



Confidentiality and the Right to Privacy

3.5 hours

The protection of confidentiality in mediation is rooted in two basic constitutional concepts: 1) the right to privacy of the parties: privacy is the set of conditions in which an individual is considered free from interference by government and the community; privacy includes the liberty to make personal and family decisions; 2) the right not to incriminate oneself, protecting the parties' relationship to the mediator and to the process. In general, participants in mediation are offered and believe themselves to have, the option to maintain privacy regarding information exchanged in mediation.

In opposition to granting an absolute protection of confidentiality are those who advocate for the right of the public to know. Underlying the debate about confidentiality in mediation are basic constitutional rights:

- **Amendment I**- free speech/the right of the public to know
- **Amendment IV**- the right to be left alone
- **Amendment V**- granting protection from incriminating oneself
- **Amendment XIV** - liberty right to make individual and family decisions

While mediators have generally considered confidentiality as preferable, this workshop will question the validity of that assumption. Participants will look at the pros and cons of confidentiality in mediation and the complex issues involved for the parties' in making the decision to maintain or waive it.