

Code of Professional Conduct for Mediators

The IBA-DRF Code of Professional Conduct (“the Code”) provides users of mediation services with a concise statement of the ethical standards they can expect from IBA-DRF Certified Mediators.

Users who believe the standards established in this Code have not been met may activate the IBA-DRF Professional Conduct Assessment Process.

Definitions

For the purposes of this Code, Mediation is defined as a process in which a third-party (the IBA-DRF Certified Mediator) assists parties in engaging in a dialogue oriented toward managing or resolving a dispute.

An IBA-DRF Certified Mediator (also called a Mediator in this Code) is one:

1. whose competency in the practice of mediation has been certified by IBA-DRF, and
2. who is authorized by IBA-DRF to use the IBA-DRF name and logo, and
3. whose Profile is included on the IBA-DRF web portal at: [insert website here]

1. Mediator Appointment

- 1.1 Entitlement to use the title “IBA-DRF Certified Mediator” and the IBA-DRF logo.
In the event that an IBA-DRF Certified Mediator fails to maintain IBA-DRF requirements for certification, or no longer qualifies as an IBA-DRF Certified Mediator, use of the title IBA-DRF Certified Mediator and use of the IBA-DRF name and logo will end, and the Mediator’s Profile will no longer be included on the IBA-DRF web portal.
- 1.2 Promotion of Mediators’ services
Subject to applicable laws and to regulations governing professional practice, Mediators will present and promote their practice truthfully and accurately. They may quote freely from, and link to, their Profile on the IBA-DRF web portal and they are free to replicate that Profile, or extracts from it, for their own professional purposes.
- 1.3 Appointment
 - 1.3.1 Before the mediation begins, Mediators will inform the parties of their relevant background and experience.
 - 1.3.2 Mediators will advise parties that they will be invited to offer the Mediator feedback on the process at any stage, including offering written feedback at the conclusion of the mediation.
 - 1.3.3 Mediators will, prior to appointment, conduct reasonable inquiries to determine if any pre-existing relationship or interest in the subject matter of the dispute creates a real or perceived conflict of interest. The mediator will disclose any such interests and obtain the parties’ consent to continue. Regardless of party consent, if the mediator thinks that the relationship or interest poses a threat to the mediator’s ability to conduct the mediation impartially, the mediator shall decline the appointment.

2. Diligence

Mediators may accept an assignment to act as Mediator in any situation in which they are competent to serve in that capacity. Mediators should ensure that they have the requisite time, energy and procedural and subject matter expertise to competently meet the reasonable expectations of the parties.

3. Impartiality

- 3.1 Mediators will always conduct mediation in an impartial manner, avoiding bias or prejudice in favor or against any party. Bias or favoritism can result from several sources: mediator reaction to a mediation participant's personal characteristics, background or values; mediator 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 in an impartial manner, (s)he will express that concern and withdraw from the mediation.
- 3.2 Mediators will not accept an appointment without first disclosing anything within their knowledge that may, or may be perceived to, materially affect their impartiality. This duty to disclose is a continuing obligation throughout the mediation process.
- 3.3 The existence of relationships or interests potentially affecting, or appearing to affect, a Mediator's impartiality will not automatically imply unfitness to act as a mediator provided these circumstances have been fully disclosed and addressed to the satisfaction of the parties and the Mediator.
- 3.4 The duty to disclose perceived or actual threats to Mediator impartiality is ongoing. Newly discovered interests or relationships creating an actual or perceived threat to Mediator impartiality must be disclosed and parties must renew their consent to proceed with the process.
- 3.5 Following any such disclosures, if any party raises an objection, the Mediator will withdraw from the mediation.
- 3.6 After accepting appointment, and until the mediation process ends, Mediators will not enter into financial, business, professional, family or social relationships or acquire financial or personal interests that are likely to create an actual or perceived threat to mediation impartiality. In the case of perceived threats, mediators may proceed after full disclosure and party consent.
- 3.7 Within 12 months following the end of a mediation, Mediators will not represent in an advisory capacity or accept employment with any party to a mediation in the same or a substantially related matter, unless all parties to the mediation expressly consent to that representation after full disclosure. Acting as a neutral in other dispute resolution proceedings (e.g. as a mediator or arbitrator) that may involve some or all of the parties will not be considered a representation in an advisory capacity for the purposes of this clause.

4. Mediation Process

- 4.1 Procedure

Mediators will endeavor to ensure that the parties to the mediation and their advisers understand the characteristics of the mediation process, their roles as parties and advisers, and the role of a mediator, as well as the enforceability of any resulting agreement. The Mediator will ensure that before the mediation begins, the parties have understood and agreed to the terms and conditions which will govern the mediation including those relating to Mediator and party obligations to respect Mediator confidentiality. It is best practice for those terms to be contained in a written Agreement to Mediate, unless the parties or the circumstances dictate otherwise.

4.2 Fairness and Integrity of the process

4.2.1 Mediators will explain the mediation process to the parties and their advisers, and be satisfied that they consent to the process being used and to the Mediator selected (unless applicable law, court rules or contract require use of a particular process and/or mediator). Mediators will ensure that all parties are aware that they have an equal opportunity to engage in pre-mediation private communications with the Mediator.

4.2.2 Mediators will conduct the process with attention to procedural fairness to all parties. The Mediator will take particular care to ensure that all parties have adequate opportunities to be heard, to be involved in the process and to have the opportunity to seek and obtain legal or other counsel before finalizing any resolution.

4.2.3 Mediators will take reasonable steps to prevent any misconduct that might invalidate an agreement reached in mediation or create or aggravate a hostile environment. Mediators will endeavor to ensure that the parties have reached agreement of their own volition and knowingly consent to any resolution.

4.3 Termination of the process

4.3.1 The Mediator will ensure the parties understand that they may withdraw from the mediation at any time by informing the Mediator of that preference (unless applicable law, court rules or contract require otherwise).

4.3.2 Mediators shall withdraw from a mediation if a negotiation among the parties appears to be moving toward an unconscionable or illegal outcome. An unconscionable outcome is one which is the product of undue pressure, exploitation or duress. An unconscionable outcome reflects one party's exploitation of an existing power imbalance to the degree that the resulting agreement "shocks the conscience" and violates accepted legal and cultural norms of fairness.

4.4 Feedback

Unless inappropriate in the circumstances, Mediators will, at the conclusion of a mediation, invite the parties and advisers and any co-mediators or assistant mediators, to complete an IBA-DRF Feedback Request Form and return it to the Mediator or to the Reviewer indicated by the Mediator in his/her IBA-DRF Profile to assist in the preparation of the Mediator's Feedback Digest.

4.5 Fees

- 4.5.1 Mediators will, before accepting appointment, agree with the parties how their fees and expenses will be calculated, and how they will be paid by the parties (and if shared between the parties, in what proportions). Mediators who withdraw from a case will return to the parties any fees already paid relating to the period following 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 keep confidential all information acquired in the course of serving as a mediator in a mediation unless:
1. compelled to make a disclosure by law or by some governmental agency having appropriate authority and jurisdiction, or
 2. arising under paragraph 5.1, in which event the recipients of the confidential information shall themselves be bound to maintain the confidentiality, or
 3. the specific information comes into the public domain (otherwise than as a result of a disclosure by the Mediator), or
 4. the parties release the Mediator from the confidentiality restriction, or as necessary to defend the Mediator from any proceedings or charges for which (s)he risks incurring any liability, or
 5. disclosure is necessary to prevent death or imminent bodily harm or severe damage 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 should make a good faith effort to persuade the party, and/or the party's counsel or other advisers, to act in such a way that would 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 none of the details of that case are disclosed.
- 5.1.3 Mediators will discuss confidentiality with the parties before or at the beginning of the mediation and obtain their consent to any communication or practice by the Mediator that involves the disclosure of confidential information.
- 5.1.4 At no time following the end of a mediation will Mediators adduce evidence or testify on behalf of one of the parties in making or defending a claim against another party to the same mediation where they have acquired confidential information from the other party, unless all that information is no longer confidential or unless the party protected by the confidentiality gives consent.

6. Professional Conduct Issues And Complaints

- 6.1 An IBA-DRF Mediator may consult his/her Reviewer about any professional or ethical dilemmas.
- 6.2 A party to a mediation who believes there has been a lack of compliance with this Code may activate the IBA-DRF Professional Conduct Assessment Process.

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

This Code is inspired by and based on:

- (1) The Model Rule for the Lawyer as a Third Party Neutral of the CPR-Georgetown Commission on Ethics & Standards in ADR (2002)
- (2) Code of Conduct for Mediators of the UIA Forum of Mediation Centres (2003)
- (3) European Code of Conduct for Mediators of the European Commission (2004)
- (4) Model Standards of Conduct for Mediators (2005) adopted by AAA, ABA and ACR
- (5) Ethical Guidelines for Mediators of the Law Council of Australia (2006)
- (6) JAMS Mediators Ethical Guidelines
- (7) The Guidelines for the appointment of mediators, confidentiality and termination of the Chartered Institute of Arbitrators
- (8) The Swiss Rule of Commercial Mediation under Mediation Rules and Clauses