

RESOLVE CODE OF CONDUCT

Edition 2015

Applicable to Mediators, this Code ensures a high standard of ethical practices and behaviour during the Mediation process at Resolve.

CODE 1: APPLICATION OF THE RESOLVE CODE OF CONDUCT

- A. The Resolve Code of Conduct, 2015 (“Code of Conduct”) shall apply to all persons appointed as Mediators (as defined in the Resolve Rules of Mediation, 2015 (“Rules of Mediation”) by the The Effective Dispute Resolution Forum (“Resolve”).
- B. The purpose of this Code is to provide a framework for ethics and conduct within which the Mediators appointed by Resolve shall conduct the mediation process as set out in the Rules of Mediation.
- C. This Code to the extent required, shall also be applicable, to the extent applicable, to the Resolve Case Managers (as defined in Rules of Mediation) and the management of Resolve.

CODE 2: SELF DETERMINATION, INDEPENDENCE AND CONSCIOUS PARTICIPATION

- A. The mediation must support the principles of conscious participation, self determination and independence. For this purpose the Mediator must:
 - (i) inform the Parties (as defined in the Rules for Mediation),, that any resolution of the dispute in mediation is based on the voluntary agreement of the Parties, at or before beginning the first mediation session;
 - (ii) respect the right of each Party to decide the extent of his/her participation in the mediation including the right to withdraw from the mediation at any time upon notice to the Mediator that the party wants to do so; and
 - (iii) refrain from forcing any Party to make a decision or to continue to participate in the mediation. However, this does not prohibit the Mediator from encouraging a Party to continue with the mediation or persuade a Party to understand the value of continued participation.
- B. The mediator must carefully explore the issues and concerns of a hesitant party and must strive to ensure that they are addressed, where he/she senses that a Party is participating involuntarily.

RESOLVE

THE EFFECTIVE DISPUTE RESOLUTION FORUM

C. The Mediator should not continue with the process or accept any decision of any party that suffers from a mental or physical impairment until he/she is convinced that informed consent of such a Party or their authorised representative has been obtained for participation and for any decision made during the process for the purposes of arriving at a settlement.

CODE 3: NEUTRALITY

- A. A Mediator shall mediate a matter in which he/she can remain neutral. Neutrality for the purposes of this Code of Conduct means freedom from favouritism, bias or prejudice.
- B. Mediators identified by Resolve for the dispute will inform Resolve of matters that may potentially affect their neutrality or any perception of their neutrality.
- C. A Mediator shall conduct a mediation in an impartial manner and be aware of any potential for bias based on the background, personal characteristics, values, beliefs or behaviour of the Parties.
- D. The Mediator should promptly withdraw from the mediation, where there is a likelihood that the Mediator is unable to maintain impartiality.
- E. The Mediator should make reasonable efforts throughout the mediation process to keep themselves informed about issues that could reasonably raise questions about their ability to conduct the mediation impartially.
- F. Individuals identified by Resolve as possible Mediators for the dispute shall prior to their appointment, inform Resolve of matters that may potentially affect their impartiality or any perception of their impartiality.

CODE 4: CONFLICT OF INTEREST AND DISCLOSURE

- A. A Mediator shall avoid a conflict of interest or the appearance of a conflict of interest during and after a mediation. A conflict of interest can arise from: (i) any relationship between the Mediator, a Party, whether past or present, personal, financial or professional that could reasonably raise a question of impartiality on part of the Mediator; or(ii) where the Mediator has any personal, financial or professional interest in the outcome of the mediation.
- B. Mediators should make reasonable efforts to keep themselves informed about matters that could reasonably raise questions about their ability to conduct the mediation impartially.
- C. Mediators should inform Resolve of matters that could affect or potentially affect their neutrality or any perception of their neutrality before their appointment.
- D. Mediators may continue with their appointment if the parties choose to continue with their appointment, where a conflict of interest is identified after the appointment of the mediator or at any time during the mediation. Parties can also request appointment of a different Mediator. Where the Parties choose to continue with the same Mediator, the Parties must sign a written waiver prepared by Resolve.
- E. **Mediator will be appointed from the Resolve Mediation Panel, where** the Parties request appointment of a different Mediator or where the Mediator declines the mediation.
- F. Mediator's obligation to disclose conflicts of interest continues until the termination of the mediation process.

CODE 5: CONFIDENTIALITY

- A. The mediation process is confidential in nature. All communications made for the purpose of/in mediation may not be disclosed by the Mediator to any third party unless the Mediator is compelled to do so by valid court order.

RESOLVE

THE EFFECTIVE DISPUTE RESOLUTION FORUM

- B. All information, records, reports or other documents produced and all communications made for the purpose of, in the course of or pursuant to a mediation are confidential, unless otherwise admissible or discoverable outside of mediation or compelled by law.

CODE 6: STANDARDS FOR CONDUCTING MEDIATION

- A. The Mediator shall conduct the mediation in accordance with the Resolve Rules for Mediation, Edition 2015.
- B. A Mediator at Resolve is expected to undergo mediation training either from Resolve or an institution recognised by Resolve in order to qualify as a Resolve Mediator.
- C. Resolve Mediators are also expected to periodically engage in various forms of continued education to refine and improve their mediation knowledge and skills.
- D. The Mediator must withdraw from the mediation, if it is determined at any time during the mediation process that he/she does not have the level of skill, knowledge or ability necessary to effectively conduct that mediation.
- E. A Mediator should ensure that all Parties and Participants understand the mediation process along with his/her role as an impartial neutral, at the outset of the mediation process.
- F. The Mediator should be well aware of the procedural and substantive issues of the dispute. The Mediator must review and study all the documents and briefs submitted before the mediation and make sure he/she is well prepared for the mediation. The Mediator must as far as possible also have pre-mediation calls with the Parties, the legal representatives or both, either separately or together for the purpose of gathering information or understanding of any factual or legal aspects of the dispute.
- G. In the initial separate mediation session, the Mediator shall remind the Parties and Participants (as applicable) of the confidentiality of the process and clarify the confidentiality of the information and documentation which will be and has been shared confidentially during the session. Any such information identified as confidential by a Party, or the Participant will not be shared with the other Party(ies) or the Participant(s) to the mediation.
- H. The Mediator, based on the facts and circumstances of each case, may conduct the mediation in such manner as he/ she sees fit. The Mediator may choose to conduct the mediation in separate and joint sessions, as necessary.
- I. A Mediator should not knowingly misrepresent any material fact or circumstance in the course of the mediation and shall encourage honesty and candour between and among all the Parties and the Participants.
- J. The presence or absence of certain Participants at a mediation depends on the agreement of the Parties and the Mediator. The Parties and Mediator may agree that Participants may be excluded from particular session or from all sessions.
- K. The Mediator should explore the circumstances and potential accommodations, modifications or adjustments that would make possible the Party's capacity to comprehend, participate and exercise self determination, where a Party appears to have difficulty comprehending the process, issues or settlement options, or difficulty participating in a mediation,

CODE 7: LEGAL ADVICE

- A. Mediation is not the practice of law. The Mediator should ensure that parties to mediation are aware of his/her position of neutrality and impartiality. The Mediator should not offer any legal advice to any of the parties but may share opinions based upon experience and knowledge regarding alternatives to a resolution through mediation.
- B. The Mediator should carefully explain to such Party that the Mediator is not his/her lawyer or advocate, where a Party is unrepresented by a lawyer in mediation,
- C. Mediator will not be responsible for any legal outcome of the mediation.
- D. Mediator should encourage any unrepresented Party to have the settlement agreement reviewed by legal counsel before signing it.

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CODE 8: WITHDRAWAL

- A. Mediator shall immediately inform Resolve of his/her withdrawal, in writing, on the occurrence of the following:
- (a) if the Parties or the Participants are using the mediation process to further actions that are contrary: (1) to law or (2) to public interest;
 - (b) if there is a request for his/her withdrawal made by any of the Party(ies);
 - (c) when the Mediator is unable to uphold the Code of Conduct;
 - (d) if the Mediator believes that the Parties are not able to voluntarily arrive at a settlement.
- B. Any such withdrawal shall be in writing.

CODE 9: PROFESSIONALISM AND PRIVILEGE

- A. Mediator shall not personally profit from or otherwise exploit information acquired through the mediation process for personal gain.
- B. Mediator shall not establish any other professional relationship with any of the Party(ies) and Participant(s) during the mediation.
- C. Mediator shall not establish any other professional relationship with any of the Parties or Participants to the mediation in a related matter which would raise legitimate questions about the impartiality or integrity of the mediation process, without the consent of all Parties, for a period of one year after the conclusion of the mediation.
- D. Mediator shall not make any unilateral arrangements with any of the Parties or Participants with respect to remuneration. Payment to a Mediator shall be in accordance with the Fee Schedule as per the Resolve Rules for Mediation.
- E. Mediator shall not accept any gifts from a Party, Party representative or a counsel to a mediation during or after a mediation. However, a Mediator may accept or give de minimis gifts or incidental items or services that are provided to respect cultural norms so long as such practices do not raise questions as to a Mediator's actual or perceived impartiality.
- F. Mediator should not guarantee any results from mediation.