

CODE OF ETHICS

1. MEDIATION PROCESS

Mediation is a process in which an impartial person (mediator):

- 1.1 facilitates the resolution of a dispute by promoting uncoerced/voluntary agreement by the parties to the dispute;
- 1.2 facilitates communication;
- 1.3 promotes understanding of the process;
- 1.4 assists the parties to identify their needs and interests;
- 1.5 apply creative problem-solving techniques to enable the parties to reach their own agreement;
- 1.6 encourage informed decision-making by consulting other professionals;
- 1.7 explore with the parties prior to the mediation that each party will have the necessary authority to conclude any settlement;
- 1.8 respect freedom of conscience, belief and expression;
- 1.9 dissociate himself/herself from comments or conduct that is racist, sexist or otherwise inconsistent with the Bill of Rights in the Constitution of South Africa;
- 1.10 observe and respect each party's religious-, gender and cultural rights.

2. IMPARTIALITY

- 2.1 A mediator may mediate only those matters in which the mediator can remain impartial and even-handed. If at any time the mediator is unable to conduct the process in an impartial manner, the mediator must withdraw.
- 2.2 Accordingly, the mediator shall avoid:
 - i) partiality or prejudice;
 - ii) conduct that gives any appearance of partiality or prejudice;
 - iii) prejudice by reason of such matters as the parties' personal characteristics, background, values and beliefs or conduct at the mediation;
 - iv) socializing with a party;
 - v) entering into any financial, business or social relationship, which is likely to compromise their impartiality, or which might reasonably create a perception of partiality or bias.

3. CONFLICTS OF INTEREST

- 3.1 Before the mediation begins/ or as soon as the information becomes known to the mediator, the mediator must disclose all actual and potential conflicts of interest known to the mediator. The mediator should:
- i) discuss any circumstances that may, or may be seen to, affect the mediator's independence or impartiality; and
 - ii) at all times be transparent about the mediator's relations with the parties in the mediation process.
- 3.2 After making disclosure, the mediator may proceed with the mediation if all parties agree and the mediator is satisfied that the conflict or perception of conflict will not preclude the proper discharge of the mediator's duties.

4. COMPETENCE

- 4.1 A mediator must not mediate unless the mediator has the necessary competence to do so and to satisfy the reasonable expectations of the parties.
- 4.2 A person who agrees to act as a mediator holds out to the parties and the public that she or he has the competence to mediate effectively.

5. CONFIDENTIALITY

- 5.1 Subject to the requirements of the law, a mediator must maintain the confidentiality required by the parties.
- 5.2 If the mediator intends to hold caucus sessions with a party, the mediator should, before such sessions, discuss with the parties the confidentiality attaching to them.
- 5.3 A mediator should not disclose any matter (including information about how the parties acted in the mediation process, the merits of the case, any settlement offers or agreed outcomes) unless:
- i) the mediator is given permission to do so by all persons attending at the mediation with an interest in the preservation of the confidence; or
 - ii) the mediator is required by law to do so; or
 - iii) the mediator obtains evidence of child abuse not previously disclosed; or/and
 - iv) the mediator believes that a child is in need of protection.

6. TERMINATION OF MEDIATION

- 6.1 A mediator may terminate the mediation if:
- (i) any party is abusing the process; or
 - (ii) there is no reasonable prospect of settlement;
 - (iii) a settlement is being reached that to the mediator appears illegal or against public policy, having regard to the circumstances of the dispute; or
 - (iv) the mediator considers that continuing the mediation is unlikely to result in a settlement.

7. RECORDING SETTLEMENT

- 7.1 If the mediation results in a settlement between the parties, the mediator should encourage the parties to continue the mediation until the parties have:
- i) addressed any enforceability issues; and
 - ii) recorded terms of settlement in writing.

8. PUBLICITY AND ADVERTISING

- 8.1 A mediator must not engage in misleading or deceptive publicity or advertising.
- 8.2 A mediator must not make any false or misleading statement including statements or claims as to the mediation process, its costs and benefits, or the mediator's role, skills, or competence.

9. FEES

- 9.1 A mediator mediating in any other dispute must fully disclose his or her fees to the parties before commencement of the mediation process and must reach written agreement in respect thereof.
- 9.2 A mediator may not agree to a fee which is contingent upon the result of the mediation or amount of settlement.

10. REMOVAL

- 10.1 When a mediator becomes aware of an ethical violation by another mediator and it seems appropriate, he/she should informally attempt to resolve the issue with the said mediator. If the violation does not seem amenable to an informal solution and is of a more serious nature, the mediator must bring it to the attention of Mediation Society of South Africa.
- 10.2 Should the mediator be found in breach of any of the terms of this Code of Ethics or conducts himself/herself or in contravention of any of the provisions of the terms of the Constitution of Mediation Society of South Africa, the internal Ethics committee of the Mediation Society of South Africa shall, after due diligence and consultancy with the mediator, withdraw his or her accreditation/membership and remove him or her from the list of members/ accredited mediators.
- 10.3 Mediators should be conscious of their social responsibility and should be make a concerted effort to remain accredited or be re-accredited.

11. GENERAL

Every MSSA Mediator shall:

- 11.1 Act with honesty, due diligence and independence.
- 11.2 Conduct himself or herself in such a manner that is fair to all parties and must not be swayed by fear, favour or by self-interest.
- 11.3 A mediator shall not permit parties or their representatives to record proceedings mechanically or electronically.
- 11.4 Every mediator must upon resignation from service or the expiry of an appointment, complete all part-heard mediations as soon as possible or provide a detailed progress report to MSSA on a monthly basis. If a mediator has been removed, by the Ethics committee, as member of MSSA or accredited member of the MSSA, such mediator shall provide a mediator's report on all pending matters and deliver all file contents within a period of (1) one month from date of removal to the MSSA head offices.
- 11.5 Every mediator shall acquire substantive knowledge and procedural skill in the specialized area of practice. This may include but is not limited to compulsory yearly MSSA online courses which shall be timeously communicated to all MSSA mediators. Every mediator shall participate in continuing education and be personally responsible for ongoing professional growth.

I the undersigned,

(herein referred to as the mediator)

hereby undertake and agree to be bound by this Code of Ethics for Mediators.

By signing this Code of Ethics, I agree to render my services as a mediator

Dated and signed at _____ on this _____ day of _____ 20_____

(Mediator signature)



MSSA

Bridge to resolution