



ILSCA

Indian Law Society's
Centre for Arbitration & Mediation

ILSCA Code of Ethics and Conduct & Disclosure Rules for Mediators

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Introduction

The ILS Centre for Arbitration and Mediation (ILSCA) believes that a mediator has the utmost responsibility of observing and maintaining highest standards of ethical conduct during the process of Mediation.

Therefore, ILSCA has developed the ILSCA Code of Ethics for Mediators ('ILSCA Code of Ethics') to provide basic guidance to the ILSCA Mediators in order to preserve integrity and fairness throughout the Mediation process.

This Code sets out the minimum standards of conduct that Mediators should observe.

Rule 1 : Applicability of Code of Ethics

- 1.1. The ILSCA Code of Ethics for Mediators ('ILSCA Code of Ethics') shall be effective from 10 January 2021.
- 1.2. The ILSCA Code of Ethics for Mediators applies to all mediators participating in mediation proceedings under the Indian Law Society's Centre for Arbitration and Mediation (ILSCA). All prospective mediators shall undertake to abide by this Code before nomination or appointment and the obligation continues throughout the mediation proceedings.

Rule 2 : Appointment of Mediator

- 2.1. Before the mediation begins, mediators will inform the parties and the Appointing Authority, ILSCA, of their relevant background and experience.
- 2.2. Mediators will, prior to appointment, conduct reasonable inquiries to determine if any pre-existing relationship or interest in the subject matter of the dispute creates a real or perceived conflict of interest.

- 2.3. A prospective mediator shall accept an appointment only if:
- a) he is fully satisfied that he is able to discharge his duties independently and without any bias;
 - b) he has adequate knowledge of the language of the Mediation; and
 - c) he is able to give to the Mediation the time and attention that the parties are reasonably entitled to expect.
- 2.4. If the prospective mediator is aware of any potential time constraints in the 6-12 months following his appointment on his ability to discharge his duties if he is appointed as a mediator, he shall, without breaching any existing confidentiality obligations, disclose details of such time constraints to the Appointing Authority, ILSCA. Appointing Authority reserves the right to refuse to appoint the prospective mediator if it is of the view that the prospective mediator will not be able to discharge his duties due to such potential time constraints.
- 2.5. The prospective mediator confirms that he understands that the quantum of fees payable to the Mediator shall be decided as per the ILSCA Fee Schedule – Mediation.

Rule 3 : Diligence

- 3.1. Mediators may accept an assignment to act as Mediator in any situation in which they are competent to serve in that capacity. Mediators should ensure that they have the requisite time, energy and procedural and subject matter expertise to competently meet the reasonable expectations of the parties.

Rule 4 : Disclosure, Independence and Impartiality

- 4.1. A mediator shall remain impartial and independent throughout the mediation proceedings.
- 4.2. A prospective mediator shall disclose all facts or circumstances that may give rise to justifiable doubts as to his impartiality or independence, such duty to continue throughout the mediation proceedings with regard to new facts and circumstances.

- 4.3. Mediators will not accept an appointment without first disclosing anything within their knowledge that may, or may be perceived to, materially affect their impartiality. This duty to disclose is a continuing obligation throughout the mediation process.
- 4.4. A prospective mediator shall disclose to the Appointing Authority, ILSCA, and any party who approaches him for a possible appointment about:
- (a) any past or present close personal relationship or business relationship, whether direct or indirect, with any party to the dispute, or any representative of a party, or any person known to be a potentially important witness in the mediation;
 - (b) the extent of any prior knowledge he may have of the dispute.

Rule 5 : Bias

- 5.1. Mediators will always conduct mediation in an impartial manner, avoiding bias or prejudice in favour of or against any party. If at any time a mediator feels unable to conduct the process in an impartial manner, he will express that concern to the Appointing Authority, ILSCA and the parties, and withdraw from the mediation.
- 5.2. Justifiable doubts as to a prospective mediator's impartiality or independence may arise where close personal relationship or current direct or indirect professional/business relationship between a mediator and a party, or any representative of a party, or with a person who is known to be a potentially important witness, exists, and if they are of such nature as to be likely to affect a prospective mediator's judgment. 5.3. The prospective mediator should decline to accept an appointment in circumstances mentioned in rules 5.1. and 5.2., unless the parties agree in writing that he may proceed.
- 5.4. After accepting appointment, and until the mediation process ends, mediators will not enter into financial, business, professional, family or social relationships or acquire financial or personal interests that are likely to create an actual or perceived threat to mediation impartiality. In the case of perceived threats, mediators may proceed after full disclosure and party consent.

Rule 6. Communications

- 6.1 Before accepting an appointment, a mediator can only inquire about the general nature of the dispute, the names of the parties and the expected time period required for the mediation.
- 6.2 No mediator shall confer with any of the parties or their counsel until after the Appointing Authority gives notice of the appointment of mediator to the parties.
- 6.3 A mediator shall not accept any gift or substantial hospitality, directly or indirectly, from any party to the mediation, except with the consent of other parties.
- 6.4. A mediator, in communicating with the parties, shall avoid impropriety or the appearance of impropriety.

Rule 7 : Fees

- 7.1 In accepting an appointment, a mediator agrees to the fees fixed by ILSCA according to the ILSCA Schedule of Fees – Mediation, and he shall make no separate arrangements with any of the parties or their counsel for any additional fees or expenses.
- 7.2. Any communication between parties and mediators regarding fees and expenses shall be made via the Appointing Authority, ILSCA.
- 7.3. A mediator shall not request an increase of his fees during the mediation proceedings, unless due to extraordinary circumstances and after due permission from the Appointing Authority and consent of the parties.
- 7.4. Mediators will not suggest to the parties that their remuneration should be based on or related to the outcome of the mediation.

Rule 8 : Confidentiality

- 8.1. Mediators will keep confidential all information acquired in the course of serving as a mediator in a mediation unless:
 - i. compelled to make a disclosure by law, by a Court of Law or by some governmental agency having appropriate authority and jurisdiction, or

- ii. the specific information comes into the public domain (otherwise than as a result of a disclosure by the mediator), or
 - iii. the parties release the Mediator from the confidentiality restriction, or
 - iv. it becomes necessary to defend the mediator from any proceedings or charges for which he risks incurring any liability.
- 8.2. The mediator may, however, disclose having previously served as a mediator in a mediation involving one or more of the parties to the present mediation, provided none of the details of the previous mediation are disclosed.
- 8.3. Mediators will discuss confidentiality with the parties before or at the beginning of the mediation and obtain their consent to any communication or practice by the mediator that involves the disclosure of confidential information.
- 8.4. Mediators may use or disclose confidential information obtained during a mediation when, and to the extent that, they believe it to be necessary to prevent death or serious physical harm or damage from arising or believe an illegal act may realistically arise. Before using or disclosing such information, if not otherwise required to be disclosed by law, mediators must, if they consider it appropriate, 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.

Rule 9 : Professional Conduct Issues and Complaints

- 9.1. The mediator shall follow and observe the ILSCA Code of Ethics strictly and with due diligence and shall not carry on any activity or conduct which could reasonably be considered as conduct unbecoming of a mediator.
- 9.2. The mediator may consult the Appointing Authority, ILSCA about any professional or ethical dilemmas.
- 9.3. Where the mediator is subject to the ILSCA Code of Ethics, a party to a mediation who believes there has been a lack of compliance with this Code may submit a complaint to this effect to the Appointing Authority, ILSCA on the Mediators' conduct Assessment.

Note: Adherence to this Code does not replace or qualify any legislation or rules regulating individual professions or any more extensive rules of conduct which may apply in specific circumstances.