

**IN THE MAGISTRATES' COURT OF BARBADOS
PRACTICE DIRECTION**

No. 2 of 2016

COURT-ANNEXED MEDIATION PILOT PROJECT

This Practice Direction is made pursuant to Section 268 of the Magistrates' Court Act 2001 Cap 116A.

1. **GENERAL**

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

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

“Code of Ethics” - means the code of ethics for mediators set out in the Third Schedule;

“Court”- means the Magistrates' Court;

“Court-Annexed mediation services”- means mediation services provided as the result of a referral by the court;

“Court office”- refers to the place where documents are to be filed and includes the offices of the Magistrates' Court.

“Mediation”- means a confidential, dispute-resolving, and voluntary process in which a neutral third party called the “Mediator” facilitates and encourages negotiations between parties in a dispute with a view to resolving or reducing the extent of the dispute by assisting the parties to arrive at a voluntary agreement;

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

“Mediation Coordinator” means the person appointed to be responsible for the management of Court-Annexed mediation;

“Mediation Process” includes a mediation session together with all administrative processes and procedures leading to and necessary for the conduct of a mediation session, and all processes and procedures after completion of a mediation session ending with the signing of a mediation agreement or, if there is no agreement, when the mediation is terminated;

“Mediation Session” means a meeting between persons in dispute and a mediator for the purpose of resolving the dispute by mediation and includes anything done by parties and/or their lawyers for the purpose of

- (a) arranging the meeting ; or
- (b) continuing any matter raised in the Mediation Session;

“Party” - includes both the party to the claim and any other person whose consent is necessary to resolve the dispute, and any legal practitioner on record for that party unless any rule otherwise specifies or it is clear from the context that it relates to the client or to the legal practitioner only;

“Referral Order” - means an order to attend mediation as a result of a referral by a Magistrate;

“Registrar” – means the Registrar of the Supreme Court;

“Rules” - means any applicable rules of court and includes Practice Directions;

“Statement of Case” - includes

- (a) an application, statement of claim, defence, counterclaim, third party (or subsequent) notice or other ancillary claim or defence and a reply to a defence and all documents filed in relation thereto;
- (b) any documents filed in support or in response to an application under the Maintenance Act; and

“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.

2. INTRODUCTORY NOTE

This Pilot Project is designed to provide more timely and cost-effective access to justice for both claimants and defendants. It is inherent in the Magistrates' Court Act 2001 Cap 116A that the Magistrate has the power to encourage parties to settle their disputes amicably. Section 165 provides that "Where the person against whom any plaint is entered in any magistrate's court can agree with the person on whose behalf such plaint is entered and upon the terms and conditions upon which the same shall be paid or satisfied, such person respectively may in the presence of the clerk of the court in which such plaint is entered or in the presence of an attorney-at-law, sign a statement of the amount of the debt or demand so agreed upon between them and of the terms and conditions upon which the same shall be paid or satisfied." Ultimately, the success of the project will depend on the co-operation of all parties and their Attorneys-at-Law, if any.

This Pilot Project applies to all matters arising in the civil jurisdiction of the court except:

- (a) Bail applications; and
- (b) Land proceedings where title is in dispute.

3. ADMINISTRATION

The Court-Annexed Mediation Pilot Project will be supervised by a Mediation Committee which shall serve as an advisory body to the Chief Justice. The Committee may comprise:

- 1. A Judge nominated by the Chief Justice who shall be the Chairman;
- 2. The Registrar or Deputy Registrar who shall be the Deputy Chairman;
- 3. The Chief Magistrate or a Magistrate nominated by the Chief Magistrate;
- 4. A Representative from the office of the Attorney General;
- 5. The President of the Bar Association or nominee;
- 6. A Representative from the Chamber of Commerce or the private sector;
- 7. A Representative from the Trades Union Congress;
- 8. A Representative from the University of the West Indies;
- 9. A Representative from the Barbados Council of Churches.

4. **FUNCTIONS OF THE COMMITTEE**

The Committee shall be responsible for:

- (a) selecting the names of persons who have been certified as mediators;
- (b) establishing and maintaining the Roster of Mediators to be used for the Project and setting the relevant fees for mediators;
- (c) assessing the effectiveness of the Pilot Project and making recommendations;
- (d) monitoring the observance of the Code of Ethics, set out in the Third Schedule, and dealing with complaints in accordance with the Fourth Schedule.

5. **REFERRAL TO MEDIATION**

- (a) Upon the filing of a defence where there is one defendant, or upon the filing of all the defences where there is more than one defendant, or where no defence has been filed, 30 days after the filing of a defence, application, statement of claim or particulars of claim a Magistrate shall make an order in [Form M1] referring any action filed in the court to mediation, unless there are good and substantial reasons for not doing so; or
- (b) At any stage of the proceedings, however, the parties may by consent notify the court that they wish to have their case referred to mediation and in such case the Magistrate shall make a referral order.
- (c) No party shall be allowed to opt out of the referral order except by order of a Magistrate and for good and substantial reasons.

6. **SELECTION OF MEDIATOR AND DATE FOR MEDIATION**

- (a) It is the joint responsibility of the parties to select a Mediator and an alternate Mediator mutually agreed to by them. If, within ten (10) days of the Order of Referral to Mediation, the parties cannot agree upon a Mediator, then the Mediation Coordinator shall select one from the Roster of Mediators. However, where there is the possibility of a backlog resulting from one or more Mediators being selected by several parties within a short period, it shall be the responsibility of the Mediation Coordinator to assign the matter or matters to the next available Mediator or Mediators, as the case may be.

- (b) The Mediation Coordinator shall be responsible for the scheduling of mediation sessions, which shall be conducted either in the Magistrates' Court Building or in facilities under the management and control of the Registrar.

Parties will be required to attend a mediation session of up to three hours but they may choose to go beyond that period if they so desire.

After the holding of the mediation session, the following cases shall be returned to the Magistrate for continuation of the action:

- (1) cases in which a Certificate of Non-compliance has been filed; and
- (2) cases in which a Notice of Outcome of Mediation indicates that the parties have not settled.

7. **PRE-MEDIATION REQUIREMENTS**

After an order has been made referring a matter to mediation, each party shall be required to:

- (1) submit a copy of the Statement of Case to the Mediation Coordinator for transmission to the Mediator at least seven days prior to the mediation session;
- (2) submit a Statement of Issues in [Form M10]; and
- (3) sign a Confidentiality Agreement in [Form M7] at the beginning of the mediation session.

Each person attending the mediation, whether a party or not, shall be required to sign the Confidentiality Agreement as a condition of attendance at the mediation. If the parties have agreed to settle or have settled the claim prior to the scheduled mediation session, they must cancel the session and provide the Mediation Coordinator with the terms of the agreement or settlement in writing.

8. **ATTENDANCE AT MEDIATION SESSION**

All parties to the mediation are required to attend the mediation session. The benefits of the mediation process include face-to face meetings, attempts at persuasion and sharing of interests by the parties. The Mediator shall file with the Mediation Coordinator a Certificate of Non-Compliance if a party to the claim fails to attend the mediation session, whether or not the party's Attorney-at-Law attends.

9. **PROCEDURES**

The Procedures to be followed under the Pilot Project are prescribed in the First Schedule of this Practice Direction.

10. **PRACTICE FORMS**

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


11. **COST OF MEDIATION SESSION**

Each party to a Mediation in the Magistrates' Court shall pay, as the fee for a first Mediation session, the sum of \$350.00. The first Mediation session shall last no more than three hours. Such fees shall be paid by the parties to the Registrar of the Supreme Court no later than seven (7) days before the date scheduled for the Mediation session. If an additional Mediation session is deemed necessary by the Mediator or the parties, the fee for each additional Mediation session shall be \$150.00 per hour per party.

12. **EFFECTIVE DATE /TERMINATION**

This Practice Direction will come into effect on the 1st day of MAY, 2016, and the Pilot Project will terminate on the 31st day of ~~December~~ 2017 unless extended by the Chief Justice in writing.

Dated this 15th day of April, 2016



Marston C. D. Gibson
Chief Justice

FIRST SCHEDULE
PROCEDURES

1. REFERRAL OF CASES TO MEDIATION

1.1 At any stage of the proceedings:

- (a) A Magistrate may make an order in [Form M1] referring any action filed in the court to mediation; or
- (b) The parties may by consent notify the court as in [Form M2] that they wish to have their case referred to mediation and in such case the Magistrate shall make a Referral Order.

1.2 After the Referral Order has been made, the court office shall send a copy to the Mediation Coordinator

2. CRITERIA FOR REFERRAL OF CASES

2.1 In considering whether to refer a case to mediation, the Magistrate shall take into account all relevant circumstances including:

- (a) the relationship between the parties; or
- (b) the willingness of the parties to resolve their dispute by a collaborative process; or
- (c) the desire of the parties to seek a flexible process that will enable creative solutions; or
- (d) unwillingness of the parties to risk the unpredictable outcome of a trial, comparative costs of litigation versus mediation; or
- (e) opportunities for joint gains not available through litigation in the court; or
- (f) any other criteria considered appropriate by the Magistrate.

3. **TIME FOR CONDUCTING THE MEDIATION SESSION**

- 3.1 The first mediation session shall be held within 45 days of the Referral Order unless otherwise ordered by the Magistrate.
- 3.2 Upon application by a party the time for conducting the mediation may be extended beyond 45 days.
- 3.3 No case shall remain in mediation for longer than 90 days unless ordered by the Magistrate.

4. **EXTENSION OF TIME FOR MEDIATION**

In considering whether to extend the time within which the mediation is to be conducted the Magistrate shall take into account all circumstances including:

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

5. **ROSTER OF MEDIATORS**

- 5.1 The Mediation Coordinator shall maintain the Roster of Mediators as selected by the Court-Annexed Mediation Committee
- 5.2 The Roster of Mediators shall be exhibited at the Court Office and at the office of the Mediation Coordinator.

6. **SELECTION OF MEDIATOR BY THE PARTIES**

- 6.1 All Court-Annexed mediations shall be conducted by a Mediator selected from the Roster of Mediators who is:
 - a) mutually agreed to by the parties ; or
 - b) selected by the Mediation Coordinator if the parties fail to agree.

- 6.2 The parties may at any time select the mediator including:
- (a) at the time of filing the Notice of Referral to Mediation; or
 - (b) at the time the Referral Order is made; or
 - (c) within 10 days of the Referral Order, by filing a Notice of Selection of Mediator in [Form M3].
- 6.3 If the parties fail to select a Mediator, the Mediation Coordinator shall:
- (a) select a Mediator from the Mediation Roster; and
 - (b) issue a Notice of Selection of Mediator in [Form M4] to the parties.

7. **SCHEDULED DATE FOR MEDIATION**

When the Notice of Selection of Mediator is filed in [Form M2] and [Form M3] the Mediation Coordinator shall:

- (a) in consultation with the parties and the mediator, fix a date for the mediation session; and
- (b) serve on every party a Notice of Scheduled Mediation [Form M5] stating the place, date and time of the mediation.

8. **ATTENDANCE AT THE MEDIATION SESSION**

- 8.1 The parties are required to attend a three-hour mediation session. After the first three hours, the mediation may be continued if the parties and the mediator agree to do so and the parties agree to pay the scheduled additional fee.
- 8.2 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.

- 8.3 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.
- 8.4 With the consent of all parties and the mediator, a mediation session may be adjourned at any time. In the event of an adjournment, the parties must reschedule the mediation session within the time limits set out in the Practice Direction

9. **FAILURE TO ATTEND**

If a party fails to attend the mediation session within half of an hour of the appointed time or attends the mediation session without having authority to settle, the mediator shall:

- (a) cancel the session ; and
- (b) immediately lodge with the Mediation Coordinator a Certificate of Non-Compliance [Form M6] for filing at the Court Office.

10. **NON-COMPLIANCE WITH REFERRAL ORDER**

When a Certificate of Non-compliance is filed with the Court Office, the Registrar shall refer the matter to the Magistrate for continuation of the action.

11. **CONFIDENTIALITY**

Prior to the commencement of mediation the parties shall sign a Confidentiality Agreement in [Form M7].

12. **MEDIATOR'S REPORT**

At the end of the mediation, the mediator shall complete and lodge the Notice of Outcome of Mediation [Form M8] with the Mediation Coordinator for filing at the Court Office.

13. **AGREEMENT**

13.1 If there is an agreement resolving any 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 seven days after the agreement is signed the parties shall apply to the court for an order in terms of the Agreement and the Magistrate may make the order in [Form M9]

13.2 If the parties fail to make an application to the court for an order in the terms of the signed agreement within 7 (seven) days after the agreement is signed, the Magistrate shall make an order.

14. **NO AGREEMENT/PARTIAL AGREEMENT**

If no agreement is reached that resolves all the issues in the dispute, the matter shall be returned to the Magistrate for continuation of the action.

SECOND SCHEDULE
PRACTICE FORMS

Form M1. Mediation Referral Order
[First Schedule 1]

MAGISTRATES' COURT DIST “ ”

CLAIM NO.
BETWEEN

PLAINTIFF

AND

DEFENDANT

Before: His / Her Worship Magistrate

Dated:

Entered:

MEDIATION REFERRAL ORDER

Upon this matter coming on for hearing

And Upon hearing Counsel for the Plaintiff and Counsel for the Defendant/

Upon hearing Plaintiff and Defendant in person.

IT IS NOW ORDERED AND DIRECTED AS FOLLOWS:

The parties to these proceedings are required to attend a mediation session with a mediator within 45 days from today's date.

[] By consent, the parties have selected from the Roster of Mediators Ms./Mr

[] The parties shall select a mediator from the Roster of Mediators and advise the Mediation Coordinator of the name of the mediator within 10 days of the receipt of this notice. If parties fail to select a mediator, one will be selected by the Mediation Coordinator.

By the Court

[SEAL]

Magistrate

Form M2. Notice of Referral to Mediation
[First Schedule 1(b)]

MAGISTRATES' COURT DIST “ ”

**CLAIM NO.
BETWEEN**

PLAINTIFF

AND

DEFENDANT

Before: His/Her Worship Magistrate

Dated:

Entered:

NOTICE OF REFERRAL TO MEDIATION

TAKE NOTICE that:

1. I (*Name*) of(*address*) the Plaintiff 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. I have not yet filed a defence in this matter.
3. We have selected (*name of Mediator*) from the Roster of Mediators.

Dated:

Signed: Plaintiff/Plaintiff's Attorney-at-Law
 (*Name, address, telephone number, email*)

 Defendant/Defendant's Attorney-at-Law
 (*Name, address, telephone number, email*)

To: The Mediation Coordinator

Form M3. Notice of Selection of Mediator
[First Schedule 6.2]

MAGISTRATES' COURT DIST “ ”

**CLAIM NO.
BETWEEN**

PLAINTIFF

AND

DEFENDANT

NOTICE OF SELECTION OF MEDIATOR

TAKE NOTICE that the parties have selected (*Name of the Mediator*)
from the Roster of Mediators.

Dated:

Signed:

Plaintiff/Plaintiff's Attorney-at-Law
(*Name, address, telephone number, email*)

Defendant/Defendant's Attorney-at-Law
(*Name, address, telephone number, email*)

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

Form M4. Notice of Selection of Mediator by Mediation Coordinator
[First Schedule 6.3]

MAGISTRATES' COURT DIST " "

**CLAIM NO.
BETWEEN**

PLAINTIFF

AND

DEFENDANT

NOTICE OF SELECTION OF MEDIATOR BY MEDIATION COORDINATOR

TAKE NOTICE that a Notice of Selection of Mediator by the parties has not been filed in this action.

Accordingly, I have selected(Name of mediator) to conduct the mediation session in these proceedings.

Unless the court orders otherwise, you are required to attend this mediation session. If you have an Attorney-at-Law representing you in this action, he/she is also required to attend.

YOU MAY BE PENALIZED IF YOU FAIL TO ATTEND THE MEDIATION SESSION
(Date)

By the Court

[SEAL]

Mediation Coordinator

To: Plaintiff/Plaintiff's Attorney-at-Law
(Name, address, telephone number, email)

And To: Defendant/Defendant's Attorney-at-Law
(Name, address, telephone number, email)

Form M5. Notice of Scheduled Mediation
[First Schedule 7(b)]

MAGISTRATES' COURT DIST “ ”

**CLAIM NO.
BETWEEN**

PLAINTIFF

AND

DEFENDANT

NOTICE OF SCHEDULED MEDIATION

TAKE NOTICE that the parties /the Mediation Coordinator have/has selected (*Name of the Mediator*) from the Roster of Mediators. The Mediation is scheduled to take place on theday, of (*date*) from to(*time*) at the Office of the Mediation Coordinator at(*address*)

You are required to attend a three (3) hour session. If you have an Attorney-at-Law representing you in this proceeding, he/she is also required to attend.

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.

You or your Attorney- at- law should send to the Mediator a copy of your Statement of case at least seven days before the date scheduled for mediation.

Your fee of \$350.00 per party for the first three (3) hour session should be paid at least seven (7) days in advance of the date scheduled for Mediation. If additional time is required, additional fees shall be paid at the rate of \$150.00 per hour per party.

Dated:

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

To: Plaintiff/Plaintiff's Attorney-at-Law
(Name, address, telephone number, email)

And To: Defendant/Defendant's Attorney-at-Law
(Name, address, telephone number, email)

Form M6. Certificate of Non-Compliance
[First Schedule 9]

MAGISTRATES' COURT DIST " "

**CLAIM NO.
BETWEEN**

PLAINTIFF

AND

DEFENDANT

CERTIFICATE OF NON-COMPLIANCE

TAKE NOTICE that

- The Plaintiff failed to attend the mediation session
- The Defendant failed to attend the mediation session
- The Plaintiff or his representative attended the mediation but had no authority to settle
- The Defendant or his representative attended the mediation but had no authority to settle

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)

MAGISTRATES' COURT DIST “ ”

**CLAIM NO.
BETWEEN**

PLAINTIFF

AND

DEFENDANT

CONFIDENTIALITY AGREEMENT

The parties will participate in a Mediation Session to be conducted in accordance with the Practice Direction regarding the Court-Annexed Mediation Pilot Project. The parties agree that:

- (1) statements made and documents produced in a mediation session, and not otherwise discoverable, shall not be 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; and
- (3) 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

Each of the parties and their Attorneys-at-Law, if any, have agreed to proceed with the mediation on the terms contained herein.

Dated:

PRINT NAME

SIGNATURE

Plaintiffs

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CLAIM NO:

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Attorney-at-Law for Plaintiff (s)

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Defendant (s)

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Attorney-at-Law for Defendant (s)

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Mediator (s)

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CLAIM NO:

Other (s)

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

MAGISTRATES' COURT DIST " "

**CLAIM NO.
BETWEEN**

PLAINTIFF

AND

DEFENDANT

NOTICE OF OUTCOME OF MEDIATION

TAKE NOTICE that a mediation session was conducted in this proceeding on theday
of(Date)

- The parties settled prior to the mediation session.
- The parties settled as a result of the mediation session
- The parties did not settle
- The parties settled some issues as a result of the mediation session
 - The terms of the settlement on all issues are hereto annexed
 - The parties have agreed that terms of the settlement are to be confidential

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 M9. Order Subsequent to Mediation Agreement
[First Schedule 13.1(b)]

MAGISTRATES' COURT DIST “ ”

CLAIM NO.
BETWEEN

CLAIMANT

AND

DEFENDANT

ORDER SUBSEQUENT TO MEDIATION AGREEMENT

Made the day of 20
Upon this matter coming on before:
His/Her Worship Magistrate

[And Upon Hearing Attorney-at-Law for the Plaintiff and the
Attorney-at-Law for the Defendant]

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

[And Upon the parties having been referred to mediation]

And Upon the parties having agreed to the terms set out in the signed agreement annexed hereto/having agreed that the terms of the settlement are to be confidential:

IT IS ORDERED THAT:

All further proceedings in this matter are stayed except for the purpose of carrying into effect the terms of the said Agreement.

For that purpose the parties have permission to apply to the court

[The claim be discontinued from the date hereof.

By the Court

[SEAL]
Magistrate

MAGISTRATES' COURT DIST " "

**CLAIM NO.
BETWEEN**

AND

PLAINTIFF

DEFENDANT

STATEMENT OF ISSUES

To be provided to mediator and each party or to their attorney-at-law (where represented) no later than seven (7) days before the date fixed for the mediation session by each plaintiff and defendant.

The plaintiff or defendant states that the following factual or legal issues are in dispute and remain to be resolved.

Issues, positions and interests should be stated briefly and numbered consecutively.

1. Factual issues in dispute
2. Legal issues in dispute
- 3 Party's position and interests (what the party hopes to achieve)
4. Attached documents

Attached to this Form are the pleadings filed by me, other documents of central importance in the action: (please list here)

Dated:

.....
Plaintiff/Defendant

.....
Attorney-at-Law for the Plaintiff/Defendant

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

THIRD SCHEDULE
CODE OF ETHICS

1. This Code of Ethics shall apply to mediators whose names appear on the Roster of Mediators of the Magistrates' Court of Barbados 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 interests” means direct or indirect financial 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 favouritism and bias either by words, action or by appearance and implies a commitment to serve all mediation parties as opposed to a single mediation party in moving towards or reaching agreement.

3.

General Responsibilities

Mediators shall –

- (a) conduct themselves in a manner which will instill confidence in the mediation process, confidence in their integrity, and confidence that disputes entrusted to them are handled in accordance with the highest ethical standards;
- (b) be responsible to the parties, to the profession, to the public and to themselves, and accordingly shall be honest and unbiased, act in good faith, be diligent, and not seek to advance their own interests, but rather the needs and interests of the mediation parties;
- (c) act fairly in dealing with the mediation parties, have no personal interests in the terms of the settlement, show no bias towards individuals or parties involved in the disputes and be certain that the mediation parties are informed of the process in which they are involved.

Ethical Standards

4. (1) The primary role of the mediator is to facilitate the voluntary resolution of a dispute.
- (2) The primary responsibility for the resolution of the dispute and the shaping of a settlement rests with the mediation parties.
- (3) A mediator shall recognise that mediation is based on the principle of self-determination by the mediation parties and upon the ability of the mediation parties to reach a voluntary un-coerced agreement.
- (4) A mediator shall request and encourage self-determination by the mediation parties in their decision whether, and on what terms, to resolve their dispute, shall refrain from being directive or judgmental regarding the issues in dispute and options for settlement.
- (5) A mediator shall encourage mutual respect between the mediation parties, and shall take reasonable steps, subject to the principle of self-determination, to limit abuse of the mediation process.
- (6) A mediator shall make the mediation parties aware, where appropriate, of the option and importance of consulting other professionals to assist the mediation parties in the making of informed decisions.
- (7) When a mediator believes a mediation party does not understand or appreciate how an agreement may adversely affect legal rights or obligations, the mediator shall advise the mediation parties to seek independent professional advice.
- (8) While a mediator may point out possible outcomes of a case, the mediator shall not offer a personal or professional opinion as to how the Court in which the case has been filed will resolve the dispute.
- (9) A mediator shall not use during the mediation process any title or honorific to which he may be entitled.

5.
 - (1) A mediator shall mediate only when the mediator has the necessary qualifications, training and experience to enable him to satisfy the reasonable expectation of the mediation parties.
 - (2) A mediator shall acquire and maintain professional competence in mediation, and shall at all times strive to improve his professional skills and abilities by participating in relevant continuing education programmes.
 - (3) A mediator shall have information regarding his relevant training, education and experience available to the mediation parties.
6.
 - (1) A mediator shall provide mediation services only for those disputes in which he can be impartial with respect to all the mediation parties and the subject matter of the dispute.
 - (2) A mediator shall in words and action, maintain impartiality towards the mediation parties and where his impartiality is in question, shall decline to serve or shall withdraw from serving as a mediator.
 - (3) Where at any time prior to, or during the mediation process the mediator is unable to conduct the mediation process in an impartial manner, the mediator shall so inform the mediation parties and shall withdraw from providing services, even if the mediation parties express no objection to the continuation of the mediator's services.
7.
 - (1) A mediator shall discuss issues of confidentiality with the mediation parties before beginning the mediation process including, limitations on the scope of confidentiality and the extent of confidentiality provided in any private session that the mediator holds with a mediation party.
 - (2) All proceedings shall be confidential and the mediator shall not voluntarily disclose to anyone who is not a mediation party to the mediation process, any information obtained through the mediation process except, with the written consent of the mediation parties, or when the information discloses an actual or potential threat to human life or safety.

- (3) In the cases referred to in subparagraph (2), the mediator shall advise the mediation parties, when appropriate to the mediation process, that the confidentiality of the mediation proceedings cannot necessarily be guaranteed.
8.
 - (1) A mediator shall structure the mediation process so that the mediation parties make decisions based on sufficient information and knowledge.
 - (2) The mediator has an obligation to ensure that all mediation parties understand the nature of the process, the procedures, the particular role of the mediator and the mediation parties' relationship to the mediator.
 - (3) Where at any time the mediator believes that any mediation party is unable to understand the mediation process or participate fully in it, whether because of mental impairment, emotional disturbance, intoxication, language barriers or other reasons, the mediator shall limit the scope of the mediation process in a manner consistent with the mediation party's ability to participate, and/or recommend that the mediation party obtain appropriate assistance in order to continue with the mediation process or shall terminate the mediation process.
9.
 - (1) A mediator shall disclose all actual and potential conflict of interests known to him and thereafter shall withdraw from the mediation, if any mediation party objects to him continuing as mediator.
 - (2) Where the mediator determines that the conflict is so significant as to cast doubt on the integrity of the mediation process, the mediator shall withdraw from the process even if the mediation parties express no objection to the continuation of the mediator's services.
 - (3) Save with the consent of the mediation parties, and for a reasonable time under the particular circumstances, a mediator who also practices in another profession shall not establish a professional relationship in that other profession with one of the mediation parties, or any person or entity, in a substantially factually related matter.
 - (4) A mediator shall limit himself solely to the role of mediator, and shall refrain from giving legal or therapeutic information or advice and otherwise engaging during mediation in counselling or advocacy.

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

10. In the family mediation, the mediator has a responsibility to promote the mediation parties' consideration of the interest of children in relation to the issues being mediated. The mediator also has a duty to assist the mediation parties to examine, apart from their own desires, the separate and individual needs of such 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.
 - (1) A mediator shall not make untruthful or exaggerated claims about the mediation process, its costs and benefits, its outcome 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.

FOURTH SCHEDULE
DISCIPLINARY REGULATIONS

1. (1) These Disciplinary Regulations apply to complaints against any individual placed on the Roster of Certified Mediators in accordance with section 4(b) of the Practice Direction No. 2 of 2016
- (2) Where a person is registered as a certified mediator such registration may be revoked for cause in accordance with these provisions.
2. (1) The Mediation Committee shall appoint a Disciplinary Committee consisting three members which shall be a standing committee, to hear and determine complaints against mediators.
- (2) The Disciplinary Committee shall consist of an Attorney-at-Law of at least seven (7) years standing and two mediators who shall not be members of the Mediation Committee.
3. (1) A complaint against a mediator hereafter called the mediator/respondent shall be in writing, signed by the complainant, and shall include the complainant's name, address and telephone number.
- (2) The complaint referred to in subparagraph (1), shall be mailed or delivered to the Committee at its address and shall -
 - (a) identify the mediator/respondent; and
 - (b) make a short and plain statement of the conduct forming the basis of the complaint.
- (3) Subject to subparagraph (4), the complaint shall be made within thirty days of the conclusion of the mediation.
- (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 mediation session if that information falls within section 7(2) of the Code of Ethics and except for good cause shown, if the mediator/respondent fails to respond to the complaint in writing within thirty 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 complainant is resolved through mediation, the Disciplinary Committee shall dismiss the complaint, unless the resolution includes sanctions to be imposed by the Disciplinary Committee in which case the Disciplinary Committee shall impose such sanctions.
 - (3) Where no agreement is reached in mediation, the Disciplinary Committee shall hear and determine the complaint.
5. (1) At the hearing the parties may be represented by Attorneys-at-Law but the rules of evidence shall not be strictly applied.

- (2) The Disciplinary Committee at its own initiative, or by request of the parties, may request the attendance of witnesses and the production of documents and other evidentiary matter.
6.
 - (1) A party may appeal the Disciplinary Committee's decision to an Appellate Committee consisting of not less than three members of the Court-Annexed Mediation Committee.
 - (2) An appeal must be filed within forty-five days from the date of the decision.
7.
 - (1) Where it comes to the attention of the Committee that a certified mediator has been convicted of a criminal offence, the Committee may call upon such certified mediator to show cause why he 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;
 - (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 Committee, members of the Disciplinary Committee, the Appellate Committee and staff;

- (b) as otherwise required or permitted by rule or statute; and to the extent that the complainant and the mediator/respondent waive confidentiality.
- (2) Where sanctions are imposed against the mediator/respondent pursuant to paragraphs (b) to (d) of paragraph 8 such sanctions shall be public record, but the files of the Disciplinary Committee and the Appellate Committee shall remain confidential.

IN THE MAGISTRATES' COURT OF BARBADOS

PRACTICE DIRECTION No. 2 of 2016

COURT-ANNEXED MEDIATION PILOT PROJECT

COMPLAINT FORM

Mediator's Name:

Claim No:

Date of Mediation Session:

Nature of Complaint:

Date:

Name:

Signature of Complainant:

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

THE MEDIATION COORDINATOR

Appointment

The position of Mediation Coordinator will be a temporary position and would be commensurate to that of a Systems Administrator. (Salary Scale S8)

The person appointed will report to the Registrar of the Supreme Court and will be responsible for the day to day administration of the Court-Annexed Mediation Pilot Project

Duties

The Mediation Coordinator shall be responsible for the administration of the Pilot Project. The duties shall include but are not limited to the following:

1. Receiving and processing mediation Referral Orders and Referral Notices
2. Scheduling mediation sessions
3. Ensuring mediation facilities are available
4. Interfacing with members of the public, parties to the mediation and their Attorneys-at-law in relation to the mediation process
5. Ensuring that the time lines laid out in the Practice Direction for the mediation process are met
6. Establishing and maintaining the Roster of Mediators in accordance with the Practice Direction
7. Maintaining records of mediation sessions and compiling relevant data
8. Submitting periodic reports to the Registrar
9. Acting as Secretary to the Court-Annexed Mediation Committee
10. Ensuring that all mediation fees are paid by the parties to the Mediators
11. Supervising of staff attached to the Pilot Project
12. Responsibility for the oversight of the mediation process and generally perform all such other duties as may be assigned by the Registrar in connection with the Practice Direction for the implementation of the Pilot Project

Qualifications

1. Must have had training in and knowledge of Mediation
2. Preferably, a degree in Management, Law or at least 5 years' experience in Administration/Management
3. Proficiency in Microsoft Word, Excel Spread Sheet and Power-Point
4. Excellent communication skills, written and oral

