



paul gallagher
dispute resolution

PROFESSIONAL PROFILE

BACKGROUND

I have been practicing law since 1980, practicing firstly in Hamilton and the Waikato for 8 years before moving to Auckland in 1987. For 2 years I worked for an international firm of Actuaries and Business Consultants involved in advising some of New Zealand's major companies with Superannuation and trust issues and employee benefits generally.

In 1989 I returned to private legal practice on Auckland's North Shore, firstly in Takapuna and then moving to Albany in 1991 where I have been ever since. I have always operated very much a general legal practice with a mix of litigation (mainly Family and Relationship Property) and commercial and conveyancing. I have however, in recent years had an increasing interest and specialization in business development issues, marketing and mediation work. My practice is now becoming more and more commercial in focus and mediation is growing very significantly.

QUALIFICATIONS

My formal qualifications are:

- Bachelor of Laws - LL.B (Otago University)
- Master of Business Studies (Business Law and Marketing) – M.B.S. (Bus. Law) (Massey University)
- Master of Management (Alternative Dispute Resolution) – M.Mgt. (ADR), (Massey University)
- Notary Public
- Associate of the Arbitrators' and Mediators' Institute of New Zealand (AMINZ)
- Admitted as a Barrister and Solicitor of the High Court of New Zealand (1981)
- Member of the Family Law Section of the New Zealand Law Society
- Member of the Property Law Section of the New Zealand Law Society

MEDIATION

I have been involved in mediation for many years as an integral part of my legal practice and as part of appearing in the Family Court jurisdiction for over 20 years.

My formal training has been through the Dispute Resolution Centre at Massey University in Palmerston North.

I have been involved in giving various presentations and addresses on Mediation and facilitation to a number of community groups.

Apart from facilitation assignments, I have also been involved in many mediations at all levels – as Mediator, as Counsel and yes – as a party too! The main areas that I have been involved in include:

- ⊗ Computer and IT contracts
- ⊗ Family and Matrimonial Property disputes
- ⊗ De Facto and Relationship Property disputes
- ⊗ Building and Construction disputes
- ⊗ Contract/Negligence disputes
- ⊗ Disputes between neighbours
- ⊗ Lease disputes
- ⊗ Commercial Contracts
- ⊗ Company ownership and partnership disputes
- ⊗ Estates and Wills
- ⊗ Employment disputes

If the mediation is to be held in Auckland, parties are welcome to use my facilities at my Albany Office at no charge. These facilities include a boardroom and breakout room and are handy to the northern motorway, are easy to find and where parking is no problem. These facilities may be regarded as being neutral

where that is a particular issue. I am however, happy to work elsewhere at a pre-agreed or arranged venue after discussion with the parties.

I subscribe to the Code of Ethics for Mediators prescribed by AMINZ. A copy of this Code of Ethics is available on request (or, if you are receiving this profile via email, the code forms part of this document).

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AMINZ CODE OF ETHICS

RULE ONE

A MEDIATOR SHOULD UPHOLD THE INTEGRITY AND FAIRNESS OF THE MEDIATION PROCESS

A mediator must observe high standards of conduct so that the integrity and fairness of the process will be preserved. A mediator should only accept appointment if the mediator believes there is time to conduct the mediation properly.

RULE TWO

A MEDIATOR SHOULD RECOGNISE THAT MEDIATION IS BASED ON THE PRINCIPLE OF “SELF DETERMINATION BY THE PARTIES”

Self determination is the fundamental principle of mediation. It requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement. Any party may withdraw from mediation at any time.

RULE THREE

A MEDIATOR SHOULD DISCLOSE ANY INTEREST OR RELATIONSHIP LIKELY TO AFFECT IMPARTIALITY OR WHICH MIGHT CREATE AN APPEARANCE OF PARTIALITY OR BIAS

The concept of mediator impartiality is central to the mediation process. A mediator should mediate only those matters in which the mediator can remain impartial and even-handed. If at any time the mediator is unable to conduct the process in an impartial manner, the mediator is obligated to withdraw. A person who is, in fact, biased or whose circumstances may give the impression of bias or partiality should not accept appointment as mediator. Persons who are requested to serve as mediators should therefore, before accepting, disclose:

- 1. any direct or indirect financial or personal interest in the outcome of the mediation;*
- 2. any existing or past financial, business, professional, family or social relationships which are likely to affect impartiality or which might reasonably create an appearance of partiality or bias.*

The duty to disclose is a continuing duty.

RULE FOUR

A MEDIATOR SHOULD CONDUCT THE MEDIATION FAIRLY, DILIGENTLY AND EXPEDITIOUSLY AND IN A MANNER CONSISTENT WITH THE PRINCIPLE OF SELF DETERMINATION BY THE PARTIES

A mediator should work to ensure a quality process and to encourage mutual respect among the parties. A quality process requires a commitment by the mediator to diligence and procedural fairness. There should be adequate opportunity for each party in the mediation to participate in the discussions. The parties decide when and under what conditions they will reach an agreement or terminate the mediation.

RULE FIVE

A MEDIATOR SHALL MEDIATE ONLY WHEN THE MEDIATOR HAS THE NECESSARY QUALIFICATIONS TO SATISFY THE REASONABLE EXPECTATIONS OF THE PARTIES

Any person may be selected as a mediator, provided that the parties are satisfied with the mediator's qualifications. Training and experience in mediation, however, are usually necessary for effective mediation. Persons who offer themselves as available to serve as mediators (or are assigned to the parties under any form of mandated mediation) shall give the parties and the public the expectation that they have the competence to mediate effectively. It is the responsibility of mediators to engage in continuing education to ensure that their mediation skills are both current and effective.

RULE SIX

A MEDIATOR SHOULD BE FAITHFUL TO THE EXPECTATION OF TRUST AND CONFIDENTIALITY INHERENT IN THAT POSITION

The parties' expectations of confidentiality depend on the circumstances of the mediation and any agreements they may make. A mediator should not disclose any matter that a party expects to be kept as confidential unless given permission by all parties or unless required by law or other public policy.

A mediator is in a relationship of trust to the parties and should not at any time use confidential information acquired during the mediation process to gain personal advantage or advantage for others or to affect adversely the interest of another.

RULE SEVEN

ADVERTISING OR PROMOTION BY A MEDIATOR MUST BE TRUTHFUL AND APPROPRIATE FOR THE PROFESSION

Professional standards in relation to advertising and promotion requires that the information not:

- 1. be inaccurate or likely to mislead;*
- 2. be likely to diminish public confidence in the process of mediation;*
- 3. make comparisons with other mediators;*
- 4. indicate or imply any willingness to accept an appointment except in accordance with this Code.*

No member should seek to imply that membership of the Institute (other than specific listing in a Panel of the Institute) indicates that the member is qualified or recognised by the Institute as such.

RULE EIGHT

A MEDIATOR SHOULD FULLY DISCLOSE AND EXPLAIN THE BASIS OF FEES AND CHARGES BEFORE ACCEPTING APPOINTMENT

The parties should be provided with sufficient information about fees at the outset of a mediation to determine if they wish to retain the services of a mediator. If a mediator charges fees, the fees should be reasonable considering among other things the mediation service, the type and complexity of the matter, the expertise of the mediator and the time required. The best practice in reaching an understanding about fees is to record that arrangement as part of the written mediation agreement.

RULE NINE

A MEDIATOR FOUND TO BE IN BREACH OF THIS CODE SHALL BE SUBJECT TO THE PROVISIONS OF THE INSTITUTE'S BY-LAWS DEALING WITH – "PROFESSIONAL CONDUCT AND DISCIPLINARY MATTERS"

A breach of this Code of Ethics may result in the breach being considered by the Institute's Investigation & Ethics Sub-Committee.