

Rule 2.4. Lawyer Serving as Third-Party Neutral
West's Annotated Code of Maryland
Maryland Rules

West's Annotated Code of Maryland
Maryland Rules (Refs & Annos)
Title 16. Courts, Judges, and Attorneys
Chapter 800. Miscellaneous
Rule 16-812. The Maryland Lawyers' Rules of Professional Conduct
Counselor

M D Rules, Rule 16-812, MRPC 2.4

Rule 2.4. Lawyer Serving as Third-Party Neutral

[Currentness](#)

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

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

COMMENT

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

[2] The role of a third-party neutral is not unique to lawyers, although, in some court-connected contexts, only lawyers are allowed to serve in this role or to handle certain types of cases. In performing this role, the lawyer may be subject to court rules or other law that apply either to third-party neutrals generally or to lawyers serving as third-party neutrals. See Md. Rules 17-101-17-109. Lawyer-neutrals may also be subject to various codes of ethics, such as the Maryland Standards of Conduct for Mediators, Arbitrators and Other ADR Practitioners adopted by the Maryland Court of Appeals or the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint committee of the American Bar Association and the American Arbitration Association.

[3] Unlike nonlawyers who serve as third-party neutrals, lawyers serving in this role may experience unique problems as a result of differences between the role of a third-party neutral and a lawyer's service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, paragraph (b) requires a lawyer-neutral to inform unrepresented parties that the lawyer is not representing them. For some parties, particularly parties who frequently use dispute-resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information may be required. Where appropriate, the lawyer should inform unrepresented parties of the important differences between the lawyer's role as third-party neutral and a lawyer's role as a client representative, including the inapplicability of the attorney-client evidentiary privilege. The extent of disclosure required under this paragraph will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute-resolution process selected.

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

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

Model Rules Comparison.- This Rule, newly added to the Model Rules by the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct, is substantially similar to the ABA Rule, with the exception of changing "will" to "may" in the fifth sentence of Comment [3].

Credits

Adopted Feb. 8, 2005, eff. July 1, 2005.

MD Rules, Rule 16-812, MRPC 2.4, MD R CTS J AND ATTYS Rule 16-812, MRPC 2.4
Current with amendments received through January 1, 2015

END OF DOCUMENT	© 2015 Thomson Reuters. No claim to original U.S. Government Works.
------------------------	---