

**ABA Section of Dispute Resolution
Committee on Mediator Ethical Guidance**

SODR-2008-2

Question Two

If the attorney-mediator does not make the warning disclosure described above and is later required by a court to disclose information and facts he or she learned in the mediation, does the attorney-mediator have liability to the participant in the mediation who revealed the facts to the attorney-mediator relying on their confidential treatment and who was adversely affected by the disclosure of those facts by the attorney-mediator?

Response: The question of mediator liability is distinct from the mediator's ethical responsibility pursuant to the Model Standards of Conduct for Mediators. Liability would be determined under the jurisdiction's tort or statutory law. The answer to the first question might serve as the basis of a finding that there was or was not a duty of the mediator to disclose a risk. The issues of breach of duty, causation and damages would turn on additional facts, that are not provided, and on state tort law, which is beyond the scope of this committee.