

I the undersigned

hereinafter referred to as the court-accredited mediator

hereby undertake and agree to be bound by this Code of Conduct for Court-Accredited Mediators.

By signing this Code of Conduct, I agree to render my services as a court-accredited mediator in one mediation per month, free of charge to the parties.

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

CODE OF CONDUCT FOR COURT-ACCREDITED MEDIATORS

1. PROCESS

Mediation is a process in which an impartial person - a court-accredited mediator - facilitates the resolution of a dispute by promoting uncoerced agreement by the parties to the dispute. A court-accredited mediator facilitates communication, promotes understanding, assists the parties to identify their needs and interests, and uses creative problem-solving techniques to enable the parties to reach their own agreement. A court-accredited mediator should explore with the parties prior to the mediation commencing that each party will have the necessary authority to conclude any settlement.

COMMENT

(a) *A court-accredited mediator should provide information about the process, and help the parties identify their real concerns and all their options. The primary role of the court-accredited mediator is to facilitate voluntary resolution of disputes by the parties themselves.*

(b) *A court-accredited mediator cannot personally ensure that each party has made a fully informed decision when reaching an agreement to resolve a dispute, but it is good practice for the court-accredited mediator to make the parties aware of the importance of consulting other professionals, where appropriate, to help them make informed decisions.*

(c) *The court-accredited mediator must address with the parties any instances of deceit, fraud and misleading statements before any settlement is reached.*

2. IMPARTIALITY

A court-accredited mediator may mediate only those matters in which the court-accredited mediator can remain impartial and even-handed. The court-accredited mediator is an officer of the court. Therefore, if at any time the court-accredited mediator is unable to conduct the process in an impartial manner, the court-accredited mediator must withdraw.

Accordingly, a court-accredited mediator must avoid:

- (i) partiality or prejudice;
- (ii) conduct that gives any appearance of partiality or prejudice; and

(iii) conduct that may embarrass the court.

COMMENT

(a) *Whatever their own views and pre-dispositions, court-accredited mediators should, as officers of the court, not only not be partial or prejudiced but should avoid the appearance of partiality or prejudice by reason of such matters as the parties' personal characteristics, background, values and beliefs or conduct at the mediation.*

(b) *Court-accredited mediators should be conscious of behaviour which, however innocent, may be interpreted as indicating partiality or prejudice, such as spending more time with one party than another without good reason, socialising with a party and adopting different modes of address.*

(c) *Where the parties agree that they would like the court-accredited mediator to express an opinion on the merits, there is a substantial risk in giving such an opinion that the court-accredited mediator may no longer appear to be impartial. As a result the court-accredited mediator should be cautious in expressing such opinion and should, as far as possible, divert any opinion on the merits, to the respective legal practitioners for their consensus.*

(d) *Paragraph (c) must not be construed as preventing the Mediator from offering a neutral assessment of the strengths and weaknesses of the parties' respective cases, but such assessment must be expressed in private and should not be disclosed to the other party.*

(e) *Should the parties agree to terminate the mediation and enter an alternative process, using the mediator, the court-accredited mediator must consider the suitability of continuing as the appointed resolver and may need to withdraw altogether notwithstanding the parties' wishes.*

3. CONFLICTS OF INTEREST

Before the mediation begins, the court-accredited mediator must disclose all actual and potential conflicts of interest known to the court-accredited mediator. The court-accredited mediator should:

(i) discuss any circumstances that may, or may be seen to, affect the court-accredited mediator's independence or impartiality; and

(ii) at all times be transparent about the court-accredited mediator's relations with the parties in the mediation process.

Disclosure must also be made if conflicts arise during the mediation.

After making disclosure, the court-accredited mediator may proceed with the mediation if all parties agree and the court-accredited mediator is satisfied that the conflict or perception of conflict will not preclude the proper discharge of the court-accredited mediator's duties. The court-accredited mediator must be certain of:

(i) the parties' agreement; and

(ii) the court-accredited mediator's ability to undertake the mediation with independence and neutrality so as to ensure impartiality.

COMMENT

(a) *Conflicts of interest may arise in recommending the services of others. It may be preferable to recommend referral services or associations which maintain rosters of qualified persons.*

(b) *External pressures should never influence the court-accredited mediator. The court-accredited mediator's commitment should be to the parties and the process.*

(c) *Interests which should be disclosed include any association with a party or adviser or representative of a party, which could reasonably be seen to affect the impartiality of the court-accredited mediator.*

(d) *The court-accredited mediator should disclose to the participants any circumstances which may cause, or have tendency to cause, a conflict of interest. In particular a court-accredited mediator who is a partner or an associate of any representative retained by either of the parties should not act as court-accredited mediator without the fully-informed consent of all the parties.*

(e) *The court-accredited mediator should not establish a professional relationship with one of the parties in relation to the same dispute.*

4. COMPETENCE

A court-accredited mediator must not mediate unless the court-accredited mediator has the necessary competence to do so and to satisfy the reasonable expectations of the parties.

A person who agrees to act as a court-accredited mediator holds out to the parties and the public that she or he has the competence to mediate effectively.

COMMENT

(a) *Competence comprises appropriate knowledge and skills which would normally be acquired through training, education, and experience.*

(b) *Court-accredited mediators should have available for the parties information regarding their training, education and experience.*

(c) *The qualifications for inclusion on a list of court-accredited mediators should be made public and available to interested persons.*

5. CONFIDENTIALITY

Subject to the requirements of the law, a court-accredited mediator must maintain the confidentiality required by the parties and the court.

COMMENT

(a) *As the parties' expectations regarding confidentiality are important, the court-accredited mediator should discuss those expectations with the parties and endeavour to meet them. The court-accredited mediator should clarify when the mediation begins and when it ends.*

(b) *The parties' expectations of confidentiality depend on the circumstances of the mediation and any agreements they, and any other persons present at the mediation, and the court-accredited mediator may make.*

(c) *A court-accredited 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 court-accredited 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 court-accredited mediator is required by law to do so; or*

(iii) *the court-accredited mediator obtains evidence of child abuse not previously disclosed; or and*

(iv) *the court-accredited mediator believes that a child is in need of protection.*

(d) *If the court-accredited mediator intends to hold caucus sessions with a party, the court-accredited mediator should, before such sessions, discuss with the parties the confidentiality attaching to them.*

6. TERMINATION OF MEDIATION

A court-accredited mediator may terminate the mediation if the court-accredited mediator considers that:

- (i) any party is abusing the process; or
- (ii) there is no reasonable prospect of settlement.

The court-accredited mediator if appropriate should inform the parties, and may terminate the mediation if:

- (i) a settlement is being reached that to the court-accredited mediator appears illegal or against public policy, having regard to the circumstances of the dispute; or
- (ii) the court-accredited mediator considers that continuing the mediation is unlikely to result in a settlement.

7. RECORDING SETTLEMENT

If the mediation results in a settlement between the parties, the court-accredited 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.

COMMENT

(a) *Normally agreement to record the terms of any settlement in writing should be made prior to the commencement of the mediation.*

(b) *The court-accredited mediator ought to be cautious about direct involvement in drafting the terms of agreement, as their involvement in drafting may be construed as providing legal advice.*

(c) *The court-accredited mediator should however assist the parties to take whatever steps may be necessary to formalise any settlement agreement, and satisfy themselves regarding its enforceability. The court-accredited mediator may consider seeking to reconvene the mediation at a later time to allow the parties to finalise a settlement deed or any necessary court orders.*

8. PUBLICITY AND ADVERTISING

A court-accredited mediator must not engage in misleading or deceptive publicity or advertising.

A court-accredited mediator must not make any false or misleading statement including statements or claims as to the mediation process, its costs and benefits, or the court-accredited mediator's role, skills, or competence.

9. FEES

9.1 A court accredited mediator rendering services in court connected mediation who is not in the employ of the public service or who holds an appointment as a Judge or Magistrate is entitled to a gratification fee as determined by the Rules of Court and in the absence thereof to a fee as determined by the Office of the Prime Minister and payable in respect of a Chairperson of Institutions, Boards etc.

9.2 A court-accredited mediator mediating in any other dispute must fully disclose his or her fees to the parties and must reach agreement in respect thereof.

COMMENT

(a) *As early as practicable, and before the mediation session begins, a court-accredited mediator should obtain the order and, where applicable, agreement of the parties regarding*

all fees and other expenses to be charged for the mediation, and by whom and when the fees and expenses are to be paid.

(b) The better practice is to record in writing the arrangements in respect of fees and costs.

(c) A court-accredited mediator may not agree to a fee which is contingent upon the result of the mediation or amount of settlement.

10. COURT-ACCREDITATION

A court-accredited mediator must attend the initial court-accredited mediation training provided by the High Court of Namibia and all continuous training provided for that purpose.

COMMENT

(a) If a court-connected mediator is unable to attend any continuous training required by the High Court of Namibia, he or she must request the Judge President in writing to be excused.

11. REMOVAL

Should the court-accredited mediator breach any of the terms of this Code of Conduct or the mediation agreement or the Rules of Court, the Judge President may in his sole discretion summarily withdraw his or her accreditation and remove him or her from the list of court accredited mediators.

Any court-accredited mediator who wishes to have his or her name removed from the list of court-accredited mediators must inform the Judge President in writing and the Judge President must summarily withdraw his or her accreditation and remove him or her from the list of court accredited mediators.

COMMENT

(a) Court-connected mediators should be conscious of their social responsibility and should be make a concerted effort to remain accredited or be re-accredited.