

RULES FOR COURT ASSISTED MEDIATION

1. *Application*

- 1.1. In the absence of statutory provisions, these rules are to operate as guidelines for all judicial officers who act as mediators in court assisted mediation.
- 1.2. These Rules do not act as a fetter upon the discretion of the mediator to help parties resolve disputes. However, mediators are urged to have regard to these rules so that the mediation process adheres to the principles of fairness and justice.
- 1.3. Judicial officers should always bear in mind that the ends do not justify the means.

2. *Judicial officers as mediators*

- 2.1 All judges and judicial officers involved in trial work are encouraged to mediate cases in an effort to save time and money for all parties involved.
- 2.2 However, judges and judicial officers are strictly not permitted to mediate cases which are on their own trial list. This is to prevent judges from being unfairly accused of attempting to avoid hearing certain cases. Judges may only mediate cases which are on the trial list of other judges.
- 2.3 Judges in stations where there is only one judge may make use of the video conferencing facility to exchange cases for mediation.

3. *Cases that are highly recommended for mediation*

3.1 Judges and judicial officers should automatically refer the following cases for mediation during case management hearings:

- (a) Personal injury cases
- (b) Family cases
- (c) Goods sold and delivered cases

3.2 The referral to mediation can be revoked if the parties object to the mediation at the outset of the proceedings.

3.3 Other cases can be referred to mediation as well with the consent of the parties.

4. *Basic function of a mediator*

4.1 In court assisted mediation the role of a mediator is two-fold.

4.2 In the first stage, the mediator is a neutral and impartial person who facilitates communication between parties so that they can resolve the dispute themselves.

4.3 In the second stage, the judicial officer who acts as a mediator may often be called upon to suggest solutions or advice. Upon such request, the mediator should obtain consent of the other party before proceeding to give a neutral evaluation.

4.4 The additional duty of giving a neutral evaluation must be discharged with caution, tact and diplomacy so that the impartiality of mediator and the mediation process are not compromised.

5. *Introducing the process*

5.1 Parties may be unaware of the nature of mediation. The mediator's first task would be to allay any fears or doubts borne of ignorance. The mediator should briefly explain the process and in particular should highlight that:

- (i) the mediation process may be conducted in a joint and/or a private session (caucus).
- (ii) the mediator is not there to make a decision for the parties;
- (iii) that the mediation process is owned by the parties and it is entirely up to them to reach a settlement voluntarily.
- (iv) that the mediator is there merely to lend an impartial hand to facilitate the process.
- (v) that the mediation need not necessarily lead to a settlement but even if it fails it may succeed in narrowing issues for trial.

6. *Voluntariness*

6.1 The mediator must ascertain at the outset that the parties have submitted to the mediation process voluntarily. This is essential as an unwilling party may deliberately scuttle the mediation process after much time and effort had been expended.

6.2 The mediator should never compel parties to participate in the mediation.

7. *Authority to settle*

7.1 The mediator should ensure at the outset of the proceedings that the disputants before them have either actual authority or delegated authority to settle the dispute.

8. *Conflict of interest*

- 8.1 Very much like court proceedings, a mediator should never mediate a dispute in which he has personal interests or appears to have one.
- 8.2 A judicial officer who acts as a mediator should desist from taking cases where relatives or friends are involved, either directly or indirectly.
- 8.3 Although a mediator would not be making a decision, he may be open to the accusation that the mediation process was skewed in obtaining a favourable settlement for one side or the other if he has a personal interest in the case.

9. *Confidentiality*

- 9.1 There are two levels of confidentiality in a mediation process.
 - (a) At the first level, the entire mediation process is confidential.
 - (b) The mediator must tell the parties at the outset that the court would not take any formal notes as part of court proceedings.
 - (c) The disputants therefore cannot make use of any admissions or concessions made in mediation if the matter goes to trial.
 - (d) The mediator, for ease of reference, may make brief notes to facilitate the mediation. However, these notes should be destroyed at the end of the mediation.
 - (e) The mediator must always resist the temptation to discuss the information learned from it, however remarkable or sensational, with anyone.

- (f) Court staff should also be excluded from the mediation proceedings unless consent is obtained from the parties for purpose of translation.

9.2 At the second level, the deliberations in caucus are confidential and privileged unless waived by the parties.

10. *Presence of lawyers*

10.1 It is advisable to allow lawyers to be present during mediation proceedings as they may assist their clients to explore options to settle. The reasons are:

- (a) In court assisted mediation, the dispute had already reached the litigation stage and the lawyers have already become stakeholders.
- (b) The presence of lawyers will give added credence to the voluntariness of the parties.
- (c) The lawyers may also assist to draw up the consent judgment if the mediation is successful.

10.2 However, in cases, where a lawyer appears to be part of the problem instead of the solution, the mediator in his discretion may limit the participation of the lawyer with the consent of the party.

11. *Presence of family members and friends*

11.1 A mediation proceeding is not a formal court proceeding. For this reason, the parties, especially those who are unrepresented or uneducated may be allowed to bring in a confidant such as a spouse or close relative at the discretion of the mediator if their presence would assist in the mediation process.

12. *Suitable venue*

12.1 As mediation deliberations are confidential, it must be held in a suitable venue where the likelihood of interference is minimal such as judge chambers or a special mediation room. Where permissible, open court should be avoided.

13. *Authority of Mediator*

13.1 Judicial officers who act as mediators should always remind themselves that they have no authority to impose any settlement or solution on the parties.

13.2 If the occasion arises, at the request of the parties, the mediator may assist in generating options in reaching a resolution to the dispute.

13.3 If parties are not making any headway in reaching a settlement, the mediator should never force the parties, however subtly, to relent from hardened positions.

14. *Mediator should not try the case himself or herself*

14.1 A judicial officer who mediates a dispute should not try the case himself in the event the mediation fails. This is because the information that had come to his knowledge during the mediation proceedings may lead him to prejudge issues pertaining to the case.

14.2 Even if the mediator is confident that he or she will not prejudge the issues upon assuming the mantle of a judge, the parties may entertain silent misgivings as to his objectivity and open-mindedness. This will taint the trial process. It is best that the case is tried by another judicial officer.

15. ***Conclusion of successful mediation***

15.1 If the mediation succeeds, the mediator may record the terms of the settlement and enter consent judgment.

15.2 In some cases, especially where the parties are not represented during the mediation, the mediator may, after ascertaining the terms of the settlement, send the parties to the trial judge to record the consent judgment if possible. This is to avoid the accusation that the mediator had imposed his own terms to “settle” the case.

16. ***Termination of mediation***

16.1 In the event the mediation fails, the mediator should immediately notify the assigned trial judge so that further directions for trial can be given.

16.2 The mediator should be quick to discern if any party is not making a genuine effort to settle the dispute but is instead using the mediation proceeding to delay trial. In such a case, the mediator should be practical in terminating the mediation session and send the case to the trial judge.

16.3 On the same note as above, the mediator should exercise his discretion in allowing follow-up mediation sessions only in cases where the parties are making progress or where there is a prospect of settlement.