



KWAZULU-NATAL SOCIETY OF MEDIATORS COMPLAINTS POLICY AND PROCEDURE

1. INTRODUCTION

- 1.1. The KwaZulu-Natal Society of Mediators (“the Society”) seeks to promote high ethical standards and integrity in the practice of mediation in KwaZulu-Natal. Its members comprise of accredited mediators and associate members who are registered with the Society and who are bound by:
 - 1.1.1. the Society’s objectives;
 - 1.1.2. the Society’s Code of Professional Conduct;
 - 1.1.3. the Society’s Complaints Policy and Procedure;
 - 1.1.4. the national accreditation standards for mediation; and
 - 1.1.5. the specific requirements for accreditation in the different fields of mediation set by the Society.
- 1.2. There are two categories of membership of the Society: mediator members, who have met the requirements for accredited mediators, and associate members, who are in the process of completing the requisite accredited training and supervised or actual mediations in order to qualify as an accredited mediator. For the purposes of this document, both categories of members are collectively referred to as “mediators” or “members”.
- 1.3. The Society takes the conduct of its members seriously. The Society will take the necessary disciplinary steps against any member who breaches our Code of Professional Conduct, or any of the values enshrined in the Constitution of the Republic of South Africa, 1996.
- 1.4. In the event that any party to a mediation, including legal representatives, is of the belief that there has been a breach by the member of the Society’s Code of Professional Conduct, that person may raise a complaint against the member by completing the Society’s Complaint Form, subject to the member having

been a registered member of the Society at the time of the event(s) giving rise to the complaint.

- 1.5. On receipt of the Complaint Form, the Society will investigate the complaint in accordance with this policy and, if necessary, institute disciplinary proceedings against the that member.

2. SCOPE OF THIS POLICY

This Policy does not apply to:

- 2.1. comments or complaints about the Society's policies;
- 2.2. policy decisions;
- 2.3. dissatisfaction with individual case outcomes, or requests for legal advice and assistance;
- 2.4. matters that have already been investigated and concluded;
- 2.5. anonymous complaints;
- 2.6. vexatious and repetitive complaints (that is, complaints which, because of the frequency or nature of the complainant's contact with the Society, hinder the efficient operation of the Society in the Society's view); and/or
- 2.7. complaints that are accompanied by unreasonable or abusive behaviour by the complainant in the Society's view.

3. THIRD PARTY INVOLVEMENT

- 3.1. Complainants may wish to have a legal representative act on their behalf as part of the complaints and disciplinary processes. An admitted legal practitioner under the Legal Practice Act may act on behalf of or make enquiries for the complainant.

- 3.2. In such cases, written consent from the complainant to be represented in the matter by the legal practitioner, must be accompany the Complaint Form.

4. PRINCIPLES FOR MANAGING COMPLAINTS

- 4.1. Complainants are expected to be familiar with the Society's Code of Professional Conduct prior to lodging a complaint against a Society member.
- 4.2. The Society encourages complainants to first attempt to resolve their concern directly with the mediator in question, before submitting a complaint.
- 4.3. Complaints considered by the Society will take into account that at the time that a client selected and engaged a Society mediator for their matter, the client accepted full responsibility for their choice of mediator. The client bore the onus to conduct their own research on the suitability and relevant experience of the mediator. The Committee accordingly reserves the right to not investigate complaints regarding the suitability of a mediator chosen by the client.
- 4.4. All complaints received will be dealt with confidentially by the Committee, subject to the need to disclose information in terms of statutory or other obligations placed on the Society.
- 4.5. Complainants will be treated with courtesy, respect and fairness at all times. The complainants must treat the Society's member/s against whom they are complaining with courtesy, respect and fairness at all times.
- 4.6. While the Society is mindful that there may be some element of distress when faced with conflict or in dealing with disputes, the Society shall not condone any conduct by a complainant which results in its mediators being subjected to offensive behaviour, including but not limited to: threats, verbal abuse, derogatory remarks, rudeness, racist, sexist, homophobic, transphobic or disablist comments, any other harassment or where complainants are known to have recorded meetings or telephone conversations without the mediator's consent.

- 4.7. A mediator shall retain all their rights to proceed with any action for defamation or to take any action deemed necessary in order to protect their reputation and integrity.
- 4.8. A mediator against whom a complaint has been made will be given the opportunity during this process to respond to the complaint, such that the *audi alteram partem* rule is observed.

5. COMPLAINTS PROCEDURE

- 5.1. The complainant is encouraged to approach the mediator against whom the complaint is to be lodged in an attempt to resolve the complaint prior to completing and submitting the Complaints Form.
- 5.2. In the event that 5.1 is not feasible or the discussion with the mediator does not resolve their concern, a complainant may then follow the complaint procedure as set out in this document.
- 5.3. The Complaint Form must be submitted in writing no later than 28 calendar days after the conclusion of the mediation, or after the date of the event(s) giving rise to the complaint, whichever is earlier. A complainant may motivate for an extension of this 28-day period if the complainant has made an attempt to first resolve the matter with the mediator directly.
- 5.4. Complaints may be sent via the Complaint Form available on the Society's website or by email to the Society, containing the information required by the Complaint Form.
- 5.5. The Society will acknowledge receipt of a written complaint within 14 calendar days of receipt of the complaint.
- 5.6. The Society will conduct an initial investigation into the complaint. The investigation shall be conducted by two independent Committee members (that is, members of the Committee who are not subjects of the complaint) ("Investigators") and the investigation shall be conducted in a manner as determined by the Investigators.

- 5.7. The Investigators shall have the right to determine the investigation process dependent on the complexity of the matter.
- 5.8. A finding by the Investigators shall be communicated to the complainant within 30 calendar days of receipt of the complaint.
- 5.9. Where a complaint is determined to be complex, the 30-day calendar period may be extended at the discretion of the Society, and the complainant will be kept informed of the progress of the investigation.

6. DISCIPLINARY PROCEDURE

- 6.1. Where the initial investigation reveals *prima facie* evidence of misconduct on the part of the mediator, a Disciplinary Committee will be convened.
- 6.2. The Disciplinary Committee will be appointed by the Committee and will consist of three objective Society members, of which at least one shall be a Committee member who shall sit as the chairperson of the Disciplinary Committee.
- 6.3. The Disciplinary Committee shall proceed as follows:
 - 6.1.1 The Disciplinary Committee shall establish the merits of the complaint and conduct a disciplinary hearing in line with the rules of natural justice and the principles of South African law.
 - 6.1.2 The hearing shall be conducted in-person, virtually, or a combination thereof at the discretion of the Disciplinary Committee.
 - 6.1.3 The Disciplinary Committee's written decision shall be communicated to the Committee chairperson, prior to feedback being given to the mediator and the complainant.
 - 6.1.4 The decision, with reasons, shall be communicated to the mediator and the complainant after the completion of the disciplinary process. Exact details of any disciplinary steps taken against the mediator need not be provided to the complainant, however, a complainant shall be informed if and when appropriate action has been taken against the mediator.

7. REMEDIES

7.1. Where a member of the Society has not acted in accordance with the Society's Code of Professional Conduct or the specific requirements for accreditation in the different fields of mediation set by the Society, the Society shall:

7.1.1 take reasonable and necessary steps to investigate and deal with the complaint and:

7.1.2 explain to the complainant the findings of the investigation and/or disciplinary hearing;

7.1.3 endeavour to restore the relationship between the complainant and the member; and

7.1.4 institute the appropriate disciplinary measures which may include but are not limited to:

- a) a written apology which must be pre-approved by the Disciplinary Committee, and/or
- b) training or supervision of the member or a combination of both, and/or
- c) suspension or cancellation of a member's membership of the Society.

7.2. The Society will not under any circumstances assist the complainant with any legal claim against a mediator by a complainant unless compelled to do so in terms of the laws of South Africa.

8. RECORDING COMPLAINTS

8.1. Complaint details, outcomes and actions taken against members are recorded by the Society and used for service improvement and the development of mediators.

8.2. A record of every complaint, including the investigation and the outcome, will be kept electronically by the Society for a period of no less than 3 years or for the duration of the membership of the mediator against whom the complaint was made, whichever period is longer.



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