

# Ethics for Mediators

Centre for Dispute Resolution Cluster

State Courts

19 November 2021

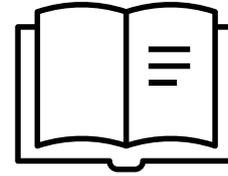
Low Lih Jeng

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Kintsugi (金継ぎ, "golden joinery")  
Mending broken pottery with gold

# Codes for Professional Conduct



State Courts

Mediation Act,  
Singapore

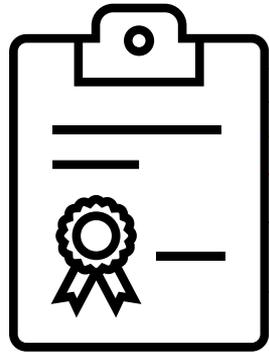
Singapore  
International  
Mediation Institute  
(SIMI)

Singapore Mediation  
Centre  
(SMC)

Law Society of  
Singapore

International  
Mediation Institute  
(IMI)

# Common Ethical Standards



Competency

Confidentiality

Disclosure of Conflict

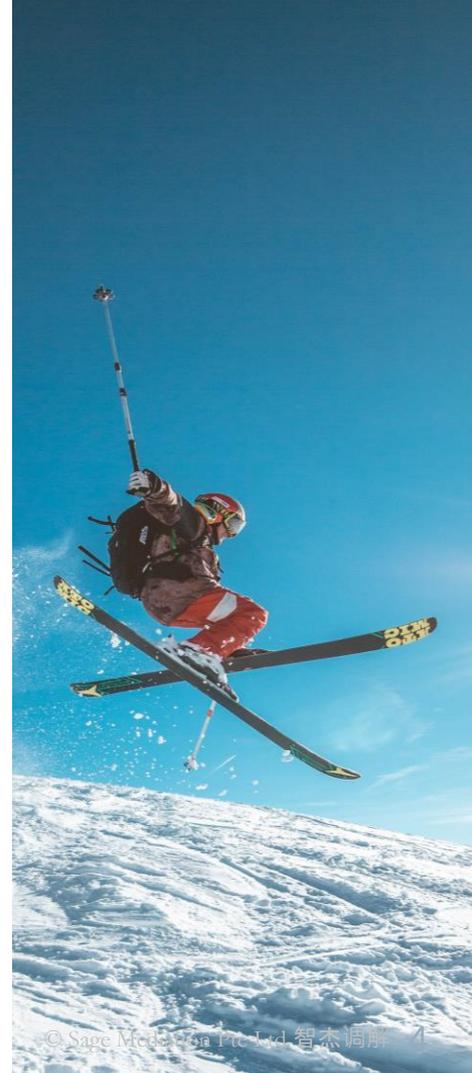
Fairness and Impartiality

Terms of Appointment

Withdrawal

# Competency

- ▷ Mediation process
- ▷ Mediation skills
- ▷ Technical skills
  - Video, audio, lighting
  - Breakouts
  - Signing settlement agreements
- ▷ Subject matter knowledge
  - Substantive knowledge vs party autonomy vs repairing the relationship



# Scenario #1

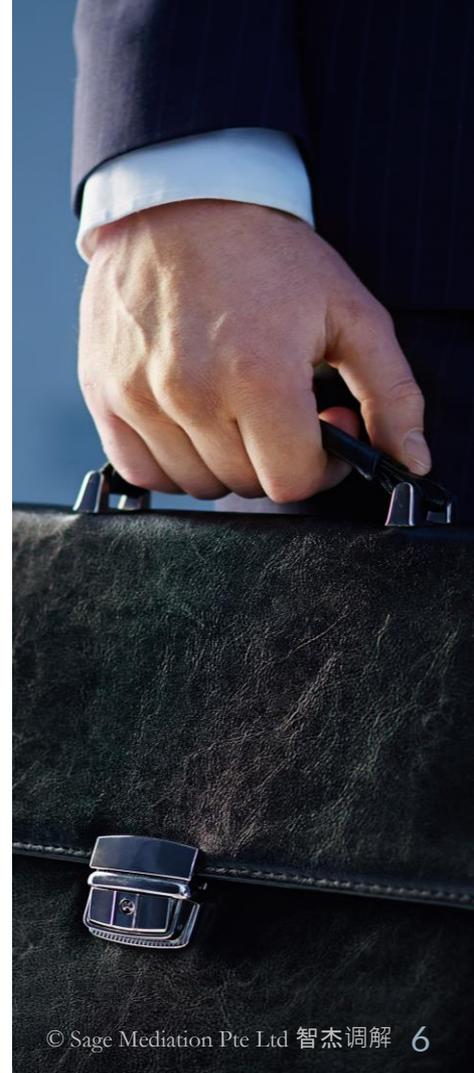
The Mediator does not practise family law.

Can the Mediator accept a dispute involving division of matrimonial assets, access to and custody of children?



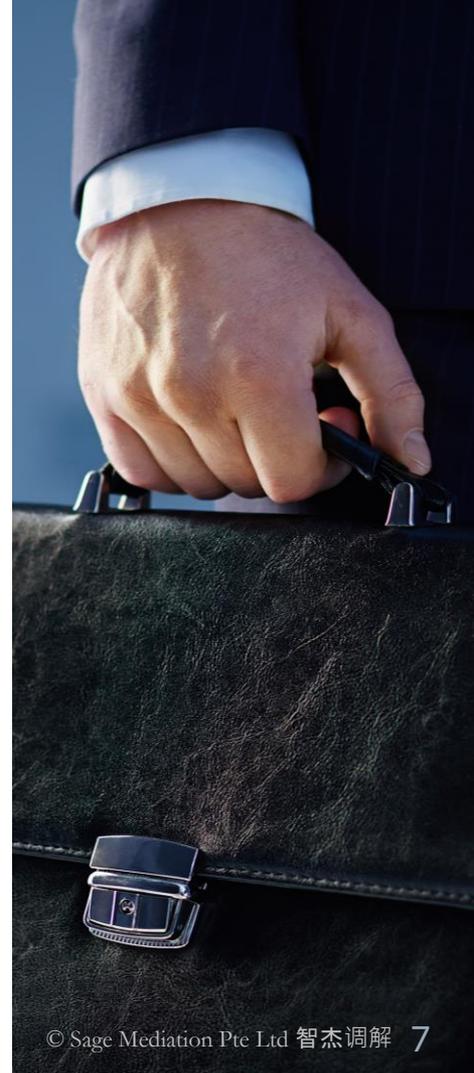
# Confidentiality

- ▷ CANNOT breach confidentiality of parties
- ▷ Exceptions vary:
  - Consent of parties
  - Compelled by law, law enforcement agency or regulatory authority
  - Disclosure is necessary to prevent death, serious physical harm or damage, or an illegal act
  - Sufficiently anonymised, specific details are not disclosed, for educational, research, record-keeping, auditing or verification purposes
  - Already in public domain
  - Cannot be a witness on behalf of parties in Court proceedings



# Confidentiality

- ▷ Online mediations
  - Presence of third parties
  - Recordings
  - Exchange of documents: cloud, chat



## Scenario #2A

What does the Mediator do if:

Parties in a high-profile dispute write in social media that their dispute was mediated successfully without mentioning the Mediator's name.

For the purpose of business development, can the Mediator say that he was the mediator?



# Scenario #2B

What does the Mediator do if:

During a mediation, Mediator runs out of ideas on what to do next.

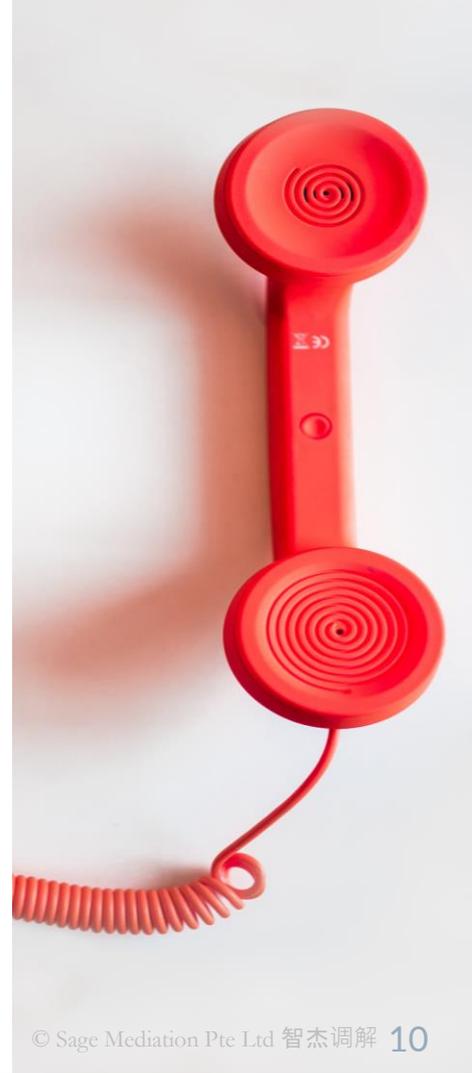
Can the Mediator

- consult a colleague in the office?
- message someone for help?



# Disclosure of Conflict

- ▷ MUST disclose before and during mediation
  - Pre-existing professional and personal relationships
  - Professional or financial interests
- ▷ Seek approval of parties
- ▷ Cannot act in advisory capacity / or be employed for a period after mediation unless parties agree
- ▷ State Courts Code
  - To withdraw if “an objective third party” views that mediator might “undermine the integrity” of the mediation
  - Cannot “establish any relationship” that would raise questions about the integrity of the mediation



## Scenario #3

Can the Mediator accept the case if:

- A. Mediator and **Party's witness** are golf buddies.
- B. **Mediator's spouse** and Party are volunteers in an organisation.



# Fairness & Impartiality

- ▷ Procedural
  - Explain process
  - Equal treatment: allow equal participation in the process
- ▷ Substantive
  - Remain neutral
  - Absence of bias against parties' personal background e.g. nationality, education, profession, age
- ▷ State Courts
  - Respect parties' right to decide at all times
  - No undue influence, manipulate, threaten or coerce



## Scenario #4

What does the Mediator do if:

A's lawyer drafts a settlement agreement and adds a new clause for payment of a larger amount and costs if B defaults.

B accuses A's lawyer of dishonesty.



# Terms of Appointment

- ▷ Fees are fixed including overtime charges
  - Mediator's qualifications
  - Complexity
  - Duration
  - Venue costs
- ▷ Services to be provided
  - Pre-mediation: meetings, case management
  - Post-mediation: feedback by parties



## Scenario #5

Parties have reached an impasse. Can the Mediator:

- A. Ask the lawyers to reduce their legal fees to make up for the gap in the settlement proposals between the parties.
- B. Offer the parties a discount if they settle within the next 30 minutes.



# Withdrawal

- ▷ Illegal or unconscionable – IMI, SIMI
  - An unconscionable outcome reflects one party’s exploitation of an existing power imbalance to the degree that the resulting agreement “shocks the conscience” and violates accepted legal and cultural norms of fairness –IMI
- ▷ State Courts
  - Parties abusing the process
  - Delaying proceedings
  - Achieving an unfair advantage
  - Pursuing an illegal or objectionable purpose



# Scenario #6A

What does the Mediator do if:

Party, who has a good legal case, suddenly agrees to accept \$5,000 to settle a \$200,000 claim for unpaid salaries.



## Scenario #6B

What does the Mediator do if:

**Boss:** A has to reimburse monies he admitted stealing.

**A:** Boss, I have reported your tax evasion to the police.

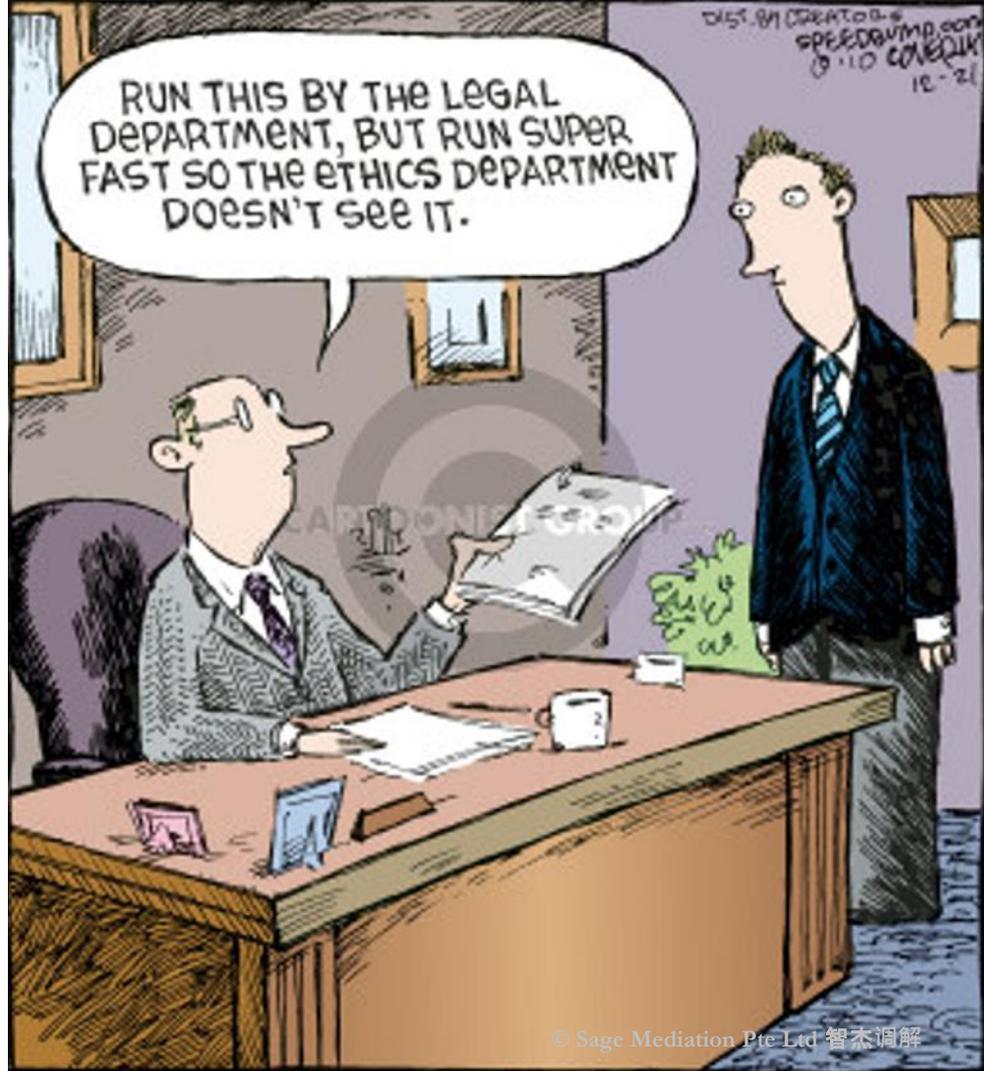
**Boss:** I will drop the claim against A. Record in the settlement agreement that A:

- Will withdraw A's police report.
- Undertakes not co-operate if authorities investigate.



# Any questions?

Thank you!



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