

Mediation Institute (Mi)

Professional Mediator Certification Standards
for East Africa



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Introduction

Purpose

The Mediation Institute Professional Mediator Certification Standards are aligned with the Australian National Mediator Accreditation System (NMAS). Professional Mediator Standards promote quality, consistency and accountability of professional mediators within the diversity of mediation practice.

The Mi Professional Mediator Certification Standards also inform participants in mediation (participants) about what they can expect of a Mi Certified Professional Mediator.

Application

These Standards apply when a person is seeking certification as a professional mediator and throughout their professional practice as a mediator.

Mediation is a process that promotes the self-determination of participants and in which participants, with the support of a mediator:

1. communicate with each other, exchange information and seek understanding
2. identify, clarify and explore interests, issues and underlying needs
3. consider their alternatives
4. generate and evaluate options
5. negotiate with each other; and
6. reach and make their own decisions.

When a person practises as a mediator under a government, community or other mediation service additional requirements relevant to that context may apply. It is the responsibility of the professional mediator to understand and comply with all legal and ethical obligations that apply to their work.

Role of mediators in a mediation process

A mediator uses the knowledge, skills and ethical principles to assist participants in mediation to make their own decisions in relation to disputes, conflicts or differences among them.

Part One – Approval Standards

1 Application

1.1. The *Approval Standards* apply to any person seeking certification (an applicant) and to a mediator who is already accredited under these standards.

- (a) The *Approval Standards* specify the training, assessment, personal qualities and experience required of a Mi Professional Mediator and for their renewal of certification.
- (b) The *Practice Standards* (Part Two of these standards) specify the professional standards which Mi Professional Mediators must comply with.

2 Approval requirements for certification

2.1 An applicant must be of good character and possess appropriate personal qualities and experience to conduct a mediation process independently, competently and professionally.

2.2 An applicant must:

- (a) disclose if they have been disqualified from any type of professional practice;
- (b) disclose any criminal conviction;
- (c) disclose any impairment that could influence their capacity to discharge their obligations in a competent, honest and professional manner;
- (d) disclose if they have ever been refused mediation certification, accreditation or if they have had their mediation certification or accreditation suspended or cancelled or had their renewal refused.
- (e) comply with these *Approval Standards* and *Practice Standards*, with any relevant legislation, professional standards and any other requirements that may be relevant to them;
- (f) become and remain a member of a professional mediation association or be a member or employee of an organisation with a relevant ethical code or standard and a complaints and disciplinary procedure that can address complaints against mediators;
- (g) be covered by relevant professional indemnity insurance or have statutory immunity.

2.3 Certification requirements for a Mi Professional Mediator Certification are that the applicant must have met the experience, training and assessment requirements set out in section 2.5 and 2.6 of these standards within the previous six months prior to their application for certification.

2.4 Unless eligible for an experience qualified pathway to certification the applicant must have participated in an acceptable quality training course completed not more than six months prior to assessment of competence. The training team requirements are:

- (a) A training team of at least two trainers
- (b) The lead trainer with at least three years' experience as a professional mediator and be certified as a professional mediator
- (c) Any secondary trainers or coaches have at least two years' experience as a professional mediator or 50 hours of mediation experience and be certified as a professional mediator
- (d) Sufficient coaches for each trainee to be observed performing the role of mediator by different coaches in at least two simulated mediations of 60 to 90 minutes duration;
- (e) Where possible role plays are to be video recorded and the recordings made available to learners;

2.5 The training requires:

- (a) a training course containing content that includes the knowledge, skills and ethical principles outlined in the *Practice Standards*;
- (b) The course should be of a minimum of 50 hours in duration which may be conducted as a workshop, multiple workshops or through online learning using video mediation for role plays;
- (c) If the training is provided in modules or via eLearning training is to be completed within a period of 12 months;
- (d) Practical skills development training requires that the learner participates in a minimum of six mediation role plays, with a minimum of three of those role plays participating in the role of a mediator;
- (e) The first role play as a mediator is to be an interactively coached learning activity. Written feedback is to be provided to learners after their second and third role play.
- (f) The final practice role play is conducted using the assessment form which is used for the final assessment to provide the trainee with detailed written feedback of their strengths and areas for further development.

2.6 An applicant may apply to be assessed for certification if they meet one of the following requirements:

- (a) They demonstrate that they have completed a mediator training course within the previous 12 months which is at least comparable to the training course described in section 2.4 or
- (b) They provide written evidence that they have conducted at least 50 hours of mediation within the two years prior to applying to be assessed for competence;

2.7 The assessment requires:

- (a) That the applicant competently performs the role of a mediator in a simulated mediation of between 60 to 90 minutes duration;
- (b) That an assessor observing the simulation, in real time or a video recording of the role play. Coaching must not be provided to the applicant during the simulated mediation;
- (c) an assessor who is a certified mediator with at least 3 years mediation experience and with no conflict of interest with respect to the applicant;
- (d) the assessment is documented using an authorised assessment form which assesses the knowledge, skills and ethical principles articulated in the *Practice Standards*;
- (e) the applicant is provided a copy of the assessment form giving them written feedback on their performance and indicating the assessment outcome.

2.8 An applicant who meets the requirements of this Standard will be certified for two years.

3 Certification Renewal Requirements

3.1 A mediator seeking renewal of certification must continue to meet the approval requirements set out in Section 2.2 and have met the practice hours and continuing professional development (CPD) requirements as described below.

- (a) The mediator must have conducted at least 25 hours of mediation, co-mediation or conciliation since their certification or previous renewal; and
- (b) The mediator must have participated in a minimum of 25 hours of CPD requirements are set out in section 3.2.

3.2 The professional development must have occurred in the previous 24 months as CPD may not be carried over from one certification period to the next. The hours may be made up as follows:

(a) Participating in Education (up to 20 hours)

This means participating in formal structured activities such as training seminars and workshops (up to 20 hours) or attending conferences (up to 15 hours)

(b) Reflecting on Practice (up to 15 hours)

This means receiving professional supervision or coaching or participating in structured peer-based reflection on mediation cases

(c) Providing Professional Development (up to 15 hours)

This means delivering presentations on mediation or related topics, including two hours of preparation time for each hour delivered, or providing professional supervision, assessment, coaching or mentoring of mediator trainees and mediators

(d) Credit for related professional CPD (up to 10 hours)

This means hours of CPD completed to maintain professional licensing or

accreditation related to their mediation practice, such as in law or in the behavioural or social sciences or in the professional field in which they mediate, such as building or engineering.

(e) Learning from Practice (up to 8 hours)

This means participating in up to four mediations as a client representative or in a formal learning capacity (up to 2 hours per mediation) or role-playing for trainee mediators and candidates for mediator assessment (up to 2 hours per simulation).

(f) Self-directed Learning (up to 5 hours)

This means private study such as reading, listening to or viewing pre-recorded content such as podcasts or recorded webinars, or writing articles or books relevant to mediation.

- 3.3 A mediator who has not met the requirement in Section 3.1 due to lack of work opportunities, health or career circumstances or residence in non-urban community, must be undertake such supplementary training as coaching and preparation that the certifying body considers necessary prior to a re-assessment in accordance to section 2.7 to determine competence.
- 3.4 A mediator who requires additional professional development and/or re-assessment must meet these requirements within two months of the due date for renewal of their certification or their certification automatically lapses.

4 Leave of absence

- 4.1 A mediator may seek a leave of absence based on health, career or other special circumstances by providing evidence to Mi of the circumstances upon which leave is being sought along with the period sought. The leave of absence may be granted or refused, or granted subject to conditions, having regard to the circumstances.
- 4.2 Where leave of absence is granted for a period of 12 months or less, the mediators name will be removed from the Register for the period of leave and their renewal due date extend extended by an amount equivalent to the period of leave.
- 4.3 Where leave of absence is granted for a period greater than 12 months, the mediators name will be removed from the Register and that mediator must comply with the requirements of Section 6 below to have their certification re-instated.
- 4.4 An applicant seeking re-instatement after a period of leave of absence or lapsed or suspended certification, must:
- (a) meet the approval requirements set out in Sections 2.1 above;
 - (b) provide evidence that they have met the certification renewal requirements described in Section 3 above in the two years immediately prior to seeking re-instatement;

- (c) where the practice requirement in Section 3.1 has not been met, undertake supplementary practical training, coaching and assessment, as required to address the shortfall;
- (d) provide evidence that any conditions imposed at the time of suspension or grant of a period of leave of absence have been met prior to seeking re-instatement.

5 Suspension

- 5.1 Where a mediator is significantly non-compliant with the *Approval and Practice Standards*, subject to the requirements of procedural fairness, their certification may be suspended and, having regard to the circumstances, Mi may specify any conditions that must be met by that mediator prior to seeking re-instatement of certification.
- 5.2 If a mediator is suspended the details of a mediator whose certification has been suspended must be removed from the Register.

Part Two – Practice Standards

1 Application

1.1 The *Practice Standards* apply to all professional mediators certified by Mediation Institute.

1.2 The *Practice Standards*:

- (a) specify the minimum practice and competency requirements of a professional mediator;
- (b) inform the community about what they can expect of the mediation process and of a professional mediator.

1.3 Where a mediator practises under a legislative framework and there is a conflict between a provision of the Practice Standards and a provision of that framework, the legislative framework will override the Practice Standards to the extent of any inconsistency.

2 Overview of the Mediation Process

2.1 Mediation is a process that promotes the self-determination of participants and in which participants, with the support of a mediator:

- (a) communicate with each other, exchange information and seek understanding
- (b) identify, clarify and explore interests, issues and underlying needs
- (c) consider their alternatives
- (d) generate and evaluate options
- (e) negotiate with each other; and
- (f) reach and make their own decisions.

2.2 A professional mediator does not evaluate or advise on the merits of, or determine the outcome of, a dispute unless they are undertaking a blended mediation process.

2.3 Where a mediator uses a blended mediation process which involves the provision of advice, such as advisory or evaluative mediation or conciliation, the mediator must:

- (a) obtain written consent from participants to use the blended process;
- (b) ensure that within the professional area in which advice is to be given, they:
 - i. have current knowledge and experience;
 - ii. hold professional registration, membership, statutory employment or their equivalent, and
 - iii. are covered by current professional indemnity insurance or have statutory immunity and

- (c) ensure that the advice is provided in a manner that it does not undermine the participants right to self-determination.

3 The pre-mediation process

3.1 A pre-mediation process such as a preliminary meeting, must be undertaken prior to any joint mediation session. The preliminary meeting or intake may be conducted by a person other than the mediator;

3.2 A proposed participant in mediation must be given the following information:

- a) a description of mediation process proposed, and the steps involved including the use of joint sessions, separate sessions and shuttle negotiations;
- b) information on how to provide feedback or lodge a formal complaint in relation to the mediator;
- c) Information about these practice standards and where they can be accessed;

3.3 The preliminary conference or intake includes:

- (a) assessing whether mediation is suitable and whether variations are required. Examples of variations are the use of an interpreter or a co-mediation model in culturally and linguistically diverse communities or introducing safeguards where violence is an issue;
- (b) explaining to participants the nature and content of the Agreement to Mediate including confidentiality, costs and how they are to be paid;
- (c) identifying who is participating in the mediation and making sure that any participant has the authority to make decisions during the mediation process or how approval for decisions may be obtained;
- (d) assisting participants to prepare for the first mediation session. Preparation includes:
 - i. discussion of the issues, positions and interests related to those issues;
 - ii. discussing with the participant any legal or other advice they have regarding the issues to be mediated;
 - iii. discussing with the participant any information that may need to be sought and/or exchanged with the other party prior to the mediation. Any document or other information sought to be referred to in mediation should be provided to the other party prior to the joint mediation session;
- (e) referring participants, where appropriate, to other sources of information, advice or support that may assist them;
- (f) informing participants about their roles in the mediation process;

- (g) determining and negotiating with the other party the inclusion of any advisors, support persons, interpreters and any other attendees in the mediation other than the parties to the dispute. The inclusion of others must take into account whether their participation will affect the fairness of the process and the balance of power between the parties.
- (h) advising participants that they are not obligated to reach agreement in mediation and about how they or the mediator can suspend or terminate the mediation.
- (i) confirming each participant's agreement to participate in the mediation with the intention to resolve the issues.

4. The structure of the mediation process

- 4.1 The mediation sessions will ordinarily include a joint session of the participants, in person or via phone or video meeting, which the participants communicate directly with each other to identify, clarify and explore interests, issues and underlying needs.
- 4.2 The mediation process may also include separate sessions and shuttle negotiations.
- 4.3 A mediator may adjourn the mediation meeting and conduct the mediation over multiple meetings and in different locations.
- 4.4 The mediation meeting may conclude whether or not the participants have reached an agreement.

5. Suspending or terminating

- 5.1 A mediator may suspend or terminate the mediation if they form the view that mediation is no longer suitable or productive, for example where:
 - (a) a participant is unable or unwilling to participate or continue in the mediation
 - (b) a participant is misusing the mediation
 - (c) a participant is not engaging in the mediation in good faith
 - (d) the safety of one or more participants may be at risk
- 5.2 A mediator should, unless it is unsafe to do so, advise of their intention to suspend or terminate the mediation
- 5.3 If terminating the mediation, the mediator where appropriate, should encourage the participants to consider alternative procedures for achieving resolution.

6. Power and safety

- 6.1 A mediator must be alert to changing balances of power in mediation and manage the mediation accordingly.
- 6.2 A mediator must consider the safety and comfort of participants and where necessary take steps, which may include:
 - (a) agreeing guidelines to encourage appropriate conduct;
 - (b) activating appropriate security protocols;
 - (c) using separate sessions, communication technology or other protective arrangements;

- (d) allow the participation of a support person such as a participant's friend, representative or professional advisor attend mediation meetings;
- (e) providing participants with information about other services or resources; and
- (f) suspending or terminating the mediation with appropriate steps to protect the safety of participants.

7 Procedural fairness and impartiality

- 7.1 A mediator must conduct the mediation in a fair, equitable and impartial way, without favouritism or bias in act or omission.
- 7.2 A mediator must identify and disclose any potential grounds of bias or conflict of interest before the mediation, or that emerge at any time during the process. Sources of potential conflict of interest include but are not exclusively:
- a) A personal relationship with one of the parties
 - b) A professional relationship other than as a mediator or conciliator with one of the parties
 - c) Any potential benefit for the mediator resulting from a specific outcome from the mediation
- 7.3 A mediator must not mediate in cases involving a conflict of interest without the informed consent of the participants, and then only if, in the mediator's view, the conflict would not impair his or her impartial conduct of the process.
- 7.4 A mediator must support participants to reach agreements freely, voluntarily, without undue influence and on the basis of informed consent.
- 7.5 A mediator must provide participants appropriate opportunities to speak to and be heard by one another in the mediation, and to articulate their respective interests, issues and underlying needs.
- 7.6 A mediator must ensure, so far as practicable, that participants have had sufficient time and opportunity to access sources of advice or information necessary for their decision-making.
- 7.7 A mediator must encourage and support negotiations that focus on the participants' respective interests, issues and underlying needs and must encourage participants to assess any proposed agreements accordingly and with reference to their long-term viability.

8. Ethical conduct and professional relations

- 8.1 A mediator must mediate only where they have the competence to do so.
- 8.2 A mediator must not use information obtained in mediation for personal gain or advantage.
- 8.3 A mediator must adhere to the ethical code or standards prescribed by Mediation Institute / Suluhu Mediation and any other requirements imposed by legislation, professional association of which they are a member or by their employer.

- 8.4 A mediator should encourage participants to consider the interests of any vulnerable stakeholders.
- 8.5 A mediator should encourage participants to obtain other professional support when appropriate and must not receive any personal financial or similar benefit from recommending the services of individuals or firms.
- 8.6 A mediator may share private and confidential information and liaise with other relevant professionals with permission from the relevant participant.
- 8.7 A mediator should extend professional courtesy to other professionals engaged by the participants.
- 8.8 A mediator should, where possible, engage in professional debriefing, peer consultation and mentoring of less experienced mediators.

9 Confidentiality

- 9.1 A mediator must respect the agreed confidentiality arrangements relating to participants and to information provided during the mediation, except:
 - (a) where reasonably considered necessary to do otherwise to prevent an actual or potential threat to human life or safety; or
 - (b) with the consent of the participant to whom the confidentiality is owed; or
 - (c) when required to do otherwise by law; or
 - (d) where permitted to do otherwise by ethical guidelines or obligations; or
 - (e) where non-identifying information is required for legitimate research, supervisory or educational purposes.
- 9.2 Before holding separate sessions with different participants, a mediator must inform participants of the confidentiality which applies to these sessions.
- 9.3 With a participant's consent, a mediator may discuss the mediation, or any proposed agreement, with that participant's advisors or with third parties.
- 9.4 A mediator is not required to retain documents relating to a mediation, although they may do so should they wish, particularly where duty-of-care or duty-to-warn issues are identified.
- 9.5 A mediator must take care to preserve confidentiality in the storage and disposal of written and electronic notes and records of the mediation and must take reasonable steps to ensure that administrative staff preserve such confidentiality.

10 Knowledge and skills

- 10.1 A mediator, consistent with the *Approval Standards*, must have the knowledge and skills, and an understanding of the ethical principles, outlined below.
- 10.2 Knowledge requirements include:
 - (a) the nature of conflict, including the dynamics of power and violence.
 - (b) the circumstances in which mediation may or may not be appropriate.
 - (c) How to prepare for mediation including assessing suitability and conducting a pre-mediation intake session.

- (d) communication patterns in conflict and negotiation.
- (e) negotiation dynamics in mediation, including manipulative and intimidating tactics.
- (f) Sources of miscommunication and misunderstanding including cross-cultural issues.
- (g) the principles, stages and functions of the mediation process including the roles and functions of mediators, the roles and functions of support persons, lawyers and other professionals in mediation.
- (h) the law relevant to mediators and to the mediation process.

10.3 Skills requirements include:

- (a) How to diagnose a dispute
- (b) How to prepare for mediation.
- (c) How to screen participants and disputes to assess mediation suitability.
- (d) How to conduct and manage the mediation process.
- (e) How to use communication skills, including active listening, effective questioning, reflecting, reframing and summarising, as required for the conduct of mediation.
- (f) How to use negotiation techniques and the mediator's role in facilitating negotiation and problem-solving.
- (g) How to manage high emotion, power imbalances, impasses and violence.
- (h) How to use separate meetings to overcome deadlocks, support negotiation, assist parties to consider their alternatives to reaching agreement and the short and long-term potential consequences of proposals.
- (i) How to assist parties to reality-test proposed outcomes considering participants' stated issues, interests and underlying needs including the short and long-term consequences of proposals.
- (j) How to document the outcomes of mediation in a manner that is appropriate for the context of the mediation and nature and purpose of the agreement.

11 Ethical Principles

11.1 A mediator must demonstrate professional conduct and be of good character. Their certification is subject to suspension should they be convicted of a crime related to violence, fraud or similar.

11.2 A mediator must be competent and demonstrate integrity and accountability in all aspects of their mediation process

11.3 A mediator must uphold the principals of informed consent and party self-determination

11.4 A mediator must make every effort to ensure that the mediation process is safe, that the procedure is fair and equitable including withdrawing from or terminating the mediation process if necessary

11.5 A mediator must remain impartial and avoid conflicts of interest

11.6 A mediator must comply with their confidentiality, privacy and reporting obligations

11.7 A mediator must be honest in the marketing and advertising of mediation and promotion of the mediator's practice

11.8 A mediator must comply with any code of ethics and conduct published by their professional association

12 Charging for services

12.1 A mediator must obtain agreement from participants about the fees and charges payable for the mediation, how those fees and charges are calculated and about how those fees and charges are to be apportioned between them.

12.2 A mediator must not charge fees based on the outcome of a mediation or calculated in a way that could influence the way the mediator conducts the mediation.

12.3 If any fees or charges paid in advance exceed fees or charges payable for the mediation, the excess must be returned promptly upon conclusion or termination of the mediation.

13 Provision of information and promotion of services

13.1 A mediator must accurately represent their qualifications and experience and how they conduct their mediations.

13.2 A mediator must not guarantee results or outcomes from the mediation process or make statements likely to create false expectations about favourable results.

13.3 A mediator may use de-identified information about any evaluation of their mediation practice that could assist participants to better understand the mediation services they offer.

13.4 A mediator accredited under these standards is entitled to use the following descriptor and post-nominal: Certified Professional Mediator (CPM) Mi.

Part Three: Mi Professional Mediator Certification

Roles in the Certification process:

1. Mediation Institute (Mi)

- 1.1 Mi is a Recognised Mediator Accreditation Body under standards established by the Mediators Standards Board of Australia.
- 1.2 Mi provides international standard learning and assessment resources via eLearning and resources for workshop training for training and assessing mediators in East Africa in partnership with Suluhu mediation
- 1.3 Mi has the capacity and expertise to assess whether training, education, assessment and CPD undertaken by applicants for certification or renewal of certification meet the respective requirements specified in the *Approval Standards*.
- 1.4 Mi oversees the application of the *Approval Standards* and the *Practice Standards* by the trainers and assessors provided by Suluhu Mediation in Africa to ensure consistency and quality regarding mediation certification;
- 1.5 Mi supports continuing professional development, provides opportunities and content for professional development, for Suluhu Mediation trainers and assessors and certified mediators in Africa via eLearning.
- 1.6 Mi requires records to be maintained for mediator who are certified under these standards
- 1.7 Mi carries out activities, maintains records and carries out other functions as necessary to support the maintenance of high standards for mediation training, assessment and certification.

2 Suluhu Mediation

- 2.1 Suluhu provides international standard mediation training and assessment in Africa making use of materials and resources provided by Mediation Institute.
- 2.2 Suluhu has the capacity to manage a team of trainers and assessors to provide training and assessment in accordance with the *Approval Standards*
- 2.3 Suluhu applies the *Approval Standards* and the *Practice Standards* to the training, assessment and certification of mediators in Africa in a way that ensures the consistency and quality of mediation certification
- 2.4 Suluhu provides opportunities for continuing professional development for mediators in Africa
- 2.5 Suluhu works with Mediation Institute to ensure the integrity of the Mi certification system for professional mediators.