



**CODE OF PROFESSIONAL CONDUCT FOR MTI EAST AFRICA PROFESSIONAL
MEDIATORS-2018**

DEFINITIONS.

For the purposes of this Code:

Mediation is a form of dispute resolution in which an independent mediator aims to assist two (or more) disputants in reaching an agreement. Whether an agreement results or not, and the content of that agreement (if any), is determined by the parties themselves, rather than it being imposed by the mediator.

A professional *Mediator* (also called a *Mediator* in this Code) is one who has gone through our 50 hour professional mediation training, and whose name is entered into our mediators directory as a professional mediator.

CODE OF CONDUCT

SELF-DETERMINATION

A Mediator Shall recognize that Mediation is Based on the Principle of Self-Determination by the Parties.

Self-determination is the fundamental principle of mediation. It requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement. Any party may withdraw from mediation at any time.

The mediator may provide information about the process, raise issues, and help parties explore options. The primary role of the mediator is to facilitate a voluntary resolution of a dispute.

MEDIATOR APPOINTMENT

Before the mediation begins, mediators will advise the parties (in the mediation agreement or otherwise in writing):

- about their relevant qualifications
- which process will apply in the event of a party believing the mediator has not met the Standards of the stated code of professional conduct.
- that at the end of the mediation they will be invited to offer written feedback on the Process and on the mediator's role, and
- whether they hold a current professional indemnity liability insurance policy covering their practice as a mediator.

DILIGENCE, INDEPENDENCE, NEUTRALITY, IMPARTIALITY

Mediators may accept an assignment to act as mediator in any situation where they feel Competent to serve in that capacity.

Mediators will not accept an appointment without first disclosing anything within their knowledge that may, or may be seen to, materially affects their independence or impartiality. This duty to disclose is a continuing obligation throughout the mediation process.

Mediators will always act in an independent and impartial way. They shall act in an unbiased manner, treating all parties with fairness, quality and respect. If at any time a Mediator feels unable to conduct the process in an independent and impartial manner, (s)he will express that concern and will offer to withdraw from the mediation.

Mediators will conduct reasonable inquiries to determine if any conflicts of interests may exist. They will have a continuing duty to disclose any conflicts of interests that may become apparent during the mediation process. Following any such disclosures, a Mediator will decline to participate as a Mediator in a particular case if any of the parties raises an objection. Even without that, if a Mediator personally believes that the matters disclosed would inhibit their actual impartiality, the Mediator should withdraw as the Mediator.

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, or might reasonably create the Appearance of, conflict of interest, partiality or bias, without making a prior disclosure to all the parties and gaining their consent.

MEDIATION PROCESS

A mediator shall work to ensure a quality process and to encourage mutual respect among the parties. A quality process requires a commitment by the mediator to diligence and procedural fairness. There should be adequate opportunity for each party in the mediation to participate in the discussions. The parties decide when and under what conditions they will reach an agreement or terminate a mediation.

Procedure

Mediators will satisfy themselves 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. The mediator will ensure that before the mediation begins, the parties have read and understood the mediation agreement that has the terms upon which the mediation will proceed.

Fairness and Integrity of the process

Mediators will ensure that, all parties are aware they will have equal opportunity to raise issues.

Mediators will explain the mediation process to the parties and their advisers, and be Satisfied that that they consent to the process being used and to the mediator selected.

Mediators will conduct the process with fairness to all parties and 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.

Termination of the process.

The Mediator will ensure the parties understand that they may withdraw from the Mediation at any time by informing the mediator and all other parties without being Required to give any justification for doing so.

Mediators shall withdraw from mediation if a negotiation among the parties assumes a character that to the Mediator appears unconscionable or illegal.

Fees.

Parties to mediation must, prior to the start of the mediation, be aware of how the fees and Expenses for the mediation will be calculated, and how they will be paid by the parties (and if Shared between the parties, in what proportions.)

Confidentiality

Mediators will keep confidential all information acquired in the course of serving as a Mediator in mediation, including the fact of mediation being held, unless compelled to make a disclosure by law.

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.

Mediators may use or disclose confidential information obtained during a mediation when, and to the extent that, they believe it to be necessary to prevent death or serious physical harm or physical damage from arising or believe an illegal act may realistically arise. Before using or disclosing such information, if not otherwise required to be disclosed by law, mediators must, if they consider it appropriate, 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.

COMPLAINTS AND DISCIPLINARY PROCEDURE.

- 1) Any person, body, or organization may make a complaint about a professional mediator's service or conduct.
- 2) A complaint must be made in writing and signed by (or on behalf of) the complainant.
- 3) If the disciplinary committee is satisfied that there is a complaint to be considered, but that it is a minor or technical breach, it shall see if the mediator can correct the alleged default.
- 4) If the matter proceeds then the disciplinary committee will require the mediator to provide a formal written response to the complaint.
- 5) The disciplinary committee must deal with the complaint in accordance with its internal complaints procedure, subject to the rules of natural justice.