

Turks and Caicos Islands

Supreme Court Ordinance

Court-Connected Mediation Rules 2023

Legal Notice 12 of 2023

Legislation as at 28 February 2023

FRBR URI: /akn/tc/act/ln/2023/12/eng@2023-02-28

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Turks and Caicos Islands

Supreme Court Ordinance

Court-Connected Mediation Rules 2023

Legal Notice 12 of 2023

Published

Assented to on 16 February 2023

Commenced on 28 February 2023

[This is the version of this document from 28 February 2023.]

MADE by the Chief Justice under section 16 of the Supreme Court Ordinance, in conjunction with section 59A of the Civil Procedure Ordinance and section 3(2) of the Chief Justice Responsibilities Ordinance 2022.

1. Citation and commencement

These Rules may be cited as the Court-Connected Mediation Rules 2023 and shall come into operation on 28 February 2023.

2. Interpretation

In these Rules—

“**ADR**” means an Alternative Dispute Resolution, which is a method of resolving disputes otherwise than through the trial process and in these Rules, it is a reference to Mediation;

“**ADR Administrator**” means the official appointed by the Chief Justice to be responsible for the management of court-connected mediation, and who manages the Roster of Mediators;

“**Co-Mediator**” means a foreign Mediator who works with a Mediator residing in the Islands and leads the mediation team in a mediation;

“**court**” means the Magistrate’s Court and the Supreme Court;

“**court-aided mediation**” means a mediation provided outside proceedings commenced in court, but which is facilitated by the use of a Mediator on the Roster;

“**court-connected mediation**” means mediation services provided as a result of the referral by the court or by the Registrar with the consent of the parties before or after commencement of proceedings;

“**foreign Mediator**” means a mediator who practices mediation in another jurisdiction and is on the Roster of Mediators in the Islands;

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

“**Mediator**” means a person engaged as a neutral third party to mediate a matter and whose name appears on the Roster of Mediators;

“**Mediation Bundle**” means a summary of the issues in dispute, and includes relevant documents that the parties wish to rely on;

“**mediation session**” means a mediation held with a Mediator and attended by parties to a dispute, either in person, or remotely through electronic means, to which these Rules apply; and it includes adjournments of the same matter;

“**parties**” means—

- (a) in court-connected mediation—
 - (i) persons between whom there is a dispute for which a claim has been filed; or
 - (ii) persons who make an application for court-connected mediation; and
- (b) in court-aided mediation means persons between whom there is a dispute who apply for court-aided mediation;

“**Referral Order**” means an order of the court or the Registrar for parties to attend mediation;

“**Registrar**” means the Registrar of the Supreme Court or the Registrar of the Magistrate’s Court, whichever is applicable;

“**Registry**” means the Registry of the Supreme Court and the Registry of the Magistrate Court, whichever is applicable;

“**Roster of Mediators**” means the roster of certified mediators of the Judiciary of the Turks and Caicos Islands which contains the current list of court-connected mediators administered by the ADR Administrator as well as specialist family mediators.

3. Application

These Rules shall not apply to—

- (a) insolvency proceedings, including winding up of companies;
- (b) non-contentious probate proceedings; and
- (c) any other proceedings in the Supreme Court as may be identified by the Chief Justice not to be suited to mediation from time to time.

4. ADR Administrator

- (1) The Chief Justice shall appoint an ADR Administrator who shall be a person with a background in court office practice.
- (2) The ADR Administrator shall—
 - (a) be responsible for compiling the Roster of Mediators from the list of suitable persons who have completed the training and have been certified by the Judiciary, or have received training from an institution recognised by the Judiciary;
 - (b) be responsible for the scheduling of mediation sessions, in person or remotely, in accordance with these Rules;
 - (c) be responsible for the management of the Roster of Mediators by assisting parties to select a Mediator, and the maintenance of the Roster by updating the availability of mediators on a weekly basis;
 - (d) be responsible for explaining the process of mediation and all its implications to the parties and attorneys, as applicable;
 - (e) make available to parties and attorneys, the Consent to Mediation Form and Confidentiality Form set out in Forms 4 and 6 of Schedule 1, and assist unrepresented parties with the forms as necessary;
 - (f) assist in the setting out of the settlement of issues in the Mediation Bundle where the parties are not represented;
 - (g) assist the Mediator to set out the Terms of Settlement in accordance with Form 11 set out in Schedule 1;

- (h) manage and maintain the Roster of Mediators;
- (i) require the parties and attorney, as applicable, to fill out Evaluation Forms 12 and 13 set out in Schedule 1;
- (j) set out the hours of work done by each Mediator and keep a ledger on cases settled by the Mediator, including matters taken on a *pro bono* basis;
- (k) prepare monthly statistics of mediation and submit the statistics with the Evaluation Forms to the Mediation Committee, in accordance with Form 14 set out in Schedule 1; and
- (l) submit monthly statistics on mediation to the Chief Justice.

5. Establishment of Mediation Committee

- (1) There shall be a Mediation Committee established by the Chief Justice, which shall comprise of the following persons—
 - (a) a Judge who will be the Chairperson;
 - (b) a Magistrate;
 - (c) the Registrar of the Supreme Court; and
 - (d) a representative of the Bar Association.
- (2) The Mediation Committee shall meet as often as is necessary, but in any case, at least once every month.

6. Duties and responsibilities of Mediation Committee

- (1) The Mediation Committee shall receive statistics and Evaluation Forms from the ADR Administrator and analyse them to make recommendations to the Chief Justice for improved service.
- (2) The Mediation Committee will be responsible for monitoring the observance of the Code of Conduct of Mediators and Disciplinary Rules, and be responsible for disciplinary matters.
- (3) 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.
- (4) The Committee shall submit a report of its work to the Chief Justice every three months

7. Application for training as Mediator

- (1) A person who wishes to undergo training to become a Mediator shall apply to the ADR Administrator in Form 1 set out in Schedule 1.
- (2) An application made under subrule (1) may be submitted in person or by email to courtadr@gov.tc.
- (3) An application will be considered only after a call has been made by the Judiciary for persons to apply for such training.

8. Placement on Roster of Mediators

- (1) A person who receives training and certification to be a Mediator by the Judiciary, being found by the ADR Administrator to be a fit and proper person, and not holding a criminal conviction for fraud or dishonesty, may be placed on the Roster by the ADR Administrator in the exercise of his discretion.

- (2) A Mediator who is trained and certified by the Judiciary who is not placed on the Roster by the ADR Administrator, may submit to the ADR Administrator an application for placement on the Roster of Mediators in Form 1 set out in Schedule 1, and provide evidence of having satisfactorily completed the training for Mediators leading to certification by the University of the West Indies and show that he is—
 - (a) a fit and proper person; and
 - (b) does not hold a criminal conviction involving fraud or dishonesty.
- (3) The ADR Administrator may, if he is satisfied that the person meets the requirements to become a mediator, and in consultation with the Chairperson of the Mediation Committee, place the person on the Roster of Mediators.
- (4) A certified Mediator whose training and certification was obtained in another jurisdiction may apply to the ADR Administrator for inclusion in the Roster of Mediators.
- (5) An application made under subrule (4) shall be made in Form 1 set out in Schedule 1, and may be submitted in person or by email to courtadr@gov.tc.
- (6) An application made under subrule (4) shall be accompanied by proof that the person has the requisite certification.
- (7) The ADR Administrator shall refer the application to the Chief Justice who, may direct that the person's name be included in the Roster of Mediators if satisfied with the training and certification, and that the person—
 - (a) is a fit and proper person; and
 - (b) does not hold a criminal conviction involving fraud or dishonesty.

9. Roster of Mediators

- (1) There shall be kept at the Registry and in the office of the ADR Administrator, a Roster of Mediators.
- (2) The Roster shall be compiled by the ADR Administrator—
 - (a) from persons who have attended a training course provided by the Judiciary and received the requisite certification from the University of West Indies; or
 - (b) from persons who have obtained the requisite training elsewhere.
- (3) The Roster shall contain the names, professional designations, dates, and times of availability of each Mediator on the Roster to conduct mediations.
- (4) The ADR Administrator may compile a roster of mediators for specific areas of practice, where specialised training has been provided in those areas.
- (5) The ADR Administrator shall submit the Roster to the Chief Justice, who shall cause it to be published in the *Gazette*.
- (6) Once placed on the Roster, the Mediator shall make his availability known to the ADR Administrator for case assignments.
- (7) The schedule of availability shall be updated weekly at the Registry with copies kept by the ADR Administrator for the day-to-day operation of the Roster of Mediators.
- (8) A Mediator on the Roster of Mediators may advertise his services, but shall not make false claims about the mediation process, or the Mediator's qualifications and abilities to assure specific outcomes.

10. Appointment of foreign Mediator or Co-Mediator

- (1) The ADR Administrator shall in the proper case, permit a more experienced Mediator from another jurisdiction to be appointed as a Mediator or Co-Mediator.
- (2) Parties or attorneys in a complex case may apply for their case to be mediated by a foreign Mediator or Co-Mediator, and the experienced Mediator shall be the lead Mediator in the case of co-mediation.
- (3) Parties who opt for the services of a foreign Mediator or Co-Mediator shall pay for the services of the foreign Mediator or Co-Mediator.
- (4) An agreement for payment of a Co-Mediator under subrule (3) shall be secured before the appointment of the foreign Mediator or Co-Mediator.
- (5) Payment of the bill of the foreign Mediator or Co-Mediator shall be paid within fourteen days of the presentation of the bill and may be claimed through mediation, or failing that, in an action by the foreign Mediator or Co-Mediator.
- (6) A list of approved experienced foreign Mediators shall be included in the Roster of Mediators and published in the *Gazette*.

11. Steps to court-connected mediation

- (1) Parties may be referred to mediation by the Registrar, Judge or Magistrate.
- (2) In making a referral, the following matters may be considered—
 - (a) the relationship between the parties;
 - (b) the willingness of the parties to resolve their dispute by a collaborative process;
 - (c) the number of parties;
 - (d) the complexity of the issues in the lawsuit; and
 - (e) whether the mediation, rather than litigation will be more beneficial to the parties as they seek to resolve their dispute.

12. Referral by Registrar

- (1) A dispute may be referred to court-connected mediation by the Registrar after a claim has been duly filed.
- (2) A plaintiff, applicant or 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.
- (3) A defendant or respondent may make a request that a matter be submitted to court-connected mediation before or after the filing of the defence, where there is one defendant or in all defences where there is more than one defendant.
- (4) A request made under subrules (2) and (3) shall be made to the Registrar by completing an Application for Referral to Mediation Form set out Form 2 in Schedule 1.
- (5) The Registrar may make a Referral Order in Form 3 set out in Schedule 1, and send the file to the ADR Administrator.
- (6) The Registrar shall make a Referral Order before the file is first placed before a Judge or Magistrate.
- (7) Where no request has not been made for court-connected mediation, the Registrar shall invite parties who have filed originating processes to a pre-proceedings case management meeting to discuss the possibility of the dispute being resolved through mediation.

- (8) The Registrar shall introduce court users to the advantages of mediation at the point of filing.
- (9) Where parties introduced to the advantages of mediation opt for mediation, the Registrar shall refer the case to mediation by referring it to the ADR Administrator for the process of mediation to commence.

13. Referral by Judge or Magistrate

- (1) Where proceedings have commenced, a Judge or Magistrate, may, in performing case management, introduce the suitability of mediation for that case, and shall secure the consent of the parties, to refer the matter to mediation.
- (2) The Judge or Magistrate may undertake the process mentioned in subrule (1) at any stage of the proceedings where the court is of the view that mediation would facilitate the resolution of the dispute between the parties.
- (3) Where one party desires to submit a dispute to mediation and the other party unreasonably refuses mediation, the Judge or Magistrate may take the party's refusal into account when making an order for costs in the proceedings.
- (4) A Judge or Magistrate may make a Referral Order in Form 3 set out in Schedule 1, where he is satisfied that mediation, rather than litigation will be more likely to succeed in the resolution of the dispute.

14. Application for court-aided mediation

- (1) A person who requires the resolution of a dispute but does not wish to commence proceedings before the court, may access mediation by applying to the Registrar or to the ADR Administrator in Form 2 set out in Schedule 1.
- (2) The Registrar shall refer the application to the ADR Administrator who shall contact the other party in the dispute to seek consent for mediation.
- (3) Where parties consent to court-aided mediation, the person requesting mediation shall pay fees for the mediation service, unless there is agreement between the parties for the fees to be paid by the other party, or by both parties.
- (4) The parties shall pay the applicable fee of the Mediator in accordance the Fee Schedule set out in Schedule 3.
- (5) Fees for such service shall be paid to through the Treasury and marked accordingly.
- (6) A person who has applied to the Registrar for court-aided mediation and has paid fees at the Treasury, shall present a receipt of such payment to the Registrar who shall inform the ADR Administrator of the request.
- (7) Upon the receipt of information in the preceding paragraph, the ADR Administrator shall make arrangements for mediation to be held in accordance with rule 15.

15. Commencement of mediation process

- (1) After a Referral Order is made, or parties have been granted access to court-aided mediation, the file on which the order is placed, shall be taken up by the ADR Administrator who shall—
 - (a) allocate an ADR number to the file;
 - (b) obtain signatures of the parties (and attorneys where applicable) on an ADR Consent Form in Form 4 set out in Schedule 1;
- (2) The ADR Administrator shall produce the Roster of Mediators to the parties, and request that the parties choose their Mediator from the Roster.

- (3) The parties shall select a Mediator and two alternative Mediators from the Roster of Mediators, which selection shall be set out in Form 5 set out in Schedule 1.
- (4) The ADR Administrator shall choose a Mediator for the parties where the parties are unable or unwilling to agree on a Mediator.
- (5) The ADR Administrator may assign a date for mediation and direct the parties to meet with the Mediator—
 - (a) at a specified venue if in person; or
 - (b) send the parties a link for electronic proceedings if the mediation will be conducted remotely

16. Pre-mediation session

- (1) A Mediator may at his own discretion request a pre-mediation session with the parties.
- (2) Before a mediation session, parties to the mediation shall—
 - (a) at least five days before a mediation session, prepare and submit a Mediation Bundle, comprising the documents on which they intend to rely, to the ADR Administrator who shall submit the Bundle to the Mediator; and
 - (b) sign the Consent Form in Form 4 set out in Schedule 1, and Confidentiality Agreement in Form 6 set out in Schedule 1.
- (3) The Mediation Bundle may be presented by attorneys representing the parties, or may be prepared by the parties with the assistance of the ADR Administrator, to facilitate the mediation.
- (4) Where any or all of the parties have failed to meet the pre-mediation requirements within the stipulated time, the ADR Administrator shall, at least two days before a mediation session, inform the assigned Mediator.
- (5) The Mediator shall, based on a report made under subrule (4), determine whether a mediation session should be cancelled or postponed.
- (6) All parties to a mediation are required to attend a mediation session.
- (7) No fees beyond the fees for filing the suit shall be paid by parties who have consented to go for mediation and for whom a mediation session has been scheduled, except parties to court-aided-mediation who shall pay the prescribed fee.

17. Mediation session

- (1) A mediation session hearing shall be held within twenty-one days of the Referral Order unless otherwise ordered by the Registrar, Judge or Magistrate, on application by any party.
- (2) A notice of the mediation session shall be issued in Form 7 set out in Schedule 1.
- (3) A mediation session may be adjourned from day to day as necessary, but shall not exceed sixty days.
- (4) The ADR Administrator shall, where in a referral made by the Registrar, and a defence has not been filed, request the defendant to submit a statement of defence to him at least seven days prior to a mediation session, so that copies can be forwarded to all other parties to the mediation proceedings.
- (5) If the defendant does not submit the statement of defence as requested in terms of subrule (4), the ADR Administrator may—
 - (a) summon a pre-mediation session to identify the issues in dispute to inform the mediation;
 - (b) assist the parties to settle issues; or
 - (c) refer the matter to the Registrar or the Judge or Magistrate.

- (6) The ADR Administrator shall, after the parties' attendance at mediation, whether or not they settle a dispute, send the file to the Registrar who will place the file before a Judge or Magistrate.
- (7) Where a matter is settled in mediation, the court shall adopt the settlement as its judgment.
- (8) Where a matter is not settled in mediation, an order will be made for the suit to take its normal course.
- (9) Where a matter is not settled as mentioned in subrule (8), no matters included in the settlement shall be disclosed to the court.

18. Failure to attend a mediation session

- (1) Where any party fails to attend the mediation session without reasonable notice, or unreasonably terminates a mediation session, the mediator shall note it on the file by using Form 8 set out in Schedule 1, and this shall go towards the assessment of costs by the court.
- (2) Where a file is returned to the Registry because one of the parties failed to attend mediation, the file shall be placed before a Judge or Magistrate who shall, if the defaulting party—
 - (a) is a plaintiff, dismiss his case and make an order for costs to be assessed; and
 - (b) is a defendant, enter judgment against the defendant with an order for costs to be assessed against him.
- (3) Where both parties who have consented to go for mediation fail to attend a pre-mediation session or the mediation session, the file shall be returned to the Registrar who shall place it before the Judge or Magistrate.
- (4) A Judge or Magistrate before whom a file is placed shall summon the parties and conduct an inquiry.
- (5) If, after an inquiry made in terms of subrule (4), the Judge or Magistrate finds that the behaviour of the Mediator is not unreasonable, the order for mediation shall be vacated and an order shall be made for the case to take its normal course.
- (6) If, after an inquiry made in terms of subrule (4), the Judge or Magistrate finds the behaviour of the Mediator to be unreasonable, the suit shall be dismissed with an order for costs to be assessed against the plaintiff or counterclaimant, where applicable.
- (7) Parties who have consented to mediation may apply within seven days of the time scheduled for mediation, to withdraw from it by using Form 9 set out in Schedule 1.
- (8) A mediation session may be adjourned for additional sessions where it is deemed to be necessary.
- (9) A Mediator shall after the conclusion of a mediation, whether or not it resulted in a settlement or partial settlement, and whether or not it was prematurely terminated fill out Form 10 set out in Schedule 2, and send it along with the file to the ADR Administrator.

19. Outcome of mediation

- (1) Upon the conclusion of a mediation session, where there is a settlement of all or some of the issues in the dispute, the terms of settlement shall be set out in the Terms of Settlement Form 11 set out in the Schedule 1.
- (2) The signed terms of settlement shall be *prima facie* evidence of settlement, and shall be adopted by the Judge or Magistrate as the judgment of the court.

20. Evaluation of mediation session

- (1) The ADR Administrator shall keep Evaluation Form 12 and 13 set out in Schedule 1.

- (2) A duly completed Evaluation Form shall be forwarded by the ADR Administrator to the Mediation Committee which shall analyse it to identify for areas of weakness, in order to inform improvements to the service.
- (3) The Evaluation Form must be completed by each party who attends a mediation session and their attorneys, where applicable.
- (4) Where a party or his attorney refuses to complete the Evaluation Form, the ADR Administrator shall record the refusal on the file.
- (5) A Judge or Magistrate before whom the file is placed following mediation shall take that party's refusal into account when making an order for costs in the proceedings.

21. Notification of charge or conviction

- (1) If a Mediator on the Roster of Mediators has been charged with or convicted of a criminal offence, the Mediator shall immediately bring this to the attention of the ADR Administrator.
- (2) On receipt of notice of charge or conviction in terms of subrule (1), the ADR Administrator shall notify the Mediation Committee which will sit as a Disciplinary Committee to hear the matter.
- (3) The Disciplinary Committee may call upon such Mediator to show cause why he should not be removed from the Roster of Mediators.
- (4) The Mediator shall show cause why he should not be suspended or removed from the Roster of Mediators.
- (5) A certificate of conviction issued by the court shall be sufficient evidence of the Mediator's conviction for an offence.

22. Grounds for discipline

- (1) A Mediator may be disciplined for the following reasons—
 - (a) for making false claims about his abilities or the mediation process with the aim of inducing persons to choose him as a Mediator; or
 - (b) if a complaint is made against him, and the complaint is found to have merit.
- (2) A mediator may be disciplined in the manner prescribed under these Rules and the Code of Conduct and Disciplinary Rules for Mediators set out in Schedule 2.

23. Complaint against Mediator

- (1) A complaint may be made by a party or the parties, or their attorneys for misconduct in relation to a case placed before a Mediator for mediation.
- (2) A complaint against a Mediator shall be in writing addressed to the Chairperson of the Mediation Committee, and submitted to the ADR Administrator.
- (3) A complaint, which shall identify the Mediator clearly, shall be signed by the complainant, and shall include the complainant's name, address and telephone number.
- (4) A complaint shall be in the form of a statement setting out the conduct, without passing any judgment.
- (5) The ADR Administrator shall transmit the complaint to the Chairman of the Mediation Committee;
- (6) The Mediation Committee shall invite the Mediator to respond to the complaint within twenty-one days.

- (7) If the Mediator who is invited to present his response to the allegation either orally or in writing, fails to respond within the prescribed time, the allegations shall be deemed admitted.
- (8) The Mediation Committee shall investigate the complaint and shall use its own methods to achieve this ends observing the rules of natural justice.
- (9) A complaint founded on matters relating to a mediation session, shall not be brought against a Mediator after a period of one month following a mediation session, except that the Mediation Committee may extend the time, upon representations being made to it of the reasons for the delay in bringing the complaint.

24. Disciplinary measures

- (1) The Mediation Committee shall recommend sanctions in accordance with these Rule and the Code of Conduct and Disciplinary Rules to the Chief Justice where the complaint is found to have merit.
- (2) The following disciplinary measures may be imposed by the Mediation Committee, after their recommendations are approved by the Chief Justice—
 - (a) a reprimand;
 - (b) a letter of apology;
 - (c) suspension for a period of time from the Roster of Mediators; or
 - (d) permanent expulsion from the Roster of Mediators.
- (3) The Chief Justice, if satisfied that the outcome of the complaint is justified, shall approve the sanction recommended and forward the approval to the Committee for implementation.

25. Petition against disciplinary measures

- (1) A Mediator may petition the Chief Justice regarding any disciplinary measure imposed by the Mediation Committee for reconsideration or for relief, not more than fourteen days after the Mediation Committee imposes a sanction on the Mediator.
- (2) The Chief Justice may review the action of the Mediation Committee and may investigate the matter, which may include receiving oral evidence from the complainant as well as the aggrieved person and his witnesses.
- (3) The Chief Justice may affirm, alter or reverse the decision of the Mediation Committee.
- (4) Sanctions imposed against the Mediator in accordance with rule 24, shall be a matter of public record, but the files of the Disciplinary Committee and the Chief Justice on the matter shall remain confidential.

26. Protection from liability

- (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.
- (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 knowledge during the mediation process.

27. Admissibility of documents

Documents made for the purpose of, disclosed, or produced during mediation proceedings, shall not be admissible in legal proceedings.

28. Code of Conduct and disciplinary Rules

- (1) The Code of Conduct and Disciplinary Rules is set out in Schedule 2.
- (2) A mediator shall comply with the Code of Conduct and shall be sanctioned if he breaches the Code.

29. Fees

- (1) A Mediator on the Roster of Mediators will be paid on a fee basis contained in the Fee Schedule set out in Schedule 3.
- (2) The Mediation Committee shall in consultation with the Chief Justice, review the fees from time to time and at least once every two years.
- (3) At the conclusion of mediation, a Mediator shall submit Claim Form 15 set out in Schedule 1 to the ADR Administrator in respect of fees earned for the conduct of a mediation.

30. Addresses

- (1) All mail deliverable physically to the Chief Justice, Registrar, Chairperson of the Mediation Committee, in all matters pertaining to Mediation shall be sent to the Registry of the Supreme Court.
- (2) All electronic communication by or to the persons referred to under subrule (1) shall be at courtadr@gov.tc.

Schedule 1

Forms

Form 1 – Application to be trained as a mediator or to be placed on the Roster of Mediators (Rules 7(1) & 8(1))

PLEASE TAKE NOTICE THAT:

I, _____ the undersigned, apply:

(Please check as applicable)

to be trained as a Mediator

to be placed on the Roster of Mediators I confirm that:

For Applicants for Training

I shall attend the mediation training which is offered by the Judiciary of Turks and Caicos Islands free of charge.
(For Roster Applicants)

that I have completed the mediation training offered for the Judiciary of Turks and Caicos Islands by the University of the West Indies;

that I am a fit and proper person to work as a Mediator in the Judiciary of Turks and Caicos Islands;

that I do not hold a criminal conviction involving fraud or other dishonesty.

that as much as practicable, I shall take up an assignment by the ADR Administrator to conduct mediation, and notify the ADR Administrator of my availability.

that I shall disclose any interest I have in a case that may be potentially assigned to me.

that I shall use my best endeavours to help parties settle their disputes without partiality.

that I shall abide by the Code of Conduct for Mediators and Disciplinary Rules.

Name _____

Residential Address _____

Postal Address _____

Telephone/Email Address _____

Signed: _____ Date: _____

Form 2 – Application for referral to mediation or access to court-aided mediation (Rule 12(4) & 14(1))

Between

A.B. _____ PLAINTIFF/CLAIMANT

and

C.D. _____ DEFENDANT

PLEASE TAKE NOTICE THAT:

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

Particulars:

PLAINTIFF/CLAIMANT

Name /Company Name _____

Residential Address _____

Business Address _____

Postal Address _____

Landline/Mobile Phone _____

E-Mail Address _____

DEFENDANT

Name /Company Name _____

Residential Address _____

Business Address _____

Postal address _____

Landline/Mobile Phone _____

E-Mail Address _____

Please circle as applicable if applying for court-aided mediation

I/WE, applying for court-aided mediation agree to pay the fee prescribed in the Fee Schedule

Signed:

_____ Plaintiff/Claimant.

_____ Attorney for Plaintiff/Claimant

(Name, address, telephone number, email of Attorney)

**Please attach copies of relevant documents and Mediation Bundle if immediately available.*

_____/Attorney for Defendant

(Name, address, telephone number, email)

**Please attach copies of relevant documents and Mediation Bundle if immediately available.*

To:

The Registrar and

The ADR Administrator

Form 3 – Mediation referral order (Rules 12(5) & (13(4))

Between

A.B. _____ PLAINTIFF/CLAIMANT

and

C.D. _____ DEFENDANT

Order Made the _____ day of _____ 20 _____

Upon this matter coming on before:

The Registrar/Magistrate/ Judge

And Upon Hearing _____ the Plaintiff/Claimant or Attorney; and the Defendant or Attorney

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;

THE PARTIES having been provided with information regarding Alternative Dispute Resolution, and in particular, mediation.

AND THE PARTIES having consented to refer the matter to mediation; IT IS ORDERED THAT:

- (1) The parties to these proceedings attend a mediation session with a Mediator selected by them or at their direction from the Roster of Mediators (as well as two Alternates), within 10 days of today's date.
- (2) If the parties fail to select a Mediator or cannot agree upon a mutually acceptable Mediator, within 5 days of this Order, the ADR Administrator shall select a Mediator from the Roster of Mediators, in consultation with the parties where applicable.
- (3) The parties shall sign a Mediation Consent Form as well as a Confidentiality Agreement before the ADR Administrator.
- (4) The parties (or attorney as applicable) shall each prepare a bundle setting out the issues to be resolved, and all the documents they intend to rely on as evidentiary material, and lodge same with the ADR Administrator at least 5 days before the commencement of the mediation session.
- (5) These proceedings are stayed pending the outcome of mediation.
- (6) Following mediation, the ADR Administrator shall forward the Outcome of Mediation Form as well as the Terms of Settlement Form to the Registrar along with the file on the matter.
- (7) The Registrar shall refer the file to the court which shall—
 - (a) enter judgment in accordance with the terms of Settlement;
 - (b) fix the matter for directions, or
 - (c) where no defence was filed, order that the defence be filed for the suit to take its normal course.
- (8) If any party fails to attend the mediation session without reasonable notice, the file will be returned to the Registrar who shall place same before the court. If the defaulting party is the plaintiff, the claim will be dismissed with costs; if the defendant, judgment shall be entered against him with costs.
- (9) Where a party unreasonably terminates a mediation session, or refuses to complete the Evaluation Form, the court shall take that fact into account when making any order as to costs in the proceedings.
- (10) In court-aided mediation, the parties shall pay the prescribed fees at least 7 days before the mediation session.

- (11) Where a party who has consented to attend court-aided mediation fails to attend, he shall forfeit the fees paid.

Registrar/Magistrate/Judge

Form 4 – Consent to mediation form (Rule 15(1)(b))

ADR FILE NO. _____

REFERRING COURT _____

DATE OF REFERRAL _____

CASE TITLE _____

The Judge/Magistrate/Registrar, having explained to the parties and their Attorneys (as applicable), the nature of the confidential mediation process, the parties to this action confirm their voluntary consent to mediation.

Proposed Date of Session _____

Mediator Agreed on by the Parties _____

CONSENT GIVEN BY:

Plaintiff(s)/Applicant(s) Name and Signature of:

Plaintiff(s)/Applicant(s) _____

Plaintiff(s)/Applicant(s) Attorney(s) _____

Defendant(s)/Respondent(s) Name and Signature of:

Defendant(s)/Respondent(s) _____

Attorney(s) _____

Declared this ____ day of _____ 20 ____

After the content had been read over/interpreted to _____

Which he/she seemed to understand before signing/making of mark _____

JUDGE/MAGISTRATE/REGISTRAR

Form 5 – Notice of selection of mediator (Rule 15(3))

Between

A.B. _____ PLAINTIFF/CLAIMANT

and

C.D. _____ DEFENDANT

PLEASE TAKE NOTICE that the parties have selected _____ as Mediator and _____ and _____ as an Alternate from the Roster of Mediators.

Dated: _____

PLAINTIFF/CLAIMANT

Signed: _____

PLAINTIFF/CLAIMANT'S ATTORNEY

(Name, address, telephone number, email)

DEFENDANT

Dated:

Signed: _____

DEFENDANT'S ATTORNEY

(Name, address, telephone number, email)

To: ADR Administrator

(Name, address, telephone number, email)

Form 6 – Confidentiality agreement (Rule 16(2)b))

Between

A.B. _____ PLAINTIFF/CLAIMANT

and

C.D. _____ DEFENDANT

The parties will participate in a mediation session to be conducted in accordance with the [Practice Direction No. 1 of 2021](#). The parties agree that:

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;

the notes, records and recollections of the Mediator conducting the session are confidential and protected from disclosure for all purposes;

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;

no recordings or capture of information by electronic devices shall be allowed in any mediation session;

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;

this Agreement shall be binding;

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

Plaintiff/Claimant _____

Defendant _____

Attorney for the Plaintiff/Claimant

Attorney for the Defendant

To: ADR ADMINISTRATOR

Form 7 – Notice of Scheduled Mediation (Rule 17(2))

Between

A.B. _____ PLAINTIFF/CLAIMANT

and

C.D. _____ DEFENDANT

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 ADR Administrator at _____

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: _____

ADR Administrator

(Name, address, telephone number, email)

To: The Mediator _____

(Name, address, telephone number, email)

To: Plaintiff/Claimant's Legal Practitioner _____

(Name, address, telephone number, email)

And To: Defendant/Defendant's Legal Practitioner _____

(Name, address, telephone number, email)

Form 8 – Certificate of non-compliance (Rule 18(1))

Between

A.B. _____ PLAINTIFF/CLAIMANT

and

C.D. _____ DEFENDANT

PLEASE TAKE NOTICE that

The Claimant/Plaintiff failed to attend the mediation session.

The defendant failed to attend the mediation session.

The claimant or his representative opted out of the mediation session after it started terminated the mediation session without just cause.

The defendant or his representative opted out of the mediation session after it started/ terminated the mediation session without just cause.

Dated:

Signed: _____

Mediator

(Name, address, telephone number, email)

To: ADR Administrator

And to: The Registrar

Form 9 – Withdrawal from mediation (Rule 18(7))

Between

A.B. _____ PLAINTIFF/CLAIMANT

and

C.D. _____ DEFENDANT

Please take notice that I, _____ hereby apply to withdraw from the mediation scheduled to take place between the parties on _____ Before _____ (Mediator)

_____ (Please check as applicable)

I wish the court to determine the dispute between the parties # I wish to submit to the judgment of the court # I wish to withdraw my claim before the court.

SIGNED _____ DATE _____

To the ADR Administrator

And To: The Registrar

Form 10 – Notice of outcome of mediation (Rule 18(9))

Between

A.B. _____ PLAINTIFF/CLAIMANT

and

C.D. _____ DEFENDANT

TAKE NOTICE that a mediation session was scheduled/conducted in this proceeding on the _____ day of _____, 20 _____

(Please check all applicable boxes)

The parties settled prior to the mediation session.

The parties settled as a result of the mediation session.

The parties did not settle for the following reasons

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 _____

The parties requested an extension of the time for mediation.

The parties attended the mediation session and agreed to meet for further mediation on the ____ day of _____, 20 _____

The Mediator/the parties agreed that a Settlement Agreement could not be reached at the mediation session for the following reasons:

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.

Dated: _____

Signed: _____ The Mediator	Signed: _____ ADR Administrator
(Name, address, telephone number, email)	

To: The Registrar

Form 11 – Terms of settlement form (Rule 19(1))

Between

A.B. _____ PLAINTIFF/CLAIMANT

and

C.D. _____ DEFENDANT

PLEASE TAKE NOTICE that the parties herein have settled their dispute

DATE OF SETTLEMENT _____

REFERRING COURT _____

TERMS OF SETTLEMENT _____

Plaintiff(s)/Claimant(s)

Name and Signature of:

Plaintiff(s)/Claimant(s) _____

Plaintiff(s)/Claimant(s) Attorney(s) _____

Defendant(s)

Name and Signature of:

Defendant(s) _____

Attorney(s) _____

Form 12 – Evaluation form for parties (Rule 20(1))

To improve our services, please fill out this form after the mediation session and return it to the ADR Administrator.

All responses to this questionnaire are strictly confidential.

Name of the Mediator _____

Date of the Mediation: _____

<i>Please circle as appropriate:-</i>	Plaintiff (Claimant)	Defendant	Other	
			yes	no
1. Were you represented by an Attorney in this case?			yes	no
If NOT, did you have any difficulty representing yourself?			yes	no
2. Did you reach an Agreement and settle your case?			yes	no
3. If YES,				
Were you satisfied with the terms of the Settlement Agreement?				
Do you believe the terms of the Settlement Agreement will finally settle the dispute?			yes	no
If NO,				
Do you think that the Mediator did everything he could to bring about a Settlement Agreement?			yes	no
Was your mediation conducted in person or remotely (electronic)				
Were you satisfied with the mode of mediation (in person/ electronic)				
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 - strongly agree
2 - disagree
3 - not sure

The Mediator explained the mediation process clearly so that I knew what to expect during the mediation session.	1	2	3
The Mediator allowed me / my Attorney to fully present my case.	1	2	3
The Mediator carefully listened to my side of the case.	1	2	3
The Mediator asked appropriate questions to determine the facts in the case.	1	2	3
The Mediator helped me/my Attorney to generate options for settling the dispute.	1	2	3
The Mediator treated all parties equally.	1	2	3
Overall, I was satisfied with the mediation session itself.	1	2	3
Overall, I was satisfied with the way the Mediator handled the session.	1	2	3
If I become a litigant in the future I would try mediation again.	1	2	3

Please provide any further comments regarding the Mediator or the mediation process.

Form 13 – Evaluation form for Attorneys (Rule 20(1))

Please fill out this form after the mediation session and return it to the ADR Administrator 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

During the introductory statement, how well did the Mediator explain the mediation process to all parties?	1	2	3
Were you satisfied that your client was allowed to fully present his case?	1	2	3
How well did the Mediator understand the FACTUAL issues involved in the case?	1	2	3
How well did the Mediator understand the LEGAL issues involved in the case?	1	2	3
How well did the Mediator ask appropriate questions to determine the facts of the case?	1	2	3
How well did the Mediator clarify the key issues and interests of each party?	1	2	3
How well did the Mediator help the parties generate realistic options to settle the case?	1	2	3
How well was the Mediator able to resolve or facilitate impasses between the parties?	1	2	3
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?			
(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?	# yes		# no
(14) Do you think mediation was appropriate in this case?	# yes		# no
(15) Were you satisfied with the way the ADR Administrator worked in this case?	# yes		# no

If NOT, why not: Additional comments:

Form 14 – Monthly return form (Rule 4(2)(k))

Month _____ Year _____						
Date	Names of Mediators	No. of cases pending for mediation during the period	No. of cases referred to mediation during the period	Number of mediation sessions (Include cases not settled)	No. of mediation sessions aborted and the reasons for non-completion	No. of cases settled and disposed of through mediation

NAME _____

SIGNATURE _____

ADR ADMINISTRATOR

To: The Chief Justice

And To: The Mediation Committee

Form 15 – Court-connected mediation Mediator fee claim form (Rule 29(3))

ADR File No: _____ Name of Mediator:

ADR File Name:

No. Mediation Sessions Required:

Mediation sessions			
Venue	Date	Start time	Finish time

I certify that I have provided mediation services in the ADR matter named above and that my fees for the services rendered are in accordance with the Mediator Fee Schedule.

Signature

**** PAYMENTS SHOULD BE NO LATER THAN 7 DAYS AFTER CONCLUSION OF THE MEDIATION SESSION, OR AS ADVISED BY THE ADR ADMINISTRATOR**

Schedule 2 (Rules 22(2) & 28(1))

Code of Conduct and disciplinary rules for Mediators

Preamble

This Code of Conduct is provided by the Chief Justice to guide the Mediation Committee's work, as well as Mediators in the practice of mediation.

The Code of Conduct also sets out the parameters of acceptable conduct for Mediators and the practice of mediation, giving force to recognised ethical standards.

The Overriding Objective

Mediation is a dispute resolution mechanism that provides an alternative mode for the settlement of disputes, while maintaining the privacy and confidentiality of all parties involved in the proceedings as well as fostering an atmosphere of trust.

The hallowed principles of self-determination, impartiality, integrity, and conflicts of interest, competence, confidentiality, advertising and solicitation, informed consent, and the advancement of mediation practice further this overriding objective. This Code of Conduct ensures that they are adhered to in a meaningful manner.

The main objective of this Code of Conduct is to promote ethical conduct and professionalism in Mediators in the Turks and Caicos Islands, and to provide sanctions for the breach of the prescribed conduct.

The Code provides standards of comportment for Mediators and is the regulating tool of the Mediation Committee for assuring acceptable conduct, as it provides guidelines for sanctions for breaches.

Part I

1. Self-determination

- (1) Mediation shall be based on the principle of self-determination. A Mediator shall respect and abide by this fundamental principle by—
 - (a) informing the parties of his role as a neutral and not the decisionmaker;
 - (b) assisting the parties to make their own voluntary, uncoerced decision regarding a possible resolution;
 - (c) guiding the parties to an informed decision by providing the parties with pertinent information, including possible outcomes.
- (2) A Mediator shall not provide legal or professional advice to the parties but may advise the parties of the need to consult with other professionals to help them make informed decisions where it becomes apparent that a party may not appreciate how a settlement may affect legal rights or obligations.
- (3) A Mediator may also, where both parties seek such information, express an opinion on the matters at issue, and may identify evaluative approaches to assist the parties.

2. Independence and impartiality

- (1) A Mediator shall be wholly independent and wholly impartial and must shun the appearance of bias at all times.
- (2) Before or immediately after accepting an appointment as Mediator in a dispute, a Mediator shall disclose to the ADR Administrator in writing any circumstance that could potentially give rise to a reasonable apprehension of a lack of independence or impartiality in the mediation of the dispute.

- (3) The ADR Administrator shall seek advice from the Chairperson of the Mediation Committee as to whether the Mediator may be appointed to mediate for the reasons given.
- (4) If the Mediator who has made a disclosure under paragraph 2.2 is appointed to mediate, he shall make further disclosure under paragraph 5.1 to the parties who may consent to have him or request for another Mediator from the ADR Administrator.
- (5) A Mediator shall not exhibit bias of any form, nor may he favour one party to the dispute, and shall have no personal interest in the terms of the settlement.
- (6) A mediator's opinion of a party or the matter in issue, must not influence how he conducts the mediation.

3. Confidentiality

- (1) A Mediator has a duty to maintain the privacy and confidentiality of all to foster an atmosphere of trust.
- (2) No part of the proceedings may be used by the Mediator or disclosed to third parties without the permission of the parties.
- (3) A Mediator shall inform the parties and any experts, advisors, and any other persons who accompany a party to a mediation session of the confidential nature of mediation, and that same shall not be disclosed by the Mediator except in the following circumstances—
 - (a) with the parties' written consent;
 - (b) if ordered to do so by a court or there is a requirement to do so by law, such as a criminal design;
 - (c) if the information discloses an actual or potential threat to human life.

4. Integrity

A Mediator shall conduct himself in a manner which shall instil confidence in the mediation process and confidence in his integrity, that he will act in good faith, be diligent, and seek to only advance the interests of the parties. He shall assist the parties to come to their own informed decision and shall not force a decision on the parties, or push for a certain course of action.

5. Conflicts of Interest

- (1) A Mediator shall make full disclosure at the beginning of the mediation process, regarding anything that might compromise the parties' willingness to continue the process.
- (2) Parties to a dispute may following the disclosure made by the Mediator under paragraphs 2.2 and 5.1, give their consent in writing to the Mediator to continue to mediate their dispute.
- (3) The Mediator must not be related to any of the parties or have an interest in the subject matter of the dispute or any matter related to it.

6. Competence

Notwithstanding the acquisition of the basic skill of mediation, a Mediator has an added obligation to acquire and maintain professional skills and the ability to uphold the quality of the mediation process.

7. Quality of the process

- (1) Before the start of mediation, a Mediator shall inform the parties about the mediation process and its implications, and endeavour to make the parties understand the mediation process.
- (2) A Mediator shall act professionally at all times and shall not engage in conduct that may bring the Mediator or the mediation process into disrepute.
- (3) A Mediator shall conduct a mediation in a manner that encourages respect among the parties and shall take reasonable steps to limit abuse of the mediation process without interfering with the parties' right to determine their own outcome.

- (4) During the mediation process, a Mediator shall not use any honorific title to which he is accustomed or may be entitled.
8. **Advertising and promotion of mediation services**
- A Mediator shall in advertising or offering services to clients or potential clients—
- (a) provide accurate information about his education, background, mediation training and experience, in any oral or written representation or biographical or promotional material;
 - (b) refrain from making promises guaranteeing settlement, or a specific outcome;
 - (c) refrain from pretending competency in areas in which he lacks qualification or experience.
9. **Advancement of mediation practice**
- A Mediator shall advance the development of mediation in these Islands by—
- (a) participating in outreach and education efforts to assist the public to develop an improved understanding of, and appreciation for, mediation;
 - (b) assisting newer mediators through training, mentoring, and networking;
 - (c) encouraging parties and attorneys to fill out the evaluation forms at the end of the mediation process.
10. **Termination or suspension of mediation**
- The Mediator may suspend or terminate the mediation—
- (a) if requested, in writing, by one or more of the parties to do so;
 - (b) if the parties are at an impasse and further efforts at mediation would not be useful at this time;
 - (c) in any circumstance in which the subject of mediation may be inimical to the public good, including the furtherance of the commission of a crime.

Part II

11. **Sanctions**
- (1) The Chairperson shall place the complaint before the Mediation Committee which shall for such purpose, be constituted as the Disciplinary Committee.
 - (2) The Disciplinary Committee shall review the complaint to determine whether the allegations, if found to be true, would constitute a violation of this Code of Conduct.
 - (3) The Disciplinary Committee shall dismiss the complaint if it would not constitute a violation of this Code of Conduct.
 - (4) Where on the face of the complaint, the Disciplinary Committee is of the view that the allegation if proven, would constitute a violation of the Code of Ethics, the Disciplinary Committee shall cause to be served on the named Mediator, either electronically, by personal service or by registered mail —
 - (a) a copy of the complaint;
 - (b) a written request of the Disciplinary Committee for the named Mediator to provide, a written response to the allegations.
 - (5) If the Mediator or Respondent fails to respond to the complaint in writing within fourteen days of service of the complaint, the allegations shall be deemed to be admitted.

- (6) The Disciplinary Committee may, in its discretion, refer the complainant and the named Mediator to mediation conducted by a volunteer Mediator to resolve the issues raised by the complainant.
- (7) If the issues raised by the complainant are not resolved through mediation, the Disciplinary Committee shall hear and determine the complaint observing the rules of natural justice including representation by attorney, the tendering of both oral and documentary evidence.
- (8) The Disciplinary Committee shall submit its report to the Chief Justice and recommend an appropriate sanction.
- (9) If the complaint is found to be justified, Chief Justice, shall approve the sanction recommended and forward the approval to the Committee for implementation.
- (10) The Mediation Committee will then impose sanctions on the Mediator in accordance with these Disciplinary Rules.

Schedule 3 (Rule 28(1))

Fee schedule

Mediation fee schedule per case		
Amount disputed in case	Mediator's fee (USD\$)	Tick applicable fee (√)
Less than \$10,000	\$600 - \$800	
Over \$10,000 but less than \$20,00	\$800 - \$1000	
Over \$20,000 but less than \$80,000	\$1000 - \$1500	
Over \$80,000 but less than \$150,000	\$1,500 - \$2,000	
Over \$150,000	\$2000 - \$3000	

Type of matter	Mediator's fee (USD\$)
Family matters	\$900 - \$1800
Land	\$900 - \$1,800
All other matters	\$600 - \$1000