

Supreme Court (Mediation) Rules 2010

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THE COURTS ACT

Rules made by the Chief Justice under sections 17A and 198 of the Courts Act

1. Title

These rules may be cited as the **Supreme Court (Mediation) Rules 2010**.

2. Application of Rules

- (1) These rules shall apply to such civil suit, action, cause or matter which has been brought and is pending before the Supreme Court as the Chief Justice may deem appropriate to refer for mediation before a Judge of the Supreme Court.
- (2) Without prejudice to the generality of paragraph (1), any party to a civil suit, action, cause or matter which has been brought and is pending before the Supreme Court may apply to the Chief Justice for same to be referred for mediation.
- (3) A party making an application under paragraph (2) shall set out the reasons for the application.

3. Purpose of mediation

- (1) The primary purpose of mediation under these rules is for the parties, in all good faith, to dispose of the civil suit, action, cause or matter by a common agreement, or to narrow down the issues in dispute.
- (2) In order to give effect to paragraph (1), the parties shall, among other practical steps taken -

- (a) strive to reduce the costs involved in the case;
- (b) strive to reduce any undue delays in litigation;
- (c) facilitate a fair and just resolution or partial resolution of the dispute; and
- (d) give full assistance to enable the mediation to proceed and be concluded within the time allocated by the mediation Judge.

4. Powers of mediation Judge

- (1) The mediation Judge shall have all necessary powers to facilitate mediation between and among the parties to the dispute in order to enable them to reach an agreement so as to dispose of the civil suit, action, cause or matter pending between the parties.
- (2) In conducting mediation sessions, the mediation Judge shall regulate the proceedings in such manner as he thinks fit whilst adopting an informal and flexible approach.
- (3) The mediation Judge may, at any time, offer his guidance and help to the parties where he considers that such a course is desirable to achieve an early and fair settlement of the dispute.
- (4) In respect of the conduct of mediation, a mediation Judge shall have all the powers and privileges of a Supreme Court Judge.

5. The mediation process

Without derogation from the generality of rule 4, the mediation Judge -

- (a) shall endeavour to do everything necessary to help the parties to resolve the dispute in a fair and equitable manner;
- (b) may, where necessary, conduct joint or separate meetings with the parties and may make recommendations for a settlement;
- (c) may, at the request of a party, conduct a private meeting to the exclusion of

every other person and may in the course of that meeting express, without prejudice, his views on the dispute;

- (d) may, where the services of an expert are required on a technical aspect, appoint an expert whose advice shall be given in an independent and fair manner and the costs for the services of the expert shall be borne in equal proportion by all parties;
- (e) may make a written request to any third party having an interest in the matter to attend the mediation where he considers that the participation of the third party may assist in resolving the dispute; and
- (f) may made a written request to any party to disclose or produce any exhibit or document where he considers that necessary for the resolution of the dispute.

6. Fixing of mediation

- (1) The mediation Judge shall, within 7 days from the date on which the civil suit, action, cause or matter is referred to him pursuant to rule 2(1), notify each party in writing of the mediation.
- (2) A notice issued under paragraph (1) shall draw attention to the contents of rules 9 and 10.
- (3) Where a party to the case has elected legal domicile in the office of an attorney, the mediation Judge may cause the notice referred to in paragraph (1) to be served at the office of the attorney, and such service shall be deemed to be good service on that party.
- (4) The mediation shall be conducted at such place and at such time as the mediation Judge may direct, and he may, for that purpose, allocate such time slots for each mediation session as he considers reasonably necessary for the determination of the issues in dispute.
- (5) Where a written notice has been issued under paragraph (1), a party shall -
 - (a) personally attend the mediation sessions at the place and time specified in

the notice, and may be assisted by an attorney or a barrister or both in the course of such mediation sessions; or

(b) in his absence, be represented by an attorney who may, in turn, instruct a barrister to appear at the mediation.

(6) A party nominating an attorney under paragraph (5)(b) shall give the latter full authority, in writing, to settle the matter, and where a barrister appears at the mediation, the attorney shall instruct the barrister accordingly.

7. Additional information

(1) Each party to the mediation shall, in addition to the pleadings already available on record, supply such information and communicate such documents as the mediation Judge may require within such time as may be fixed by the mediation Judge.

(2) Without prejudice to the generality of paragraph (1), the mediation Judge may, in particular, request any or all the parties to supply -

(a) a position paper setting out their stand on issues which require resolution; and

(b) further documents which are critical to the resolution of issues in dispute.

8. Failure to submit to mediation

(1) Where it is not practical to conduct mediation in a case because a party fails, without good cause, to comply with rule 6(5) or unreasonably refuses to participate in the mediation process, the mediation Judge may make such order as he thinks fit with regard to the early hearing of the case.

(2) Following the hearing of the case on the merits, the trial Judge may order a party who has failed, without good cause, to comply with rule 6(5), or who has unreasonably refused to participate in the mediation process to pay such costs as may be just and reasonable in the circumstances, unless good cause is shown why costs should not be paid.

9. Without prejudice communications and confidentiality

- (1) The mediation process shall take place in private and shall be confidential.
- (2) Every document produced or communication done, or other form of information disclosed, or any proposal made by any party specifically for the purpose of the mediation process, shall be treated as having been produced, done, disclosed or made on a privileged and without prejudice basis and no privilege or confidentiality shall be deemed to have been waived by such disclosure.
- (3) All notes and records taken by or before the mediation Judge in connection with the mediation process shall be confidential.
- (4) Nothing said or done in the course of the mediation process shall be taken as the expression of an intention to affect, and shall not, in any way, affect the rights of a party to the dispute or prejudice his position in the mediation process or any subsequent arbitration, adjudication or litigation, unless the party makes a written statement to the contrary.
- (5) Where, in the course of a separate or private meeting, a party informs the mediation Judge that information is being imparted to him in confidence, the mediation Judge shall not disclose that information to any other party or his representative in the course of the mediation or to any other person at any other time.

10. Non-disclosure

- (1) Subject to paragraph (2), no person shall disclose any information given, document produced, communication made, record kept, report produced or agreement reached in the course of the mediation process.
- (2) Where, for the purpose of the implementation or the enforcement of a settlement agreement, it becomes necessary to disclose any record, information, communication, document, report or any agreement reached during the mediation, same may be disclosed -
 - (a) with the written consent of the parties concerned with the mediation; or

(b) upon an Order made by a mediation Judge.

11. Non-admissibility of evidence

- (1) The record of the mediation, any statement made at any mediation session, and any information obtained during the mediation, shall not be admissible as evidence in any Court proceedings, except where such record, statement or information is to -
 - (a) be produced in proceedings instituted for the purpose of challenging the settlement agreement on the ground of fraud;
 - (b) be produced in contempt proceedings or criminal proceedings initiated by the Director of Public Prosecutions; or
 - (c) act as a bar to any subsequent action or proceedings brought in respect of the same subject matter which has been resolved by an agreement binding the parties.
- (2) Paragraph (1) shall be without prejudice to the right of a party to make use of his own documents and information in any Court proceedings, provided no reference is made to the mediation proceedings in connection with or related to such documents and information.

12. Terms of settlement

- (1) Any party to the mediation may, at any stage of the process, make one or more offers with a view to reaching a settlement or for the narrowing down of issues.
- (2) An offer made pursuant to paragraph (1) shall be made in writing and shall provide sufficient details to enable the other parties and the mediation Judge to appreciate the nature of the offer.
- (3) Where it appears to the mediation Judge that there exist elements of a settlement acceptable to the parties, the Judge may, where there is no objection from the parties, formulate the terms of a possible settlement and submit it to the parties for their consideration.

- (4) The parties may, after having received the formulation of the terms of the settlement from the mediation Judge under paragraph (3), submit their observations in writing within the delay allocated by the mediation Judge.
- (5) Where a party fails to make observations within the allocated delay, the mediation Judge shall proceed as if the party has no observation to make.
- (6) After the mediation Judge has received the observations of the parties, he may reformulate the terms of a possible settlement in the light of those observations and resubmit them to the parties.
- (7) The exercise described in paragraph (6) may be repeated where the mediation Judge considers it necessary in order to reach a final settlement.

13. Settlement agreement

- (1) Where the parties have reached a formal agreement, the mediation Judge shall record the settlement agreement in the form of a memorandum setting out the terms of the agreement.
- (2) The settlement agreement may include any agreement for the disposal of any other matter, involving the same parties, pending before the Supreme Court or any other jurisdiction.
- (3) The memorandum shall be signed by the mediation Judge and by the parties to the agreement and, thereupon, the agreement embodied in the memorandum shall be executed in the same manner as if it were a judgment of the Court by consent of and between the parties who have signed it.
- (4) The mediation Judge may make such Orders as he considers necessary or expedient relating to matters consequential to the agreement, including the stay, discontinuance or withdrawal of proceedings, as may be appropriate in respect of the main case pending before the Supreme Court in order to give effect to the settlement agreement.
- (5) The agreement may include an agreement as to costs.

14. Referral for trial

- (1) Where the parties have been unable to reach an agreement at the conclusion of the mediation, the mediation Judge shall refer the case to the Master and Registrar to be fixed for trial.
- (2) Paragraph (1) shall be without prejudice to the right of the parties to withdraw the case and refer it for arbitration or to seek an alternative route for the matter to be resolved.
- (3) Where issues have been narrowed down during the mediation, the mediation Judge shall, upon referring the matter for trial, draw a memorandum specifying in writing those issues which are no longer in dispute and the memorandum shall be signed by the mediation Judge and the parties who have agreed to the narrowing down of the issues between them.
- (4) The memorandum referred to in paragraph (3) shall form part of the record for the purposes of the trial and shall be binding on the parties who have signed it.
- (5) Where, after the mediation process, the mediation Judge is satisfied that the issues left for determination may be dealt with by any other jurisdiction, he may, with the agreement of the parties, refer the matter for trial before the appropriate jurisdiction.

15. Time limit for mediation

- (1) Subject to paragraph (2), the mediation process shall not exceed a period of 30 days from the date of the first session of mediation.
- (2) The mediation Judge may extend the time limit specified in paragraph (1) by a period not exceeding 30 days where it has been established that such an extension of time is required for the favourable progression of the mediation.
- (3) Where the mediation Judge is satisfied that there is a likelihood that a settlement may be reached after the time limit prescribed under paragraph (2) has lapsed, he may, with the agreement of the parties, refer the matter to be mentioned before the Master and Registrar or to be called before any other appropriate jurisdiction for the case to be disposed of by the recording of any agreement

which may have been subsequently reached by the parties.

- (4) Where, following a referral under paragraph (3), a settlement agreement has been reached between the parties and has been recorded before the Supreme Court or before any appropriate jurisdiction, the agreement shall be executed in the same manner as has been prescribed under rule 13 and shall have the same effect as has been prescribed therein.
- (5) Where no agreement has been reached by the parties following a referral under paragraph (3), the matter shall be fixed for trial.

16. End of mediation

The mediation process shall come to an end -

- (a) upon the signature of an agreement by the parties and the mediation Judge;
- (b) where the mediation Judge cancels the mediation session on the ground of non-compliance on the part of any party;
- (c) where the mediation Judge, after having heard the parties, declares in writing that any further mediation would not serve any useful purpose; or
- (d) upon an Order made by the mediation Judge.

17. Commencement

These rules shall come into operation on 1 October 2010.

Made by the Chief Justice on 27 August 2010.
