

Supreme Court (Seventh Amendment) Rules, 2006

The Supreme Court has made these Rules by exercising the power given by Section 11 of the Supreme Court Act, 1991, as it was necessary to amend the Supreme Court Rules, 1992.

1. Brief name and commencement:

- (1) These Rules shall be called “Supreme Court (Seventh Amendment) Rules, 2006”.
- (2) These Rules shall come into force immediately.

2. The following parts (j), (k) and (l) have been added after part (i) of Rule 2 of the Supreme Court Rules, 1992 (hereafter referred to as Principal Rules):

- (j) “Mediation” is a voluntary and confidential process of dialogue and negotiation for the intervention of a neutral third party to facilitate the parties to reach a mutually acceptable resolution of the dispute.
- (k) “Mediator” means an individual or organization selected by the parties to a dispute to work as a facilitator with the objective of causing mediation on any or all the disputes between them. This term shall also denote a mediator selected by the court in agreement of the parties.
- (k) “Mediation Organization” means any organization/ association formed as per law for the purpose of providing mediation service to the parties involved in a dispute (case).

13 (f). Mediation Committee: For the purpose of approval of the names of mediators, and for monitoring and supervision, including other policy management, of mediation activities carried out by the subordinate courts, there shall be a mediation committee with the followings as members:

- (a) A Judge designated by the Chief Justice
- **Chairperson**
- (b) Another judge designated by the Chief Justice – **Member**
- (c) Registrar, Supreme Court, - **Member**
- (d) President, Supreme Court Bar Association - **Member**

(e) Joint Registrar, Litigation and Writ Division, Supreme Court,

- Member Secretary

18. The following Rules — 65 (b), 65 (c), 65 (d), 65 (e), 65 (f), 65 (g), 65 (h), 65 (i), 65 (j), 65 (k), 65 (l), 65 (m), 65 (n), 65 (o) — have been added after 65 (a) of the Principal Rules.

65 (b). Mediators' Roster:

- (1) The Registrar shall prepare a roster of potential mediators from among persons who have received training in mediation or are experienced in mediation, or who have good moral character, impartiality and commitment to mediation profession. Such a person could be a former judge or a legal professional, or an official of the local government body, or a social worker, or an incumbent or retired government officer, or a professor or teacher, or any individual or organization that have been involved in mediation. In the roster, the Registrar should include the details such as name, address, profession, experience, and training received.

But, those who have not received mediation training, or who have immoral character, or who have been punished for criminal offence, shall not be included in such a roster.

- (2) The Court shall publish the roster of mediators prepared as per Sub-Rule (1) after it is approved by the Mediation Committee.
- (3) An individual mentioned in Sub-Rule (1) may request for inclusion of his name in the Roster of mediators. If such a request is made, his name may be included in the roster of mediators considering its appropriateness.

65 (c). Roster of mediators to be updated:

- (1) The court shall update the roster of mediators each year.
- (2) While updating the roster of mediators, the names of following mediators shall be removed from the roster in the following circumstances:
 - (a) If he/she dies,
 - (b) If he/she requests for exclusion of his/her names from the roster of mediators,
 - (c) If an order is issued to remove the name from the roster as per Sub-Rule (4) of Rule 65 (h),
 - (d) If he/she is punished for immorality or criminal offence.
 - (e) If the organization registered in the roster is annulled or dissolved.

- (3) The court shall publish a notice if any mediator's name is removed from the roster of mediators as per Sub-Rule (2).

65 (d). Referral to mediation:

- (1) The Bench, if it deems a case appropriate for mediation and if the parties to a dispute agree to go for mediation, may order for referral of the case to mediation by a mediator or organization enrolled for the purpose of mediation. The registrar himself may order for referral of the case to mediation if both the parties in the dispute request for mediation in writing.
- (2) The case shall be ordered for referral to mediation for the second time in the agreement of all the parties to the dispute and if the Bench deems that the case is appropriate for re-mediation.
- (3) While referring the case for mediation, the court may fix a period not exceeding three months depending upon the complexity of the case, the number of parties involved, issues of the case and the time normally required in mediation.
- (4) Normally, the case should be referred for mediation by a single mediator.
But, if the parties in the dispute request for mediation by more than one mediator or if the court, upon considering the complexity of the case and the number of people involved in the dispute, deems that the case should be mediated by more than one mediator, it shall issue order, with the consent of the parties, that mediation shall be done by mediators not exceeding three in number.
- (5) In the event of the appointment of a single mediator, a mediator during the course of mediation shall request the court for appointment of additional mediators in writing with the consent of both the parties in the dispute. If such a request is made, an order shall be issued for appointing more mediators not exceeding three in number.

65 (e). Selection of mediator:

- (1) An individual or organization selected by both the parties to a dispute shall be appointed as a mediator. But if the parties cannot agree on the selection of a mediator and request the court for the appointment of a mediator, the court itself shall appoint the mediator.
- (2) The Registrar shall cause to select mediators as per Sub-Rule (1) under these Rules.

- (3) If the parties in the dispute request to appoint an individual or an organization who is not listed on the roster of mediators as a mediator for mediating their dispute, such a person or organization shall be appointed as mediator only after completing the procedures for inclusion of the name in the roster of mediators.

65 (f). Change of mediator:

- (1) A mediator shall not be replaced except in the following circumstances:
 - (a) If the mediator dies, or
 - (b) If the parties agree to change the mediator, or
 - (c) If any party in the dispute file application in the court expressing distrust towards a mediator, or
 - (d) If the mediator informs the court about conflict of interest on the subject matter, or
 - (e) If the mediator, during the course of mediation, is found to be involved in the conduct or activity against the ground rules of mediation, or
 - (f) If the mediator appointed to mediate the dispute is unable to perform as a mediator due to other reasons.
- (2) Normally, the new mediator changed/appointed as per Sub-Rule (1) shall accomplish his work within the time stipulated previously. But, if the time frame scheduled previously is less, and if there are enough appropriate grounds for providing additional time, an additional time of one month shall be given for mediation.

65 (g). Procedure to refer to the mediator:

- (1) If any case has been ordered for referral to the mediator for the purpose of mediation, the parties in the dispute should be notified to be present before the mediator on the fixed date including the following things, and the mediator should also be informed about the same.
 - (a) Summary of the case (or photocopy of principal documents),
 - (b) The names, surnames, addresses, telephone numbers, e-mail and facsimile addresses of the parties to the dispute or their authorized attorneys, if any, as far as possible.
 - (c) The venue to conduct mediation.

- (2) If the mediator requests to make available any specified copies of documents, the court should provide such documents to the mediator.
- (3) While referring the case to the mediator, the court shall fix date for the disputant parties to appear before the court in the original files considering the time that is expected to take for the mediation.

But, the parties to the dispute should appear before the court within seven days excluding the time necessary for journey to the court if the mediator fixes a time for their appearance in advance of the date fixed by the court.

65 (h). Conduct of the mediator:

- (1) The mediator should follow basic things and conduct about mediation as provided by the guidelines to be made and enforced by the Supreme Court and conduct mediation as per the existing laws.
- (2) If the mediator believes that mediation cannot be completed within the date stipulated by the court, he shall inform the court about the same.
- (3) The mediator shall not disclose anything expressed by any party to the dispute or any communication made by a party exclusively to the mediator during the course of mediation without the consent of such a party. The mediator or mediation organization shall not disclose any documents, notes or materials prepared during the mediation to anyone except parties to the dispute without the consent of the parties concerned.

But, this restriction shall not remain effective when the mediator believes that there is risk of his or someone else's life or (physical or mental insecurity), or child abuse or if there is threat to the security of any party to the dispute or a third party.

- (4) The mediator's name may be removed from the roster of mediators if he/she is found to be involved in activities against the conduct of the mediators pursuant to these Rules and other guidelines under these Rules.

But, such a mediator shall be given opportunity to state his argument prior to removing his name from the roster of mediators as per this Regulation.

65 (i). Procedures during mediation:

- (1) Mediation discussion and other activities related to mediation shall be carried out at a place provided by the court or any other appropriate place appointed by the mediator with the consent of the parties to the dispute.
- (2) It shall be the duty of the parties to appear before the mediator and participate in mediation discussion at a date and time fixed by the court for the purpose of mediation. The mediator shall inform the court if any party to the dispute does not present before the mediator at the appointed time and date and if he/she does not attend the mediation session, and court may take necessary action in such a situation.
- (3) During the course of mediation, while discussing separately or in a group with the parties to the dispute, counsels of the parties, or a person each selected by the parties, experts on the disputed matter and other reputed persons, the mediator should play the role of a facilitator.
- (4) With the consent of the parties and under these Rules, the mediator may prepare procedures for conducting mediation on his own.
- (5) The mediator may meet with a party in a private session with the consent of the parties.
- (6) With the consent of the parties, the mediator may conduct mediation sessions by telephone, or by videoconference or by any other appropriate means.
- (7) The parties will not be required to undergo a procedure of stay of the appointed day as in the court in the event of failure to be present before the mediator. If a party fails or both the parties fail to be present before the mediator at the appointed day fixed by the court or the day fixed by the mediator for mediation, such a failure may be interpreted as lack of interest in coming to a compromise settlement and the mediator shall prepare a report and submit to the court accordingly after seven days from the fixing of such dates.

But, the mediator shall further mediation process if both the parties attend the mediator within seven days.

65 (j). Preparation of document and settlement:

- (1) If, during the course of mediation, the parties mediate and agree settle the case, the mediator should draw or cause to draw a document of settlement and submit it to the court as soon as

possible. The court shall mediate as per such a document under the law. No fees shall be levied by the court on such agreement.

- (2) The court shall make a stipendiary legal practitioner prepare a document of settlement if the parties to the dispute request the court to provide one for the purpose of preparing document of settlement.

65 (k). Procedures to be followed in case of failure to settle:

- (1) If the parties fail to settle the case, the mediator should submit a report before the concerned court within seven days stating that a compromise agreement could not be reached. If such a report is received, the court shall carry out necessary action and settle the case.
- (2) In the event of failure to receive the report from the mediator even after the expiry of seven-day period from the time set for mediation by the court as per Sub-Rule (1), the court shall initiate procedures for the settlement of the case as per the law thinking that mediation has failed.
- (3) It shall be the duty of the parties to be present before the court within seven days from the day of settlement excluding the time necessary for journey to the court.

65 (l). Mediator oath of office: The mediator, once included in the roster of mediators, shall take an oath of office before the Chairman of the Mediation Committee.

65 (m). Fee for mediation: No other fees shall be levied for conducting mediation except taking appropriate amount with the consent of parties to the dispute considering their social and economic status, possible time necessary for conducting mediation.

65 (n). To keep statistics: The court shall separately include in its monthly and annual reports the statistics about cases settled through mediation. But facts about the cases shall not be mentioned in such records.

65 (o). Officials to be deputed: The court may assign appropriate officials for counseling the parties in the dispute for the purpose of encouraging them to opt for mediation procedures after giving both of them the same date for presence.

65 (p). Manual to be made: The Supreme Court shall prepare and enforce a manual for the purpose of conducting mediation proceedings, including basic rules to be followed by the mediators.