



# MEDIATION ADVOCACY WORKSHOP FOR LAWYERS



3 Mar 2023 [09:00 – 15:00]

**Group 1**



14 Mar 2023 [09:00 – 15:00]

**Group 2**



**Dubai, UAE**

ADR Center

**Leonardo D'Urso, CEO**

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## About ADR Center

**ADR Center** (<https://adrcenter.com/>) is a dispute resolution services provider that implements highly effective capacity-building assistance to set up Alternative Dispute Resolution (ADR) systems worldwide. It delivers its service through three distinct Centers of Excellence:

- ❖ **ADR Centers – Resolutions Centers** (Mediation and Arbitration Services). ADR Center is an ADR service provider, handling more than **7,000 cases** per year with more than **150 full-time mediators** in **52 offices throughout Italy**, serving as the largest private mediation provider in continental Europe. This aspect distinguishes ADR Center from most capacity building providers, which generally provide consulting services through externally engaged mediators and lawyers. Our core competence has been built, day-to-day and year-by-year on managing thousands of mediation procedures during the past 20 years conducting several tens of thousands of mediations directly and through the affiliate offices.
- ❖ **ADR Center for Development** – ADR Center has been bringing its development experience to countries across the globe with its International Division by Helping develop sustainable ADR systems around the world and Building Turnkey Mediation Centers.
- ❖ **ADR Center – Academy** – Our Training Division. Over **20 years of experience** in the field, focused on negotiations, conflict management and dispute resolution. ADR Center Academy delivers a sophisticated curriculum of business excellence trainings: including basic and advanced course for Mediators, Mediation Advocacy, Arbitration Courses, Negotiation at its best, Negotiation across cultures, Challenging conversation, Principles of Persuasions, Family Mediation, and Workplace Mediation. To date, our trainers – all full-time mediators – **have trained more than 6,000 mediators** in Europe, Middle East, Asia and Africa. Additionally, our programs focused on successful mediation advocacy (for lawyers) and effective mediation referral (for judges).
- ❖ **ADR Center Global** – Through its international Global Panel of mediators, its experienced Global Case Management and its national Resolution Centers, ADR Center Global provides services to solve both cross-border and domestic civil and commercial disputes. Based on 20 years of experience, ADR Center Global is the first truly international mediation provider with a Global Panel of Mediators and multilingual Case Management that can assist law firms, multinationals and international organizations in ADR Programs and ADR Services. All local offices associated with ADR Center Global based in **more than 15 countries** share the same high standard of quality in mediation services and set of rules for cross-border mediation. ADR Center Global's headquarters is based in Rome (Italy).

## About Mediation Advocacy

This workshop is intended for lawyers who represent parties in mediation. It explains how they can use the structure of the process and the value added by mediators to achieve their bargaining goals.

Lawyers have traditionally seen mediation as a method to facilitate competitive bargaining. In this view, a mediator's primary role is to carry offers back and forth between the parties and shield them from the impact of each other's hard tactics. When such bargaining breaks down, the mediator can meet separately with parties and access confidential information that may be critical for building consensus. To do that, each mediator needs to find a balance between building trust by listening empathically and discussing risk by reality testing. A good mediation advocate should be able to work with the mediator to find that balance.

Mediators have power. They cannot compel parties to settle, but they can influence the process of bargaining. Wise lawyers take advantage of this. As one mediator remarked about a litigator, a note of admiration in his voice, *"He moved me around like a chess piece!"*. Indeed, good mediators are like chessboard knights; they have many capabilities, and attorneys can use them to advance their bargaining strategies.

Mediators can enhance a lawyer's ability to negotiate in many ways. A mediator can, for example, improve communication between parties by conveying messages or explaining what an offer means (*"Tell them we are at €25,000 but are prepared to talk seriously once they drop their claim to future profits."*). Mediators can also provide information about the attitude of an opponent (*"Has the plaintiff become any calmer since we met this morning?"*) and can arrange informal discussions (*"I think it would be helpful if we set up a private discussion between the two CFOs."*)

Mediation advocates can use mediation to pursue both competitive and cooperative negotiation strategies. Thus, for example, lawyers can make an extreme opening offer in mediation with less risk than if they used the same tactic in direct bargaining. This is because they can rely on the mediator to cushion the tactic's impact (*"scrape the other side off the ceiling"*). Lawyers can also use mediation to support creative approaches, for example, by pressing a claim for money while privately asking the mediator to explore whether the other side is open to repairing a business relationship.

Particularly toward the end of the process, lawyers will likely find themselves in a three-sided negotiation, bargaining with the other party and the mediator. Advocates can negotiate, for example, about whether the mediator uses a specific technique (*"Before we would discuss liability, I'd appreciate it if you would let each side make another offer"*) or can request that the mediator uses a tactic (*"Why don't you suggest to both sides that they ... ?"*). Attorneys cannot expect a mediator to take sides in a dispute, but if a tactic is neutral, the mediator may follow a lawyer's suggestion to use it.

The key lesson is not to approach the process passively but instead to use the mediation process in an active way to advance your client's interests.

## About the Mediation Advocacy Workshop

Based on the ADR Center's mediation experience with attorneys worldwide, this workshop offers suggestions about how lawyers can use the mediation process to achieve optimal outcomes.

Mediation is an active process which is capable of almost infinite variation. Good lawyers know that a mediator can help them bargain more effectively and take the initiative to ask a mediator for help. By doing so, they can achieve better outcomes for their clients.

The mediation advocacy workshop demonstrates how mediation is most successful when the parties' advocates/advisors are knowledgeable and skilled in the principles of the mediation process and negotiation theories. It provides arguments regarding how mediation can fail when party representatives act as if they were in a courtroom rather than in a negotiation.

The participating advocates will see that mediation presents unique problem-solving opportunities in which representatives can assist their clients in reaching faster, more cost-effective and better outcomes with the assistance of a mediator. They can help their clients achieve results that may be unattainable in a courtroom or arbitration tribunal. But to do that, they need a different set of knowledge and skills.

The first session will include an overview of the mediation process. The participants will have an opportunity to introduce themselves, and then they will engage medial in a practical activity that will highlight the difference between third-party roles in adversarial and collaborative processes. Participants will learn about where mediation is placed in the larger spectrum of conflict management processes.

The second session will focus on the principles of mediation and how they can be applied in practice. To this end, participants will be able to observe a demonstration of a mediation session. This experience will expose them to the "feel and look" of a mediation environment, the general approach of a mediator, and, more importantly, what lawyers can do to improve the outcome of the process.

The remaining two sessions will follow the chronology of the mediation process, the preparation stage to the resolution of the dispute and reflect the specific knowledge and skills for effective mediation advocacy.

Each session will have minimal presentations and, instead, will provide plenty of opportunities for discussions, questions and answers.

At the end of the workshop, the participants will be presented with certificates and invited to take a group photo.

The workshop will be delivered in English with Arabic interpretation.

Figure 1 - ADR Center 5x5 matrix for describing the mediation process and transferring know-how to new mediators

<b>I.1</b> <b>PREPARATION</b> <small>[BILATERAL MEETINGS]</small>	<b>II.1</b> <b>FACT-FINDING</b> <small>[OPENING JOINT SESSION (OJS)]</small>	<b>III.1</b> <b>EXPLORATION</b> <small>INITIAL PRIVATE SESSIONS (IPS)</small>	<b>IV.1</b> <b>NEGOTIATION</b> <small>LATER PRIVATE SESSIONS (LPS)</small>	<b>V.1</b> <b>RESOLUTION</b> <small>CLOSING PHASE</small>
<b>I.2</b> <b>GOALS</b> <small>FOR PREPARATION PHASE</small>	<b>II.2</b> <b>GOALS</b> <small>FOR FACT-FINDING PHASE (OJS)</small>	<b>III.2</b> <b>GOALS</b> <small>FOR EXPLORATION PHASE (IPS)</small>	<b>IV.1</b> <b>GOALS</b> <small>FOR NEGOTIATION PHASE (LPS)</small>	<b>V.2</b> <b>GOALS</b> <small>FOR CLOSING PHASE</small>
<b>I.3</b> <b>ACTIVITIES</b> <small>FOR PREPARATION PHASE</small>	<b>II.3</b> <b>ACTIVITIES</b> <small>FOR FACT-FINDING PHASE (OJS)</small>	<b>III.3</b> <b>ACTIVITIES</b> <small>FOR EXPLORATION PHASE (IPS)</small>	<b>IV.3</b> <b>ACTIVITIES</b> <small>FOR NEGOTIATION PHASE (LPS)</small>	<b>V.3</b> <b>ACTIVITIES</b> <small>FOR CLOSING PHASE</small>
<b>I.4</b> <b>STRATEGIES</b> <small>FOR PREPARATION PHASE</small>	<b>II.4</b> <b>STRATEGIES</b> <small>FOR FACT-FINDING PHASE (OJS)</small>	<b>III.4</b> <b>STRATEGIES</b> <small>FOR EXPLORATION PHASE (IPS)</small>	<b>IV.4</b> <b>STRATEGIES</b> <small>FOR NEGOTIATION PHASE (LPS)</small>	<b>V.4</b> <b>STRATEGIES</b> <small>FOR CLOSING PHASE</small>
<b>I.5</b> <b>SKILLS &amp; TOOLS</b> <small>FOR PREPARATION PHASE</small>	<b>II.5</b> <b>SKILLS &amp; TOOLS</b> <small>FOR FACT-FINDING PHASE (OJS)</small>	<b>III.5</b> <b>SKILLS &amp; TOOLS</b> <small>FOR EXPLORATION PHASE (IPS)</small>	<b>IV.5</b> <b>SKILLS &amp; TOOLS</b> <small>FOR NEGOTIATION PHASE (LPS)</small>	<b>V.5</b> <b>SKILLS &amp; TOOLS</b> <small>FOR CLOSING PHASE</small>

The tentative workshop agenda is listed below.

The trainers, in consultation with participants, may reorganize the timing of the sessions.

The ADR Center approach to training mediators and mediation trainers is based on the ADR Center's 5x5 matrix that describes the mediation process and has successfully transferred the know-how from practitioners to new mediators and mediation advocates.

<b>08:30 – 09:00</b>	
Registration	
<b>09:00 – 10:15</b>	
<b>SESSION #1 THE MEDIATION OVERVIEW</b>	
	<ul style="list-style-type: none"> <li>Welcome, goals and presentation of trainers, introduction of participants</li> <li>The fundamental choice: To talk or to fight?</li> <li>Overview of Alternative Dispute Resolution (ADR)</li> </ul>
<i>Break</i>	
<b>10:30 – 11:45</b>	
<b>SESSION #2 FOUNDATIONAL PRINCIPLES AND THEIR APPLICATION</b>	
	<ul style="list-style-type: none"> <li>Systemic and psychological barriers to settlement.</li> <li>Overview of Mediation (definition and practices in the Emirates)</li> <li>Overview of Mediation (principles, mediation advocacy for lawyers)</li> <li>Case study: "The Case of the Mule Kaslaan" presentation</li> </ul>
<i>Lunch Break</i>	
<b>12:30 – 13:30</b>	
<b>SESSION #3 EFFECTIVE PREPARATION AND REPRESENTATION IN MEDIATION</b>	
	<ul style="list-style-type: none"> <li>What do you do as a mediation advocate to prepare before the mediation?</li> <li>The stages of the mediation process: ADR Center 5x5 matrix</li> <li>Practical activity: mediation advocacy applied for the case study</li> </ul>
<i>Break</i>	
<b>13:45 – 15:30</b>	
<b>SESSION #4 DEMONSTRATION OF EFFECTIVE MEDIATION ADVOCACY</b>	
	<ul style="list-style-type: none"> <li>Application of principles: Demonstration of a mediation process</li> <li>Plenary discussion</li> <li>Wrap up. Presentation of certificates. Group picture.</li> </ul>

## Experts' bios

**Leonardo D'Urso**, International mediator and trainer



Leonardo D'Urso is a full-time mediator, co-founder and CEO of ADR Center, Adjunct Professor at Straus Institute for Dispute Resolution at Pepperdine University (Malibu-CA, USA) and member of the Board of Director of the Weinstein International Foundation – Mediating a Better Future. With more than 23 years' experience in the field of Alternative Dispute Resolution (ADR), he has mediated over 2.000 complex civil and commercial mediations, workplace disputes and facilitated various public dialogue processes. In the field of consulting, his current focus is developing ADR strategic policies for Governments, Ministries of Justice and large organizations and drafting effective legislative frameworks to increase the recourse to mediation and the quality of mediation services. From 2017 to 2019, he has been Scientific Expert of the Working Group on Mediation of CEPEJ at the Council of Europe and currently is in the panel of selected CEPEJ Experts on mediation.

He has been appointed as mediator for a high-level workplace management dispute within European public institutions by the IPAM Independent Project Accountability Mechanism (IPAM) of the European Bank for Reconstruction and Development (EBRD) as Impartial and Independent Expert.

Since 1998, he has been nominated as senior expert in several international projects on ADR in Africa, Asia, Central America and Europe. In particular, he has been one of the leading experts in the two-year successful project for the creation of the first mediation center for commercial dispute in Kabul, Afghanistan. The most recent projects aimed to draft mediation legislative reforms and implement capacity building in Azerbaijan, Moldova, Serbia, Oman, Jamaica, Jordan, Turkey and Zambia based on the "Italian Mediation Model".

Author of several publications on negotiation and mediation, Leonardo has lectured on Negotiation and Mediation Techniques at several universities, Chambers of Commerce, and conducted hundreds of trainings courses for multinational corporations in the last 23 years. With ADR Center, he is the co-organizer of the Italian editions of the workshop "Negotiation for Executives" of the Program on Negotiation (PON Global) at Harvard Law School.

Mr. D'Urso complies with the minimum requirements included in the tender specifications document: academic diploma, English C2 CEFR level, 24 years of mediation practice, at least 15 years post education experience with designing and delivering mediation training programs, at least ten relevant mediation training projects designed and delivered in the last four years.

**Constantin Adi Gavrilă**, International mediator and trainer

Constantin Adi Gavrilă is a full-time professional mediator, CEO, and founder of ADR Center Romania, Weinstein International Foundation's Senior Fellow, having extensive experience since 2002 in supporting individuals, groups, companies, governments, and international organizations to resolve a wide variety of domestic and international disputes. Adi has trained more than 1000 mediators and has provided consultancy services to beneficiaries and governments from more than 20 countries to design and develop mediation programs.

Representative domestic cases include • the Division of a regional bread factory because of a dispute between shareholders; • a Dispute between a property developer and a constructing company; • a Real estate multi-party case involving banking procedural and methodological updates; • Disputes related to maintenance of medical equipment (CT scan); • High-value case regarding determining, valuing, and dividing marital property.

Adi is also an active mediator in the development space, working with the Office of the Compliance Advisor/Ombudsman (CAO) and Independent Project Accountability Mechanism (IPAM), the IFC/MIGA (World Bank), and EBRD accountability mechanisms to facilitate dialogue processes between the bank clients and communities concerned about the environmental and social impacts of bank-financed projects. Examples of multi-party cases supported by Adi are • Seismic impacts and other E&S concerns of communities regarding the technology used by the oil & gas sector; • Air quality impacts of the steel production industry; • Risk of rockfalls and landslides related to HPP construction works; • Community resettlement related to the expansion of mining activities; • Impacts of public transportation projects for pedestrian accessibility.

Adi is a co-founder and general manager of Craiova Mediation Center, Romania, Advisory Council's member of the Lord Slynn of Hadley European Law Foundation, London UK, first president of the Romanian Mediation Centers Union, vice-president of the first Mediation Council, and he served as Co-Chair of the Independent Standards Commission convened by the International Mediation Institute (IMI). Among other awards, Adi was honored with the Association for Conflict Resolution (ACR) International Development Committee's 2009 Outstanding Leadership Award for outstanding contributions to international conflict resolution. Adi received his Ph.D. from the University of Craiova with an emphasis on "Mediation and Access to Justice" and coordinates the Mediation Campus at the Law Faculty from Craiova University. Also, Adi is as associate professor at the Conflict Studies Center within the Faculty of Political, Administrative and Communication Sciences, part of Babeş-Bolyai University in Romania, where he is teaching "Developing skills in conflict resolution" and "ADR comparative systems". More information about Adi can be found at [www.adrcenterfordevelopment.com/2018/05/21/constantin-adi-gavrila/](http://www.adrcenterfordevelopment.com/2018/05/21/constantin-adi-gavrila/) and [adigavrila.com](http://adigavrila.com).