

Revised IMI Code of Conduct for Mediators

This draft is a work in progress prepared by the IMI Ethics Committee for public consultation. At this stage it does not reflect the IMI organization view. The final version of the Revised Code will be brought before the IMI Board for formal approval.

INTRODUCTION

THE INTERNATIONAL MEDIATION INSTITUTE (IMI) is a public interest initiative, established as an international foundation whose aim is to develop international professional standards for mediators and mediation. The standards together with the IMI Certification Scheme aim to promote transparency, credibility, and quality in the mediation process as well as the development and use of mediation worldwide.

1. Application

The IMI Code of Conduct for Mediators (“the Code”) applies to IMI Certified Mediators and IMI Qualified Mediators and may be voluntarily adopted by other mediators and mediation organizations.

The Code provides minimum ethical standards of conduct for mediators (“the Standards”) in all practice styles and contexts, both in person and online.

2. Purpose

The Code intends to:

- (a) Inform mediators of the applicable ethical standards and the behavior that those standards require.
- (b) Inform mediation parties about what they can expect of the process and their mediator.
- (c) Promote public confidence and trust in the mediation process.

3. Liability and Accountability

The Code does not replace applicable legislation, case law, or other professional rules.

Where any part of this Code is found to be inconsistent with such legislation, case law, or other professional rules, mediators must comply with the applicable law and disclose this fact to the parties.

The Code is not intended to create legal liability. However, by providing minimum ethical standards of conduct for mediators, the Code establishes a minimum ethical threshold of accountability that

mediators are expected to meet. Failure to meet these ethical standards could lead to collegial sanction and may be considered within the IMI Professional Conduct Assessment Process.

4. Structure

The Code comprises General Principles and Practice Rules that are to be read and applied together. The **General Principles** are ethical principles that are intended to guide mediators in the exercise of their role before, during, and after the mediation. They are complemented by **Practice Rules** which represent the application of the General Principles to the different stages of mediation with the aim of producing clearer practical guidance.

5. Scope of obligations

The Code reflects the obligations of mediators toward mediation parties, the mediation profession, the public, and employers or principals such as courts (when and where applicable).

Mediators are expected to:

- exercise their role in accordance with the Code in a manner that maintains the standing of and public trust in the profession and process,
- avoid harming important social interests such as the rule of law and the institution of mediation, and
- maintain the standing of an institution or employer with whom they are affiliated, or on whose behalf they mediate (such as a court).

6. Interpretation

The Code is to be read, interpreted, and applied in its entirety. No obligation has priority over another. Where obligations appear to conflict, mediators are required to –

- (a) Search for an alternative course of action that is consistent with all their obligations; and
- (b) Terminate or withdraw from the mediation when they cannot prevent the violation, minimizing as far as possible the harm resulting from the violation.

Mediators who are undecided on how to act after reading the Code may consult with the IMI's Ethics Committee while maintaining the anonymity of the parties to the mediation.

Mediation users who believe the standards established in this Code have not been met, may initiate the IMI Professional Conduct Assessment Process.

7. Definitions

In this Code –

- (a) “Mediation” means a process in which a third party assists parties to communicate, negotiate, and make their own decisions, including reaching an agreement, when they choose to do so.
- (b) “Mediator” means a person or persons who conduct a mediation.
- (c) “Online mediation” means a mediation conducted by a human mediator with use of information technology, including videoconferencing.
- (d) “Conducting a mediation” refers to all actions taken by a mediator before, during, and after a mediation in connection with the process.
- (e) “Shall” indicates a duty of a mediator to act or refrain from acting.
- (f) “May” indicates a choice of the mediator to act or refrain from acting. Such a decision is to be made in the exercise of professional discretion, based on relevant considerations that can be reasonably justified.
- (g) IMI Certified Mediators (also called “mediators” in this Code) are those mediators:
 - whose competency in the practice of mediation has been certified by the IMI;
 - who are authorized by the IMI to use the “IMI Certified Mediator” designation and logo; and
 - whose Profile is searchable on the IMI “Find a Certified Mediator” web portal.

CODE SUMMARY: GENERAL PRINCIPLES

1. Party Self-determination

A mediator shall conduct the mediation based on party self-determination, with parties who have capacity and who are making informed decisions, voluntarily, and without coercion.

2. Impartiality

A mediator shall exercise the mediator's role without favoritism or bias.

3. Conflicts of Interest

A mediator shall avoid a conflict of interest or the appearance of a conflict of interest at all stages of a mediation or act to mitigate them.

4. Mediator Competence

A mediator shall accept a mediation, and proceed to mediate only when the mediator has appropriate knowledge and skills necessary for conducting the mediation effectively.

5. Confidentiality

A mediator shall maintain the confidentiality of information that comes to the mediator's knowledge in the exercise of the mediator's role.

6. Diligence

A mediator shall exercise the mediator's role with reasonable availability, attention, and care.

7. Professional Integrity

A mediator shall exercise the mediator's role within the confines of the role of a mediator and congruent with the mediation process, by making required decisions for managing the mediation, maintaining independence in the exercise of professional discretion, separating the role of mediator from other professional roles, mediating cases suitable for mediation, and preventing process abuse or substantial defects in the mediation process.

8. Human Dignity

A mediator shall respect the dignity of the participants and others in the performance of the mediator's role.

9. Honesty

A mediator shall be honest in dealing with the participants and with others in the performance of the mediator's role.

10. Public Standing of the Profession and Process

A mediator shall exercise the mediator's role in a manner that maintains the standing of, and public trust in, the profession and process.

11. Fairness

A mediator shall exercise the mediator's role fairly and conduct a fair process.

12. Advancement of the Mediation Profession

A mediator is encouraged to advance the mediation profession for the benefit of the public.

THE CODE

I. General Principles

1. Party Self-determination

1.1. A mediator shall conduct the mediation based on party self-determination. Party self-determination means that the parties, with capacity, voluntarily make informed decisions without coercion.

1.1.1. Party capacity entails the ability to perceive information, understand its meaning and appreciate its consequences for decision-making. In online mediation, it also includes the ability to use the relevant communication technology.

1.1.2. Voluntary decision-making is an exercise of choice not dominated by feelings of distress or helplessness resulting from pressures exercised by others, including mediation participants, and/or the mediator.

1.1.3. An informed decision is made based on information relevant for making that decision. A mediator cannot ensure that parties make decisions that are based on complete information. In managing the mediation process, a mediator must assist the parties in accordance with these Standards to consider whether they have sufficient knowledge of relevant information that a reasonable decision-maker, in the circumstances, would have considered relevant for making that decision.

1.2. The parties' right to self-determination may be exercised in connection to both process and outcome, including the appointment of mediators (unless the applicable law, court rules or contract require the use of a particular mediator) as well as all aspects of participation and withdrawal.

2. Impartiality

2.1. A mediator shall exercise the mediator's role impartially. Impartiality means freedom from manifestations of favoritism or bias toward one party over another in word, action, or omission; and the appearance of favoritism in the eyes of a reasonable person.

2.2. Impartiality does not always entail treating the parties in the same or similar fashion. A mediator may use different types of interventions with parties when these are necessary

to support each party's right to exercise self-determination, provided that the following conditions are met:

2.2.1 The intervention is limited to the minimum necessary to ensure the self-determination or other rights of a party;

2.2.2 In making the intervention, the mediator has taken appropriate measures to prevent, as far as possible, an appearance of favoritism or bias;

2.2.3 The mediator's conduct does not violate any other ethical duty; and

2.2.4 The intervention does not jeopardize public trust in the process.

3. Conflicts of Interest

- 3.1. A mediator shall, at all stages of a mediation, avoid a conflict of interest or the appearance of a conflict of interest or act to mitigate such conflict or appearance, in accordance with this Principle.
- 3.2. A conflict of interest is a situation in which an interest of a mediator conflicts with an interest of one party or more parties as a result of:
 - (1) a mediator's financial, personal, or other involvement in the content of the dispute or its outcome;
 - (2) a past or present, personal, business, or professional relationship, between a mediator and a mediation participant, or a person related to a mediation participant; or (3) a pre-existing legal, moral, ethical, religious, conscientious or other duty of the mediator to act in a particular way in the mediation.
- 3.3. A mediator shall disclose conflicts of interest in accordance with the Practice Rules set out below. Upon disclosure, the parties may waive the mediator's conflict of interest in writing, unless the mediator's conflict constitutes a Serious Conflict of Interest as defined in paragraph 3.4.
- 3.4. If the conflict of interest raises a reasonable concern that a mediator will not be able to avoid harming a party's interest, and as a result the process might reasonably be perceived to be faulty, thereby jeopardizing the standing of and public trust in the profession and the process ("A Serious Conflict of Interest"), the mediator shall withdraw or decline to proceed, regardless of the express agreement of the parties.

4. Mediator Competence

- 4.1. A mediator shall mediate only when the mediator has the competence to do so.
- 4.2. A mediator at all times shall possess basic mediator competence and shall comply with the rules of the country of practice or organization for which the mediator is mediating. Basic competence includes familiarity with the mediation process, knowledge and skills, based on the training and experience necessary for effectively assisting parties to communicate, negotiate, and make voluntary decisions.
- 4.3. A mediator shall, when necessary, also possess specific competence, including subject-specific knowledge. Such specific competence shall be required when necessary to meet:
 - (1) the reasonable expectations of the parties;
 - (2) the rules of the country of practice or organization for whom the mediator is mediating;
 - (3) the complexity and cultural context of the mediation; or
 - (4) the format of mediation when it is online.
- 4.4. A mediator shall strive to participate in continuing education and related activities to maintain and improve the mediator's knowledge and skills relating to mediation.

5. Confidentiality

- 5.1. A mediator shall maintain the confidentiality of information that comes to the mediator's knowledge in the exercise of the mediator's role, whether before, during, or after the mediation.
 - 5.1.1. Maintaining confidentiality means refraining from disclosure of information without a justified cause as provided for in this Principle.
 - 5.1.2. Confidential information includes:
 - (1) Information received in connection with the mediation;
 - (2) Information regarding the conduct of the parties in the mediation; and
 - (3) Information that undermines the anonymity of the parties.
- 5.2 The extent of the confidentiality which applies to a mediation will depend on applicable law, rules of an applicable mediation program, and an agreement between the parties and the mediator.
- 5.3 Subject to paragraph 5.2, a mediator may disclose information that comes to the mediator's knowledge in the exercise of the mediator's role in the following circumstances:
 - 5.3.1. The parties agree to the disclosure.

- 5.3.2. The information is obtained in a private session and the disclosing party agrees to the disclosure.
- 5.3.3. The disclosure is required or permitted by law or a court order.
- 5.3.4. The disclosure is required by a mediation program or other referring entity regarding whether parties attended the mediation and whether or not the parties reached an agreement.
- 5.3.5. The disclosure is made for the purpose of professional consultation, research, teaching, evaluation, or training, provided that the anonymity of the parties is protected as well as their reasonable expectations regarding confidentiality.
- 5.3.6. The disclosure is required in connection with resolving claims between mediators and parties.
- 5.3.7. The mediator discloses that the mediator previously served as a mediator in a mediation involving one or more of the parties, provided that none of the details of that mediation are disclosed.
- 5.3.8. The disclosure is necessary to prevent death or imminent bodily harm or severe damage to an identifiable third party or to prevent the commission of illegal or unconscionable acts that jeopardize the standing of and public trust in mediation. Before using or disclosing such information, if not otherwise required to be disclosed by law, a mediator shall make a good faith effort to persuade the party, and/or the party's counsel or other advisers, to act in such a way that would remedy the situation.

6. Diligence

A mediator shall exercise the mediator's role with reasonable time and with the attention required to carry out the process effectively, actively striving to achieve the goals of the mediation, and with due care to avoid harm to the parties.

7. Professional Integrity

- 7.1. A mediator shall exercise the mediator's role with professional integrity. Professional integrity requires the mediator to act within the confines of the mediator's role and congruent with the mediation process, as defined in these Standards. Professional integrity has four components: (1) decision-making and independence in the exercise of professional discretion, (2) separation of professional roles and services, (3) consideration

of the appropriateness of the case for mediation, and (4) prevention of process abuse or substantial defects in the process.

7.2. Mediator Decision-Making and independence in the Exercise of Professional Discretion

7.2.1. Consistent with the Principle of Party Self-determination, a mediator has the authority and duty to manage the mediation process and to make those decisions which are necessary for the mediation to be conducted in accordance with the definition of the mediator's role and these Standards.

7.2.2. A mediator shall respect the parties' choices, unless to do so would be inconsistent with these Standards.

7.2.3. A mediator's decision-making shall be independent and based on relevant professional considerations that can be reasonably justified.

7.3. Separation of Professional Roles and Services

7.3.1. A mediator shall distinguish between the mediator's role as a mediator and other professional roles such as lawyer, therapist, evaluator, and arbitrator.

7.3.2. During the mediation, a mediator shall not provide the parties with professional services in any capacity other than as a mediator.

7.4. Consideration of Appropriateness of a case for mediation.

A mediator shall only mediate in cases that are appropriate and suitable for mediation, considering the nature of mediation and its principles.

7.5. Prevention of Process Abuse or Substantial Defect in the Process

7.5.1. A mediator shall take steps to prevent an abuse of the mediation process or a substantial defect in the process. Consistent with these Standards, such steps may include discussions with the parties in joint or separate sessions, asking the parties to consult external experts, postponing the mediation, or terminating the mediation as a last resort.

7.5.2. Abuse of process and substantial defect in the mediation may include:

7.5.2.1. The use of mediation to further illegal conduct.

7.5.2.2. The use of information revealed to a mediator during the mediation for any purpose not connected with the mediation, unless agreed to by the parties.

7.5.2.3. Presenting a dispute resolution procedure other than mediation as a mediation to gain the protection of rules or statutes pertaining to mediation.

- 7.5.2.4. Participants' conduct that exhibits bad faith, is inconsistent with the purposes of the mediation, or makes the conduct of mediation impossible. Indications of bad faith could include undue pressure, exploitation, duress, and deceit.
- 7.5.2.5. Where the mediated agreement appears to severely jeopardize the standing of and public trust in mediation. For example, a mediator reasonably believes that the settlement agreement's terms appear to be illegal, having regard to the circumstances of the case and the competence of the mediator to make such an assessment, or are unconscionable or grossly unfair, "shocking the conscience" of a reasonable person and violate accepted social norms.

8. Human Dignity

A mediator shall respect the dignity of the participants and others in the performance of the mediator's role. Respecting human dignity includes treating others with respect, patience, courtesy, and refraining from the use of abusive, discriminatory, humiliating, and profane language.

9. Honesty

A mediator shall be honest in the mediator's dealings with the participants and others in the performance of the mediator's role. Honesty entails a mediator refraining from making untrue statements, lying and intentionally misrepresenting information that could undermine party self-determination.

10. Public Standing of the Profession and Process

- 10.1. A mediator shall exercise the mediator's role in a manner that maintains the standing of and public trust in the profession and process. Maintaining the standing of the profession and process involves refraining from conduct that might devalue the public's perception of mediation and the profession, or diminish the willingness of the public to use mediation.
- 10.2. A mediator shall exercise the mediator's role and discharge the mediator's duties in a manner worthy of the public's trust in the mediation process and profession.

11. Fairness

A mediator shall exercise the mediator's role fairly and conduct a fair process. Fairness in these Standards means following the Standards and interpreting them in accordance with their spirit and purpose, preferring a realistic, substantive, and contextual understanding of the Standards and their impact on the parties over a formal, literal understanding of them.

12. Advancement of the Mediation Profession

A mediator is encouraged to advance the mediation profession for the benefit of the public.

II. Practice Rules

1. Before and at the Beginning of Mediation

1.1. Accepting a Mediation

1.1.1. Competence

1.1.1.1. A mediator shall only accept a mediation when the mediator has the basic and, when required, specific competence as defined by the Principle of Mediator Competence. If a mediator, in the course of a mediation, cannot continue conducting the mediation competently, the mediator shall notify the parties and withdraw, unless the mediator can take steps, which are reasonably appropriate in the circumstances, to address the incompetence by requesting assistance from others.

1.1.1.2. A mediator shall also decline to mediate or withdraw from a mediation when the mediator's ability to mediate is impaired by drugs, alcohol, medication, or any other reason.

1.1.1.3. A mediator shall make available to the parties upon the parties' request relevant information regarding the mediator's mediation training, education, and experience.

1.1.2. Diligence

A mediator shall only agree to mediate when the mediator is able to commit the attention necessary for an effective mediation; and when the mediator can satisfy the parties' reasonable expectations concerning the timing of the mediation.

1.1.3. Inquiry of Impartiality

1.1.3.1. A mediator shall not accept a mediation if the mediator cannot conduct the

mediation impartially; or

- 1.1.3.2. If a reasonable person would have a concern regarding the mediator's partiality that would jeopardize the standing of, and public trust in the profession and process.

1.1.4. Inquiry and Disclosure of Conflicts of Interest

- 1.1.4.1. A mediator shall make a reasonable inquiry to determine whether there are any facts that a reasonable person would consider likely to create a potential or actual conflict of interest for the mediator.
- 1.1.4.2. If, following the inquiry, a conflict of interest has been found (which is not a Serious Conflict of Interest, as defined in the Principle of Conflicts of Interest), the mediator shall, as soon as practicable, disclose it to the parties.
- 1.1.4.3. After disclosure, if all parties agree in writing to waive the mediator's conflict of interest, the mediator may proceed with the mediation.

1.1.5. Assessing and Addressing Party Capacity

- 1.1.5.1. A mediator shall not conduct a mediation in circumstances in which a reasonable mediator would be under the impression that a party lacks capacity to participate in the process (as defined in the Principle of Party Self-determination).
- 1.1.5.2. A mediator who believes that any party lacks capacity to participate in the mediation shall take measures to assist the party to understand the process, participate in it, and exercise self-determination, including postponing the mediation or encouraging a party to involve a representative or support person.
- 1.1.5.3. If taking any or all of these measures is impossible or unsuccessful in assisting the party to attain the requisite capacity to participate, the mediator shall terminate the mediation.

1.1.6. Consideration of Appropriate Participants

A mediator shall bring to the parties' attention the importance of appropriate participants (e.g. those authorized to make binding decisions on behalf of the party) taking part in the process.

1.1.7. Consideration of Appropriateness of Case to Mediation

At any stage of the mediation, a mediator shall recommend that parties consider resolving their dispute through other processes, such as arbitration, counseling, or

neutral evaluation, when those processes are more appropriate than mediation.

1.1.8. Discussion of the Extent of Confidentiality with the Parties

- 1.1.8.1. A mediator shall discuss with the parties the extent of confidentiality that applies to the process and to the mediator, and the existence or nonexistence of mediation privilege and its scope. A mediator may suggest that the parties obtain legal advice on the extent of mediation confidentiality and privilege.
- 1.1.8.2. A mediator shall promote understanding among the parties of the extent to which the parties will maintain confidentiality of information they obtain in the mediation.
- 1.1.8.3. In online mediation the mediator shall discuss with the parties the risks to privacy and confidentiality in using online communication, establish who is allowed to be present in the room, and confirm that no one is recording the mediation.

1.2. Providing Information Related to the Process

A mediator shall inform the parties, or shall be satisfied that the parties have been informed, of the following process information at the beginning of the mediation:

- 1.2.1. The characteristics of the mediation process as distinct from other dispute resolution processes.
- 1.2.2. The stages of the mediation process.
- 1.2.3. The role of the mediator including the mediator's preferred style of mediation.
- 1.2.4. The duties of the mediator according to these Standards and any applicable law.
- 1.2.5. The rights and expectations of the parties in connection with the mediation process, including:
 - 1.2.5.1. The right of the parties to withdraw from the mediation.
 - 1.2.5.2. The right of the parties to consult other professionals and the importance of such consultation when it is required for decision-making.
 - 1.2.5.3. The extent of confidentiality that applies to the process, the mediator, and the parties.
 - 1.2.5.4. The expectation that the parties act fairly and in good faith.
- 1.2.6. The importance of taking account of the interests of minors, incapacitated persons affected by the dispute, or any other person who is likely to be substantially impacted by the outcome of the mediation.

1.2.7. The provisions of the agreement to mediate between the parties and the mediator, and/or any applicable rules to that effect.

1.2.8. The enforceability of any resulting mediated agreement.

1.3.Charges and Fees

1.3.1. A mediator shall discuss with the parties, before the mediation begins, the mediation fees and any charges that may be incurred in connection with the mediation, and how they will be paid by the parties (and if shared between the parties, in what proportions).

1.3.2. Mediation fees shall not be contingent upon the outcome or amount of the mediated outcome.

1.4.Advertising and Marketing

1.4.1. A mediator shall be truthful and accurate when describing the mediator's qualifications, experience, expertise and services provided.

1.4.2. IMI Certified Mediators may quote from and link to their Profile on the IMI web portal and replicate that Profile, or extracts from it, for their own professional purposes so long as their profile is maintained on the IMI web portal.

1.4.3. A mediator shall not make any promises as to outcome in statements or publications.

1.4.4. A mediator shall not list names of mediation parties served without their prior permission.

2. Conduct During the Mediation

2.1. Voluntariness, Pressure, and Power Imbalances

2.1.1. A mediator shall not exert pressure designed, or likely to reduce party choice in decision-making, for any reason, such as obtaining high settlement rates.

2.1.2. A mediator shall take account of power imbalances between parties. When a party's voluntary decision-making appears to have been substantially undermined by pressures exerted by mediation participants or non-participants, and appears to be dominated by feelings of distress or helplessness, the mediator shall explore that party's emotional state and ability to make a voluntary decision in the circumstances.

If, after this exploration and consideration of the best and worst alternatives to a consensual outcome, the party wishes to proceed with the decision, their decision shall be considered voluntary.

2.2. Informed Decision-making, Provision of Subject-matter Information, and Advice

2.2.1. A mediator shall assist the parties, by the means available to them and to the extent consistent with the Standards, to make informed decisions as defined in the Principle of Self-determination.

2.2.2. A mediator shall not give parties legal, psychological, financial, or other advice.

A mediator may recommend that the parties seek external professional advice, an opinion, or services, when appropriate.

2.2.3. A mediator may, with a party's consent, provide a party with information or an opinion that the mediator is competent to provide by training or experience.

Such information or opinion shall only be provided in the mediator's capacity as mediator. It could include discussion and evaluation of legal, psychological, financial, and other relevant aspects of the case, including the possible outcomes if the dispute is litigated in court, provided that it is consistent with the Principles of Self-determination (voluntariness), Impartiality, and Professional Integrity (separation of professional roles).

2.3. Impartiality and Intervention

2.3.1. A mediator shall not directly or indirectly favor or show bias against or towards a party on one or more grounds, including (1) race, ethnicity, sex, age, religion, nationality, sexual orientation, personal characteristics, background, values and beliefs, or (2) the mediator's personal, professional or financial interests in the content of the dispute, or (3) pre-existing relationships with any mediation participant.

2.3.2. A mediator shall not accept or give a gift, favor, loan, or other valuable item that may raise a concern of partiality.

2.3.3. A mediator may intervene to support a party's right to exercise self-determination in accordance with the Principle of Impartiality.

2.4. Conflict of Interests Revealed During Mediation

2.4.1. If a mediator learns of any fact after accepting a mediation that raises a question of a potential or actual conflict of interest, the mediator shall disclose it to the parties as soon as practicable.

2.4.2. After disclosure, if all parties agree in writing to waive the mediator's conflict of

interest, the mediator may proceed with the mediation, unless the mediator's conflict constitutes a Serious Conflict of Interest as defined in the Principle of Conflict of Interests.

- 2.4.3. A mediator shall not solicit any future professional services, including future mediations, beyond the sessions necessary for the mediation.

2.5. Process Fairness

A mediator shall conduct the process with attention to procedural fairness for all parties. A mediator shall take particular care to ensure that all parties have adequate opportunities to be heard, to be involved in the process and to have the opportunity to seek and obtain legal or other counsel before finalizing any resolution.

2.6. Maintaining Confidentiality

A mediator shall maintain the confidentiality of information that comes to the mediator's knowledge in connection with the mediation and refrain from disclosure of the information without a justified cause as provided in the Principle of Confidentiality.

2.7. Respecting Human Dignity

- 2.7.1. A mediator shall treat the parties, their representatives, co-mediators, and other participants with dignity.
- 2.7.2. A mediator shall promote mutual respect among the participants.
- 2.7.3. A mediator shall treat with dignity colleagues, other professionals, courts and other referring agencies, the media, and the general public.

2.8. Acting with Honesty

- 2.8.1. A mediator shall act honestly in dealings with parties, their representatives, and other participants.
- 2.8.2. A mediator shall encourage the participants to be honest with each other.
- 2.8.3. A mediator shall be honest in contacts with colleagues, referring bodies such as courts, the media, and the general public.

3. Postponing, Withdrawing, or Terminating the Mediation

3.1. Party Incapacity

A mediator shall terminate the mediation if a party lacks capacity and the measures taken to address this situation have been unsuccessful.

3.2. Lack of Information

A mediator shall terminate the mediation due to lack of information if all the following conditions are met:

- 3.2.1. Relevant information is not known to a party and that party is unaware of its absence;
and
- 3.2.2. The information is such that if a reasonable party had known about it, that party would not have agreed to continue with the mediation or would not have agreed to the proposed mediated outcome; and
- 3.2.3. The mediator has exhausted all possible steps consistent with the Standards to make that party aware of the information (including asking questions or encouraging the party to consult external experts).

3.3. Partiality or Serious Conflicts of Interest

A mediator shall withdraw if –

- 3.3.1. The mediator cannot conduct the mediation impartially;
- 3.3.2. If a reasonable person would have a concern regarding the mediator's partiality that would jeopardize the standing of and public trust in the profession and process; or
- 3.3.3. The mediator has a Serious Conflict of Interest, as defined in the Principle of Conflicts of Interest.

3.4. Professional Integrity Concerns as to Process and Outcome

Consistent with these Standards, a mediator shall take appropriate steps, that may include, for example, discussions with the parties in joint or separate sessions, asking the parties to consult external experts, postponing the mediation, or terminating the mediation as a last resort, if the mediator believes that -

- 3.4.1. The case is inappropriate for mediation.
- 3.4.2. There is no reasonable likelihood that the parties will reach a mediated agreement.
- 3.4.3. A party acts in a way that makes the conduct of mediation impossible.
- 3.4.4. A participant is abusing the process through -
 - 3.4.4.1. The use of mediation to further illegal conduct.
 - 3.4.4.2. Conduct that exhibits bad faith, is inconsistent with the purposes of the mediation, or is making the conduct of mediation impossible.
- 3.4.5. The parties are about to reach a mediated agreement that appears to severely jeopardize the standing of and public trust in mediation, for instance, an agreement that appears illegal, unconscionable, or grossly unfair.

3.5. Non-payment of Fees

A mediator may terminate the mediation if the parties do not pay due fees.

3.6. Return of Fees

A mediator who withdraws from a mediation shall return to the parties any fees already paid relating to the period following withdrawal.

4. After the Mediation

4.1. Conflicts of Interest Subsequent to the Mediation

- 4.1.1. A mediator shall not establish a personal or professional (other than as a mediator) relationship with parties, other individuals, or organizations, following a mediation in which the mediator was involved, that would raise a reasonable concern that the mediator had a conflict of interest that could undermine the standing of and public trust in the profession and process.
- 4.1.2. In making the decision to establish a personal or professional relationship with a mediation participant, a mediator shall consider the time elapsed since the mediation, the nature of the relationship established, and the type of services offered.
- 4.1.3. A mediator who is an attorney, therapist, or other professional shall not advise, counsel, represent, or treat any of the parties in the same or a substantially related

matter; and shall not do so in an unrelated matter within 12 months (or a longer period if a local law so determines) following the end of a mediation.

- 4.1.4. A mediator is strongly encouraged not to serve as an arbitrator in the same matter and instead refer the parties to a different neutral. A mediator may only agree to arbitrate the same matter if the following conditions are met: (1) the parties agree in writing that the mediator serves as arbitrator after an explanation of the process and full disclosure of the risks associated with the change of process; (2) the mediator can remain impartial; and (3) the mediator did not learn confidential information during separate meetings that might influence the mediator's judgment.

4.2. Maintaining Confidentiality After the Mediation

- 4.2.1. A mediator shall maintain the confidentiality of information that came to the mediator's knowledge in connection with the mediation and refrain from disclosure of the information without a justified cause as provided in the Principle of Confidentiality.
- 4.2.2. Subject to section 4.2.3, at no time following the end of a mediation shall a mediator adduce evidence or testify in any judicial, administrative, arbitral, or other adjudicative process regarding a mediation's confidential information, including on behalf of one of the parties in making or defending a claim against another party to the same mediation.
- 4.2.3. If summoned to testify or to adduce evidence, a mediator shall only testify or adduce evidence after all the following conditions are met:
- (1) The mediator is required to do so by statute, or the parties who are protected by confidentiality and privilege gave consent;
 - (2) the mediator objected to the disclosure by informing the parties and the court that disclosure could present the mediator as aligned and partial to one party, and that the appearance of partiality could jeopardize public trust in the profession and process of mediation; and
 - (3) The mediator was ordered to do so by court.

4.3. Advancing the Profession

Mediators are encouraged to advance the mediation profession in the following ways:

- 4.3.1. Demonstrate respect for differing points of view, seek to learn from other mediators to improve the profession and better serve people in conflict.
- 4.3.2. Strive to make mediation culturally, physically, and otherwise accessible to the public, including providing services at a reduced rate or on a pro bono basis when appropriate.
- 4.3.3. Participate in research in the field when given the opportunity, including obtaining participant feedback.
- 4.3.4. Participate in outreach and education efforts to assist the public in developing improved understanding of, and appreciation for, mediation.
- 4.3.5. Assist new mediators through training, mentoring, and networking, as appropriate.