

Code of Conduct for MfN-registered mediators (MfN-registermediator)

This Code of Conduct forms a guideline for the conduct of MfN-registered mediators. It also serves as information provision for the parties involved and as criterion for the disciplinary tribunal when reviewing the actions of a mediator.

1 – Professional ethics and integrity

The mediator shall behave as may be expected of a mediator.

Explanation

This rule is the basis for the actions of the mediator and the foundation for all other rules of conduct, which are derived therefrom. Integrity is a core value for the mediator. The mediator may be expected to comply with and enforce his professional code and general social and ethical norms and values, even in the event of outside pressure to deviate therefrom. The mediator shall at least act as a reasonably competent and reasonably acting mediator.

2 – Transparency

The mediator shall explain the mediation process to the parties.

Explanation

Transparency means that the mediator gives the parties clarity about the mediation process, including his own role therein. The mediator will make it possible to discuss issues with or between the parties and will be clear about his approach and what the parties may expect of him. Openness and clarity are essential for building up confidence and a good working relationship with the parties. This helps the mediator to avoid difficulties at a later stage.

3 – Autonomy of the parties

- 3.1 The mediator shall see to it that the autonomy of the parties is guaranteed.
- 3.2 The mediator shall not make any pronouncement about the issue.

Explanation

The mediator safeguards the autonomy of the parties and monitors their commitment and voluntary participation in the mediation. The parties make their own choices and will bear the responsibility therefore. The mediator stands in between the parties and supports them in making their choices and looking for a solution. Where necessary the mediator can furnish the parties with information, so that they can form a considered picture and determine their position.

The mediator will not make any determination regarding the issue or a part thereof. He will thus not make a decision on the content of the conflict between the parties. The mediator will also be reserved in giving his opinion or giving advice on what a party should or should not do. An opinion or advice is generally not free of norms and values and unbiased and is difficult to reconcile with the autonomy of the parties and the neutral role of the mediator. If necessary the mediator will inform the parties of the option of consulting external advisers or experts during the mediation.

In the event the mediator, on the explicit request of all parties, does make a determination, binding or otherwise, he will have to clearly distance himself from his role as mediator. It must be clear for the parties in what capacity he is acting. If possible the mediator will lay down this change in roles in writing.

4 – Independence

- 4.1 The mediator shall take an independent position. He has no interest which could affect his impartiality.
- 4.2 If the mediator cannot supervise the issue in an independent manner, he shall not accept the assignment or he shall withdraw.

Explanation

A mediator who has an interest in the mediation which affects or could affect his independence, will not accept his appointment. This interest could be a personal or commercial relationship which the mediator or one of his colleagues has or has had with the parties or with one of them, or in the outcome of the mediation. He must also be aware of the possible appearance of dependence and act accordingly. The mediator will clarify his position to the parties if his independence is or could be a matter of discussion. He will then ask the parties whether they wish to continue with him on this basis. The mediator will see to it that he safeguards his independence both during and after the mediation. He will withdraw, if necessary.

5 – Impartiality

- 5.1 The mediator represents the interests of all the parties. He is impartial and acts without prejudice.
- 5.2 If the mediator cannot supervise the issue in an impartial manner, he shall not accept the assignment or he shall withdraw.

Explanation

A mediator is characterised by his neutral, impartial role. The mediator is there for all the parties. He has a confidential position with regard to each of them. In neither word nor deed shall a mediator indicate a preference for or disapproval of (one of) the parties and he will act without prejudice with regard to the parties. The confidence of the parties that the mediator is impartial, is essential for the quality of the mediation process.

The mediator will only act in respect of issues in which he can retain his impartiality. He will endeavour to ensure that his impartiality is not affected by prejudice based on such things as personal characteristics, position, religion or background or by an opinion on positions or interests introduced by the parties.

The mediator may be expected to critically review his own actions and continually monitor his neutral, impartial position. If it is impossible for the mediator to monitor the mediation in an impartial manner, he will withdraw.

6 – Confidentiality

- 6.1 The mediator shall safeguard the confidentiality of the mediation.
- 6.2 The mediator has a duty of confidentiality.
- 6.3 The duty of confidentiality continues after the termination of the mediation.

Explanation

The basic principle is that all verbal and written exchanges during mediation are confidential. This information may not be used outside of the mediation during or after the end of the mediation, unless the parties have made explicit deviating agreements with each other and the mediator in this respect, for example if feedback is necessary for the progress of the mediation. Information which was already public or known before the mediation is not covered by the duty of confidentiality. The duty of confidentiality applies to all parties involved in the mediation process and to the mediator in particular as the party with primary responsibility for guaranteeing confidentiality.

The mediator has a duty of confidentiality with regard to everything that comes to his attention in his capacity as mediator with the parties and their advisers, both in a plenary session and individually. His duty of confidentiality also applies to exploratory discussions with the parties before a mediation agreement has been made with them. Feedback of information by the mediator to referring parties or principals which goes further than notice of termination of the mediation, will only be effected in consultation with and with the consent of all parties.

The mediator's duty of confidentiality lapses insofar as the mediator must do so to defend himself in legal proceedings, including complaint or disciplinary procedures.

There are a few exceptions to the mediator's duty of confidentiality which can be found in the MfN-Mediation Rules.

7 – Competency

The mediator shall only accept a mediation if he possesses the necessary qualities for the mediation to run smoothly.

Explanation

A mediator may be expected to possess the knowledge, skills, professional attitude and the personal qualities which are necessary to safeguard the smooth progress of the mediation. If this is not the case or it is not sufficiently the case, he will not accept the mediation. Should the mediator already have accepted the mediation, he will withdraw.

The mediator is expected to have knowledge of communication and conflict resolution, negotiating concepts and intervention techniques. The expected knowledge can also encompass substantive expertise in the area of the conflict if the parties have precisely appointed the mediator with that in mind. The skills which may be expected of the mediator are, for example, intervention techniques geared to improving the communication between the parties, clarifying the problem and the related emotions and interests and supervising the negotiations between the parties. The mediator possesses more technical skills, such as discussing and making a mediation agreement and recording agreements in a settlement agreement.

The essence of the professional attitude is that the mediator has integrity and is reliable, carries out his work to the best of his ability and is willing to follow continual schooling and to develop further as mediator. Personal qualities are essential for the mediator. The mediator may be expected to be balanced, flexible, empathic and decisive and that he operates well in a context in which pressure and conflicting interests play an undeniable role.

8 – Working method

- 8.1 The mediator is responsible for the mediation process and shall monitor the course thereof.
- 8.2 Prior to the mediation, the mediator shall make a written mediation agreement with all parties which shall at least lay down the duty of confidentiality and the fact that the mediation is voluntary.
- 8.3 The mediator shall not involve any third parties in the mediation, subject to consent of the parties.

Explanation

The essence of the mediator's task is to monitor the mediation process. The mediator will handle the mediation with the necessary expedience and will make sufficient time available for the mediation. He will explain the mediation process, the contents of the mediation agreement and the Rules. The mediator verifies whether the parties understand what conditions and consequences are attached to the signing of the mediation agreement. The mediator will see to a balanced handling of the issue and will promote as much as possible that each party gets its turn in equal measure, has sufficient access to the necessary information and has the scope to consult financial, legal, psychological or other advisers if necessary.

The mediator is responsible for the contractual recording in the mediation agreement of the duty of confidentiality of the parties and the mediator himself. The parties have no statutory duty of confidentiality. The duty of confidentiality of the parties is primarily intended to promote that they can speak freely during the mediation discussions and that confidence can be built. The parties shall jointly determine the scope of the duty of confidentiality. They will evaluate whether it is necessary for the progress of the mediation which has taken place with certain persons outside of the mediation table consultation. The mediator will see to it that the scope of the duty of confidentiality is recorded.

The mediator will see to it that third parties engaged in the mediation sign a confidentiality agreement. The consent of the parties is not necessary for secretarial support of the mediator referred to in article 6.1 of the Rules.

9 – Fees and costs

- 9.1 The mediator shall agree his fees and the additional costs with the parties in advance and shall record this agreement in the mediation agreement.
- 9.2 Unless the mediator has good grounds for presuming that the parties would not qualify for a mediation supplement, he is obliged to inform the parties of the possibility thereof. If parties may possibly qualify for a mediation supplement but nonetheless choose not to claim this supplement, the mediator shall record this in writing.
- 9.3 The mediator shall not demand or receive remuneration in any form whatsoever for a mediation to which he is assigned on a supplement basis, apart from the own contribution imposed by the Dutch Legal Aid Board.
- 9.4 The mediator is permitted to agree a fixed amount for the mediation.
- 9.5 The mediator shall provide a clear, orderly invoice.

Explanation

At the start of the mediation the mediator will make clear agreements relating to his fees (or a fixed sum for the mediation process) and possible additional costs. The mediator will agree with the parties who is to bear the costs of the mediation. The mediator will provide a clear, itemised invoice. He will keep a record of his activities and will produce this if requested so that the parties can clearly see which costs are charged for which activities.

Parties may qualify for a mediation supplement from the Dutch Legal Aid Board in various legal fields, such as personal and family law, labour and dismissal, agreements and contracts, tenancy law and administrative law. Upon commencement of the mediation the mediator is obliged to investigate whether one or more parties qualify for a mediation supplement. This obligation may cease to apply if the mediator has good grounds for presuming that one or more parties do not qualify for a supplement. For instance, this may be the case if the nature of the dispute does not meet the substantive requirements of the Dutch Legal Aid Board or if the financial capacity of the parties exceeds the income limit set by the Dutch Legal Aid Board (see www.rvr.org). Mediators who are not registered with the Dutch Legal Aid Board refer parties who qualify for a mediation supplement to a mediator who is registered with the Dutch Legal Aid Board. If parties qualify for a mediation supplement but refrain from claiming this, this is recorded in writing by the mediator.

Apart from the own contribution, the mediator may in no circumstance whatsoever charge any amount to a party who is receiving mediation on a supplement basis. Charging costs to a party receiving mediation on supplement basis contravenes the provisions of the Dutch Legal Aid Act (article 33e paragraph 3 and article 38 paragraph 1) as well as article 11 paragraph 4 of the Registration Conditions for Mediators laid down by the Dutch Legal Aid Board – although, of course, the mediator will receive remuneration from the Dutch Legal Aid Board for activities performed on supplement basis.

10 – Disciplinary procedure

The mediator is subject to the disciplinary procedure in accordance with the Rules of Stichting Tuchtrechtspraak Mediators.

Explanation

Every mediator who is registered in the MfN-register at the start of a mediation, is subject to this disciplinary procedure.