

IN THE SUPREME COURT OF THE COMMONWEALTH OF THE BAHAMAS

PRACTICE DIRECTION

No. [] of 2021

COURT-CONNECTED MEDIATION

This Practice Direction is made pursuant to Part 4.2(2) of the Civil Procedure Rules of the Supreme Court of The Bahamas 2021 and supplements rule 25.1(i).

CPR 4.2

4.2 Scope of practice directions

- (1) A practice direction may be issued in any case where provision for such a direction is made by these Rules.
- (2) Where there is no express provision in these Rules for such a direction, the Chief justice may give directions as to the practice and procedure to be followed in the Supreme Court.

CPR 25.1

25.1 Court's duty actively to manage cases

The court must further the overriding objective by actively managing cases. This may include -

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- (i) encouraging the parties to use any appropriate form of ADR procedure including, in particular, mediation, if the court considers it appropriate and facilitating the use of such procedures;

1. GENERAL

In this Practice Direction, unless otherwise provided for or the context otherwise requires -

“Alternative Dispute Resolution” or **“ADR”** - means a collective description of methods of resolving disputes otherwise than through the trial process including, in particular, mediation;

“Case” – means proceedings filed in the Supreme Court of The Bahamas which are subject to the Civil Procedure Rules of the Supreme Court of The Bahamas 2021 in accordance with CPR 2.2 of those Rules;

Part 2

CPR 2.2

2.2 Application of these Rules

- (1) Subject to paragraph (3), these Rules apply to all civil proceedings in the Supreme Court.
- (2) In these Rules “civil proceedings” include Judicial Review.
- (3) These Rules do not apply to proceedings of the following kinds -

- (a) *bankruptcy and insolvency proceedings (including winding up of companies);*
- (b) *family proceedings except proceedings under the Child Protection Act;*
- (c) *non-contentious probate proceedings;*
- (d) *proceedings in which the Supreme Court is acting as a Prize Court;*
- (e) *any other proceedings in the Court instituted under any enactment, in so far as rules made under that enactment regulate those proceedings; and*
- (f) *any proceedings to which, by Part 73 (transitional provisions) it is provided that these Rules do not apply.*

“Court” - means the Supreme Court of The Bahamas.

“court-connected mediation services” - means mediation services provided as the result of a referral by the court before or after case management;

“court office” – refers to –

- (a) the place where documents are to be filed, etc. and includes the Registry of the Supreme Court; and
- (b) members of the court staff who carry out work of a formal or administrative nature under rule 2.5 of the Civil Procedure Rules of the Supreme Court of The Bahamas 2021;

CPR 2.5

2.5 Court staff

- (1) *Where these Rules refer to an act being done by the court office or require or permit the performance of an act of a formal or administrative character, that act may be performed by a member of the court staff authorised generally or individually in writing by the Chief Justice.*
- (2) *Where these Rules expressly so provide, any other functions of the court may be carried out by a member of the court staff authorised in writing by the Chief Justice.*
- (3) *If a step may be taken by a member of the court staff -*
 - (a) *that person may consult a judge or registrar before taking the step; and*
 - (b) *that step may be taken by a judge or registrar instead of a member of the court staff.*

“BJEI” – means the Bahamas Judicial Education Institute;

“mediation” - means a flexible dispute resolution procedure in which a neutral third party, the mediator, facilitates dialogue and discussion between two or more parties with a view to conducting negotiations between them to help them settle their dispute;

“Mediation Coordinator” – means the person appointed by the Chief Justice to be responsible for the management of court-connected mediation in The Bahamas;

“mediation session” - refers to a mediation including continuations and adjournments of the same matter held with a mediator and attended by parties and /or their lawyers (either in person at a designated venue or by use of a remote platform or other electronic means) to a dispute to which this Practice Direction applies;

“Mediator” - means an individual engaged as a neutral third party to provide mediation services and whose name appears on the Roster of Mediators for the Court;

“party” means -

- (1) one of the persons to a dispute for which a Case has been filed; and
- (2) attorneys for a party who are in attendance at a mediation to act as counsel for that party;

“parties” – mean more than one party;

“a Referral Direction” – means a non-mandatory direction by a registrar or judge for parties to participate in mediation conducted in accordance with this Practice Direction bearing in mind (i) the overriding objective in CPR 1.1; (ii) the duty of the parties to help the court to further the overriding objective under CPR 1.3; (iii) the court’s duty actively to manage cases under Part 25 of the Rules; and (iv) specifically the provisions of CPR 25.1 (i). The Court may take into account a party’s failure to comply with a Referral Direction under CPR 1.3 and CPR 71.

“Rules” – mean the Civil Procedure Rules of the Supreme Court of The Bahamas 2021;

“statement of case” – means -

- (a) a claim form, statement of claim, defence, reply, counterclaim, ancillary claim form or defence and a reply; and
- (b) any further information given in relation to any statement of case under Part 34 of the Rules either voluntarily or by order of the court;

Part 34
Requests for information
CPR 34.1

34.1 Right of parties to obtain information

CIVIL PROCEDURE RULES OF THE BAHAMAS.

(1) *This Part enables a party to obtain from any other party information about any matter relevant to the determination of any matter which is in dispute in the proceedings.*

(2) *To obtain the information referred to in paragraph (1), the party must serve on the other party a request identifying the information sought.*

CPR 34.2

34.2 *Orders compelling reply to request for information*

(1) *If a party does not, within 14 days, give information or agree to give such information within a reasonable period thereafter which another party has requested under rule 34.1, the party who served the request may apply for an order compelling the other party to do so.*

(2) *An order may not be made under this rule unless it is necessary in order to dispose fairly of the claim or to save costs.*

(3) *When considering whether to make an order, the court must have regard to –*

(a) *the likely benefit which will result if the information is given;*

(b) *the likely cost of giving it; and*

(c) *whether the financial resources of the party against whom the order is sought are likely to be sufficient to enable that party to comply with the order.*

CPR 34.3

34.3 *Information obtained under Part 34 not to be used in other proceedings*

A party may use information obtained –

(a) *in compliance with an order under rule 34.2; or*

(b) *in response to a request under rule 34.1;*

only in the proceedings in which the request or order was made unless otherwise ordered by the court.

CPR 34.4

34.4 *Statement of truth*

Any information provided under this Part must be verified by a statement of truth in accordance with rule 3.8.

“Roster” - means the Roster of Mediators for the Court kept at the Registry of the Supreme Court under this Practice Direction.

2. INTRODUCTORY NOTE

2.1 Part 1.1 of the Rules provide that:

(1) The overriding objective of these Rules is to enable the court to deal with cases justly and at proportionate cost.

(2) Dealing justly with a case includes, so far as is practicable:

(a) ensuring that the parties are on an equal footing;

(b) saving expense;

(c) dealing with the case in ways which are proportionate to

(i) the amount of money involved;

(ii) the importance of the case;

(iii) the complexity of the issues; and

(iv) the financial position of each party;

(d) ensuring that it is dealt with expeditiously and fairly;

- (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases; and
- (f) enforcing compliance with rules, practice directions and orders.

Additionally, Part 1.3 states that:

“It is the duty of the parties to help the court to further the overriding objective. In applying the Rules to give effect to the overriding objective the Court may take into account a party's failure to help in this respect.

2.2 One of the Court's primary duties in furtherance of the overriding objective of dealing with cases justly is to actively encourage and assist the parties to settle the whole or part of their dispute on terms that are acceptable to each party by using alternative forms of dispute resolution such as mediation and facilitating the use of such procedures. Part 25.1(i) of the Rules provides that the Court must actively manage cases, by **“encouraging the parties to use any appropriate form of dispute resolution including, in particular, mediation, if the court considers it appropriate and facilitating the use of such procedures”**. In order to facilitate the use of such procedures and to provide litigants with a timely and cost-effective method as an alternative to the conventional way of resolving civil disputes, the Court is instituting Court-connected mediation.

2.3 The Court has power under Part 26.1(q) of the Rules to stay proceedings in a Case to facilitate mediation. That provisions states that the Court can **“stay the whole or part of any proceedings generally or until a specified date or event.”**

2.4 This Practice Direction only applies to civil proceedings in the Supreme Court which are subject to the Civil Procedure Rules of the Supreme Court of The Bahamas 2021.

3. MEDIATION COMMITTEE

3.1 There will be a Court-connected Mediation Committee appointed by the Chief Justice (after such consultation as he/she deems appropriate) which shall include:

- a. a Justice of the Supreme Court who shall be the Chairperson;
- b. the Registrar of the Supreme Court or a Deputy Registrar or Assistant Registrar;
- c. the Mediation Coordinator, who shall be the Secretary to the Committee;
- d. A representative from each of:
 - o The Bahamas Bar Association; and
 - o Two organizations in The Bahamas specializing in ADR.

3.2 Any person who is a Mediator serving on the Roster shall not be eligible to be a member of the Mediation Committee.

3.3 The term of office for members of the Mediation Committee shall be 2 years (subject to the earlier removal of any member by the Chief Justice), after which time Committee members shall be eligible for re-appointment for no more than 6 consecutive years. The Registrar shall make recommendations for new members to be appointed to the Committee. The Registrar shall also advise the Chief Justice of any change in membership of the Committee during the term of office, to ensure the continuity of the Committee's work at any given time.

3.4 The Mediation Committee shall be responsible for selecting Court-connected Mediators who have been certified by the BJEI and approved by the Chief Justice, for inclusion on the Roster. The 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.

3.5 The Chief Justice may from time to time advise of the process and procedure for persons who have been trained in mediation from other jurisdictions, within and outside of the Caribbean, to be allowed to be placed on the Roster.

3.6 Subject to paragraph 9.6 of this Practice Direction, Mediators on the Roster will be paid on a fee basis for their services in conducting mediation sessions which will be recommended by the Mediation Committee and approved by the Chief Justice. The Committee shall review the rules and fees from time to time but at least once every 3 years.

3.7 The Roster from which litigants can choose a Mediator will be posted on the website of the Judiciary and available at the Registry of the Supreme Court and at the office of the Mediation Coordinator.

3.8 The Mediation Committee will be responsible for monitoring the observance of the Code of Ethics set out in the Third Schedule.

3.9 The Mediation Committee will also deal with complaints using the Disciplinary Procedures set out in the Fourth Schedule to this Practice Direction, assess the effectiveness of the process and make recommendations to the Chief Justice when necessary. The Committee will regulate its proceedings as it relates to day-to-day practice and procedures and will communicate/submit these to the Mediation Coordinator. The Chairman of the Committee will have a casting vote in the event of an equality of votes.

4. REFERRAL TO MEDIATION

4.1 In a Case, upon the filing and service of a Claim Form and Statement of Claim or Fixed Date Claim Form, as the case may be, a Claimant desiring to submit a dispute to mediation must make a request in writing to the Registrar in Form M1.

4.2 In a Case, upon the filing of a Defence where there is one Defendant or upon the filing of all Defences where there is more than one Defendant, a Defendant who also desires to submit a dispute to mediation must make a request in writing to the Registrar in Form M1.

4.3 In a matter where the Claimant and the Defendant(s) have submitted Form M1 a Referral Direction may be made by a judge or a registrar.

4.4 Notwithstanding any other provisions in this Practice Direction:

- a. where appropriate, with or without an application, a Judge may make a Referral Direction referring a Case to mediation at any stage of the proceedings; or
- b. at any stage of the proceedings, the parties may by consent notify the Court or Mediation Coordinator that they wish to have their dispute(s) in a Case referred to mediation and, in such case, a registrar or judge may make a Referral Direction.

4.5 Once a party consents to participate in mediation, he/she/it shall not be allowed to opt out of the mediation process prior to its conclusion except by Order of a Judge and upon adducing good and substantial reasons.

5. SELECTION OF MEDIATOR AND DATE FOR MEDIATION

5.1 It is the joint responsibility of the parties participating in a mediation to select a Mediator from the Roster who is mutually agreed to by them. If, within 30 days of the Referral Direction, the parties cannot agree upon a mutually acceptable Mediator, then the Mediation Coordinator shall request a registrar or judge to appoint a Mediator from the Roster. Where a Mediator has more than 3 matters pending, the Mediation Coordinator may, where the Mediator has been selected by the parties, in his or her discretion, assign the additional matter or matters to the next available Mediator or Mediators, as the case may be. The

Mediation Coordinator shall attempt to avoid a Mediator having more than 3 pending matters.

5.2 The Mediation Coordinator shall be responsible for the scheduling of mediation sessions the first of which should take place within 30 days of the Referral Order. Parties participating in mediation will be required to attend, either in person or remotely as determined by the Mediator, a mediation session of up to 3 hours, but they may choose to go beyond that period if they so desire. The first mediation session shall last at least 3 hours unless the Mediator terminates the session earlier on the basis of a settlement between the parties or if the Mediator is of the view that a settlement will not be reached on any of the issues.

5.3 The Mediation Coordinator shall also maintain a list showing the number of mediations conducted by each Mediator in the calendar year.

5.4 In addition to the foregoing, the Mediation Coordinator shall have the duties and responsibilities as outlined in the Fifth Schedule to this Practice Direction.

5.5 The Mediation Coordinator shall report to the Registrar of the Supreme Court. The Mediation Coordinator shall also be responsible to furnish to the Registrar of the Supreme Court quarterly reports which are outlined in the Fifth Schedule to this Practice Direction.

5.6 After the holding of a mediation session, the following cases will be returned to the Court for case management:

- a. Cases in which a Certificate of Non-compliance has been filed; or
- b. Cases in which a Notice of Outcome of Mediation indicates that the parties have not fully settled the matter only in respect of those matters which were not settled.

6. MEDIATION ACCOUNTS

6.1 The Registrar shall establish a separate bank account, which should be an interest bearing account where it is available, where mediation fees collected are to be deposited and from which payments of the mediators fees can be made to the Mediators who have conducted mediation sessions. The signatories to this account shall be two officers of the Court, one of which shall be the Registrar of the Court and the other shall be the Finance Officer of the Judiciary or a Deputy Registrar as directed by the Chief Justice.

6.2 The funds in the Mediation Account are to be used for purposes which include:

- a. Payments to Mediators for the mediation sessions which they have performed;
- b. Operating Public Awareness Campaigns promoting the use of mediation within the jurisdiction;
- c. Training purposes in the area of mediation within the jurisdiction;
- d. Attendance at conferences and seminars which relate to mediation; and
- e. Other mediation activities or operations approved by the Chief Justice.

6.3 The Mediation Coordinator shall keep an accurate record of all fees received and disbursements paid out of the Mediation Account in respect of mediations.

6.4 The Mediation Coordinator shall submit to the Finance Officer of the Judiciary (with a copy to the Registrar) quarterly accounts of all receipts and expenditure on the Mediation Account for the period and projected expenditure for the upcoming quarter for prior approval. The Mediation Account is not part of the Government Consolidated Fund and therefore not subject to the rules of procurement of the fund.

7. PRE-MEDIATION REQUIREMENTS

7.1 After a Referral Direction has been made the participating parties are required to:

- a. Pay the mediation session fees at least 72 hours before the mediation session is scheduled to take place unless such fees are waived under paragraph 9.5 below;
- b. Submit copies of the Statement of Case to the Mediator at least 7 days prior to the mediation session;
- c. Sign a Confidentiality Agreement prior to the mediation session in the form approved by the Mediation Committee.

The Mediation Coordinator shall inform the assigned Mediator at least 48 hours before the mediation session where any or all of the parties have failed to meet the pre-mediation requirements, within the stipulated time. The Mediator shall determine in his /her discretion whether the mediation should be cancelled or postponed in the circumstances. Should the Mediator choose to perform mediation services where any or all of the parties have not complied with the pre-mediation requirements, the said Mediator shall be deemed to have waived any unpaid fees payable to him/her under this Practice Direction.

7.2 If the parties have agreed to settle or have settled the claim prior to the scheduled mediation session, they must cancel the session and, unless ordered otherwise by a judge, provide the Mediation Coordinator with the details of the terms of the Agreement or Settlement. Cancellations which are made later than 48 hours prior to the mediation session shall be subject to an administrative fee.

8. ATTENDANCE AT MEDIATION SESSION

8.1 All participating parties in the Case are required to attend the mediation session in person or by remote platform as determined by the Mediator. The Mediator shall lodge with the Mediation Coordinator a Certificate of Non-compliance if a party in the Case fails to attend the mediation session whether or not their Counsel attend.

9. COST OF MEDIATION SESSIONS

9.1 The Mediation Committee, with the approval of the Chief Justice, shall fix the fees payable by the participating parties to a mediation and to the Mediators who perform the mediation sessions.

9.2 A Schedule of approved fees under paragraph 9.1 above shall be communicated to the Mediation Coordinator and posted in the Registry of the Supreme Court and on the website of the Judiciary. The Mediation Committee may make recommendations for changes to the fee structure for mediations from time to time and upon approval by the Chief Justice, shall be the fee paid until such time as a further alteration is approved.

9.3 Subject to paragraph 9.5 below, each participating party to mediation in the Supreme Court shall pay the fee for a first mediation session as established by the Mediation Committee and approved in accordance with paragraphs 9.1 and 9.2. Such fees shall be paid by the participating parties to the Registrar of the Supreme Court no later than 72 hours before the date scheduled for the mediation session.

9.4 If an additional mediation session is deemed necessary by the Mediator or the participating parties, the fee for each additional mediation session shall be at a rate per hour as established by the Mediation Committee and approved in the manner specified under paragraphs 9.1 or 9.2 as the case may be. Subject to paragraph 9.5 below, fees for each additional mediation session shall be paid by the parties to the Registrar of the Supreme Court no later than 72 hours before the date scheduled for the additional mediation session.

9.4A In no event shall any fees be paid by the participating parties in a mediation, or on behalf of such parties, directly to the Mediator.

9.5 A participating party to a mediation who claims to be unable to pay the required fee may apply for a waiver of the fee by delivering to the Registrar Form M14 which is a Mediation Means Assessment. The decision of the Registrar on the application shall be final. In the event that the application is granted, the Mediation Coordinator shall select a Mediator who shall conduct the session on a pro bono basis.

9.6 Every Mediator is required to provide the number of hours of pro bono service which is specified in the Third Schedule. A record of the number of hours of pro bono service provided by each Mediator will be kept by the Mediation Coordinator.

9.7 If any party opts out of the mediation session after the session starts, any mediation fees paid will be forfeited.

9.8 Where a party requests a refund of mediation fees for any reason, deemed to be through no fault of his/her own, such as the discontinuation of the case, the party shall submit his/her request, in writing to the Court, within 14 days before a further hearing or trial date. Any refund of mediation fees shall be made by Order of a Judge or Registrar of the court against the defaulting party. A request for a refund of mediation fees shall be made in Form M 3 which is to be completed and provided to the Mediation Coordinator with a copy to the Mediator.

10. EVALUATION OF MEDIATION SESSION

10.1 It is the responsibility of the Mediator conducting the mediation session to request that each party present has completed the appropriate Evaluation Forms. Form M 4 is to be completed by each litigant who is attending the mediation session and Form M 5 is to be completed by each Attorney attending the mediation session.

10.2 Failure by the Mediator to submit all completed Mediation Evaluation Forms to the Mediation Coordinator at the end of the mediation session may result in the Mediator forfeiting his/her fees for the mediation session.

11. MEDIATION OFFICE

11.1 The Registrar shall ensure that an office to manage the mediation activity is established with a Mediation Coordinator and any other staff deemed to be necessary to manage the volume of mediations being conducted from time to time.

11.2 The staff in the Mediation Office shall report to the Mediation Coordinator who in turn shall report to the Registrar of the Supreme Court.

12. PROCEDURES

12.1 The Procedures to be followed in relation to Court-connected mediation are prescribed in the First Schedule of this Practice Direction.

13. PRACTICE FORMS

13.1 The Practice Forms are contained in the Second Schedule of this Practice Direction.

14. EFFECTIVE DATE

14.1 This Practice Direction will come into effect on the [] day of [], 2022 and will be applicable to all civil actions filed in the Court.

Dated this ____ day of [], 2022.

Chief Justice

FIRST SCHEDULE PROCEDURES

1. REFERRAL OF CASES TO MEDIATION

1.1 At any stage of the proceedings:

- a. A Judge may make a Referral Direction in Form J1 referring a Case to mediation; or
- b. The parties may by consent notify the Court in Form M 1 that they wish to have their case referred to mediation, and in such case, a registrar or judge may make a Referral Direction in Form J2.

1.2 This Practice Direction does not apply to the following matters as excluded by Part 2.2 (3) of the the Civil Procedure Rules of the Supreme Court of The Bahamas, 2021 ("the CPR"):

- (a) bankruptcy and insolvency proceedings (including winding up of companies);
- (b) family proceedings except proceedings under the Child Protection Act;
- (c) non-contentious probate proceedings;
- (d) proceedings in which the Supreme Court is acting as a Prize Court;
- (e) any other proceedings in the Court instituted under any enactment, in so far as rules made under that enactment regulate those proceedings; and
- (f) any proceedings to which, by Part 73 of the CPR (transitional provisions) it is provided that the CPR do not apply.

1.3 After the Referral Direction has been made, the Court Office shall promptly send a copy to the Mediation Coordinator.

2. CRITERIA FOR REFERRAL OF CASES

2.1 In considering whether to refer a case to mediation under paragraph 1.1 (a), the Judge shall take into account all relevant circumstances including the following:

- a) the relationship between the parties;
- b) the willingness of the parties to resolve their dispute by a collaborative process;
- c) opportunities for joint gains not available through litigation in the Court;
- d) the costs of mediation in proportion to the value of the claim;
- e) the available resources of the parties;
- f) whether the proceeding involves a matter of public policy that would render it inappropriate for mediation; and
- g) any other criteria considered appropriate by the Judge.

3. PARTICIPATING IN MEDIATION

Within 10 days after the Referral Direction, each party must file Form M12 indicating whether or not he/she/it will participate in the mediation. In the event that any of the parties decline to participate in the mediation the Case will proceed in court. The Court may take into account a party's failure to comply with a Referral Direction under CPR 1.3 and CPR 71. Alternatively, within such 10 day period a party may apply to the Court to vacate the Referral Direction if good and substantial reason is shown to the Judge.

4. ROSTER OF MEDIATORS

4.1 The Mediation Coordinator shall maintain a Roster of Mediators as selected by the Court-connected Mediation Committee and approved by the Chief Justice.

- 4.2 The Roster of Mediators shall be posted (i) on the website of the Judiciary; (ii) at the Registry of the Supreme Court; and (iii) at the office of the Mediation Coordinator.

THE FOLLOWING PROVISIONS APPLY ON THE BASIS THAT ALL THE PARTIES HAVE FILED FORM M12 INDICATING THEIR INTENTION TO COMPLY WITH THE REFERRAL DIRECTION.

5. TIME FOR CONDUCTING THE MEDIATION SESSION

- a) Upon referral by the Court the mediation session hearing shall be held within 60 days of the Referral Direction unless otherwise ordered by the Registrar or Judge on application by any party.
- b) Upon the application by the Claimant / Defendant
- a. The Mediation Coordinator must inform all parties to the dispute that arrangements are being made for the parties to attend mediation;
 - b. If a Defence has not been filed the Defendant shall, unless otherwise ordered by the Court, submit either a Statement of Defence or a summary statement setting out the nature and substance of the defence to the Mediation Coordinator within 24 days of being notified by the Mediation Coordinator that a mediation session is being arranged, copies of which will be forwarded to all other parties to the mediation proceedings.
 - c. If the Defendant does not submit either the Statement of Defence or summary statement referred to in paragraph b above within the 21 days of being notified that a mediation

session is being arranged, then the Mediator may refer the matter to the Registrar of the Supreme Court.

6. EXTENSION OF TIME FOR MEDIATION

6.1 In considering whether to extend the time within which the mediation is to be conducted the Registrar or Judge shall take into account all circumstances, including:

- a) the number of parties and the complexity of the issues in the action; and
- b) whether the mediation will be more likely to succeed if it is postponed to allow the parties more time to acquire more information.

6.2 No case shall remain in mediation for longer than 90 days unless ordered by a Judge.

7. SELECTION OF MEDIATOR

7.1 All Court-connected mediations shall be conducted by a Mediator from the Roster of Mediators, who is:

- a) mutually agreed to by the parties; or
- b) assigned by the Registrar or Judge, where the parties fail to agree; or
- c) assigned by the Mediation Coordinator where this is provided for under this Practice Direction.

7.2 The parties may select the Mediator:

- a) at the time of filing Form M1;
- b) at the time the Referral Direction is made; or
- c) within 30 days of the Referral Direction, by filing a Notice of Selection of Mediator in Form M 6.

7.3 If the parties fail to select a Mediator within 14 days after the date of the Referral Direction the Mediation Coordinator shall thereafter request:

- a) That the Registrar or Judge assign a Mediator from the eligible Mediators on the Roster of Mediators; and
- b) Issue a Notice of Selection of Mediator in Form M 6, to the parties.

8. SCHEDULED DATE FOR MEDIATION

When the Notice of Selection of Mediator is filed in Form M6, the Mediation Coordinator shall:

- a) in consultation with the parties and the Mediator, fix a date for the mediation session; and
- b) serve on every party a Notice of Scheduled Mediation (Form M7) stating the place, date and time of the mediation.

9. PROCEDURE BEFORE THE MEDIATION SESSION

9.1 Parties are required to:

- a) Submit a copy of the Statement of Case to the Mediator and the documents specified in paragraph 5 of this Practice Direction at least 7 days prior to the mediation session;
- b) Pay the mediation fee at least 3 days prior to the mediation session;
- c) Sign a Confidentiality Agreement prior to the mediation session.

9.2 If the parties have agreed to settle or have settled the matter prior to the scheduled mediation session, they must cancel the session and provide the Mediation Coordinator with the details of the terms of the Agreement or Settlement.

10. ATTENDANCE AT THE MEDIATION SESSION

- 10.1 The parties are required to attend a three-hour mediation session. After the first three hours, the mediation session may be continued if the parties and the Mediator agree to do so and the parties agree to pay the scheduled additional hourly rate.
- 10.2 A party who requires another person's approval before agreeing to a Settlement shall, before the mediation session, arrange to have ready access to the other person throughout the session.
- 10.3 Where a party is not a natural person, the person attending on behalf of that party must be authorized to settle the dispute or be in a position to be able to obtain such authority during the mediation.
- 10.4 With the consent of all parties and the Mediator, a mediation session may be adjourned at any time. In the event of an adjournment, the parties must reschedule the mediation session within the time limits set out in the Practice Direction.

11. FAILURE TO ATTEND

- 11.1 If a party -
- (i) fails to attend the mediation session within half an hour of the appointed time;
 - (ii) attends the mediation session without having authority to settle;
 - or
 - (iii) intentionally frustrates the mediation, which includes refusing to engage in discussion of the issues or matter in dispute
- the Mediator shall:
- a) cancel the session; and
 - b) immediately lodge with the Mediation Coordinator a Certificate of Non-compliance (Form M8) for filing at the Court Office together with the Application for Refund of

Mediation Fees using Form M3, if this form is completed by a party.

11.2 If any party fails to attend the mediation session without reasonable notice then the mediation fees of the defaulting party shall be forfeited.

12. NON-COMPLIANCE WITH THE REFERRAL ORDER

When a Certificate of Non-compliance is filed with the Court Office, the Registrar shall refer the matter to a judge who may make an Order under Part 26 (Case Management - The Court's Powers) or under Part [] (Costs - General) of the Rules against a party who fails to comply with the Practice Direction.

13. CONFIDENTIALITY

Prior to commencement of the mediation session the parties shall sign a Confidentiality Agreement using Form M10.

14. MEDIATOR'S REPORT

At the end of the mediation session, the Mediator shall complete and lodge the Notice of Outcome of Mediation (Form M9), including any request for a refund of mediation fees made by a party, with the Mediation Coordinator. Failure by the Mediator to lodge the Notice of Outcome of Mediation with the Mediation Coordinator, may result in the Mediator forfeiting his/her fees for the mediation session.

15. AGREEMENT

15.1 The Mediation Agreement once signed by the parties becomes a legal contract unless contrary to public policy.

15.2 If there is an Agreement resolving some or all of the issues in the dispute:

- a) it shall be signed by the parties and the Mediator and lodged with the Mediation Coordinator for filing at the Court Office; and
- b) within 7 days after the Agreement is signed the parties shall apply to the Court for an Order in terms of the Agreement and the Registrar or Judge shall make an Order in Form M11;

15.3 If the parties fail to make an application to the Court for an Order in terms of the signed Agreement within 7 days after the Agreement is signed, the Registrar or Judge shall make an Order under Part 26.2 of the Rules.

CPR 26

26.2 Court's power to make orders of its own initiative

- (1) Except where a rule or other enactment provides otherwise, the court may exercise its powers on an application or of its own initiative.
- (2) If the court proposes to make an order of its own initiative it must give any party likely to be affected a reasonable opportunity to make representations.
- (3) The opportunity may be to make representations orally, in writing, telephonically or by any other means as the court considers reasonable.
- (3) If the court proposes to -
 - (a) make an order of its own initiative; and
 - (b) hold a hearing to decide whether to do so;the court office must give each party likely to be affected by the order at least 7 days' notice of the date, time and place of the hearing.

16. NO AGREEMENT ON ALL ISSUES

If no Agreement is reached that resolves all the issues in dispute, the matters which were not settled through mediation shall be returned to the Court for case management.

**SECOND SCHEDULE
PRACTICE FORMS**

Forms 6 - 8, 12 & 13 to be drafted.

Forms M1 & M2: Notice for Referral to Mediation

Notice for Referral to Mediation

TAKE NOTICE that:

1. I(name) of (address) the Claimant herein consent to have the Court refer this matter to mediation.
2. I(name) of (address) the Defendant herein consent to have the Court refer this matter to mediation.
3. We have selected..... (name of Mediator) from the Roster of Mediators.

Dated:

Signed:

Claimant/ Claimant's Counsel

(name, address, telephone number, email)

Defendant/ Defendant's Counsel

(name, address, telephone number, email)

To: The Registrar

Form M3 - Application for Refund of Mediation Fees

**APPLICATION BY THE CLAIMANT/DEFENDANT FOR REFUND OF
MEDIATION FEES**

TAKE NOTICE that:

1. I the undersigned, the Claimant/Defendant herein apply for a refund of mediation fees pursuant to a dispute between the above parties under Claim No. _____.

2. Particulars of the Claimant:

Surname _____

First Name _____

Residential address _____

Business address _____

Postal address _____

Telephone _____

Mobile Phone _____

E-Mail Address _____

3. Particulars of the Defendant:

Surname _____

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First Name _____

Residential address _____

Business address _____

Postal address _____

Telephone _____

Mobile Phone _____

E-Mail Address _____

4. Reason for Application for refund of mediation fees:

Signed: Claimant/Claimant's Attorney or Defendant/Defendant's
Attorney
(Name, address, telephone number, email)

(Attach copy of Receipt evidencing payment of mediation fees)

To: The Registrar and the Mediation Coordinator

Form M4 - Evaluation Form for Litigants

EVALUATION FORM FOR LITIGANTS

***Please fill out this form after the mediation session and return it to the Mediation Coordinator.
All responses to this questionnaire are strictly confidential.***

Name of the Mediator _____

Date of the Mediation: _____

Are you the: Claimant Defendant Other

Did you have an Attorney represent you in this case? yes no

If NOT, did you have any difficulty representing yourself? yes no

Did you reach an Agreement and settle your case? yes no

If YES,

(a) Are you satisfied with the terms of the Agreement? yes no

(b) In your opinion will this settle the dispute? yes no

(c) Do you believe the other party will live up to the terms of the Agreement? yes no

If NO,

Do you think that the Mediator did everything he/she could to bring about an Agreement? yes no

Did you find the mediation fee reasonable? yes no

Were you satisfied with the mediation facilities and surroundings? yes no

If NO, please identify any areas of dissatisfaction:

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

- | | 1-disagree | 2-not sure | 3-agree |
|---|------------|------------|---------|
| 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 you became a litigant in the future will you try mediation again. | 1 | 2 | 3 |

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

.

Form M5 - Evaluation Form for Counsel & Attorney-at-law

EVALUATION FORM FOR ATTORNEYS

Please fill out this form after the mediation session and return it to the Mediation Coordinator on completion of the mediation session. All responses to this questionnaire are strictly confidential.

Name of the Mediator _____

Are you the Claimant's Attorney Defendant's Attorney other's Attorney

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

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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)

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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 Mediation Coordinator

worked in this case?

yes *no*

If NOT, why not:

Additional comments:

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Form M9 - Notice of Outcome of Mediation

Notice of Outcome of Mediation

TAKE NOTICE that a mediation session was conducted in this proceeding on the day

of, 20..... (Date)

- 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 Settlement on all issues are hereto annexed.

Dated:

Signed:

The Mediator

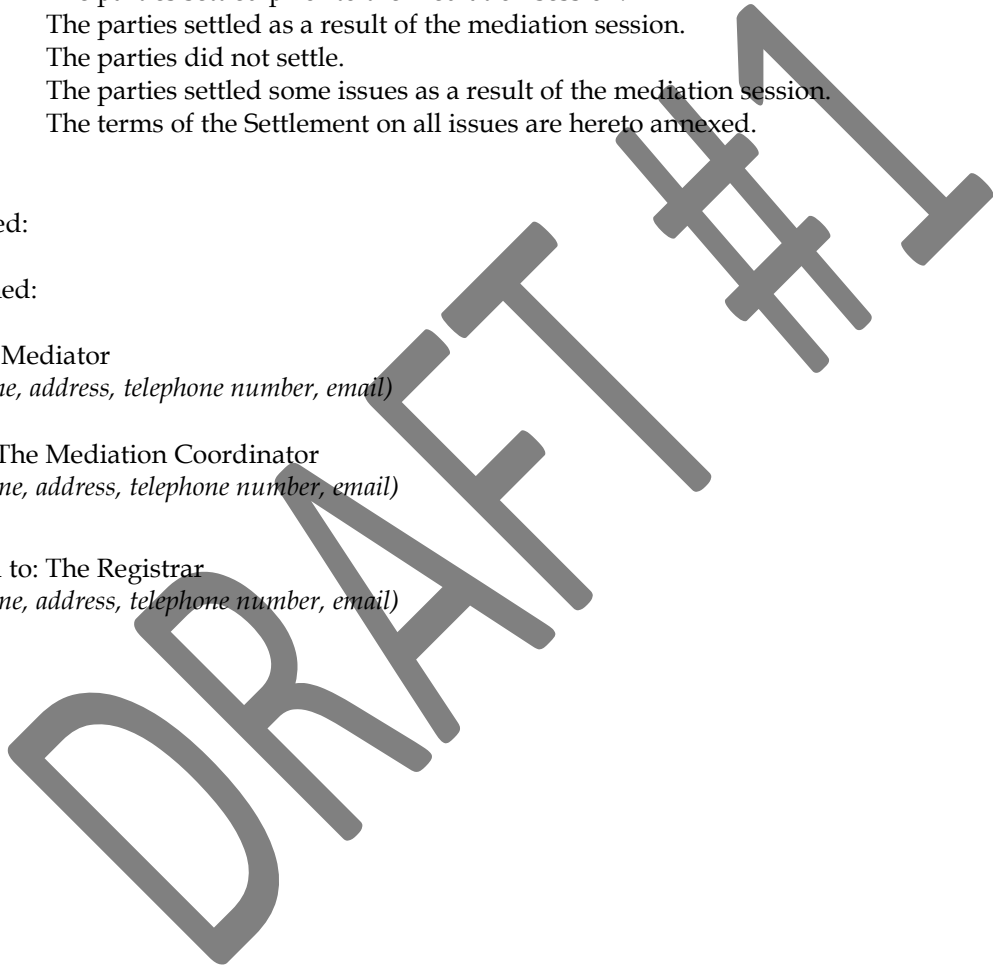
(name, address, telephone number, email)

To: The Mediation Coordinator

(Name, address, telephone number, email)

And to: The Registrar

(Name, address, telephone number, email)



Form M14 - Mediation Means Assessment Form

**SUPREME COURT OF THE COMMONWEALTH OF THE BAHAMAS
COURT-CONNECTED MEDIATION MEANS ASSESSMENT FORM**

NOTE: ALL INFORMATION CONTAINED HEREIN WILL REMAIN CONFIDENTIAL. YOU MUST ANSWER ALL THE QUESTIONS ON THIS FORM OR IT SHALL BE REJECTED. PLEASE ATTACH YOUR JOB LETTER AND PAYSリップ.

CLAIM NO. _____

Name and Address of Attorney-at-law: _____

A. CLIENT INFORMATION

Your Name: _____

Address: _____

Phone: _____ Email: _____

Are you employed? _____ Occupation: _____

Employer Name: _____

Employer Address: _____

Employer Phone Number: _____ Length of time at current employment: _____

Monthly Salary (less deductions): \$ _____ Dependents: _____

Additional Sources of Income/Amount: \$ _____ **Total Monthly Income:** \$ _____

LIST OF EXPENSES:

BILLS: \$ _____ MORTGAGE: \$ _____ CAR PAYMENTS: \$ _____

FOOD: \$ _____ MEDICAL/INSURANCE: \$ _____ OTHER: \$ _____

\$ _____ \$ _____ \$ _____ \$ _____

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TOTAL EXPENSES: \$ _____ NET INCOME: \$ _____

I CONFIRM THAT THIS INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Signature: _____ Date: _____

FOR OFFICIAL USE ONLY:

DATE: _____ APPROVED/NOT APPROVED: _____

REASON: _____

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THIRD SCHEDULE
CODE OF ETHICS

1. This Code of Ethics applies to Mediators whose names appear on the Roster of Mediators under this Practice Direction and is intended to assist and guide them in their conduct and to provide a framework within which mediation is conducted and regulated within the Court-Connected Mediation process within the Commonwealth of the Bahamas.

2. In this Code -

“Conflict of interests” means direct or indirect financial and / or personal interests in the outcome of the dispute or an existing or past financial, business, professional, family or social relationship which is likely to affect the impartiality or reasonably create an appearance of partiality or bias;

“Impartiality” means freedom from favoritism and bias either by words, action or by appearance and implies a commitment to serve all mediation parties as opposed to a single mediation party in moving towards or reaching Agreement.

3. General Responsibilities

Mediators shall -

- (a) conduct themselves in a manner which shall instill confidence in the mediation process, confidence in their integrity, and confidence that disputes entrusted to them are handled in accordance with the highest ethical standards;
- (b) be responsible to the parties, to the profession, to the public and to themselves, and accordingly shall be honest and unbiased, act in good faith, be diligent, and not seek to advance their own

interests, but rather the needs and interests of the mediation parties; and

- (c) act fairly in dealing with the mediation parties, have no personal interests in the terms of the Settlement, show no bias towards individuals or parties involved in the disputes and be certain that the mediation parties are informed of the process in which they are involved.

Ethical Standards

4. (1) The primary role of the Mediator is to facilitate the voluntary resolution of a dispute.

(2) The primary responsibility for the resolution of the dispute and the shaping of a Settlement rests with the mediation parties.

(3) A Mediator shall recognise that mediation is based on the principle of self-determination by the mediation parties and upon the ability of the mediation parties to reach a voluntary un-coerced Agreement.

(4) A Mediator shall request and encourage self-determination by the mediation parties in their decision whether, and on what terms, to resolve their dispute, shall refrain from being directive or judgmental regarding the issues in dispute and options for Settlement.

(5) A Mediator shall encourage mutual respect between the mediation parties, and shall take reasonable steps, subject to the principle of self-determination, to limit abuse of the mediation process.

(6) A Mediator shall make the mediation parties aware, where appropriate, of the option and importance of consulting other professionals to assist the mediation parties in the making of informed decisions.

(7) When a Mediator believes a mediation party does not understand or appreciate how an Agreement may adversely affect legal rights or obligations,

the Mediator shall advise the mediation parties to seek independent professional advice.

(8) While a Mediator may point out possible outcomes of a case, the mediator shall not offer a personal or professional opinion as to how the Court in which the case has been filed will resolve the dispute.

(9) A Mediator shall not use during the mediation process any title or honorific to which he may be entitled.

5. (1) A Mediator shall mediate only when the Mediator has the necessary qualifications, training and experience to enable him/her to satisfy the reasonable expectation of the mediation parties.

(2) A Mediator shall acquire and maintain professional competence in mediation and shall at all times strive to improve his professional skills and abilities by participating in relevant continuing education programs.

(3) A Mediator shall have information regarding his relevant training, education and experience available to the mediation parties.

6. (1) A Mediator shall provide mediation services only for those disputes in which he can be impartial with respect to all the mediation parties and the subject matter of the dispute.

(2) A Mediator shall in words and action, maintain impartiality towards the mediation parties and where his impartiality is in question, shall decline to serve or shall withdraw from serving as a Mediator.

(3) Where at any time prior to, or during the mediation process the Mediator is unable to conduct the mediation process in an impartial manner, the Mediator shall so inform the mediation parties and shall withdraw from providing services, even if the mediation parties express no objection to the continuation of the Mediator's services.

7. (1) A Mediator shall discuss issues of confidentiality with the mediation parties before beginning the mediation process including, limitations on the scope of confidentiality and the extent of confidentiality provided in any private session that the Mediator holds with a mediation party.

(2) All proceedings shall be confidential and the Mediator shall not voluntarily disclose to anyone who is not a mediation party to the mediation process, any information obtained through the mediation process except, with the written consent of the mediation parties, or when the information discloses an actual or potential threat to human life or safety.

(3) In the cases referred to in subparagraph (2), the Mediator shall advise the mediation parties, when appropriate to the mediation process, that the confidentiality of the mediation proceedings cannot necessarily be guaranteed.

8. (1) A Mediator shall structure the mediation process so that the mediation parties make decisions based on sufficient information and knowledge.

(2) The Mediator has an obligation to ensure that all mediation parties understand the nature of the process, the procedures, the particular role of the Mediator and the mediation parties' relationship to the Mediator.

(3) Where at any time the Mediator believes that any mediation party is unable to understand the mediation process or participate fully in it, whether because of mental impairment, emotional disturbance, intoxication, language barriers or other reasons, the Mediator shall limit the scope of the mediation process in a manner consistent with the mediation party's ability to participate, and/or recommend that the mediation party obtain appropriate assistance in order to continue with the mediation process or shall terminate the mediation process.

9. (1) A Mediator shall disclose all actual and potential conflict of interests known to him and thereafter shall withdraw from the mediation, if any mediation party objects to him continuing as Mediator.

(2) Where the Mediator determines that the conflict is so significant as to cast doubt on the integrity of the mediation process, the Mediator shall withdraw from the process even if the mediation parties express no objection to the continuation of the Mediator's services.

(3) Save with the consent of the mediation parties, and for a reasonable time under the particular circumstances, a Mediator who also practices in another profession shall not establish a professional relationship in that other profession with one of the mediation parties, or any person or entity, in a substantially factually related matter.

(4) A Mediator shall limit himself solely to the role of Mediator and shall refrain from giving legal or therapeutic information or advice and otherwise engaging during mediation in counselling or advocacy.

(5) The duty to disclose a conflict of interests shall be a continuing obligation throughout the mediation process.

10. Where this Practice Direction is made to apply to family proceedings, in a family mediation, the Mediator has a responsibility to promote the mediation parties' consideration of the interests of children in relation to the issues being mediated. The Mediator also has a duty to assist the mediation parties to examine, apart from their own desires, the separate and individual needs of the child/ children.

11. A Mediator shall not enter into a fee agreement which is contingent upon the results of the mediation or the amount of the Settlement but may however, specify in advance a minimum charge in conformity with the scale of fees approved by the Mediation Committee for a mediation session without violating this provision. A Mediator must disclose in writing to the parties and to the Mediation Coordinator, prior to the first mediation session, all fees, other

remuneration or benefit which the Mediator will receive in connection with the mediation.

12. A Mediator is required to conduct at least 9 hours of pro bono mediation sessions per year.

13. (1) A Mediator shall not make untruthful or exaggerated claims about the mediation process, its costs and benefits, its outcomes or the Mediator's qualifications and abilities.

(2) No claims of specific results or promises which apply to one party over another party should be made for the purpose of obtaining business.

(3) No commission, rebates, or other similar forms of remuneration shall be given to or received by a Mediator for the referral of clients.

14. Where a rostered Mediator is found to be in breach of the Code of Ethics that person shall be subject to sanctions pursuant to Section 8 of the Fourth Schedule - Disciplinary Regulations.

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FOURTH SCHEDULE
DISCIPLINARY REGULATIONS

1. (1) These Disciplinary Regulations apply to complaints against any individual placed on the Roster of Certified Mediators in accordance with section 3 of the Practice Direction No. [] of 2021.

(2) Where a person is registered as a certified Mediator such registration may be revoked for cause in accordance with these provisions.

2. (1) The Mediation Committee shall appoint a Disciplinary Committee consisting of 3 members which shall be a standing committee, to hear and determine complaints against Mediators.

(2) The Disciplinary Committee shall consist of an Attorney of at least 7 years' standing and two certified Mediators. The members of the Disciplinary Committee shall not be members of the Mediation Committee.

3. (1) A complaint against a Mediator hereafter called the Mediator/Respondent shall be in writing using the form in Appendix 1, signed by the Complainant, and shall include the Complainant's name, address and telephone number.

(2) The complaint referred to in subparagraph (1), shall be e mailed and a hard copy shall be delivered to the Committee at its address and shall -

(a) identify the Mediator/Respondent; and

(b) make a short and plain statement of the conduct forming the basis of the complaint.

(3) Subject to subparagraph (4), the complaint shall be made within 30 days of the conclusion of the mediation session where the conduct forming the basis of the complaint is alleged to have taken place.

(4) The Mediation Committee in its discretion, for good cause, may extend the time limit within which the complaint may be made.

(5) The Disciplinary Committee shall review the complaint to determine whether the allegations, if true, constitute a violation of the Code of Ethics.

(6) If the allegations made in the complaint would not constitute a violation of the Code of Ethics, the complaint shall be dismissed and the Complainant and the Mediator/Respondent shall be notified in writing.

(7) Where the Disciplinary Committee concludes that the allegations of the complaint if true, constitute a violation of the Code of Ethics, the Disciplinary Committee shall hear and determine the complaint and in all such cases, the Disciplinary Committee shall serve on the Mediator/Respondent, by personal service or by e mail a copy of the complaint, a request for a written response to the allegations and to any specific questions posed by the Disciplinary Committee.

(8) It shall not be considered a violation of paragraph 7 of the Code of Ethics, for the Mediator/Respondent to disclose information acquired in a mediation session if that information falls within section 7(2) of the Code of Ethics and except for good cause shown, if the Mediator/Respondent fails to respond to the complaint in writing within 30 days of receipt of the complaint, the allegations shall be deemed admitted.

4. (1) The Disciplinary Committee may, in its discretion, refer the Complainant and the Mediator/Respondent to mediation conducted by a volunteer Mediator to resolve the issues raised by the Complainant.

(2) If the issues raised by the Complainant are resolved through mediation, the Disciplinary Committee shall dismiss the complaint, unless the resolution includes sanctions to be imposed by the Disciplinary Committee in which case the Disciplinary Committee shall impose such sanctions.

(3) Where no Agreement is reached in mediation, the Disciplinary Committee shall hear and determine the complaint.

5. (1) At the hearing the parties may be represented by Counsel but the rules of evidence shall not be strictly applied.

(2) The Disciplinary Committee at its own initiative, or by request of the parties, may request the attendance of witnesses and the production of documents and other evidentiary matter.

6. (1) A party may appeal the Disciplinary Committee's decision to an Appellate Committee consisting not less than 3 members of the Court-connected Mediation Committee.

(2) An appeal must be filed within 45 days from the date of the decision.

7. (1) Where it comes to the attention of the Committee that a certified Mediator has been convicted of a criminal offence, the Committee shall immediately cause that person's name to be removed from the Roster.

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

8. The Disciplinary Committee or the Appellate Committee may impose sanctions, including but not limited to -

(a) the issue of a private reprimand;

(b) the designation of corrective action necessary for the Mediator/Respondent to remain on the Roster;

(c) notifying any approved mediation agency with which the Mediator is affiliated of the complaint and the result of its disposition;

(d) the removal of the Mediator/Respondent from the Roster of Mediators, with conditions for reinstatement, if any.

9. (1) All files, records, and proceedings of the Disciplinary Committee and the Appellate Committee that relate to or arise out of any complaint shall be confidential, except -

- (a) as between the Mediation Committee, members of the Disciplinary Committee, the Appellate Committee and staff;
- (b) as otherwise required or permitted by rule or statute; and to the extent that the Complainant and the Mediator/Respondent waive confidentiality.

(2) Where sanctions are imposed against the Mediator/Respondent pursuant to paragraphs (b) to (d) of paragraph 8 such sanctions shall be public record, but the files of the Disciplinary Committee and the Appellate Committee shall remain confidential.

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Appendix 1

IN THE SUPREM COURT OF THE BAHAMAS

PRACTICE DIRECTION No. [] of 2021

COURT-CONNECTED MEDIATION

COMPLAINT FORM

Mediator's Name:

Claim No:

Date of Mediation Session:

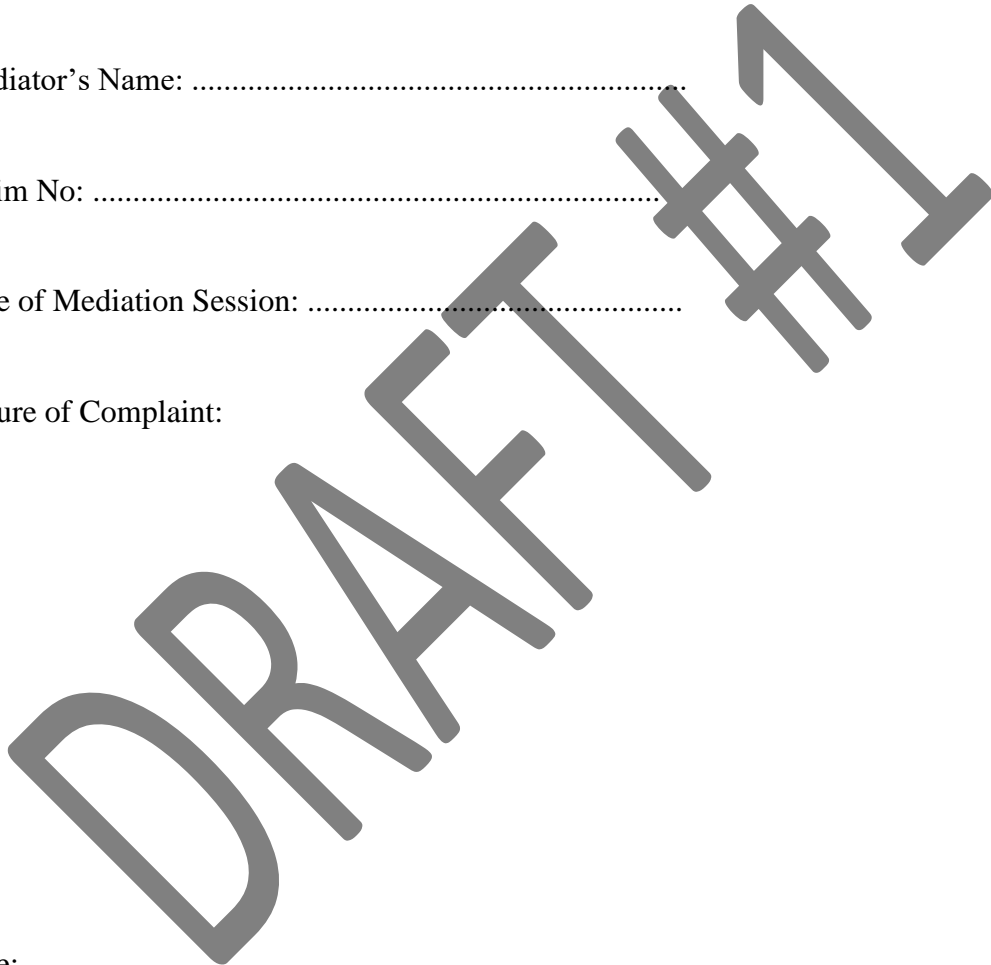
Nature of Complaint:

Date:

Name:

Signature of Complainant:

To: The Mediation Coordinator
(Name, address, telephone number, email)



FIFTH SCHEDULE

ADDITIONAL DUTIES OF THE MEDIATION COORDINATOR

Duties of the Mediation Coordinator to Include:

- Keeping an accurate record of all cases referred to mediation
- Keeping an accurate record of all Agreements reached and of all cases which are not settled
- Keeping an accurate record of the number of mediations performed by each Mediator in a calendar year
- Providing a list of Mediators who are eligible to be selected for mediation based on the number of mediations which the Mediators have performed for the current calendar year and the number of outstanding mediations which a Mediator may have assigned to him/her (where the number of outstanding mediations must be limited to a maximum of 3)
- Keeping an accurate record of all fees received and disbursements paid out in respect of the Mediation Account
- Keeping an accurate record of the number of hours of pro bono service provided by each Mediator on the Roster of Mediators

Quarterly Reports to be Submitted to the Registrar of the Supreme Court

- A listing of all cases where the mediation is not complete at the beginning of a quarter
- A listing of all cases mediated during the quarter and who performed the mediation clearly indicating whether or not the Mediator is a Legal Practitioner
- A listing of the results of the cases mediated, that is whether the cases were settled, partially settled, not-settled, or where the Mediation Referral Direction has not been complied with

- An updated list of the number of mediations performed by each Mediator in the calendar year together with the number of hours of pro bono service that each Mediator has given

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SIXTH SCHEDULE

ROLE OF ATTORNEYS IN MEDIATION

The role of an Attorney may include:

- advising the client about the mediation process and programme
- advising the client about the selection of a Mediator
- preparing the client for effective participation in the mediation session
- participating in the mediation process in good faith
- protecting the client's interests in connection with any Agreement reached
- not taking over the mediation session and lecturing the parties on the law, but if called upon to explain a legal principle in mutual interest of both parties, he/she should adhere
- working with the client to develop opening statements and a representation plan
- explaining the best options of the case to the client and if / when these should be activated
- requesting a caucus where necessary to facilitate resolution or to avoid a breakdown of the mediation process

Preparation of Clients for Mediation

Attorneys are aware that the parties participate directly and actively in mediation.

To prepare a party for mediation, the Attorney may:

- describe the mediation process and what will happen at the session
- explain what is expected of the client
- remind the client that the objective of the mediation is not to "win", but to reach a satisfactory resolution
- ensure that the client or client's representative has authority to settle
- discuss the costs, risks and benefits of not reaching a Settlement
- ensure that the client is conversant with the facts and issues of the case

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- explore the client's position, goals and interests
- assist the client in identifying any common goals or interests towards the resolution of the dispute
- advise the client on how to best put forward his or her interests
- discuss with the client the other party's position, goals and interests toward resolution of the dispute

If in attendance, the Attorney shall sign the Confidentiality Agreement and attest to the Mediation Agreement if one is arrived at.

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