

## ADR CENTER MEDIATION ADVOCATE/ADVISOR QUALIFYING ASSESSMENT PROGRAM COMPETENCY FRAMEWORK FOR MEDIATION ADVOCATES

### EXTRACT

The ADR Center Mediation Advocate / Advisor Qualifying Assessment Program is centered around the following core competency areas and skills:

#### Conflict analysis

1. Identifying relevant information to understand the situation beyond its mere legal framework;
2. Using conflict analysis tools and the relevant information to prepare the mediation brief and build a strategy for successful client representation;

#### Relationship building

3. Developing communication and trust with the mediator, the other party and its counsels and other stakeholders;
4. Adopting appropriate communication styles, listening actively and identifying key interests of all parties involved;

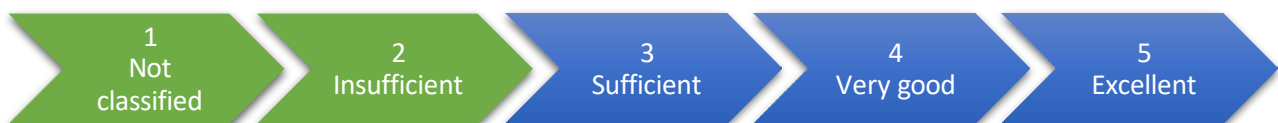
#### Process facilitation

5. Working with the mediator and the client to develop the mediation approach and process ground rules;
6. Participating in mediation to help parties navigate the process and generate progress for all.

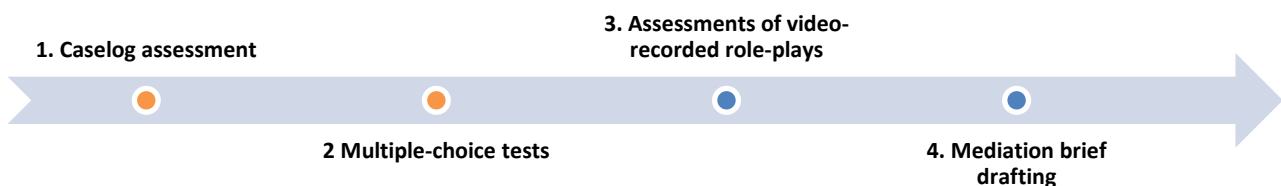
#### Substance management

7. Assisting the parties in structuring issues, mapping needs, creating value and exploring options collaboratively;
8. Providing legal advice, analyzing risk and contributing to formalizing the mediation settlement agreement in writing.

The above-mentioned competency areas and skills are needed throughout all stages of the mediation process. They are assessed before, during, and after the training. The assessment tools used for this include written sampling, multiple-choice tests, observation of video-recorded simulated mediations, and review of mediation briefs prepared by the course participants. The assessment levels for each of the skills and knowledge described above are:



The assessment program includes the following activities:



To pass the ADR Center Mediation Advocacy Qualifying Assessment Program, each candidate must score a minimum of 3 on average for his/her performance in the submitted video records from the role plays, multiple-choice tests and final Mediation brief.

The competencies, the skills, and the tools presented in this document are an ideal standard that is unlikely to be fully demonstrated during the training. Instead, they represent a goal for practicing mediation advocates who develop flexibility and experience as they develop through their careers.

## CONFLICT ANALYSIS

### 1. IDENTIFYING RELEVANT INFORMATION BEYOND THE LEGAL FRAMEWORK

- Identify the parties involved and their apparent interests. Work with the client to ensure an in-depth understanding of his/her interests and needs.
- Check the biases of other stakeholders, their interests, and potential impacts on the conflict
- See if there aren't gender and other cross-cultural factors that need to be better understood and considered
- Seek information to understand the perspectives of all parties and stakeholders
- Understand the timeline of the conflict and pinpoint the relevant moments in time
- Prepare the mediation briefs and relevant documents required for active engagement during the process
- Investigate previous attempts to build consensus and focus on the main areas for disagreement, their root causes, and potential lessons learned by the parties
- Check for underlying issues, hidden interests, and agendas
- Clarify existing case law applicable to the case specifics

Tools: **Individual research, bilateral meetings, conference calls, exchange of briefs**

Mediation advocate qualities: **Humane, responsible, upright, professional**

### 2. USING CONFLICT ANALYSIS TOOLS TO PREPARE MEDIATION BRIEFS AND STRATEGY

- Discuss with the client and see if mediation is the most appropriate method at a given time
- Explore and map the substantive, the psychological/emotional, and the procedural interests of the parties and potential other stakeholders
- Use the information collected to engage the question of how to respond to the situation
- Define/adapt your strategic approach (road map) to mediation and a mediation plan with a timeline and actions.
- Integrate gender perspectives into the conflict analysis process throughout
- Advises client whether mediation is mandatory, court-annexed or strategically beneficial
- Uses active listening, reframing and cultural sensitivity; balances empathy and legal realism
- BATNA/WATNA Modeling: Quantifies cost, duration, reputational impact and enforcement risks of litigation / arbitration alternatives
- Models respectful language, avoids positional posturing, encourages principled dialogue; protects client from intimidation but does not obstruct mediator

Tools: **Individual preparation, checklists, information sharing, capacity building**

Mediation advocate qualities: **Honest, neutral, impartial**

## RELATIONSHIP BUILDING

### 3. DEVELOPING COMMUNICATION AND TRUST WITH THE PARTIES AND OTHER STAKEHOLDERS

- Listen with patience, care, show empathy and shows understanding of the other parties' perspectives over issues as well as how they feel about them, recognizing emotions and allowing their venting
- Avoid placing blame on the other party, while acknowledging their views regarding responsibility
- Adopt a pleasant and constructive communication style to set the scene for positive talks
- Include open-ended questions, realistic but positive summaries, and other communication tools that appear to be non-threatening for the parties
- Participate in agreeing on ground rules and a communication protocol that suits all participants
- Take mandate from the client prior to the mediation process
- Humanize the process as possible i.e. use humour to connect with people and groups
- Appear relaxed but not disengaged and find the right balance between energy and patience

Tools: **Building rapport, active listening, summarizing, questioning, reflecting**

Mediation advocates qualities: **Empathic, approachable, valuable**

### 4. ADOPTING APPROPRIATE COMMUNICATION STYLES AND IDENTIFYING KEY INTERESTS

- Adjust communication style to suit the needs and sensitivities of all parties.
- Listen actively to uncover both expressed and underlying interests.
- Balance empathy with legal realism, using respectful language and avoiding positional posturing.
- Model principled dialogue and encourage openness while safeguarding the client's interests.

Tools: **Communication checklists, feedback loops, cultural sensitivity training**

Mediation advocates qualities: **Honest, neutral, impartial**

## PROCESS FACILITATION

### 5. WORKING WITH MEDIATOR AND CLIENT TO DEVELOP APPROACH AND GROUND RULES

- Establish a productive environment that welcomes the other parties' contribution
- Know various models and structures that could support the parties' conversations
- Seek and understand the other party's expectations about the strategic mediation approach, the timeline, and the mediator's expected influence over both process and substance
- Discuss the principles that should guide the mediation process
- Discuss how long the process and the meetings are expected to last.
- Discuss with the mediator, the client and the other parties how a successful process would look like and under what circumstances the process can be interrupted
- Discuss confidentiality, language, costs, and other factors that ensure a sustainable process
- Formalize as necessary the agreement to mediate, and the joint commitment towards ensuring the confidentiality of all the information exchanged in the process

Tools: **Process ground rules, agreement to mediate**

Mediation advocates qualities: **Supportive, active, communicative, and clear.**

### 6. PARTICIPATING IN MEDIATION TO NAVIGATE AND GENERATE PROGRESS

- Find the right balance between the detail level and the flexibility of the mediation approach
- Take responsibility for the process and its enforcement mechanisms as needed
- Participate in the organization of the necessary logistics and physical space for the mediation
- Manage time effectively to ensure progress and constructive outcomes of the meetings
- Provide summaries and explanations with regard to the rules agreed to govern the process
- Strive for efficiency, manage spoilers and challenges, and adopt a proactive approach
- Encourage information exchange and voluntary sharing of the client's information after having gained the client's consent on this
- Take good notes and track the progress of negotiations
- Keep the client focused and engaged in the process
- Manage the process always with an eye on the clients' underlying interests and needs, not what a court would most probably rule
- Be aware of the specific purpose of each phase, keep and bring back the process on track
- Be self-aware of the mediator's role and manage ethical challenges effectively

Tools: **Shaping the conversations through summaries, reframing, restating, etc.**

Mediation advocates qualities: **Enthusiastic, reliable, leading, rational, and focused.**

## SUBSTANCE MANAGEMENT

### 7. ASSISTING THE PARTIES IN STRUCTURING ISSUES, MAPPING NEEDS, CREATING VALUE AND EXPLORING OPTIONS COLLABORATIVELY

- Encourage the client and preparing him/her to share their perspectives and to inform the topics for conversation
- Assist the mediator in structuring an agenda of issues and organizing the mediation process to address all the issues in their order of importance
- Work with the mediator to identify the underlying interests and needs in relation to the issues
- Assist the client in focusing attention on their most important interests and needs
- Assist the client in developing their perspectives on the situation and in generating and exploring new options based on all the information available
- Keep the client away from skipping too early to "surface" negotiations, and instead, assist in understanding the situation better and in focusing on the interests and needs
- Encourage the client to think creatively and to replace gaps that are seemingly impossible to fill with new options that add value to the positions of all parties

Tools: **Mapping interests and needs, generating options based on mutual gain**

Mediation advocates qualities: **Creative, objective, good negotiator, organized, dynamic.**

### 8. PROVIDING LEGAL ADVICE, ANALYZING RISK AND CONTRIBUTING TO FORMALIZING THE MEDIATION SETTLEMENT AGREEMENT IN WRITING

- Advise parties on legal implications, risks, and alternatives to settlement (BATNA/WATNA analysis).
- Contribute to drafting clear, enforceable mediation settlement agreements.
- Help the client identify the proper balance between *value-creating* and *value-claiming* approaches in their negotiations
- Assist the client in working with multiple options at the same time and, when necessary, to compromise less important interests for more important ones
- Help the client define proposals that are consistent with both their preferred options for agreement and their negotiation strategies
- Avoid reaching a deadlock and roll out strategies to overcome the deadlock as necessary
- Assist the client in writing a SMART mediation agreement, when necessary
- Assist the mediator in closing the mediation process at the appropriate time and learn from past experiences

Tools: **Risk analysis models, agreement drafting templates, reality testing.**

Mediation advocates qualities: **Knowledgeable, visionary, creative, and pragmatic.**

## EVALUATION FORM FOR THE MEDIATION ADVOCATE DURING THE ROLE PLAY

### ADR Center Feedback Form for observing mediation advocates

This form outlines the main competencies against which participants are assessed. Other course participants find this form useful to observe mediators and structure their feedback accordingly. Focus on the techniques & challenges observed for each competency in preparation for (white shading) and during mediation - opening joint session, private sessions, closing session (gray shading).

CONFLICT ANALYSIS			
Identifying relevant information to understand the situation beyond its mere legal framework		Using conflict analysis tools and the relevant information to prepare and to mediate	
Techniques	Challenges	Techniques	Challenges
RELATIONSHIP BUILDING			
Developing communication and trust with the client, the mediator, the other party and other stakeholders		Adopting appropriate communication styles, listening actively and identifying key interests of all parties involved	
Techniques	Challenges	Techniques	Challenges
PROCESS FACILITATION			
Working with the mediator and the client to develop the mediation approach and process ground rules		Participating in mediation to help parties navigate the process and generate progress for all	
Techniques	Challenges	Techniques	Challenges
SUBSTANCE MANAGEMENT			
Assisting the parties in structuring issues, mapping needs, creating value and exploring options collaboratively		Providing legal advice, analyzing risk and contributing to formalizing the mediation settlement agreement in writing	
Techniques	Challenges	Techniques	Challenges