

Slovenski kodeks mediatorjev

Na občnem zboru 17.3.2007 smo sprejeli spodnji kodeks mediatorjev, ki velja od tega datuma dalje.

ETIČNA NAČELA DRUŠTVA MEDIATORJEV SLOVENIJE

1. člen-NAČELO USPOSOBLJENOSTI

Mediator mora biti strokovno usposobljen za izvajanje mediacije. V okviru postopka pridobitve dovoljena za njeno izvajanje mora opraviti ustrezno izobraževanje ter svoje znanje ves čas izpopolnjevati tako v okviru organiziranih izobraževanj kot tudi v praksi ob sodelovanju drugih izkušenih mentorjev.

Mediator odkloni mediacijo v zadevah, za katere ni primerno usposobljen. Na željo strank razkrije svoje ozadje in izkušnje v zvezi z delom in mediacijo.

2. člen-NAČELO NEPRISTRANSKOSTI

Mediator mora ves čas mediacije ravnati popolnoma nevtralnoma, neodvisno in nepristransko v odnosu do udeležencev in do izida mediacije.

Mediator ne sme pričeti z mediacijo ali z njo nadaljevati, če je z njo že pričel, dokler ne razkrije vseh okoliščin, ki bi lahko vplivale na njegovo neodvisnost in neopredeljenost, oziroma bi lahko ustvarile pri udeležencih mediacije vtis, da ni popolnoma nevtralen. Ta dolžnost velja ves čas postopka.

Te okoliščine so sledeče:

- vse osebna ali poslovna razmerja z enim od udeležencev
- vsi finančni ali drugi interesi, posredni ali neposredni, povezani z izidom mediacije
- mediator ali njegov sodelavec je za katerega od udeležencev nastopal v drugi vlogi

V teh primerih lahko mediator ob izrecnem soglasju udeležencev izvaja mediacijo le, če je prepričan, da bo postopek vodil neodvisno, nepristransko ter nevtralnoma.

3. člen-NAČELO ZAUPNOSTI

Mediator je dolžan ohraniti kot zaupno vse, kar izve med mediacijo ali v zvezi z njo, tudi dejstvo, da se mediacija bo ali se je že izvajala.



Dejstev, ki mu jih zaupajo udeleženci mediacije, mediator ne sme posredovati javnosti, sodniku, ki zadevo redno obravnava v sodnem postopku, ali jih uporabiti v korist ali breme tistih, ki bi jim ta dejstva lahko kakorkoli koristila oziroma škodila. Dejstev, ki mu jih je posamezni udeleženec mediacije posredoval kot zaupne na ločenem srečanju, ne sme posredovati drugim udeležencem, razen če ima dovoljenje udeleženca, ki mu je posredoval to dejstvo.

Ne glede na določbo prejšnjega odstavka, pa sme mediator razkriti zaupna dejstva, če:

- to dovolijo udeleženci mediacije
- gre za kaznivo dejanje
- bo s tem preprečil nevarnost za življenje in zdravje drugih.

4. člen-NAČELO PREPOVEDI PRIČANJA

Mediator ne sme pred sodiščem ali drugim organom pričati o dejstvih, ki jih je izvedel v postopku mediacije, ali o dejstvih, ki so z mediacijo tesno povezana, razen v primerih, ko zakon tako določa.

5. člen-NAČELO NEZDRUŽLJIVOSTI

Mediator-sodnik v zadevi, v kateri je nastopal v vlogi mediatorja, ne sme te iste zadeve obravnavati kot sodnik v sodnem postopku.

6. člen-NAČELO VODENJA IN SOOBLIKOVANJA POSTOPKA

Mediator mora poskrbeti, da so udeleženci mediacije seznanjeni in da soglašajo z:

- namenom, postopkom in pogoji, pod katerimi poteka mediacija
- vlogo mediatorja in udeležencev
- dolžnostjo mediatorja in udeležencev, da ne razkrijejo zaupnih dejstev.

Mediator mora skrbeti, da se med mediacijo ohrani primerna raven medosebnih odnosov, da se prepreči morebitna zloraba pravic v mediaciji ter da se udeleženci ves čas zavedajo, da



je sodelovanje v mediaciji in sklenitev morebitnega sporazuma popolnoma prostovoljno in odvisno od njih samih.

Udeleženci in mediator se lahko dogovorijo, na kakšen način bo potekala mediacija. Pri vodenju mediacije mora mediator upoštevati vse okoliščine primera, možna nesorazmerja v moči strank, veljavno pravo, želje, ki jih izrazijo udeleženci in potrebo po hitri rešitvi zadeve. Če mediator oceni kot potrebno, opravi ločena srečanja z udeleženci postopka.

7. člen-ZAKLJUČEK MEDIACIJE

Mediator mora poskrbeti, da udeleženci izrazijo izrecno in pristno soglasje s sklenjenim sporazumom in da so seznanjeni z vsemi posledicami in pogoji, pod katerimi je sklenjen.

Mediator seznanja udeležence s postopkom v zvezi s formalizacijo dogovora (sklenitvijo sodne poravnave) in možnostmi izvršitve dogovora.

Udeleženci lahko vsak čas brez obrazložitve umaknejo svoje soglasje za mediacijo.

Mediator prekine mediacijo in pojasni udeležencem razloge za svojo odločitev, ko:

- je sklenjeni dogovor po mnenju mediatorja neizvršljiv ali ni v skladu z veljavno zakonodajo, pri tem je mediator upošteval vse okoliščine primera in je za takšno presojo usposobljen,
- mediator oceni, da nadaljevanje mediacije po vsej verjetnosti ne bo doseglo sporazuma.

8. člen-PROMOCIJA, NAGRADE, ODGOVORNOST MEDIATORJEV

Mediatorji lahko svojo dejavnost reklamirajo na profesionalen, časten in dostojanstven način.

Če ni drugače določeno, mora mediator še pred začetkom mediacije udeležence seznaniti s ceno mediacije in ne sme pričeti z mediacijo, dokler vse strani ne izrazijo svojega soglasja z višino njegove nagrade.

Mediatorji lahko pri ustreznih organizacijah zavarujejo svojo odgovornost v zvezi z



morebitnimi profesionalnimi napakami, ki bi izvirale iz mediacije.

Društvo mediatorjev Slovenije je na svojem ustanovnem zboru podpisalo in pri Evropski komisiji v Bruslju deponiralo izjavo, s katero sprejema in se zavezuje spoštovati Evropski kodeks vedenja in ravnanja za mediatorje, ki ga je pripravila Evropska komisija.

EUROPEAN CODE OF CONDUCT FOR MEDIATORS

This code of conduct sets out a number of principles to which individual mediators can voluntarily decide to commit, under their own responsibility. It is intended to be applicable to all kinds of mediation in civil and commercial matters.

Organisations providing mediation services can also make such a commitment, by asking mediators acting under the auspices of their organisation to respect the code.

Organisations have the opportunity to make available information on the measures they are taking to support the respect of the code by individual mediators through, for example, training, evaluation and monitoring.

For the purposes of the code mediation is defined as any process where two or more parties agree to the appointment of a third-party – hereinafter “the mediator” - to help the parties to solve a dispute by reaching an agreement without adjudication and regardless of how that process may be called or commonly referred to in each Member State.

Adherence to the code is without prejudice to national legislation or rules regulating individual professions.

Organisations providing mediation services may wish to develop more detailed codes adapted to their specific context or the types of mediation services they offer, as well as with regard to specific areas such as family mediation or consumer mediation.

1. COMPETENCE AND APPOINTMENT OF MEDIATORS

1.1 Competence

Mediators shall be competent and knowledgeable in the process of mediation.

Relevant factors shall include proper training and continuous updating of their education and practice in mediation skills, having regard to any relevant standards or accreditation schemes.

1.2 Appointment

The mediator will confer with the parties regarding suitable dates on which the mediation may take place. The mediator shall satisfy him/herself as to his/her background and competence to conduct the mediation before accepting the appointment and, upon request, disclose information concerning his/her background and experience to the parties.

1.3 Advertising/promotion of the mediator's services

Mediators may promote their practice, in a professional, truthful and dignified way.

2. INDEPENDENCE AND IMPARTIALITY

2.1 Independence and neutrality

The mediator must not act, or, having started to do so, continue to act, before having disclosed any circumstances that may, or may be seen to, affect his or her independence or conflict of interests. The duty to disclose is a continuing obligation throughout the process.

Such circumstances shall include

- any personal or business relationship with one of the parties,
- any financial or other interest, direct or indirect, in the outcome of the mediation, or
- the mediator, or a member of his or her firm, having acted in any capacity other than mediator for one of the parties.



In such cases the mediator may only accept or continue the mediation provided that he/she is certain of being able to carry out the mediation with full independence and neutrality in order to guarantee full impartiality and that the parties explicitly consent.

2.2 Impartiality

The mediator shall at all times act, and endeavour to be seen to act, with impartiality towards the parties and be committed to serve all parties equally with respect to the process of mediation.

3. THE MEDIATION AGREEMENT, PROCESS, SETTLEMENT AND FEES

3.1 Procedure

The mediator shall satisfy himself/herself that the parties to the mediation understand the characteristics of the mediation process and the role of the mediator and the parties in it.

The mediator shall in particular ensure that prior to commencement of the mediation the parties have understood and expressly agreed the terms and conditions of the mediation agreement including in particular any applicable provisions relating to obligations of confidentiality on the mediator and on the parties.

The mediation agreement shall, upon request of the parties, be drawn up in writing.

The mediator shall conduct the proceedings in an appropriate manner, taking into account the circumstances of the case, including possible power imbalances and the rule of law, any wishes the parties may express and the need for a prompt settlement of the dispute. The parties shall be free to agree with the mediator, by reference to a set of rules or otherwise, on the manner in which the mediation is to be conducted.

The mediator, if he/she deems it useful, may hear the parties separately.

3.2 Fairness of the process



The mediator shall ensure that all parties have adequate opportunities to be involved in the process.

The mediator if appropriate shall inform the parties, and may terminate the mediation, if:

- a settlement is being reached that for the mediator appears unenforceable or illegal, having regard to the circumstances of the case and the competence of the mediator for making such an assessment, or
- the mediator considers that continuing the mediation is unlikely to result in a settlement.

3.3 The end of the process

The mediator shall take all appropriate measures to ensure that any understanding is reached by all parties through knowing and informed consent, and that all parties understand the terms of the agreement.

The parties may withdraw from the mediation at any time without giving any justification.

The mediator may, upon request of the parties and within the limits of his or her competence, inform the parties as to how they may formalise the agreement and as to the possibilities for making the agreement enforceable.

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3.4 Fees

Where not already provided, the mediator must always supply the parties with complete information on the mode of remuneration which he intends to apply. He/she shall not accept a mediation before the principles of his/her remuneration have been accepted by all parties concerned.

4. CONFIDENTIALITY

The mediator shall keep confidential all information, arising out of or in connection



with the mediation, including the fact that the mediation is to take place or has taken place, unless compelled by law or public policy grounds. Any information disclosed in confidence to mediators by one of the parties shall not be disclosed to the other parties without permission or unless compelled by law.