

The U.P. Civil Procedure Mediation Rules, 2009

UTTAR PRADESH

India

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Rule THE-U-P-CIVIL-PROCEDURE-MEDIATION-RULES-2009 of 2009

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The U.P. Civil Procedure Mediation Rules, 2009Published Vide Notification No. 1253/7-Nyaya-2-2009-319-08, Dated 13.08.2009, published in the U.P. Gazette, Extraordinary, Part 4, Section (Kha), Dated 13.08.2009In exercise of the rule-making power conferred under Part X of the Code of Civil Procedure, 1908 and Clause (d) of sub-section (2) of Section 89 of the said Code, and all other powers enabling it in this behalf, the High Court of Judicature at Allahabad makes the following rules.

1. Short title and commencement. -

(i)These rules may be called the Uttar Pradesh Civil Procedure Mediation Rules, 2009.(ii)They shall come into force from the date of their publication in the Official Gazette.

2. Extent. -

These rules shall apply to all Court annexed mediation with regard to any suit or other proceeding filed/pending in any Court subordinate to the High Court of Judicature at Allahabad. The mediation in respect of any suit or other proceeding may be referred to the Mediation and Conciliation Centre set up in the district. Upon such a reference being made to the Mediation and Conciliation Centre, these rules will apply.

3. Appointment of mediator from the panel under Rule 4 by agreement of the parties. -

(a)Parties to a suit may all agree on the name of the sole mediator for mediating between them.(b)Where there are two sets of parties and are unable to agree on a sole mediator, each set of parties shall nominate a mediator.(c)Where there are more than two sets of parties having diverse

interests, each set shall nominate a person on its behalf and the said nominees shall select the sole mediator and failing unanimity in that behalf, the Court shall appoint a sole mediator.

4. Panel of mediators. -

(a)(i) The District and Sessions Judge in each district shall, for the purpose of appointing mediator to mediate between parties in suits or other proceedings, prepare a panel of mediators, within a period of sixty days of the commencement of these rules, after obtaining the approval of the High Court to the names included in the panel, and shall publish the approved list of mediators on their respective notice board with copy to each Bar Association in the District Courts. (ii) Copies of the said panels referred to in Clause (a)(i) shall be forwarded to all the outlying Courts subordinate to the District and Sessions Judge concerned and to the Bar Associations attached to each of the outlying Courts. (b) The consent of the persons whose names are included in the panel shall be obtained before empanelling them on proforma as set out in Schedule 1. (c) The panel of names shall contain detailed annexure giving details of the qualifications of the mediators and their professional or technical experience in different fields. (d) The panel of mediators appointed under Clause (a) shall normally be for a period of three years from the date of appointment and further extension of the panel of mediators or any mediator shall be at the discretion of the District and Sessions Judge with the prior approval of the High Court. (e) The District and Sessions Judge with prior approval of the High Court, may in his discretion, from time to time, add or delete any person in the panel of mediators.

5. Qualifications of persons to be empanelled under Rule 4. -

The following persons shall be treated as qualified and eligible for being enlisted in the panel of mediators under Rule 4, namely :- (a) Retired on superannuation District and Sessions Judges and retired on superannuation Additional District and Sessions Judge of the Uttar Pradesh Higher Judicial Service; (b) Legal practitioners with at least fifteen years standing at the Bar at the level of the Supreme Court or the High Court or the District Courts; (c) Experts or other professionals with at least fifteen years standing; (d) Persons and institutions who/which are themselves experts in the mediation and have been approved and recognized by the High Court

6. Disqualification of persons. -

The following persons shall be deemed to be disqualified for being empanelled as mediators :- (i) any person who has been adjudged as insolvent or is declared of unsound mind; (ii) or any person against whom criminal charges involving moral turpitude are framed by a Criminal Court and are pending; or (iii) any person who has been convicted by a Criminal Court for any offence involving moral turpitude; (iv) any person against whom disciplinary proceedings or charges relating to moral turpitude have been initiated by the appropriate Disciplinary Authority, which are pending or have resulted in a punishment; (v) any person who is interested or connected with the subject-matter of dispute or is related to any one of the parties or to those who represent them, unless such objection is waived by all the parties in writing; (vi) any legal practitioner who has or is appearing for any of the parties in the suit or in any other suit or proceedings; and (vii) such other categories of persons as may be notified by the High Court.

7. Venue for conducting mediation. -

The mediator shall conduct the mediation at one or other of the following places :-(i)Venue of the Lok Adalat or permanent Lok Adalat;(ii)Any place identified by the District Judge within the Court precincts for the purpose of conducting mediation;(iii)Any place identified by the Bar Association or State Bar Council for the purpose of mediation, within the premises of the Bar Association or Suite Bar Council, as the case may be;(iv)Any other place as may be agreed upon by the parties subject to the approval of the Court.

8. Preference. -

The Court shall, while nominating any person from the panel of mediators referred to in Rule 4. consider his suitability for resolving the particular class of dispute involved in the suit and shall give preference to those who have proven record of successful mediation or who have special qualifications or experience in mediation.

9. Duty of mediator to disclose certain facts. -

(a)When a person is approached in connection with his proposed/possible appointment as a mediator, he shall disclose in writing any circumstances likely to give rise to a justifiable doubt as to his independence or impartiality;(b)Every mediator shall, from the time of his appointment and throughout the continuance of the mediation proceedings, without delay, disclose to the parties in writing about the existence of any of the circumstances referred to in Clause (a).

10. Cancellation of appointment. -

Upon information furnished by the mediator under Rule 9 or upon any other information received from the parties or other persons, if the Court, in which the suit or other proceeding is pending is satisfied, after conducting such inquiry as it deems fit, and after giving a hearing to the mediator, that the said information has raised a justifiable doubt as to the mediator's independence or impartiality, it shall cancel the appointment by a reasoned order and replace him by another mediator subject to approval of the High Court.

11. Renewal or deletion from panel. -

A person whose name is placed in the panel referred to in Rule 4, may be removed or his name be deleted from the said panel, by the Court which empanelled him, if :-(i)He resigns or withdraws his name from the panel for any reason;(ii)He is declared insolvent or is declared of unsound mind,(iii)He is a person against whom criminal charges involving moral turpitude are framed by Criminal Court and are pending,(iv)He is a person who had been convicted by a Criminal Court for any offence involving moral turpitude;(v)He is a person against whom disciplinary proceedings on charges relating to moral turpitude have been initiated by appropriate Disciplinary Authority which are pending or have resulted in a punishment.(vi)He exhibits or displays conduct, during the

continuance of the mediation proceedings, which is unbecoming of a mediator:(vii)The Court, which empanelled, upon receipt of information, if it is satisfied, that it is not possible or desirable to continue the name of that person in the panel:Provided that, before removing or deleting his name, under Clause (vi) and (vii), the Court concerned shall hear the mediator whose name is proposed to be removed or deleted from the panel and shall pass a reasoned order which shall be given effect to after its approval by the District and Sessions Judge concerned.

12. Procedure of mediation. -

(a)The parties may agree on the procedure to be followed by the mediator in the conduct of the mediation proceedings.(b)Where the parties do not agree on any particular procedure to be followed by the mediator, the mediator shall follow the procedure hereinafter mentioned, namely :-(i)he shall fix, in consultation with the parties, a time schedule, the dates and the time of each mediation session, where all parties have to be present:(ii)he shall hold the mediation conference in accordance with the provisions of Rule 7;(iii)he may conduct joint or separate meetings with the parties:(iv)each party shall, ten days before a session, provide to the mediator a brief memorandum setting forth the issues, which according to it, need to be resolved, and its position in respect to those issues and all information reasonably required for the mediator to understand the issue; such memoranda shall also be mutually exchanged between the parties:(v)each party shall furnish to the mediator, copies of pleadings or documents or such other information as may be required by him in connection with the issues to be resolved :Provided that where the mediator is of the opinion that he should look into any original document, the Court may permit him to look into the original document before such officer of the Court and on such date or time as the Court may fix.(vi)each party shall furnish to the mediator such other information as may be required by him in connection with the issues to be resolved.(c)Where there is more than one mediator, the mediator nominated by each party shall first confer with the party that nominated him and shall thereafter interact with the other mediators, with a view to resolving the disputes.

13. Mediator not bound by Evidence Act, 1872 or Code of Civil Procedure, 1908. -

The mediator shall not be bound by the Code of Civil Procedure, 1908 or the Evidence Act, 1872, but shall be guided by principles of fairness and justice, have regard to the rights and obligations of the parties, usages of trade, if any, and the nature of the dispute.

14. Non-attendance of parties at sessions or meetings on due dates. -

(a)(i)the parties residing in India shall be present personally or may be represented by their power of attorney holders at the meetings or sessions notified by the mediator.(ii)The parties not resident in India may be represented by their Counsel or power of attorney holders at the sessions or meetings.(b)If a party fails to attend a session or a meeting notified by the mediator, other parties or the mediator can apply to the Court in which the suit is filed, to issue appropriate directions to that party to attend before the mediator and if the Court finds that a party is absenting himself before the

mediator without sufficient reason, the Court may taken (sic take) action against the said party by imposition of costs.

15. Administrative assistance. -

In order to facilitate the conduct of mediation proceedings, the parties, or the mediator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

16. Offer of settlement by parties. -

(a)Any party to the suit may, without prejudice' offer a settlement to the other party at any stage of the proceedings, with notice to the mediator; and(b)Any party to the suit may make a, 'with prejudice' offer, to the other party at any stage of the proceedings, with notice to the mediator.

17. Role of mediator. -

The mediator shall attempt to facilitate voluntary' resolution of the dispute by the panics and communicate the view of each party to the other, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt solve the dispute, emphasizing that it is the responsibility of the parties to take decision which affects them; he shall net impose any terms of settlements on the parties.

18. Parties alone responsible for taking decision. -

The parties must understand that the mediator only facilities (sic facilitates) in arriving at a decision to resolve disputes and that lie will not and cannot impose any settlement nor does the mediator give any warranty that the mediation will result in a settlement The mediator shall not impose any decision on the parties.

19. Time limit for completion of mediation. -

On the expiry' of sixty days from the date fixed for the first appearance of the parties before the mediator, the mediation shall stand terminated, unless the Court, which referred the matter, either suo moto or upon request by the mediator or any of the parties, and upon hearing all the parties, is of the view that extension of time is necessary or may be useful; but such extension shall not beyond a further period of thirty days.

20. Parties to act in good faith. -

While no one can be compelled to commit to settle his case in advance of mediation, all parties shall commit to participate in the proceedings in good faith with the intention to settle the dispute, if possible.

21. Confidentiality, disclosure and inadmissibility of information. -

(1)When a mediator receives confidential information concerning the dispute from any party, he shall disclose the substance of the information to the other party, if permitted in writing by the first party.(2)When a party gives information to the mediator subject to a specific condition that it be kept confidential, the mediator shall not disclose that information to the other party, nor shall the mediator voluntarily divulge any information regarding the documents or what is conveyed to him orally as to what transpired during the mediation.(3)Receipt or perusal, or preparation of records, reports or other documents by the mediator, or receipt of information orally by the mediator while serving in that capacity, shall be confidential and the mediator shall not be compelled to divulge information regarding the documents nor in regard to the oral information nor as to what transpired during the mediation.(4)Parties shall maintain confidentiality (sic confidentiality) in respect of events that transpired during mediation and shall not rely on or introduce the said information in any other proceedings as to :-(a)views expressed by a party in the course of the mediation proceedings;(b)documents obtained during the mediation which were expressly required to be treated as confidential or other notes, drafts or information given by parties or mediators;(c)proposals made or views expressed by the mediator;(d)admission made by a party in the course of mediation proceedings; and(e)the fact that a party had or had not indicated willingness to accept a proposal.(5)There shall be no stenographic or audio or video recording of the mediation proceedings.

22. Privacy. -

Mediation sessions and meetings are private; only the concerned parties or their Counsel or power of attorney holders can attend. Other persons may attend only with the permission of the parties or with the consent of the mediator.

23. Immunity. -

No mediator shall be held liable for anything bona fide done or omitted to be done by him during the mediation proceedings for any civil or criminal action nor shall he be summoned by any party to the suit to appear in a Court of law to testify in regard to information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the mediation proceedings.

24. Communication between mediator and the Court. -

(a)In order to preserve the confidence of parties in the Court and the neutrality of the mediator, there should be no communication between the mediator and the Court, except as stated in Clauses (h) and (c) of this rule;(b)If any communication between the mediator and the Court is necessary, it shall be in writing and copies of the same shall be given to the parties or their Counsel or power of attorney;(c)Communication between the mediator and the Court shall be limited to :
(i)Communication by the mediator with the Court concerned about the failure of party to

attend;(ii)with the Court concerned with the consent of the parties;(iii)regarding his assessment that the case is not suited for settlement through mediation;(iv)that the parties :(a)have settled the dispute or disputes; or(b)have failed to arrive at a settlement; or(c)are not willing for a settlement through mediation.

25. Settlement Agreement. -

(1)Where an agreement is reached between the parties in regard to all the issues in the suit or some of the issues, the same shall be reduced to writing and signed by the parties or their power of attorney holder. If any Counsel have represented the parties, they shall attest the signature of their respective clients.(2)The agreement of the parties so signed and attested shall be submitted to the mediator who shall, with a covering letter signed by him, forward the same to the Court in which the suit is pending.(3)Where no agreement is arrived at between the parties, before the time limit stated in Rule 18 or where, the mediator is of the view that no settlement is possible, he shall report the same to the said Court in writing.(4)The mediator shall fix the date on which the parties to the litigation should appear before the Court concerned and within that period he shall, -(a)submit the agreement where an agreement is reached between the parties; or(b)report the result of his efforts in settling the dispute to the Court.

26. Court to fix a date for recording settlement and passing decree. -

(1)On the parties appearing before the Court on the date fixed by the mediator, or such other day, not being beyond seven days from the date fixed by the mediator, the Court concerned shall hear the parties and if it is satisfied that the parties have settled their disputes voluntarily and that the settlement is not collusive, then it shall pass a decree in accordance with the settlement so recorded, if the settlement disposes of all the issues in the suit.(2)(i)If the settlement disposes of only certain issues arising in the suit or proceeding, the Court shall record the settlement in respect of those issues if they are severable from other issues and if a decree could be passed to the extent of the settlement covered by those issues, then the Court may pass a decree straightaway in accordance with the settlement on those issues without waiting for a decision of the Court on the other issues which are not settled.(ii)If the issues are not severable, then in that event, the Court shall wait for a decision of the Court on the other issues, which are not settled.

27. Fee of mediator and costs. -

(1)At the time of referring the disputes to mediation, the Court shall, after consulting the mediator and the parties, fix the fee of the mediator.(2)As far as possible a consolidated sum may be fixed rather than for each session or meeting.(3)Where there are two mediators as in Clause (b) of Rule 3, the Court shall fix the fee payable to the mediators, which shall be shared equally by the two sets of parties.(4)The expense of the mediation including the fee of the mediator, costs of administrative assistance and other ancillary expenses concerned, shall be borne equally by the various contesting parties or as may be otherwise directed by the Court.(5)Each party shall bear the costs for production of witnesses on his side including experts, or for production of documents.(6)The mediator may before the commencement of mediation, direct the parties to deposit equal sums,

tentatively to the extent of 40% of the probable costs of the mediation, as referred to in Clauses (1), (3) and (4). The remaining 60% shall be deposited with the mediator, after the conclusion of mediation. For the amount of cost paid to the mediator, he shall issue the necessary receipts and a statement of account shall be filed, by the mediator in the Court.(7)The expense of mediation including fee, if not paid by the parties, the Court shall on the application of the mediator or parties, direct the concerned parties to pay, and if they do not pay, the Court shall recover the said amounts as if there was a decree for the said amount.(8)Where a party is entitled to legal aid under Section 12 of the Legal Services Authority Act, 1987, the concerned Legal Services Authority under that Act shall pay the amount of fee and costs payable to the mediator.

28. Ethics to be followed by mediator. -

The mediator shall : (1) Follow and observe these rules strictly and with due diligence. (2) Not carry on any activity or conduct which could reasonably be considered as conduct unbecoming of a mediator; (3) Uphold the integrity and fairness of the mediation process; (4) Ensure that the parties involved in the mediation are fairly informed and have an adequate understanding of the procedural aspects of the process. (5) Satisfy himself/herself that he/she is qualified to undertake and complete the assignment in a professional manner; (6) Disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias; (7) Avoid, while communicating with the parties, any impropriety or appearance of impropriety; (8) Be faithful to the relationship of trust and confidentiality (sic confidentiality) imposed in the office of mediator; (9) Conduct all proceedings related to the resolutions of dispute, in accordance with the applicable law; (10) Recognize that mediation is based on principles of self-determination by the parties and that mediation process relies upon the ability of parties to reach a voluntary, undisclosed agreement; (11) Maintain the reasonable expectations of the parties as to confidentiality (sic confidentiality); and (12) Refrain from promises or guarantees of results.

29. Transitory provisions. -

Until a panel of mediators is prepared by the District Court, the Courts referred to in Rule 4, may nominate a mediator of their choice if the mediator belongs to the various classes of persons referred to Rule 5 and is duly qualified and is not disqualified, taking into account the suitability of the mediator for resolving the particular dispute.

Schedule 1

.....Judgeship Mediation and Conciliation Centre (Consent to be furnished for empanelment) Name : Father's name : Address : (a) Office : (b) Residence : Telephone No. (a) Office : (b) Residence : Academic Qualifications : Professional Qualifications and Experience : Technical experience, if any : Special qualification or experience in mediation : Enrolment number with date and the Bar Council : I....., do hereby submit that I am willing to be empanelled as a mediator in.....Judgeship and give my consent for my empanelment under Rule 4 of the Uttar Pradesh Civil Procedure Mediation Rules, 2007. I assure that during my term as mediator, I shall follow ethics as

prescribed in Rule 28 of the said Rules while performing my duties as mediator. Full Signature Date :

Schedule 2

.....Judgeship Mediation and Conciliation Centre (Case sheet furnished by the Court to the centre)

- 1. Date of Referral**
- 2. Name of the Presiding Officer referring the matter :**
- 3. Case Number :**
- 4. Category of Case :**
- 5. Name of Parties :**
- 6. Contact information of Parties :**
- 7. Names and Contact Information of Counsel :**
- 8. List of documents annexed to case sheet :**

(To be prepared and signed by the Reader of the Court concerned)

Schedule 3

.....Judgeship Mediation and Conciliation Centre (Written notice to the parties and their Counsel)

- 1. The referral of the case by the Court for mediation.**
- 2. The date of referral.**
- 3. Information about the process of mediation.**
- 4. Name of the mediator.**
- 5. That the parties may object to the mediator appointed giving their reasons for doing so within a fixed time**

6. Date and time of mediation session.

(To be prepared, signed and issued by the senior most clerk in the centre in consultation with the mediator)

Schedule 4

.....Judgeship Mediation and Conciliation Centre(Information Sheet furnished to the Parties)Case Name :Case Number:Name of Mediator :

1. This mediation is being conducted with the purpose of arriving at an acceptable resolution by settling the dispute in a co-operative manner. Parties should participate in this in good faith.

2. The mediator will inform the parties of the time and date of the mediation sessions

3. (a) The parties residing in India agree to -

(i)attend the mediation sessions personally; or(ii)be represented at the mediation sessions by their constituted attorney with authority to settle the dispute(Strike off whichever is not applicable)(b)The parties not resident in India agree to be represented at the mediation sessions by their constituted attorney or Counsel with authority to settle the dispute.

4. The mediator shall respect the confidentiality of information that the parties request him/her to keep confidential.

5. The parties shall not rely or introduce as evidence in any proceedings the view, suggestions or admissions expressed or made by a party, the proposals made by the mediator and indication of acceptance by a party during the course of the mediation proceedings.

6. The parties agree not to call the mediator as a witness or as an expert in any proceeding relating in any way to the dispute, which is the subject of mediation.

7. If the parties reach a settlement, they shall sign an agreement to that effect and this shall be filed into the Court.

- 8. The entire process is a voluntary' process and until parties reach settlement and sign an agreement, any party is free to opt out of the process**
- 9. If the parties fail to reach settlement, the matter shall be referred back to the Court**

(To be signed and dated by each party and the learned Counsel identifying them).

Schedule 5

.....Judgeship Mediation and Conciliation Centre(Settlement Agreement)This Settlement Agreement entered into on.....between.....Advocate andidentified by Sri.....AdvocateWhereas

- 1. Disputes and differences had arisen between the parties hereto and(Case No.) was filed on.....(date of institution) before.....(give particulars of the Court concerned);**
- 2. The matter was referred to mediation vide an order datedpassed by (name and designation of the Presiding Officer concerned).**
- 3. The parties agreed that Sri.....(name of the Mediator) would act as their Mediator.**
- 4. Meetings were held during the process of Mediation from.....toand the parties have with the assistance of the mediator voluntarily arrived at an amicable solution resolving the above mentioned dispute and differences.**
- 5. The parties hereto confirm and declare that they have voluntarily and of their own free will arrived at this Settlement/Agreement in the presence of the Mediator.**
- 6. The following settlement has been arrived at between the parties hereto :**
- ABC
- 7. By signing this agreement the parties hereto state that they have no further claims or demands against each other with respect to.....(Case No.) and the parties hereto through the process of Mediation in this regard have amicably settled all disputes and differences.**

Parties full signature with date : Counsel's full signature with date : (Additions/alterations in the form as per requirement are permitted)

Schedule 6

.....Judgeship, Mediation and Conciliation Centre Report to Court

1. Court Case No. :

2. Referred by :

3. Date of Referral :

4. Mediators : (a)

(b)(c)5. Date (s) of Mediation Sessions : (i) Mediation completed, Agreement enclosed Or (ii) Mediation completed, no agreement. Or (iii) Parties not willing for the Mediation.

6. The parties have been directed to appear before the Court on.....

Signed by Mediator(s) Dated :