



TSWELOPELE ADR (PTY) LTD

ANNEXURE M

DISCIPLINARY POLICY AND SANCTIONS FRAMEWORK

Aligned with NABFAM National Standards | ADRP-SA | Gauteng Mediation Protocol | POPIA Act 4 of 2013
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Approved by: Adv. Charlton M. Rex — Chief Executive Officer
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1. PURPOSE AND SCOPE

This Disciplinary Policy and Sanctions Framework ("the Policy") governs the conduct of all mediators and affiliated practitioners on the Tswelopele ADR (Pty) Ltd Mediation Panel ("Panel Members"). It establishes a fair, transparent, and proportionate process for investigating and adjudicating allegations of misconduct, and prescribes the sanctions applicable upon a finding of guilt.

This Policy applies to:

- All accredited mediators on the Tswelopele ADR Panel;
- All staff and contractors acting on behalf of Tswelopele ADR in a mediation capacity; and
- Any person acting under the authority or auspices of Tswelopele ADR in a professional capacity.

This Policy is aligned with the NABFAM National Standards for Family Mediation, the Gauteng Mediation Protocol, ADRP-SA Standards, the Complaints Procedure Manual (Annexure F), and the Code of Professional Conduct for Mediators (Annexure E).

2. GUIDING PRINCIPLES OF DISCIPLINARY PROCESS

All disciplinary proceedings under this Policy are governed by the following fundamental principles:

Audi Alteram Partem: No disciplinary finding may be made against any person without affording them a full and fair opportunity to be heard.

Nemo Iudex in Sua Causa: No person may adjudicate a matter in which they have a personal interest or conflict.

Proportionality: Sanctions imposed must be proportionate to the gravity of the misconduct and the circumstances of the respondent.

Consistency: Like cases must be treated alike; the Disciplinary Panel must be guided by precedent and the sanctions matrix.

Confidentiality: All proceedings are confidential unless disclosure is required by law, a court order, or the interests of public protection.

Presumption of Innocence: The respondent is presumed innocent until a finding of guilt is made on a balance of probabilities.

3. CLASSIFICATION OF MISCONDUCT

Misconduct is classified into three categories according to gravity. The classification determines the procedural track and the range of available sanctions:

CATEGORY A — MINOR MISCONDUCT

Procedural or administrative breaches that do not directly harm parties or undermine the integrity of a mediation process.

Examples	Initial Sanction Range
Late submission of post-mediation documentation.	Verbal or written warning.
Failure to update availability on the ADR Tech PA Platform.	Written warning.
Minor administrative non-compliance with Tswelopele ADR procedures.	Corrective instruction.
Failure to submit CPD records by the annual deadline.	Written warning; CPD remediation plan.

CATEGORY B — SERIOUS MISCONDUCT

Conduct that undermines the integrity of mediation, harms parties, or breaches professional obligations in a significant way.

Examples	Initial Sanction Range
Failure to disclose a known conflict of interest prior to accepting a referral.	Formal reprimand; supervised practice; suspension of referrals.
Breach of party confidentiality without lawful justification.	Formal reprimand; suspension pending investigation.
Exceeding the mediator's role by providing legal advice or adjudicative decisions.	Formal reprimand; mandatory retraining.

Examples	Initial Sanction Range
Unprofessional conduct toward parties, staff, or colleagues.	Formal reprimand; conditions on continued practice.
Persistent non-compliance with CPD requirements after warning.	Suspension from panel pending compliance.

CATEGORY C — GROSS MISCONDUCT

Conduct of the most serious nature that fundamentally undermines the integrity of mediation, causes serious harm, or constitutes criminal or fraudulent behaviour. May result in immediate suspension and removal.

Examples	Initial Sanction Range
Sexual harassment, assault, or abusive conduct toward any party or colleague.	Immediate suspension; removal from panel; referral to professional body and SAPS.
Deliberate manipulation of a mediation outcome in favour of one party.	Immediate suspension; removal from panel; referral to ADRP-SA/NABFAM.
Fraud, forgery, or misrepresentation in connection with mediation services or credentials.	Immediate removal; referral to SAPS and relevant professional regulatory body.
Serious breach of confidentiality causing demonstrable harm to a party.	Suspension; removal; referral to professional body; potential civil liability referral.
Conduct of a criminal nature in connection with mediation practice.	Immediate removal; mandatory referral to SAPS and professional regulatory body.
Accepting bribes or corrupt payments in connection with any mediation engagement.	Immediate removal; referral to SAPS; referral to relevant professional body.

4. SANCTIONS FRAMEWORK

The following sanctions are available to the Disciplinary Panel, applied in accordance with the category of misconduct and the circumstances of the case. Sanctions are not mutually exclusive and may be imposed in combination:

Level	Sanction	Description and Conditions
1	Verbal Warning	Informal; recorded on file for 6 months. Applicable to first-instance minor procedural breaches.
2	Written Warning	Formal; recorded on file for 12 months. Two written warnings within 24 months may escalate to a higher-level sanction.
3	Formal Reprimand	A formal written censure issued by the Disciplinary Panel and recorded on the mediator's permanent file.
4	Corrective Conditions	The mediator continues to practice subject to specified conditions: mandatory retraining, supervised practice, mentorship, or restrictions on case types accepted.

Level	Sanction	Description and Conditions
5	Suspension of Referrals	Temporary cessation of new case referrals from Tswelopele ADR for a defined period (1–6 months), with reinstatement subject to compliance.
6	Suspension from Panel	Temporary removal from the Tswelopele ADR Panel for a defined period (1–12 months). The mediator may not hold themselves out as a Tswelopele ADR panelist during the suspension period.
7	Removal from Panel	Permanent removal from the Tswelopele ADR Panel. The mediator ceases to be affiliated with the Institution in any capacity.
8	External Referral	Referral of findings to the relevant professional regulatory body (GCB, LSSA, SACSSP, BHF), ADRP-SA, NABFAM, or the South African Police Service, as applicable.

5. DISCIPLINARY PROCESS — STEP BY STEP

STEP 1 Receipt of Complaint or Trigger Event

A complaint is received from a party, colleague, or third party, or a trigger event is identified by Tswelopele ADR (e.g., adverse finding by external body, criminal charge). The complaint must be submitted in writing to the Tswelopele ADR Secretariat using the Complaints Submission Form (Annexure F). Anonymous complaints may be investigated at the discretion of the CEO.

STEP 2 Initial Assessment (5 Working Days)

The CEO or designated Complaints Officer conducts an initial assessment to determine: (a) whether the complaint falls within the scope of this Policy; (b) the prima facie category of misconduct; and (c) whether interim measures (see Section 8) are warranted. The complainant and respondent are notified of receipt within 5 working days.

STEP 3 Formal Investigation (20 Working Days)

A Complaints Investigator (internal or independent) is appointed to gather evidence, interview witnesses, and compile an Investigation Report. The respondent is served with a Notice of Investigation and afforded the opportunity to submit a written response within 10 working days. The Investigation Report is completed within 20 working days of appointment.

STEP 4 Disciplinary Hearing

If the Investigation Report discloses prima facie misconduct, a formal Disciplinary Hearing is convened. The respondent receives at least 5 working days' written notice of the hearing, the charges, and the evidence. The respondent may be accompanied by a colleague or legal representative. The hearing is chaired by the Disciplinary Panel (see Section 6) and is conducted according to the principles in Section 2.

STEP 5 Finding and Sanction (5 Working Days)

The Disciplinary Panel deliberates and issues a written Finding and Sanction Notice within 5 working days of the conclusion of the hearing. The Notice sets out the charge(s), the finding, the sanction, the reasons, and the right of appeal. Both parties are notified simultaneously.

STEP 6 **Implementation and Monitoring**

Sanctions are implemented immediately unless stayed pending an appeal. The Secretariat records the outcome on the mediator's file, updates the ADR Tech PA Platform, and notifies relevant external bodies where required. Compliance with corrective conditions is monitored by the Training and Accreditation Committee.

6. THE DISCIPLINARY PANEL

The Disciplinary Panel for Category B and C matters shall comprise:

- The Chief Executive Officer of Tswelopele ADR (or a Senior designate), as Chair;
- One Senior Tswelopele ADR Panel Mediator (not involved in the matter); and
- One independent practitioner from the ADR profession, where practicable.

For Category A matters, the CEO or Complaints Officer may act as sole adjudicator. No member of the Disciplinary Panel may have a prior personal relationship with the respondent or any conflict of interest in the matter. Any Panel member with a conflict must recuse themselves and be replaced.

7. RIGHTS OF THE RESPONDENT

The respondent is entitled to the following rights throughout the disciplinary process:

- The right to be informed of the specific charges in writing before any hearing;
- The right to receive copies of all evidence and the Investigation Report;
- The right to submit a written response to the charges prior to the hearing;
- The right to attend the hearing and present their case, including calling witnesses;
- The right to be accompanied by a colleague, fellow mediator, or legal representative;
- The right to cross-examine witnesses and challenge evidence;
- The right to receive a written finding with reasons; and
- The right to appeal in accordance with Section 11.

8. INTERIM SUSPENSION PENDING INVESTIGATION

The CEO may impose an interim suspension of a mediator's panel membership pending the outcome of a disciplinary investigation where:

- The alleged misconduct is of a Category C nature;
- There is a reasonable apprehension that the mediator's continued practice poses a risk to parties or the Institution; or
- A criminal charge has been laid against the mediator in connection with their professional conduct.

An interim suspension is not a finding of guilt. The respondent retains all rights under Section 7 and must be notified in writing of the reasons for the interim suspension within 24 hours of its imposition. The interim suspension may be reviewed by the Disciplinary Panel on application by the respondent.

9. REPORTING TO EXTERNAL BODIES

Tswelopele ADR is committed to the protection of the public and the integrity of the ADR profession. Findings of Category B or C misconduct that engage professional obligations will be reported to the relevant external body:

Conduct / Regulatory Body	Trigger for Referral
General Council of the Bar (GCB)	Misconduct by an Advocate involving breach of professional conduct rules.
Legal Practice Council (LPC) / LSSA	Misconduct by an Attorney involving breach of professional conduct rules.
SA Council for Social Service Professions (SACSSP)	Misconduct by a Social Worker or Social Auxiliary Worker.
NABFAM	Misconduct by a NABFAM-accredited family mediator.
ADRP-SA	Misconduct by any ADRP-SA-accredited mediator.
South African Police Service (SAPS)	Criminal conduct; fraud; assault; sexual offences; bribery.
Health Professions Council of SA (HPCSA)	Misconduct by a registered health professional acting as mediator.

10. RECORD-KEEPING AND CONFIDENTIALITY

Record Retention: All disciplinary records, including complaints, investigation reports, hearing transcripts, findings, and sanctions, are retained for a minimum of 7 years from the date of the finding.

Confidentiality: All disciplinary proceedings and records are strictly confidential. Access is limited to the CEO, the Disciplinary Panel, the Secretariat, and authorised legal advisors.

POPIA Compliance: All personal information processed in the course of disciplinary proceedings is handled in accordance with POPIA Act 4 of 2013 and the Tswelopele ADR Privacy Policy.

ADR Tech PA Platform: Disciplinary outcomes and sanctions are recorded on the mediator's profile in the ADR Tech PA Platform and are flagged in the panel register accessible to the Vetting Committee during re-vetting.

Public Disclosure: Findings of removal from the panel following Category C misconduct may be disclosed on the Tswelopele ADR Public Register where required in the interests of public protection.

11. APPEALS

A respondent who wishes to appeal a disciplinary finding or sanction must:

- Submit a written Notice of Appeal to the CEO within 10 working days of receipt of the written Finding and Sanction Notice;
- Set out the grounds of appeal clearly, identifying either an error of procedure, an error of fact, or a sanction that is disproportionate to the misconduct;
- The CEO appoints an independent Appeals Adjudicator (not previously involved in the matter) within 5 working days of receipt of the Notice of Appeal; and
- The Appeals Adjudicator issues a written decision within 20 working days. The Appeals decision is final and binding.



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RECOGNISED MEDIATION ORGANISATION | ADRP-SA MEMBER

Approved: Gauteng Mediation Protocol | AFSA-Accredited Mediators

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NOTE: The lodging of an appeal does not automatically suspend the implementation of a sanction unless the Appeals Adjudicator grants a stay of execution upon application.

12. REVIEW CYCLE

This Policy shall be reviewed every two (2) years, or earlier if:

- Legislation, court directives, or NABFAM/ADRP-SA standards require amendment;
- Patterns of complaints or findings reveal gaps in the classification or sanctions framework; or
- Feedback from the Disciplinary Panel or external regulatory bodies necessitates refinement.

APPROVED BY:

Adv. Charlton M. Rex — Chief Executive Officer, Tswelopele ADR (Pty) Ltd

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