

**S.I. 47 of 2014****COURTS ACT***(Cap 52)***Supreme Court (Mediation) (Amendment) Rules, 2014**

In exercise of the powers conferred by section 16 of the Courts Act, the Chief Justice hereby makes the following rules—

1. These rules may be cited as the Supreme Court (Mediation) (Amendment) Rules, 2014. Citation

2. The Supreme Court (Mediation) Rules, 2013 is hereby amended as follows— Amendment of  
S.I. 72 of 2013

(a) by inserting in rule 4 after subrule (3), the following rules—

“(4) The person nominated as mediator shall accept the nomination in writing within 7 days of such nomination, unless—

(a) he or she is aware of any potential conflict of interest, whether direct or indirect, in relation to the mediation, except where all the parties to the dispute have consented in writing to his or her nomination following a written disclosure of the nature of, or the circumstances giving rise to, such potential conflict of interest;

(b) he or she is not available to conduct the mediation within

the period set out in these rules;  
or

- (c) his or her nomination has been objected to by any party in the mediation on the ground that the person nominated as the mediator under subrule (3)(b)—
- (i) is not competent or does not have sufficient experience in the subject matter of the proceeding; or
  - (ii) has not reached a satisfactory prior agreement with one or more parties as to the payment of his or her professional fees as mediator.

(5) Where any of the circumstances in subrule (4) apply, he or she shall communicate in writing of his or her refusal to accept the nomination within 7 days.

(6) Where any of the circumstances referred to in subrule (4) arise after the nomination is accepted, the mediator shall immediately withdraw from mediation in accordance with rule 17(1)(e).

(7) A mediator shall not preside over any proceeding or, as the case may be, provide professional service as an attorney or notary, in relation to the subject matter of any proceeding in

which he or she is or has been a mediator under these rules.”;

- (b) by inserting after rule 4, the following rule—

“Fee to be  
charged by  
mediator

4A.(1) A person nominated as mediator under rule 4(3)(b) shall not charge for his or her services as a mediator except by agreement with one or more parties to the proceeding referred for mediation prior to the commencement of the first mediation session.

(2) Any fee agreement reached between the mediator and one or more parties to the proceeding referred for mediation shall be recorded in writing and disclosed to all the parties and to the Registry of the Supreme Court before the commencement of the first mediation session, and any subsequent change to that agreement shall be recorded and disclosed without any delay in the same manner as provided in this rule.

(3) The fees agreed upon under this rule shall not be linked to the outcome of mediation or to the nature or content of any settlement of the dispute.

(4) The Chief Justice may review the fee agreement under this rule for transparency and fairness and, in particular, with reference to the principles set out in rule 13 of the Legal Practitioners (Professional Conduct) Rules, 2013.

Panel of  
authorised  
persons

**4B.(1)** The Chief Justice shall make a panel of persons authorised under rule 4(3)(b).

(2) Any person, who—

(a) is admitted to practice law in Seychelles or any other country or jurisdiction in terms of the Legal Practitioners Act; or

(b) has completed mediation training,

may apply to the Chief Justice for authorisation under rule 4(3)(b) and the Chief Justice shall take into account their level of experience in mediation or as a legal practitioner in considering the application.”;

(c) by repealing rule 6 and substituting therefor the following rule—

Role and  
responsibilities  
of mediator

“6.(1) The mediator shall conduct the mediation without fear or favour, ill will, bias or prejudice, and shall ensure that his or her conduct maintains and enhances the confidence of the parties in the impartial administration of justice.

(2) The mediator shall respect and promote the right of all parties to mediation to make their own informed and voluntary decisions regarding the possible resolution of any issue in dispute.

(3) The mediator shall endeavour to enable the parties to resolve their dispute in a fair and efficient manner.

(4) For the purposes of subrules (2) and (3), the mediator shall have all powers necessary to facilitate mediation between the parties.

(5) Subject to this rule, the mediator may regulate the mediation in such manner as he or she thinks fit and shall adopt an informal and flexible approach taking into account any wishes expressed by the parties.

(6) The mediator shall, in the first mediation session, explain the substance of this rule and rules 10 and 11 to the parties, and shall strictly observe the requirements of those rules throughout and after the mediation.

(7) The mediator shall—

(a) treat the parties to the mediation fairly and equally, taking into account the circumstances of the case;

(b) endeavour to ensure that all parties to the mediation understand the nature of the mediation process, the role of the mediator,

and the consequences of reaching or not reaching a mediated settlement; and

- (c) advise the parties, where appropriate, to obtain independent legal or other professional advice.

(8) The mediator may, at any time, offer help or guidance to the parties, including expressing, without prejudice, his or her views on the dispute, but shall do so without giving the impression that he or she is advocating on behalf of one or more parties or applying pressure to accept any particular settlement.

(9) The mediator may, on his or her own motion or at the request of a party, conduct private meetings with one or more parties to the exclusion of any other person, including attorneys or other authorised representatives.

(10) Where the mediator considers that a party is unable to give informed consent to participation in mediation, or to the terms of a proposed settlement, the mediator shall take appropriate action, which may include adjourning the process to enable the appointment of a representative, or filing a declaration terminating the mediation under rule 17(1)(d).

(11) The mediator may, where the services of an expert are required on a technical matter, after consultation with the parties, appoint an expert whose advice shall be given in an independent and fair manner and the costs for the services of the expert shall be borne in equal proportion by all parties or otherwise as the mediator may direct.

(12) The mediator may make a written request to any third party having an interest in the dispute to attend one or more mediation sessions where he or she considers that the participation of the third party may assist in resolving the dispute.

(13) Where the mediator considers that the mediation process or the underlying dispute may raise significant ethical concerns (including the furtherance of any crime), the mediator shall take appropriate action, which may include filing a declaration terminating the mediation under rule 17(1)(d).”;

(d) by inserting after rule 17, the following rules —

“Supervision  
of mediation

18.(1) The Chief Justice shall —

- (a) be responsible for supervising the conduct of mediators under these rules; and

- (b) receive and deal with complaints made against a mediator arising from the mediation process.

(2) Where the Chief Justice, after making such inquiry as he or she considers appropriate, is satisfied that a mediator has contravened any provision of these rules, the Chief Justice may, subject to any other written law applicable to the mediator —

- (a) withdraw the mediation from the mediator or take such other action as the Chief Justice considers appropriate; or
- (b) in case of a mediator authorised under rule 4(3)(b), suspend or revoke the authorisation granted under that rule.

(3) The mediator shall be given a reasonable opportunity of being heard in the matter before taking any action under subrule (2).

(4) The decision of the Chief Justice under this rule shall be communicated in writing to —

- (a) the mediator and the complainant, if any; and

- (b) in the case of a mediator authorised under rule 4(3)(b), any professional body responsible for regulating the profession of the mediator.

(5) The Chief Justice may, if considers appropriate, make the sanctions public.

Proceedings  
against  
mediator

19.(1) A mediator referred to in rule 4(3)(a) shall, while conducting a mediation under these rules, be deemed to be performing a judicial function for the purposes of article 119(3) of the Constitution.

(2) Where an attorney-at-law or other legal practitioner is a mediator authorised under rule 4(3)(b), the attorney-at-law or legal practitioner while conducting the mediation shall —

- (a) not be deemed to be conducting or managing a case in court for the purpose of section 19(1) of the Legal Practitioners Act;
- (b) not have a legal practitioner-client relationship with any party to the mediation; and
- (c) otherwise be acting as a legal practitioner for

the purposes of the Legal Practitioners Act and the rules or regulations made thereunder.

(3) No civil proceeding shall be instituted against a mediator for any act or omission in the course of mediation, unless —

- (a) the subject matter of any civil proceeding has been considered by the Chief Justice with reference to complaint or disciplinary proceedings;
- (b) that complaint or disciplinary proceedings has concluded; and
- (c) the Chief Justice has granted leave to file the proceeding.

(4) No criminal proceeding shall be instituted against a mediator for any act or omission in the course of mediation without the prior written consent of the Attorney General.”.

**MADE this 9th day of July, 2014.**

**DURAIKANNU KARUNAKARAN  
ACTING CHIEF JUSTICE**

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