

EASTERN CARIBBEAN SUPREME COURT

CIVIL PROCEDURE RULES 2000

PRACTICE DIRECTION

No. 6 of 2020

COURT-CONNECTED MEDIATION

(Re-Issue)

This Practice Direction is made pursuant to Part 4.2(2) of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 and supplements rule 25.1[h].

Practice Direction No. 1 of 2003 is revoked and substituted by this Practice Direction.

1. INTRODUCTORY NOTE

1.1 Court-connected mediation was introduced in Saint Lucia by Practice Direction No. 2 of 2002. Practice Direction No. 1 of 2003 extended court-connected mediation to all Member States and Territories and made provision for the referral to mediation for civil actions filed in the Court.

1.2 One of the Court's primary duties in furtherance of the overriding objective of dealing with cases justly is to actively encourage and assist parties to settle the whole or part of their dispute on terms that are fair to each party by using alternative forms of dispute resolution such as mediation and facilitating the use of such procedures. Part 25.1(h) 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 instituted court-connected mediation in the Member States and Territories.

- 1.3 This Practice Direction does not apply to the following matters as excluded by Part 2.2 (3) of the Rules: family proceedings (unless it has been so made to apply under any relevant family proceedings enactments or rules or where the parties voluntarily agree to attend mediation in family related matters), insolvency proceedings (including winding up of companies), non-contentious probate proceedings, proceedings when the High Court is acting as a prize court and any other proceedings in the Supreme Court instituted under any enactment, in so far as rules made under that enactment regulate those proceedings.

2. DEFINITIONS

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, but does not include settlement discussions;

“Court” - means the High Court and, where the context so admits and in Part 62 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000, the Court of Appeal;

“court-connected mediation services” - means mediation services provided as a result of the referral by the Court or by agreement between the parties before or after commencement of proceedings or case management;

“Court Office” - refers to

- (a) the place where documents are to be filed, etc. and includes the Registry of the High Court and of the Court of Appeal; and
- (b) members of the court staff who carry out work of a formal or administrative nature under rule 2.6 (1) of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000;

“days” - refer to business days;

“ECSC Regional Mediation Coordinator” - means the person appointed by the Judicial and Legal Services Commission to coordinate and monitor the development of court-connected mediation in the Member States and Territories;

“Judicial Education Institute” or “JEI” - means the Judicial Education Institute of the Eastern Caribbean Supreme Court;

“mediation” - means a flexible dispute resolution procedure in which a neutral and impartial third party, the Mediator, facilitates negotiations between the parties to help them settle their dispute;

“Mediation Coordinator” - means the person appointed by the Chief Justice on the recommendation of the Registrar, to be responsible for the management of court-connected mediation in each of the Member States and Territories;

“mediation memorandum” - means a summary of the issues in dispute, giving an indication of the position being adopted by the party submitting the Memorandum;

“Mediation Office”- shall be construed as being a part of the Court Office;

“mediation session” - refers to a mediation including continuations and adjournments of the same matter held with a Mediator and attended by parties (either in person at a Mediation Centre and/or by use of electronic means) to a dispute to which this Practice Direction applies;

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

“Member States” - means

- [1] Antigua and Barbuda;
- [2] Commonwealth of Dominica;
- [3] Grenada;
- [4] Federation of Saint Christopher and Nevis;
- [5] Saint Lucia; and
- [6] Saint Vincent and the Grenadines

“party” - means

- (1) persons between whom there is a dispute for which a claim has been filed or where the context so requires persons who have agreed to attend mediation to settle a dispute; and
- (2) where necessary may include the legal representatives for the parties who are in attendance;

“Referral Order” - means an order (prepared by the Court Office) to attend mediation as a result of a referral by a Registrar, Master or Judge;

“Roster” - means the current list of court-connected Mediators placed at the Mediation Office and published on the Eastern Caribbean Supreme Court’s website;

“Rules” - means Eastern Caribbean Supreme Court Civil Procedure Rules 2000 and includes any amendments thereto;

“statement of case” shall have the same meaning given to it under rule 2.4 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000;

“Territories” - means

- [1] Anguilla;
- [2] Montserrat; and
- [3] The Territory of the Virgin Islands

“to refer” - means to provide a party to a case with the name of one or more Mediators for the purpose of selecting a Mediator.

3. MEDIATION COMMITTEE

3.1 Court-connected mediation will be managed on a regional and national basis. In each Member State and Territory there will be a national court-connected Mediation Committee appointed by the Chief Justice, comprised of a maximum of 10 persons, which shall be constituted as follows:

- (a) A resident Judge in the Civil Division appointed by the Chief Justice, who shall be the Chairperson;
- (b) the Registrar of the High Court or his/her nominee;
- (c) the Mediation Coordinator, who shall be the Secretary to the Committee; and

(d) A representative from each of the following (not to exceed 7 representatives):

- The Ministry responsible for Legal Affairs or Justice
- The Bar Association
- The private sector
- Chamber of Commerce or Employers Federation
- The Trade Unions or where applicable a representative of the Ministry or Department of Labour
- Religious Organisations
- A certified Mediator or a representative of a Mediators' Association where such a body exists

3.2 The term of office for each Committee member shall be 3 years, after which time Committee members shall be eligible for reappointment. However, save for the Judge, Registrar and Mediation Coordinator, no member shall serve for more than 2 consecutive terms.

3.3 At least 3 months prior to the end of a term of office, the Registrar shall (after consultation with the Chairman of the Mediation Committee) advise the Chief Justice of the members who shall be reappointed or shall make recommendations for new members to be appointed to the Mediation Committee.

3.4 The Registrar shall advise the Chief Justice of any change in membership of the Mediation Committee during the term of office and shall (after consultation with the Chairman of the Mediation Committee) make recommendations to the Chief Justice for the

replacement of members on the Committee, to ensure the continuity of the Committee's work at any given time.

- 3.5 The Mediation Committee shall be responsible for selecting the persons to be placed on the Roster of Mediators from the list of persons who have completed the training and have been certified by the Judicial Education Institute/the University of the West Indies. 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 of Mediators. The recommendations for the appointment of Mediators to be placed on the Roster must be made to the Chief Justice for approval.
- 3.6 Certified Mediators desiring to be placed on the Roster of Mediators must complete and submit to the Mediation Committee of the Member State or Territory, an Application for Placement on the Roster of Mediators in Form M16 and provide evidence:
- (a) of having satisfactorily completed the training for Mediators leading to certification by the Judicial Education Institute/the University of the West Indies;
 - (b) that he/she is a fit and proper person;
 - (c) of good standing, where previously on the Roster;
 - (d) that he/she does not have any unspent criminal convictions that may be relevant to his/her role as Mediator and, in particular, any conviction involving fraud or other dishonesty; and
 - (e) of a favourable Police Certificate of Character, not more than six months old.

- 3.7 If a Mediator has been charged with or convicted of a criminal offence, the Mediator shall immediately bring this to the attention of the Mediation Coordinator who in turn shall bring the same to the attention of the Mediation Committee. The Mediator shall show cause why he/she should not be suspended or removed from the Roster of Mediators.
- 3.8 Persons who are on the Roster of Mediators for any Member State or Territory are eligible, subject to the laws of that particular Member State or Territory, for selection to perform mediation sessions in any Member State or Territory within the jurisdiction of the Eastern Caribbean Supreme Court.
- 3.9 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 CARICOM region, to be allowed to be placed on the Roster of Mediators for a Member State or Territory within the jurisdiction of the Eastern Caribbean Supreme Court.
- 3.10 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 rules and fees from time to time and at least once every 3 years. Every effort will be made to ensure that the fees are harmonised within the jurisdiction of the Eastern Caribbean Supreme Court.
- 3.11 The Roster of Mediators from which parties can choose a Mediator will be available at the Court Office, at the office of the Mediation

Coordinator, and shall be published on the Eastern Caribbean Supreme Court's website. Mediators on the Roster will be paid on a fee basis where the fees are established in accordance with subparagraph 3.10.

- 3.12 The Mediation Committee will be responsible for monitoring the observance of the Code of Ethics, set out in the Third Schedule to this Practice Direction.
- 3.13 The Mediation Committee will also deal with complaints using the Disciplinary Regulations set out in the Fourth Schedule to this Practice Direction, assess the effectiveness of the process and make recommendations to the relevant authorities as appropriate or to the Chief Justice when necessary.
- 3.14 The Committee shall, subject to the provisions of this Practice Direction, conduct its day-to-day activities and submit a report thereon at the end of every calendar quarter, to the ECSC Regional Mediation Coordinator.
- 3.15 There will be a regional court-connected Mediation Committee comprised of a maximum of 13 persons which shall be constituted as follows:
- (a) the ECSC Regional Mediation Coordinator, who shall be the Chairperson of this Committee;
 - (b) the Registrar or the Mediation Coordinator of each Member State and Territory; and
 - (c) such other persons as may be selected by the Chief Justice.

- 3.16 This Committee will serve as an advisory body to the Chief Justice and will meet either in person or by video or teleconference at least twice a year.

4. REFERRAL TO MEDIATION

- 4.1 A dispute may be referred to court-connected mediation either:
- (a) on the application of the parties prior to or after the commencement of proceedings; or
 - (b) with the agreement of the parties, on the Court's own motion.
- 4.2 The procedures for the referral of a dispute to court-connected mediation are set out in paragraph 1 of the First Schedule to this Practice Direction.
- 4.3 Parties shall not be allowed to opt out of the Referral Order except by order of the Registrar (in cases where the Referral Order was made upon the filing of Form M1B) or a Master or Judge and upon adducing good and substantial reasons.

5. IMMUNITY FOR THE PROVISION OF COURT-CONNECTED MEDIATION SERVICES

- 5.1 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.

- 5.2 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.
- 5.3 The Mediation Committee or any Disciplinary Committee established by 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.

6. SELECTION OF MEDIATOR

- 6.1 It is the joint responsibility of the parties to select a Mediator and at least 2 alternate Mediators in order of preference, as outlined in sub-paragraph 7.2 of the First Schedule to this Practice Direction.
- 6.2 Where the parties fail to select a Mediator or cannot agree upon a mutually acceptable Mediator, a Mediator shall be selected in accordance with the procedures set out in sub-paragraph 7.3 of the First Schedule to this Practice Direction.

7. DUTIES AND RESPONSIBILITIES OF MEDIATION COORDINATOR

- 7.1 The Mediation Coordinator shall be responsible for the scheduling of mediation sessions, which shall be conducted on facilities (physical or electronic) under the management and control of the Court.
- 7.2 The Mediation Coordinator shall maintain:

- (a) a list of all Mediators which shows the number of mediations and the number of hours of pro bono mediation sessions conducted by each Mediator in the calendar year; and
- (b) a schedule depicting the names, professional designations, dates and times when each Mediator on the Roster is available to conduct mediations. The schedule must be updated weekly and lodged at the Court Office.

7.3 As far as practicable, the Mediation Coordinator shall ensure that mediations are conducted by all Mediators on the Roster and that the work is distributed equitably. In determining the availability of Mediators, the Mediation Coordinator shall not allow any Mediator to have more than 3 new or adjourned matters pending.

7.4 The Mediation Coordinator shall be responsible for furnishing to the ECSC Headquarters Statistician, through the ECSC Regional Mediation Coordinator, quarterly reports which are outlined in the Fifth Schedule to this Practice Direction.

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

8. PRE-MEDIATION REQUIREMENTS

- 8.1 After a matter has been referred to mediation, each of the parties are required to follow the procedures as set out in sub-paragraph 9.1 of the First Schedule to this Practice Direction.
- 8.2 Where any or all of the parties have failed to meet the pre-mediation requirements within the stipulated time, the Mediation Coordinator and the Mediator shall follow the procedures as set out in sub-paragraph 9.2 of the First Schedule to this Practice Direction.
- 8.3 A Mediator may at his/her own discretion request a pre-mediation meeting with the parties.
- 8.4 Where the parties have settled the claim prior to the scheduled mediation session, the procedures as set out in sub-paragraphs 9.5 and 9.6 of the First Schedule to this Practice Direction shall apply.

9. ATTENDANCE AT MEDIATION SESSION

- 9.1 All parties to the mediation are required to attend the mediation session.
- 9.2 If any party fails to attend the mediation session without reasonable notice then the mediation fees of the defaulting party shall be forfeited.

- 9.3 Where a party unreasonably terminates a mediation session before the allotted time, the Judge or Master may take this fact into account when making any order as to costs in the proceedings.
- 9.4 Where a party or the parties fail to attend the mediation session the procedure as set out in paragraph 11 of the First Schedule to this Practice Direction shall apply.
- 9.5 The duties of the parties with respect to their attendance at mediation sessions, are set out in the Seventh Schedule to this Practice Direction.

10. COST OF MEDIATION SESSIONS

- 10.1 The Mediation Committee shall make recommendations to the Chief Justice as to the fees which should be paid by the parties to a mediation and to the Mediators who perform the mediation sessions.
- 10.2 Once the recommendations referred to in sub-paragraph 10.1 are received by the Chief Justice a decision on the fees to be applied in each Member State or Territory shall be communicated to the Mediation Committee for implementation.
- 10.3 The Mediation Committee in each Member State or Territory may make recommendations for alterations to the fee structure for mediations from time to time. Upon approval by the Chief Justice, the fee structure as altered shall be the new fee structure in the respective Member State or Territory, until such time as a further alteration is approved.

- 10.4 Each party to a mediation shall pay the fees for the mediation session as established by the Mediation Committee and approved in accordance with sub-paragraphs 10.1, 10.2 and 10.3.
- 10.5 If an additional mediation session is deemed necessary by the Mediator or the parties, the fees for each additional mediation session shall be at an hourly rate as established by the Mediation Committee and approved in the manner specified under sub-paragraphs 10.1, 10.2 or 10.3. The procedure for the payment of fees by the parties is set out in paragraph 13 of the First Schedule to this Practice Direction.
- 10.6 A Mediator may be required to provide a number of hours of pro bono service as specified in the Third Schedule to this Practice Direction, Code of Ethics.
- 10.7 A Master or Judge may not order a waiver of the fees for a mediation session, for any or all of the parties to a mediation, unless the proposed Mediator consents to such a waiver.
- 10.8 If any party opts out of the mediation session after the session starts, any mediation fees paid will be forfeited.

11. MEDIATION ACCOUNTS

- 11.1 The Eastern Caribbean Supreme Court from its Headquarters shall establish in each Member State and Territory a separate bank account in the name "ECSC – Mediation" which shall be an interest-bearing account where it is available. This account will be used to

deposit the mediation fees collected in the Member State or Territory, for making payments of the Mediators' fees for conducting mediation sessions, for the activities set out in sub-paragraph 11.4 and any other charges levied in connection with the provision of mediation services. There shall be 5 signatories to this account as follows:

- the Accountant and the ECSC Regional Mediation Coordinator;
- the Registrar and Deputy Registrar of the High Court of the Member State or Territory; and
- either the Mediation Coordinator, Senior Executive Officer or the Court Administrator of the respective Member State or Territory.

11.2 Where there is no Deputy Registrar in a Member State or Territory, the Mediation Committee will make a recommendation to the Chief Justice for a person from the Court Office to be placed as the fifth signatory to the "ECSC - Mediation" Account.

11.3 The procedures for the operation of the account will be as agreed in a protocol between the ECSC Headquarters and the Court Office of the Member State or Territory.

11.4 The funds on 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 of the ECSC;
- (c) Training purposes in the area of mediation within the jurisdiction of the ECSC;
- (d) Attendance at conferences and seminars which relate to mediation; and
- (e) Other mediation-related activities or operations approved by the Chief Justice.

11.5 The duties of the Mediation Coordinator in relation to the Mediation Account are set out in the Fifth Schedule to this Practice Direction.

11.6 The Mediation Account is not part of the Government Consolidated Fund and therefore not subject to the rules of procurement of the fund.

12. OUTCOME OF MEDIATION

12.1 Upon the conclusion of the mediation sessions, where there is a Settlement Agreement resolving some or all of the issues in the dispute, the procedures as set out in paragraph 16 of the First Schedule to this Practice Direction shall apply.

12.2 The procedure for the Settlement Agreement referred to in subparagraph 12.1 to become an order of the Court is set out in subparagraphs 16.2 and 16.3 of the First Schedule to this Practice Direction.

12.3 The following cases will be returned to the Court Office for case management :

(a) Cases in which a Certificate of Non-compliance in Form M5 has been filed; and

(b) Cases in which the mediation sessions have been concluded and a Notice of Outcome of Mediation in Form M7 has been prepared by the Mediator and lodged with the Mediation Coordinator for submission to the Court Office.

13. EVALUATION OF MEDIATION SESSION

13.1 The information gathered from the Evaluation Forms is very important to the Eastern Caribbean Supreme Court as it is analysed to identify areas where improvements can be made to the Mediation Programme.

13.2 The Evaluation Form for Litigants in Form M11 must be completed by each litigant who is attending the mediation session and the Evaluation Form for Legal Practitioners in Form M12 must be completed by each Legal Practitioner attending the mediation session.

13.3 It is the responsibility of the Mediator conducting the mediation session to ensure as far as practicable that each party present has completed the appropriate Evaluation Forms.

- 13.4 Where a party or his/her Legal Practitioner refuses to complete Forms M11 or M12, the Mediator shall record such refusal in the Notice of Outcome of Mediation in Form M7. The Master or Judge may take that party's refusal into account when making a costs order in the proceedings.
- 13.5 Failure by the Mediator to submit the completed 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.

14. MEDIATION OFFICE

- 14.1 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 in the respective Member State or Territory.
- 14.2 The staff in the Mediation Office shall report to the Mediation Coordinator who in turn shall report to the Registrar of the Court and to the ECSC Regional Mediation Coordinator.

15. PROCEDURES

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

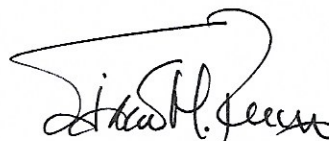
16. PRACTICE FORMS

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

17. EFFECTIVE DATE

This Practice Direction will come into effect on the 2nd day of November, 2020.

Made this 9th day of October, 2020.

A handwritten signature in black ink, appearing to read 'Janice M. Pereira', with a large, sweeping flourish above the name.

Dame Janice M. Pereira, DBE

Chief Justice

FIRST SCHEDULE

PROCEDURES

1. REFERRAL OF CASES TO MEDIATION

- 1.1 Where, prior to the commencement of proceedings, the parties voluntarily agree to submit a dispute to court-connected mediation:
- (a) the parties must jointly make a request in writing to the Registrar by completing an Application for Referral to Mediation by the Parties in Form M1A; and
 - (b) the Registrar shall within 3 days thereafter forward Form M1A to the Mediation Coordinator who will arrange the mediation session in accordance with the procedures set out herein.
- 1.2 A 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. 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.
- 1.3 A request under sub-paragraph 1.2 shall be made to the Registrar by completing an Application for Referral to Mediation by the Claimant/Defendant in Form M1B.
- 1.4 A Referral Order shall only be made by the Registrar in Form M1 after commencement of the proceedings and before the first case

management conference where both the claimant and the defendant(s) have submitted Forms M1B.

- 1.5 Where the Registrar makes a Referral Order pursuant to subparagraph 1.4, he/she shall send a copy of the Referral Order together with Form M1B attached, to the Mediation Coordinator.
- 1.6 At any time from the first case management conference, the parties may by consent notify the Court [by Notice for Referral to Mediation in Form M8] that they wish to have their case referred to mediation and, in such case, the Master or Judge shall make a Referral Order.
- 1.7 At any stage of the proceedings after the first case management conference where the Court is of the view that mediation would facilitate the resolution of the dispute between the parties:
 - (a) The Master or Judge may with the agreement of the parties make a Referral Order.
 - (b) The Referral Order shall be in the form as set out in the Mediation Referral Order in Form M1.
 - (c) Where one party desires to submit a dispute to mediation and the other party unreasonably refuses mediation, the Master or Judge may take that party's refusal into account when making a costs order in the proceedings.
- 1.8 After the Referral Order has been made by a Master or Judge, 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, a Master or 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; or
- (d) any other criteria considered appropriate by the Master or Judge.

2.2 **In matters subject to sub-paragraph 1.3 of this Practice Direction, the case shall not be referred to mediation except where the parties have consented to attend mediation.**

3. APPLICATION TO DISPENSE WITH MEDIATION

3.1 Within 10 days of the Referral Order being made, a party may apply to the Court to vacate the Referral Order if good and substantial reason is shown to the Registrar, Master or Judge.

4. TIME FOR CONDUCTING THE MEDIATION SESSION

4.1 Upon referral by the Court:

- (a) the mediation session hearing shall be held within 45 days of the Referral Order unless otherwise ordered by the Registrar, Master or Judge, on application by any party.

(b) The Mediation Coordinator shall:

- i. Inform all parties to the dispute that arrangements are being made for the parties to attend mediation;
- ii. Where a defence has not been filed, request that the defendant submits a statement of defence to him/her at least 7 days prior to the mediation session, so that copies can be forwarded to all other parties to the mediation proceedings;
- iii. If the defendant does not submit the statement of defence as requested, discuss with the Mediator whether to proceed with the mediation session or refer the matter to the Registrar of the Court; and
- iv. For mediations prior to commencement of proceedings, where no information has been provided, request that the parties submit any relevant information, including a mediation memorandum, upon which they wish to rely.

5. EXTENSION OF TIME FOR MEDIATION

5.1 The Mediation Coordinator shall, 7 days prior to the return date set out in the Referral Order, submit a Notice of Outcome of Mediation in Form M7 to the Court Office.

5.2 In considering whether to extend the time within which the mediation is to be conducted the Registrar (in cases where the referral was made by the Registrar upon the parties filing Form M1B), the Master or Judge shall, in consultation with the parties, take into account all circumstances, including:

- (a) the number of parties and the complexity of the issues in the action;
- (b) whether the mediation will be more likely to succeed if it is postponed to allow the parties more time to acquire more information; and
- (c) the reasons why the mediation has not yet been concluded.

5.3 No case shall remain in mediation for longer than 90 days unless ordered by the Registrar (in cases where the referral was made by the Registrar upon the parties filing Form M1B), Master or Judge.

6. ROSTER OF MEDIATORS

- 6.1 The Mediation Coordinator shall maintain a Roster of Mediators for that Member State or Territory, as selected by the court-connected Mediation Committee.
- 6.2 The Registrar shall ensure that the Roster of Mediators is gazetted annually, exhibited at the Court Office, at the office of the Mediation Coordinator and submitted for publication on the Eastern Caribbean Supreme Court's website.
- 6.3 The Headquarters of the Eastern Caribbean Supreme Court shall ensure that the Roster of Mediators is posted promptly to the Court's website when it is received.

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, Master or Judge; 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 the Notice for Referral to Mediation in Form M8;
- (b) at the time the Referral Order is made; or
- (c) within 7 days of the Referral Order, by filing a Notice of Selection of Mediator in Form M2.

7.3 Where the parties fail to select a Mediator or cannot agree upon a mutually acceptable Mediator:

- (a) In matters where proceedings have not yet commenced or where the Registrar made a Referral Order, the Mediation Coordinator, within 7 days thereafter, shall:
 - i. Request in writing that the Registrar assigns a Mediator or permits him/her to assign a Mediator from the eligible Mediators on the Roster of Mediators; and
 - ii. Notify the parties of the selected Mediator.

(b) In matters where a Referral Order is made under sub-paragraphs 1.6 or 1.7 above, the Mediation Coordinator, within 7 days thereafter, shall:

- i. Where the Referral Order so permits (in consultation with the parties), select a Mediator from the Roster of Mediators; or
- ii. Where the Referral Order does not permit selection by the Mediation Coordinator, submit a Request for Permission to Select Mediator in Form M15, to the Master or Judge who made the Referral Order.

7.4 Notice of Selection of Mediator by the Court in Form M3 shall be issued to the parties.

7.5 Where a Mediator or the alternates are unavailable or have been selected by several parties, resulting in the selected Mediator or the alternates having more than 3 new or adjourned matters pending, sub-paragraphs 7.3 and 7.4 shall apply.

8. SCHEDULED DATE FOR MEDIATION

- 8.1 When Form M2, M3 or M8 is filed, 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 in Form M4 stating the place, date and time of the mediation.

9. **PROCEDURE BEFORE THE MEDIATION SESSION**

9.1 Parties are required to:

- (a) Pay the mediation session fees at least 3 days before the mediation session is scheduled to take place;
- (b) At least 7 days prior to the mediation session, prepare and submit a bundle comprising their statements of case and/or other documents including a mediation memorandum, on which they intend to rely, to the Mediation Coordinator, who shall promptly submit the bundles to the Mediator; and
- (c) Sign an Agreement to Mediate in Form M14 and a Confidentiality Agreement in Form M6 at the commencement of the mediation session.

9.2 Where any or all of the parties have failed to meet the pre-mediation requirements within the stipulated time, the Mediation Coordinator shall, at least 2 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.

9.3 Where the Mediator performs the mediation session notwithstanding the report, the Mediator shall not hold the Mediation Coordinator or the Mediation Office accountable for the payment of his/her fees.

9.4 A Mediator may, if he/she believes it would assist with the mediation process, request a pre-mediation meeting with the parties.

The Mediator and the parties may attend the pre-mediation meeting in person or by use of electronic means. Pre-mediation meetings shall be held at the discretion of the Mediator and there shall be no fees payable in relation to these meetings.

9.5 If the parties have settled the claim prior to the scheduled mediation session, they must cancel the session and provide the Mediation Coordinator with the details of the terms of the Settlement Agreement, which will be made available to the Court.

9.6 Where the parties have settled the claim and cancelled the scheduled mediation session, the parties may submit an Application for Refund of Mediation Fees in Form M13 to the Mediation Coordinator. Cancellations which are made later than 2 days prior to the mediation session shall be subject to an administrative fee to be borne equally by the parties and the refund shall be adjusted by the administrative fee and any other applicable fees.

9.7 Where a Mediator attends a mediation session in circumstances where the session has not been properly cancelled, the Mediator may be entitled to a sum not exceeding one third of the paid-in Mediator's fee.

10. ATTENDANCE AT THE MEDIATION SESSION

10.1 The parties are required to attend a 3-hour mediation session unless the Mediator terminates the session earlier as the parties have settled, or the Mediator is of the view that a settlement will not be reached on any of the issues. After the first 3 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 authorised 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 this Practice Direction.
- 10.5 The parties may request through the Mediation Coordinator that a mediation session be conducted with one party/parties appearing via electronic means. The Mediation Coordinator shall forward the request to the Mediator who shall determine whether to conduct the session via electronic means after consultation with the other party/parties.
- 10.6 Where a party appears via electronic means, all required documents shall be signed by the party and submitted via electronic means.
- 10.7 Parties requesting attendance by electronic means must ensure that they have access to all the necessary equipment and facilities

including a computer, camera, microphone, scanner and printer, a stable internet connection and access to an email account.

11. FAILURE TO ATTEND

If a party or the parties fail to attend the mediation session within half an hour of the appointed time or attends the mediation session without having authority to settle the matter, the Mediator shall cancel the session and:

- (a) Where the Registrar referred the matter to mediation in circumstances where the parties filed an Application for Referral to Mediation by the Parties in Form M1A, the Mediation Coordinator shall notify the Registrar in writing, of the non-compliance of the parties; and
- (b) Where the Referral Order is made by a Judge or Master, or the Registrar (where the parties have filed an Application for Referral to Mediation by the Claimant/Defendant in Form M1B), lodge a Certificate of Non-compliance in Form M5 with the Mediation Coordinator, for filing at the Court Office together with the Application for Refund of Mediation Fees in Form M13, if this form is completed by a party.

12. NON-COMPLIANCE WITH THE REFERRAL ORDER

When a Certificate of Non-compliance in Form M5 is filed with the Court Office, the Registrar shall refer the matter to the Master or Judge who may make an order under Part 26 (Case Management - The Court's Powers) or under Part 64 (Costs - General) of the Rules against a party who fails to comply with this Practice Direction.

13. COST OF MEDIATION SESSIONS

- 13.1 Each party to a mediation shall pay the fees for the mediation session as established by the Mediation Committee. Such fees shall be paid by the parties to the Mediation Coordinator no later than 3 days before the date scheduled for the first mediation session.
- 13.2 Fees for each additional mediation session shall be paid by the parties to the Mediation Coordinator no later than 3 days after the completion of the additional mediation session, where it is not possible for the fees to be paid on the day of the mediation session.
- 13.3 Where a party to a mediation is unable to pay the required fee, that party must file a Mediation Means Assessment Form in Form M10, at the time of filing either the Application for Referral to Mediation by the Claimant/Defendant in Form M1B or the Application for Referral to Mediation by the Parties in Form M1A or within 7 days of the Mediation Referral Order.
- 13.4 The Registrar shall verify the information submitted in Form M10. In that regard, the Registrar's decision is final. Where Form M10 has been filed, showing that the party is unable to pay the fee and subject to the Registrar's decision, a Mediator shall be selected to conduct the session, in respect of that party, on a pro bono basis.
- 13.5 Where the parties have selected a Mediator and/or alternates who have already provided the required number of pro bono hours, the Mediation Coordinator shall select a different Mediator to conduct

the pro bono services in an equitable manner as far as reasonably practicable.

13.6 Where a party requests a refund of mediation fees for any reason, in circumstances where the mediation session was not held through no fault of his/her own, such as discontinuation of the case, the party shall submit his/her request, in writing by completing an Application for Refund of Mediation Fees in Form M13 to the Court Office (through the Mediation Coordinator), within 14 days before a further hearing or trial date. The Registrar shall decide whether to grant or refuse the request.

13.7 A party aggrieved by the Registrar's decision in respect of the request referred to in sub-paragraph 13.6 may apply to the Court using the Application Form in Form 6 of the Rules.

14. CONFIDENTIALITY

14.1 During the course of legal proceedings, evidence of a document, communication or recording, whether delivered or not, made for the purpose of or produced during mediation proceedings, shall not be admissible.

14.2 At the commencement of the mediation session the parties shall sign an Agreement to Mediate in Form M14 and a Confidentiality Agreement in Form M6.

15. MEDIATOR'S REPORT

At the end of the mediation session, the Mediator shall complete and lodge the Notice of Outcome of Mediation in Form M7, including any request for a refund of mediation fees made by a party, with the Mediation Coordinator, for filing at the Court Office. 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.

16. SETTLEMENT AGREEMENT

- 16.1 The Mediation Settlement Agreement once signed by the parties becomes a legal contract unless contrary to public policy.
- 16.2 If there is a Settlement 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 Settlement Agreement is signed the parties shall apply to the Court for an order in terms of the Settlement Agreement and the Master or Judge shall make an order in Form M 9;
- 16.3 If the parties fail to make an application to the Court for an order in terms of the signed Settlement Agreement within 7 days after the Settlement Agreement is signed, the Master or Judge shall make an order under Part 26.2 of the Rules.

17. NO AGREEMENT / PARTIAL AGREEMENT

- 17.1 Where the Mediator is of the belief that a Settlement Agreement cannot be reached between the parties, or within 7 days of the return date set by the Referral Order, the Mediator shall lodge the Notice of Outcome of Mediation in Form M7 with the Mediation Coordinator, who shall promptly submit it to the Court Office and the matter shall be returned to the Master or Judge for case management.
- 17.2 In the case of an Application using Forms M1A or M1B, where a Settlement Agreement has not been reached between the parties, the Mediator shall lodge Form M7 with the Mediation Coordinator who shall promptly submit it to the Registrar and the parties may proceed to litigation on the unsettled issues in the matter.
- 17.3 If a partial Settlement Agreement is reached prior to the conclusion of the mediation, the Mediator shall, at least 7 days before the next case management hearing, notify the Court Office of the partial Settlement Agreement using Form M7.
- 17.4 Where a Settlement Agreement is reached on all the issues in dispute save and except for costs, the Mediator shall set out the terms of the settlement reached between the parties in Form M7 and expressly record thereon that no agreement has been reached as regards legal fees or costs incurred by the parties.

SECOND SCHEDULE
PRACTICE FORMS

Form M1: Mediation Referral Order

[Sub-paragraphs 1.4, 1.6, 1.7]

The Eastern Caribbean Supreme Court

In the High Court of Justice

[State/Territory]

Claim No.

Between

A.B.

Claimant

and

C.D.

Defendant

Mediation Referral Order

Made the day of 20 ...

Upon this matter coming on before:

The Honourable Justice/Master/Registrar

[And Upon Hearing Counsel for the Claimant and Counsel for the Defendant]

[And Upon the Claimant and/or Defendant being present]

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;

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

IT IS ORDERED THAT:

- (1) The parties to these proceedings are required to attend a mediation session with a Mediator from the Roster of Mediators within 45 days from today's date. Parties agree that the mediation shall be conducted by [Mediator 1] as Mediator and [Mediator 2] and [Mediator 3] as Alternates.

- (2) If the parties fail to select a Mediator or cannot agree upon a mutually acceptable Mediator, within 7 days thereafter, the Mediation Coordinator shall select a Mediator from the Roster of Mediators, in consultation with the parties where applicable.
- (3) The parties are to each prepare a bundle comprising their statements of case and other documents on which they intend to rely and to send to the Mediation Office no later than 7 days prior to the commencement of the mediation session.
- (4) These proceedings are stayed pending the outcome of mediation.
- (5) The parties are required to sign an Agreement to Mediate and a Confidentiality Agreement at the commencement of the mediation session.
- (6) The claim will be listed on the [insert date] for [case management directions/pre-trial review/trial direction] unless;
 - (a) the claim has been settled and the claimant advises the Court of the settlement agreement and/or files a draft consent order, or
 - (b) the parties apply no later than 7 days before the hearing for further directions; or
 - (c) the parties apply for an extension of the stay and the extension is granted, upon which the hearing will be relisted on the date to which the extension is granted.

By the Court

[SEAL]

Registrar

NOTICE

1. Mediation fees are to be paid 3 days prior to the mediation session;
2. Failure to pay the fees as required shall result in cancellation of the mediation session and the party failing to pay may be liable in costs;
3. If any party fails to attend the mediation session without reasonable notice, the mediation fees of the defaulting party shall be forfeited;
4. If any party opts out of the mediation session after the session starts, any mediation fees paid will be forfeited;
5. Where a party unreasonably terminates a mediation session before the allotted 3 hours, the Judge or Master may take that fact into account when making any order as to costs in the proceedings; and
6. Where a party and/or his/her Legal Practitioner (where represented) fail or refuse to complete the Evaluation Forms (Form M11 and Form M12), the Master or Judge may take that party and/or his /her Legal Practitioner's failure /refusal into account when making a costs order in the proceedings.

Form M1A: Application for Referral to Mediation by the Parties

[Sub-paragraph 1.1(a)]

Heading: *same as in Form M 1*

APPLICATION FOR REFERRAL TO MEDIATION BY THE PARTIES

TAKE NOTICE that:

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

2. Particulars of the above Parties:

Surname /Company Name -----

First Name -----

Residential address -----

Business address -----

Postal address -----

Telephone -----

Mobile Phone -----

E-Mail Address -----

Surname / Company Name -----

First Name -----

Residential address -----

Business address -----

Postal address -----

Telephone -----

Mobile Phone -----

E-Mail Address -----

Signed: -----/Legal Practitioner
(Name, address, telephone number, email)
(Attach copies of relevant documents and/or mediation memorandum)

-----/Legal Practitioner
(Name, address, telephone number, email)
(Attach copies of relevant documents and/or mediation memorandum)

To: The Registrar and the Mediation Coordinator

Form M1B: Application for Referral to Mediation by the Claimant/Defendant

[Sub-paragraph 1.3]

Heading: *same as in Form M 1*

APPLICATION FOR REFERRAL TO MEDIATION BY THE CLAIMANT/ DEFENDANT

TAKE NOTICE that:

1. I the undersigned, the claimant/defendant herein apply for referral to mediation of a dispute between the above parties under Claim No. _____.

2. Particulars of the claimant/defendant:

Surname / _____
Company name

First Name _____

Residential address _____

Business address _____

Postal address _____

Telephone _____

Mobile Phone _____

E-Mail Address _____

Signed: ----- Claimant/Claimant's Legal Practitioner or
Defendant/Defendant's Legal Practitioner

(Name, address, telephone number, email)

(You may attach copies of statement of claim, defence, mediation memorandum and any other relevant documents)

To: The Registrar and the Mediation Coordinator

Form M2: Notice of Selection of Mediator

[Sub-paragraph 7.2]

Heading: same as in Form M 1

Notice of Selection of Mediator

TAKE NOTICE that the parties have selected [Mediator 1] as Mediator and[Mediator 2] and[Mediator 3] as Alternates from the Roster of Mediators.

Dated:

Signed: -----

Claimant/ Claimant’s Legal Practitioner
(Name, address, telephone number, email)

Dated:

Signed: -----

Defendant/ Defendant’s Legal Practitioner
(Name, address, telephone number, email)

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

Form M3: Notice of Selection of Mediator by the Court

[Sub-paragraph 7.3]

Heading: *same as in Form M 1*

Notice of Selection of Mediator by the Court

TAKE NOTICE that a Notice of Selection of Mediator by the parties has not been filed in this action. Accordingly, [insert designation/ name] assigned [Mediator 1] as Mediator and[Mediator 2] and[Mediator 3] as Alternates to conduct the mediation session in these proceedings.

Unless the Court orders otherwise, you are required to attend this mediation session. If you have a Legal Practitioner representing you in this action, he or she may attend.

YOU MAY BE PENALISED IF YOU FAIL TO ATTEND THE MEDIATION SESSION.

(Dated)

By the Court

[SEAL]

Registrar

To: Claimant /Claimant’s Legal Practitioner
(Name, address, telephone number, email)

And To: Defendant/Defendant’s Legal Practitioner
(Name, address, telephone number, email)

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

Form M4: Notice of Scheduled Mediation

[Sub-paragraph 8.1(b)]

Heading: same as in Form M 1

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 Mediation Coordinator at (*address*).

You are required to attend a 3-hour mediation session. If you have a Legal Practitioner representing you in this proceeding, he/she may attend. Any party attending the mediation must be authorised to settle the dispute or be in a position to be able to obtain such authority during the mediation.

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: -----

Mediation Coordinator
(*Name, address, telephone number, email*)

To: The Mediator
(*Name, address, telephone number, email*)

To: Claimant/Claimant’s Legal Practitioner
(*Name, address, telephone number, email*)

And To: Defendant/Defendant’s Legal Practitioner
(*Name, address, telephone number, email*)

Form M5: Certificate of Non-Compliance

[Sub-paragraph 11.1(b)]

Heading: same as in Form M 1

Certificate of Non-Compliance

TAKE NOTICE that

- The claimant failed to attend the mediation session.
- The defendant failed to attend the mediation session
- The claimant or his/her representative attended the mediation but had no authority to settle.
- The defendant or his/her representative attended the mediation but had no authority to settle.
- The claimant or his/her representative attended the mediation but did not complete Form M11.
- The defendant or his/her representative attended the mediation but did not complete Form M11.
- The claimant’s Legal Practitioner attended the mediation but did not complete Form M12.
- The defendant’s Legal Practitioner attended the mediation but did not complete Form M12.
- The claimant or his/her representative opted out of the mediation session after it started **OR** unreasonably terminated the mediation session before the allotted 3 hours.
- The defendant or his/her representative opted out of the mediation session after it started **OR** unreasonably terminated the mediation session before the allotted 3 hours.

(Please check all applicable boxes)

Dated:

Signed: -----

Mediator

(Name, address, telephone number, email)

To: Mediation Coordinator

(Name, address, telephone number, email)

And to: The Registrar

(Name, address, telephone number, email)

Form M6: Confidentiality Agreement

[Sub-paragraph 14.2]

Heading: *same as in Form M 1*

Confidentiality Agreement

The parties will participate in a mediation session to be conducted in accordance with the Practice Direction regarding court-connected Mediation. 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 when signed in counterparts shall be as binding and effectual as one in respect of which all parties have signed as a single document;
- 7) delivery of an electronically scanned executed counterpart of this Agreement by facsimile or electronic mail shall be equally effective as delivery of a manually executed counterpart of this Agreement; and
- 8) any party delivering an executed counterpart of this Agreement by facsimile or electronic mail shall also deliver a manually executed counterpart of this Agreement, but failure to do so shall not affect the validity, enforceability, or binding effect of this Agreement.

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:

.....

Claimant

.....

Defendant

.....

Legal Practitioner for the Claimant

.....

Legal Practitioner for the Defendant

To: The Mediation Coordinator

(Name, address, telephone number, email)

Form M7: Notice of Outcome of Mediation

[Sub-paragraph 15.1 and Sub-paragraphs 17.1, 17.2, 17.4]

Heading: *same as in Form M 1*

Notice of Outcome of Mediation

TAKE NOTICE that a mediation session was scheduled/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 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[state date].
- 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.

(Please check all applicable boxes)

Dated:

Signed: -----

The Mediator
(name, address, telephone number, email)

Signed: -----

The Mediation Coordinator

To: The Registrar
(Name, address, telephone number, email)

Form M8: Notice for Referral to Mediation

[Sub-paragraph 1.6]

Heading: *same as in Form M 1*

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.....[Mediator 1] as Mediator and[Mediator 2] and[Mediator 3] as Alternates from the Roster of Mediators.

Dated:

Signed: -----

Claimant/ Claimant's Legal Practitioner

(name, address, telephone number, email)

Signed: -----

Defendant/ Defendant's Legal Practitioner

(name, address, telephone number, email)

To: The Registrar

Form M10: Mediation Means Assessment Form

[Sub-paragraph 13.3]

**EASTERN CARIBBEAN SUPREME COURT
COURT-CONNECTED MEDIATION MEANS ASSESSMENT FORM**

NOTE: ALL INFORMATION CONTAINED HEREIN IS SUBJECT TO OUR CONFIDENTIALITY RULES AND 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 Legal Practitioner: _____

A. CLIENT INFORMATION

Your Name: _____

Address:

Telephone: _____ Email: _____

Are you employed? _____ Occupation: _____

Employer's Name: _____

Employer's Address: _____

Employer's 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/RENT: \$ _____ CAR PAYMENTS: \$ _____

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

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

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

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

BY SIGNING AND SUBMITTING THIS FORM TO THE REGISTRAR, I CONSENT TO THE REGISTRAR REQUESTING AND OBTAINING SUCH INFORMATION FROM THIRD PARTIES, FOR THE PURPOSE OF VERIFYING THE INFORMATION.

Signature: _____ **Date:** _____

<p>FOR OFFICIAL USE ONLY:</p> <p>DATE: _____ APPROVED/NOT APPROVED: _____</p> <p>REASON: _____</p> <p>REGISTRAR'S SIGNATURE: _____</p>

Form M11: Evaluation Form for Litigants

[Practice Direction 13.2]

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 a Legal Practitioner 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 Settlement 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 Settlement Agreement? yes no

If NO,

Do you think that the Mediator did everything he/she could to bring about a Settlement 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:

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 Legal Practitioner 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 Legal Practitioner 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.

Form M12: Evaluation Form for Legal Practitioners

[Practice Direction 13.2]

EVALUATION FORM FOR LEGAL PRACTITIONERS

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 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? | <input type="checkbox"/> <i>yes</i> <input type="checkbox"/> <i>no</i> | | |
| 14. Do you think mediation was appropriate in this case? | <input type="checkbox"/> <i>yes</i> <input type="checkbox"/> <i>no</i> | | |

15. Were you satisfied with the way the Mediation Coordinator worked in this case? yes no

If NOT, why not:

Additional comments:

Form M13: Application for Refund of Mediation Fees

[Sub-paragraph 11.1(b)]

Heading: *same as in Form M 1*

APPLICATION 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/defendant:

Surname / _____
Company Name

First Name _____

Residential address _____

Business address _____

Postal address _____

Telephone _____

Mobile Phone _____

E-Mail Address _____

3. Reason for Application for refund of mediation fees:

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

(Attach copy of receipt evidencing payment of mediation fees)

To: The Registrar and the Mediation Coordinator

Form M14: Agreement to Mediate

[Sub-paragraph 14.2]

The Eastern Caribbean Supreme Court

In the High Court of Justice

[State/Territory]

Claim (Where applicable):

Between

A.B. Claimant / Party A

and

C.D. Defendant / Party B

AGREEMENT TO MEDIATE

A.B. _____ and C.D. _____

agree to participate in mediation to resolve the following issues:

We also agree to the following:

1. Information

We shall provide full accurate disclosure to the other party of all information that the Mediator and/or the other party requests if the Mediator finds disclosure is pertinent to the mediation process and may aid in reaching agreement.

2. Confidentiality

We agree to abide by the Confidentiality Agreement set out in Form M6 of the Practice Direction on Court-Connected Mediation (PD No. 6 of 2020).

3. Mediator Duty

We understand and agree that the Mediator does not represent any of the parties. The Mediator has no duty to provide advice or information to either party or to assure that we understand the consequences of our actions. The Mediator's function is to promote and facilitate voluntary resolution of the matter and the Mediator has no responsibility regarding the fairness or legality of the resolution.

4. Waiver of Rights

By participation in court-connected mediation we, the parties, thereby waive our rights to make any claim, against the Mediator for any matter reasonably connected with or in relation to the:

- (a) dispute between the parties;
- (b) mediation; and
- (c) services provided by the Mediator.

5. Evaluation of Mediation Session

We agree that upon completion of the mediation session and before leaving the Mediation Office, we shall complete the Evaluation Form for Litigants in Form M11 and ask that our Legal Practitioners (when in attendance) complete the Evaluation Form for Legal Practitioners in Form M12, and accept that there may be sanctions for failure to do so.

6. Execution of Agreement to Mediate

We also agree that this Agreement when signed in counterparts shall be as binding and effectual as one in respect of which all parties have signed as a single document.

Delivery of an electronically scanned executed counterpart of this Agreement by facsimile or electronic mail shall be equally effective as delivery of a manually executed counterpart of this Agreement.

Any party delivering an executed counterpart of this Agreement by facsimile or electronic mail shall also deliver a manually executed counterpart of this Agreement, but failure to do so shall not affect the validity, enforceability, or binding effect of this Agreement.

Dated: -----

Mediator: -----

Parties' names and addresses:

Representatives' names and addresses:

Party A _____

Rep. A _____

Party B _____

Rep. B _____

Form M15: Request for Permission to Select Mediator

[Sub-paragraph 7.3(b)]

Heading: *same as in Form M 1*

REQUEST FOR PERMISSION TO SELECT MEDIATOR

TAKE NOTICE that the parties have failed to select a Mediator or could not agree on a mutually acceptable Mediator and the Mediation Referral Order did not provide for Selection of a Mediator by the Mediation Coordinator in this matter.

In the circumstances, I the undersigned do hereby request permission to select from the Roster of Mediators, in consultation with the parties, [Mediator 1] as Mediator and [Mediator 2] and [Mediator 3] as Alternates to conduct the mediation session in these proceedings.

Signed:-----

Dated:-----

Mediation Coordinator

To: Master / Judge

Form M16: Application for Placement on the Roster of Mediators

[Practice Direction 3.6]

APPLICATION FOR PLACEMENT ON THE ROSTER OF MEDIATORS

Please print clearly:

PART ONE: PERSONAL INFORMATION

Name:-----
Surname First name Middle initial

Mailing Address:-----

Telephone number Fax number E-mail address

PART TWO: BRIEF BIOGRAPHY

Please provide a brief biography:

PART THREE: DECLARATION:

1. I the undersigned, having provided evidence that I:

- i. have satisfactorily completed the training for Mediators leading to certification by the Judicial Education Institute of the Eastern Caribbean Supreme Court / the University of the West Indies;
- ii. am a fit and proper person;
- iii. am of good standing, where previously on the Roster;
- iv. do not have any unspent criminal convictions that may be relevant to my role as Mediator and, in particular, any conviction involving fraud or other dishonesty; and
- v. possess a favourable Police Certificate of Character, not more than six months old.

2. Do hereby apply to be considered for placement on the Roster of Mediators of -----
----- [Member State or Territory]

3. I also acknowledge that if I am selected for placement on the Roster of Mediators, I shall be required to pay the annual Mediator's fee.

By signing and submitting this application, I consent to the Mediation Committee requesting and obtaining such information from third parties, for the purpose of verifying the information I have submitted.

Signed: -----

Dated: -----

To: The Mediation Committee

THIRD SCHEDULE

CODE OF ETHICS

1. This Code of Ethics shall apply to Mediators whose names appear on the Roster of Mediators for each Member State and Territory of the Eastern Caribbean Supreme Court and is intended to assist and guide them in their conduct and to provide a framework within which mediation is conducted and regulated.

2. In this Code -

“Conflict of interest” 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 parties as opposed to a single party in moving towards or reaching settlement.

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 parties; and

- (c) act fairly in dealing with the 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 parties are informed of the process in which they are involved.

Ethical Standards

- 4. (1) The primary role of the Mediator is to assist the parties in their attempt to achieve a resolution of their dispute, with the parties in ultimate control of the decision to settle the dispute and the terms of the settlement.
- (2) The primary responsibility for the resolution of the dispute and the shaping of a settlement rests with the parties.
- (3) A Mediator shall recognise that mediation is based on the principle of self-determination by the parties and upon the ability of the parties to reach a voluntary un-coerced settlement.
- (4) A Mediator shall request and encourage self-determination by the 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 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 parties aware, where appropriate, of the option and importance of consulting other professionals to assist the parties in making informed decisions.
- (7) When a Mediator believes a party does not understand or appreciate how a settlement may adversely affect legal rights or obligations, the Mediator shall advise the 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 parties.
- (2) A Mediator shall acquire and maintain professional competence in mediation and shall at all times strive to improve his/her professional skills and abilities by participating in relevant continuing education programs.
- (3) A Mediator shall have information regarding his/her relevant training, education and experience available to the parties.
6. (1) A Mediator shall provide mediation services only for those disputes in which he can be impartial with respect to all the parties and the subject matter of the dispute.
- (2) A Mediator shall in words and action, maintain impartiality towards the parties and where his/her 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 parties and shall withdraw from providing services, even if the parties express no objection to the continuation of the Mediator's services.
7. (1) A Mediator shall discuss issues of confidentiality with the 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 party.

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

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

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

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

(3) Where at any time the Mediator believes that any 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 party's ability to participate, and/or recommend that the party obtain appropriate assistance in order to continue with the mediation process, or shall terminate the mediation process.

9. (1) A Mediator shall disclose any actual or potential conflict of interest known to him and thereafter shall withdraw from the mediation, if any 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 parties express no objection to the continuation of the Mediator's services.

(3) Save with the consent of the 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 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 interest 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 parties' consideration of the best interests of children in relation to the issues being mediated. The Mediator also has a duty to assist the 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 for a mediation session without violating this provision.

12. A Mediator who is asked to conduct a pro bono mediation session shall not be required to do more than 12 hours in any calendar 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) All advertising shall honestly represent the services to be rendered and 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.

FOURTH SCHEDULE
DISCIPLINARY REGULATIONS

1. (1) These Disciplinary Regulations apply to complaints against any person placed on the Roster of Mediators in accordance with sub-paragraph 3.13 of this Practice Direction.
(2) Where a person is registered as a Mediator on the Roster of Mediators such registration may be revoked for cause in accordance with these provisions.

2. (1) The Mediation Committee shall appoint a Disciplinary Committee consisting 3 members which shall be a standing committee, to hear and determine complaints against Mediators.
(2) The Disciplinary Committee shall consist of a Legal Practitioner of at least 7 years' standing, 1 Mediator from the Roster of Mediators who has served for a period of at least 3 years and 1 lay person of good character. The members of the Disciplinary Committee shall not be members of the Mediation Committee in any of the Member States or Territories.

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 sub-paragraph (1), shall be mailed or delivered to the Mediation 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 sub-paragraph (4), the complaint shall be made within 45 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 registered 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 paragraph 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 the appropriate sanction as set out in paragraph 8 below.

- (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 Legal Practitioners, but while the rules of evidence shall not be strictly applied, the principles of natural justice shall apply.
- (2) The Disciplinary Committee may at its own initiative, or at the request of the parties, 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 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.
- (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 register;
 - (c) notifying any approved mediation agency with which the Mediator is affiliated of the complaint and the result of its disposition; and

(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; and

(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 a public record, but the files of the Disciplinary Committee and the Appellate Committee shall remain confidential.

Appendix 1

IN THE EASTERN CARIBBEAN SUPREME COURT

PRACTICE DIRECTION No. 6 of 2020

COURT-CONNECTED MEDIATION

COMPLAINT FORM

Mediator's Name:

Claim No: /
Names of the Parties

Date of Mediation Session:

Nature of Complaint:

Dated:

Name:

Signature of Complainant:

To: The Mediation Committee (via the Mediation Office)
(Name, address, telephone number, email)

FIFTH SCHEDULE

ADDITIONAL DUTIES OF THE MEDIATION COORDINATOR

1. Duties of the Mediation Coordinator to Include:

- a. Keeping an accurate record of all cases referred to mediation;
- b. Keeping an accurate record of all Settlement Agreements reached and of all cases which are not settled;
- c. Keeping an accurate record of the number of mediations performed by each Mediator in a calendar year;
- d. Ensuring that the electronic case management systems are properly kept up to date to capture the information in relation to matters which are referred to mediation;
- e. 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 new or adjourned mediations which a Mediator may have assigned to him/her (where the number of new or adjourned mediations pending must be limited to a maximum of 3);
- f. Submitting to the Court Office on a weekly basis, an up-to-date Schedule depicting the names, professional designations, dates and times when each Mediator on the Roster is available to conduct mediations;
- g. Keeping an accurate record of all fees received and disbursements paid out in respect of the Mediation Account; and
- h. Submitting to the Accountant at the ECSC Headquarters through the ECSC Regional Mediation Coordinator, quarterly accounts of all receipts and expenditure on the Mediation Account for the period and projected expenditure for the upcoming quarter for prior approval.

2. Quarterly Reports to be Submitted to ECSC Headquarters

- a. A listing of all cases where the mediation is not complete at the beginning of a quarter;
- b. A listing of all cases mediated during the quarter and who performed the mediation clearly indicating whether the Mediator is a Legal Practitioner or not;
- c. 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 Order has not been complied with;
- d. 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; and
- e. Copies of all Form M11 (Evaluation Form for Litigants) and Form M12 (Evaluation Form for Legal Practitioners) completed during the quarter.

SIXTH SCHEDULE

ROLE OF THE LEGAL PRACTITIONER IN MEDIATION

1. The role of the Legal Practitioner may include:
 - a. advising the client about the mediation process and programme;
 - b. advising the client about the selection of a Mediator;
 - c. preparing the client for effective participation in the mediation session;
 - d. working with the client to develop opening statements and a representation plan;
and
 - e. explaining the best options of the case to the client and if/when these should be activated.

2. Preparation of Clients for Mediation
 - 2.1 Legal Practitioners are aware that the parties participate directly and actively in mediation. To prepare a party for mediation, the Legal Practitioner will:
 - a. describe the mediation process and what will happen at the session;
 - b. explain what is expected of the client;
 - c. remind the client that the objective of the mediation is not to "win", but to reach a mutually agreed resolution;
 - d. ensure that the client or client's representative has authority to settle;
 - e. discuss the costs, risks and benefits of not reaching a Settlement Agreement;
 - f. ensure that the client is conversant with the facts and issues of the case;
 - g. explore the client's position, goals and interests;
 - h. assist the client in identifying any common goals or interests towards the resolution of the dispute;
 - i. advise the client on how to best put forward his or her interests; and

- j. discuss with the client, prior to attending the mediation session where possible or during caucus where necessary, the other party's position, goals and interests, toward resolution of the dispute.
3. At the Mediation Session:
- a. participating in the mediation process in good faith;
 - b. protecting the client's interests in connection with any Settlement Agreement reached;
 - c. 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; and
 - d. requesting caucus where necessary to facilitate resolution or to avoid a breakdown of the mediation process.

In the event that the Legal Practitioner attends the mediation session, it is expected that he/she shall not actively participate in the mediation session, nor shall he/she address the Mediator directly except where he/she is so permitted by the Mediator or unless his/her input is specifically requested by the Mediator, or if the parties for any reason are unable to adequately speak for themselves.

If in attendance, the Legal Practitioner shall sign the Confidentiality Agreement and attest to the Settlement Agreement where one is reached.

SEVENTH SCHEDULE

DUTIES OF THE PARTIES

1. THE PARTIES

It is the duty of each party to act and participate in the mediation session in good faith and to use their best efforts to co-operate with each other and with the Mediator to enable the mediation to proceed smoothly in order to resolve the dispute.

2. Parties should:

(a) be prepared to treat all participants in the mediation session with courtesy and respect;

(b) have considered the issues which have priority for them and the possible options for their resolution;

(c) have a clear view on what the best outcome would be from the mediation session and the extent to which they would be prepared to compromise;

(d) ensure that they confer upon their representative, the necessary authority to settle the dispute, in the event that they are not appearing in person; and

(e) complete all required mediation forms at the commencement and conclusion of the mediation session.