

# ICFML PROFESSIONAL CONDUCT ASSESSMENT PROCESS

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Instituto de Certificação e Formação  
de Mediadores Lusófonos

[icfml.org](http://icfml.org)

# PROCESSO ICFML DE AVALIAÇÃO DE CONDUTA PROFISSIONAL

This assessment process is in line with the professional conduct assessment procedures adopted by the International Mediation Institute. The principles of diligence, confidentiality, independence, neutrality, impartiality, justice and integrity, as well as the other principles defined in the legislation and in the ICFML Code of Professional Conduct, are vital to the mediation process. Users of mediation services have the right to know and trust that ICFML Certified Mediators strictly adhere to these basic principles. In the unlikely event of a failure by an ICFML Certified Mediator to comply with the ICFML Code of Professional Conduct ("the Code") or another code of conduct for which there is no professional conduct assessment process, one or both Parties to mediation conducted by an ICFML Certified Mediator may request an assessment of the Mediator's conduct, which will be independently assessed pursuant to this process.

The Evaluation Process is carried out in up to 4 stages:

- Direct conversation
- Mediation
- Assessment of Professional Conduct
- Appeal to the Professional Conduct Assessment Committee

All complaints regarding non-compliance by the ICFML Certified Mediator must first be discussed with the Mediator. If the conversation does not resolve the complaint, a request must be made to initiate the mediation stage. If the mediation step does not resolve the grievance, the Party may file a formal request for an ICFML professional conduct assessment. An appeal possibility will be available with the last step of the process.

The ICFML Professional Conduct Assessment Process does not deprive any party of any alternative claim or disciplinary process by which the Mediator's conduct may be regulated, or indeed any other national process that may be invoked.

## **1 - FIRST STAGE - Direct Conversation**

A Party that has participated in a Mediation and that believes that an ICFML Certified Mediator has failed to fulfill the duties set out in the Code and that wishes to file a complaint must first raise the matter with the mediator himself, within one month of becoming aware of the alleged violation of the Code. Mediators may invite a member of the ICFML Board of Directors or, if they prefer, another ICFML Certified Mediator to become involved and provide the Party and Mediator with an independent source with which to informally discuss the matter. This Direct Conversation Step will be conducted privately and all parties will be required to treat all information as confidential.

## **2 - SECOND STAGE - Mediation**

2.1 - If the matter is not resolved in the Direct Conversation Stage within a maximum of two months after its initiation, the Party may formally request referral to the Second Stage, where the attempt to resolve the matter will be made by through Mediation.

2.2 - To trigger the referral to the Second Stage, the Party must complete the Mediation Request Form. ICFML will immediately acknowledge receipt and send a copy to the ICFML Certified Mediator whose conduct is the subject of the review request.

2.3 - Within two weeks of receiving the Mediation Request Form, the ICFML will appoint a Mediator to act on the case. The appointed Mediator, who will be independent from both the Party and the Mediator undergoing the review process, will aim to address the complaint within six weeks after the date the Mediation Request Form was received by ICFML. This mediation can be carried out in person, online, by email or by conference call. In exceptional circumstances, this period may be extended by a further four weeks and the appointed Mediator will notify the Party and the Mediator under review of any intended extension. The appointed Mediator will decide how the Mediation Stage will be conducted to maximize the prospects of a satisfactory resolution of the matter for both the Party and the Mediator undergoing the review process.

2.4 - If the Mediation Stage does not result in an agreement, and if the Party and the Mediator undergoing the review process agree, the appointed Mediator may provide the Party and the Mediator undergoing the review process with a non-binding opinion and recommendation. This opinion and recommendation may include a statement as to whether, in the opinion of the appointed Mediator, the Party has sufficient justification for the complaint to merit a Full Professional Conduct Assessment (STEP THREE, below). This non-binding opinion and recommendation may be summarized in writing by the appointed Mediator and filed with the ICFML, where it will be kept confidential. The appointed Mediator is not authorized to give a binding decision or to impose sanctions.

2.5 - The appointed Mediator, as well as all parties will be obliged to maintain the confidentiality of all information related to the Complaint.

2.6 - The costs of the Mediation Stage, including the Mediator's fees and any applicable mediation institution fees (but not any legal fees of the parties) will be borne equally by the parties.

### **3 - THIRD STAGE - Professional Conduct Assessment**

3.1 - The ICFML Professional Conduct Assessment Process may be triggered by a Party that has participated in a mediation to seek redress for an alleged violation of the ICFML Code of Professional Conduct if the Mediation Step has not resolved the issue. To activate the Assessment Process, the Party must complete the Professional Conduct Assessment Form. ICFML will promptly acknowledge receipt and send a copy to the Mediator whose conduct is the subject of the Complaint.

3.2 - Upon receipt of notification of an admissible application, the ICFML will immediately contact the Professional Conduct Assessment Commission or a qualified and independent professional to take cognizance of the complaint and decide on the matter.

3.3 - The Parties are required to disclose whether they have filed or intend to file a claim against each other under any other laws, codes or rules of any professional or other organization or under any prior agreement between them. The ICFML may declare an application to be inadmissible to activate

the ICFML Professional Conduct Assessment process if a lawsuit, under any code of conduct or rules of any trade association or other similar organization, or any arbitration or legal proceeding against the Mediator has already been concluded or is pending. The ICFML may likewise declare inadmissibility if, in its opinion, these issues have been or will be better addressed by other processes that the Party has initiated or intends to initiate.

3.4 - Once formally activated by the ICFML, the Professional Conduct Assessment Commission or the appointed professional will decide the appropriate procedures in each case, which may involve one or more hearings, to be conducted by written, electronic communications, by video or telephone, or any suitable combination. The Professional Conduct Review Committee or the appointed professional will, in all cases, try to understand all the relevant facts and allow the Party and the Mediator undergoing the review process the opportunity to present their versions and rebut the other party's arguments. Each will have the right to be assisted by a lawyer. The Professional Conduct Assessment Commission or the appointed professional may contact witnesses and hear from experts. Assessment sessions will be private.

3.5 - The evaluation process will not last more than three months after the activation of the Professional Conduct Evaluation Committee or the appointment of the indicated professional. At the end of the assessment process, the Professional Conduct Assessment Committee or the nominated professional will issue a decision with one or more of the following results:

- (i) Reject all or part of the Order or Claim;
- (ii) Comply with all or part of the Request or Complaint, but without issuing any sanction;
- (iii) Issue a written warning or reprimand;
- (iv) Suspend the ICFML Certified Mediator Certification for a maximum period of one year;
- (v) Permanently suspend the ICFML Certification;
- (vi) Make a claim for the costs of the Assessment Process if the parties do not agree to share the costs of the Assessment Process equally.

3.6 - The decision of the Professional Conduct Assessment Committee or the appointed professional will be justified. The decision will take effect within one month from the date on which the decision of the Commission or the appointed professional was issued in writing, unless an appeal has been filed within that one-month period. In this case, the decision will be suspended pending the outcome of the appeal.

3.7 - Subject to item 3.5 (vi), the costs of the Evaluation Process will be shared equally by the Party and the Mediator.

#### **4 - FOURTH STAGE - Appeal to the Commission or to the Professional appointed by the Commission**

4.1 - Within four weeks after receiving the decision from the Professional Conduct Assessment Commission or the appointed professional, the party or the mediator may file an appeal with the ICFML Presidency. The appeal procedure will be initiated by the Party or the Mediator submitting

the Appeal on the ICFML Internet portal. Within one week, ICFML will confirm receipt and send a copy to the opposite side.

4.2 - Within four weeks after receipt of the Appeal, the ICFML Chair will convene its board, made up of the Chair and founding members, to resolve the appeal. The ICFML Chair will determine how the appeal will be handled. The main board will hear the appeal within six weeks of the call. An appeal suspends the execution of the decision of the Professional Conduct Assessment Commission or the appointed professional until the appeal is decided. The board's decisions will be final and binding in all respects.

4.3 - The costs of the appeal, if any, will be entirely borne by the appellant.

## **5. Board**

5.1 The Board that will evaluate the appeals will include the President of the ICFML and the founding members of the ICFML in the country considered.

5.3 Reviewers will not be members of the Appeals Council in the same case.

5.4 The ICFML will endeavor to appoint local representatives for the Parties and the Mediator in each case in order to contain costs.

5.5 A cost estimate will be provided to the parties immediately upon appointment of the Assessor and Appeals Council in each case.

5.6 The Appraiser and an Appeals Council member may be challenged by the Party or the Mediator, in the event of an actual or potential conflict of interest or for any other valid reason that may compromise impartiality. Decisions on impediments will be made by the President of the ICFML and the founding members of the ICFML in the country concerned.

5.7 Any challenge by the Party or the Mediator must be submitted to the ICFML within a maximum period of 7 days after notification of the identity of the Assessor or the Appeals Council and be fully justified.

5.8 The Party and the Mediator will be informed in writing of all decisions regarding appointments by the representative or the Board of Appeal.

## **6. Confidentiality**

Committee members, eventual evaluators, Board members, as well as all parties and the ICFML are obliged to maintain the confidentiality of all information to which they are exposed during all stages of the Evaluation Process, except to the extent that publication of a final and binding decision may be ordered.

## **7. Publication**

The ICFML will have the power to publish the decisions of the Commission, the professional appointed by the Commission and the Board in any way it deems appropriate, but it will not publish any details that could allow the identification of the parties or the disclosure of any confidential information.

## 8. Dispute Resolution

This Professional Conduct Assessment Process will be exclusively governed by the law of any mediation agreement applicable between the parties, but in the absence of such agreement it will be governed by the law of the place where the ICFML Certified Mediator, who is the subject of the claim, maintains its main place of operation.

