

The Mediator's Charter

1. INFORMED CHOICE

All mediators shall conduct mediation based on the principle of party self-determination and informed choice. Mediators shall explain to the participants, that the probability of success can be improved when they participate with an open mind throughout the mediation process.

2. IMPARTIALITY

All mediators shall demonstrate impartiality throughout the mediation process by conducting mediations fairly, diligently, even-handedly, and with no personal stake in the outcome. Mediators shall decline a mediation if they cannot conduct it in an impartial manner.

3. CONFIDENTIALITY

All mediators shall discuss confidentiality issues as soon as practical and before confidential information is provided by anyone. Mediators shall maintain the confidentiality of all information obtained by them during the process of mediation, unless otherwise agreed to by the parties.

4. QUALITY ASSURANCE

All mediators shall conduct mediation in accordance with these Standards and in a manner that promotes diligence, timeliness, safety, presence of the appropriate participants, party participation, procedural fairness, and mutual respect among all participants.

5. COMPETENCE AND CPD

All mediators shall mediate only when they have the necessary competence to satisfy the reasonable expectations of the parties. Mediators shall update their skills on a regular basis by attending structured Continued Professional Development (CPD) events maintain and enhance their knowledge and skills related to mediation.

6. COMMUNICATIONS, PR & MARKETING

All mediators shall be truthful and not misleading when advertising or otherwise communicating their qualifications, experience, services and fees. Mediators shall not make promises or guarantees of specific results.

7. MEDIATION PRACTICE

All mediators shall act in a manner that advances the practice of mediation.

Standards and Commentary

1. INFORMED CHOICE

All mediators shall conduct mediation based on the principle of party self-determination and informed choice. Mediators shall explain to the participants that the probability of success can be improved when they participate with an open mind throughout the mediation process.

Mediators shall respect, value and encourage the ability of each participant to make individual decisions. Participants should be free to choose their own dispute resolution process, and mediators should encourage them to make their own decisions on all issues. However, a mediator may need to balance such choices with their duty to conduct a quality process in accordance with these Standards.

Whilst a mediator cannot ensure that participants are making informed and voluntary decisions, they should help participants understand the process, issues and options before them and encourage participants to make informed and voluntary decisions.

Mediators should promote honesty and candidness throughout the process.

Mediators should respect the culture, beliefs, rights and autonomy of the participants and should defer their own views to those of the participants, recognising that the interaction between the participants is often the key to resolution.

Mediators should encourage participants to consider the benefits of participation in mediation and agreement, as well as the consequences of non-participation and non-agreement. Participation in mediation is usually a voluntary process. Even when mediation is “mandatory”, participants who are unable or unwilling to participate effectively in the mediation process should be free to suspend or withdraw from mediation. Mediators should respect a participant’s informed decision to continue or end the process.

Mediators shall agree the role of third parties in the mediation process prior to commencement of mediation.

Mediators shall not undermine independence and self-determination by any party for reasons such as higher settlement rates, egos, increased fees, or outside pressures from administrators of in-house mediation schemes or contractor/client relationships.

2. IMPARTIALITY

All mediators shall demonstrate impartiality throughout the mediation process by conducting mediations fairly, diligently, even-handedly, and with no personal stake in the outcome. Mediators shall decline a mediation if they cannot conduct it in an impartial manner.

Mediators shall conduct mediation in an impartial manner and avoid conduct that gives the appearance of partiality.

Mediators should carry out an assessment, based upon practice context, to decide whether there are facts that a reasonable person would consider likely to create a potential or actual conflict of interest.

Mediators should not act with partiality or prejudice based on any participant's personal characteristics, background, values and beliefs, or performance at a mediation, or any other reason.

Mediators should neither give nor accept a gift, favour, loan or other item of value that raises a question as to the mediator's impartiality.

Mediators shall disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to them and could reasonably be seen as raising a question about the mediator's impartiality. After disclosure, if all parties agree, the mediator may proceed with the mediation.

If at any time a mediator is unable to conduct a mediation in an impartial manner, they shall withdraw.

Mediators should explain or offer to explain that they are not acting on behalf of or representing any participant.

3. CONFIDENTIALITY

All mediators shall discuss confidentiality issues as soon as practical and before confidential information is provided by anyone.

Mediators shall maintain the confidentiality of all information obtained by them during the process of mediation, unless otherwise agreed to by the parties.

Mediators should not communicate to any non-participant information about how the parties acted in the mediation.

Mediators may report, if required, whether parties appeared at a scheduled mediation and whether or not the parties reached a resolution.

If a mediator participates in teaching, research or evaluation of mediation, they should protect the anonymity of the parties and abide by all reasonable expectations regarding confidentiality.

Mediators who meets with an individual during mediation shall not convey directly or indirectly to any other person, any information that was obtained during that private session without the consent of the disclosing person.

Mediators shall promote understanding among the parties of the need to maintain confidentiality of information they obtain in mediation.

If the parties to mediation agree that the mediator may disclose information obtained during the mediation, the mediator may do so.

4. QUALITY ASSURANCE

Mediators shall conduct mediations in accordance with these Standards and in a manner that promotes diligence, timeliness, safety, presence of the appropriate participants, party participation, procedural fairness, and mutual respect amongst all participants.

Mediators should agree to mediate only when they are prepared to commit the attention essential to an effective mediation.

Mediators should only accept cases when they can satisfy the reasonable expectation of the parties concerning the timing of mediation.

The presence or absence of persons at a mediation depends on the agreement of the parties and the mediator. The parties and the mediator should agree the attendance of others at each session.

Mediators should promote honesty and candour between and among all participants, and they shall not knowingly misrepresent any material fact or circumstance in the course of a mediation.

Mediators may recommend, when appropriate, that parties consider resolving their dispute through arbitration, counselling, neutral evaluation or other processes.

Mediators shall not undertake an additional dispute resolution role in the same matter without the consent of the parties. Before providing such service, a mediator shall inform the parties of the implications of the change in process and obtain their consent to the change. Mediators who undertake such roles assume different duties and responsibilities that may be governed by other standards.

If a party appears to have difficulty comprehending the process, issues, or settlement options, or difficulty participating in a mediation, mediators should explore the circumstances and potential adjustments that would enable the party to participate.

If a mediator believes that participant conduct jeopardises conducting a mediation consistent with these Standards, the mediator shall take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.

5. COMPETENCE AND CPD

All mediators shall mediate only when they have the necessary competence to satisfy the reasonable expectations of the parties. Mediators shall update their skills on a regular basis by attending structured Continued Professional Development (CPD) events recognised by TCM to maintain and enhance their knowledge and skills related to mediation.

Mediators shall fully and accurately represent their knowledge, skills, abilities, and limitations. Mediators should have information regarding their training, education and experience readily available for review by the participants prior to the mediation session.

Mediators shall maintain and improve their skills and substantive knowledge necessary to reasonably satisfy the expectations of the participants in the matters they mediate.

Mediators should exercise their independent judgment when their abilities or availability are unlikely to satisfy the participants' expectations. When exercising their judgment, mediators should consider factors such as the participants involved, their agreed- upon mediation approach, and the complexity, subject matter, and specific issues of the dispute.

If mediators, during the course of a mediation determine that they cannot conduct the mediation competently, they shall discuss this with the parties as soon as is practicable and take appropriate steps to address the situation, including, but not limited to, withdrawing or requesting appropriate assistance.

If a mediator's ability to conduct a mediation is impaired by drugs, alcohol, medication or some other cause, they shall not conduct the mediation.

Mediators shall not provide participants with legal advice, therapy, counselling or other professional services during mediation.

6. COMMUNICATIONS, PR & MARKETING

Mediators shall be truthful and not misleading when marketing or otherwise communicating their qualifications, experience etc. Mediators shall not make promises or guarantees of specific results.

Mediators should not make themselves publicly available to serve unless they can meet participants' reasonable expectations that they are qualified.

Mediators should not solicit business in a manner that could impact their impartiality or otherwise undermine the integrity of mediation as a viable process to resolve disputes.

7. MEDIATION PRACTICE

Mediators shall act in a manner that advances the practice of mediation.

Mediators promote this Standard by engaging in some or all of the following: Mediators should foster diversity within the field of mediation.

Mediators should strive to make mediation accessible to those who elect to use it, including providing services at a reduced rate as appropriate.

Mediators should participate in mediation research whenever practical. Mediators should participate in outreach and education efforts to assist the public in developing an improved understanding of, and appreciation for mediation.

Mediators should improve and promote mediation by sharing their knowledge and skills through training, mentoring and networking with others.

Mediators should demonstrate respect for differing points of view within the field, seek to learn from other mediators and work together with other mediators to improve the profession and better serve people in conflict.

Mediators should be open to, and provide opportunities for feedback from, mediation participants to enhance their mediation skills.

Mediators should have a file storage policy and advise the participants about that policy. Mediators should provide these Practice Standards to the mediation participants as soon as practical.