

Preamble

In 2008, the European Union adopted a Code of Conduct, as stated in its preamble, which established a set of principles whose implementation is left to individual mediators at their own responsibility and which may be applied to any type of mediation in civil and commercial matters.

Attending to the condition of mediators of the lawyers, specifically their dual training as lawyers and mediators, their performances in the two areas to avoid conflicts of interest and incompatibilities, and after seeing the various codes of professional and ethical conduct that different mediation centers and associations have regulated, we propose a Code of Conduct for Mediators which covers in its entirety the European Code of Conduct, which is applicable to all those which have the status of lawyers and colleges that are found in any of the professional associations that are part of the FBE.

Articled Text

1. COMPETENCE, APPOINTMENT , AND FEES OF THE MEDIATORS AND PROMOTION OF THEIR SERVICES

1.1. COMPETENCE

Mediators must be competent in the field of mediation and should know its procedures. It is considered essential that they have the appropriate training

and constantly upgrade their theoretical and practical skills, taking into account current standards of accreditation systems.

The professional colleges establish specific training needed by mediators who enroll in the register of mediators that the professional colleges may have.

The practice of mediation is not incompatible with the practice of law.

1.2. APPOINTMENT

The mediator will confer with the parties on the dates that are most convenient to them for the development of mediation. The mediator will make sure that you have the training and expertise necessary to mediate in a concrete case before accepting your appointment. At the request of the parties, the mediator will provide them with the information on your training and experience.

1.3. FEES

When not otherwise provided for, the mediator shall inform the parties involved as to which forms of payment they will be subject to. The mediator shall not participate in any mediation before the principles of payment have been accepted by all parties involved.

When the legal aid for the process of mediation in the State is recognized, the mediator will state their fees to the amounts which are accepted by this concept,

always providing that they have been recognized by the paying parties as the legal aid for the process of mediation.

1.4. Promoting the services of the mediator

Mediators may advertise their services, so long as they are professional, honest and dignified.

2. INDEPENDENCE, IMPARCIALITY AND CONFIDENCIALITY

2.1. Independence

Before starting or continuing ones work, the mediator must reveal any circumstance which affects or could affect their independence, or create a conflict of interests.

Such circumstances include – all types of personal or business relations with any of the parties – any financial interests, or other type, direct or indirect, in the outcome of the mediation, or – if the mediator, or a member of their firm, has previously acted in favor of one or more of the parties under any circumstances, with the exception of mediation.

In such cases the mediator may only accept or continue the mediation on the condition that they are sure to be able to mediate with total independence in order to guarantee their complete impartiality, provided that the parties involved offer their explicit consent.

The duty of disclosure of information holds throughout the mediation process.

2.2. Impartiality

The mediator will act impartially with the parties at all times, and endeavor to demonstrate their impartiality, and also will commit to serve all parties equally during the mediation process.

2.3. Confidentiality

The mediator will respect the confidentiality of all the information arising from or concerning the mediation, including the mere existence of the mediation, in the present or the past, unless there are substantial legal reasons or public policy to the contrary. Excepting laws to the contrary, any information revealed in confidence to the mediators by one party may be disclosed to other parties without your authorization.

Supposing that the mediator, for whatever reason, was summoned as a witness in court or in an arbitration process for disputes arising after the mediation agreement, the mediator is protected by professional secrecy, though they can be relieved of this by the express permission of both parties.

The mediator's duty of confidentiality extends to all people who collaborate and work with the mediator during the mediation process.

3. Willfulness

The parties will voluntarily submit to the mediation process, and can withdraw from it at any time.

4. MEDIATION AGREEMENT, PROCEDURE AND CONFLICT RESOLUTION

4.1 Procedure

The mediator will ensure that the parties understand the characteristics of the mediation procedures, its role as mediator, and his role as a mediator and that of the parties in its procedure.

The mediator in particular will ensure that before the start of the mediation, the parties have understood and expressly agreed to the conditions of the terms of the mediation agreement, including the provisions relating to the confidentiality obligation of the mediator and the parties involved.

The agreement of the mediation agreement shall be in writing, at the request of the parties.

The mediator will conduct the proceedings in an appropriate manner, taking into account the circumstances of the case, the potential power imbalances, the desires that are expressed by the parties, the applicable law and the need to reach a quick resolution of the conflict. The parties will be free to agree with the mediator, referring to the way in which a standard will be carried out in the mediation.

If they find it necessary, the mediator may listen to the parties separately.

4.2. Suspension of the mediation or end of mediation due to exceptional circumstances

The mediator will be obliged to suspend or end the mediation:

- If the mediation is being used for inappropriate purposes
- If the behavior of one of the parties is incompatible with the proper conduct of the mediation
- If one of the parties is not a constructive part of the mediation and is using the information obtained from it.
- If any of the parties breaches the rules previously established rules of mediation
- If any of the parties fails to attend sessions of mediation without justified cause .
- If the existence of criminal acts or threats to life or the physical integrity of either party is inferred, the mediator is released from the obligation of confidentiality and must make a report to the proper authorities.
- If in the opinion of the mediator, mediation for any reason become purposeless

4.3 Procedural fairness

The mediator will ensure that all parties can participate effectively in the process.

The mediator shall inform the parties and end the mediation when:

- The mediation has concluded in an agreement that the mediator considers inapplicable or illegal, taking into account the circumstances of the case, or when it does not seem responsible to conclude it, or
- The mediator considers that it is unlikely that further mediation results in an agreement

4.4 End of procedure

The mediator shall take all appropriate measures to ensure that the parties give their consent to the agreement fully informed and in understanding of its terms.

The parties may resign from the mediation at any time without need of justification.

The mediator shall inform the parties, at their request and within the limits of its jurisdiction, on how to formalize the agreement and on the possibilities that are applicable.

4.5 The process of mediation does not interrupt the expiration terms or the fulfillment of actions, unless positive or procedural rules of the State are expressly collected.

4.6 Implementation of the mediation agreement. The mediation agreement is enforceable in accordance with the provisions of Directive 2008/52 and the provisions of positive and procedural laws of each state.

5. PENALTIES FOR THE BREACH OF RULES OF CONDUCT.

Every professional Bar shall regulate the rules on penalties applicable to the mediators and these must include at the least:

A) Punishable behaviors classified as:

1. Very serious breach of the obligations of independence, impartiality and confidentiality when they have caused injury to any of the parties.
2. Conducts that, contrary to the obligations cited as very serious, have not caused any prejudice to any of the parties
3. Slight breach of any of the obligations contained in this code of conduct.

B) Penalties

1. For very serious offenses, the loss of status as a mediator.
2. For serious offenses, the suspension of the status of mediator for three to six months
3. For slight offenses, written warning and/or suspension of the status of mediator for one day to two months and thirty days.

PROPOSAL FOR ADOPTION

As indicated in the preamble, this incorporates the standards and behavior conducts tested by the EU, to which have been added some specialties that are typical of the practitioners of mediation and advocacy.

We propose the adoption of the text articulated above to be subsequently developed for each of the colleges that comprises the FBE, complete with the specificities of the regulations of each state.

The approval of a text base allows uniformity of mediators and the mediation process in its essential aspects, which is of great importance as the conflict can fall under a the domain of territories of other mediators.

This translates into an important element of security for the parties, since it ensures the quality of mediation and the professionalism of the mediators.

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