



**MINISTRY OF LABOUR, INDUSTRIAL RELATIONS, EMPLOYMENT, LOCAL
GOVERNMENT, URBAN DEVELOPMENT & HOUSING**

CODE OF ETHICS FOR MEDIATORS 2008

**Developed in consultations with the tripartite social partners and other
stakeholders through the former Labour Advisory Board and the new Employment
Relations Advisory Board**

1.0 INTRODUCTION

- 1.1 This Code of Ethics for Mediators sets the minimum standards to guide Mediators in performing their duties and functions, as required under Section 199 of the Employment Relations Promulgation 2007 ('the Promulgation'). This Code does not exhaust the moral and ethical consideration that should guide a Mediator. Rather, it provides the Mediator a framework for the ethical practice considered essential in his or her conduct of mediation.
- 1.2 Mediation is a conflict resolution process in which an impartial third party ('the Mediator') facilitates the resolution of a grievance or a dispute by promoting uncoerced agreement by the parties to the grievance or dispute. In this process, the decision-making authority rests with the parties and not the Mediator.
- 1.3 The Mediator should provide information about the process and help the parties to identify their concerns and options. The primary role of the Mediator is to facilitate voluntary resolution of grievances or disputes by the parties themselves. The various means available to a Mediator in facilitating a resolution between the parties are detailed under Section 193 of the Promulgation.

2.0 MEDIATION AND THE EMPLOYMENT RELATIONS LAW

- 2.1 Mediation is the primary method of resolving employment grievances and employment disputes under the Promulgation. Under Section 200 of the Promulgation, the following matters may be referred to the Mediation Services -
 - an employment grievance of a worker, whether or not a worker is a member of a registered trade union; or
 - an employment dispute that has been reported to the Permanent Secretary under Section 170(4)(b) of the Promulgation.
- 2.2 This Code is intended to -
 - provide standards that will guide Mediators in the performance of their duties and functions;
 - promote good governance in the Mediation Services;
 - promote public confidence and trust in the process of mediation for resolving employment grievances and employment disputes; and
 - inform the mediating parties on acceptable standards.

- 2.3 The standards in this Code apply to all Mediators and the Mediation Services established under the Promulgation.
- 2.4 This Code governs all Mediators conducting mediation proceedings commenced on or after the date of gazetting of the Code by the Minister responsible for the administration of the Promulgation.

3.0 GENERAL PRINCIPLES OF MEDIATION

3.1 Mediation is based on communication, negotiation, facilitation, and the technique or method of solving problems with the highest ethical and professional standards, particularly for integrity, honesty and independence.

3.2 It emphasizes -

- Responsiveness to the needs and interests of the participants;
- Fairness, equity and accountability;
- Neutrality, impartiality and professionalism;
- Freedom from discrimination and harassment;
- Avoidance of conflict of interest;
- Respect, courtesy, mutual trust and fair dealings between parties;
- Informality and procedural flexibility;
- Privacy and confidentiality;
- Candidness and full disclosure of information;
- Self-determination; and
- Promotion and sustaining of good faith employment relationships.

4.0 THE ROLE OF THE MEDIATOR

4.1 Decision-making is the role of the parties, not the Mediator. The role of the Mediator includes -

- Assisting the aggrieved or disputing parties to identify issues;
- Facilitating communication between the parties;
- Focussing the parties on their interests;
- Maximizing the exploration of alternatives;

- Helping the disputing parties reach voluntary agreements; and
- Promoting and sustaining of good faith employment relationships between the parties.

5.0 STANDARDS

5.1 Standard 1: Self-Determination.

- 5.1.1 A Mediator must conduct mediation according to the principle of self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome. It is a fundamental principle which each Mediator will respect and encourage.
- 5.1.2 A Mediator cannot personally ensure that each party has made a fully informed decision when reaching an agreement to resolve a grievance or dispute, but it is good practice for the Mediator to make the parties aware of the importance of consulting other professionals, where appropriate, to help them make informed decisions.
- 5.1.3 A Mediator must make reasonable efforts to ensure that each party understands the nature and character of the mediation process including discussing the issues, the available options, and that each party is free and able to make whatever choices the party desires regarding participation in mediation generally and regarding decisions and outcomes.
- 5.1.4 The Mediator must provide information about the process, and help the parties to identify their real concerns and all their options.
- 5.1.5 If at any time the Mediator believes that any party to the mediation is unable to understand the process or participate fully in it, the Mediator will limit the scope of the mediation process in a manner consistent with the party's ability to participate, and/or recommend that the party obtain appropriate assistance in order to continue with the process.
- 5.1.6 A Mediator shall activate options available to him or her if it becomes apparent that the case is unsuitable for mediation or if one or more of the parties is unable or unwilling to participate in the mediation process in a meaningful manner.

5.2 Standard 2: Impartiality

- 5.2.1 Impartiality means freedom from favouritism, bias or prejudice in both conduct and appearance.
- 5.2.2 A Mediator must conduct mediation in an impartial manner and avoid conduct that gives the appearance of partiality. Whatever their own views and standards, Mediators should not only be impartial and unprejudiced but should avoid the appearance of partiality or prejudice that might be caused by such matters as the parties' personal characteristics, background or conduct at the mediation.
- 5.2.3 A Mediator should neither give nor accept a gift, favour, loan or other item of value that raises a question as to the Mediator's actual or perceived impartiality. This includes the provisions detailed in Clause 5.7.
- 5.2.4 If at any time prior to or during the grievance or dispute resolution process the Mediator is unable to conduct the process in an impartial manner, the Mediator will inform the parties and withdraw from providing services, even if the parties express no objection to the Mediator continuing to provide services.

5.3 Standard 3: Conflict of Interest

- 5.3.1 Before commencing the mediation, a Mediator must disclose all actual and potential conflicts of interest. Disclosure must also be made if conflicts of interest arise during mediation. All disclosures must be made as soon as practicable after the Mediator becomes aware of the interest or the relationship.
- 5.3.2 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 Mediator.
- 5.3.3 After making disclosure, the Mediator may proceed with the mediation if all parties agree and the Mediator is satisfied that the conflict will not preclude the proper discharge of the Mediator's duties. The parties' agreement must be recorded in writing. If the Mediator believes that the relationship or interest would affect the Mediator's impartiality, he or she should withdraw, irrespective of the expressed desires of the parties.

5.4 Standard 4: Confidentiality

- 5.4.1 A Mediator must maintain the confidentiality of all communications made to him or her by the parties involved in the mediation process, unless otherwise agreed to by the parties or required by law.
- 5.4.2 A Mediator must discuss issues of confidentiality with the parties before beginning the mediation process, including the parties' expectations regarding confidentiality, limitations on the scope of confidentiality and the extent of confidentiality provided in any private sessions that the Mediator holds with a party.
- 5.4.3 A Mediator must promote understanding among the parties regarding the extent to which the parties will maintain confidentiality of information they obtain in mediation. The parties may make their own rules with respect to confidentiality.
- 5.4.4 A Mediator should not communicate information to any non-participant about how the parties acted in the mediation. A Mediator may report, if required, whether parties appeared at a scheduled mediation and whether or not the parties reached a resolution.
- 5.4.5 Exceptions to the confidentiality of mediation include -
- where all parties give written consent;
 - where statutory obligations apply;
 - where the Mediator is required to prepare a written report or summary;
 - when there are reasonable grounds to believe disclosure is necessary to prevent or minimize danger or injury to a person, child or property;
 - where information of a general quantitative nature that could not identify the parties, or the grievance or dispute, is to be used for research or evaluation; and
 - where information of a qualitative nature is used for research, for evaluation or supervision purposes, provided the consent of the parties has been obtained.
- 5.4.6 If a Mediator holds private sessions (breakout meetings, caucuses) with a party, he or she must discuss the nature of such sessions with all parties before commencing such sessions. In particular, the Mediator must inform parties of any limits to confidentiality applicable to information disclosed during private sessions.

5.4.7 A Mediator must ensure that confidentiality is maintained in the storage and disposal of mediation records, notes and files.

5.5 Standard 5: Quality and Integrity of the Process

5.5.1 A Mediator must conduct mediation in keeping with following qualities: diligence, timeliness, safety, presence of the appropriate participants, party participation, procedural fairness, party competency, honesty and mutual respect among all participants.

5.5.2 A Mediator's conduct should not be influenced by a desire to achieve a high settlement rate.

5.5.3 If the Mediator believes that further negotiations may lead to a settlement, he or she should encourage the parties to continue to negotiate even when they seem unable to agree.

5.5.4 A Mediator must not knowingly misrepresent any material fact or circumstance in the course of mediation.

5.5.5 If one of the parties is unable to participate in the mediation process for psychological or physical reasons, the Mediator should postpone or cancel the mediation until such time as all parties are able to participate.

5.5.6 A Mediator must take reasonable steps, subject to the principle of self-determination, to limit abuses of the mediation process.

5.5.7 A Mediator must not withdraw from any grievance or dispute resolution process once he or she has engaged the parties, but may refer the employment grievance or employment dispute to the Employment Relations Tribunal if he or she is satisfied that -

- one or more of the parties is not acting in good faith;
- the parties' proposed agreement would be illegal or involve the commission of a crime;
- continuing the dispute resolution process would give rise to an appearance of impropriety;
- continuing with the process would cause significant harm to a non-participating person or the public;
- discussions would not be in the best interest of the parties or the dispute resolution process;

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

5.5.8 After the mediation, a Mediator must not act in such a manner as to raise legitimate questions about the integrity of the mediation process.

5.6 Standard 6: Professional Development

5.6.1 A Mediator must maintain professional competence in mediation skills in accordance with the requirements of the Promulgation.

5.6.2 The Permanent Secretary responsible for the administration of the Promulgation must provide, as far as practical, appropriate training programmes and related activities to maintain and enhance the Mediators knowledge, skills and experience on matters relating to mediation.

5.7 Standard 7: Non Acceptance of Bribery or Favours

5.7.1 A Mediator must not, in any capacity or situation, accept any bribe or favour offered by any person in relation to any hearing.

5.7.2 A bribe or favour mentioned in clause 5.7.1 includes, but is not limited to, the acceptance or payment of any of these services from either of the parties or their representatives or their intermediaries –

- (a) monetary benefits;
- (b) breakfast, lunch, dinner, supper, dance tickets, concert tickets, airline tickets or sports tickets;
- (c) alcohol, yaqona or drug;
- (d) sexual favour of any kind;
- (e) offer of a job or consultancy; or
- (f) gift of any kind.

5.7.3 A Mediator who has accepted any bribe or favour mentioned under Standard 5.7 shall be suspended forthwith, pending investigation by the Mediation Tribunal.

5.8 Standard 8: Timeframe for Mediation

5.8.1 A Mediator and the parties in dispute must complete the mediation within 30 days from the date of the first mediation session.

5.8.2 If a Mediator fails to resolve an employment grievance or employment dispute within the timeframe set out in Clause 5.8.1-

- (a) the parties may extend the timeframe by mutual agreement; or
- (b) the Mediator may refer the matter to the Employment Relations Tribunal.

5.8.3 If the Mediator determines that the employment grievance or employment dispute is unlikely to be resolved through mediation, the Mediator may refer the case to the Employment Relations Tribunal before the timeframe in Clause 5.8.1 expires.

5.9 Standard 9: Mediated Settlement

5.9.1 Where an employment grievance or employment dispute is resolved through mediation, the Mediator must –

- (a) ensure that the parties to the settlement sign the terms of the settlement; and
- (b) endorse the terms of settlement.

5.9.2 Where the terms of settlement are signed and endorsed, the settlement is deemed to be a final and binding decision.

5.9.3 Except for enforcement purposes, no party may challenge the terms of settlement before the Employment Relations Tribunal, Employment Relations Court, or any other court or tribunal, whether by action, appeal, application for review, or otherwise.

5.10 Standard 10: Mediation not to be Challenged

5.10.1 No mediation may be challenged or called in question in any proceedings on the grounds –

- (a) that the nature and content of the mediation was inappropriate; or
- (b) that the manner in which the mediation were provided was inappropriate.

5.11 Standard 11: Mediation Tribunal

5.11.1 A Mediator who fails to comply with the any of the standards set out in this Code may be liable to the following –

- (a) suspension or termination from practising as a Mediator with the Mediation Services under the Promulgation; or
- (b) being disciplined under the Mediator’s Disciplinary Procedures.

5.11.2 A Mediator affected under Clause 5.11.1 may activate the Employment Grievances Procedure specified in his or her employment contract.

5.11.3 To facilitate the process under this Standard, the Permanent Secretary responsible for the administration of the Promulgation shall constitute a Mediator’s Tribunal to hear and determine the Mediator’s grievance.