and authority.

Ethical Principles Most Exposed:

- Confidentiality (internal and external).

- Impartiality.
- Party self-determination.

Specific Risks:

- Undisclosed presence of escorts or third parties influencing participants.
- Environmental or social pressure impacting parties.
- Unequal power dynamics, including physical disparities among delegations.
- Possible misuse of breaks or private caucuses to exert pressure.

Mediator's Precautions:

- Rigorous verification of all attendees and their representative powers upfront.
- Strict and transparent management of caucus sessions, ensuring privacy and fairness.
- Explicit, repeated reminders regarding confidentiality rules.
- Balanced allocation of speaking time to mitigate dominance.
- Maintaining clear records of attendance and participants' powers.

Entirely Online / Telematic Mediation**Operational Advantages:**

- Increased accessibility for parties regardless of location.
- Reduction in costs and time commitments.
- Enhanced organizational flexibility.

Ethical Principles Most Exposed:

- Confidentiality, challenged by technology-mediated environments.
- Authentic and voluntary participation.
- Informed consent in a virtual setting.
- Procedural fairness and correctness.
- Identity verification and authenticity of consent/signatures.

Specific Risks:

- Third parties not visible on camera (e.g., hidden listeners).
- Unauthorized or covert audio/video recordings.
- External coaching or influence is unperceived by the mediator.
- Technical issues (poor audio, video lag) are disrupting communication.

- Challenges with document sharing, signing, and delegation verification.
- Undetected pressures or coercion due to remote distance.

Mediator's Precautions:

- Establishment of a pre-session protocol covering conduct rules and technology use.
- Verification of participant identity and confirmation that they are alone in the environment.
- Explicit prohibition on recording, confirmed at each session start.
- Recommendation or requirement to use headphones for confidentiality.
- Technical checks before or at the start of the session; postponement or suspension if quality is compromised.
- Careful adherence to laws governing digital document execution, e.g., Italy's Legislative Decree articles 8-bis and 8-ter.

Mixed / Hybrid Mediation (Combination of Physical and Remote Participation)

Operational Advantages:

- Flexibility accommodating varying logistical and health constraints.
- Continuation of mediation despite travel or availability limitations.

Ethical Principles Most Exposed:

- Impartiality as perceived by parties, particularly regarding physical proximity advantages.
- Equality of treatment and participation.
- Genuine self-determination and decision-making power for remote participants.
- Confidentiality concerns across physical and virtual divides.

Specific Risks:

- Mediator's physical closeness to in-person parties may engender perceived or actual partiality.
- Remote parties may experience isolation, limited capacity for intervention, or difficulty influencing the flow.
- Asymmetries in document access and perception of non-verbal cues.
- Heightened risk of perceived favoritism or bias.

Mediator's Precautions:

- Clear pre-session communication explaining the hybrid setup and its implications.
- Securing explicit consent from all parties to proceed in a mixed modality.
- Enforce stricter controls over speaking turns and dialogue pacing.

- Frequent comprehension and participation checks with remote attendees.
- Simultaneous sharing of documents and materials, equally accessible to all parties.
- Scheduled pauses ensure that remote parties can engage fully.
- Willingness to convert sessions to fully in-person or fully online formats if significant imbalances persist.

Remote Caucus Sessions (Within Online or Mixed Models)

Operational Advantages:

- Facilitates confidential one-on-one dialogue even at a logistical distance.
- Enables rapid switching between joint sessions and caucuses without physical relocation.

Ethical Principles Most Exposed:

- Internal confidentiality of sensitive caucus discussions.
- Procedural fairness and mediator loyalty to all parties.
- Maintaining parties' self-determination without undue influence.

Specific Risks:

- Undetected third-party eavesdropping or presence.
- Use of parallel private communication channels that the mediator cannot monitor.
- Difficulty in guaranteeing true privacy for caucus content.

Mediator's Precautions:

- Explicitly confirming the privacy of party locations during caucus sessions.
- Requests to disable other devices or digital communications that could compromise privacy.
- Visual environment checks via camera, where possible.
- Regular verbal reminders reinforcing confidentiality obligations.
- Further limited verbalization about caucus discussions to protect privacy.

Summary Chart of Mediation Modalities

Mode of Conduct	Operational Advantages	Most Exposed Ethical Principles	Specific Risks	Mediator's Precautions / Remedies
Entirely In-Person	Full control of space; rich non-verbal cues; direct identity verification	Confidentiality; impartiality; self-determination	Undeclared attendants; environmental pressure; physical power imbalances; caucus misuse	Verify attendees/powers; manage caucuses; confidentiality reminders; balanced speeches; attendance records

Entirely Online / Telematic	Accessibility; cost/time savings; flexible organization	Confidentiality; authentic participation; informed consent; document authenticity	Hidden third parties; secret recordings; technical glitches; identity/powers verification challenges	Connection protocols; identity/environment checks; no recording; participant alone confirmation; headphones; tech tests; suspend if needed
Mixed / Hybrid	Organizational flexibility; continuity despite impediments	Perceived impartiality; equality; genuine participation; confidentiality	Mediator proximity bias; isolation of remote parties; asymmetries in access and cues; favoritism risk	Explain setup; obtain consent; control speaking turns; check understanding; share docs; dedicate breaks; switch formats if imbalance
Remote Caucus (online/mixed)	Confidential one-on-ones possible remotely	Internal confidentiality; procedural fairness; self-determination	Undetected listeners; parallel chats; confidentiality breaches	Confirm privacy; disable other devices; visual checks; confidentiality reminders; minimal caucus disclosure

This comprehensive understanding of mediation modalities illustrates how the ethical principles of confidentiality, impartiality, and self-determination must be actively protected through specific practical steps tailored to the method of mediation delivery. Mediators must remain attentive to modality-specific vulnerabilities and adapt operational procedures accordingly to preserve the integrity and fairness of the mediation process.

CONCLUSION

This article has argued that mediator ethics rests on a shared normative core — self-determination, impartiality, confidentiality, fairness, transparency, and competence — but that this core is operationalized differently across legal traditions, institutional design, professional culture, and market structure. The comparison should therefore not be reduced to a simple civil law/common law opposition. Italy represents a highly formalized civil law model, but other civil law jurisdictions, including Germany and France, reveal different combinations of statutory recognition, judicial involvement, and professional self-regulation.

The comparative analysis affirms that civil and common law traditions share a fundamental axiological core of mediation—self-determination, impartiality, confidentiality, procedural fairness, and transparency—while diverging in their institutional implementation. Civil law’s procedural codification contrasts with common law’s emphasis on professional standards, influencing the roles of mediators and the permitted interventions, particularly regarding settlement proposals and evaluative conduct.

The facilitative model consistently anchors ethical practice; evaluative interventions require transparency and party consent to maintain legitimacy. Advertising must uphold truthfulness and neutrality to preserve public trust. Emerging modalities like remote and hybrid mediation demand adaptive ethical protocols to safeguard these core principles.

The analysis also shows the limits of purely doctrinal comparison. Ethical rules acquire practical meaning only when examined in light of how mediation is actually used: whether as a voluntary commercial process, a court-connected settlement mechanism, a mandatory pre-litigation step, or an online service delivered through digital platforms. Future research should therefore combine comparative legal analysis with empirical investigation into mediator conduct, party perceptions, institutional incentives, and cultural expectations across jurisdictions.

Ultimately, mediator ethics are realized not through directive force but by fostering a fair process enabling informed, autonomous party decisions, thereby sustaining mediation's distinct and vital role in modern dispute resolution.

The ongoing revision of the Model Standards presents a significant opportunity to reflect upon and potentially incorporate elements of increased procedural rigor and normative clarity, drawing from time-tested principles and canons such as those of the CEM, ultimately promoting a mediation practice that is more transparent, fair, and trustworthy on a global scale.

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