

COURT-ANNEXED MEDIATION

ACCREDITATION STANDARDS FOR MEDIATORS

Under the provisions of rule 86 of the Magistrates' Courts Rules, and for the purpose of accrediting mediators to the panel referred to in rule 86(2), the Minister has, taking into consideration national and international qualifications, standards and practice, determined the qualifications, standards and levels set out herein.

ACCREDITATION STANDARDS

1 Course content

1.1 Every applicant for accreditation as a mediator must complete 40 hours of contact training consisting of:

(a) Theoretical training including -

- (i) basic civil procedure;
- (ii) a study of the court-annexed mediation rules;
- (iii) the role and function of the mediator;
- (iv) principles, stages and methodology of mediation;
- (v) social-context and diversity awareness;
- (vi) conflict management;
- (vii) decision-making;
- (viii) communication and diplomacy;
- (ix) ethics and professional conduct;
- (x) negotiation and influence;
- (xi) interpersonal relations;
- (xii) confidentiality, privacy and reporting obligations; and
- (xiii) neutrality and impartiality.

(b) Practical training consisting of mock mediation sessions before a trained mediator.

1.2 The training referred to in paragraphs 1.1(a) and (b) must have been received through an institution which offers mediation training and is an institution approved by the Minister.

2 Certification and affiliation

2.1 An applicant must be certified by an institution referred to in paragraph 1(c) as having received the training referred to in paragraphs (1)(a) and (b), from that institution.

2.2 An applicant must be affiliated to an institution which offers mediation training and is an institution approved by the Minister.

3. Mediator levels

3.1 A level 1 mediator must have a minimum of a NQF level 4 competence under the provisions of the National Qualifications Framework Act, 2008 (Act 68 of 2008) and should possess basic computer literacy skills.

3.2 A level 2 mediator must have NQF level 7 qualification or higher competency in terms of the National Qualifications Framework Act (Act 68 of 2008) plus a minimum of 5 years mediation experience in general mediation or specific fields of mediation.

4. Exemption

An applicant may, upon application, be exempted by the Minister from any of the requirements of paragraphs one, two and three. If exemption is granted, the Minister may accredit such applicant with restrictions.

5. Character and other certification

Every applicant for accreditation must produce-

- (a) A character reference, which is not older than 3 months from the date from when it was written;
- (b) Proof of South African citizenship, or in the case of a non-national, a valid work permit or permanent South African resident's permit;
- (c) A statement on oath or affirmation by the applicant that the applicant–
 - (i) Is not an unrehabilitated insolvent;
 - (ii) Does not suffer from a mental illness or a severe or profound intellectual disability in terms of the Mental Health Act (Act 17 of 2002);
 - (iii) Has not been convicted of a crime involving fraud or dishonesty or violence, or has not been convicted of a crime where the sentence was imprisonment without the option of a fine.
- (d) Proof that the applicant has successfully completed the level of mediation training referred to in paragraph (1).
- (e) A certificate of good-standing by a professional body of which the applicant is a member, or by an institution referred to in paragraph 2(b), if the applicant is not a member of a professional body.

6. Panel of mediators

6.1 The Minister may enroll a successful applicant onto the Panel of Court-Annexed Mediators and such a mediator may be permitted to offer mediation services in any magistrates' court which has been designated for court-annexed mediation, subject to any restrictions imposed by the Minister.

- 6.2 Before enrollment onto the Panel of Court-Annexed Mediators, every successful applicant shall be required to enter into a Service Level Agreement with the Minister.
- 6.3 The Minister may at any time remove any mediator from the Panel of Court-Annexed Mediators if such mediator conducts or fails to conduct himself or herself in a manner which does not comply with the standards contained in this document or if such person breaches any of the terms and conditions of the Service Level Agreement referred to in 6(2) above.

7. Mediator ethics

Every Mediator must -

- (a) Act with honesty, impartiality, due diligence and independence;
- (b) Conduct himself or herself in a manner that is fair to all parties and must not be swayed by fear, favour or by self-interest;
- (c) Not tout for a mediation assignment and thereby undermine the mediation process;
- (d) Not accept a mediation appointment unless he or she is available to conduct the mediation promptly and competently;
- (e) Avoid entering into any financial, business or social relationship, which is likely to compromise their impartiality, or which might reasonably create a perception of partiality or bias; and
- (f) Not assert influence on any person involved in the court-annexed mediation processes by any improper means whatsoever, including the receipt of gifts or other inducements.
- (g) Refrain from soliciting or negotiating any private arrangement relating to fees and must abide by the fee structure determined by the Minister.

8. Duty to disclose conflict of interest

- 8.1 Every mediator must disclose any interest or relationship that is likely to affect his or her impartiality or which might create a perception of partiality including:
- (a) Any direct financial or personal interest in the matter; and
 - (b) Any existing or past financial, business, professional, family or social relationship which is likely to compromise impartiality.
- 8.2 After disclosure the mediator may continue to mediate a matter if both parties agree: Provided that the mediator must withdraw if the conflict of interest may unduly influence the mediation process.

9. Mediator's conduct and obligations during mediation proceedings

- 9.1 Every mediator must respect freedom of conscience, belief and expression and must avoid and dissociate himself or herself from comments or conduct that is racist, sexist or otherwise inconsistent with the Bill of Rights in the Constitution.
- 9.2 Every mediator must respect the right to equality before the law and the right of equal protection and benefit of the law.
- 9.3 Every mediator must observe religious, gender and cultural rights.

- 9.4 Every mediator must conduct proceedings fairly, diligently and in a fair manner.
- 9.5 A mediator must ensure that the parties and their representatives act in accordance with commonly accepted decorum.
- 9.6 A mediator must be patient and courteous to legal practitioners, parties and the public and must respect the dignity of others.
- 9.7 Every mediator must be punctual for a mediation session and keep to time limits, if any, set by the parties.
- 9.8 Every mediator must be impartial and must not make any decisions or findings of law or fact or determine the credibility of any person participating in the mediation.
- 9.9 A mediator must inform the parties that all discussions and disclosures, whether oral or written, made during the mediation session are confidential and inadmissible as evidence in any court, save for those that are included in a settlement agreement or are otherwise discoverable in terms of the rules of court or ordered by a court.
- 9.10 Every mediator must at the beginning of the proceedings ensure that he or she understands the positions, needs, and expectations of the parties involved in a dispute.
- 9.11 A mediator must understand the issues pertaining to the dispute before assisting the parties with the settlement of a dispute.
- 9.12 Every mediator must prepare for mediation by *inter alia* understanding the issues in dispute beforehand and perusing all documentation pertaining to the matter.
- 9.13 A mediator must decline an appointment to mediate or must withdraw or request technical assistance if he or she considers that a matter is beyond his or her competence or expertise.
- 9.14 A mediator must not hold undisclosed discussions with any party or his or her representative without the consent of the other party: Provided that the mediator may in the interest of resolving the dispute hold discussions with the parties separately.
- 9.15 A mediator must not permit parties or their representatives to record proceedings mechanically or electronically.
- 9.16 A mediator must not delegate his or her duty to any other person without informing the mediation clerk/registrar, and obtaining the consent of the parties.
- 9.17 A mediator must conduct mediation expeditiously and in such a manner so as to avoid an escalation of costs for the parties.
- 9.18 A mediator must discourage unnecessary postponements, point-taking and undue formality.
- 9.19 A mediator must not exert undue influence in order to promote a settlement or to obtain a concession from any party.
- 9.20 Every mediator must upon resignation or the expiry of an appointment complete all part-heard mediations as soon as possible, unless directed otherwise by the parties or by the court.