

CODE OF PROFESSIONAL RESPONSIBILITY FOR MEDIATORS OF THE INDEPENDENT MEDIATION SERVICE OF SOUTH AFRICA

1. GENERAL QUALIFICATIONS

The essential personal qualifications of a mediator shall include honesty, integrity, impartiality and a general competence in the field of intervention. A mediator must demonstrate ability to exercise these personal qualities faithfully and with good judgment in dealing with the parties.

2. QUALIFICATIONS FOR SPECIAL CASES

A mediator should decline appointment, withdraw, or request technical assistance when he or she decides that the issues raised for consideration in a mediation are beyond his or her competence.

3. RESPONSIBILITIES TO THE PROFESSION

- 3.1 A mediator must uphold the dignity and integrity of the office and endeavour to provide effective service to the parties.
- 3.2 An experienced mediator should cooperate in the training of new mediators.
- 3.3 mediator must not advertise or solicit mediation assignments.

4. REQUIRED DISCLOSURES

- 4.1 Before accepting an appointment, a mediator must disclose through the IMSSA office, any relevant current or past managerial, representational or consultative relationship with any company or union involved in a proceeding in which he or she is being considered for appointment or has been tentatively designated to serve. Disclosure must also be made of any pertinent pecuniary interest.
- 4.2 When a mediator is serving concurrently as an attorney/advocate or representative of other companies or unions in labour relations matters, or has done so in recent years, he or she must disclose such activities before accepting appointment as a mediator. A mediator must disclose such activities to the IMSSA office and such disclosure then satisfies this requirement for mediations handled under the auspices of IMSSA.



- 4.3 A mediator must not permit personal relationships to influence his or her conduct in the mediation proceedings.
- 4.4 Prior to acceptance of an appointment, a mediator must disclose to the parties and to the IMSSA office any close personal relationship or other circumstance, in addition to those specifically mentioned earlier in this section, which might reasonably raise the question as to the mediator's impartiality.
- 4.5 If the circumstances requiring disclosure are not known to the mediator prior to acceptance of appointment, disclosure must be made when such circumstances become known to the mediator.
- 4.6 The burden of disclosure rests on the mediator. After appropriate disclosure, the mediator may serve if both parties so desire.

5. MEDIATION PROCEEDINGS

- 5.1 A mediator should make certain that he or she understands the issues which form the subject of dispute between the parties.
- 5.2 A mediator should make every effort to understand the nature of the industry in which the parties operate.
- 5.3 Where the parties provide written documentation concerning the dispute the mediator should read these documents prior to the mediation.
- 5.4 The mediator should spend some time at the commencement of the mediation making certain that he or she understands the issues involved and the positions of the parties.
- 5.5 A mediator should make it clear to the parties that the mediation will take place on a "without prejudice" basis and should secure their agreement to this. This means that any positions taken and proposals made during the course of mediation proceedings in an effort to reach settlement will not be disclosed without prior agreement to the public at large nor may they be used as evidence in any subsequent proceedings before the Industrial Court or the ordinary courts.
- 5.6 Discussions between a mediator and a party in private caucus take place in confidence. Where a mediator has been provided with confidential information by one of the parties, he or she may not disclose this information to the other party without the first party's consent. This duty of confidentiality remains in force after the completion of the mediation. Confidential information should not be revealed to third parties at any stage.



6. PERSONAL RELATIONSHIPS WITH THE PARTIES

A mediator should have no contact of consequence unrelated to the mediation proceedings with either party or their representatives during the course of mediation proceedings without the other party's consent.

7. LEGAL PROCEEDINGS

7.1 mediator should at all times respect and protect the confidential nature of information gleaned on the parties during the course of mediation proceedings.

7.2 Should a mediator be requested or summoned to give evidence concerning information disclosed to him or her during the course of mediation proceedings, he or she should contact IMSSA immediately.

IMSSA will then provide the mediator with legal representation provided the mediation was done under the auspices of IMSSA.

8. USE OF ASSISTANCE

A mediator must not delegate any responsibility during the course of mediation proceedings to another person without the consent of the parties.

9. AVOIDANCE OF DELAY

9.1 It is a basic professional responsibility of a mediator to plan his or her work schedule so that present and future commitments will be fulfilled in a timely manner.

9.2 A mediator should cooperate with the parties and with the IMSSA office in avoiding delays.

10. FEES AND EXPENSES

10.1 A mediator occupies a position of trust in respect of the parties and the IMSSA office. In charging for services and expenses, the mediator must be governed by the same high standards of honour and integrity that apply to all other phases of his or her work.

10.2 A mediator must endeavour to keep total charges for services and expenses reasonable and in accordance with the fee policy approved by IMSSA from time to time.



- 10.3 Prior to appointment the parties should be aware of or be able readily to determine all significant aspects of a mediator's basis for charges for fees and expenses.
- 10.4 A mediator must maintain adequate records to support charges for services and expenses and should submit his or her statement of account to IMSSA immediately upon completion of mediation proceedings.

11. DUAL MEDIATION

- 11.1 IMSSA encourages the use of a single mediator in mediation proceedings.
- 11.2 IMSSA recognizes, however, that dual mediations may be useful in certain circumstances. Should a mediator be approached to undertake a dual mediation, he or she should undertake to do so only on condition that the mediators act together as a team. This means that they will each have access to both parties and neither will conceal information from the other.
- 11.3 Mediators should not undertake a mediation under the auspices of IMSSA with a mediator who is not on the IMSSA mediation panel. It is nevertheless recognized that exceptional circumstances may occur where such dual mediations are necessary. An IMSSA mediator may then act together with a non-IMSSA mediator, provided this has been cleared with the Director of IMSSA.

12. GENERAL RESPONSIBILITIES

- 12.1 A mediator must be candid, accurate and fully responsive to the IMSSA office concerning his or her qualifications, availability and all other pertinent matters.
- 12.2 A mediator must observe the policies and rules of IMSSA.
- 12.3 A mediator must not seek to influence IMSSA by any improper means, including gifts or other inducements to IMSSA employees.
- 12.4 IMSSA strongly discourages its mediators from mediating outside the auspices of IMSSA. Where a mediator is approached personally to act as mediator he or she should advise the party or parties that the mediation should be conducted under the auspices of IMSSA and that they should contact IMSSA to make the necessary arrangements.
- 12.5 Should a mediator mediate other than under the auspices of IMSSA, IMSSA will not make any administrative arrangements for the mediation or undertake responsibility for remunerating the mediator.

