

## SCHEME FOR TRAINING UNDER MEDIATION AND CONCILIATION PROJECT COMMITTEE.

The Supreme Court of India has constituted Mediation and Conciliation Project Committee (MCPC) to oversee the effective implementation of Mediation and Conciliation in the Country. The Mediation and Conciliation Project Committee (MCPC) was constituted by the then Chief Justice of India Hon'ble Mr. Justice R.C. Lohoti by order dated 9<sup>th</sup> April, 2005. Hon'ble Mr. Justice N. Santosh Hegde was its first Chairman. It consisted of other Judges of the Supreme Court and High Court, Senior Advocates and Member Secretary of NALSA.

### 1. COMPOSITION

At present the constitution of MCPC is as under :

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|----|---|----------------------|
| 1. | Hon'ble Mr. Justice J.S. Khehar             | ... Chairman         |
| 2. | Hon'ble Mr. Justice Madan B. Lokur          | ... Member           |
| 3. | Mr. P. P. Rao, Senior Advocate              | .... Member          |
| 4. | Ms. Asha Menon,<br>Member Secretary, NALSA. | ... Member           |
| 5. | Ms. Nisha Saxena                            | ... Member Secretary |

### 2. ELIGIBILITY FOR TRAINING

The following persons are eligible for training as Mediators :

- (a) (i) Retired Judges of the Supreme Court of India,
- (ii) Retired Judges of the High Court;
- (iii) Retired District and Sessions Judges or retired Judges of the City Civil Court or Courts of equivalent status.
- (b) Judicial Officers or legal practitioners with atleast 10 years' standing at the bar at the level of the Supreme Court or the High Court or the District Courts of equivalent status;
- (c) Experts or other professionals with at least fifteen years' standing; or retired senior bureaucrats or retired senior executives;

### 3. TRAINING OF MEDIATORS

The Mediators are trained as per the curriculum approved by the MCPC contained in the manual known as Mediation Training Manual of India. The Mediation Training Manual was prepared under the guidance of Hon'ble Mr. Justice Cyriac Joseph, former member, MCPC and Chairman, Sub-Committee. Any person to be trained as a Mediator has to undergo

compulsory 40 hours' mediation training imparted by trainers of MCPC as per the curriculum laid down in Mediation Training Manual. Mediation Training Manual of India can be down loaded from the Supreme Court of India website – sci.nic.in

#### 4. ACCREDITION

A person must have undergone 40 hours of mediation training programme under the aegis of MCPC as per curriculum approved by MCPC from the trainers of Mediation and Conciliation Project Committee. After having undergone 40 hours training only those mediators who have completed atleast 10 successful mediation resulting in settlement and atleast 20 mediation in all, are eligible to be accredited as qualified mediator.

The Committee also resolved that the Mediators who have undergone training programme conducted by institution other than MCPC shall not be accredited as Mediator under MCPC.

#### 5. TRAINING OF TRAINERS PROGRAMME

Master trainers of Mediation have devised a 20 hour programme for training of trainers and only those mediators accredited by MCPC who have completed atleast 50 mediations resulting in settlement and atleast 60 mediations in all, are eligible to undergo Training of Trainers (ToT) programme. The training of trainers programme is also followed by advanced training programme to further crystallize the concept of mediation and skill development.

#### 6. HONORARIUM TO MEDIATORS ACCREDITED BY MCPC

S.No	Nature of case	Honorarium
1	On settlement through mediation of a matrimonial case [including criminal], custody, guardianship, probate, partition and possession.	Rs.3000/- per case [with two or more connected cases, the maximum would be Rs.4000/-]
2	All other matters.	Rs. 2000/- per case [with two or more connected cases, the maximum would be Rs.3000/-]
3	Connected case	Rs.500/- per case subject to a maximum of Rs.1000/- [regardless of the number of connected cases]
4	In case of no settlement	No honorarium.

The scheme of training under MCPC has been devised in such a way so as to ensure uniformity in the curriculum of the Mediation training and also to maintain quality control of mediators throughout the country.

The endeavor of the Mediation and Conciliation Project Committee is to give a boost to the Court annexed mediation and to help mediation in growing not as an Alternative Dispute Resolution Mechanism but as another effective mode of dispute resolution.

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## MEDIATION RULES – 2015

**Rule 1: Title**

These Rules shall be called the Mediation Rules, 2015

**Rule 2 : Function of the Mediation Centre :**

- [1] To maintain a panel of trained Mediators sufficient in number to meet the requirement of work referred to the Mediation Centre.
- [3] On receipt of the matter by way of referral for mediation, the Co-ordinator of the Mediation Centre may assign the matter to any mediator who is best suited to deal with the matter from the panel of mediators maintained by the Mediation Centre.
- [4] The Mediation shall not be limited only to the issues in the referred dispute and the Mediator may take into account the disputes between the parties to a case which are not the subject of the pending litigation, and may resolve all disputes between the parties.
- [5] During the mediation, counsel for the parties may also participate in the mediation process.
- [6] In appropriate cases, the Mediation Centre may invite any person/ persons, other than those who are involved in the pending litigation to join the Mediation for the purpose of finding comprehensive and complete solutions including an expert pertaining to any field.
- [7] If any party to the dispute referred to Mediation has any objection to the mediator assigned to it, the said party shall inform the Mediation Centre of the same and thereafter the Co-ordinator, Mediation Centre shall endeavour to appoint a Mediator who may be acceptable to all the parties.

**Rule 3: Appointment of Mediator**

- a) In a Court annexed mediation, the coordinator of the mediation centre shall appoint the mediator as he may deem fit.
- b) in exceptional cases, the Court may also appoint a mediator

who is not necessarily from the panel of Mediators referred to in Rule 4 nor bear the qualifications referred to in Rule 5 but should not be a person who suffers from the disqualifications referred to in Rule 6.

**Rule 4: Panel of Mediators.**

- a) The High Court shall empanel only those persons as mediators who have necessary qualifications as indicated in Rule 5 and a list of such mediators empanelled with the mediation centre should be prepared.
- b) The District Court shall also prepare a panel of qualified Mediators with the approval of the High Court Mediation Committee.

All the mediators as appointed under clause (a) and Clause (b) shall normally be on the panel for a period of 3 years from the date of appointment and further extension of their tenure shall be at the discretion of High Court Mediation Committee.

**Rule 5: Qualifications of persons to be empanelled under Rule 3 :**

The following persons are eligible for training as Mediators :

- (a)
  - (i) Retired Judges of the Supreme Court of India,
  - (ii) Retired Judges of the High Court;
  - (iii) Retired District and Sessions Judges or retired Judges of the Courts of equivalent status.
  - (iv) Judicial Officers of Higher Judicial Service.
- (b) Legal practitioners with atleast 10 years' standing at the bar at the level of the Supreme Court or the High Court or the District Court or equivalent status;
- (c) Experts or other professionals with at least fifteen years' standing; or retired senior bureaucrats or retired senior executives;

**Rule 6: Disqualification of persons.**

The following persons shall be deemed to be disqualified for being empanelled as mediators:

- (a) any person who has been adjudged as insolvent or persons
  - (i) against whom criminal charges involving moral turpitude are framed by a criminal court and are pending; or
  - (ii) persons who have been convicted by a criminal court for any offence involving moral turpitude.
- (b) any person against whom disciplinary proceedings have been initiated by the appropriate disciplinary authority which are pending or have resulted in a punishment.
- (c) any person who is interested or connected with the subject-matter of dispute(s) or is related to any one of the parties or to those who represent them, unless such objection is waived by all the parties in writing.
- (d) any legal practitioner who has or is appearing for any of the parties in the suit or in other proceedings(s).

**Rule 7 : Addition to or deletion from panel.**

There shall be periodical assessment of the performance of the mediators. The High Court or the District & Sessions Judge with prior approval of the High Court Mediation Committee, may in its/his discretion, from time to time, add or delete any person in the panel of mediators.

**Rule 8 : Preference.**

The Coordinator shall, while nominating any person from the panel of mediators referred to in Rule 3, consider his suitability for resolving the dispute(s) involved and shall give preference to those who have proven record of successful mediation or who have special qualification or experience in mediation.

Nomination to a mediation proceeding shall not be perceived as a right by mediators. Such nomination shall be at the discretion of the Coordinator of the Mediation Centre.

**Rule 9 : Duty of mediator to disclose certain facts.**

- (a) When a person is approached in connection with his proposed appointment as mediator, he shall disclose any circumstance likely to give rise to a reasonable doubt as to his independence or impartiality.
- (b) Every Mediator shall from the time of his appointment and throughout continuance of the mediation proceedings, without delay, disclose to the parties, about the existence of any circumstance referred to in Clause (a).

**Rule 10 : Withdrawal of appointment.**

Upon information furnished by the mediator under Rule 9 or upon any other information received from the parties or other persons, if the Court, in which the suit or proceeding is pending or the coordinator of the Mediation Centre, is satisfied, that the said information has raised a reasonable doubt as to the mediator's independence or impartiality, it/he may withdraw the appointment and replace him by another mediator.

**Rule 11 : Mediation process.**

- a) All civil and criminal compoundable matters may be referred to mediation during the course of litigation, by the Court.
- b) The mediation process will comprise of reference as well as the steps taken by the mediator to facilitate the settlement of a referred matter by following the structure usually followed, including but not limited to introduction and opening statement, joint session, separate session(s) and closing.
- c) failure to arrive at a settlement would not preclude the Court from making fresh reference of the matter for mediation.
- d) In case of failure of resolution of the referred dispute, the

Mediator shall inform the Mediation Centre, by a report and the Co-ordinator of the Mediation Centre shall inform regarding the same to the Court.

**Rule 12 :** Mediator not bound by Indian Evidence Act, 1872 or Code of Civil Procedure, 1908.

The mediator shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872, but shall be guided by the principles of fairness and justice, having regard to the rights and obligations of the parties, usages of trade, if any, and the circumstances of the dispute(s).

**Rule 13 :** Representation of parties

The parties shall ordinarily be present personally or through constituted attorney at the sessions notified by the Mediator. They may also be represented by a counsel with permission of the mediator in such sessions.

**Rule 14:** Consequences of non-attendance of parties at sessions on due dates.

If a party fails to attend a session notified by the mediator on account of deliberate or wilful act, the other party or the mediator can apply to the Court in which the suit or proceeding is pending, in that case Court may issue the appropriate directions having regard to the facts and circumstances of the case.

**Rule 15 :** Administrative assistance.

In order to facilitate the conduct of mediation proceedings, the parties, or the mediator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

**Rule 16 :** Role of Mediator.

The mediators shall attempt to facilitate voluntary resolution of the dispute(s) by the parties. He shall assist them in understanding the problems, identifying the underlying issues, reducing mis-understandings, generating the options and developing option which are mutually acceptable to both the parties.

Rule 17 : Parties alone responsible for taking decision.

The parties shall be made to understand that the mediator only facilitates in arriving at a decision to resolve dispute(s) and that he will not and cannot impose any settlement nor does the mediator give any assurance that the mediation will result in a settlement. The mediator shall not impose any decision on the parties.

Rule 18 : Time limit for completion of mediation.

On the expiry of Ninety days from the date fixed for the first appearance of the parties before the mediator, the mediation shall stand terminated, unless the Court, which referred the matter, either suo moto, or upon request by any of the parties, and upon hearing all the parties, is of the view that extension of time is necessary or may be useful; but such extension shall not be beyond a further period of thirty days.

Rule 19 : Parties to act in good faith

All the parties shall commit to participate in the proceedings in good faith with the intention to settle the dispute (s), if possible.

Rule 20. Confidentiality, disclosure and inadmissibility of information :

[1] when a mediator receives factual information concerning the dispute from any party, he shall disclose the substance of that information to the other party, so that the other party may have an opportunity to present such explanation as it may consider appropriate.

Provided that, when a party gives information to the mediator subject to a specific condition that it be kept confidential, the mediator shall not disclose the information to the other party.

[2] Receipt or perusal of any document by the mediator or receipt of information orally by the mediator while serving in that capacity, shall be confidential and the mediator shall not be compelled to divulge information regarding the document or record or oral information nor as to what transpired during the mediation.

- [3] Parties shall maintain confidentiality in respect of events that transpired during the mediation and shall not rely on or introduce the said information in any proceeding as to :-
- [a] views expressed by a party in the course of the mediation proceeding;
  - [b] documents produced during the mediation which were expressly required to be treated as confidential or other notes or drafts or information given by the parties to the mediators.
  - [c] proposal made or views expressed by the mediator.
  - [d] admission made by a party in the course of mediation proceeding.
  - [e] the fact that a party had or had not indicated willingness to accept a proposal.
- [4] There shall be no stenographic or audio or video recording of the mediation proceedings.
- [5] A mediator may maintain personal record regarding progress of the mediation for his personal use.

**Rule 21 : Privacy :**

The mediation sessions shall be conducted in complete privacy ; only the concerned parties or their counsels or power of attorney holders can attend, other persons may attend only with the consent of the parties and permission of the mediator.

**Rule 22 : Immunity :**

No mediator shall be held liable for anything bonafidely done or omitted to be done by him during the mediation proceedings for civil or criminal action nor shall he be summoned by any party to the suit or proceeding to appear in a Court of Law to testify in regard to information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the mediation proceedings.

**Rule 23 : Communication between mediator and the Court :**

- [1] In order to preserve the confidence of parties in the Court and the neutrality of the mediator, there should be no communication between the mediator and the Court, except as stated in sub-rules [2] and [3] of this Rule.
- [2] If any communication between the mediator and the Court is necessary, it shall be in writing and copies of the same shall be given to the parties or their constituted attorneys or the counsel.
- [3] All communication between the mediator and the Court shall be made only by the mediator and in respect of the following matters :
  - [a] the failure of a party or parties to attend; or
  - [b] the mediator's assessment that the case is not suited for settlement through mediation; or
  - [c] settlement of dispute or disputes arrived at between parties.

**Rule 24 : Settlement agreement :**

Where an agreement is reached between the parties with regard to all the issues in the suit or proceeding or some of the issues, the same shall be reduced to writing and signed by the parties or their constituted attorney. If any counsel has represented the parties, the mediator may obtain his signature also on the settlement agreement.

- [1] The agreement of the parties so signed shall be submitted to the Co-ordinator, Mediation Centre, who shall, with a covering letter signed by him forward the same to the Court in which the suit or proceeding is pending.
- [2] Where no agreement is arrived at between the parties or where the mediator is of the view that no settlement is possible, he shall report the same in writing to the Co-ordinator, Mediation Centre, who shall, with a covering letter signed by him forward the same to the Court in which the suit or proceeding is pending.

**Rule 25 : Court to record settlement and pass decree :**

On receipt of settlement agreement, if the Court is satisfied that the parties have settled their disputes voluntarily, the Court may pass appropriate order/deGREE on the basis of settlement, if the same is not found collusive/illegal /unworkable. However if the settlement disposed of only certain issues arising in the matter, the Court may record settlement in respect of the issues settled in the mediation and may proceed to decide other issue which are not settled.

Settlement between the parties shall be final in respect of the proceedings pending before the Court.

**Rule 26 : Fee of the Mediators**

a) the mediators shall be paid honorarium as under :

S.No	Nature of case	Honorarium
1	On settlement through mediation of a matrimonial case [including criminal], custody, guardianship, probate, partition and possession.	Rs.3000/- per case [with two or more connected cases, the maximum would be Rs.4000/-]
2	All other matters.	Rs. 2000/- per case [with two or more connected cases, the maximum would be Rs.3000/-]
3	Connected case	Rs.500/- per case subject to a maximum of Rs.1000/- [regardless of the number of connected cases]
4	In case of no settlement	No honorarium.

It is subject to revision from time to time as deemed fit by the Hon'ble Chairman and Members of MCPC.

- b) However, in exceptional cases the Court may fix consolidated amount as fee of the **Court nominated** mediator / Mediators.
- c) Each party shall bear the cost for production of their witnesses and experts, as also for production of documents.

**Rule 27. Ethics and code of conduct for mediator :**

The Mediator shall follow and observe these Rules strictly and with due diligence.

- (1) Not indulge in conduct unbecoming of a mediator.

- (2) uphold the integrity and fairness of the mediation process.
- (3) ensure that the parties involved in the mediation are fairly informed and have an adequate understanding of the procedural aspects of the mediation process.
- (4) While communicating with the parties avoid any impropriety or appearance of impropriety.
- (5) The mediator must avoid mediating in cases where they have direct personal, professional or financial interest in the outcome of the dispute. If the mediator has any indirect interest, he is bound to disclose to the parties such indirect interest at the earliest opportunity and he shall not mediate in the case unless the parties specifically agree to accept him as mediator, despite such indirect interest.
- (6) Where the mediator is an advocate, he shall not appear for any of the parties in respect of the dispute which he had mediated.
- (7) Mediators have a duty to know the limits of their competence and ability in order to avoid taking on assignments which they are not equipped to handle.
- (8) Mediators have a duty to remain neutral throughout the mediation.
- (9) Mediators must respect the voluntary nature of mediation and must recognize the rights of the parties to withdraw from the mediation at any stage.
- (10) Mediation being confidential in nature, a mediator shall be faithful to the confidentiality reposed in him.
- (11) Mediator has a duty to encourage the parties to make their own decisions both individually and collectively about the resolution of the dispute, rather than imposing his own ideas on the parties. Self determination is the essence of the mediation process.

(12) Settlement of dispute must be based on informed consent.

(13) Conduct all proceeding relating to the resolution of dispute in accordance with the law.

(14) Mediator must refrain from promises or guarantee of results.

**Rule 28. Consequences of breach of Rule 27 :**

It shall be open to the Coordinator to take such action with the approval of the High Court Mediation Committee as may be appropriate if the mediator violates any code of conduct expressed in Rule 27 or behaves in a manner not expected of him as a Mediator”.

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