



COMMUNITY SCHEMES OMBUD SERVICE

CONCILIATOR AND ADJUDICATOR CODE OF CONDUCT

2015

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1. INTRODUCTION

- 1.1 This Code of Conduct (the Code) applies to all Conciliators and Adjudicators appointed by the Community Scheme Ombud Service (CSOS) in line with the Community Schemes Ombud Service Act No 9 of 2011 (the Act). Conciliators and Adjudicators are responsible for conducting themselves in a professional and ethical manner. The Code serves as a guide and cannot anticipate all possible situations in which Conciliators and Adjudicators may be called upon to exercise judgment about appropriate conduct.
- 1.2 All persons appointed as Conciliators and Adjudicators are required to comply with the general Code of Conduct applicable to all CSOS employees and are bound by the following CSOS values;
- **Service Excellence:** CSOS will provide best dispute resolution services to its clients in a timely and responsive manner.
 - **Independence:** CSOS will act independently and objectively in the undertaking of its activities.
 - **Transparency:** CSOS will execute its functions in an open and transparent manner and ensures that it is easily accessible to its clients.
 - **Integrity:** CSOS will strive to execute its functions in an honest, ethical, transparent and reliable manner.
 - **Innovation:** CSOS will strive to apply innovative capabilities to improve its service delivery.
 - **Fairness:** CSOS will make decisions in a fair and impartial manner that espouses the principle of Ubuntu.
- 1.3 In addition to the Code, Conciliators and Adjudicators are required to comply with the provisions of the Constitution of the Republic of South Africa Act, 1996 (the Constitution) Promotion of Administrative Justice Act, the CSOS Act and its Regulations.

2. CODE OF CONDUCT

2.1 Acceptance of Assignment

- 2.1.1 Before accepting an appointment to a case, a Conciliator or Adjudicator must ensure that s/he is able to conduct the conciliation or adjudication independently, impartially and expeditiously.

2.2 Impartiality

- 2.2.1 A Conciliator or Adjudicator must be impartial and fair to the parties, and be seen to be so. Following from this, a Conciliator or Adjudicator must disclose to the Ombud any information which may lead to the impression that s/he may not be impartial or fair, including, that:

- There is an actual, potential or apparent conflict of interest between the Conciliator or Adjudicator and any of the parties, the Conciliator or Adjudicator must immediately disclose this to the Ombud.
- A Conciliator or Adjudicator (or any member of his/her firm or company) has acted in any capacity for any of the parties on previous matters not related to the dispute at hand.
- A Conciliator or Adjudicator has a financial or any other interest (direct or indirect) in any of the parties or the outcome of the dispute resolution process; or
- A Conciliator or Adjudicator has any confidential information about the parties or the matter which is the subject of conciliation and/ or adjudication derived from external sources.

2.2.2 If, at any stage during the conciliation and/or adjudication proceedings, new circumstances arise that could give rise to doubt as to the impartiality or independence of the Conciliator or Adjudicator, such information must immediately be reported to the Ombud. The Ombud shall have the discretion to appoint a substitute Conciliator or Adjudicator.

2.2.3 A Conciliator or Adjudicator (or any member of his/her or company) is precluded from acting for any of the parties subsequently in any matter related to or arising out of the subject matter of the conciliation or adjudication whilst still in the employ of CSOS.

2.2.4 A Conciliator or Adjudicator should not engage in conduct that exploits his/her position of authority.

3. CONFIDENTIALITY

3.1 Any document or information supplied for and/or disclosed in the course of the conciliation or adjudication must be kept confidential. A Conciliator or Adjudicator can only disclose the same if required to do so by law, or pursuant to an order of a court, or with the written consent of all the relevant parties.

3.2. A Conciliator or Adjudicator should not make public comment in the media or any public forum, orally or in writing, on any aspect of a matter before them.

4. PREPARATION AND DILIGENCE

4.1 A Conciliator or Adjudicator must prepare appropriately before the commencement of the conciliation or adjudication.

4.2 A Conciliator or Adjudicator should carry out his/her role in a conscientious and diligent manner.

5. RULES FOR CONDUCTING CONCILIATIONS AND ADJUDICATION

- 5.1 In conducting proceedings, Conciliators or Adjudicators should give special attention to the right of equality before the law and the right of equal protection and benefit of the law and must not unfairly discriminate or display any bias or prejudice based upon a ground set out in section 9(3) of the Constitution.
- 5.2 Adjudicators should resolve all cases before them by findings of fact and by applying the law (and equity) in a fair hearing. This includes:
 - 5.2.1 the duty to allow both parties to be heard; and
 - 5.2.2 the duty to remain and to be seen as impartial
- 5.3 Conciliator or Adjudicators should act in accordance with the commonly accepted degree of decorum, and requires, parties, witnesses and the public to act likewise.
- 5.4 A Conciliator or Adjudicator does not exert undue influence to obtain a settlement or a concession from any party. In this regard, a member usually refrains from expressing views about the merits or demerits of the case unless requested by both the parties.
- 5.5 Adjudicators should apply the law to the evidence in good faith and to the best of their ability. The prospect of disapproval from any person, institution, or community must not deter adjudicators from making the decision that they believe is correct based on the law and the evidence.
- 5.6 Adjudicators should endeavour to ensure that decisions are rendered in a timely manner. Where written reasons are to be given, adjudicators should strive to ensure that they are prepared with reasonable promptness having regard to all the circumstances including, balancing the rights and interests of the parties, public interest factors, as well as to the urgency of the matter, the length of the proceeding and its complexity.

6. RECUSAL

- 6.1 A Conciliator or Adjudicator recuses him or herself from a case if either a reasonable suspicion of bias or a conflict of interest exists based upon objective facts. A Conciliator or Adjudicator does not recuse him or herself on insubstantial grounds.
- 6.2 A Conciliator and/or Adjudicator who is a practising attorney does not sit in any case in which firm, law centre or legal aid clinic, was directly involved as either attorney of record or in any other capacity.
- 6.3 A Conciliator or Adjudicator who is a practising attorney does not sit in any case in which his/her former firm, law centre or legal aid clinic, was directly involved as either the attorney of record or in any other capacity before their appointment until all indebtedness between the Conciliator or Adjudicator and the firm, law centre or legal aid clinic has been settled.

- 6.4 A Conciliator or Adjudicator who is serving concurrently as an employee or consultant or representative of a party in any case before the Service does not sit in that case.
- 6.5 A Conciliator or Adjudicator who was an employee or consultant or representative of a party in any case before CSOS does not sit in that case until all indebtedness has been settled.
- 6.6 If the circumstances requiring recusal are not known to the Conciliator and/or Adjudicator prior to the hearing of the case the Conciliator or Adjudicator discloses the circumstances when they become known to the Conciliator or Adjudicator r.
- 6.7 The burden of recusal rests on the Conciliator or Adjudicator. After appropriate recusal and despite the contents of paragraphs 6.1 to 6.6 of the Code, a Conciliator or Adjudicator may serve if both parties so request. However, if the Conciliator or Adjudicator believes or perceives that there is a clear conflict of interest the Conciliator or Adjudicator should confirm the recusal, irrespective of the expressed desires of the parties.

7. MEMBERSHIP OF ORGANISATIONS AND CONTROVERSY

- 7.1 A Conciliator and/or Adjudicator does not take part in the activities of any organisation that practices discrimination inconsistent with the Constitution.
- 7.2 A Conciliator or Adjudicator does not become involved in any political controversy or activity as a Conciliator or Adjudicator except where it is necessary to discharge the office of CSOS.

8. GIFTS AND PERSONAL ADVANCEMENT

- 8.1 A member does not accept any gift, advantage or privilege that directly or indirectly relates to membership of the CSOS panel of Conciliators or Adjudicators or can reasonably be perceived as being calculated to influence the Conciliator or Adjudicator in the performance of the Conciliator or Adjudicators his/her duties.