

"NOTIFICATION"

HIGH COURT OF HIMACHAL PRADESH CIVIL
PROCEDURE ALTERNATIVE DISPUTE RESOLUTION
AND MEDIATION RULES, 2005.

In exercise of the rule making power vested under Part X of the Code of Civil Procedure, 1908 (5 of 1908) and clause (d) of sub-section (2) of Section 89 of the said Code, the High Court of Himachal Pradesh is pleased to make the following Rules.

Part I

ALTERNATIVE DISPUTE RESOLUTION RULES.

1. Title. - (1) These Rules in Part I shall be called "High Court of Himachal Pradesh Civil Procedure Alternative Dispute Resolution Rules, 2005.

(2) These Rules shall come into force from the date of publication in the official gazette.

2. Procedure for directing parties to opt for alternative modes of settlement. - (1) The Court shall, after recording admissions and denials at the first hearing of the suit under Rule 1 of Order X, and where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, formulate the terms of settlement and give them to the parties for their observations under sub-section (1) of Section 89, and the parties shall submit to the court their responses within thirty days of the first hearing.

(2) At the next hearing, which shall be not later than thirty days of the receipt of responses, the Court may reformulate the terms of a possible settlement and shall direct the parties to opt for one of the modes of settlement of disputes outside the Court as specified in clauses (a) to (d) of sub-section (1) of Section 89 read with Rule 1A of Order X, in the manner stated hereunder:

Provided that the Court, in the exercise of such power, shall not refer any dispute to arbitration or to judicial settlement by a person or institution without the written consent of all the parties to the suit.

3. Persons authorized to take decision for the Union of India, State Governments and others.-(1) For the purpose of Rule 2, the Union of India or the Government of a State or Union Territory, all local authorities, all Public Sector Undertakings, all statutory corporations and all public authorities shall nominate a person or persons or group of persons who are authorized to take a final decision as to the mode of Alternative Dispute Resolution in which it proposes to opt in the event of direction by the Court under Section 89 and such nomination shall be communicated to the High Court within the period of three months from the date of commencement of these Rules and the High Court shall notify all the subordinate courts in this behalf as soon as such nomination is received from such Government or authorities.

(2) Where such person or persons or group of persons have not been nominated as aforesaid, such party as referred to in clause (1) shall, if it is a plaintiff, file alongwith the plaint or if it is a defendant, file alongwith or before the filing of the written statement, a memo into the Court, nominating a person or persons or group of persons who is or are authorized to take a final decision as to the mode of alternative dispute resolution, which the party prefers to adopt in the event of the Court directing the party to opt for one or other mode of Alternative Dispute Resolution.

4. Court to give guidance to parties while giving direction to opt.-(1) Before directing the parties to exercise option under clause (b) of Rule 2, the Court shall give such guidance as it deems fit to the parties, by drawing their attention to the relevant factors which parties will have to take into account, before they exercise their option as to the particular mode of settlement, namely.

- (i) that, it will be to the advantage of the parties, so far as time and expense are concerned, to opt for one or other of these modes of settlement referred to in Section 89 rather than seek a trial on the disputes arising in the suit;
- (ii) that, where there is no relationship between the parties which requires to be preserved, it may be in the interest of the parties to seek reference of the matter of arbitration as envisaged in clause (a) of sub-section (1) of Section 89.
- (iii) that, where there is a relationship between the parties which requires to be preserved, it may be in the interest of parties to seek reference of the matter to conciliation or mediation, as envisaged in clauses (b) or (d) of sub-section (1) of Section 89.

Explanation: Disputes arising in matrimonial, maintenance and child custody matters shall, among others, be treated as cases where a relationship between the parties has to be preserved.

- (iv) that, where parties are interested in a final settlement which may lead to a compromise, it will be in the interests of the parties to seek reference of the matter to Lok Adalat or to judicial settlement as envisaged in clause (c) of sub-section (1) of Section 89.
- (v) the difference between the different modes of settlement, namely, arbitration, conciliation, mediation and judicial settlement as explained below:

(a) Settlement by 'Arbitration' means the process by which an arbitrator appointed by parties or by the Court, as the case may be, adjudicates the disputes between the parties to the suit and passes an award by the application of the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996), in so far as they refer to arbitration.

(b) Settlement by 'Conciliation' means the process by which a conciliator who is appointed by parties or by the Court, as the case may be, conciliates the disputes between the parties to the suit by the application of the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) in so far as they relate to conciliation, and in particular, in exercise of his powers under Sections 67 and 73 of that Act, by making proposals for a settlement of the dispute and by formulating or reformulating the terms of a possible settlement; and has a greater role than a mediator.

(c) Settlement by 'Mediation' means the process by which a mediator appointed by parties or by the Court, as the case may be, mediates the dispute between the parties to the suit by the application of the provisions of the High Court of Himachal Pradesh Mediation Rules, 2005 in Part II, and in particular, by facilitating discussion between parties directly or by communicating with each other through the mediator, by assisting parties in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, generating options in an attempt to solve the dispute and emphasizing that it is the parties own responsibility for making decisions which affect them.

(d) Settlement in Lok Adalat means settlement by Lok Adalat as contemplated by the Legal Services Authority Act, 1987.

(e) 'Judicial Settlement' means a final settlement by way of compromise entered into before a suitable institution or person to which the Court has referred the dispute and which institution or person are deemed to be the Lok Adalats under the provisions of the Legal

Service Authority Act, 1987 (39 of 1987) and where after such reference, the provisions of the said Act apply as if the dispute was referred to a Lok Adalat under the provisions of that Act.

5. Procedure for reference by the Court to the different modes of Settlement. – (1) Where all parties to the suit decide to

exercise their option and to agree for settlement by arbitration, they shall apply to the Court, within thirty days of the direction of the Court under clause (b) of Rule 2 and the Court shall, within thirty days of the said application, refer the matter to arbitration and thereafter the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) which are applicable after the stage of making of the reference to arbitration under that Act, shall apply as if the proceedings were referred for settlement by way of arbitration under the provisions of that Act.

(2) Where all the parties to the suit decide to exercise their option and to agree for settlement by the Lok Adalat or where one of the parties applies for reference to Lok Adalat, the procedure envisaged under the Legal Services Authority Act, 1987 (39 of 1987) and in particular by Section 20 of that Act, shall apply.

(3) Where all the parties to the suit decide to exercise their option and to agree for judicial settlement, they shall apply to the Court within thirty days of the direction under clause (b) of Rule 2 and then the Court shall, within thirty days of the application, refer the matter to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and thereafter the provisions of the Legal Services Authority Act, 1987 (39 of 1987) which are applicable after the stage of making of the reference to Lok Adalat under that Act, shall apply as if the proceedings were referred for settlement under the provisions of that Act.

(4) Where none of the parties are willing to agree to opt or agree to refer the dispute to arbitration, or Lok Adalat, or to judicial settlement, within thirty days of the direction of the Court under clause (b) of Rule 2, they shall consider if they could agree for reference to conciliation or mediation, within the same period.

(5) (i) Where all the parties opt and agree for conciliation, they shall apply to the Court, within thirty days of the direction under clause (b) of Rule 2 and the Court shall, within thirty days of the application refer the matter to conciliation and thereafter the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) which are applicable after the stage of making of the reference to conciliation under that Act, shall apply, as if the proceedings were referred for settlement by way of conciliation under the provisions of that Act;

(ii) Where all the parties opt and agree for mediation, they shall apply to the Court, within thirty days of the direction under clause (b) of Rule 2 and the Court shall, within thirty days of the application, refer the matter to mediation and then the High Court of Himachal Pradesh Mediation Rules, 2005 in Part II shall apply.

(6) Where under clause (d), all the parties are not able to opt and agree for conciliation or mediation, one or more parties may apply to the Court within thirty days of the direction under clause (b) of Rule 2, seeking settlement through conciliation or mediation, as the case may be, and in that event, the Court shall, within a further period of thirty days issue notice to the other parties to respond to the application, and:-

(i) In case all the parties agree for conciliation, the Court shall refer the matter to conciliation and thereafter, the provisions of the Arbitration and Conciliation Act, 1996 which are applicable after the stage of making of the reference to conciliation under that Act, shall apply.

- (ii) in case all the parties agree for mediation, the Court shall refer the matter to mediation in accordance with the Civil Procedure – Mediation Rules, 2005 in Part II shall apply.
- (iii) in case all the parties do not agree and where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties and that there is a relationship between the parties which has to be preserved, the Court shall refer the matter to conciliation or mediation, as the case may be. In case the dispute is referred to Conciliation, the provisions of the Arbitration and Conciliation Act, 1996 which are applicable after the stage of making of the reference to Conciliation under that Act shall and in case the dispute is referred to mediation, the provisions of the Civil Procedure-Mediation Rules, 2005, shall apply.

(7) (i) Where none of the parties apply for reference either to arbitration, or Lok Adalat, or judicial settlement, or for conciliation or mediation, within thirty days of the direction under clause (b) of Rule 2, the Court shall, within a further period of thirty days, issue notices to the parties or their representatives fixing the matter for hearing on the question of making a reference either to conciliation or mediation.

(ii) After hearing the parties or their representatives on the day so fixed the Court shall, if there exist elements of a settlement which may be acceptable to the parties and there is a relationship between the parties which has to be preserved, refer the matter to conciliation or mediation. In case the dispute is referred to conciliation, the provisions of the Arbitration and Conciliation Act, 1996 which are applicable after the stage of making of the reference to conciliation under that Act shall and in case the dispute is referred to mediation, the provisions of the Civil Procedure – Mediation Rules, 2005, shall apply.

(8) (i) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings of the Court, opt for any one of the modes of alternative dispute resolution nor shall enter into any settlement on behalf of a minor or person under disability with reference to the suit in which he acts as mere friend or guardian.

(ii) Where an application is made to the Court for leave to enter into a settlement initiated into in the alternative dispute resolution proceedings on behalf of a minor or other person under disability and such minor or other person under disability is represented by counsel or pleader, the counsel or pleader shall file a certificate alongwith the said application to the effect that the settlement is, in his opinion, for the benefit of the minor or other person under disability. The decree of the Court based on the settlement to which the minor or other person under disability is a party, shall refer to the sanction of the Court thereto and shall set out the terms of the settlement.

5. Referral to the Court and appearance before the Court upon failure of attempts to settle disputes by conciliation or judicial settlement or mediation.-(1) Where a suit has been referred for settlement for conciliation, mediation or judicial settlement and has not been settled or where it is felt that it would not be proper in the interests of justice to proceed further with the matter, the suit shall be referred back again to the Court with a direction to the parties to appear before the Court on a specific date.

(2) Upon the reference of the matter back to the Court under sub-rule (1) or under sub-section (5) of Section 20 of the Legal Services Authority Act, 1987, the Court shall proceed with the suit in accordance with law.

7. Training in alternative methods of resolution of disputes, and preparation of manual. — (1) The High Court shall take steps to

have training courses conducted in places where the High Court and the District Courts or Courts of equal status are located, by requesting bodies recognized by the High Court or the Universities imparting legal education or retired Faculty Members or other persons who, according to the High Court are well versed in the techniques of alternative methods of resolution of dispute, to conduct training courses for lawyers and judicial officers.

(2) (i) The High Court shall nominate a committee of judges, faculty members including retired persons belonging to the above categories, senior members of the Bar, other members of the Bar specially qualified in the techniques of alternative dispute resolution, for the purpose referred to in clause (a) and for the purpose of preparing a detailed manual of procedure for alternative dispute resolution to be used by the Courts in the State as well as by the arbitrators, or authority or person in the case of judicial settlement or conciliators or mediators.

(ii) The said manual shall describe the various methods of alternative dispute resolution, the manner in which any one of the said methods is to be opted for, the suitability of any particular method for any particular type of dispute and shall specifically deal with the role of the above persons in disputes which are commercial or domestic in nature or which relate to matrimonial, maintenance and child custody matters.

(3) The High Court and the District Courts shall periodically conduct seminars and workshops on the subject of alternative dispute resolution procedures throughout the State with a view to bring awareness of such procedures and to impart training to lawyers and judicial officers.

(4) Persons who have experience in the matter of alternative dispute resolution procedures, and in particular in regard to conciliation and mediation, shall be given preference in the matter of empanelment for purposes of conciliation or mediation.

8. Applicability to other proceedings. - The provisions of these Rules may be applied to proceedings before the Courts, including Family Courts constituted under the Family Courts Act (66 of 1984), while dealing with matrimonial, maintenance and child custody disputes, wherever necessary, in addition to the rules framed under the Family Courts Act, (66 of 1984).

PART II

CIVIL PROCEDURE MEDIATION RULES

1. Title - These Rules in Part II shall be called the Civil Procedure Mediation Rules, 2005.

2. Appointment of mediator: (1) Parties to a suit may all agree on the name of the sole mediator for mediating between them.

(2) Where, there are two sets of parties and are unable to agree on a sole mediator, each set of parties shall nominate a mediator.

(3) Where parties agree on a sole mediator under clause (a) or where parties nominate more than one mediator under clause (b), the mediator need not necessarily be from the panel of mediators referred to in Rule 3 nor bear the qualifications referred to in Rule 4 but should not be a person who suffers from the disqualifications referred to in Rule 5.

(4) 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.

3. Panel of mediators. - (1) The High Court shall, for the purpose of appointing mediators between parties in suits filed on its original side, prepare a panel of mediators and publish the same on its Notice Board, within thirty days of the coming into force of these Rules, with copy to the Bar Association attached to the original side of the High Court.

(2) (i) The Courts of the District Judge in each District shall, for the purposes of appointing mediators to mediate between parties in suits filed on their original side, 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 same on their respective Notice Board.

(ii) Copies of the said panels referred to in clause (i) shall be forwarded to all the Courts of equivalent jurisdiction or Courts subordinate to the Courts referred to in Sub-clause (i) and to the Bar Associations attached to each of the Courts.

(3) The consent of the persons whose names are included in the panel shall be obtained before empanelling them.

(4) The panel of names shall contain a detailed Annexure giving details of the 'qualifications' of the mediators and their professional or technical experience in different fields.

4. Qualifications of persons to be empanelled under Rule 3. -

(1) The following persons shall be treated as qualified and eligible for being enlisted in the panel of mediators under Rule 3, namely:

- (i) Retired Judges of the Supreme Court of India;
- (ii) Retired Judges of the High Court.
- (iii) Retired District and Sessions Judges or retired Judges of the City Civil Court or Courts of equivalent status.

(2) 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 or Courts of equivalent status.

(3) Experts or other professionals with at least fifteen years standing; or retired senior bureaucrats or retired senior executives;

(4) institutions which are themselves experts in mediation and have been recognized as such by the High Court, provided the names of its members are approved by the High Court initially or whenever there is change in membership.

5. Disqualifications 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; or
- (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; or
- (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; or
- (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; or
- (vi) any legal practitioner who has or is appearing for any of the parties in the suit or in any other suit or proceedings; or
- (vii) such other categories of persons as may be notified by the High Court.

6. 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 State 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.

7. Preference. - The Court shall, while nominating any person from the panel of mediators referred to in Rule 3, 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 qualification or experience in mediation.

8. Duty of Mediator to disclose certain facts. - (1) When a person is approached in connection with his possible appointment as a mediator, the person shall disclose in writing to the parties, any circumstances likely to give rise to a justifiable doubt as to his independence or impartiality.

(2) 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).

9. Cancellation of appointment. - Upon information furnished by the mediator under Rule 8 or upon any other information received from the parties or other persons, if the Court, in which the suit is filed, 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.

10. Removal or deletion from panel.- A person whose name is placed in the panel referred to in Rule 3 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 a criminal court and are pending;
- (iv) he is a person who has 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, after conducting such inquiry as it deem fit, is of the view, that it is not possible or desirable to continue the name of that persons in the panel:

Provided that, before removing or deleting his name, under clause (vi) and (vii), the Court shall hear the mediator whose name is proposed to be removed or deleted from the panel and shall pass a reasoned order.

✓ **11. Procedure of mediation.-** (1) The parties may agree on the procedure to be followed by the mediator in the conduct of the mediation proceedings.

(2) 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 6;
- (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.

(3) 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.

12. 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.

13. Non-attendance of parties at sessions or meetings on due dates.- (1) The parties shall be present personally or may be represented by their counsel or power of attorney holders at the meetings or sessions notified by the mediator.

(2) If a party fails to attend a sessions 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 take action against the said party by imposition of costs.

(3) The parties not resident in India may be represented by their counsel or power of attorney holders at the sessions or meetings.

14. 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.

15. Offer of settlement by parties. (1) 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.

(2) 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.

16. Role of Mediator.- The mediator shall attempt to facilitate voluntary resolution of the dispute by the parties, 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 to solve the dispute, emphasizing that it is the responsibility of the parties to take decision which affect them; he shall not impose any terms of settlement on the parties.

17. Parties alone responsible for taking decision.- The parties must understand that the mediator only facilitates in arriving at a decision to resolve disputes and that he 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.

18. 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 be beyond a further period of thirty days.

19. 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.

20. 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 that 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 in respect of events that transpired during mediation and shall not rely on or introduce the said information in any other proceedings as to:

(i) views expressed by a party in the course of the mediation proceedings;

(ii) 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;

(iii) proposals made or views expressed by the mediator;

(iv) admission made by a party in the course of mediation proceedings;

(v) 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.

21. 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.

22. Immunity. No mediator shall be held liable for anything bona fide done or omitted to be done by him during the mediation proceedings for 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.

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23. Communication between mediator and the Court. (1) 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 (b) and (c) of this Rule.

(2) 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.

(3) Communication between the mediator and the Court shall be limited to communication by the mediator:

- (i) with the Court about the failure of party to attend;
- (ii) with the Court with the consent of the parties;
- (iii) regarding his assessment that the case is not suited for settlement through mediation;
- (iv) that the parties have settled the dispute or disputes.

24. 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 in 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.

25. Court to fix a date for recording settlement and passing decree. - (1) Within seven days of the receipt of any settlement, the Court shall issue notice to the parties fixing a day for recording the settlement, such date not being beyond a further period of fourteen days from the date of receipt of settlement, and the Court shall record the settlement, if it is not collusive.

(2) The Court shall then pass a decree in accordance with the settlement so recorded, if the settlement disposes of all the issues in the suit.

(3) If the settlement disposes of only certain issues arising in the suit, the Court shall record the settlement on the date fixed for recording the settlement; and

(i) if the issues are severable from other issues and if a decree could be passed to the extent of the settlement covered by those issues, 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, the Court shall wait for a decision of the Court on the other issues which are not settled.

26. 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 2, the Court shall fix the fee payable to the mediators which shall be shared equally by the two sets of parties.

(4) The expenses 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.

(b) Each party shall bear the costs for production of witnesses on his side including experts, or for production of documents.

(b) 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.

(c) The expenses 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.

(d) Where a party is entitled to legal aid under Section 12 of the Legal Services Authority Act, 1987, the amount of fee payable to the mediator and costs shall be paid by the concerned Legal Services Authority under that Act.

27. Ethics to be followed by mediator. - The mediator shall:

- (i) follow and observe these Rules strictly and with due diligence;
- (ii) not carry on any activity or conduct which could reasonably be considered as conduct unbecoming of a mediator;
- (iii) uphold the integrity and fairness of the mediation process;
- (iv) ensure that the parties involved in the mediation are fairly informed and have an adequate understanding of the procedural aspects of the process;
- (v) satisfy himself/herself that he/she is qualified to undertake and complete the assignment in a professional manner;

(vi) disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias;

(vii) avoid, while communicating with the parties, any impropriety or appearance of impropriety;

(viii) be faithful to the relationship of trust and confidentiality imposed in the office of mediator;

(ix) conduct all proceedings related to the resolutions of a dispute, in accordance with the applicable law;

(x) 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;

(xi) maintain the reasonable expectations of the parties as to confidentiality;

(xii) refrain from promises or guarantees of results.

23. Transitory provisions. - Until a panel of arbitrators is prepared by the High Court and the District Court, the Courts referred to in Rule 3, may nominate a mediator of their choice if the mediator belongs to the various classes of persons referred to in Rule 4 and is duly qualified and is not disqualified, taking into account the suitability of the mediator for resolving the particular dispute.

BY ORDER

(J. N. Barowalla)
Registrar (Rules)

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171001

No. HHC/Rules/CP.ADR/05-

Dated; 7.8.2010.

NOTIFICATION

In exercise of the rule making power vesting under Part X of the Code of Civil Procedure, 1908 (5 of 1908) and clause (d) of sub-section (2) of Section 89 of the said Code, the High Court of Himachal Pradesh is pleased to make the following amendment in "High Court of Himachal Pradesh Civil Procedure Alternative Dispute Resolution and Mediation Rules, 2005".

Short title:

1. These Rules shall be called "High Court of Himachal Pradesh Civil Procedure Alternative Dispute Resolution and Mediation, (1st Amendment) Rules, 2010".

Commencement

2. This amendment shall come into force with immediate effect.

Amendment

3. Sub-Rule (2) of Rule 4 in Part II, Civil Procedure Mediation Rules shall stand substituted as under:

"4 Qualification of persons to be empanelled under Rule 3".

- (2) Legal practitioners with at least **ten** years standing at the Bar at the level of the Supreme Court or the High Court; or the District Courts or Courts of equivalent status.

**BY ORDER OF THE HIGH COURT OF
HIMACHAL PRADESH**

REGISTRAR(JUDICIAL)