

Supreme Court Guidelines for Conducting Mediation, 2006

Preliminary:

The Supreme Court has made and enacted these Guidelines by exercising the power given by Rule 65 (p) of the Supreme Court Rules, 1992 for the purpose of conducting mediation.

1. Brief name and commencement:

- (1) These Guidelines shall be called “Supreme Court Guidelines for Conducting Mediation, 2006”.
- (2) These Guidelines shall come into force immediately.

2. To prepare mediators’ roster:

For the purpose of Rule 65 (c) of Supreme Court Rules, 1992, a roster of mediators should be prepared by adopting the following procedures:

- (1) Applications shall be called from individuals and organizations willing to be included in the roster of mediators to be prepared pursuant to Sub-Rule (1) of Rule 65 (c) of the Supreme Court Rules, 1992, and a notice shall be published as per Schedule-1.
- (2) A notice pursuant to Sub-Section (1) should be pasted on the notice board of the Supreme Court. Such a notice may also be pasted in offices or places where people gather.
- (3) Individuals and organizations willing to include their names in the roster of mediators should apply by mentioning necessary details as per the models provided in Schedule -2.
- (4) The court should prepare and approve the roster of mediators considering the details included in the applications pursuant to Sub-Section (3).
- (5) A roster including names, surnames and addresses of the mediators approved by the court as per Sub-Section (4) should be pasted on the notice board of the Supreme Court in the model pursuant to Sub-Section (3) and a detailed book along with their photographs should be kept in the court.
- (6) A notice in the model pursuant to Schedule-4 should be dispatched to the mediator mentioning the details regarding the inclusion of his/her name in the roster of mediators.

3. **To assign cases for mediation and selection of mediators:** The following procedures should be followed while selecting a mediator and referring a case to mediation:

- (1) While issuing orders for mediation, consideration must be made so as not to do anything against public policy and interest and misuse of judicial process. Such an order shall be written in the model of Schedule (5).
- (2) One or all the parties to the dispute shall submit an application before the Registrar in the model of Schedule-6 for adopting mediation process. In case of application from only one party, the court shall make efforts to get approval of another party for adopting mediation process. The court shall summon the concerned party through an authorized attorney if the party has hired the authorized attorney instead of attending the court in person.
- (3) Following the issuance of order for mediation as per Sub-Section (1), the Registrar should, under the directives in the order, cause the parties to the dispute to select the name of an individual or organization as a mediator from among those listed in the roster of mediators. Such a selection document shall be in the model of Schedule-7.
- (4) In the situation of appointment of one or more than one mediator, the individual or organization approved by the parties should only be appointed the mediator.
- (5) The Registrar should give appointment letters to the mediators selected as per Sub-Section (3) in the model pursuant to Schedule-8. The following things should be included in the appointment letters to be sent to the mediators by mentioning the place for conducting mediation:
 - (a) Summary of the dispute (case) or photocopy of the main documents,
Note: While sending the summary or photocopy of the documents it would be adequate to include the disputed question in the case (differing opinions) and brief information about the case.
 - (b) Two copies of the forms of the report to be submitted to the court after the settlement of mediation discussion pursuant to Schedule -9

4. **Mediator's function:** The mediator shall do the following things except those mentioned in the Supreme Court Rules, 1992 (2049 BS):
 - (1) To study copies of manuals and guidelines relating to mediation made available to him,
 - (2) To identify the subject matter of the dispute,
 - (3) To prepare time-table for the execution of works, follow it, and maintain regularity.
 - (4) To have knowledge of law and practice relating to mediation and deed of agreement or reconciliation.

5. **Basic rules to be followed by mediators:**
 - (1) Throughout the mediation process, the mediator should realize responsibility towards judicial process, commitment towards oath of office, and maintain impartiality;
 - (2) The mediator should inform the parties about his personal relation with the parties or their legal practitioners, if any, prior to commencing mediation;
 - (3) The mediator who has personal interest on the subject matter of the case should not conduct or cause to conduct mediation on such cases, and the mediator should inform the parties if he has conflict of interest on the subject matter during the mediation, and he should withdraw from the case unless parties' consent in writing to the mediator's continuing participation in the mediation;
 - (4) The mediator should inform the parties about the following facts at the start of mediation process:
 - (a) The role of the mediator, nature of mediation process and procedures to be followed in course mediation;
 - (b) The mediators only suggest and facilitate the parties to reach to the agreement voluntarily;
 - (c) It is the job of the parties to reach to an agreement or settlement;

(d) No other persons shall be allowed during the mediation process without the consent of the parties; the things expressed during the course of mediation shall not be recorded either orally or in writing, and the things done during mediation shall be confidential.

(e) The mediator not provide legal advice to any party, and

(f) The parties to be able to withdraw from the mediation process any time they want.

(5) Mediation should not be conducted or caused to be conducted without the presence of all the parties except with the consent of the parties to the dispute.

(6) The mediator shall provide equal opportunity to the parties while giving time for expressing their opinions on the subject matter of the dispute during the course of mediation process.

6. **Basic conduct to be followed by mediator:** The basic conduct to be followed by the mediator shall be as follows:

(1) The mediator should not use information and messages received during the course of mediation for his personal benefit or interest;

(2) An attorney who is involved in a case as a mediator shall not be allowed to work as a representative of the case or as a neutral/arbitrator;

(3) The mediator should not take or try to take any cash, goods or services directly or indirectly from the parties or any other persons except the fees to be received with the agreement of both the parties to the dispute;

(4) If any party to the dispute suspects his impartiality at the start or during any stage of mediation discussion, the mediator should inform the court about the same and withdraw from mediation process;

- (5) If the mediator receives new information about his relation with the parties or the subject matter of dispute after the start of negotiation and sees that he cannot remain impartial and neutral during the negotiation, he should immediately withdraw from the mediation process by informing the parties and the court about the same; and
- (6) The mediator can encourage the parties to the dispute for legal advice or suggestion if he finds that they need legal advice and professional counseling during the mediation process, but except as a facilitator, he should not himself provide any legal advice or professional counseling that can be beneficial to only one party;
- (7) The mediator should not hold private informal meetings with a party without the consent of the other party to the dispute;
- (8) The mediator should not be biased against or in favor of any party, and should not favor only one party;
- (9) The mediator should not put any party under undue pressure, impress or lure;
- (10) The mediator should not cause mediation by meeting gross injustice to one party;
- (11) Mediation process should not be conducted or caused to be conducted against public policy and rights and interest, or by misusing judicial process.

7. **To remove mediators' name from the roster:** If the court receives any complaint against a mediator stating that he worked or conducted against the ground rules of mediation, a clarification should be taken from him in the model of Schedule-10, and if the complaint sounded reasonable a notice should be published stating the removal of the mediator's name from the roster of mediators in the model of Schedule-11.

8. **Oath of Office:** The mediator, once included in the roster of mediators, shall take the oath of office in the model pursuant to Schedule -13.

9. **To keep Record:** A record of cases referred for mediation shall be prepared in the model of Schedule-14.

Schedule –1

Relating to Sub-Section-1 of Section 2
Supreme Court

Notice

A roster of mediator is being prepared to resolve the pending cases prescribed by the court pursuant to Rule 65 (b) of the Supreme Court Rules, 1992 (2049 BS). Therefore, interested individuals or organizations are requested to apply within 30 days to enlist their names in the roster.

An application form is available at the court.

Date:

Registrar

Schedule –2

(Relating to Sub-Section 3 of Section 2 of the Guidelines)

The Supreme Court
Katmandu

Registration No:
Registration Date:

Subject: - Application to be enlisted as a mediator

As I am interested to enlist my name in the roster of mediators in accordance with Rule 65 (b) of the Supreme Court Rules, I hereby apply with following personal details to enlist in the roster.

If my name is enlisted in the roster of mediators, I shall perform assigned responsibility to mediate the disputing parties honestly.

The details mentioned in the application and my personal details are true. I shall bear the consequences if proved otherwise.

Date:

Yours
(Signature of applicant)

(Name)

Personal Details

Photo (Passport size)

- Name surname:
- Name of father/ Mother:
- Date of Birth :
- Occupation:
- Address:

Permanent

District	VDC/Municipality	Ward No
House No	Village/Area	
Telephone	Fax	
Email		

Temporary

District	VDC /Municipality	Ward No
House No	Village/ Tole	

Telephone	Fax
Email	

Marital status:

Married :	Husband/Name of spare
Unmarried	

- Academic qualification (SLC and above only)
In order beginning with the latest

S.N	Qualification	Name of institute(studied)	Date of study

- Received Training on mediation Yes /No

If yes:

Name of institute: _____ Date from to _____
Period of training: _____

- Experience on social or public service

Scope of Work	Duration	Position
	From To	

- Area of expertise
- Knowledge of language (Dedicate)

Language	Spoken	Reading	Writing

- Details of service if involved in Governmental /Non-governmental service (latest)

Office	Duration	Position
	from to	

- Whether punished in the criminal offence of any kind like corruption, fraud, and forgery or not. Yes / No.
- Is there any involvement of applicant or family or close relatives in any case *sub judice* in Court? Yes/No

Yes	Plaintiff :	Defendant:
	Case:	No.: Date of registration:
No		

- Time and Duration comfortable or uncomfortable for mediator (if any):
- Other necessary matter if any:

Above details are true.

Signature:

Application form for organization

1. Name of applicant organization

2. Of organization:

Registration No:	Date of Registration:
Name office registration:	
Renewal Date:	

3. Address of Organization:

District :	VDC / MC:	Ward No:
House No:	Village/ Area:	
Telephone:	Fax:	
Email:		

4. Major Objective of establishment:

5. Of the operators of organization:

Name	Address

Name list of mediators:

Name	Surname	Address	Qualification
------	---------	---------	---------------

--	--	--	--

6. Experience or proficiency about mediation:

7. Other information if any:

Above details are true

Seal of organization

Executive Head or
Authorized Officer's
Name surname:
Signature: -

Schedule –3

(Related to subsection 5 of section 2)

Supreme Court

S N	Name of mediators	Addre	Academic qualifications	Experience	Knowledge on Language	Enlisted date	Details of experience

Registrar

Schedule –4

(Relating to Sub-Section 6 of Section 2)

Notice to the Mediator /Organization about enlistment in the roster of mediators

**Supreme Court
Mediation Committee**

Dispatch No:

Date:

Mr./Mrs. ...

Subject: Notice of enlistment as mediator

Sir,

It is my pleasure to inform you that you are enlisted as mediator as per the Rule 65 (b) of the Supreme Court Rules, 1992. If any case is referred by this court for meditation in the future, it is expected that you will make your valuable contribution to resolve the dispute within the ambit of law and guidelines on mediation.

It is also informed that before being involved in mediation process, you are required to take an oath of before the chairperson of Mediation Committee of the Supreme Court.

Date: -.....

Member Secretary

Schedule –5
(Relating to Sub- Section (1) of Section 3)

**Supreme Court
Bench**

Hon. Justice

Hon. Justice

Order

..... Appellant

Versus

..... Opponent

Case: -

The case has been referred for the settlement through mediation. Present the case before the bench after completion of mediation process withindays pursuant to the Supreme Court Rules 1992.

Justice

Justice

Schedule –6
(Related to Sub-Section (2) of Section 3)
Application to have the case referred to mediation

Registrar,
Supreme Court

Subject: Request for referral of case for mediation.

.....appellate

Versus

..... Respondent

Case:-

I/ We appellant/ appalle hereby made an appeal before the Supreme Court that above mentioned case be referred for settlement through mediation.

The details mentioned in the application are true. I shall bear the consequences if proved otherwise.

Applicant/Applicants

.....

Schedule -7

(Relating to Sub-Section 3 of Section 3)

Appellant...Plaintiff/ Defendant

Appallee.....Plaintiff/ Defendant

In accordance with the orders of the Court (Bench) dated..... For the selection of mediator in the civil appeal /criminal appeal No...we have consciously selected Mr..... from the roster of mediators. We have no objection to convey the mediation process by the mediator.

Signature of Appellant

Signature Appallee

Details of authority asking for selection of mediator

Name:

Signature:

Schedule –8

(Related to sub-section (5) of section 3)

Format of letter to mediator

Supreme Court

Received letter no and date:
Case No:

Dispatch No:
Date:

Mr./Mrs....
...

Subject: In context to convening mediation.

Dear...

The summary of the case is attached herewith as the parties in the case between plaintiff...and defendant ...have been notified to be present before you on...(Date) for mediation of their case under Rule 65 (d) of the Supreme Court Regulation 1992.

It is hoped that you would make a valuable effort to mediate the disputing parties following the basic rule for mediators. The assigned task is required to be completed within ...day/ month from the date of letter received. If additional time is needed more than allotted, please make a request to the court with reasonable grounds not exceeding three months. If the parties agreed to settle the dispute through mediation within given time, submit the settlement deed immediately to the court. You are also requested submit the details within seven days in case the mediation fails and inform parties to appear in the court.

Thank you for your cooperation.

Enclosed Documents:

- 1.....
- 2.....
- 3.....

Registrar

Schedule –9

(Relating to Sub-Section 5 (b) of Section3)

No of letter received and date:

Case No: -

Report submitted to the Supreme Court

As I was appointed a mediator for the case..... between plaintiff..... and defendant..... Date..... having discussion with the parties in a prescribed way. The case has been settled having mediated /failed to settle through mediation. Therefore, this report is submitted before the court. The parties to the dispute have been advised to attend the court on.. (Date).

Documents attached

- 1.
- 2.

Name and signature of Plaintiff

Name and signature of Defendant

Name of Mediator:

Signature:

Date:

Schedule –10
(Relating to Section 7)
Supreme Court
Mediation Committee

Dispatch No:
Mr. / Mrs.
.....

Date:

Subject: Clarification

Sir,

You were enlisted in the roster of mediators as provisioned in the Supreme Court Rules 1992. A copy of complaint made against you for having acted /behaved in contrary tobasic rules of mediation has been attached herewith. Therefore, you are required to be present before the committee with your clarification as to whether or not your name should be removed from the roster of mediators or whether the complaint made against you is true or not. You are also informed that sub rule 4 of Rule 65 (h) of the Supreme Court Rules shall be enacted if you failed to submit satisfactory clarification.

Member Secretary

Schedule –11
(Relating to Section 7)
Notice for removal of names
Supreme Court
Notice for removal of name from roster

This notice has been published to inform that following persons/organizations have been removed from the roster of the mediators prepared pursuant to Rule 65 (b) of the Supreme Court Rules 1992, (2049 BS), as the mediation committee took the decision in this regard dated on ... according to Rule 65 (h) of the Regulation.

SN	Name,Address	Remarks

Date:

Registrar

Schedule –12
(Related to Rule 65C- Notice for updating of roster)
Supreme Court
Notice for updating of name from roster

This notice has been published to inform that following persons/organizations have been added and following have been removed from the roster of the mediators prepared pursuant to regulation 65 (c) of the Supreme Court Rules 1992 (2049 BS). As the mediation committee in this regard took the decision dated on ... for the purpose regulation 65(c) of the Regulation.

A. Name of the person and organization added in the roster.

SN	Name, Address	Remarks

B. Name of the person and organization removed from the roster.

SN	Name, Address	Remarks

Date:

Registrar

Schedule –13
(Relating to Section 8)
Format of oath

I in the name of God with honor to truth take oath that I shall perform the task avoiding partiality, and maintaining confidentiality and neutrality with due respect to judicial process and with the sprit of dedication. Additionally, I shall discharge the given responsibility honestly being obedient by the conduct of a mediator and grand rule of the mediation.

Date...

Name...

Signature...

