

Kluwer Mediation Blog

Mediator's status in Switzerland and Canton of Geneva

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The title of “Mediator”

In Switzerland there are two main areas of intervention of the mediation and therefore two broad categories of mediators: the so-called “conventional” mediators and those who have a quasi-“judicial” function; the latter only intervene in the case where mediation replaces the judicial conciliation required in most civil litigation pursuant to Articles 213 and 214 of the Federal Code of Civil Procedure (CCP) entered in force on 1st January 2011.

“The Conventional” Mediator

In Switzerland, the title “mediator” is not protected by the State; as a result, in conventional mediations (i.e. in instances where mediation takes place other than compulsory conciliation) any person may freely perform the function of mediator or family mediator. The parties may therefore in principle choose their mediator, through a family consultation office, a mediators’ association, the Swiss Chambers of Commerce or appoint an independent mediator, certified and/or accredited or not. The decision to impose to mediators an authorization to practice in so-called “conventional” mediations is within the competence of the cantons, but in the current state of things, this requirement is probably not of a sufficient public interest.

The Mediator as “Auxiliary of Justice”

On the other hand, for those mediators who have a quasi-judicial function, it is quite permissible to require from them appropriate qualifications, training and sufficient experience, as such a requirement, which is a certain restriction on the freedom of professional practice, corresponds to a public interest (protection of the clients), does not infringe the principle of proportionality and is based on a sufficient legal basis. To this effect most of the cantons (at least in the French speaking part of Switzerland) have adopted various prerequisites to this effect.

Mediation Training

The mandatory training of mediators who have a function of auxiliary of justice (as opposed to the conventional mediators) is therefore specifically subject to cantonal rules. It is also guaranteed, in fact and indirectly, by leading mediation associations, which “accredit” mediators provided that they have undertaken a mediation training that meets specific criteria. This accreditation is purely of private nature. The associations concerned are:

- the Swiss Federation of the associations of mediation (“FSM”; www.infomediation.ch);
- the Swiss Association for mediation (“ASM”; www.mediation-SVM.ch) for family mediations exclusively;
- the Swiss Federation of lawyers (“FSA”; www.swisslawyers.com); and
- the Swiss Chamber of Commercial Mediation (“CSMC”; www.csmc.ch) which is not connected to the Swiss Chambers of Commerce which, however, do appoint mediators directly, without having an “official” list (roaster) of mediators.

The FSM and the FSA accreditations are not specific to family mediators; to the contrary they concern mediators who practice in areas other than family disputes. On the other hand, the ASM only certifies family mediators; the rules for recognition of the title of “ASM Mediator” pose as a condition in its Article 3 that the person is trained in family mediation. The training of family mediators in principle shall meet the standard established by the European Forum of mediation: http://www.europeanforum-familymediation.EU/index.php?option=com_content & task = view & id = 36 & Itemid = 91

The Canton of Geneva

To ensure the quality of mediation services, the canton of Geneva has set specific conditions that enables to become a “certified” (sworn”) mediator :

- being at least thirty years old;
- being holder of a university degree or equivalent;
- having good professional experience;
- having sufficient knowledge and experience in mediation practice;
- having particular skills and qualifications in mediation.
- having not criminal records for an intentional offense probity and honor.

Only certified mediators can be sworn and request admission to the Registry of “sworn” (certified) mediators’ established by the Canton of Geneva. The mediators are subject to disciplinary sanctions incase they fail to perform their duties in accordance with ethical rules prescribed by law. It is to be noted that the Mediation Associations have a similar system. Since the entry into force of the CCP, the mediator can act as “certified” mediator in Geneva only if authorized by the Council of State under the conditions set out above.

Absent a monopoly situation, mediators who do not meet the conditions for certification – and therefore cannot be sworn – can nevertheless act as mediators; but in case of judicial proceedings, a mediator shall in principle chosen from the Registry.

The Mediator appointed by with the Juvenile Court (Geneva)

The Juvenile Court may refer, under certain circumstances, the matter to a mediator.

The case may be, he or she must have the following specific qualifications:

- being registered at the Mediator’s Registry of the Canton of Geneva;
- having proper and certified mediation education and training;
- having knowledge about Juvenile Criminal Law;
- having professional experience and specific skills in relation to Juveniles.

These qualifications are quite similar to those of the certified mediator save as specific qualifications which are required in the field.

Conclusions

The mediation's profession is not doubt in construction as shown above. Some attempts have been made to regulate, both at the cantonal and federal level, more in depth the "profession" but have been failed so far.

Time will not doubt come, sooner or later, where this matter will be unified, when mediation will be actually seen as a truly recognized and practised means of disputes resolution.


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