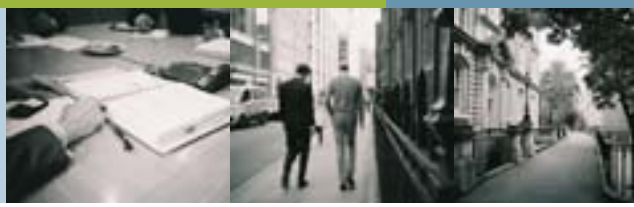
THE MEDIATION ADVOCACY STANDARDS

Prof. Andrew Goodman PhD



SCMA®

Standards and Competencies in Mediation Advocacy

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The Mediation Advocacy Standards

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THE BUSINESS CASE FOR MEDIATION ADVOCACY

1 The Business Case for Mediation Advocacy

For nearly 30 years, the market for mediation services has developed slowly:- even where governments, judiciaries, consumer groups and academics have welcomed the practical advantages in cost and time reduction, confidentiality, empowerment of participants, control and flexibility of outcome, and the preservation of reputation and relationships. Mediation is seen by the enlightened as a better, more productive and socially cohesive way to resolve disputes.

Why, then, hasn't there been such a demand for services from users to drive forward the substantial development needed by the industry to mature as a market? Why, even in jurisdictions where the courts make mediation compulsory, at least for low-value claims, has the take up and positive experience of Mediation not generated an irresistible momentum for change in civil justice?

Three factors appear to be the answer:

- Educating the market about a confidential process
- Getting media support to promote mediation; and
- Overcoming resistance to the process by the gatekeepers of disputes – usually lawyers –fearful of the loss of revenue from truncated litigation- particularly in jurisdictions where consumers of legal services have no control over time or cost.

The industry can push for the first two. The third requires stakeholder explanation, persuasion and acceptance of the business case for mediation advocacy.

Those who offer a professional practice representing parties in mediation understand that the process is more likely to succeed in effecting settlement and provide the client with a more desirable outcome by reference to their interests and needs, than a judge or arbitrator can deliver, and with far less risk. The practitioner/client relationship will be enhanced. The satisfied and happy client is the professional's best asset with repeat business and a free marketing device for your practice and your industry - so expanding your market in two ways.

The business case for mediation advocacy is also aspirational, since it leads to

- Enhanced public reputation in innovation and leadership
- Promotion of positive perceptions by customers, vendors, and other stakeholders – rather than the negativity associated with litigation profiting from the misfortune of others.

- Communicating a clear message that cost containment is wired into your ethos, and
- Meeting user expectation that providers and advisors of ADR services devise strategies to end disputes on acceptable terms as quickly and cost- effectively as possible

Reduced litigation spend is therefore transformed into a desirable aim for the development of solid client relations, rather than being seen as a short-term loss to the practice.
The International Mediation Institute reviews the approaches of major corporations to their dispute resolution strategy, and has published data which indicates that companies known to be "dispute-wise" (i.e. systemic and thoughtful in their approaches to dispute resolution) tend to have higher P/E ratios [1] than those that litigate to the end.

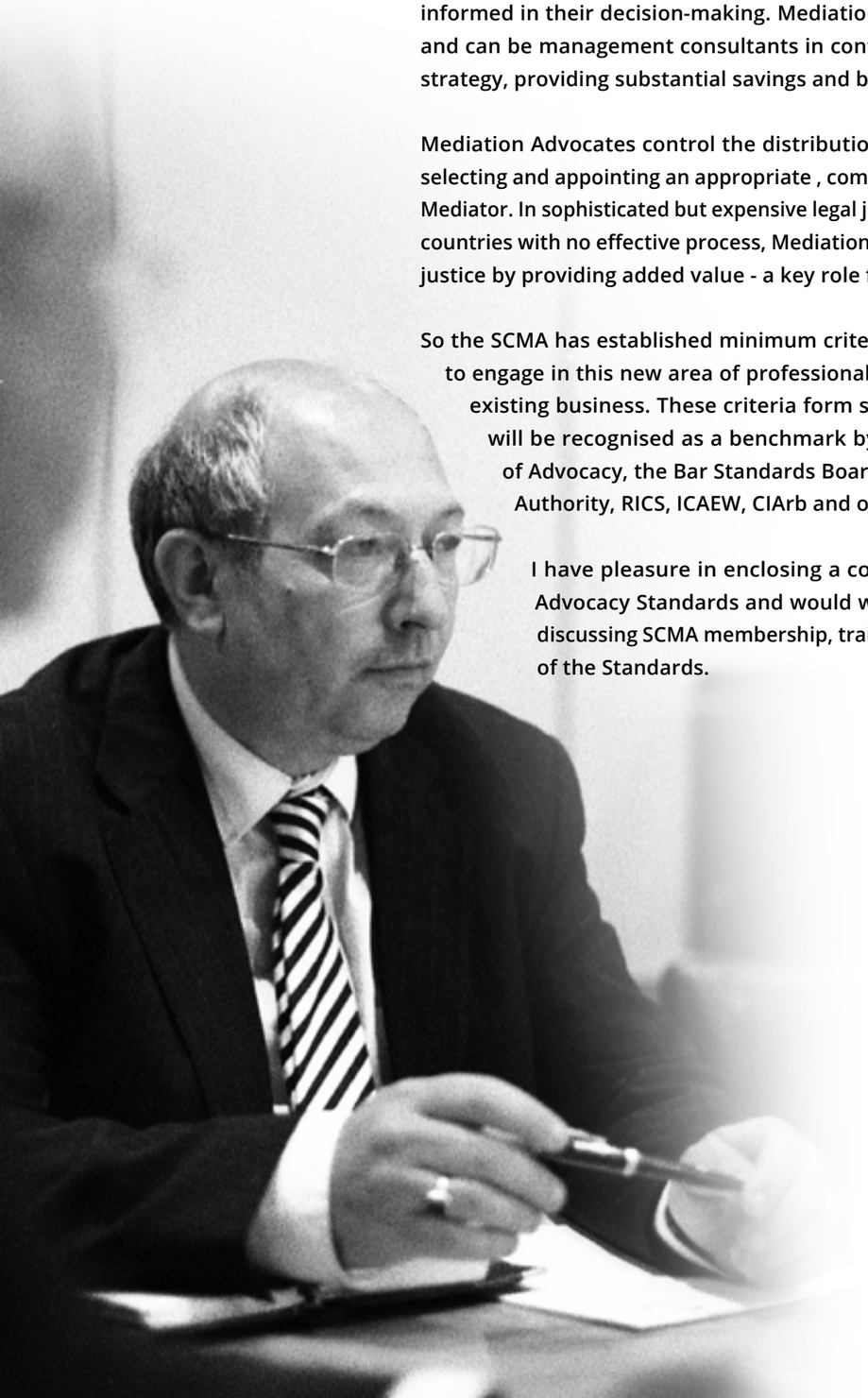
On October 29, 2014, an interactive convention in London entitled Shaping the Future of International Dispute Resolution was organised by the International Mediation Institute (IMI) for international entities and a wide range of global stakeholders . Over 150 delegates from more than 20 countries used interactive technology to vote on a number of key issues. The data generated was indicative of user demands of the mediation market, and suggested significant gaps may exist between what disputants expect and need, and what is currently provided by advisors, provider bodies, practitioners, educators and policy makers.

Consumers of mediation recognise its benefits and note the following, in order of importance -

- Certainty: risk reduction and control of outcome
- Expense: cost containment
- Efficiency: focussing on the key issues in the dispute
- Relationships: preventing conflict escalation and retaining relationships whenever possible
- Speed: securing the earliest possible outcome Enforceability of outcomes or awards
- Confidentiality

In any market the successful service provider is in tune with, and can deliver what his client wants. Yet mediation is still underused, mainly because one of the parties is not familiar enough or experienced with the process, or because external legal or other advisers do not propose mediation when circumstances suggest they should.

Trained mediation advocates are therefore market leaders and progressive thinkers, engaging their clients in a process that doesn't attribute fault or blame, looks forward rather than backwards, and is focussed on



problem solving according to client needs. The IMI data suggests that the most important factors influencing how effectively a company uses alternative dispute resolution (ADR) are the skills and approach of the in-house lawyers, the knowledge and attitude of the company's senior management and the tactics of their external lawyers who all need to be informed in their decision-making. Mediation Advocates are educators, and can be management consultants in conflict avoidance and dispute strategy, providing substantial savings and business efficiency .

Mediation Advocates control the distribution of work to Mediators, by selecting and appointing an appropriate , competent, mutually acceptable Mediator. In sophisticated but expensive legal jurisdictions, or in developing countries with no effective process, Mediation Advocates deliver access to justice by providing added value - a key role for ADR in a modern world.

So the SCMA has established minimum criteria for Mediation Advocacy to engage in this new area of professional practice, or to add to your existing business. These criteria form standards which it is hoped will be recognised as a benchmark by the Inns of Court College of Advocacy, the Bar Standards Board, the Solicitors' Regulation Authority, RICS, ICAEW, CIArb and other institutions.

I have pleasure in enclosing a copy of the SCMA Mediation Advocacy Standards and would welcome the opportunity of discussing SCMA membership, training for and the application of the Standards.

Andrew Goodman

COMPETENCY CRITERIA FOR MEDIATION ADVOCATES

2 Competency Criteria for Mediation Advocates

2.1 Introduction

Mediation is most successful when the parties' advocates, advisors or representatives ("Mediation Advocates") are knowledgeable and skilled in the principles of the mediation process and negotiation theories. Mediations can fail when party representatives act as if they were in a courtroom rather than in a negotiation.

Mediation presents unique problem-solving opportunities in which representatives can assist their clients to reach faster, cheaper and/or better outcomes with the assistance of a mediator. They can help their clients achieve outcomes that may be unattainable in a courtroom or arbitration tribunal. To do that, they need a different set of knowledge and skills.

2.2 Criteria

SCMA assisted the International Mediation Institute in the design of criteria for programmes qualifying as competent Mediation Advocates in order to establish a professional and technical basis for enabling disputing parties to identify professionals experienced in advising and representing clients in the resolution of disputes through mediation and related dispute resolution processes. The Criteria are presented in two broad categories: The General Requirements for the programs are set out in Section 1 below (the "General Requirements") The Mediation Advocacy Practical Skills Requirements are set out in Section 2 below ("Practical Skills Requirements" and the substantive criteria for Mediation Advocates' Competency are set out in Section 3 below (the "Substantive Criteria").

SCMA now wishes to develop its own Standards to reflect the needs of this jurisdiction and to be commensurate with the recognised international Criteria.

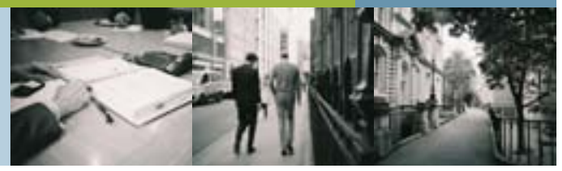
2.3 Nomenclature

Mediation is a form of facilitated negotiation which does not necessarily take place as part of a judicial or other adjudicative process. Because mediation is an extra-legal process, not all professionals who may advise, represent and assist disputing parties in mediation are necessarily legally qualified.

In many countries, the term "advocate" and language equivalents of that word denotes or implies that a person is a qualified lawyer and should not (and in some cases can not) be used by a person not legally qualified. In some countries, however, that connotation does not arise. Nomenclature is therefore largely a jurisdiction-specific issue.

Moreover there are some proponents of mediation who believe the term 'mediation advocate' is an oxymoron, since mediation must be a non-adversarial process. The term is used for ease of reference by and to address the significant proportion of professionals in the mediation world, whose primary function is to assist clients resolve their disputes either as part of an orthodox adversarial system or within the shadow of the law.

GENERAL REQUIREMENTS OF KNOWLEDGE AND COMPETENCE



3 General Requirements of Knowledge and Competence

The following areas of practical skills are required for effective mediation advocacy. This list is intended as guidance to those operating assessment programmes in designing knowledge assessments. The list is not necessarily exhaustive or mandatory.

1. Knowing when mediation may or may not be a suitable process to address particular issues.

2. Identifying procedural options and preferred processes for reaching optimal outcomes.

3. Knowledge of negotiation and solution-generating processes, as well as party and participant dynamics, as contextualised by the choice of mediation process/ vehicle.

4. Understanding the nature, theory, procedure, practical application, methodology, appropriateness, benefits and disadvantages of the available types of mediation, schemes or programmes, procedural rules and pertinent costs.

5. Understanding the role of a mediator, and the palette of mediator methodology, psychology, core training, and practices.

6. Knowledge of relevant laws affecting mediation practice including structure and enforceability of mediation and settlement agreements (where relevant), confidentiality and privilege /professional secrecy. Costs, (the impact of the increase in issue fees, contrast with litigation costs and the impact of case law and the approach of the judiciary) and costs budgeting for mediation.

7. Knowing how to use techniques for productively supporting the parties, their representatives, the mediator and the process to generate a mutually accepted outcome.

8. Knowing how to communicate effectively with the mediator, prior to, during and after the mediation sessions.

9. Being able to explain the nature, theory, procedure, practical application, methodology, appropriateness, benefits, advantages and drawbacks of available types of mediation within or between relevant jurisdictions, court-connected mediation schemes, ad-hoc or institutional procedural rules, applicable costs, and applicable professional ethics codes.

10. Knowledge of hybrid dispute resolution processes (e.g., Arb-Med, Med-Arb, Arb//Med, Med-Con, Med//Con, MEDALOA (a combination of Mediation and last offer Arbitration) and their potential advantages and drawbacks in different circumstances.

11. Understanding and applying the best timing for each dispute resolution process.

12. Familiarity with methods of formulating solutions, including assessing alternatives (BATNA, WATNA, PATNA, RATNA [2] & preparing client and self for joint/caucus mediation meetings.

13. Being able to assist parties in separating interests and needs from wants and positions.

14. Being able to seek and understand the motivations behind individual positions as distinguished from the issues in dispute.

15. Being familiar with techniques like questioning, summarizing, (active/ effective) listening, framing and re-framing, reformulating, reflecting and paraphrasing.

16. Being able to make strategic choices that can help strike a balance between positional claims that advance the clients' wants and creating value based on interests and needs.

17. Being familiar with cross-cultural settings and dynamics.

18. Understanding cross-border and multi-cultural mediation paradigms.

19. Being able to adapt procedural parameters when dealing with complex cases involving numerous participants.

20. Understanding and using professional and ethical standards and behaviours in generating, informing and/or setting norms.

21. Knowledge of problem-solving, interest-based negotiation techniques.

22. Knowledge of the distributive (adversarial) approach to negotiation, in addition to the problem-solving (interest-based) approach and knowing when and why to apply each. Knowing how to avoid and counter unhelpful adversarial attitudes, behaviour and language.

23. Being able to draft / approve settlement agreements as discussed by the parties to the mediation.

24. Being able to understand and interpret settlement agreements and procedural options.

25. Being able to use understandings and momentum derived from mediation to promote problem solving or dispute settlement where no concluded agreement takes place at the mediation itself.

PRACTICAL SKILLS REQUIREMENTS

Good lawyers must have the skills required for professional competence. But this is not enough. They must know how to carry the burdens of other people on their shoulders. They must know of pain, and how to help heal it. Lawyers can be healers. Like physicians, ministers, and other healers, lawyers are persons to whom people open up their innermost secrets when they have suffered or are threatened with serious injury. People go to them to be healed, to be made whole, and to regain control over their lives.

James D. Gordon III

4 Practical Skills Requirements

The following areas of practical skills are required for effective Mediation Advocacy. The list is not necessarily exhaustive or mandatory and is offered as guidance. It is intended to aid in designing skills assessments.

4.1 Pre Mediation Stage

4.1.1 Case diagnosis and process selection

i.Conflict diagnosis, including conflict (de)escalation models.

ii.Understanding when a neutral third party can add value in a conflict and assessing the quality of that value compared with direct without prejudice negotiations. Being able convincingly to convey that understanding to the client.

iii.Using dispute assessment & risk analysis methodologies.

iv.Identification of relevant parties, stakeholders and participants to the process and identifying who not to invite and what to do if uninvited people seek to attend .

v.Identifying the most appropriate process. Skills to assess (contra-) indications, pros and cons, and strengths and risks of each method. Being able convincingly to convey that understanding to the client.

vi.Design, customization and implementation of appropriate conflict resolution processes.

vii.Considering possible application of hybrids and other process design options.

viii.Pre-mediation analysis.

ix.Application and interpretation of alternatives analysis, BATNA, WATNA, PATNA and RATNA

x.Whether or not to use norms to set ZOPA[3] and leverage such analyses.

xi.Defining time frames.

xii.Understanding different levels of readiness of the client to accept mediation and the ability to address their concerns effectively.

4.1.2 Clarifying and initiating process

i.Initiating contact with the other parties or their representatives, and/or with mediation institutions.

ii.Consider whether the parties wish to use norms, subjective interests, or a combination of the two to resolve the dispute, and what norms (if any) to use (e.g., laws, customs, community response).

iii.Consider the relevance of past, present or future events, and whether to focus on the past or the future as a basis for seeking resolution of the dispute.

iv.Counselling clients, principals, participants and relevant stakeholders, as appropriate to identify and resolve procedural issues and options separately from substantiveissuestobemediated,andifsowhenandhowtomediate. Explaining mediation goals and process.

v.Communicating effectively with the other side to bring them to mediation in the right frame of mind.

vi. Identifying and overcoming possible misperceptions (e.g., concerns of appearing to be weak if agreeing to negotiate).

vii.Collaborating and negotiating with other parties, their representatives and the mediator about process choice and design, logistics and timing. Setting, collaborating and negotiating about mediator selection criteria with the other parties and their representatives and where appropriate, working with the other parties to identify, set and implement each mediation parameter.

4.2 Selection of neutral and preparation stage

4.2.1 Identify, negotiate and select mediation process and mediator

4.2.1.1 Mediation process and mediator

i.Selecting the most suitable mediation procedure, style and approach (e.g. evaluative, transformative, facilitative, narrative, solution focused, eclectic, hybrid forms, co-mediation (when does this give added value?), joint sessions and/or caucus-based), including consideration of common mediation approaches used locally and elsewhere

ii.Determining whether mediation should be administered or self-administered. Applying specific aspects of court-connected mediation processes.

iii.Working with the participants and the mediator(s) to determine the need for a mediation agreement (if any), select a venue, identify participants, use opening statements (if any), time allocations (if any), prior written submissions (if any) both open and confidential , the mediator(s) role and conduct; discuss the use and frequency of joint sessions and/or caucuses (if any).

iv.Finding, selecting and appointing the most suitable competent mediator(s) for this case, these parties and the specific circumstances. Ensuring there is no conflict of interest with the appointment

v.Knowing when co-mediation is appropriate and how to select and convene a co- mediation team in collaboration with the other side.

vi.Knowing how to select a suitable mediator for a particular case, including subject

knowledge, mediation style and skills, and identifying the need for a specialist or generalist.

vii.Collaborating and negotiating with other parties, their representatives and the mediator about process choice and design, logistics and timing.

4.2.1.2 Administrative, formal and legal aspects of coordinating a mediation

i.Negotiating and (where applicable) drafting the mediation agreement.

ii.Dealing productively with any obstructive or fencing behaviour of the other party or the party's representatives.

iii.Advising on mediation clauses, mediation rules and regulations of mediation providers and professional bodies, ethical guidelines, codes of conduct, complaint schemes, disciplinary processes, liability issues, confidentiality, privacy, refusals to participate, mandates, and authorities to settle.

4.2.2 Preparation

i.Composing mediation teams. Identifying/negotiating attendees on each side. Ensuring the ultimate decision maker is available to attend and/or be available by phone / skype

ii.Information strategy: when (and when not) to share what information with whom. Determining information that is needed.

iii.Identifying the necessary documents to be exchanged with the other side and confidentially with the Mediator, with knowledge of applicable confidentiality rules. Brief the mediator by initial conversation before sending documents. Facilitating conversations between the Mediator and your clients

iv.Timing of the revelation of interests and options.

v.Advising on the roles of client and advocate.

vi.Separating interests needs & positions / wants.

vii.SWOT analysis skills (own client and, , the other party).

viii.Preparation of self, client and the mediator.

ix.Drafting a Mediation Briefing or Position/Participation Statement and confidential note for the Mediator and a Strategic Mediation Representation plan for cases where such materials are required.

x Prepare a skeleton without prejudice subject to contract proposal for use at the Meeting

xi Prepare a skeleton Tomlin Order / Settlement Agreement for use at the Meeting

4.3 Mediation Stage

4.3.1 General, monitoring process

i.Monitoring progress and checking whether the process needs to be adapted to the circumstances.

ii.Awareness of the key factors for success and failure in mediation.

iii.Collaboration with own client, the other party and the other party's representative to facilitate a constructive outcome based on problem-solving techniques.

iv.Counselling the client to obtain separate professional advice on financial, tax, social media, reputational, commercial and other relevant interests.

v.Making an informed choice between several approaches and options for resolving the issues, and knowing when to suggest each approach (including whether and when to terminate the mediation process as necessary).

vi.Balancing between (1) claiming value and advocating the client's interests and (2) creating value and motivating participants to reach a settlement.

vii.Acting as client coach and "reality check" to help them gain familiarity and confidence with the process, their relevant roles and whether their positions are compatible with their interests.

viii.Collaboration with the mediator, tasking the mediator, ensuring the mediator understands the client's core interests and constructively designing and implementing the mediation process from the perspective of all parties. Working with the Mediator to minimise 'down time' when the Mediator is with the other party and/or to ensure that time is used productively

4.3.2 Opening statement and agenda setting

i.Breaking the ice and creating constructive conditions for a productive mediation process. Identifying interests, topics for discussion, information to be exchanged (give and get) and possible impasses to be overcome.

ii.Agenda setting and time and expectation management.

iii.Coaching clients, where applicable, to prepare and deliver effective opening statements in accordance with the style of mediation or negotiation approach. Understanding what type and style of opening statement to use (e.g., argumentative, persuasive, explanatory, expressive etc.) as may be most effective, what to include and omit, and possibly proposing to defer to a later time or dispense with formal statements and/or initial open meeting when this would be more effective. Deciding who should deliver the opening statement.

iv.Supporting information exchange by summarizing facts and addressing queries from the other party, the other party's representative or from the mediator.
v.Interpreting the other party's opening statement and identifying key information, interests, opportunities and impediments.

4.3.3 Exploration

i.Generating effective negotiation approaches, explanations of first offers, package deals, concession strategies and negotiation techniques.

ii.Eliciting interests and distinguishing positions and wants from interests and needs .
iii.Applying communication skills such as active listening, reformulation and non-positional communication skills.

iv. Understanding and dealing with emotions, social and status issues, and international and cultural aspects and conveying this understanding to parties.

v. Identifying, analysing and dealing with impasses, breaking deadlocks and knowing how to support the client and mediator on these issues.

vi.Dealing with clients' instructions that may be difficult to reconcile with opportunities and options and resolving those inconsistencies.

vii.Balancing confidentiality and the need to provide the information necessary for resolving the dispute and reaching the best possible outcome.

viii.Dealing with difficult parties, party representatives, clients or inappropriate mediators.

ix.Applying reality-testing techniques to manage the expectations of the client and the other party.

x.Identifying the right time and work with the mediator to call for caucus, time- out, breaks, private client meetings, joint sessions, sessions with just professionals, changes of venue and changes of negotiation team members.

xi.Caucus:

a.Ensuring any caucus is handled ethically and confidentially.
b.Working with the client and mediator to provide information useful in resolving the dispute.
c.Exploring options with the mediator.
d.Seeking and providing positive and constructive feedback to/from the mediator.
e.Working with the mediator to identify the possible use of norms to generate, set and/or advocate possible outcomes.

4.3.4 Generating options and negotiation

i.Preparing the client effectively on how to react to, and consider, unlimited possibilities.

ii. Creating and prioritising interests and options.

iii.Where appropriate, assisting the client to be an effective negotiator (problem-solving, interest-based, positional, etc.).

iv. Formulating first/opening offers.
v.Responding to first/opening offers.

vi.Identifying topics for further discussion and information to be exchanged.

vii.Ensuring that the mediator presents the options proposed during private caucus accurately and maintains confidentiality.

viii.Working with the other party, the client, and the mediator to generate, develop, brainstorm and reality-test options. Ability to engage in and consult on several methods for generating options.

ix.Utilizing the processes of negotiation, and party and participant dynamics, as contextualised by the choice of mediation process.

x.Establishing mutually acceptable norms or reference criteria.

xi.Identifying objective and measurable criteria by which to assess feasibility and possible implementation of options.

xii.Responding to positional tactics.

xiii.Using mediator(s) for reality testing and/or for evaluative feedback where appropriate.

xiv.Using mediator(s) to support and lead the parties and/or to help them formulate offers or responses.

xv.Identifying and dealing with impediments, and enlisting the mediator's support.

xvi.Dealing with unexpected surprises or inconsistent negotiation styles. xvii. Maintaining momentum and dealing with decision fatigue. xviii.Dealing with reactive devaluation.

xix.Checking for confirmation bias.

xx.Clarifying intentions and motivations.

xxi.Adapting communication styles and strategies in accordance with progress made and other participants' conduct.

4.4 Closing and implementation

4.4.1 Closing

i.Securing the best available and workable outcomes that circumstances permit.

ii.Deciding whether to end or walk out of a mediation.

iii.Formulating final offers.

iv.Responding to final offers.

v.Dealing with incomplete settlements or inability to settle.

vi.Deciding whether and if so how to request a mediator's proposal.

vii.Maintaining positive momentum and leaving a window open.

viii.Generating joint or single communication strategies and dealing with possible reporting or reputational impacts.

ix.Facilitating the mediation to progress to a comprehensive, substantive, clear, valid and enforceable agreement (as SMART[4] as possible), preserving such relations as may be desired between the parties.

x.Managing setbacks in the final stage of the mediation if new issues emerge.

xi.Sustaining a constructive and amiable atmosphere to promote successful implementation of the agreement (keep the door and communication open).

xii.Assisting with the drafting of any publicity statements and contingency Questions & Answers, where appropriate.

xiii.Dealing with partial settlements and managing contingencies where applicable.

xiv.Dealing with parallel judicial, administrative, arbitral or other proceedings

xv.Closing documents and ceremonies (if any).

xvi.Possible rescheduling of additional mediation sessions with the same or different mediator(s), and when or where to conduct such sessions.

xvii.Considering possible final procedural options, hybrids and proposals.

xviii.Understanding that not all disputes result in a settlement directly after a

mediation and knowing how to identify and establish possible next steps to retain positive momentum and reschedule the matter for future consideration and settlement as and when appropriate. Consider how best to stay in touch with the Mediator after the Meeting

4.4.2 Implementation

i.Considering possible compliance and enforcement requirements.

ii.Knowing the relevance of Consent/Tomlin Orders and, where applicable and possible, the means to ensure compliance.

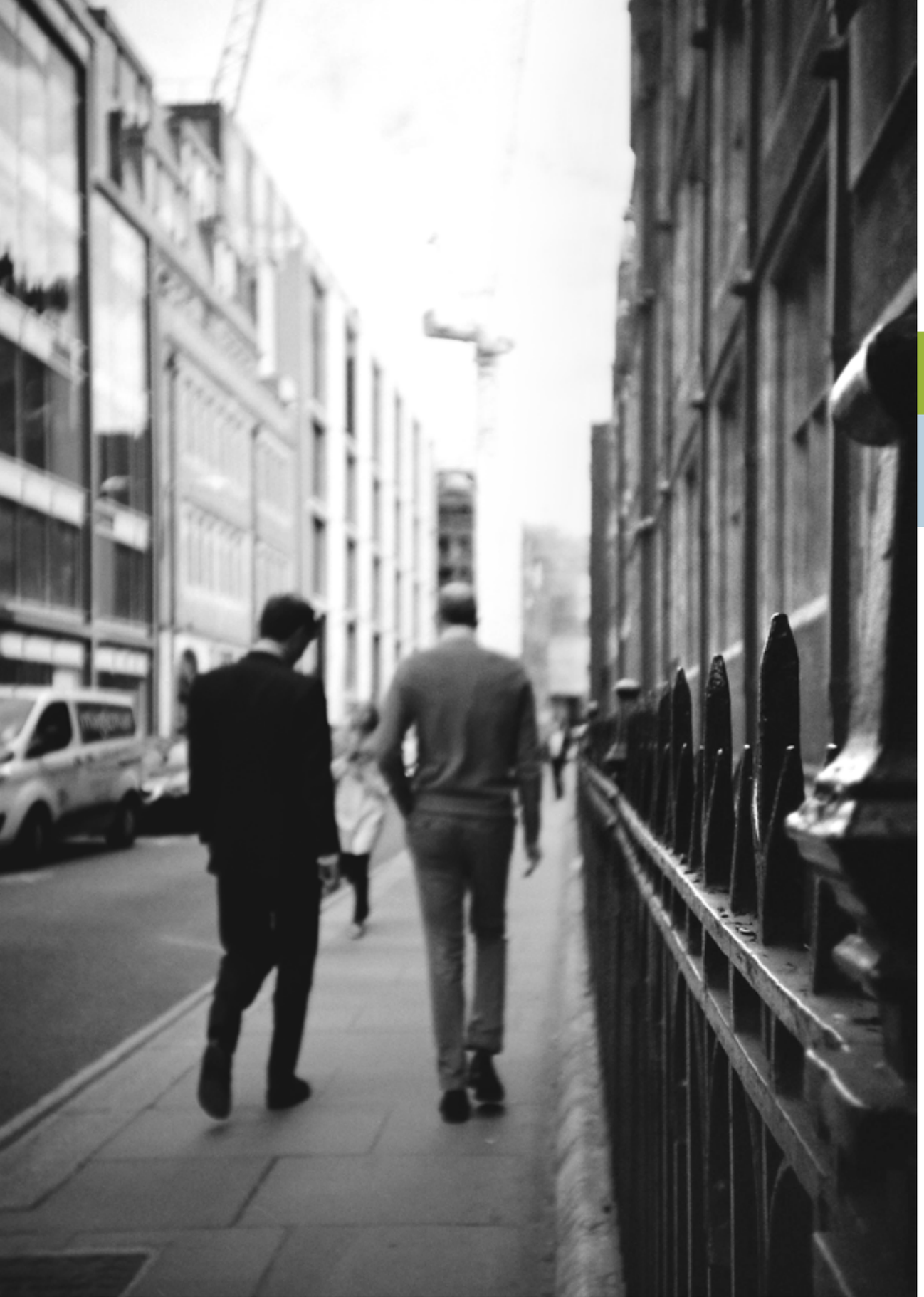
iii.Monitoring compliance and dealing with any post-settlement issues.

iv.Maintaining a good-faith approach towards the mediated settlement agreement and dealing with possible surprises.

v.Ability to deal with and finalise any outstanding post-settlement issues.

vi.Dealing with any final settlement formalities and possible contingent documentation

vii.Securing such appropriate court or tribunal recognition for a settlement (e.g., use of consent orders).



ASSESSMENT PROGRAMMES - SUBSTANTIVE CRITERIA

5 Assessment programmes - Substantive Criteria

SCMA invites any professional practice, educational or professional institution to prepare a Mediation Advocacy Assessment or Accreditation Programme to meet these Standards. Once approved by the SCMA, professionals who pass the assessment of such Programme will be qualified for SCMA Certification in the SCMA Registry in accordance with its terms and conditions, including conditions of membership.

5.1 General requirements

5.1.1 Methodology

All Mediation Advocacy Programmes must implement a methodology for assessing whether each applicant's performance meets each of these SCMA Substantive Criteria.

The assessments may be based on written material, role-play or live action evaluations, other suitable methods, or any combination, and may include videotaped and online assessments such as web dramas, self-assessments, interviews, peer reviews, user feedback and other in-practice skill evaluations.

5.1.2 Transparency

The Substantive Criteria (i.e. assessment benchmarks applied for the Programme) must be published and be openly accessible to both candidates, intending candidates and the SCMA .

5.1.3 Integrity

Each Assessor must be experienced in representing clients in mediations and/or teaching/assessing mediation advocacy skills, and should preferably be members of a designated professional body established for the purpose, or of the Association of Mediation Assessors, Trainers and Instructors (AMATI).

5.1.4 Ongoing monitoring of programme

The Programme must include a process for the ongoing monitoring of the performance and practice of both the Trainers and Assessors. SCMA will liaise closely with all recognised programme organizers to maintain a sustainable quality control system.

5.1.5 Diversity

The Programme must be accessible on an equal basis to applicants regardless of their professional affiliations, gender, race, ethnicity, age, religion, sexual orientation or other personal characterization. This should be clearly stated by each programme provider to candidates and intending candidates.

5.2 Evaluating the Standards

Any Programme assessing or accrediting qualifying candidates for SCMA Mediation Advocacy Certification must meet the following minimum substantive criteria with respect to all applicants:

5.2.1 Experience of the mediation process

The Programme must include a methodology for ensuring that Applicants have demonstrated to the satisfaction of the Programme's Assessors experience of mediation as a Mediation Advocate in at least ten mediations.

Exemptions: Practising Mediators - Mediators having acted as sole paid mediator in at least 10 cases

5.2.2 Knowledge of mediation advocacy

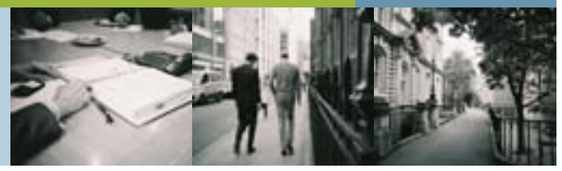
The Programme must include a methodology for determining that candidates have demonstrated a strong understanding of general mediation advocacy theory and practice. Written tests, essays, reports, theses and interviews may be used to determine such knowledge. Applicants are expected to be tested on and exhibit a comprehensive understanding of Mediation and Mediation Advocacy theory derived from the listing of the General Requirements of Knowledge and Competency in Section 1 above or leading textbooks on the subject.

5.2.3 Practical mediation advocacy skills

The Programme must include a methodology for the assessment of performance as a Mediation Advocate against a variety of benchmarks that together demonstrate a high degree of Mediation Advocacy competency. The assessed benchmarks may be based on role-play or live action assessments, and may include videotaped and online assessments such as web dramas, self- assessments, interviews, peer reviews, user feedback and other in-practice skill evaluations. The methodology used will address all the Practical Skills Requirements in Section 2 above and will be sufficiently detailed to attest to an applicant's demonstrated high level of competency as a Mediation Advocate. However, it is not expected that all detailed Practical Skills Requirements in Section 2 above will be assessed in the same depth, and Programmes will be free to assess other practical skills not listed.

Given the comments under the Heading "Nomenclature" in Section 2, a Programme needs to clearly identify in the application which assessment will be accorded to successful candidates, whether Mediation Advocate or Mediation Advisor/ Representative.

NOTES



6 Notes

[1] P/E = Price/Earnings ration; a measurement of the valueof a company that measures its current share price relative to its earning per share (EPS)

[2] BATNA = Best Alternative to a Negotiated Agreement; WATNA = Worst Alternative to a Negotiated Agreement; PATNA = Probable Alternative to a Negotiated Agreement; RATNA = Realistic Alternative to a Negotiated Agreement.

[3] ZOPA = Zone of Possible Agreement

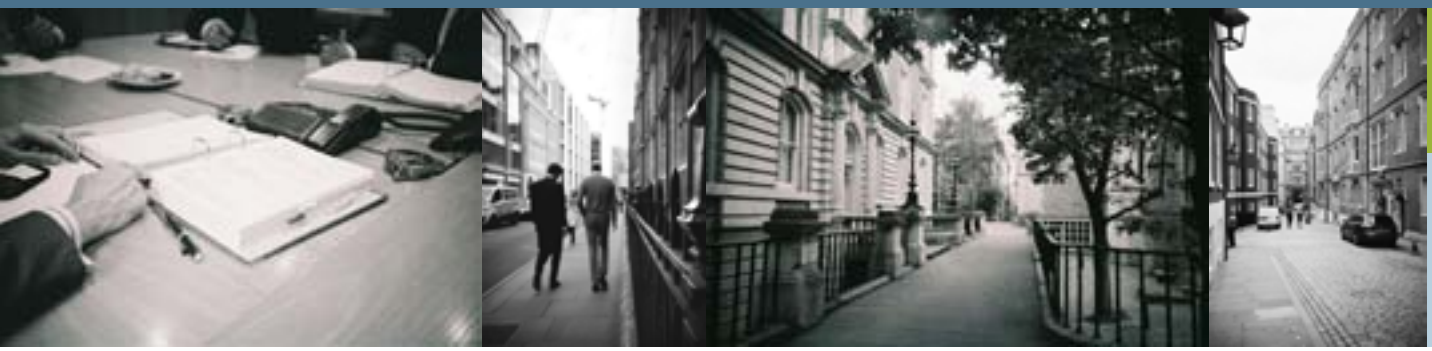
[4] SMART = Specific, Measurable, Achievable, Relevant and Timely.

Feedback

We welcome your comments, constructive criticism and feedback on how we might improve The Mediation Advocacy Standards in future versions. We would also like to hear about your experiences in applying it to your work.

Please email us at secretary@scmastandards.com or use the Contact Form located at http://www.scmastandards.com/contact.html

The quality mark that drives specialist skills required by mediation advocates



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