



*Mediation Division
Office of the Chief Registrar of the Federal Court of
Malaysia*

JDRN PRESENTATION ON MEDIATION IN MALAYSIA : MEDIATION IN SUBORDINATE COURTS

28th October 2024

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**SPEECH BY THE RIGHT HONOURABLE CHIEF
JUSTICE OF MALAYSIA,
TUN TENGKU MAIMUN BINTI TUAN MAT**

**THE OPENING LEGAL YEAR 2024
ON 15 JANUARY 2024**

“[51] The Malaysian Judiciary is significantly complemented by our ever-growing Alternative Dispute Resolution ('ADR') scene. **These ADR mechanisms significantly help reduce the Judiciary's case load without compromising access to justice.** Specifically, I would like to home in to one feature of ADR i.e. mediation.

[52] In view of the burgeoning caseload that is inundating the Malaysian superior and subordinates court, mediation has now become an important medium to cope and deal with these cases. Ideally, hearing of cases via trial must be the last resort.

[53] There are generally two modes of mediation, that is to say, pre-action mediation as well as court annexed mediation which are catered for in the Rules of Court 2012. It is mandatory for all running down cases to undergo mediation. The necessity of other cases to undergo mediation is at the discretion of the Judge depending on his/her views on the suitability thereof.

[54] By virtue of the current volume of cases commenced in the Courts, there is a critical need to now intensify the usage of court annexed mediation. In other words, at case management all Judges must duly consider why each and every case should not be mediated. Unless absolutely unsuitable, I take the position that cases ought to undergo mediation.

[55] Additionally, Judges must also be part of the mediation process sitting as the mediator and should not shy away from the process. This is because Judges are in the best position to persuade parties to resolve their dispute amicably by means of facilitative and/or evaluative mediation. The Court Annexed Mediation Committee is tasked to oversee the implementation of the same. Unlike other countries such as in England and Wales, there is presently no requirement for parties to undergo mediation prior to commencing an action in the Malaysian courts.

[56] As such, the Judiciary strongly feels that the time has arrived to consider the implementation of pre-action mediation through pre-action mediation protocols. Towards this end, the Court Annexed Mediation Committee is further tasked to study and revert on the same soonest possible. This should include requisite proposals on amendments to the relevant statute and/or rules.

COURT-ANNEXED MEDIATION (CAM)

In the Malaysian legal landscape, CAM means mediation conducted by High Court Judges and Judicial Officers.

Cases heard at CAM is voluntary in nature (except for running down cases which is mandatory).

Cases are referred at any time after the commencement of proceedings.

All communications made during mediation are confidential.

The service provided is free.

An agreement reached by the parties will be recorded in the form of a settlement agreement or a consent judgment before the trial judge.

Where parties fail to reach a settlement, the case will be sent to court for trial.



LAWS GOVERNING MEDIATION IN SUBORDINATE COURTS

1) ORDER 34 RULE (1B) OF THE RULES OF COURT 2012

All running down cases shall be subject to mediation

2) PRACTICE DIRECTION NO. 2 “MATTERS AND MEDIATION PROCEDURES FOR CASES IN THE HIGH COURTS AND THE SUBORDINATE COURTS” DATED 24 MARCH 2022 (PRACTICE DIRECTION NO. 2 / 2022)

Issued by the Rt Hon. Chief Justice, Tun Tengku Maimun binti Tuan Mat

Salient features of Practice Direction No. 2 /2022

(a) applies to mediation matters and procedures in civil proceedings in the High Courts and Subordinate Courts throughout Malaysia;

(b) mandatory reference (for road traffic accident claims);

(c) mediation may be conducted by—

- (i) Judge-led mediation;**
- (ii) Institutions providing mediation services as agreed by the parties;**
- (iii) Private Mediator as agreed by the parties.**

Salient features of Practice Direction No. 2 /2022

(d) location for mediation process depends on the type of mediation as follows:

- (i) judge-led mediation either in Court Mediation Centres or any location within the premises of the Court as may be determined by the mediator; and
- (ii) by an Institution providing mediation services or Mediation by a Private Mediator agreed by the parties, any location other than the facilities of the Court Mediation Centre.

(e) listing of Court Mediation Centres via website link.

MEDIATION PROCEDURES FOR ROAD TRAFFIC ACCIDENT CASES

ANNEXURE B



ANNEXURE B

A mediation process for road traffic accident cases is carried out to determine liability or quantum issues. For this purpose, the mediation process will be conducted after all the following basic documents are filed through the e-Court system:

preliminary medical report;

sketch plan of the accident;

police report by the parties;

photographs (if applicable); and

other relevant documents

A mention date will then be fixed for all road traffic accident cases based on the following codes:

Court

Code

Sessions Court

Code A53KJ / B53KJ /

A51KJ / B51KJ

Magistrate's Court Code A73KJ/ A71KJ

After the filing of pleadings is closed, the parties will be notified of the trial date and the date of the mediation process as follows:

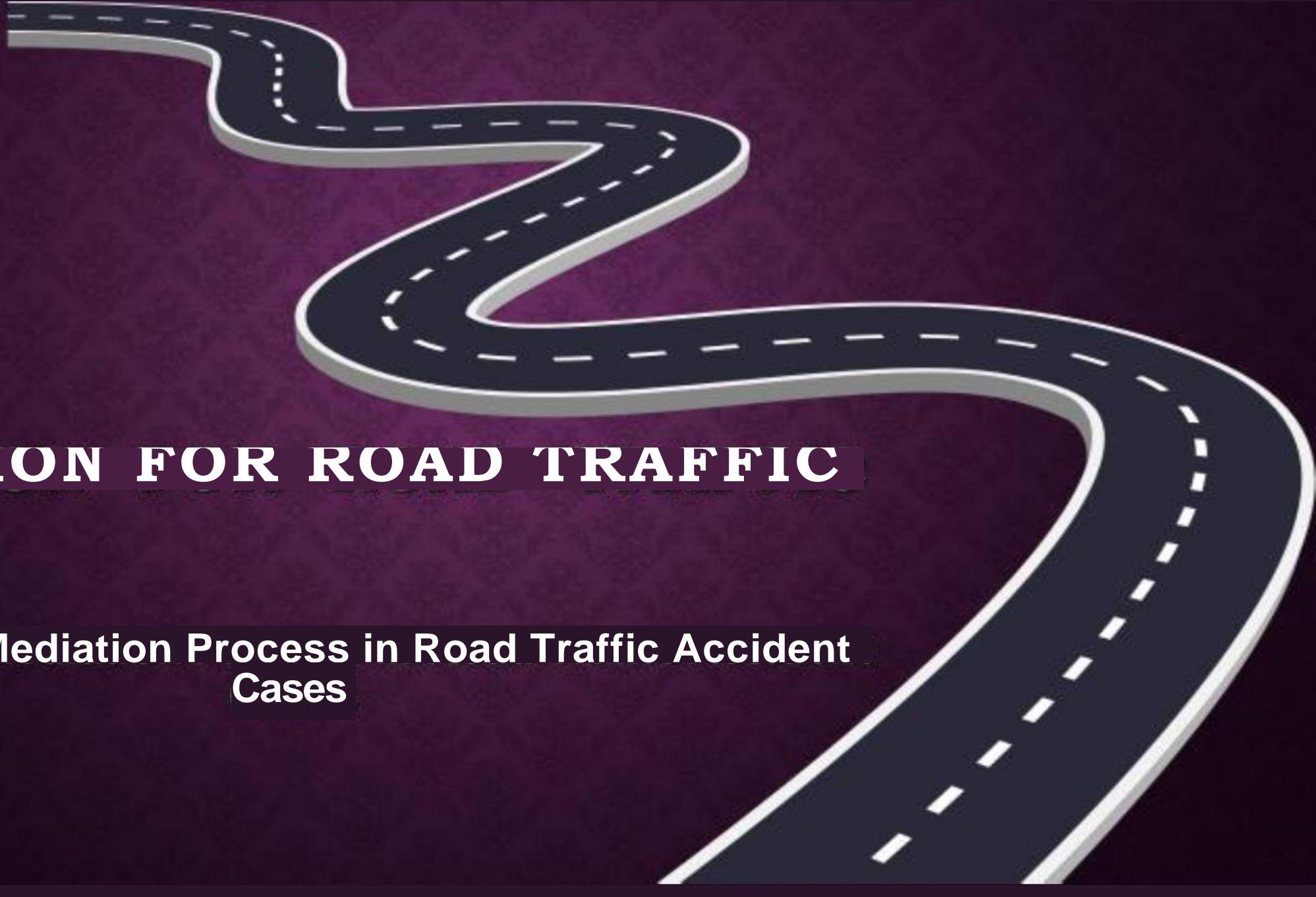
No.	Types of Proceeding	Trial Date Fixing Period
(a)	Trial dates for cases that do not require an expert report	Four (4) to six (6) months from the date the case is filed. The trial shall proceed on the fixed date.
(a)	Trial dates for cases that require an expert report	Six (6) to eleven (11) months from the date the case is filed. The trial shall proceed on the fixed date.

The date for mediation process shall
be fixed not later than one (1) month
after the date of the trial is fixed

MEDIATION FOR ROAD TRAFFIC

CASES

**Mediator for Mediation Process in Road Traffic Accident
Cases**



The mediation process for road traffic accident cases can be carried out by

Sessions Court or Magistrates' Court which has only one Sessions Court Judge / Magistrate

Sessions Court Judges / The Director of the State Magistrates; or Private Mediators agreed by the parties in state to act as a accordance with the procedures in Annexure E.

Court may direct any Judicial Officer in the mediator to the Mediation process, as deemed appropriate.

A stylized illustration of a winding road with white dashed lines and a grey shoulder, set against a dark maroon background.

MEDIATION FOR ROAD TRAFFIC CASES

COMPLETION OF MEDIATION PROCESS

Judgement will be recorded when the parties have successfully resolved both liability and quantum issues in the mediation process.

If only one issue is successfully resolved during the mediation process, judgment will be recorded for the issue that was successfully resolved only; while the issues that cannot be agreed upon during the mediation process, will be determined through the process of trial.

For road traffic accident cases that have yet to receive an expert report, the parties must first attend the mediation process to determine the liability issue. The mediation process for the issue of quantum will be conducted after the expert report is obtained.

PROCEDURE OF MEDIATION PROCESS BY JUDGE-LED MEDIATION

ANNEXURE C

REGISTRATION

- Parties will have to fill up, sign both forms – Form C-1 (registration form) & Form 1 (agreement to mediate) and submit them to the Mediation Centre within seven (7) days from the date the Court recommends mediation / from the date the parties agree to go for mediation

AGREEMENT TO MEDIATE FORM 1

Agreement to Mediate Pursuant to Court Annexed Mediation

Case No :

Judge / Mediator :

Parties : Plaintiff
Defendant
Third Party

Mention Date :

Hearing Date :

We, the solicitors representing the abovementioned parties hereby consent to refer this matter for mediation for the purpose to reach an amicable settlement and to the satisfaction of all parties.

It is hereby agreed that:-

- a) The mediation process conducted is a closed process attended only by the parties involved or an authorized representative together with counsel, if any;
- c) Any disclosures, admissions and communications made during the mediation process are confidential and without prejudice;
- e) All communications during the mediation process shall not be part of the records of proceedings; and
- g) Neither party shall call the mediator to give evidence in relation to the mediation process conducted by the mediator for the proceedings.

Plaintiff / Plaintiffs
Solicitor's Signature

Defendant Defendant's
Solicitor's Signature

Third Party / Third Party's Solicitor's Signature

REGISTRATION FORM C-1

BORANG PENDAFTARAN MEDIASI

NOMBOR KES	
NAMA PEGAWAI MEDIASI	
MAHKAMAH ASAL	
TARIKH LAPANG PIHAK-PIHAK	
TARIKH PENGURUSAN KES/BICARA	
ALAMAT E-MEL PLAINTIF	
ALAMAT E-MEL DEFENDAN	
ALAMAT E-MEL PIHAK KETIGA	

NOTICE OF MEDIATION

- The date of the mediation process is fixed at least within one (1) month from the date of the registration of the mediation process.
- Notification regarding the date, time and location of the mediation process session will be sent via email / e-Court system.

ATTENDANCE

- On the date fixed for the mediation process, the parties shall attend the mediation session at the designated location or by video conference.

MEDIATION PROCESS BY VIDEO CONFERENCE

The Mediation Centre may decide to conduct the mediation process through remote communication technology by way of video conferencing. Parties will be notified of the method of process by video conference not later than **one (1) week** from the date fixed for the mediation process.

PREPARATION

For the purpose of ensuring that the mediation process by way of video conference can be carried out, the parties must ensure compliance with the following:

(a) the parties must have an understanding of the mediation process by way of video conference is to be conducted;

(b) the parties must have the ability to attend the mediation process by video conference; and

(c) the availability and the quality of the technology to be used, taking into account the hardware, software and the access and speed of the internet.

COMPLIANCE BEFORE MEDIATION

- On the date of the mediation process, the parties shall ensure compliance with the following:
 - (a) the parties attending the session —
 - (i) have received a link to the session from the Court;
 - (ii) must be ready to log in not later than thirty (30) minutes before the process begins;
 - (iii) must not disclose details of access to the video conferencing platform to parties unrelated to the proceedings except with the permission of the Court. Any party who discloses such details to another party without permission of the Court, will not be admitted into the video conferencing platform;
 - (iv) must be in a room free from any noise interference with bright lighting throughout the video conference; and
 - (v) the microphone is always muted except when the parties need to communicate in the mediation process; and
 - (b) inform the Court of any technical or logistical issues that may affect the mediation process.

TECHNICAL GLITCH

If there is a technical glitch to the video conferencing platform which lasts for more than fifteen (15) minutes, the mediation process will be postponed and a new date for the mediation process will be fixed.

POSTPONEMENT OF THE MEDIATION PROCESS

INTENTION TO POSTPONED MUST BE COMMUNICATED

- If the parties intend to postpone the date of the mediation process, they shall inform the Court of the intention to postpone not later than three (3) days before the date fixed for the mediation process.

ABSENCE WITHOUT REASON

- If the parties fail to appear for the mediation session without providing any reasons for the absence, the mediator may refer to the Trial Court for the Trial Judge to make an order as to the cost of such absence.

FEEDBACK

FEEDBACK MECHANISM

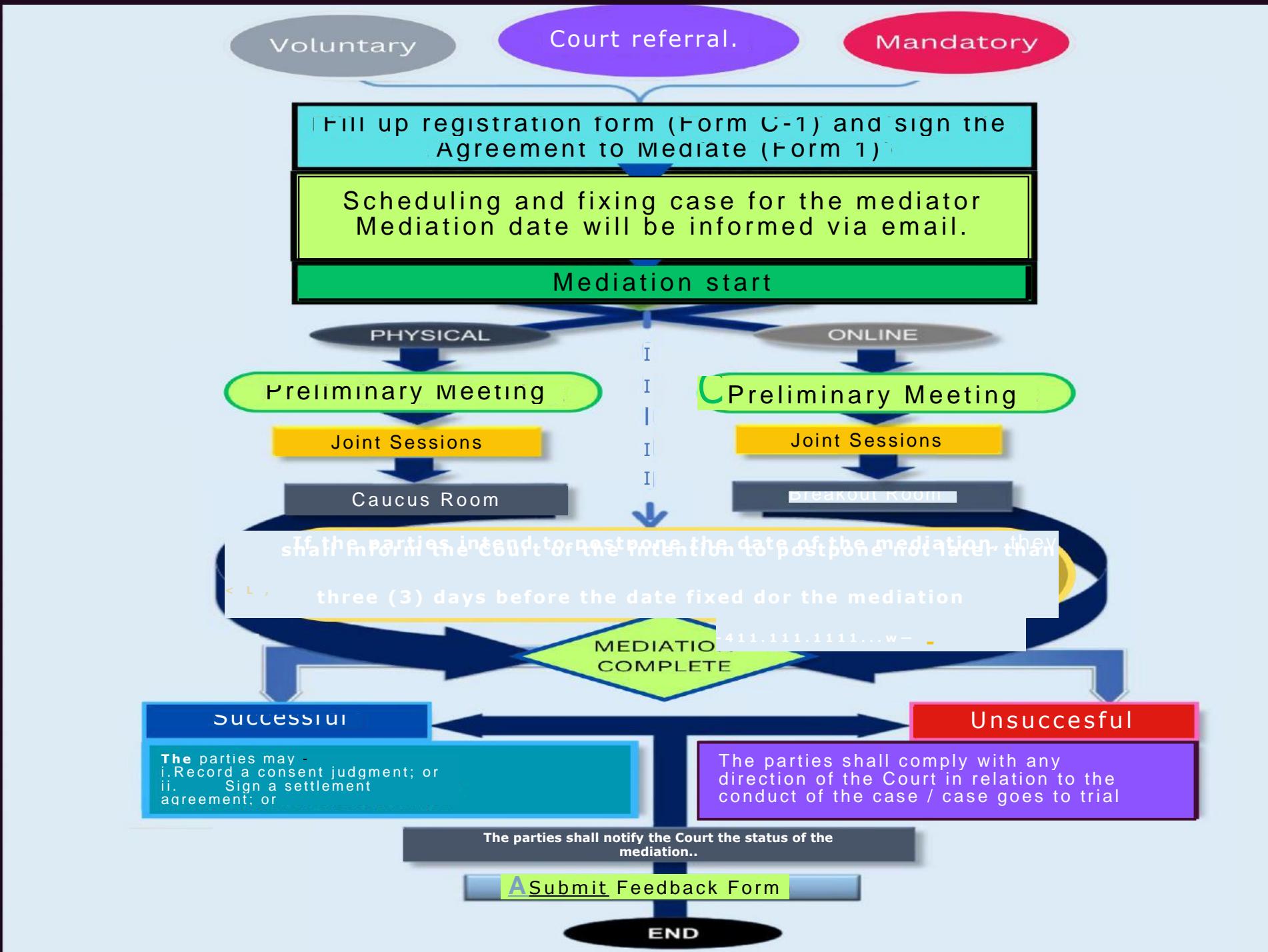
- Implemented since 1st March 2023 through feedback forms.
- Created for parties who have gone through the mediation process to give their views. Their input can provide an insight into the quality of service and areas for improvement.



 <p>MEDIASI MAHKAMAH Pejabat Ketua Pendaftar Mahkamah Persekutuan Malaysia</p>			
<p>MAKLUMBALAS MEDIASI PENDAPAT ANDA SANGAT DIHARGAI</p>			
<p>DEATAKAS LEVIS PES YANG DI DAAFICAN UN FUSSES MEDIAN (Sila tandakan ✓)</p>		<p>No. Kes:</p>	
<p>BAGAIMANA MEDIASI DIJALANKAW</p>		<p>Tarikh Mediasi:</p>	
<p>O Kecederaan Kediri</p>		<p>Peranan anda dalam sesi mediasi: (Sila tandakan ✓ di ruang sebelah)</p>	
<p>O Probate</p>		<p>D Pi hak-yang bertikai 10 Lain-Lain</p>	
<p>O Insurans</p>		<p>Pejuamyang anagkuämityamewa lah</p>	
<p>O Pekerjaan</p>		<p>Fizikal Oos Talton</p>	
<p>O Pembinaan</p>		<p>PENILAIAN</p>	
<p>(=) Lain-lain silanyarkan</p>		<p>Tidak Memuaskan Kurang Memuaskan Menusukan Baik Cemerlang</p>	
<p>Pekihnduhend 1zanzet7andet dan</p>			
<p>SEKSYEN 1: DARIPADA SESI MEDIASI</p>			
<p>1. Adakah persetujuan dapat dicapai?</p>		<p>YA</p>	
<p>2. Adakah anda berpuas hati dengan keputusan semasa mediasi?</p>		<p>MS</p>	
<p>4. Adakah Pegawai Pengantara memberikan anda ruang untuk bercakapsepenuhnya?</p>		<p>PKAS</p>	
<p>3. Adakah Pegawai Pengantara seorang yang neutral dan tidak berat sebelah</p>			
<p>5. Adakah proses mediasi menjimatkan masa dan kos?</p>			
<p>6. Anda percaya mediasi lebih baik daripada menjalani proses perbicaraan di mahkamah?</p>			
<p>7. Adakah anda akan mencadangkan Pegawai Pengantara ini kepada rakan dan keluarga anda?</p>			
<p>SEKSYEN 2: APA YANG ANDA SOKA TENTANG MEDIASI?</p>			
<p>Rundingan dan tawar-menawar</p>		<p>YA</p>	
<p>Keadaan persekitaran</p>		<p>PAR</p>	
<p>Saya boleh bercakap</p>		<p>PASTI</p>	
<p>Proses yang pantas</p>			
<p>eas gee untuk me.amal, inalumbalas mars dalam mediationfeedback.com</p>		<p>Serap i. ma tempoh yang diambil untuk menetapkan tarikh mediasi elepas kes didad arkan.</p>	
<p>Apakah yang perlu dimer al I. (Anda rioter + bhl p keras sekitany a ruang book men)</p>		<p>SILA kembalikan borang ini ke Pusat Medias, Mahkamah yang terdekat atau emel ke alamat mttainedit@kehakiman.gov.my Saba a g pe a vas 03-62072094</p>	
<p></p>		<p>itN Bahagian Pengantara (Medias)</p>	

 <p>PUSAT MEDIASI MAHKAMAH Pejabat Ketua Pendaftar Mahkamah Persekutuan Malaysia</p>		<p>Case No.:</p> <p>Mediation Date:</p>	
<h1>Mediation Feedback</h1> <p>Your opinion matters</p>		<p>Please state your role during the mediation session: (please tick)</p> <p><input type="checkbox"/> Party to the disputes <input type="checkbox"/> Other <input type="checkbox"/> Lawyer representing the participants</p>	
<p>What type of dispute was mediated? (please tick)</p> <p><input checked="" type="checkbox"/> Personal Injury <input type="checkbox"/> Probate <input type="checkbox"/> Employment <input type="checkbox"/> Insurance <input type="checkbox"/> Construction <input type="checkbox"/> Other <small>plasm speed below</small></p>		<p>How the mediation is conducted: (0.1)</p> <p><input checked="" type="checkbox"/> Physical <input type="checkbox"/> Online</p>	
		<p>RATING (please 1)</p> <p>I feel is your II thoughts on the mediation process?</p> <p>Our services in Registering and Getting dates</p>	
		<p>-Co- Verifier</p> <p> Poor  Neutral  Good  Excellent</p>	
<p>Section 1: From the mediation session: (please tick)</p>		<p>Yes No Uncertain</p>	
1. Was an agreement reached?			
2. Are you satisfied with the outcome of the mediation?			
3. Was the mediator neutral and impartial?			
4. Did the mediator allow you to speak fully?			
5. Did mediation save your time and money?			
6. Do you believe mediation was better than going to court?			
7. Would you recommend this mediator to friends and family?			
<p>Section 2: What do you like about the mediation process? (please I)</p> <p>Bargaining and Negotiating Environment I am able to speak up Quick Process</p>		<p>EM No Not sure</p>	
<p>Please sign on Co. for 61.11.1.01110. Feedback MEDIATION</p>  <p>https://tinyurl.com/mediationfeedbackcam</p> <p>What could be improved?</p> <p>(you may add additional papers if needed)</p>		<p>How long until a date for mediation is given after registration ?</p> <p>(day/month)</p> <p>Please return this form at our office neaetoffeo alto at mtkmediasi@kehak.man.gov.my For any enquiries please call 03-62072094</p>	
<p>tt Mediation Division</p> <p>Office of the Chief Registrar, Federal Court of Malaysia</p>			

FLOWCHART



TRAINING

- Currently there are 82 judicial officers who are accredited mediators who have undergone hours of training

82

ACCREDITED MEDIATORS
(JUDICIAL OFFICERS)

1

REGISTRAR OF THE
COURT OF APPEAL



25

Sessions
Judges



16

Magistrates



1

REGISTRAR OF The subordinate
COURT OF SABAH AND
SARAWAK



25

Deputy
Registrars



14

Senior
Assistant
Registrars



THANK YOU

TERIMA KASIH

