

**Court- connected
Mediation under the
Supreme Court (Civil
Procedure) Rules,
2005.**

Rationale for Court-Connected Mediation

Court's duty to actively manage cases

Under rule 25.1(d), the court must further the overriding objective by actively managing cases, and this may include:-

"encouraging the parties to use any appropriate form of dispute resolution including, in particular, mediation, (if the court considers that appropriate) and facilitating the use of such procedures".

Rationale for Court-Connected Mediation (Cont'd)

- Methods of resolving disputes include:-
 1. Negotiation
 2. Arbitration
 3. Conciliation
 4. Litigation
 5. Mediation

Legislative Platform

- Rule making authority under Cap 91, s 95
Section 95 of the Supreme Court of Judicature Act, Cap. 91 empowers the Chief Justice to make rules.
- Addition of Part 73 to BCPR
Amendment to the Rules by the addition of Part 73 comprised of rules governing the procedure for mediation under the auspices of the Supreme Court.

Ethos of Part 73

To further the overriding objective by establishing a system of court- connected mediation based on a procedure for the discretionary referral of appropriate pending cases or matters to a court- approved mediator.

What is Mediation?

- Mediation is a consensual process by which parties to a dispute meet with a neutral third party with the aim of resolving a dispute or problem on the basis of self-determination.
- Mediation serves as an alternative to a dispute being resolved by a decision imposed by a judge in court.

Who is a Mediator?

- A neutral third party who conducts the mediation by facilitating and encouraging communication and negotiation amongst parties to a dispute in order to arrive at a voluntary agreement.
- The Mediator is enjoined from advising or suggesting solutions to the dispute.
- The Mediator reports only to the Court, is bound by an oath of confidentiality and must observe the Mediator's Code of Ethics.

Court- connected Mediation by Referral

Discretion of Judge

- a) The system is based on referral by a Judge (r 73.3(1));
- b) Referral is entirely at the discretion of the Judge managing the civil cause or matter (r73.4).

Request by the Parties

Parties may by consent opt for Mediation by notifying the Court by “Notice for Referral to Mediation” and the Judge may make an Order referring the claim to Mediation (r 73.3(2)).

Court- connected Mediation by Referral (Cont'd.)

Nature of Matters for referral

As per Rule 2.2 (3) of the Rules, mediation does not extend to :-

- i. Insolvency (including winding up of companies)**
- ii. Non- contentious probate proceedings**
- iii. Family proceedings.**

Note: Criminal matters will also not be assigned to mediation.

Administrative Structure

a) National Court-connected Mediation Committee

Serves as a policy-making body and acts as an advisory committee to the Chief Justice.

b) Mediation Coordinator

A person employed by the Supreme Court and appointed by the Chief Justice to manage and supervise the mediation process and lend administrative support.

Membership of the National Court-connected Mediation Committee

Chaired by Justice Courtney Abel.

Representatives of the following entities:-

1. Belize Council of Churches
2. National Trade Union Congress of Belize
3. The University of the West Indies
4. The University of Belize
5. Restore Belize
6. The Family Court
7. The Magistrate's Court
8. The Attorney General's Chambers

Membership of the National Court-connected Mediation Committee (Cont'd.)

9. The Justice of the Peace and Commissioners of the Supreme Court Association
10. Belize Chamber of Commerce and Industry

These persons are joined by the remaining Judges of the Civil Division and the Registrar, Assistant Registrar and Court-Administrator as ex-officio members.

Role of the National Court- connected Mediation Committee

The committee generally advises the Chief Justice on matters of policy and more specifically:-

- a) Is responsible for the selection of mediators to provide mediation services under Part 73;
- b) Certifies and approves, possibly in conjunction with the Judicial Education Institute of Belize, suitable courses for mediators to be placed on the “Roster of Mediators”;
- c) Approves a code of conduct for mediators;

Role of the National Court-connected Mediation Committee (Cont'd.)

- d) Monitors the performance of mediators;
- e) Maintains and review a schedule of fees for mediators and mediation services;
- f) Addresses complaints; and
- g) Assesses the efficiency of the mediation process and makes appropriate recommendation.

Role of the Mediation Co-ordinator

The mediation co-ordinator is a court- appointed officer who shall be responsible for:-

- a) Providing daily administrative, logistical and secretarial support to the system of mediation;
- b) Maintaining the Roster of Mediators;
- c) Monitoring the performance of mediators; and
- d) Disbursing fees to mediators.

Training of Mediators

The training of the candidates eligible for selection to the Roster of Mediators has been entrusted to the University of the West Indies (Open Campus) Belize based on a proposal submitted to the Mediation Committee.

Training Requirement for Mediators

Basic requirements for candidacy are:

- a) Prior mediation training ;
- b) Over 21 years of age;
- c) No criminal record;
- d) Desire to become a professional mediator; and
- e) High School Diploma or above.

Course of Training

- a) Forty (40) hours inclusive of 6 hours of practical training;
- b) Course work delivered over 5 days;
- c) Training conducted under the tutelage of:
 - 1) Mrs. Julie- Ann Ellis Bradley, an Attorney- at- Law and duly certified instructor of the UWI Open Campus Belize and
 - 2) Mr. James Rowe, an Attorney-at-Law and trained Mediator with extensive experience in mediation.

Regulating, Monitoring and Accountability of Mediators

1) Accountability & Reporting

Mediators report directly and only to the Supreme Court;

2) Discipline

Disciplinary Procedure will be set in place for Mediator's misconduct/mal-practice;

3) Applicable Laws

Relevant legislation inclusive of the Mediation Rules and Code of Ethics serve as a guideline for Mediators;

Regulating, Monitoring and Accountability of Mediators (Cont'd.)

4) Training

Training received by Mediators equips them with the skills necessary for mediation and provides guidance as to conduct and professional etiquette.

5) Supervisory & Regulatory Bodies

- Mediator's Association will be set up to further help regulate the body of Court-Connected Mediators;
- The Mediation Committee serves as a supervisory body.

Role of the Judicial Officer

- a) To identify cases suitable for mediation based on a thorough reading of the file;
- b) To possess full knowledge and comprehension of the mediation process;
- c) To encourage the parties to embark on mediation in appropriate cases;

Role of Judicial Officers (Cont'd.)

- d) To ensure that the litigants understand the *raison d'etre* of the mediation process and its mechanics.

Note: A Judicial Officer must, however, recognise that the legal issues may bear no relation to the real dispute between the parties.

Steps towards Mediation

- i. Referral by Judge and making of Order (r73.3);
- ii. Selection of Mediator by parties, or in default by the Judge (r73.6(2));
- iii. Arrangements by Mediation Co-ordinator (r73.8);
- iv. Date set for mediation session of up to three (3) hours and notice sent to the parties(r73.8(1));

Steps towards Mediation (Cont'd.)

- iv. Mediation conducted at a venue designated by the Court (r73.8(1)).
- vi. Filing of mediation agreement and entry of Order (r73.14(1)); and
- vii. Alternatively, matter re-fixed before the Judge for case management (r73.14(3)).

Termination of Mediation

1) No-Agreement or partial-agreement

Where no agreement or partial agreement is reached, the matter reverts to the Court for litigation (r73.14(3))

2) Referral back to Court/Termination by Mediator

Where parties fail to attend mediation session, the Mediator may lodge a Certificate of Non-Compliance with the Court (r73.8(9)) and the Judge may make an Order, which may include termination of Mediation session.

Termination of Mediation (Cont'd.)

3) Application by the parties

Parties may make an application to the Court setting out good and substantial reason as to why the matter should not proceed to mediation (r73.5) .

4) Application by Mediation Co-ordinator

Where a party, attorney or Mediator misconducts himself/herself the Mediation Coordinator may make an application to the Court for sanctions and the Judge may make an Order, which may include termination of the mediation session (r73.16).

Role of the Parties' Attorneys- at-Law

- a) To sensitize clients as to the purpose of mediation, its benefits and the process;
- b) To attend the mediation session with the clients;
- c) To provide advice to clients during mediation sessions;

Role of the Parties' Attorneys- at-Law (Cont'd.)

- d) To assist in the drafting of the mediation agreement; and
- e) To generally assist the court in encouraging mediation in furtherance of the overriding objective.

Note: The Attorney-at-Law shall not be allowed to directly participate in the mediation session.

Why Mediation?

Benefits of Mediation

- a) Direct participation of the litigants in the outcome;
- a) The opportunity to ventilate matters not necessarily reflected in the pleadings;
- a) The possibility of issues being identified and streamlined, even though the mediation does not result in an agreement;

Why Mediation?

Benefits of Mediation (Cont'd.)

- d) Reduction of the cost of litigation in terms of time and money;
- e) Opportunity to forge a solution, in terms not available to the Court;
- f) Reduction of the quantum of pending cases awaiting trial;

Why Mediation?

Benefits of Mediation (Cont'd.)

- g) Opportunity to address the dispute or problem without the formality and complexity of court procedures and rules of evidence; and
- h) In general, the engendering of a harmonious community by dissipation of hostility.