

# **Council for Occupational Standards and Certification**

**Research and Technical Services Unit**

## **OCCUPATIONAL STANDARD**

**Occupation: Mediator**

**Domain: Other non-classified areas**

**Bucharest 2000**

Pilot Unit:

Foundation for Democratic Changes

Occupational standard project's coordinator:

Nicoleta Mănescu

Members of the editing team of the occupational standard:

Elisabeta Anca Ciucă

Vasile Virgil Șoncutean

Expert reviewers:

Cristinel Adrian Bădilă

Silviu Erușencu

Standard COSA approved at 28-06-2000

COSA Code: X - 239

© copyright 2000 , COSA - U.C.S.T.

All rights herein are reserved.

This may not be reproduced in part or whole, cannot be used or cited in other  
paper works without COSA's approval

## *Mediator*

### **Description of occupation**

The Standard refers to mediation as the activity in which two or more parties in conflict are assisted by a third neutral party, named mediator, neutral and impartial – vs. the parties and the conflict content, and without discretion in terms of solutions adopted by the parties regarding the concerned conflict resolution on the basis of their common interests.

The mediator conducts research, organization and planning, reporting as well as specific activities.

The specific activities are to facilitate communication between the parties, to analyze information, the conflict analysis and the facilitation of the conflict resolution agreements.

*Mediator*

UNITS OF COMPETENCE

*Areas of competence*

*Units of competence*

Workplace general skills

Ensuring the necessary conditions for carrying out  
Facilitating communication between parties  
Operation with documents  
Planning the conflict resolving activity

Specific competencies

Conflict analysis  
Informations analysis  
Collecting informations  
Facilitating agreements  
Conclusion of conflict resolution contracts  
Drafting documents

## Ensuring the necessary conditions for carrying out the activity

Unit description

### ELEMENTS OF COMPETENCE

1. Establishes the basic rules for the activity to take place
  
2. Checks the authority and the intent of the parties to sign the final agreement
  
3. Prepares the framework for conducting the mediation

### PERFORMANCE CRITERIA

- 1.1. The establishing principles are consistent with the methodology and the practice of mediation.
- 1.2. The rules are understood and accepted by the parties.
- 1.3. The rules are simple, clear, justified.
- 1.4. The rules are impartial and neutral.
  
- 2.1. By asking, the availability and authority of the parties to sign agreements is checked.
- 2.2. Legal requirements are met.
  
- 3.1. The deployment of mediation is optimal in terms of logistics.
- 3.2. The deployment ensures a minimum of comfort and it is pleasant.
- 3.3. The framework provides the privacy of the discussion by eliminating potential sources of distraction or external intervention during the mediation process.

Range of variables

Rules should be:

- simple
- understood by the parties
- useful
- accepted by the parties

The location should be:

- convenient
- familiar
- equipped with furniture and logistics
- necessary to ensure the discussions' private character
- neutral: not advantage either party

Guide for evaluation

Necessary knowledge:

- basic knowledge of psychology and sociology
- basic knowledge of law
- knowledge about how to conduct the mediation process
- knowledge to organize an appropriate working environment

The evaluation will follow:

- how the availability and the authority of the parties to sign the final agreement is checked
- how the work rules are designed and showed
- the clarity and the usefulness of the rules set
- how the workspace is organized

## Facilitating the communication between parties

### Unit description

The unit refers to the mediator's necessary skills in order to help communication between the conflicting parties, by maintaining an atmosphere of respect and neutrality where the discussion is focused on issues and not on people, as well as building confidence regarding the possibility of finding solutions to solve the conflict in question.

### ELEMENTS OF COMPETENCE

1. Presents the working mode and the objectives of mediation
2. Provides additional information about mediation to the parties
3. Listens to the parties, presenting
4. Facilitates the generation of information by the parties
5. Restates and concludes the statements of the parties
6. Builds the confidence between parties
7. Focuses the discussion over the issues (not on personalities or emotional states)
8. Maintains an atmosphere of respect and neutrality between parties

### PERFORMANCE CRITERIA

- 1.1. The information is given directly to the parties in conflict.
- 1.2. The working method and the objectives of mediation are presented clearly, concisely and unequivocally.
- 1.3. The presentation is comprehensive of recipes, captures essential aspects related to the mediation process.
- 1.4. The parties understand their role and that of the mediator in the mediation process.
  - 2.1. Information relates only to the mediation process.
  - 2.2. Informations are necessary and sufficient for the proper conduct of the mediation process during the given case.
- 3.1. All issues that the parties directly bind the to the given conflict, are presented.
- 3.2. The presented problems are understood as content and importance.
- 3.3. The presented issues are concisely, clearly, positively and unequivocally expressed.
- 4.1. The informations are useful and necessary for the good understanding of the problems.
- 4.2. The informations are formulated in neutral, impartial and positive terms.
  - 5.1. The reformulation respects the meaning of the parties' statements and it is supported by these.
  - 5.2. The conclusions are made neutral, impartial and positive.
  - 5.3. The findings help parties to better understand different aspects of the conflict.
- 6.1. All emotions are identified and clarified.
- 6.2. The discussion encourages the parties to express their fears, desires, hopes.
- 6.3. All emotions are reformulated in neutral, impartial and constructive terms.
- 7.1. The emotions are separated from the issues
- 7.2. The discussion refers to the problems, not the expression or presentation of those.
- 7.3. The discussion between parties respects the principles of neutrality and impartiality.
- 8.1. The rules of the discussion's conduct are followed.
- 8.2. The discussion between parties takes place in an atmosphere of respect and neutrality.

Range of variables:

The information on the mediation process is about:

- the role of the parties
- the role of the mediator
- the stages of the process
- the objectives of each stage

The work mode:

- the timing of the mediation process
- the following of the rules established and accepted by the parties

The rules concern:

- the way the discussions are, in the process of mediation
- the manner the problems, expectations, fears are presented
- how the parties address to each other
- etc.

The issues relate to:

- the impact of conflict situations on each side
- the view on the conflict
- expectations concerning the evolution of the conflict

Evaluation guide

Necessary knowledge:

- the stages of the mediation process
- notions of psychology, sociology
- the thorough knowledge of Romanian language or the language that runs the mediation process

Skills, attitudes:

- active listening
- neutral, impartial, positive rephrasing
- ability to ask questions
- analysis and synthesis capability
- ability to separate people from problems
- neutrality, impartiality,
- constructive attitude

The evaluation will follow:

- how the stages of the mediation process are presented
- how the parties are listened presenting their problems
- how the statements of the parties are restated and concluded
- how the parties are helped to generate additional information
- how the emotions are identified and kept under control

## **The use of documents**

Unit description

### **ELEMENTS OF COMPETENCE**

1.Establishes the working documents

2. Draws up documents

3. Archives documents

### **PERFORMANCE CRITERIA**

1.1.The working papers are designed to be relevant in relation to the activity undertaken.

1.2. The documents determined are necessary, prove their utility in the undertaken activity.

1.3. The documents are easy to follow and to be filled.

2.1. The preparation of documents is made in accordance with the legal provisions.

2.2. The documents contain complete information and avoid redundancy.

2.3. The documents are prepared in clear, concise and neutral terms.

3.1. The archiving of documents is done at the right time, that is when they have fulfilled their mission in the current activity.

3.2. The archiving activity is logically organized and structured so that the access to information to be easily made.

3.3. The keeping conditions ensure the documents quality.

Range of variables

The working documents are:

internal  
supporting  
in relation to third parties

The documents contain a minimum of:

name and identification number  
date of preparation  
space for name and signature of the person who prepared it  
the object (content)  
specific data on the case

Principles for preparing the documents:

to comply with legal requirements for the supporting ones  
clear  
concise  
sufficiently explicit  
readable

Archival principles:

logical structure of input, search and completion of the archive  
the documents' storage conditions should be: lack of moisture, without danger of fire, on suitable media  
support

The methodology for determining the internal documents:

an optimal information system to the developed activity will be designed  
the necessary information to be recorded will be determined  
the information will be grouped in documents, in an efficient manner  
the life cycle of each document will be determined starting with its creation / filling up, to its movement  
and its archiving

Evaluation guide

Necessary knowledge:

theoretical info about preparing documents  
the organization of the information system  
Romanian language required for the message construction in terms of style and grammatically  
correctness, and also related to the terms in documents  
basic knowledge of legislation relating to the preparation and storage of documents

The evaluations will follow:

the design of an effective and justified circuit of documents  
the correct and efficient choosing of the archiving methods  
respecting the following principles: simple, complete, irredundant when designing documents  
right choice of the documents' archival place

## **The planning of resolving conflict activity**

Unit description:

### **ELEMENTS OF COMPETENCE**

1. Sets out the steps to resolve conflict

2. Establishes the work plan

Range of variables

The work plans' content:

stages

terms

objectives

necessary resources

used methods

evaluation methods

Well defined objective:

simple

concise

measurable

realist

timed

feasible

Evaluation guide

Necessary knowledge:

time and resources management

Skills, abilities, attitudes:

ability to plan

analysis and synthesis capacity

organized person

realistic

The evaluation will follow:

the ability of making a coherent work plan

the ability of evaluating the fulfillment of established objectives

the ability of justifying the stages of the work plan

the ability to comply with the restrictions identified as procedures, instructions, schedules and deadlines

### **PERFORMANCE CRITERIA**

1.1. The work stages are clear, concise, reasoned.

1.2. The working steps have a clearly defined objective.

1.3. The work stages are consistent with the time and financial resources allocated by the parties for solving the conflict.

2.1. The work plan follows procedures, instructions, schedules and identified deadlines.

2.2. The work plan is clear and concise.

2.3. The work plan is justified.

2.4. The work plan is flexible.

## Conflict analysis

Unit description

### ELEMENTS OF COMPETENCE

1. Estimates the purpose, the intensity, and the implications of a conflict
  
2. Establishes if the mediation service is justified or appropriate
  
3. Determines the differences between current practice and the situation on cause
  
4. Initiates the mediation process or refers it, as appropriate

### PERFORMANCE CRITERIA

- 1.1 The purpose, the intensity, and the implications of the conflict are determined.
- 1.2. General, as well as particular aspects of the conflict are identified
  
- 2.1 The impact of the mediation service on the conflict is estimated.
- 2.2 The existence of the necessary elements to assess whether there is consensus building between the parties on a negotiated solution to resolve the conflict, is evaluated
  
- 3.1. The similarities between current practice and given conflict are set.
- 3.2. The differences between current practice and given conflict are set.
  
- 4.1. The need for specific domain knowledge, other than those relating to the mediation process, is estimated.
- 4.2. The need for consultation of specialists from other fields in order to intervene in the conflict is estimated.
- 4.3. The impact on the parties if intervention in the given conflict, is estimated.

## Range of variables

The aim of the conflict may be:

- restoring a property right
- guardianship over the minor
- a property division
- establishment or restoration of a right on the person
- etc.

The implications might be:

- only of the parties
- of the parties and depending third parties
- of a collectivity
- etc.

The elements of the consensus building:

- alternatives
- options
- objective criteria
- ability to communicate
- maintaining the relationship
- balanced power relationship
- the ability to put into practice the final agreement

Specialist from other fields:

- lawyers
- psychologists
- sociologists
- doctors
- technical experts in various fields
- other mediators

Evaluation guide

Necessary knowledge:

- thorough knowledge of the conflict's dynamics
- knowledge of the mediation process
- basic knowledge of psychology, sociology
- basic knowledge of law, specific to the conflict
- general knowledge in the field that the conflict manifests itself
- depth knowledge on alternative dispute resolution ways of solving a conflict

Skills, attitudes:

- the ability to analyze and synthesize
- the ability to assess the information needs to intervene in the conflict and the sources from which this information can be obtained
- the ability to collaborate with other professionals
- active listening
- communication skills
- ability to ask questions
- neutrality, impartiality
- positive, constructive attitude

The evaluation will follow:

- the ability to determine and justify whether the mediation service is suitable
- the ability to correctly determine the purpose, intensity and implications of the conflict
- the ability to recommend other ways to resolve the conflict

## **Analyzing information**

Unit description:

### **ELEMENTS OF COMPETENCE**

### **PERFORMANCE CRITERIA**

1. Identify the problems to be discussed upon

- 1.1 All the issues proposed to be discussed by the parties are identified.
- 1.2. All hidden problems not mentioned previously or unidentified by the parties, are identified and clarified.

2. Highlights the key issues

- 2.1.All essential aspects of the problem in question are identified and highlighted.
- 2.2. Key issues are formulated in neutral, impartial and positive terms.

3. Examines the interpersonal dynamics of the dispute

- 3.1. The ability of the parties to directly negotiate in different stages of the mediation process, is analyzed
- 3.2. It is looked at how the parties discussed the identified issues related to the conflict

Range of variables

The problems relate to:

- the impact of the conflict situation on each party
- views on the conflict
- expectations about the developments of the conflicting situation

Key issues:

- problems, fears, emotional states, expectations, priorities which:
  - significantly help in understanding conflict
  - significantly help to identify solutions
  - significant help in determining the terms of the final agreement

Evaluation Guide

Necessary knowledge:

- the stages of the mediation process
- concepts of psychology, sociology
- knowledge of interviewing techniques
- knowledge of the dynamics of a dispute
- thorough knowledge of Romanian or the language that runs the mediation process

Skills, attitudes:

- analysis and synthesis capacity
- verbal and non-verbal language
- neutrality, impartiality
- positive, constructive attitude
- empathy
- calm, self-control

The evaluation will follow:

- the understanding of verbal and nonverbal language
- the way issues to be discussed are identified
- the ability to identify key aspects of the conflict

## Collecting information

### Unit description

The unit covers the skills necessary to the mediator in order to collect necessary information on the conflict and the parties involved, using additional sources to determine how to deal with the conflict and which restrictions are in place to intervene constructively in solving it.

### ELEMENTS OF COMPETENCE

### PERFORMANCE CRITERIA

1. Sets the information sources.

- 1.1. The established sources provide relevant information on the conflict and the parties.
- 1.2. Sources are available
- 1.3. Sources are complementary, provide a more complete picture of the case.
- 1.4. Sources are sufficient
- 1.5. The sources are reliable

2. Documenting on the case and on the parties.

- 2.1 Information is collected from alternative sources
- 2.2. Informations are relevant to the case
- 2.3. Information is complete
- 2.4. All parties involved, both directly and indirectly in the conflict are identified.
- 2.5. The nature of the conflict is properly determined.

3. Documentation on the procedures, instructions, planning and terms

- 3.1. All technical and legal aspects of the conflict are identified.
- 3.2. All implications on the case are identified.
- 3.3. Information is relevant

Range of variables:

Sources of information are:

- parties to the conflict
- the relevant legislation to the case
- previous cases
- other mediators
- experts, etc.

Technical issues relate to:

- procedures
- planning
- terms
- instructions

Complete informations:

- refers to the parties' potential to conclude an agreement
- refers to the complexity of the case and the opportunity to use mediation
- refers to the situation that caused the conflict and how the parties are currently affected
- identifies the potential existence of common interests of the parties
- identifies the balance of power between the parties
- identify the real desire of the parties to resolve the conflict

Nature of the conflict:

- heritage
- family
- work
- commercial
- ethnic
- religious
- access to resources, etc..

Evaluation guide

Necessary knowledge:

- potential sources of information
- basic law knowledge
- types of conflicts
- mediation process
- dynamics of conflict

Skills, abilities, aptitudes:

- capacity for analysis and synthesis
- capacity to process information
- receptivity
- neutrality, impartiality
- constructive attitude

The evaluation will follow:

- how the list of information sources is drawn up
- how the information they need is chosen
- how the necessary information is selected

## The facilitation of agreements

Unit description

### ELEMENTS OF COMPETENCE

1. Assists parties to generate options

2. Assists the parties to evaluate alternative solutions

3. Establishes the parties' desire to solve dispute

4. Highlights a final agreement's area

5. Clarifies and formulates specific aspects of the final agreement

6. Agrees with the parties upon the agreement and helps them understand the limits of a possible agreement

### PERFORMANCE CRITERIA

1.1. The options relate to future relations between the parties.

1.2. The options include limit variants, namely the best option and the worst option.

1.3. All options that can be imagined by the parties are identified.

2.1. Appropriate solutions to all options are identified.

2.2. Evaluation is complete, covers all the solutions identified, and combinations thereof

2.3. The rating is neutral and impartial.

2.4. The assessment meets the parties' interests.

2.5. The parties understand the various aspects of acceptance of each solution.

3.1. Expectations of each party of the mediation process are identified.

3.2. The motivations of each party that turned to mediation are identified.

4.1. Each other's interests are identified.

4.2. The common interests of the parties are identified.

5.1. All specific issues for implementation of the final agreement are identified.

5.2. All specific issues are raised and clarified.

6.1. The parties unanimously agree to the terms of the final agreement wording

6.2. The parties understand the terms of the final agreement.

6.3. The parties understand the limitations of the final agreement.

Range of variables

Specific issues for the implementation of the final agreement:

timing and space settlement

obligations of each party as for example who, when, how, to whom

rights and obligations after implementation of the final agreement

Limits of the final agreement:

the agreement covers the identified solutions found only for a part of the problems

the agreement might need to have recognizing from an external for

the agreement may contain clauses

The agreement's terms:

the identity of the parties

the agreement's object

date and place of the preparation

special clauses

etc.

Evaluation guide

Necessary knowledge:

thorough knowledge of Romanian or the language that runs the mediation process

the stages of the mediation process

the requirements regarding the formulation of the final settlement

basic knowledge of legislation

basic knowledge of psychology, sociology

basic knowledge specific to the field the conflict runs in

Skills, attitudes

the ability to listen and understand the parts' message

capacity of analysis and synthesis

flexibility

creativity

neutrality

impartiality

positive, constructive, encouraging attitude

The evaluation will follow:

the ability to formulate and clarify specific aspects of the final agreement

the knowledge of the content and objectives of each stage of the mediation process

the ability to identify the essential elements of the final agreement

the ability to assist the parties in order to generate options and solutions to the given conflict

## Contracts settlements for resolving conflicts

Unit description

### ELEMENTS OF COMPETENCE

1. Set the contracts' content

2. Estimates costs

3. Settled contract

### PERFORMANCE CRITERIA

1.1. The content of these contracts respects the clarity criterion in which concerns the terms and expressions used.

1.2. The content of the contracts is comprehensive in terms of the informations regarding the location and the time of their implementation, of identifying all the signing parties its object.

1.3. The contents of the contract is understood and accepted by all parties.

2.1. The costs' estimation is done according to the complexity of the mediated case.

2.2. The costs are estimated depending on the length of deployment of the mediation process.

2.3. the Market value indicates a different criterion for estimating the costs.

3.1 The contract is accepted and signed by all parties.

3.2. The settled contract complies with the legal procedures.

3.3. The settled contract represents the real intention of the parties.

Range of variables:

Informations contained in the contracts:

- name and identification documents of the parties
- name and permit number under which the mediator operates
- time and place of the contract's preparation
- the object of the contract
- the contract's registration number as a document issued by the mediator

Requirements for the cost's estimation:

- the costs include:
  - fixed expenses incurred by the mediation process
  - variable costs
  - share of the administration fees
  - taxes

Evaluation guide

Necessary knowledge:

- general knowledge about the law regarding the system of contracts and transactions between the parties
- Romanian language needed to accurately design stylistically and grammatically the message contained in the contract
- general knowledge of financial management and costing

The evaluation will follow:

- emphasizing the correct expenditure in the estimation done
- the wording of the contract
- the complete number of signatures (parties, media)
- the occurrence of the identification data of the contract

## Drafting documents

Unit description

### ELEMENTS OF COMPETENCE

1. Draws up agreements between parties
  
2. Identifies and proposes clauses to the parties
  
3. Proposes to the parties the consultation of other sources of information or external specialists

### PERFORMANCE CRITERIA

- 1.1. Agreements are made in terms formulated by the parties.
- 1.2. Agreements respect and express the will of the parties.
- 1.3. The agreements exclusively commit the parties directly involved in the mediation process.
- 1.4. Agreements are written in clear, concise terms leaving no room for interpretation.
  
- 2.1. Clauses are necessary and sufficient.
- 2.2. The terms are differentiated.
  
- 3.1. The Consultation helps the parties in the mediation process.
- 3.2. The suggested information sources are authorized.

Range of variables:

Types of agreements:

mediation agreement  
privacy agreement  
final agreement to resolve conflict

Mandatory components of the agreements are:

title of the agreement  
date  
name and identification data of the signing parties  
place and time of carrying out  
the agreement's object  
other special provisions, as appropriate

Sources of information:

legislation  
other similar mediation cases  
on areas specific to the case

External experts:

legal consultants  
other mediators  
experts on areas specific to the case

Principles for writing the agreement:

clear explicit, complete expression  
the parties understand and accept each term of the agreement  
the terms of the agreement expresses the parties' will

Guidelines for evaluation

Knowledge:

Romanian for an explicit and correct expression of the terms of the drafted agreement  
basic knowledge of legislation, specific to the case  
knowledge of psychology and sociology  
information sources  
external experts

Abilities / skills:

ability to analyze and synthesize  
active listening  
positive, constructive reformulation  
communication  
ability to ask questions

The evaluation will follow:

the degree to which the agreement:  
is complete (containing all the particulars of the parties, date, place and signatures of all persons mentioned in the agreement, its object)  
is written in clear, concise terms  
expresses the will of the parties