

## PRACTICE DIRECTION # SC 2002-2

### COURT CONNECTED MEDIATION PILOT PROJECT

By order of the Chief Justice and with the concurrence of the Judges of the Supreme Court, the following Practice Direction is hereby issued to take effect immediately:

1. This **Practice Direction** establishes a Supreme Court Civil Mediation Pilot Project (hereinafter referred to as the “pilot”) in the civil jurisdiction of the Supreme Court in order to demonstrate the impact of early mediation on:

- (a) improving the pace of litigation;
- (b) promoting early and fair resolution of disputes;
- (c) reducing the cost of litigation to the parties and the court system;
- (d) improving access to the court;
- (e) improving participants’ satisfaction with dispute resolution in the justice system; and
- (f) maintaining the quality of litigation outcomes

through a Mediation Referral Agency appointed to carry out the objects of the pilot.

2. **Duration of Pilot Project**

This pilot project commences on 1<sup>st</sup> January 2003 and expires on 31<sup>st</sup> March 2004.

3. **Scope and Application of Practice Direction**

(a) This Practice Direction applies to all matters arising in the Civil Jurisdiction of the Supreme Court under the Civil Procedures Rules 2002 (hereinafter referred to as “CPR”), save for the matters listed hereunder unless the court, by order of a judge or registrar permits -

- i. administrative law proceedings under Part 56;
- ii. Writs of Habeas Corpus under Part 57;
- iii. bail applications under Part 58;
- iv. admiralty proceedings under Part 70; and
- v. fixed date claims under rule 8.1;

(b) Matters eligible for mediation must be referred to the pilot –

- i. upon filing of first defence where the Attorneys-at-law in the matter have indicated their consent to participate in the pilot

- project by Form M1 and on notification by the registrar to the Mediation Referral Agency; or
- ii by referral from a case management conference by a designated Judge or Master with consent of the parties, or
  - iii by notice by the parties to the Registrar within 14 days of filing defence; or
  - iv on application on consent by the parties at a case management conference; or
  - v by the parties' consent through settlement week and other backlog reduction strategies implemented by the Chief Justice
- (c) Referral to the pilot must be on Form M1 which
- i where referral is under section 3(b)i, must be filed and served
    - a. with the claim form by the claimant and
    - b. with the defence by the defendant, or
  - ii where referral is under section 3(b)iv must be filed and the filing must be accompanied by application on Form 7 pursuant to CPR, rule 11.8.3;
- (d) For all types of referral, the registry will complete Form M1 and provide copies to all parties and the Mediation Referral Agency, and
- (e) This Practice Direction does not restrict the right of the parties to agree to mediation before or at any stage of the proceedings

#### 4. Definition of Mediation

**Mediation** refers to a dispute resolving process in which a neutral third party called the "mediator" facilitates and coordinates the negotiation of parties in dispute with a view to resolving, or reducing the extent of the dispute.

#### 5. Establishment & Powers of Steering Committee

- (a) The Chief Justice will chair a **Mediation Project Steering Committee (MPSC)** constituted as follows:
- 1 other member of the Rules Committee of the Supreme Court
  - 1 member from the Advocates Association
  - 1 member from the Jamaican Bar Association (JBA)
  - 1 member from the Dispute Resolution Foundation (DRF)
  - 1 member from the Roster of mediators
  - 1 member from the Ministry of Justice (MOJ)

- 1 member from the Private Sector Organisation of Jamaica (PSOJ)
- 1 member from Social Conflict & Legal Reform Project (SCLRP)
- 1 other member of the Judiciary
- 1 member of the Registry Staff

Members must be nominated by the designated organization on the invitation of the Chief Justice except in the case of court personnel who will be nominated by the Chief Justice. The Chief Justice shall have the power to co-opt other members.

- (b) The MPSC will guide and monitor the development and implementation of the pilot project and will meet on a monthly basis or as frequently as they deem necessary. The quorum must be a bare majority of the members including the chairman who will exercise a casting vote, and
- (c) The MPSC must set the standards, criteria, and mechanisms for
  - i. certification of mediators
  - ii. a system to review and handle complaints about mediators
  - iii. a code of conduct for mediators
  - iv. the remuneration of mediators
  - v. pro bono service by mediators

## 6. **Dispensing with Mediation**

- (a) On the application of a party on CPR Form 7 within the time standards herein, the court may dispense with a reference to mediation if it is satisfied that
  - i. good faith efforts to settle have been made and were not successful, or
  - ii. the cost of the mediation to the parties is disproportionate to the value of the proceedings and the benefits that might be achieved by mediation, or
  - iii. the case involves a matter of public policy and mediation may not be appropriate, and
- (b) When the court dispenses with mediation, where appropriate a case management conference should be scheduled.

## 7. **Mediation Referral Agency**

- (a) The Dispute Resolution Foundation is hereby appointed as the mediation referral agency for the duration of this pilot project. This agency will coordinate and deliver approved services under the pilot project under the direction of the Chief Justice; and
- (b) The approved services include:
  - i. to compile and keep current a roster of mediators,
  - ii. to assign mediators pursuant to section 8 (c),
  - iii. to monitor the performance of the mediators on the roster;
  - iv. to train mediators;
  - v. to provide facilitation and advice to the MPSC and the Chief Justice for matters within section 5(c); and
  - vi. any other services as may be required and as are consistent with this Practice Direction

#### 8. Selection of Mediator and Scheduling of Mediation

- (a) The claimant must on Form M2 not later than 28 days after referral under section 3(b):
  - i. Where the parties have so agreed, notify the Mediation Referral Agency and all other claimants or defendants against whom judgment has not been entered of the name of the mediator selected and the date of the mediation; or
  - ii. Apply to the Mediation Referral Agency for the appointment of a mediator and the scheduling of the mediation; or
- (b) Where the claimant does not so apply or notify the Mediation Referral Agency, the defendant may on Form M2 within 7 days of the expiration of the time provided at section 8(a):
  - i. Where the parties have so agreed, notify the Mediation Referral Agency and all other claimants or defendants against whom judgment has not been entered of the name of the mediator selected and the date of the mediation; or
  - ii. Apply to the Mediation Referral Agency for the appointment of a mediator and the scheduling of the mediation; and
- (c) Where an application on Form M2 is made under section 8(a)ii or section 8(b)ii to the Mediation Referral Agency which does not give the name of a mediator selected by the parties:

- i. the referral agency must proceed forthwith to select a mediator from the roster, and
  - ii. no later than 7 days of the application, the Mediation Referral Agency must give notice on Form M5 of the name of the appointed mediator and the date and time appointed for the mediation
    - a. to the applicant, and
    - b. if the applicant was a defendant, to the claimant.
- (d) Where the Mediation Referral Agency has received notice of referral to mediation on Form M1, and Form M2 has not been served by either the claimant or defendant on the Mediation Referral Agency within 35 days of the date of referral, the
- i. the referral agency must proceed forthwith to select a mediator from the roster, and
  - ii. no later than 7 days of the application, the Mediation Referral Agency must give notice on Form M5 of the name of the appointed mediator and the date and time appointed for the mediation
    - a. to the applicant, and
    - b. if the applicant was a defendant, to the claimant.
- (e) No later than 7 days after receiving notice under section 8(c)ii, the claimant must serve notice on Form M2 of the name of the mediator appointed by the Mediation Referral Agency and the date and time of the mediation to all defendants or claimants against whom judgment has not been entered; and
- (f) At least 7 days notice must be given by the mediator to each party of any change in the date, time and place appointed for the mediation.

**9. Roster of Mediators**

- (a) The mediator must be selected from a roster of mediators approved by the Chief Justice; and
- (b) Every mediator who conducts a mediation pursuant to this Practice Direction must comply with the provisions herein and all rules and procedures ancillary hereto.

**10. Timing of the Mediation**

- (a) Where a referral has been made to mediation under section 3(b) the mediation must be completed within 70 days of the date of referral.

#### 11. Attendance at Mediation

- (a) All parties along with their attorneys-at-law where represented must attend one mediation session of up to 3 hours duration;
- (b) Where a party is not a natural person, the person attending on behalf of that party must be authorized to settle the dispute or be in a position to be able to obtain such authority during the mediation;
- (c) The parties may, by consent, extend the mediation session or schedule such sessions with the mediator as necessary. If extensions are agreed the mediator must forthwith notify the Mediation Referral Agency and such extension must not conflict with other time standards related to the case management conference without leave of the court; and
- (d) The parties must provide the mediator a statement of issues in the form set out in Form M4 along with copies of the Pleadings filed in the Supreme Court no later than 7 days before the date fixed for the mediation.

#### 12. Conduct of the Mediation

- (a) The mediator selected under section 9 may adopt any method of proceeding at a mediation that he or she considers to be fair and accords with any relevant standards of certification and code of conduct approved by the Chief Justice;
- (b) The disputants and their attorneys-at-law must execute an agreement absolving the mediator of liability from suits arising out of the mediation prior to beginning the mediation process.
- (c) Mediation is a confidential process such that:
  - i. Discussions in the mediation and documents prepared solely for the purposes of the mediation are confidential and may not be disclosed.
  - ii. No party or his or her counsel may at any subsequent trial or hearing of the claim refer to any matters disclosed by them or any other party at the mediation; and
  - iii. The mediator may not disclose to any other person or be required to give evidence about any matters disclosed by a party at the mediation;

- (d) Any agreement reached by the parties at the mediation must be recorded in writing and signed by the parties and their Attorneys-at-law (if any);
- (e) The interim and final results of the mediation will be absolutely privileged unless it becomes an order of the court pursuant to 13(a) and 14(b),
- (f) The mediator must not be required to provide consultation, notes, evidence and or opinion in any subsequent proceeding touching on the subject matter or the parties in any subsequent proceeding.

### 13. Report of Mediator

- (a) Within 8 days of the completion of the mediation and in any event within the expiration of the time standard established at 10(a), the mediator must file Form M3 at the Supreme Court Civil registry stating:
  - i. the date(s) of the mediation;
  - ii. list of persons receiving notice and the date of notification of the last mediation session;
  - iii. list of persons who attended mediation, and
  - iv. whether:
    - (a) full agreement;
    - (b) partial agreement; or
    - (b) no agreement was reached, or
    - (d) whether, where no agreement or partial agreement was reached, the parties were prepared to continue with mediation and the mediator considers that there are reasonable prospects of agreement and an extension of time is required,
- (b) Where any agreement was reached and the parties wish it to become an order of the court, the signed written agreement must accompany Form M3 or be filed at the registry not later than 30 days after completion of the mediation;
- (c) Where the written agreement does not accompany the report, the mediator must state who if anyone will be responsible for filing the report; and
- (d) Where an application or referral has been made for mediation the mediator or the mediation agency must report on Form M3 to the court within 78 days of the application or referral

### 14. Action by the Court after Report Filed

- (a) Where agreement has been reached the court may, on the joint application of the parties, make an order in the terms of the report pursuant to CPR 42.7,
- (b) Where the report states
  - i. that no mediation has taken place within 70 days of the application or referral, or
  - ii. that no agreement was reached and the conditions set out at Section 12 hercof were not met, the registry must forthwith fix a case management conference under CPR 27.3 and give notice to the parties as required by that rule,
- (c) Where the claimant did not attend the mediation, the Judge must, on the application of a defendant, strike out the claim,
- (d) Where a defendant does not attend the mediation, the Judge must, on the application of the claimant, enter default judgment against that defendant,
- (e) An application under paragraph (c) or (d) above must be supported by evidence on affidavit that the claimant or defendant as the case may be:
  - i. did not attend the mediation, and
  - ii. had notice of the date, time and place of the mediation as required by section 10,
- (f) The provisions of Civil Procedure Rules 12.3 (cases in which permission required), CPR 12.8 (claim for a specified sum of money), CPR 12.9 (claim against more than one defendant), CPR 12.10 (nature of default judgment), CPR 12.11 (interest), CPR 12.13 (Defendant's rights following default judgment) must apply to a judgment entered under paragraph (d) above;
- (g) The provisions of CPR 11.18 (application to set aside an order made in the absence of party) apply to a striking out of the claim or a default judgment under paragraphs (c) or (d) of this section as if the mediation were a hearing of an application under Part 11 of the CPR.

#### 15. Costs of Mediation

- (a) The costs of attendance at a mediation under this Part, including any payment made by a party to the Mediation Referral Agency in respect of mediator's fees are costs in the claim,
- (b) The fee payable for the mediation will be \$12,500.00 per party for 3 hours or less and preparation time;



- (c) Fees for further time will be set by agreement between the parties and the mediator; and
- (d) Unless otherwise agreed by the parties, the mediator's fees must be borne equally by them and must be paid to the mediator or the Mediation Referral Agency by the parties no later than 7 days before the date scheduled for mediation.

**16. Use of Mediators' Reports for Research and Evaluation**

For purposes of research and evaluation by persons authorized by the Chief Justice, mediator's reports may be disclosed with removal of all identifying information of the parties or other editing necessary to preserve confidentiality.

**17. Forms**

- (a) Forms applicable to this Practice Direction are set out at Appendix 1 hereof.

December 20, 2002

*L. Wallace*  
*Chief Justice*

**Part 2. Defence**

– if 1b or 1c above, or if 1a and defence agrees to have case mediated under the pilot to be filled out by Attorney-at-law for defence – or by defence if unrepresented a  
 – if d, e or f above - to be filled out by registry, registrar, Master or Judge

9. The Defendant agrees to have the case referred to mediation under the Mediation Pilot <i>(check box)</i>	<input type="checkbox"/> Yes
	<input type="checkbox"/> No
	<input type="checkbox"/> N/A

10. Date dd __ mm __ yyyy ____
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11. Name of Defendant where represented (please print and sign)	or	12. Name of Defendant's Attorney-at-law (please print and sign)
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*(for defendant or Attorney-at-law)*

13. Phone _____	15. Address _____ _____ _____
14. a. Fax _____	
b. E-mail _____	

**Part 3. Registry** – *To be filled out by Registry*

16. Date of Claim	17. Date of Defence	18. Deadline for Mediation
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19. Request for mediation under Pilot pursuant to 1c Refused. <i>(Signature)</i>	20. DRF is hereby authorized to arrange a mediation in this case. <i>(Signature)</i>	21. Date of Referral dd __ mm __ yyyy ____
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Appendix 1

**Agreement/ Referral to Mediation through Mediation Pilot**

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**FORM M1 [Supreme Court Civil Mediation Pilot Project Practice Direction Section 3(c) and 3(d)]**

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
CLAIM NO.**

**BETWEEN  
AND**

**CLAIMANT  
DEFENDANT**

***Part 1. Case & Claimant***

- if a, 1b or 1c below - to be filled out by Attorney-at-law for Claimant – or by Claimant if unrepresented*
- if 1d, 1e or 1f below - to be filled out by registry, registrar, Master or Judge*

1. Please indicate how Referral Process was initiated (check one)

<input type="checkbox"/> a. by Claimant at filing of claim <input type="checkbox"/> b. by parties on consent notice from parties to Registrar (within 2 weeks of defence) <input type="checkbox"/> c. by parties on consent application to Master or Judge at Case management conference (& accompanied by an application on CPR Form 7)	<input type="checkbox"/> d. by Registrar, Master or Judge as part of backlog reduction initiative <input type="checkbox"/> e. by Master or Judge at 1st Case Management Conference  (if d, e above) date and signature of Registrar, Master or Judge as appropriate Date  Signature
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2. The Claimant agrees to have the case referred to mediation under the Mediation Pilot (check box)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
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3. Date  dd__mm__yyyy__
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4. Name of Claimant where unrepresented (please print & sign)	or	5. Name of Claimant's Attorney-at-law (please print & sign)
6. Phone _____ 7. a. Fax _____ b. E-mail _____		8. Address _____ _____ _____

**NOTICE OF NAME OF MEDIATOR AND DATE OF SESSION**

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**FORM M2 [Supreme Court Civil Mediation Pilot Project Practice Direction Section 8(a), 8(b), 8(c) and 8(d)]**

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
CLAIM NO.**

**BETWEEN  
AND**

**CLAIMANT  
DEFENDANT**

**TO: DISPUTE RESOLUTION FOUNDATION  
The Peace Centre  
4 Camp Road  
Kingston 5  
Fax No. 754-9769**

1. I certify that I have consulted with the parties [name(s)] and that the parties have chosen the following mediator from the roster [name] for the mediation session required by Rule 8(a) and (b): [name].
2. The mediation session will take place on (date)

I declare that the information given above is true to the best of my knowledge.

Dated the day of \_\_\_\_\_ 20\_\_\_\_

Signed .....

**Filed by (specify name and address of Attorney-at-law or firm of Attorneys-at-Law filing the application)**

REPORT OF MEDIATOR

FORM M3 [Supreme Court Civil Mediation Pilot Project Practice Direction Section 13]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
CLAIM NO.

BETWEEN  
AND

CLAIMANT  
DEFENDANT

1. Attendance

The following persons attended the mediation.

- (a) Claimant: (name)
- (b) Claimant's Attorney-at-law: (name)
- (c) Defendant(s): (name)
- (d) Defendant's Attorney-at-law: (name)
- (e) Other persons: (name)

2. Mediation was held on [all dates]

3. [Where one or more parties did not attend] -- Notice of the final session for mediation was provided to:

4. Tick Boxes

- (a)  At least one party did not attend so the mediation was aborted.
- (b)  The parties met, but were unable to arrive at an agreement.
- (c)  The parties arrived at a partial settlement.
- (d)  The parties and the mediator met and the mediator considered that there are reasonable prospects of agreement and an extension of time is required and requested herein.
- (e) The parties have reached full agreement and a copy of the agreement
  - i.  is attached, or
  - ii.  will be provided by (name) or
  - iii.  the claim and defence are herein settled, and the parties will keep the agreement confidential as evidenced by the signatures appended hereto.

Signed by Mediator (name) (address)  
Signed by Claimant (name) (address)  
Signed by Defendant (name) (address)

**STATEMENT OF ISSUES**

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**FORM M4 [Supreme Court Civil Mediation Pilot Practice Direction  
Section 11(d)]**

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
CLAIM NO.**

**BETWEEN  
AND**

**CLAIMANT  
DEFENDANT**

To be provided to mediator and parties at least seven days before the mediation session by each claimant and defendant

The claimant 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)

(Date)

(Party's signature)  
(Name, address, telephone number and fax  
of Attorney-at-Law of party filing statement  
of issues, and of party)

**NOTICE OF NAME OF MEDIATOR SELECTED BY MEDIATION REFERRAL AGENCY AND DATE OF SESSION**

**FORM M5 [Supreme Court Civil Mediation Pilot Project Practice Direction Section 8(d)]**

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
CLAIM NO.**

**BETWEEN  
AND**

**CLAIMANT  
DEFENDANT**

**TO: (party)**

**NOTE:** Section 12 of the Supreme Court Mediation Pilot Project Practice Direction governs the conducting of mediation and communications related thereto.

Take notice pursuant to section 8 that the Mediation Referral Agency has

- 1. Selected
  - a. name
  - b. address
  - c. telephone no., fax, and e-mail

to conduct the mediation in this matter.
- 2. Scheduled the mediation session on
  - a. date
  - b. from (time) to (time)
  - c. at (place)

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 or she is also required to attend.

A copy of the Practice Direction governing procedure may be obtained at the Dispute Resolution Foundation, or the Supreme Court Civil Registry, or found on the website of

the Supreme Court at [www.sc.gov.jm](http://www.sc.gov.jm) or the Mediation Referral Agency website at [www.disputeresolutionfoundation.com](http://www.disputeresolutionfoundation.com).

When you attend the mediation session, you should bring with you any documents that you consider of central importance in the action. You should plan to remain throughout the scheduled time. If you need another person's approval before agreeing to a settlement, you should make arrangements before the mediation session to ensure that you have ready telephone access to that person throughout the session, even outside regular business hours.

(Date)

Dispute Resolution Foundation  
4 Camp Road  
Kingston 5  
Telephone No. - 906-2456/908-3657  
Fax No. - 754-9769

Copy: Mediator