



# **Competency Framework for Mediation Advocacy QAP Assessment IMI**

## Competency Framework

### Stage 1 – Mediation Advocacy General Knowledge Requirements

**Method of Assessment – Online Tests and Capstone Project (see Assessment Process Document)**

#### Competencies to be Assessed

***\*Note – These competencies reflect the learning outcomes for the online modules and the Capstone Project, which are designed and constructed to assess these learning outcomes.***

Students must demonstrate an ability to:

- Differentiate between different types of mediation processes and hybrid processes;
- Recognise what cases are and are not suitable for mediation and explain why; guide unsuitable cases into other more suitable processes;
- Explain and advise on mediation process, procedure and rules and their own, the parties and other parties such as advisors role in the process, including different process models, stages of mediation, the use of caucus and cross caucus and other procedural features;
- Explain the role of the mediator, how this might vary and what to look for in selecting a mediator;
- Use and explain negotiation theory and strategies including BATNA WATNA ZOPA and assist parties in separating interests from positions;
- Draft and evaluate mediation documentation including but not limited to Mediation Agreements and Mediated Settlement Agreements;
- Support the client by means of empathetic listening and questioning techniques, attending to emotional and physiological needs, answering questions and clarifying issues and events during the process;
- Work effectively with the mediator, the other side, and the client and respond to a variety of negotiation styles and approaches;
- Deal with cultural variations and language and communication differences;
- Manage multiple parties / advisers in a multi-party mediation;
- Demonstrate a high degree of familiarity and comfort with the use of different ICT platforms, and guide and assist the client in using same;
- Demonstrate understanding the required situational awareness to decide when online methods of mediation may or may not be suitable;
- Understand the dynamics of, and ethical challenges of mediating online;
- Design a on online mediation process including selecting the appropriate technology, familiarising parties with the technology and process implications of the online environment and drafting appropriate mediation agreements.
- Advise the client of the implications of mediating in different jurisdictions, and online, in international mediation;

- Select and agree (with the other side) the most appropriate regulatory framework for the process;
- Advise on any national legal and regulatory aspects of the process including confidentiality, enforcement of agreements and process regulations insofar as they exist. *As an example, in Ireland this would include advising on implications of the Mediation Act, 2017, and understanding and implementing legal advisers' obligations as set out in section 14 and 15 therein.*

## Stage 2 – Mediation Advocacy Practical Skills Requirements

**Method of Assessment – Case Study, Interview and Role-Play Assessment (see Assessment Process Document)**

### Competencies to be Assessed

**\*Note – For details of how assessment will be carried out, see Assessment Process Document**

Students must demonstrate an ability to:

#### ***Advice on Law and Process***

- Advise clients in line with any legal or regulatory obligations imposed by national law, and/or the provisions in any Code of Practice in relation to encouraging parties to engage in ADR otherwise settle their dispute amicably.
- Where such national law or practice exists, advise the client on the potential consequences of refusal to mediate;

#### ***Dispute Analysis and Process Choice***

- Carry out a conflict and dispute analysis;
- Explain to the client the options for dispute resolution and elicit their views and concerns;
- Analyse the dispute for suitability and recommend an appropriate process and course of action;
- Carry out a risk / benefit analysis of the chosen course of action in collaboration with the client;

#### ***Preparation for Mediation***

- Prepare the required paperwork and organise logistics (time, place, attendees) for the chosen process;
- Prepare the client for mediation: analyse and differentiate between positions and interests, define BATNAs WATNAs and ZOPAs, prepare Opening Statements with client;
- Work through fears and anxieties about the process with the client;
- Engage with other parties and adviser and assist in the selection of the mediation;

- Consistently demonstrate a collaborative approach to all communications with all parties concerned;
- Advise the client in relation to the process for selecting and appointing a mediator or co-mediators, including making reference to different styles, different standards of accreditation and professional oversight, and cost implications;

### ***Technology Management***

- Demonstrate sufficient online technology and communications skills to support a process being carried out online;
- Support clients in accessing and using the selected technology, including coaching clients in the use of technology and managing any concerns in relation to same;
- Manage and engage helpfully in an online mediation process;
- Use ICT in an efficient and productive way;
- Respond to any concerns, challenges or ethical dilemmas arising out of the use of ICT for mediation;

### ***Process Management***

- Ensure the Agreement to Mediate meets any national regulatory or practice-based standards or institutional requirements;
- Advising on the implications of dispute resolution clauses and of any regulatory framework, which may impact upon the process and its outcome;
- Assisting with the development of an agenda for discussion, if appropriate;
- Collaborating with the client and encouraging them to, as far as possible, approach the mediation in an open and co-operative manner.
- Assist the client in managing anxiety, anger and other difficult emotions and behaviour, on their part and that of the other party(ies).;
- Modelling collaborative behaviour with the mediator and the other parties and advisors;
- Drawing out and focusing the discussions on underlying interests;

### ***Working Through Options***

- Advising the client on all legal, financial, taxation and practical implications (so far as possible) of suggested courses of action;
- Implementing a collaborative and problem solving negotiation strategy;
- Encouraging and managing offers, responses to offers and counter offers;
- Reality checking suggestions, offers and courses of action;
- Clarifying and summarising positions, issues, facts, financials, interests and other information;
- Assist client in generating and analysing options and creative problem solving;

### ***Supporting the Mediation and the Client***

- Respond to an deal with challenges arising from, but not limited to, high conflict, difficult behaviours, cultural differences and ethical dilemmas;
- Making effective use of both the mediator and process variations like caucus, breaks, joint sessions, use of experts;
- Motivating the client in the process and managing fatigue and frustration;

- Demystifying mediation techniques and strategies;
- Managing confidentiality;

### ***Managing Agreement***

- Encouraging and facilitating agreement, ensuring terms of agreement are clear, workable and measurable;
- Assisting with or managing the drafting of, checking of and clarifying of any agreement, including advising on the appropriate format for and status if any settlement agreement;
- Managing and safe and collaborative exit from and follow up to a process that has not resulted in agreement, scheduling follow up sessions and managing any other processes, such as litigation, that may be running in parallel or might be re-activated or initiated.
- Assisting with the implementation of any agreement;
- Ensuring any additional steps which may be required are carried out.

### ***Self-Awareness and Reflection***

- Demonstrating self-awareness by identifying and discussing skills and targets for improvement arising out of reflection on assessment process;
- Answering assessors questions on practice in such a way as to demonstrate the ability to link theory and practice;
- Articulate the rationale for using particular strategies and interventions and justify these choices by reference to theory and best practice;
- Recognise impact of stress and unexpected events on performance and suggest ways of managing this in future;
- Demonstrating the capacity for reflection and commitment to ongoing learning and development.

