

CODE OF CONDUCT FOR THE MEDIATOR CERTIFIED BY THE ICFML

ICFML Professional Code of Conduct

Instituto de Certificação e Formação
de Mediadores Lusófonos

icfml.org

ICFML PROFESSIONAL CODE OF CONDUCT

The ICFML Code of Professional Conduct ("the Code") provides users of mediation services with a concise statement of the ethical standards that can be expected of ICFML Certified Mediators.

Users who believe that the standards set out in this Code have not been observed may initiate the ICFML Professional Conduct Assessment Process.

DEFINITIONS

For the purposes of this Code, Mediation is defined as a process in which a third party (the Certified Mediator) assists the parties to develop a dialogue aimed at managing or resolving a dispute.

An ICFML Certified Mediator (also referred to as a Mediator in this Code) is someone:

- whose competence in the practice of mediation has been certified by the ICFML, and
- who is authorized by the ICFML to use the ICFML name and logo, and
- whose profile is included in the ICFML mediators panel at icfml.org

1. MEDIATOR APPOINTMENT

1.1 Right to use the title "ICFML Certified Mediator" and the ICFML logo.

In the event that an ICFML Certified Mediator or ICFML Advanced Certified Mediator fails to maintain the ICFML requirements for certification, or no longer qualifies as a Certified Mediator, such Mediator will no longer have their Mediator Profile included in the ICFML Mediators Panel and will not have more permission to use the ICFML logo and the title of ICFML Certified Mediator.

1.2 Promotion of intermediary services

Subject to applicable laws and regulations governing professional practice, Mediators will present and promote their practice truthfully and accurately. They can freely create their profile and post it on the ICFML mediators panel and can replicate their profile for their professional purposes.

1.3 Appointment

1.3.1 Prior to mediation, mediators will inform the parties of their relevant background and experiences.

1.3.2 Mediators will inform the parties that they will be invited to provide feedback from the Mediator at any stage of the process, including providing written feedback at the conclusion of the mediation.

1.3.3 Mediators shall, prior to appointment, carry out an accurate investigation to determine whether there is any pre-existing relationship or interest in the subject matter of the dispute that could reasonably be perceived as a conflict of interest. The mediator will make this information available in order to obtain the consent of the parties to its appointment. Regardless of the consent of the parties, the mediator will decline his appointment if he concludes that the relationship with the parties or any interest in the object of the dispute could threaten his impartiality.

2. DILIGENCE

Mediators can accept the assignment to act as Mediator in any situation they feel capable and competent. Mediators must ensure that they have sufficient time, energy and knowledge of the matter brought to the mediation in order to meet the reasonable expectations of the parties.

3. IMPARTIALITY

3.1 Mediators will always carry out mediation impartially, avoiding bias or prejudice in favor of or against any party. Bias or favoritism can arise from several sources: the mediator's reaction to a mediation participant's personal characteristics, background, or values; the mediator's personal, professional or financial interests in the subject matter of the dispute; or preexisting relationships with any mediation participant. If, at any time, a Mediator feels unable to conduct the process impartially, he will voice that concern and withdraw from the mediation.

3.2 Mediators will not accept an appointment without first disclosing any information known to them that could be perceived as likely to affect their impartiality. This disclosure duty is an obligation that persists throughout the mediation process.

3.3 The existence of relationships or interests that potentially affect or that apparently affect the impartiality of a mediator will not automatically imply their inability to act as a mediator, provided that these circumstances have been fully disclosed and addressed to the satisfaction of the parties and the Mediator.

3.4 The Mediator has an ongoing duty to disclose perceived or actual threats to its impartiality. If during the course of the process relationships or interests arise that could be perceived as a threat to the mediator's impartiality, they must be disclosed and the parties must renew their consent to proceed with the process.

3.5 Following such disclosures, if any party raises an objection, the Mediator will withdraw from the mediation.

3.6 After accepting the appointment and until the end of the mediation process, mediators will not establish financial, business, professional, family or social relationships or acquire financial or personal interests that could create a real or perceived threat to the Mediator's impartiality in the mediation. In the event of a perceived threat to the mediator's impartiality, the mediators may proceed with the mediation if, after the full disclosure of the facts, the mediators obtain the consent of the parties.

3.7 After the end of the mediation, for the following 12 months, the Mediators may not represent or advise any of the parties in a mediation that deals with the same matter or substantially related to it, unless all the parties, aware of the fact, express consent. For the purposes of this clause, the role of the mediator in other dispute resolution procedures, such as, for example, neutral assessment or arbitration, which may involve some or all of the parties participating in the mediation, will not be considered.

MEDIATION PROCESS

4.1 Procedure

Mediators will endeavor to ensure that the Parties, their representatives and advisors, understand the characteristics of the mediation process, the role of the mediator, the parties and their representatives and advisors, as well as the legal effectiveness of the agreement reached in the mediation. The mediator will ensure prior to initiating mediation that the parties have understood and agreed to the terms and conditions governing the mediation, including the parties' obligations to respect the Mediator's confidentiality. Best practice recommends writing an Agreement to Mediate contemplating these terms, unless the parties or circumstances dictate otherwise.

4.2 Equity and integrity of the process

4.2.1 Mediators will explain the mediation process to the parties and their advisors and will be satisfied with their consent to participate in the mediation process and the selection of the mediator (unless applicable law, court regulations or contractual rules require a specific and/or mediator). Mediators will ensure that all parties are aware that they have an equal opportunity to hold private pre-mediation meetings with the mediator.

4.2.2 The mediators will conduct the process, paying attention to the equity of the parties in the process. The mediator will take special care to ensure that the parties have equal opportunity to speak, participate in the process and allow the parties to obtain legal or other guidance necessary to enter into any resolution.

4.2.3 Mediators will take reasonable steps to prevent any misconduct that could invalidate an agreement reached in mediation or create or exacerbate a hostile environment. Mediators will endeavor to ensure that the parties reach an agreement of their own accord and will knowingly enter into any resolution.

4.3 End of the process

4.3.1 The Mediator will ensure that the parties are aware that they may withdraw from the mediation at any time by informing the Mediator of this option (unless applicable law, court regulations or contractual rules require otherwise).

4.3.2 Mediators will withdraw from mediation if the negotiation between the parties appears to lead to an inconceivable or illegal outcome. An inconceivable result stems from exploitation, undue pressure or coercion. An inconceivable outcome reflects an imbalance of power between the parties in such a way that it “shocks conscience” and violates equity between the parties and accepted legal and cultural norms.

4.4 Feedback

Unless it is inappropriate in the circumstances, mediators, upon concluding a mediation, will invite the parties, assessors and, if any, co mediators or assistant mediators to complete a Request for Comments Form and return it to the Mediator or mail it by email to the ICFML.

4.5 Taxes

4.5.1 The mediators, before accepting appointment, will agree with the parties how their fees, fees and expenses will be calculated, and how they will be paid by the parties (if divided between them and in what proportion). Mediators who withdraw from a case will refund the parties any prepaid fees for the period after withdrawal.

4.5.2 Mediators will not suggest to the parties that their remuneration should be based on or related to the outcome of the mediation.

5. CONFIDENTIALITY

5.1.1 Mediators will maintain confidentiality on all information obtained in the course of mediation, unless:

- is required to disclose by operation of law or by any government agency that has appropriate authority and jurisdiction, or
- arising from paragraph 5.1, in which case recipients of confidential information must be obliged to maintain confidentiality, or
- if the specific information passes into the public domain (not as a result of a disclosure by the Mediator), or
- if the parties release the Mediator from the restriction of confidentiality or, if necessary, to defend the Mediator from any suit or charge for which the Mediator is at risk of being liable, or
- if disclosure is necessary to prevent death or imminent bodily harm or serious harm to an identifiable third party or to prevent the commission of illegal and morally objectionable acts. Before using or disclosing such information, if not otherwise required to be disclosed by law, mediators shall make a good faith effort to persuade the party and/or the representative or other advisors to act in a way that will remedy the situation.

5.1.2 The Mediator may, however, disclose having previously served as a mediator in a mediation involving one or more of the parties, provided that none of the details of that case are disclosed.

5.1.3 Mediators will discuss confidentiality with the parties prior to or at the commencement of the mediation and obtain consent for any communication or practice by the Mediator that involves the disclosure of confidential information.

5.1.4 At no time after the conclusion of a mediation shall the Mediators present evidence or testify on behalf of a party that makes or defends a claim against another party in the same mediation in which they acquired confidential information from the other party. unless all such information is no longer confidential or unless the party protected by confidentiality gives consents.

6. PROFESSIONAL CONDUCT ISSUES AND COMPLAINTS

6.1 An ICFML Certified Mediator may consult with the ICFML about any professional or ethical dilemmas.

6.2 A party to a mediation that believes there has been a lack of compliance with this Code may trigger the ICFML Professional Conduct Assessment Process.

This Code is inspired by and based on:

- (1) The Model Rule for the Attorney as a Neutral Third Party of the CPR-Georgetown Ethics and Standards Commission on ADR (2002)
- (2) Code of Conduct for Mediators of the UIA Forum of Mediation Centers (2003)
- (3) European Code of Conduct for European Commission Mediators (2004)
- (4) Models of Standard of Conduct for Mediators (2005) adopted by AAA, ABA and ACR
- (5) Australian Law Council Ethical Guidelines for Mediators (2006)
- (6) Ethical Guidelines for JAMS Mediators
- (7) Guidelines for the appointment of CIARB mediators
- (8) The Swiss Commercial Mediation Rules and the Mediation Rules and Clauses
- (9) IMI Mediator Code of Conduct

Adherence to this Code does not replace or qualify any legislation or rule governing individual professions or more extensive rules of conduct that may apply in specific circumstances.

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