

## Confidentiality in Mediation

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### Abstract

Mediation is a process in which participants in a conflict using a neutral mediator systematically identify problems and ways to solve them, look for alternatives and try to reach a consensus agreement that would be in their interests (Price, 2014). Mediation, first of all, should be understood as a process that allows parties to push the conflict in the direction of its resolution. Mediation is a targeted intervention that can first ease the conflict, then prepare the ground for making informed decisions, and, finally, solve some problem. Even if not all elements of a dispute are resolved, an existing conflict through mediation can be better understood by its participants and transferred to a manageable level. Mediation is ideal for resolving disputable situations that are based on a significant number of problems and imply the continuation of relations between the parties, since it can create an interaction model suitable for resolving future conflicts.

**Keywords:** confidentiality, mediation.

### Introduction

Under the principle is understood the basic initial position of any scientific system, theory, ideological direction (Spencer & Brogan, 2006). In turn, the principles of mediation are defined as the fundamental principles of organization and conduct of mediation as a non-divisive way of resolving legal disputes (Alrashdan, 2011). It should be noted that in the legal literature there is no single approach to the list and classification of the principles of mediation. The same is true of the approaches to this issue introduced by the national legislation of different countries and international acts. At the same time, in spite of the existing differences, one can distinguish the principles that are called practically by all researchers and are introduced in the legislation of the overwhelming majority of countries - the principle of confidentiality. Confidentiality, or keeping information secret, is the most important principle of mediation. Its meaning is that nothing of what is happening during the procedure becomes known to anyone except the participants in the mediation. Confidentiality provides an opportunity for honest and open conversation, which is necessary for success. Confidentiality in mediation has several levels: from keeping secret information about the conduct of the mediation procedure as such to the free disclosure by the parties of what happened during the procedure (Alrashdan, 2011). The flexibility of the confidentiality regime is that the limits for the distribution of information by the parties are set by themselves. The task of the mediator is only to inform them about the risks and advantages of the communication to third parties of information that became known in the process of conducting mediation (Spencer & Brogan, 2006). Very often, the parties enter into a separate confidentiality agreement, which is attached to the agreement on the mediation procedure.

Confidentiality, in a broad sense, means a rule by virtue of which the fact of conducting a mediation procedure, as well as information, including oral information, and documents that were used during the mediation process, are not subject to disclosure, unless otherwise established by agreement of the parties (Baxendale, 2002). Adherence to this principle implies that everything that is said or discussed in the process of mediation and information about the conditions of a mediation agreement, including, remains within this process. Such confidentiality is known as confidentiality “without prejudice to any material rights”, that is, information obtained by the other party in the course of such a negotiation process is not evidence in court.

Confidentiality is considered in legal literature as one of the key benefits of mediation compared to state legal proceedings. It can be described as one of the key values of informal procedures that allow agreements to be entered into and resolve conflicts without creating precedents, as well as secrecy of private affairs of any parties to the dispute, both organizations and individuals (Spencer & Brogan, 2006). Any information may be classified as confidential. Thus, the parties may confess both the information on the very existence of the conflict and on any aspect of the dispute. The parties agreement regarding confidentiality is mandatory for the mediator. The principle of confidentiality extends to the very fact of the parties' appeal to mediation.

### **Principle of Confidentiality in International Law**

Respecting the confidentiality of mediation is the professional responsibility of the mediator, this is explicitly stated in the European Code of Conduct for Mediators. Article 7 of the EU Directive on Certain Aspects of Mediation (2008/52 / EC) states that, unless the parties have agreed on something else, the mediator cannot be forced to testify in relation to information that has become known to him in connection with mediation procedure. Article 7 “Confidentiality of Mediation” states:

“Given that mediation is conducted on the basis of confidentiality principles, Member States are obliged to ensure that neither mediators nor other persons participating in the provision of mediation procedures can be forced to testify in civil or commercial proceedings or arbitration court with respect to information that has become known to them in connection with the mediation procedure, unless the parties to the dispute otherwise agree. This immunity does not apply to cases where the testimony is necessary to protect the public order of a Member State, in particular to protect the rights and legitimate interests of minors, to prevent harm to the health or life of citizens, and when the disclosure of the content of the agreement is necessary to enforce such an agreement. Paragraph 1 shall not be interpreted as restricting the rights of Member States to establish more stringent requirements for respecting the confidentiality of the mediation procedure.”<sup>1</sup>

The same applies to the economic process and arbitration proceedings. In addition, Article 7 of the Directive states that, given that preservation of confidentiality is one of the requirements for a mediation procedure, EU Member States should ensure that, in the absence of a different position of the parties, the persons participating in the

<sup>1</sup> 'EUR-Lex - 32008L0052 - EN - EUR-Lex' (Eur-lex.europa.eu, 2018) <<https://eur-lex.europa.eu/eli/dir/2008/52/oj>> accessed 2 November 2018.

mediation procedure are exempted from the duty to testify in a civil or commercial trial or arbitration with respect to information that has become known to them through mediation.<sup>2</sup> Exceptions to this rule may be the situation:<sup>3</sup>

- a) when it is necessary for public order, especially to protect the child's immediate interests or to prevent any encroachment on the physical or psychological safety of a person;
- b) when disclosure of the content of an agreement reached through mediation is necessary for the implementation or implementation of this agreement.

Thus, the Directive does not provide for "autonomous", that is, independent of the will of the parties, the obligation of the mediator to maintain confidentiality. It is considered at the same time that intermediaries should not have a witness immunity that they would use to protect their own interests (as a general rule against the parties and third parties), even if the parties have already refused confidentiality in proper form.

Describing the principle of confidentiality, one should also pay attention to the provisions contained in the UNCITRAL Model Law of 24 June 2002. First, it is Article 9 "Confidentiality", which states that unless the parties agree otherwise, all information relating to the conciliation procedure is confidential. An exception to this general rule is a situation where the disclosure of such information is necessary in accordance with the law or for the purpose of executing a settlement agreement.<sup>4</sup> At the same time, the Model Law contains Article 8 "Disclosure", which states that in cases where the intermediary receives from one of the parties information relating to the dispute, he may disclose the nature of this information to the other party to the conciliation procedure.

At the same time, if the party informs the intermediary of any information with the direct condition of maintaining its confidentiality, this information will not be disclosed to the other party to the conciliation procedure. Thus, the rules on confidentiality can exist not only, in a word, at the level of "participants of mediation - the outside world", but also within the procedure itself.

### **Description of Confidentiality Principle**

An important aspect of confidentiality is to limit the use of information obtained during mediation in court proceedings. The parties, organizations involved in ensuring the mediation procedure, the mediator, as well as other persons who were present during the mediation procedure, regardless of whether the proceedings or arbitration proceedings are not related to the dispute that was the subject of the mediation procedure the trial or arbitration for information on (Baxendale, 2002):

- 1) the proposal of one of the parties to apply the mediation procedure, as well as the willingness of one of the parties to participate in the conduct of this procedure;

<sup>2</sup> 'EUR-Lex - 32008L0052 - EN - EUR-Lex' (Eur-lex.europa.eu, 2018) <<https://eur-lex.europa.eu/eli/dir/2008/52/oj>> accessed 2 November 2018.

<sup>3</sup> 'EUR-Lex - 32008L0052 - EN - EUR-Lex' (Eur-lex.europa.eu, 2018) <<https://eur-lex.europa.eu/eli/dir/2008/52/oj>> accessed 2 November 2018.

<sup>4</sup> United Nations, '[https://www.uncitral.org/Pdf/English/Texts/Arbitration/MI-Conc/03-90953\\_Ebook.Pdf](https://www.uncitral.org/Pdf/English/Texts/Arbitration/MI-Conc/03-90953_Ebook.Pdf)' (United Nations 2004) <[https://www.uncitral.org/pdf/english/texts/arbitration/ml-conc/03-90953\\_Ebook.pdf](https://www.uncitral.org/pdf/english/texts/arbitration/ml-conc/03-90953_Ebook.pdf)> accessed 2 November 2018.

- 2) opinions or suggestions expressed by one of the parties regarding the possibility of resolving the dispute;
- 3) admissions made by one of the parties during the mediation procedure;
- 4) the ability of one of the parties to acknowledge the proposition of the go between or the other party on the settlement of the question.

The mediator must ensure that the parties have reasonable expectations regarding confidentiality. Confidentiality depends on the circumstances of the mediation and any agreement to which the parties come. The mediator should not disclose the course and results of mediation, if this is not authorized by all parties or if the law does not require it. In relation to confidentiality, the parties can develop their own rules, or agree in advance with the mediator, or use the already existing rules defined (Alrashdan, 2011). Since the guarantee of confidentiality is important for the parties, the mediator should discuss it with the conflicting parties.

If the mediator holds private meetings with the parties, the content of such meetings, in terms of confidentiality, should be discussed with all the parties in advance. In order to protect the integrity of the mediation process, the mediator should avoid transmitting to anyone information about the behavior of the parties during the mediation process, the quality of the case or the proposed solutions.

If the parties have agreed that all or part of the information revealed during the mediation process is confidential, such agreement of the parties should be binding for the mediator. The content of the settlement agreement can be disclosed only in cases established by the parties or by law, in particular, for the purposes of its execution (Price, 2014). Confidentiality cannot be deciphered as constraining or prohibiting checking, research or assessment of intercession programs. Under proper conditions and with the consent of the gatherings, researchers can be enabled access to measurable information, nearness at the intervention procedure, meetings of members in intercession. It is important to emphasize that the law protects confidentiality from unwarranted encroachment by government officials. Thus, the request from the mediator and from the organization carrying out activities to ensure the conduct of the mediation procedure does not allow information relating to the mediation procedure, except as provided for by federal laws, and unless the parties have agreed otherwise (Spencer & Brogan, 2006). At the same time, the confidentiality of the mediation procedure is a prerequisite for its conduct and decision-making in an atmosphere of trust and security.

During the mediation procedure, only the mediator, direct participants in the dispute and (or) their representatives are present. Other persons are allowed only with the consent of both parties. During the mediation procedure, no verbatim or electronic records are kept (Baxendale, 2002). As an exception, the mediator and the parties can record for themselves the necessary information in the form of notes, which upon completion of mediation are subject to destruction.

### **Mediator Responsibilities in Case of Litigation**

The mediator is a specially trained mediator in resolving conflicts, which equally supports both sides and helps them find a mutually acceptable solution. The

mediator is responsible for the process, not for the decision. The mediator should conduct a conciliation procedure in such a way as to comply with the principles of voluntary participation and self-determination of each party to the dispute.<sup>5</sup> Any settlement of a difference, in the course of a conciliation procedure, is possible only with the voluntary consent of the parties. The mediator must maintain neutrality and impartiality towards all participants and throughout the conciliation procedure. The mediator should control all procedural aspects of the conciliation procedures, including deciding when to hold joint and separate sessions with each side of the dispute. Judicial rules of evidence do not apply. If the parties agreed to document the work of the meetings, such records are destroyed at the timely completion of the conciliation procedure (Fennell, 2006).

Mediation in a civil procedure is one of the ways to resolve a dispute, involving the involvement of a mediator who helps to develop the terms of the agreement, satisfying both parties. A feature of the use of mediation in civil proceedings is to conduct it after sending the claim to the court and accepting it for production. Before starting a conciliation procedure (mediation), each party to a dispute may send a representative of your choice. Names and addresses of representatives of the parties must be communicated in writing to all other parties and organizations, providing a conciliation procedure. If a party to a dispute sends a representative to participate in conciliation procedure, its powers must be executed appropriately (power of attorney or protocol together with the charter of the organization or notarized, the certified power of attorney from the side of the dispute - the citizen) (Cole et al, 2012). With all that was said, it must be done, signed by such a representative at each session of mediation is considered outgoing from the side of the dispute and binding for it.

The representative is allowed to participate in the conciliation procedure by telephone, fax, email or other means of communication over the discretion of the Mediator and the agreement of the parties. The mediator is not entitled to disclose confidential information received from any of the parties to the dispute to the other party/parties or any third party without proper permission.<sup>6</sup> In the case of reclaiming mediators and organizations providing a conciliation procedure, information related to conciliation procedure is not allowed.

The mediator and the workers of the organization providing the conciliation procedures cannot be called and questioned as a witness about the circumstances become known to them in connection with the conciliation procedure (Dyck, 2010). Holding about the mediator or employee of the organization providing conciliation procedure, operational search activities and investigative actions, related to their participation in the conciliation procedure is allowed only by the court decision.

Unless otherwise agreed by the parties to the dispute, they shall refrain from judicial protection and other legal remedies for the period of the conciliation procedure, as long as they can avoid from these methods of protection without prejudice to their

<sup>5</sup> The European Commission, 'European Code Of Conduct For Mediators' (The European Commission 2004) <[https://steinberg-mediation-hannover.de/wp-content/uploads/2015/06/European\\_code\\_of\\_conduct\\_on\\_mediation\\_engl-deutsch.pdf](https://steinberg-mediation-hannover.de/wp-content/uploads/2015/06/European_code_of_conduct_on_mediation_engl-deutsch.pdf)> accessed 6 November 2018.

<sup>6</sup> The European Commission, 'European Code Of Conduct For Mediators' (The European Commission 2004) <[https://steinberg-mediation-hannover.de/wp-content/uploads/2015/06/European\\_code\\_of\\_conduct\\_on\\_mediation\\_engl-deutsch.pdf](https://steinberg-mediation-hannover.de/wp-content/uploads/2015/06/European_code_of_conduct_on_mediation_engl-deutsch.pdf)> accessed 6 November 2018.

rights and legally protected interests. In the case of a dispute to court (including the world /arbitration or arbitration court) the mediator is not entitled to act as a judge, arbitrator or a representative without the written consent of each party to the dispute and the mediator (Fennell, 2006). If mediation is carried out free of charge, on a non-professional basis, then the meditative agreement must be disclosed possible risks to the parties the dispute, as well as indicated the lack of security property liability. A guarantee of compliance with this principle is evidence of immunity, enshrined in the imperative form by the legislator in the procedural codes. The mediator cannot be questioned about the circumstances that have become known to him in connection with the performance of his duties as a mediator.<sup>7</sup>

It is also important to mention that during the mediation procedure, only the mediator, direct participants in the dispute and (or) their representatives are present. Other persons are allowed only with the consent of both parties. During the mediation procedure, no verbatim or electronic records are kept. As an exception, the mediator and the parties can record for themselves the necessary information in the form of notes, which upon completion of mediation are subject to destruction.

The procedure of litigation ends in several cases:<sup>8</sup>

- when making a mediation agreement. In this case, the dispute is considered completed from the moment of signing the document, and the proceedings on the case in court are terminated.
- in the absence of agreement between the parties and the inability to resolve the dispute using mediation.
- in case of inexpediency of the procedure (this decision is made on the basis of the relevant application of the mediator).
- if one of the parties refuses to continue to participate in the procedure.
- after the deadline for resolving a dispute established in the framework of mediation.

In the case of a mediation agreement when conducting mediation in a civil procedure, it must be approved by the court. A document is approved in the form of a settlement agreement, after the adoption of which the trial ends. If it is not possible to resolve the dispute on the results of the alternative procedure, the trial will continue until the court makes the appropriate decision.

### **Duties of the Mediator regarding Confidentiality**

The mediator acts equally in the interests of all parties to the dispute, encouraging cooperation. It should not allow itself to be drawn into the opposition of the parties (and opposition is a natural component of the conflict with which the parties, even with the most peaceful intentions, have to cope in their own interests). One of the fundamental ideas of mediation is to empower the parties with the power

<sup>7</sup> The European Commission, 'European Code Of Conduct For Mediators' (The European Commission 2004) <[https://steinberg-mediation-hannover.de/wp-content/uploads/2015/06/European\\_code\\_of\\_conduct\\_on\\_mediation\\_engl-deutsch.pdf](https://steinberg-mediation-hannover.de/wp-content/uploads/2015/06/European_code_of_conduct_on_mediation_engl-deutsch.pdf)> accessed 6 November 2018.

<sup>8</sup> The European Commission, 'European Code Of Conduct For Mediators' (The European Commission 2004) <[https://steinberg-mediation-hannover.de/wp-content/uploads/2015/06/European\\_code\\_of\\_conduct\\_on\\_mediation\\_engl-deutsch.pdf](https://steinberg-mediation-hannover.de/wp-content/uploads/2015/06/European_code_of_conduct_on_mediation_engl-deutsch.pdf)> accessed 6 November 2018.

and responsibility to make decisions on their own conflict (Dyck, 2010). Therefore, the mediator, whatever his initial education - a lawyer, teacher, psychologist, doctor, engineer, etc., being in this role, the main thing is that he was a mediator - a professional, relying on his experience. One of the complex skills of a mediator is the ability not to allow his knowledge, experience, judgments in one area or another to influence his behavior, statements, so as not to prejudice the process of dispute resolution by the owners, of which the parties themselves are (Price, 2014).

As for the mediator, he is obliged to observe the strictest confidentiality. The mediator does not have the right to disclose information relating to the mediation procedure, which became known to him during its conduct, without the consent of the parties (Fennell, 2006). Also, all information that the parties have individually entrusted to the mediator must also remain confidential. The mediator has no right to give it publicity and transfer it to the other party without the permission of the party that is the source of information (Alrashdan, 2011). The requirement for the mediator to observe confidentiality is enshrined not only in the national law on mediation but is also an integral part of all international and foreign mediation acts, as well as included in all codes of ethics of mediators.

The mediator must keep as confidential all information obtained in the process of mediation or related to it, including the fact that mediation will be conducted or has already taken place, except in cases where it is related to the requirements of the law or public policy fundamentals (Fennell, 2006). Any information communicated confidentially to the attention of the mediator of one of the parties should not be related to the other party unless it is agreed to by the other party or required by law. The mediator is obligated to inform the parties of the dispute about the essence and principles of mediation, the role, rights and obligations of the mediator and the parties in this procedure, the power of the parties to contact the specialists for the appropriate consultation, about the beginning of the mediation procedure. The mediator must make sure that the mediation side correctly understands the information provided by the mediator, including the conditions for ensuring confidentiality and are aware of the possibility of their refusal to participate in mediation at any stage without explaining the reasons (Dyck, 2010). The mediator has no right to disclose confidential mediation information received during the mediation, nor has the right to use such information in its interests, except as provided for by law and this Code.<sup>9</sup> Before the mediation, the mediator must inform the mediation parties that the requirement to maintain confidentiality does not apply to information about acts that threaten the life, health of mediation participants or third parties, as well as to other cases specified by law or mediation agreement. The obligation not to disclose confidential mediation information received during mediation is indefinite.

What is more, the mediator must protect/take into account the reasonable expectations of the parties about confidentiality. The mediator must respect the reasonable expectations of the parties regarding confidentiality mediation procedures. Hopes of parties regarding privacy depend on circumstances cases of mediation and agreements

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<sup>9</sup> The European Commission, 'European Code Of Conduct For Mediators' (The European Commission 2004) <[https://steinberg-mediation-hannover.de/wp-content/uploads/2015/06/European\\_code\\_of\\_conduc\\_t\\_on\\_mediation\\_engl-deutsch.pdf](https://steinberg-mediation-hannover.de/wp-content/uploads/2015/06/European_code_of_conduc_t_on_mediation_engl-deutsch.pdf)> accessed 6 November 2018.

that they can conclude. The mediator cannot disclose any information that the party considers to be confidential except when the consent of all parties is obtained, or the law requires it. The mediator also has to inform the parties of the need to store information, collected during the mediation, as well as the fact that the parties have the right to develop their privacy policy (Walker & Smith, 2013). The mediator can define and discuss the parties with the confidentiality limit consequences of violation of this principle. The duty of all participants to observe confidentiality is fixed in the agreement on the secrecy that the mediator signs at the beginning of the process.

The mediator ensures compliance with the principles of self-determination of the \ parties, the voluntary, equal and active participation of the parties in the mediation procedure and the parties' understanding of the conditions and consequences of concluding a mediation agreement. The mediator has the right to refuse to conduct mediation at any stage in the following cases:<sup>10</sup>

- the manifestation of aggression on the part of the mediator about the mediator or another mediator in the form of physical or psychological violence, threats, blackmail, etc.;
- a manifestation of mediation of intentions other than reconciliation or settlement of a conflict (dispute), other unfair behavior;
- the apparent illegality of the actions and agreements of the parties of mediation;
- if there are other valid reasons.

However, the information received must be kept confidential even if there are reasons for canceling mediation. The mediator is obliged to refuse to conduct the mediation at any stage in case of loss of neutrality and impartiality (Bleemer, 2009). The mediator helps to establish communication between the parties. The mediator does not comment on the content of the conflict (dispute) and its participants and does not provide advice on its solution and does not make any decisions regarding the conflict (dispute).<sup>11</sup> The mediator should refrain from discussing with the mediation parties the actions of another mediator, including in case of mediation by several mediators (co-mediations).

No later than five working days before the start of the first session of the planned of the conciliation procedure, each party to the dispute sends a written statement to the Mediator. It summarizes the conflict situation and its current state, including what efforts were made to resolve the dispute, evidence, and information that the mediator will request or any of the parties to the debate, as well as the evidence and knowledge with which the party of the dispute deems it expedient to familiarize the mediator. The mediator may require any side of the dispute to provide additional information and clarification (Dyck, 2010). Parties are encouraged, but not required, to exchange written claims before the first session of conciliation procedures. The parties to the dispute may also agree to submit signed agreements or other evidence

<sup>10</sup>The European Commission, 'European Code Of Conduct For Mediators' (The European Commission 2004) <[https://steinberg-mediation-hannover.de/wp-content/uploads/2015/06/European\\_code\\_of\\_conduct\\_on\\_mediation\\_engl-deutsch.pdf](https://steinberg-mediation-hannover.de/wp-content/uploads/2015/06/European_code_of_conduct_on_mediation_engl-deutsch.pdf)> accessed 6 November 2018.

<sup>11</sup>The European Commission, 'European Code Of Conduct For Mediators' (The European Commission 2004) <[https://steinberg-mediation-hannover.de/wp-content/uploads/2015/06/European\\_code\\_of\\_conduct\\_on\\_mediation\\_engl-deutsch.pdf](https://steinberg-mediation-hannover.de/wp-content/uploads/2015/06/European_code_of_conduct_on_mediation_engl-deutsch.pdf)> accessed 6 November 2018.

and other materials obtained by the parties to the Mediator. If the parties wish to provide confidential information, they are entitled to do so. Such information must be marked as confidential to maintain confidentiality.

The mediator, as well as other persons present during the mediation procedure, are not entitled to refer to the information:

- 1) the proposals of one of the parties regarding the application of the mediation procedure, as well as the willingness of one of the parties to participate in the conduct of this procedure;
- 2) opinions or suggestions expressed by one of the parties regarding the possibility of settling a dispute;
- 3) recognition of one party's actions during the mediation procedure;
- 4) the readiness of one of the parties to accept the mediator's or other party's proposal to settle the dispute.

There are special conditions for mediator disclosure of information relating to the mediation procedure. If the mediator receives from one of the parties information relating to the mediation procedure, he may disclose such information to the other party only with the consent of the party providing the information (Dyck, 2010).

It can be traced that one of the common cases of prosecution in violation of the principle of confidentiality by the mediator. This follows from the particular importance of privacy for the mediation procedure. The relationship between the mediator and the parties are fiduciary, personal and trusting, and therefore one of the critical principles of mediation is confidentiality (Walker & Smith, 2013). It is important to emphasize that the law protects the privacy of unwarranted encroachments by the authorities. Thus, the request from the mediator and from the organization conducting the activity to ensure the conduct of the mediation procedure, information relating to the mediation procedure, is not allowed, except in cases provided for by federal laws, and situations, unless the parties have agreed otherwise (Cole at al, 2012).

## **Conclusions**

Mediation is a process in which a neutral third party, a mediator, helps to resolve a conflict by facilitating the development of a voluntary agreement between the conflicting parties. During arbitration or a court a third party (arbitrator, judge) who is not involved in the conflict and is neutral, having collected and heard the information provided by the parties, makes the decision that is binding on the parties. However, during mediation also a neutral third party (mediator) helps the parties themselves to find a solution during the discussion of the problem. The mediator facilitates the process of communication between the conflicting parties, contributes to the understanding of positions and opinions, emphasizes the parties to their interests and seeks a productive solution to the problem, providing an opportunity for the parties to reach a general agreement jointly (Bleemer, 2009).

Confidentiality is one of the essential principles of mediation. The mediator facilitates the process of communication between the parties, understanding of positions and interests focuses the parties on their interests and seeks a productive solution to the problem, giving the parties an opportunity to come to their agreement. The mediator

must ensure that the parties have reasonable expectations regarding confidentiality. Confidentiality depends on the circumstances of the mediation and any contract to which the parties come. The mediator should not disclose the course and results of mediation, if all parties do not authorize this or if the law does not require it. Confidentiality depends on the circumstances of the mediation and any agreement to which the parties come. The mediator should not disclose the course and results of mediation, if all parties do not authorize this or if the law does not require it.

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