

COURT-CONNECTED MEDIATION RULES 2021

AUTHORITY: These Rules are issued by the Chief Justice pursuant to section 16(2)(a) of the Supreme Court Ordinance and 59A of the Civil Procedure Ordinance, in conjunction with the Chief Magistrate who does so under section 150 of the Magistrate’s Court Ordinance, as allowed by the Governor under section 150(2) of the Magistrate’s Court Ordinance.

WHEREAS the overriding objective of dealing with cases justly includes the duty of the court to promote settlement or reconciliation whenever possible.

WHEREAS Alternative Dispute Resolution has been identified as an effective way of providing a timely, cost-effective, and efficient way of resolving disputes in a non-litigious manner.

WHEREAS, section 59A of the Civil Procedure Ordinance vests the power in the Chief Justice to create a mechanism for alternative dispute resolution.

AND WHEREAS section 16 of the Supreme Court Ordinance permits the Chief Justice to vary Rules made under section 16,

NOW THEREFORE the following Rules are made to vary the Court Connected Mediation Rules that came into force on 16th of August 2021.

COMMENCEMENT AND DURATION: These Rules shall be in force from the 15th day of October 2021 until they are varied, revoked or replaced by the Chief Justice.

APPLICATION: These Rules shall not apply to—

- (a) insolvency proceedings (including winding up of companies);
- (b) non-contentious probate proceedings;
- (c) any other proceedings in the Supreme Court as may be identified by the Chief Justice to be not suited to Mediation from time to time.

INTERPRETATION

“ADR” is the abbreviated form of “Alternative Dispute Resolution”;

“ADR Administrator” refers to the official appointed by the Chief Justice to be responsible for the management of court-connected mediation and who manages the Roster of Mediators;

“Alternative Dispute Resolution” refers to methods of resolving disputes otherwise than through the trial process and in these Rules, it is a reference to Mediation;

“Court” refers to the Magistrate’s Court and the Supreme Court;

“Court Connected Mediation” refers to mediation services provided as a result of the referral by the Court or by the Registrar with the consent of the parties before or after commencement of proceedings;

“Court Registry” refers to the Registry of the Supreme Court;

“Clerk of Court” refers to the Clerk of the Magistrate’s Court;

“Mediation” refers to the dispute resolution procedure in which a neutral and impartial third party (the Mediator), facilitates negotiations between the parties to help them settle their dispute;

“Mediator” refers to a person engaged as a neutral third party to mediate a matter and whose name appears on the Roster of Mediators of the Judiciary of the Turks and Caicos Islands;

“Mediation Bundle” refers to a summary of the issues in dispute. This may be presented by attorneys representing the parties, or may be prepared by the parties with the assistance of the ADR Administrator, to facilitate the mediation;

“Mediation Session” refers to a mediation held with a Mediator and attended by parties to a dispute, either in person, or remotely (through electronic means), to which these Rules apply; it includes adjournments of the same matter;

“Parties” refers to—

- (a) persons between whom there is a dispute for which a claim has been filed, and
- (b) their Attorneys (as applicable);

“Referral Order” refers to an order of the Court, or the Registrar for parties to attend mediation;

“Roster” refers to the current list of court-connected Mediators compiled by the Mediation Committee after training and certification by the University of the West Indies, and administered by the ADR Administrator.

1. THE ADR ADMINISTRATOR

(1) The Chief Justice shall appoint an ADR Administrator who shall be a person with a background in court office practice.

(2) The ADR Administrator shall—

- (a) be responsible for the scheduling of mediation sessions (in person or remotely) in accordance with these Rules;
- (b) be responsible for the management of the Roster by assisting parties to select their Mediator, and the maintenance of the Roster by updating the availability of Mediators on a weekly basis;
- (c) be responsible for explaining the process of Mediation and all its implications to the parties and counsel (as applicable);
- (d) make available to parties and counsel the Consent to Mediation, and Confidentiality Forms and assist unrepresented parties with the Forms as necessary;
- (e) assist in the setting out of the settlement of issues in the Mediation Bundle where the parties are not represented;
- (f) assist the Mediator to set out the Terms of Settlement in accordance with Form 7 set out in the Schedule to these Rules;
- (g) manage and maintain the Roster;
- (h) require the parties and counsel (as applicable) to fill out Evaluation Forms 10 and 10A;
- (i) set out the hours of work done by each Mediator and keep a ledger on cases settled by the mediator, including on a pro bono basis;
- (j) prepare monthly statistics of mediation and forward same along with the Evaluation Forms to the Mediation Committee, in accordance with Form 12 set out in the Schedule;
- (k) forward monthly statistics on mediation to the Chief Justice.

2. THE MEDIATION COMMITTEE

(1) There shall be a Mediation Committee established by the Chief Justice, comprised of the following persons—

- (a) a Judge who will be the Chairperson;
- (b) the Chief Magistrate;

- (c) the Registrar of the Supreme Court;
 - (d) a Representative of the Bar Association who may hold the position of membership for one year.
- (2) The Mediation Committee shall meet at least once every two months.
- (3) The Mediation Committee shall be responsible for compiling the Roster of Mediators from the list of persons who have completed the training and have been certified by the University of the West Indies and have applied to have their names on the Roster.
- (4) The Mediation Committee may consult with any person or body which it deems necessary in order to assess the suitability of a candidate to be selected for the Roster of Mediators.
- (5) The Mediation Committee shall determine, in consultation with the Chief Justice, the fee payable to Mediators for successful mediation of referred cases.
- (6) In the matter of Court-Aided Mediation, the Mediation Committee shall prescribe the fees payable for access to mediation.
- (7) The Mediation Committee shall also determine the circumstances under which a Mediator may be paid for an unsuccessful mediation, and advise the Chief Justice.
- (8) The Mediation Committee shall receive statistics and Evaluation Forms from the ADR Administrator and analyze them to make recommendations to the Chief Justice for improved service.
- (9) The Mediation Committee will be responsible for monitoring the observance of the Code of Conduct of Mediators and Disciplinary Rules, and be responsible for disciplinary matters.
- (10) To initiate disciplinary measures—
 - (a) a complaint against Mediators shall be received by the ADR Administrator who shall forward same to the Mediation Committee;
 - (b) the Mediation Committee shall investigate the complaint and shall use its own methods to achieve this end:

Provided that the rules of natural justice shall be observed at all times during such investigation;
 - (c) the Mediation Committee shall recommend sanctions in accordance with the Code of Conduct and Disciplinary Rules to the Chief Justice where the complaint is found to have merit;
 - (d) the Chief Justice, if satisfied that the outcome of the complaint is justified, shall approve the sanction recommended and forward the approval to the Committee for implementation;
 - (e) the Mediation Committee may impose sanctions on the Mediator in accordance with the Disciplinary Rules.
- (11) The Mediation Committee shall from time to time, assess the effectiveness of the process and make recommendations to the Chief Justice for changes and additions that may improve the process.
- (12) The Mediation Committee shall not be liable to any person for any act or omission in connection with the performance of their duties, except to the extent such limitation of liability is prohibited by law.
- (13) The Committee shall submit a report of its work to the Chief Justice every six months.

3. ROSTER OF MEDIATORS

(1) There shall be kept at the Registry and in the Office of the ADR Administrator, a Roster of Certified Mediators.

(2) The Roster will be compiled by the Mediation Committee and managed by the ADR Administrator.

(3) The Roster shall contain the names, professional designations, dates, and times of availability of each Mediator on the Roster to conduct mediations.

(4) The schedule of availability shall be updated weekly at the Registry with copies kept by the ADR Administrator for the day-to-day operation of the Roster.

(5) Certified Mediators desiring to be placed on the Roster of Mediators must complete and submit to the Mediation Committee an Application for Placement on the Roster of Mediators and provide evidence—

(a) of having satisfactorily completed the training for Mediators leading to certification by the University of the West Indies;

(b) that he/she is a fit and proper person;

(c) that he/she does not hold a criminal conviction involving fraud or other dishonesty.

(6) If a Mediator on Roster has been charged with or convicted of a criminal offence, the Mediator shall immediately bring this to the attention of the ADR Administrator who in turn shall bring the same to the attention of the Mediation Committee.

(7) The Mediator shall show cause why he/she should not be suspended or removed from the Roster of Mediators.

(8) Where it comes to the attention of the Disciplinary Committee that a Mediator on the Roster of Mediators has been convicted of a criminal offence, the Committee may call upon such Mediator to show cause why he/she should not be removed from the Roster.

(9) A Certificate of Conviction issued by the Court shall be sufficient evidence of the Mediator's conviction for an offence.

(10) A Mediator shall not be liable to any person for any act or omission in connection with the mediation, except to the extent such limitation of liability is prohibited by law.

(11) A Mediator shall not be called as a witness to give evidence of any matter which occurred at any stage of the mediation or any confidential information which came to his/her knowledge during the mediation process.

(12) A certified Mediator whose training and certification was obtained in another jurisdiction may apply to the Chief Justice for inclusion in the Roster. The Chief Justice shall refer the application to the Mediation Committee with his/her advice.

(13) Mediators on the Roster will be paid on a fee basis which will be recommended by the Mediation Committee and approved by the Chief Justice. The Committee shall review the fees from time to time and at least once every two years.

(14) The Mediation Committee shall in the proper case, permit a more experienced Mediator from another jurisdiction to be appointed Co-Mediator.

(15) Parties or counsel in a complex case may apply for their case to be mediated by co-Mediators, the experienced Mediator being the lead Mediator.

(16) A list of approved experienced Mediators from another jurisdiction shall be prepared by the Mediation Committee and administered by the ADR Administrator at their direction.

4. STEPS TO MEDIATION

(1) Parties may be referred to mediation by the Registrar, Magistrate, or Judge.

(2). In making a referral, the following matters may be considered—

- (a) the relationship between the parties;
- (b) the willingness of the parties to resolve their dispute by a collaborative process;
- (c) the number of parties;
- (d) the complexity of the issues in the suit;
- (e) whether the mediation, rather than litigation will be more beneficial to the parties as they seek to resolve their dispute.

A. Referral by Registrar

(1) A dispute may be referred to court-connected mediation after a claim has been duly filed.

(2) A plaintiff/applicant/claimant may request that a dispute be submitted to court-connected mediation after the filing and service of the claim form and statement of claim.

(3) A defendant may also make this request either before or after the filing of the defence, where there is one defendant or all defences where there is more than one defendant.

(4) A request under sub-paragraphs (2) and (3) shall be made to the Registrar by completing an Application for Referral to Mediation Form set out in the Schedule to these Rules.

(5) The Registrar may make a Referral Order and send the file to the ADR Administrator.

(6) A Registrar's Referral Order shall be made before the file is first placed before the Magistrate/Judge. The Registrar/Clerk of Court shall invite parties who have filed originating processes to a pre-proceedings case management meeting to discuss the possibility of the dispute being resolved through mediation.

(7) Where the parties after their introduction to the advantages of mediation, opt for mediation, the Registrar shall refer the case to mediation by referring it to the ADR Administrator for a mediator to be selected and for a date of for mediation to be allocated.

B. Referral by the Court

(1) Where proceedings have commenced, a Judge or Magistrate, may, in performing case management, introduce the suitability of mediation for that case, and shall secure the consent of the parties, to refer the matter to mediation.

(2) This may be at any stage of the proceedings where the Court is of the view that mediation would facilitate the resolution of the dispute between the parties.

(3) Where one party desires to submit a dispute to mediation and the other party unreasonably refuses mediation, the Magistrate or Judge may take that party's refusal into account when making a costs order in the proceedings.

(4) A Judge or Magistrate may make a Referral Order where he is satisfied that mediation, rather than litigation will be more likely to succeed in the resolution of the dispute.

(5) After a Referral Order is made, the file on which the order is placed, shall be taken up by the ADR Administrator who shall—

- (a) allocate an ADR number to the file;
- (b) obtain signatures of parties (and attorneys where applicable) on an ADR Consent Form: (set out in the First Schedule);
- (c) produce the Roster and request that the parties choose their Mediator from the Roster. The parties shall also select two alternative Mediators.
- (d) choose the Mediator for the parties where they are unable or unwilling to agree on a Mediator.
- (e) assign a date for mediation,
- (f) direct the parties to meet with the Mediator at a specified venue if in person, or, send the parties a link for electronic proceedings if the mediation will be conducted remotely.

(6) The mediation session hearing shall be held within twenty-one days of the Referral Order unless otherwise ordered by the Registrar or Judge, on application by any party.

(7) The mediation sessions may be adjourned from day to day as necessary but under no circumstance shall any mediation exceed sixty days.

(8) The ADR Administrator shall, where in a referral made by the Registrar, a defence has not been filed, request that the defendant submits a statement of defence to him/her at least seven days prior to the mediation session, so that copies can be forwarded to all other parties to the mediation proceedings.

(9) If the defendant does not submit the statement of defence as requested, the Mediator may summon a pre-mediation session to identify the issues in dispute to inform the mediation, or may, invite the ADR Administrator to assist the parties to settle issues, or refer the matter to the Registrar or the Court.

(10) The ADR Administrator, shall, after the parties' attendance at mediation, whether or not they settle their dispute, or only partially settle, send the file to the Registrar/Clerk of Court who will place same before a Judge/Magistrate.

(11) Where the matter is settled, the court shall adopt the settlement as its judgment; where the matter is not settled, an order will be made for the suit to take its normal course.

(12) If the parties come to only partial settlement, the Mediator shall return the file to the ADR Administrator with along with a notation of partial settlement and filled out Forms 8 and 9.

(13) Where a matter is not settled as in the immediately preceding paragraph, no matters disclosed for, or included in the settlement shall be disclosed to the court:

- i. Documents made for the purpose of, disclosed or produced during mediation proceedings, shall not be admissible in legal proceedings.

5. THE MEDIATOR

(1) A person desirous of becoming a Mediator shall apply to the Registrar of the Supreme Court in writing, or by email at courtadr@gov.tc

(2) The application shall be placed before the Mediation Committee for consideration; where the Mediation Committee decides to refuse the application, written reasons shall be provided by the Chairperson within five working days of the said refusal.

(3) The applicant must be willing to undergo the requisite training offered by the Judiciary, working with the University of the West Indies.

(4) A person who attends the training, is certified by the University of the West Indies, and is approved by the Mediation Committee, shall be placed on the Roster of Mediators.

(5) Once placed on the Roster, the Mediator shall make his/her availability known to the ADR Administrator for case assignments.

(6) A Mediator on the Roster may advertise his/her services, but shall not make false claims about the mediation process, or the Mediator's qualifications and abilities to assure specific outcomes.

(7) A Mediator may be disciplined for the following reasons and in the following manner.

(8) A Mediator may be disciplined under the Code of Conduct and Disciplinary Rules for Mediators contained in the first Schedule to these Rules.

(9) A Mediator may be disciplined for making false claims about his abilities or the mediation process with the aim of inducing persons to choose him/her as a Mediator.

(10) A Mediator may be disciplined if a complaint made against him/her is found to have merit.

(11) A complaint may be made by a party or the parties, or their Attorneys for misconduct in relation to a case placed before him/her for mediation.

(12) A complaint against a Mediator shall be in writing addressed to the Chairperson of the Mediation Committee, through the Office of the ADR Administrator.

(13) The complaint, which shall identify the Mediator clearly, shall be signed by the complainant, and shall include the complainant's name, address and telephone number.

(14) The complaint shall be in the form of a statement setting out the conduct, without passing any judgment.

(15) A complaint founded on matters relating to a mediation session, shall not be brought against a Mediator after a period of one month following a mediation session, except that the Mediation Committee may extend the time, upon representations being made to it of the reasons for the delay in bringing the complaint.

(16) The Mediation Committee shall investigate the complaint.

(17) An investigation of a complaint under the preceding paragraph shall be conducted in accordance with the rules of natural justice.

(18) If the Mediator, invited to present his response to the allegation either orally or in writing, fails to respond within twenty-one days of receipt of the complaint and order for response, the allegations shall be deemed admitted.

(19) If the allegations are made out, the Committee may impose the sanctions of—

(a) a reprimand;

(b) a letter of apology;

(c) suspension for a period of time from the Roster; (d) permanent expulsion from the Roster.

(20) A Mediator may petition the Chief Justice regarding any disciplinary measure imposed by the Committee.

(21) The Chief Justice may review the action of the Mediation Committee and may investigate the matter, which may include receiving oral evidence from the complainant as well as the aggrieved person and his witnesses.

(22) The Chief Justice may affirm, alter or reverse the decision of the Mediation Committee.

6. THE MEDIATION SESSION

(1) A Mediator may at his/her own discretion request a pre-mediation meeting with the parties.

(2) Before the mediation session, parties to the mediation shall—

(a) at least five days before the mediation session, prepare and submit a mediation bundle, a bundle comprising their documents on which they intend to rely, to the ADR Administrator who shall submit the bundles to the Mediator;

(b) sign the Consent Form, and Confidentiality Agreement.

(3) Where any or all of the parties have failed to meet the pre-mediation requirements within the stipulated time, the ADR Administrator shall, at least two days before the mediation session, inform the assigned Mediator. The Mediator shall, based on this report, determine whether the mediation session should be cancelled or postponed.

(4) All parties to the mediation are required to attend the mediation session.

(5) No fees beyond the fees for filing the suit shall be paid by parties who have consented to go for mediation and for whom a mediation session has been scheduled, except parties to Court-Aided Mediation who shall pay the prescribed fee; this provision may be revisited from time to time.

(6) Where any party fails to attend the mediation session without reasonable notice, or unreasonably terminates a mediation session, the mediator shall note it on the file. It shall go towards the assessment of costs by the Court.

(7) Where a file is returned to the Registry because one of the parties failed to attend mediation, the file shall be placed before the Judge/Magistrate who shall, if the defaulting party is a plaintiff, dismiss his case and make an order for costs to be assessed; if a defendant, enter judgment against the defendant with an order for costs to be assessed against him.

(8) Where both parties who have consented to go for mediation fail to attend the mediation session, the file shall be returned to the Registry who shall place same before the Judge/Magistrate.

(9) A Judge/Magistrate before whom such a file is placed shall summon the parties and conduct an inquiry. If the behaviour is found to be not unreasonable, the order for mediation shall be vacated and an order made for the case to take its normal course.

(10) Parties who have consented to mediation may apply within seven days of the time scheduled for mediation, to withdraw from it.

(11) An application may be made in the Form 11 set out in the Schedule.

(12) Where the conduct is found to be unreasonable, the suit shall be dismissed with an order for costs to be assessed against the plaintiff or counterclaimant (where applicable).

(13) A mediation session may be adjourned for additional sessions where such is deemed to be necessary.

(14) The Mediator shall after the conclusion of a mediation, whether or not it resulted in a settlement or partial settlement, and whether or not it was prematurely terminated fill out Form 9 and send it along with the file to the ADR Administrator.

7. OUTCOME OF MEDIATION

(1) Upon the conclusion of the mediation sessions, where there is a settlement of all or some of the issues in the dispute, the terms of settlement shall be set out in the Terms of Settlement Form 8 set out in the Schedule to these Rules.

(2) The signed terms of settlement shall be *prima facie* evidence of settlement, and shall be adopted by the Judge/Magistrate as the judgment of the court.

8. EVALUATION OF MEDIATION SESSION

(1) The ADR Administrator shall keep an Evaluation Form 10 and 10A set out in the Schedule to these Rules.

(2) The filled-out Evaluation Form shall be forwarded by the ADR Administrator to the Mediation Committee which shall analyse it to identify for areas of weakness, in order to inform improvements to the service.

(3) The Evaluation Form must be completed by each party who attends the mediation session and their attorneys (where applicable).

(4) Where a party or his/her Legal Practitioner refuses to complete the Evaluation Form, the ADR Administrator shall record such refusal on the file.

(5) The Judge/Magistrate before whom the file is placed following mediation shall take that party's refusal into account when making a costs order in the proceedings.

ADDRESSES:

(a) All mail deliverable physically to the Chief Justice, Registrar, Chairperson of the Mediation Committee, and Court Administrator, in all matters pertaining to Mediation shall be sent to the Registry of the Supreme Court.

(b) Electronic Communication by or to the said persons shall be at courtadr@gov.tc.

9. COURT-AIDED MEDIATION

(1) A person who requires the resolution of a dispute with another but does not wish to file papers before the court, may access mediation by applying for such on the Court-Aided Mediation Form set out in the Schedule.

(2) Persons who opt for mediation without first filing a suit before the court shall pay fees for the mediation service.

(3) The Mediation Committee shall prescribe the fee for such service, which may be an hourly rate, a daily rate, or a fee for concluding settlement.

(4) Fees for such service shall be paid to the Registry through the ADR Administrator.

(5) All such funds shall be paid into the Consolidated Fund.

FIRST SCHEDULE

CODE OF CONDUCT AND DISCIPLINARY RULES FOR MEDIATORS

PREAMBLE

This Code of Conduct is provided by the Chief Justice to guide the Mediation Committee's work under Rule 2 of the Court Connected Mediation Rules 2021, as well as Mediators in the practice of mediation.

The Code of Conduct also sets out the parameters of acceptable conduct for Mediators and the practice of mediation, giving force to recognised ethical standards.

THE OVERRIDING OBJECTIVE

Mediation is a dispute resolution mechanism that provides an alternative mode for the settlement of disputes, while maintaining the privacy and confidentiality of all parties involved in the proceedings as well as fostering an atmosphere of trust.

The hallowed principles of self-determination, impartiality, integrity, and conflicts of interest, competence, confidentiality, advertising and solicitation, informed consent, and the advancement of mediation practice further this overriding objective. This Code of Conduct ensures that they are adhered to in a meaningful manner.

The main objective of this Code of Conduct is to promote ethical conduct and professionalism in Mediators in the Turks and Caicos Islands, and to provide sanctions for the breach of the prescribed conduct.

The Code provides standards of comportment for Mediators and is the regulating tool of the Mediation Committee for assuring acceptable conduct, as it provides guidelines for sanctions for breaches.

PART I

1. SELF-DETERMINATION

1.1 Mediation shall be based on the principle of self-determination. A Mediator shall respect and abide by this fundamental principle by—

- i. informing the parties of his role as a neutral and not the decision-maker;
- ii. assisting the parties to make their own voluntary, uncoerced decision regarding a possible resolution;

iii. guiding the parties to an informed decision by providing the parties with pertinent information, including possible outcomes.

1.2 A Mediator shall not provide legal or professional advice to the parties but may advise the parties of the need to consult with other professionals to help them make informed decisions where it becomes apparent that a party may not appreciate how a settlement may affect legal rights or obligations.

1.3 A Mediator may also, where both parties seek such information, express an opinion on the matters at issue, and may identify evaluative approaches to assist the parties.

2. INDEPENDENCE AND IMPARTIALITY

2.1 A Mediator shall be wholly independent and wholly impartial and must shun the appearance of bias at all times.

2.2 Before or immediately after accepting an appointment as Mediator in a dispute, a Mediator shall disclose to the ADR Administrator in writing any circumstance that could potentially give rise to a reasonable apprehension of a lack of independence or impartiality in the mediation of the dispute.

2.3 The ADR Administrator shall seek advice from the Chairperson of the Mediation Committee as to whether the Mediator may be appointed to mediate for the reasons given.

2.4 If the Mediator who has made a disclosure under paragraph 2.2 is appointed to mediate, he shall make further disclosure under paragraph 5.1 to the parties who may consent to have him or request for another Mediator from the ADR Administrator.

2.5 A Mediator shall not exhibit bias of any form, nor may he favour one party to the dispute, and shall have no personal interest in the terms of the settlement.

2.6 A mediator's opinion of a party or the matter in issue, must not influence how he conducts the mediation.

3. CONFIDENTIALITY

3.1 A Mediator has a duty to maintain the privacy and confidentiality of all to foster an atmosphere of trust.

3.2 No part of the proceedings may be used by the Mediator or disclosed to third parties without the permission of the parties.

3.3 A Mediator shall inform the parties and any experts, advisors, and any other persons who accompany a party to a mediation session of the confidential nature of mediation, and that same shall not be disclosed by the Mediator except in the following circumstances—

- i. with the parties' written consent;
- ii. if ordered to do so by a court or there is a requirement to do so by law, such as a criminal design;
- iii. if the information discloses an actual or potential threat to human life.

4. INTEGRITY

A Mediator shall conduct himself in a manner which shall instil confidence in the mediation process and confidence in his integrity, that he will act in good

faith, be diligent, and seek to only advance the interests of the parties. He shall assist the parties to come to their own informed decision and shall not force a decision on the parties, or push for a certain course of action.

5. CONFLICTS OF INTEREST

5.1 A Mediator shall make full disclosure at the beginning of the mediation process, regarding anything that might compromise the parties' willingness to continue the process.

5.2 Parties to a dispute may following the disclosure made by the Mediator under paragraphs 2.2 and 5.1, give their consent in writing to the Mediator to continue to mediate their dispute.

5.3 The Mediator must not be related to any of the parties or have an interest in the subject matter of the dispute or any matter related to it.

6. COMPETENCE

Notwithstanding the acquisition of the basic skill of mediation, a Mediator has an added obligation to acquire and maintain professional skills and the ability to uphold the quality of the mediation process.

7. QUALITY OF THE PROCESS

7.1 Before the start of mediation, a Mediator shall inform the parties about the mediation process and its implications, and endeavour to make the parties understand the mediation process.

7.2 A Mediator shall act professionally at all times and shall not engage in conduct that may bring the Mediator or the mediation process into disrepute.

7.3 A Mediator shall conduct a mediation in a manner that encourages respect among the parties and shall take reasonable steps to limit abuse of the mediation process without interfering with the parties' right to determine their own outcome.

7.4 During the mediation process, a Mediator shall not use any honorific title to which he is accustomed and/or may be entitled.

8. ADVERTISING AND PROMOTION OF MEDIATION SERVICES

A Mediator shall in advertising or offering services to clients or potential clients—

- i. provide accurate information about his or her education, background, mediation training and experience, in any oral or written representation or biographical or promotional material;
- ii. refrain from making promises guaranteeing settlement, or a specific outcome;
- iii. refrain from pretending competency in areas in which he lacks qualification and/or experience.

9. ADVANCEMENT OF MEDIATION PRACTICE

A Mediator shall advance the development of mediation in these Islands by—

- i. participating in outreach and education efforts to assist the public to develop an improved understanding of, and appreciation for, mediation;
- ii. assisting newer mediators through training, mentoring, and networking;
- iii. encouraging parties and counsel to fill out the evaluation forms at the end of the mediation process.

10. TERMINATION OR SUSPENSION OF MEDIATION

The Mediator may suspend or terminate the mediation—

- i. if requested, in writing, by one or more of the parties to do so;
- ii. if the parties are at an impasse and further efforts at mediation would not be useful at this time;
- iii. in any circumstance in which the subject of mediation may be inimical to the public good, including the furtherance of the commission of a crime.

PART II

11. SANCTIONS

11.1 A complaint against a Mediator by a person who has been subject to the mediation process shall be made in writing to the Chairperson of the Mediation Committee through the Office of the ADR Administrator

11.2 The Chairperson shall place the complaint before the Mediation Committee which shall for such purpose, be constituted as the Disciplinary Committee.

11.3 The Disciplinary Committee shall review the complaint to determine whether the allegations, if found to be true, would constitute a violation of this Code of Conduct.

11.4 The Disciplinary Committee shall dismiss the complaint if it would not constitute a violation of this Code of Conduct.

11.5 Where on the face of the complaint, the Disciplinary Committee is of the view that the allegation if proven, would constitute a violation of the Code of Ethics, the Disciplinary Committee shall cause to be served on the named Mediator, either electronically, by personal service or by registered mail—

- i. a copy of the complaint;
- ii. a written request of the Disciplinary Committee for the named Mediator to provide, a written response to the allegations.

11.6 If the Mediator/Respondent fails to respond to the complaint in writing within 14 days of service of the complaint, the allegations shall be deemed to be admitted.

11.7 The Disciplinary Committee may, in its discretion, refer the complainant and the named Mediator to mediation conducted by a volunteer Mediator to resolve the issues raised by the complainant.

11.8 If the issues raised by the complainant are not resolved through mediation, the Disciplinary Committee shall hear and determine the complaint observing the rules of natural justice including representation by counsel, the tendering of both oral and documentary evidence.

11.9 The Disciplinary Committee shall submit its report to the Chief Justice and recommend appropriate the sanction.

11.10 If the complaint is found to be justified, Chief Justice, shall approve the sanction recommended and forward the approval to the Committee for implementation.

11.11 The Mediation Committee will then impose sanctions on the Mediator in accordance with these Disciplinary Rules.

11.12 Sanctions may include the following—

- i. the issue of a private reprimand;
- ii. the ordering of corrective action;
- iii. suspension from the Register for a prescribed period; and/or
- iv. removal from the Roster of Mediators, with or without conditions for reinstatement.

11.13 Sanctions imposed against the Mediator pursuant to paragraphs 10(11) of this Code shall be a matter of public record, but the files of the Disciplinary Committee and the Chief Justice on the matter shall remain confidential.

11.14 A Mediator who is aggrieved by the sanction may appeal to the Chief Justice for reconsideration or relief not more than fourteen days after the Mediation Committee imposes sanction on the Mediator.

SECOND SCHEDULE

FORMS

FORM 1

APPLICATION TO BE TRAINED AS A MEDIATOR AND/OR TO BE PLACED ON THE ROSTER OF MEDIATORS

PLEASE TAKE NOTICE THAT:

1. I, _____ the undersigned, apply:

(Please check as applicable)

- to be trained as a Mediator
- to be placed on the Roster of Mediators

I confirm that:

(For Applicants for Training)

- I shall attend the Mediation Training which is offered by the Judiciary of Turks and Caicos Islands free of charge. (For Roster Applicants)
- that I have completed the Mediation training offered for the Judiciary of Turks and Caicos Islands by the University of the West Indies;
 - that I am a fit and proper person to work as a Mediator in the Judiciary of Turks and Caicos Islands;
 - that I do not hold a criminal conviction involving fraud or other dishonesty.
 - that as much as practicable, I shall take up an assignment by the ADR Administrator to conduct mediation, and notify the ADR Administrator of my availability.
 - that I shall disclose any interest I have in a case that may be potentially assigned to me.
 - that I shall use my best endeavours to help parties settle their disputes without partiality.
 - that I shall abide by the Code of Conduct for Mediators and Disciplinary Rules.

Name -----

Residential Address-----

Postal Address -----

Telephone/Email Address -----

Signed: -----Date-----

APPLICATION FOR REFERRAL TO MEDIATION

Between

A.B. PLAINTIFF/CLAIMANT

and

C.D. DEFENDANT

PLEASE TAKE NOTICE THAT:

1. We the undersigned herein, apply for referral to mediation of a dispute between the above parties.

Particulars:

PLAINTIFF/CLAIMANT

Name /Company Name -----

Residential Address-----

Business Address-----

Postal Address -----

Landline/Mobile Phone -----

E-Mail Address-----

DEFENDANT

Name /Company Name -----

Residential Address -----

Business Address-----

----- Postal address

Landline/Mobile Phone-----

E-Mail Address-----

Signed:

1. -----Plaintiff/Claimant.

-----Attorney for Plaintiff/Claimant

(Name, address, telephone number, email of Attorney)

*Please attach copies of relevant documents and/or mediation bundle if immediately available.

2. -----/Attorney for Defendant

(Name, address, telephone number, email)

*Please attach copies of relevant documents and/or mediation bundle if immediately available.

To:

The Registrar and

The ADR Administrator

MEDIATION REFERRAL ORDER

Between

A.B. PLAINTIFF/CLAIMANT and

C.D. DEFENDANT

Order

Made the..... day of20 ...

Upon this matter coming on before:

The Registrar/Magistrate/ Judge

And Upon Hearing the Plaintiff/Claimant or Counsel; and

the Defendant or Counsel

AND UPON THE COURT being of the opinion that the parties should try to resolve their dispute in a non-litigious manner by way of Mediation;

THE PARTIES having been provided with information regarding Alternative Dispute Resolution, and in particular, Mediation.

AND THE PARTIES having consented to refer the matter to mediation;

IT IS ORDERED THAT:

- (1) The parties to these proceedings attend a mediation session with a Mediator selected by them or at their direction from the Roster of Mediators (as well as two Alternates), within 10 days of today’s date.
- (2) If the parties fail to select a Mediator or cannot agree upon a mutually acceptable Mediator, within 5 days of this Order, the ADR Administrator shall select a Mediator from the Roster of Mediators, in consultation with the parties where applicable.
- (3) The parties shall sign a Mediation Consent Form as well as a Confidentiality Agreement before the ADR Administrator.
- (4) The parties (or counsel as applicable) shall each prepare a bundle setting out the issues to be resolved, and all the documents they intend to rely on as evidentiary material, and lodge same with the ADR Administrator at least 3 days before the commencement of the mediation session.
- (5) These proceedings are stayed pending the outcome of mediation.

- (6) Following Mediation, the ADR Administrator shall forward the Outcome of Mediation Form as well as the Terms of Settlement Form to the Registrar along with the file on the matter. (7) The Registrar shall refer the file to the court which shall—
- a. enter judgment in accordance with the terms of Settlement;
 - b. fix the matter for directions, or
 - c. where no defence was filed, order that the defence be filed for the suit to take its normal course.
- (8) If any party fails to attend the mediation session without reasonable notice, the file will be returned to the Registrar who shall place same before the Court. If the defaulting party is the plaintiff, the claim will be dismissed with costs; if the defendant, judgment shall be entered against him with costs.
- (9) Where a party unreasonably terminates a mediation session, or refuses to complete the Evaluation Form, the Court shall take that fact into account when making any order as to costs in the proceedings.
- (10) In Court-Aided Mediation, the parties shall pay the prescribed fees at least 7 days before the Mediation session.
- (11) Where a party who has consented to attend Court-Aided Mediation fails to attend, he/she shall forfeit the fees paid.

Registrar/Magistrate/Judge

CONSENT TO MEDIATION FORM

ADR FILE NO.....

REFERRING COURT.....

DATE OF REFERRAL.....

CASE

TITLE.....
.....

The Judge/Magistrate/Registrar, having explained to the parties and their Attorneys (as applicable), the nature of the confidential mediation process, the parties to this action confirm their voluntary consent to mediation.

Proposed Date of Session.....

Mediator Agreed on by the Parties.....

CONSENT GIVEN BY:

Plaintiff(s)/Applicant(s) Name

and Signature of:

1. Plaintiff(s)/Applicant(s).....
.....
.....

2. Plaintiff(s)/Applicant(s)
Attorney(s).....
.....
.....

Defendant(s)/Respondent(s) Name

and Signature of:

1. Defendant(s)/Respondent(s).....
.....
.....

2. Attorney(s).....
.....
.....

Declared thisday of.....20

After the content had been read over/interpreted to

.....

Which he/she seemed to understand before signing/making of mark

.....

Judge/Magistrate/Registrar

CONFIDENTIALITY AGREEMENT

Between

A.B. PLAINTIFF/CLAIMANT and

C.D. DEFENDANT

The parties will participate in a mediation session to be conducted in accordance with the Practice Direction No.1 of 2021 The parties agree that:

- (1) statements made and documents produced in a mediation session and not otherwise discoverable are not subject to disclosure through discovery or any other process and are not admissible into evidence for any purpose, including impeaching credibility;
- (2) the notes, records and recollections of the Mediator conducting the session are confidential and protected from disclosure for all purposes;
- (3) where a mediation has been finalised all notes taken at any session in respect of the mediation shall be destroyed in the presence of the parties;
- (4) no recordings or capture of information by electronic devices shall be allowed in any mediation session;
- (5) at no time shall any party summon, subpoena or call the Mediator as a witness to testify as to the fact of the mediation or as to any oral or written communication made at any stage of the mediation;
- (6) this Agreement shall be binding;

Each of the parties and their Legal Practitioners have read this Agreement and agree to proceed with the mediation on the terms contained herein.

Dated:

.....

.....

Plaintiff/Claimant

Defendant

.....

.....

Attorney for the Plaintiff/Claimant

Attorney for the Defendant

To: ADR ADMINISTRATOR

NOTICE OF SELECTION OF MEDIATOR

Between

A.B. PLAINTIFF/CLAIMANT and

C.D. DEFENDANT

PLEASE TAKE NOTICE that the parties have selected
as Mediator and

.....and
..... as an Alternate from the Roster of Mediators.

Dated:.....

PLAINTIFF/CLAIMANT

Signed: -----

PLAINTIFF/CLAIMANT'S ATTORNEY

.....
.....
.....
.....
.....
.....
.....
.....

(Name, address, telephone number, email)

DEFENDANT

Dated:

Signed: -----

DEFENDANT'S ATTORNEY

.....

.....
.....
.....
.....
.....
.....
.....

(Name, address, telephone number, email)

To: ADR Administrator

(Name, address, telephone number, email)

NOTICE OF SCHEDULED MEDIATION

Between

A.B. PLAINTIFF/CLAIMANT and

C.D. DEFENDANT

Notice of Scheduled Mediation

TAKE NOTICE that the parties/the Court have/has selected (Name of Mediator) from the Roster of Mediators. The mediation is scheduled to take place on the.....day of

..... (date) from to (time) at the Office of the ADR Administrator at (

When you attend the mediation session, you should bring with you any documents that you consider of central importance to your case. You should plan to remain throughout the scheduled time.

Dated:

Signed: -----

ADR Administrator

(Name, address, telephone number, email)

To: The Mediator

(Name, address, telephone number, email)

To: Plaintiff/Claimant's Legal Practitioner

(Name, address, telephone number, email)

And To: Defendant/Defendant's Legal Practitioner

(Name, address, telephone number, email)

CERTIFICATE OF NON-COMPLIANCE

Between

A.B. PLAINTIFF/CLAIMANT and

C.D. DEFENDANT

PLEASE TAKE NOTICE that

The Claimant/Plaintiff failed to attend the mediation session.

The defendant failed to attend the mediation session.

The claimant or his/her representative opted out of the mediation session after it started terminated the mediation session without just cause.

The defendant or his/her representative opted out of the mediation session after it started/ terminated the mediation session without just cause.

Dated:

Signed: -----

Mediator

(Name, address, telephone number, email)

To: ADR Administrator

And to: The Registrar

Defendant(s)

Name and Signature of:

1. Defendant(s).....
.....

2. Attorney(s).....
.....
.....

NOTICE OF OUTCOME OF MEDIATION

Between

A.B. PLAINTIFF/CLAIMANT and

C.D. DEFENDANT

TAKE NOTICE that a mediation session was scheduled/conducted in this proceeding on the day of, 20.....

(Please check all applicable boxes)

- The parties settled prior to the mediation session.
- The parties settled as a result of the mediation session.
- The parties did not settle.
- The parties settled some issues as a result of the mediation session.
- The terms of the Partial Settlement Agreement on some issues are hereto annexed.
- The terms of the Settlement Agreement on all issues are hereto annexed.
- The parties did not attend the mediation session.
- The mediation session was adjourned to
- The parties requested an extension of the time for mediation.
- The parties attended the mediation session and agreed to meet for further mediation.
- The Mediator/the parties agreed that a Settlement Agreement could not be reached at the mediation session.
- The parties have settled on all issues save for costs, as a result of the mediation session.
- The terms of the Settlement Agreement on all issues save for costs, are hereto annexed.

Dated:-----

Signed: -----

The Mediator

(Name, address, telephone number, email)

Signed: -----

ADR Administrator

To: The Registrar

Please circle the number, which best reflects how you feel about each of the following statements.

1 - strongly agree 2 - disagree 3- not sure

- | | | | | |
|-----|--|---|---|---|
| (1) | The Mediator explained the mediation process clearly so that I knew what to expect during the mediation session. | 1 | 2 | 3 |
| (2) | The Mediator allowed me / my Attorney to fully present my case. | 1 | 2 | 3 |
| (3) | The Mediator carefully listened to my side of the case. | 1 | 2 | 3 |
| (4) | The Mediator asked appropriate questions to determine the facts in the case. | 1 | 2 | 3 |
| (5) | The Mediator helped me/my Attorney to generate options for settling the dispute. | 1 | 2 | 3 |
| (6) | The Mediator treated all parties equally. | 1 | 2 | 3 |
| (7) | Overall, I was satisfied with the mediation session itself. | 1 | 2 | 3 |
| (8) | Overall, I was satisfied with the way the Mediator handled the session. | 1 | 2 | 3 |
| (9) | If I become a litigant in the future I would try mediation again. | 1 | 2 | 3 |

Please provide any comments you wish to make regarding the Mediator or the mediation process on this form.

Thank you.

EVALUATION FORM FOR ATTORNEYS

Please fill out this form after the mediation session and return it to the ADR Administrator on completion of the mediation session.

All responses to this questionnaire are strictly confidential.

Name of the Mediator _____

Are you the Claimant’s Legal Practitioner Defendant’s Legal Practitioner Other’s Legal Practitioner

Date of Mediation_____

Outcome: not settled settled some issues settled

Type of case (Tort, contract, etc.): _____

Mediator’s level of participation: None Low Medium High

Your comments are important, particularly in instances of a “poor” ranking. We would appreciate you elaborating as much as possible.

1 - poor 2 – satisfactory 3 - very good

- | | | | | |
|-----|--|---|---|---|
| (1) | During the introductory statement, how well did the Mediator explain the mediation process to all parties? | 1 | 2 | 3 |
| (2) | Were you satisfied that your client was allowed to fully present his/her case? | 1 | 2 | 3 |
| (3) | How well did the Mediator understand the FACTUAL issues involved in the case? | 1 | 2 | 3 |
| (4) | How well did the Mediator understand the LEGAL issues involved in the case? | 1 | 2 | 3 |
| (5) | How well did the Mediator ask appropriate questions to determine the facts of the case? | 1 | 2 | 3 |
| (6) | How well did the Mediator clarify the key issues and interests of each party? | 1 | 2 | 3 |
| (7) | How well did the Mediator help the parties generate realistic options to settle the case? | 1 | 2 | 3 |

(8) How well was the Mediator able to resolve or facilitate impasses between the parties? 1 2 3

(9) Overall, how satisfied were you that the Mediator was impartial and treated both sides equally? 1 2 3

(10) Overall, how satisfied were you with the PROCESS of the mediation? 1 2 3

(11) Overall, how satisfied were you with the OUTCOME of the mediation? 1 2 3

(12) Overall, how satisfied were you with the MEDIATOR? 1 2 3

(13) Did you think the assignment of this case to mediation facilitated (or will facilitate) its early resolution? yes no

(14) Do you think mediation was appropriate in this case? yes no (15) Were you satisfied with the way the ADR Administrator worked in this case? yes no

If NOT, why not:

Additional comments:

WITHDRAWAL FROM MEDIATION

Between

A.B. PLAINTIFF/CLAIMANT and

C.D. DEFENDANT

Please take notice that I, -----
hereby apply to withdraw from the Mediation scheduled to take place between the parties on ----
-----Before------(Mediator)

My reasons for withdrawal are as follows:-----

----- (Please check as applicable)

- I wish the court to determine the dispute between the parties
- I wish to submit to the judgment of the court I wish to withdraw my claim before the court.

SIGNED.....DATE.....

To the ADR Administrator

And To: The Registrar/Clerk of Court

MONTHLY RETURN FORM

MONTH.....YEAR.....

DATE	Names of Mediators	No. of Cases Pending for Mediation during the period	No. of Cases referred to Mediation during the period	Number of Mediation Sessions (Include cases not settled)	No. of Mediation sessions aborted and the reasons for non-completion	No. of Cases Settled and disposed of through Mediation

NAME.....

SIGNATURE.....

ADR ADMINISTRATOR

To: The Chief Justice

And To: The Mediation Committee

ISSUED ON 29th September 2021

BY:

THE HONOURABLE MRS. JUSTICE MABEL AGYEMANG

CHIEF JUSTICE

With input from Practice Direction No. 7 of the Eastern Caribbean Supreme Court,
with the permission of the Chief Justice of ECSC.

In Conjunction with:

JOLYON HATMIN

CHIEF MAGISTRATE