



PKPMP.PKHN.600-3/3/1
March 2022

All High Court Judges / Judicial Commissioners
High Courts of Malaya / High Courts of Sabah and Sarawak

All Sessions Court Judges
Sessions Courts throughout Malaysia

All Deputy Registrars / Senior Assistant Registrars
Federal Court / Court of Appeal /
High Court of Malaya / High Court of Sabah and Sarawak

All Magistrates
Magistrates' Courts throughout Malaysia

All Senior Assistant Registrars / Assistant Registrars
Subordinate Courts throughout Malaysia

**PRACTICE DIRECTION OF THE CHIEF JUSTICE
NUMBER 2 OF YEAR 2022
MATTERS AND MEDIATION PROCEDURES FOR CASES
IN THE HIGH COURTS AND THE SUBORDINATE COURTS**

IN exercise of the powers conferred by Order 92 Rule 3B (1) of the Rules of Court 2012 [*P.U.(A)205/2012*] (ROC 2012) and in accordance with Order 34 Rules 1A and 1B of ROC 2012, I, after consultation with the Rt. Hon. the Chief Judge of the High Court of Malaya and the Rt. Hon. the Chief Judge of the High Court of Sabah and Sarawak, issued this

Practice Direction to prescribe the matters and procedure of mediation for cases in the High Courts and Subordinate Courts as follows:

APPLICATION

2. This Practice Direction applies to mediation matters and procedures in civil proceedings in the High Courts and Subordinate Courts throughout Malaysia.

INTERPRETATION

3. In this Practice Direction, unless the context otherwise requires—

“Court” refers to the High Court of Malaya, the High Court of Sabah and Sarawak, the Sessions Court or the Magistrates’ Court, as the case may be, throughout Malaysia;

“Judge” means any High Court Judge, Judicial Commissioner or any judicial officer;

“Institution providing mediation services” refers to any of the institutions listed in **Annexure A**;

“Private Mediator” refers to a mediator appointed by the parties privately without reference to the Institution providing mediation services where the mediator is registered;

“e-Court system” means any electronic application developed by the Office of the Chief Registrar of the Federal Court for the matters and proceedings of the Court.

CASE REFERRAL TO THE MEDIATION PROCESS

i. Mediation for Road Traffic Accident Cases

4. For road traffic accident cases, the Court shall direct the case to be referred to the mediation process before trial is fixed. The procedure for the mediation process for Road Traffic Accident cases is as provided in **Annexure B**.

ii. Mediation for Civil Cases

5. For civil cases, the Court may refer the parties to the mediation process if–

(a) the judge is of the view that the case could be resolved through mediation and the parties agree to refer to the mediation process; or

(b) the parties apply to the Court to refer to the mediation process.

6. Notwithstanding the provision in paragraph 5(a), the Court may recommend to the parties to refer to Judge-led mediation.

7. The mediation process may be conducted at any of the following stages of proceedings:

- (a) during the case management before hearing;
- (b) during the interlocutory application;
- (c) before the start of the full trial;
- (d) during the full trial;
- (e) after the full trial but before a decision is made;
- (f) during the appeal stage; and
- (g) at any stage or proceeding as the Court deems fit.

TYPES OF MEDIATION

8. For the purpose of conducting the mediation process, the parties may choose one of the following types of mediation:

No.	Types of Mediation	Procedures
(a)	Mediation by the Court (Judge-led mediation)	As in Annexure C
(b)	Mediation by Institutions providing mediation services	As in Annexure D
(c)	Mediation by a Private Mediator agreed by the parties	As in Annexure E

MEDIATOR FOR THE MEDIATION PROCESS

9. The mediators for Judge-led mediation are as follows:

No.	Court	Mediator
(a)	Courts with Mediation Centres	A judge appointed as mediator
(b)	Courts with no Mediation Centre but have more than one Judge	A judge will act as mediator by case swapping
(c)	Courts with only one Judge	The same judge acts as mediator, provided that both parties agree. If both parties do not agree, mediation will be conducted by another Judge to be determined by the Head of the Mediation Centre in the state in question.

10. The mediation process by an Institution providing mediation services or a Private Mediator shall not be conducted by a Judge.

11. During the mediation process, the Mediator shall perform the following functions:

- (a) facilitate negotiations between the parties; and
- (b) seek settlement to disputes between the parties.

LOCATION OF THE MEDIATION PROCESS

12. The mediation process can be carried out at the following locations:

No.	Types of Mediation	Location of Mediation Process
(a)	Judge-led Mediation	(i) Court Mediation Centre; or (ii) any location within the premises of the Court as may be determined by the mediator
(b)	Mediation conducted by an Institution providing mediation services / Mediation by a Private Mediator agreed by the parties	(i) at any location as determined by the mediator; or (ii) at any place agreed by the parties; and (iii) the parties shall not use the facilities of the Court Mediation Centre or any of the premises of the Court for mediation processes conducted by external mediators.

13. The location of the Court Mediation Centre as specified in paragraph 12(a)(i) at the location of the Court as determined by the Rt. Hon. the Chief Judge of Malaya or the Rt. Hon. the Chief Judge of Sabah and Sarawak, as the case may be. The list of Court Mediation Centres is as provided in the portal of the Office of the Chief Registrar of the Federal Court which can be accessed through the website <http://www.kehakiman.gov.my/ms/hubungi-kami/senarai-pusat-mediasi-mahkamah>.

NOTICE REGARDING THE STATUS AND/OR THE OUTCOME OF THE MEDIATION PROCESS

14. The parties shall notify the Court the status of the mediation that had been conducted. For this purpose, a case management date shall be fixed within a period of not later than a month from the date the case is referred to the mediation process.

15. For the mediation process that has been completed, the parties shall notify the Court as soon as possible or latest within two (2) weeks from the date the mediation process is completed.

16. After the mediation process is completed, the parties shall comply with the following procedures:

No.	Outcome of Mediation	Actions by the Parties
(a)	Mediation successful	The parties may – (i) record a consent judgment; (ii) record a settlement agreement; (iii) file a Notice of Discontinuance
(b)	Mediation failed	The parties shall comply with any directions of the Court in relation to the conduct of the case in the original proceedings.

COSTS OF CONDUCTING MEDIATION

17. The costs for conducting the mediation process are as follows:

No.	Types of mediation	Total costs
(a)	Judge-led mediation	Free of charge
(b)	Mediation by Institutions providing mediation services and Private Mediators	Subject to the amount of costs as determined by the Institution or Private Mediator providing the mediation services

CONFIDENTIALITY

18. The parties shall ensure 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;
- (b) any disclosures, confessions and communications made during the mediation process are confidential and without prejudice;
- (c) all communications during the mediation process shall not be part of the record of proceedings; and
- (d) Parties shall not call a mediator to give evidence in relation to the mediation process conducted by the mediator for the proceedings.

REVOCATION

19. The following Practice Direction and Letter are hereby revoked:

- (a) Practice Direction No. 2 of 2013 entitled “Proses Mediasi bagi Kes-Kes Kemalangan Jalan Raya di Mahkamah Majistret dan di Mahkamah Sesyen”;
- (b) Letter from the Office of the Chief Registrar of the Federal Court entitled “Proses Mediasi Bagi Kes-Kes Kemalangan Jalanraya di Mahkamah Majistret dan di Mahkamah Sesyen yang dirujuk di dalam Arahan Amalan Ketua Pendaftar Bil 2 Tahun 2013” dated 30 January 2013; and
- (c) Practice Direction No. 4 of 2016 entitled “Practice Direction on Mediation.”

SAVING

20. Any action or proceeding which has commenced or is pending before the date of commencement of this Practice Direction shall, after the date of commencement of this Practice Direction, be continued as if the Practice Direction No. 2 of 2013 and Practice Direction No. 4 of 2016 have not been revoked.

DATE OF COMMENCEMENT

21. This Practice Direction comes into effect on **1 April 2022**.

Sgd.

TUN TENGKU MAIMUN BINTI TUAN MAT
Chief Justice of Malaysia
Palace of Justice
Putrajaya

C.C:

The Rt. Hon. the President of the Court of Appeal
Federal Court
Palace of Justice
Putrajaya

The Rt. Hon the Chief Judge of Malaya
Federal Court
Palace of Justice
Putrajaya

The Rt. Hon the Chief Judge of Sabah and Sarawak
Federal Court
Palace of Justice
Putrajaya

Attorney General
Attorney General's Chambers
No. 45, Persiaran Perdana,
Presint 4, 62100 Putrajaya

Chief Registrar
Federal Court
Palace of Justice
Putrajaya

Deputy Chief Registrar
Federal Court
Palace of Justice
Putrajaya

Registrar
Court of Appeal
Palace of Justice
Putrajaya

Registrar
High Court of Malaya
Palace of Justice
Putrajaya

Registrar
High Court of Sabah & Sarawak
Kota Kinabalu
Sabah

Registrar
Subordinate Courts of Malaya
Palace of Justice
Putrajaya

Registrar
Subordinate Courts of Sabah & Sarawak
Kota Kinabalu
Sabah

Librarian
Federal Court
Palace of Justice
Putrajaya

President
Malaysian Bar
Kuala Lumpur

President Sabah Law Society
Sabah

President
The Advocates' Association of Sarawak
Sarawak

LIST OF INSTITUTIONS PROVIDING MEDIATION SERVICES

No.	Name of institution
1.	Asian International Arbitration Centre (AIAC)
2.	Malaysian Mediation Centre (MMC)
3.	Securities Industry Dispute Resolution Center (SIDREC)
4.	Mediation Centre Sabah, Sabah Law Society (MCS)
5.	AAS Mediation Services, Advocates Association of Sarawak (AMS).

**MEDIATION PROCEDURES FOR ROAD TRAFFIC ACCIDENT
CASES**

1. 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:

- (a) preliminary medical report;
- (b) sketch plan of the accident;
- (c) police report by the parties;
- (d) photographs (if applicable); and
- (e) other relevant documents.

2. For the purposes of paragraph 1, a mention date will be fixed for all road traffic accident cases based on the following codes:

Court	Code
Sessions Court	Code 53
Magistrates' Court	Code 73

3. After pleading 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	<p>Four to six months from the date the case is filed.</p> <p>The trial shall proceed on the fixed date.</p>
(b)	Trial dates for cases that require an expert report	<p>Six to eleven months from the date the case is filed.</p> <p>The trial shall proceed on the fixed date.</p>

4. The date for mediation process shall be fixed not later than one (1) month after the date of the trial is fixed for the type of proceedings in paragraph 3.

Mediator for Mediation Process in Road Traffic Accident Cases

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

- (a) Sessions Court Judges / Magistrates; or
- (b) Private Mediators agreed by the parties in accordance with the procedures in **Annexure E**.

6. For Sessions Court or Magistrates' Court which has only one Sessions Court Judge / Magistrate, the Director of the State Court may direct any Judicial Officer in the state to act as a mediator to the Mediation process, as deemed appropriate.

Completion of Mediation Process

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

8. 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.

9. 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.

10. For the purposes of paragraph 8, the parties shall file an expert report within three months from the date the pleading is closed. If the expert report cannot be filed within the stipulated time—

(a) the case will proceed for trial;

(b) the parties may withdraw the proceedings with liberty to file afresh after having received the relevant expert report.

**PROCEDURE OF MEDIATION PROCESS BY JUDGE-LED
MEDIATION**

1. The parties or counsel shall submit the mediation registration form as in Annexure C-1 to –
 - (a) the Court Mediation Centre; or
 - (b) the Court conducting the mediation process (for Courts that do not have a Mediation Centre),within seven (7) days from the date the Court recommends / the parties agree to conduct a mediation process through Judge-led mediation.
2. 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 e-mail / e-Court system.
3. On the date fixed for the mediation process, the parties shall attend the mediation session at the designated location or by video conference in accordance with the time specified in paragraph 2 above.

Mediation Process by Video Conference

4. 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 week from the date fixed for the mediation process.

5. 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.

6. 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.
7. 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.
8. When attending the mediation process by video conference, the parties must ensure compliance with the following:
- (a) introduce the parties attending the mediation process by video conference;
 - (b) do not make any indecent body and hand gesture;

- (c) do not eating and drinking;
- (d) to be in the video conference session at all times and to remain in the mediation process until the mediation process has been completed except with the permission of the mediator;
- (e) refer to any document used during the mediation session through the document share screen;
- (f) do not record of the mediation session using any recording device; and
- (g) to leave (log out) the video conference after the mediator leaves the mediation process.

Postponement of the Mediation Process

9. 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.
10. 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.

MEDIATION REGISTRATION FORM

Case number	
Name of Judge /Judicial Commissioner/ Judicial Officer	
Court of Origin	
Parties Available Dates	
Date of Case Management/Trial	
Email Address of Plaintiff	
Email Address of Defendant	
Email Address of Third Party	

**PROCEDURES OF THE MEDIATION PROCESS
BY INSTITUTIONS PROVIDING MEDIATION SERVICES**

1. For mediation processes referred to any Institution providing mediation services, the procedures in this Annexure shall apply.
2. The parties or lawyers shall inform the Institution providing mediation services in writing in relation to the agreement of the parties to conduct the mediation process by the Institution within seven (7) days from the date the Court allows the proceedings to be referred to the mediation process.
3. All registration and mediation processes are carried out in accordance with the rules set by the Institution.

Mediator

4. The parties may appoint–
 - (a) any mediator registered with the Institution providing mediation services to conduct the mediation process; and
 - (b) more than one (1) mediator to conduct the mediation process.
5. The appointed mediator may choose to be bound or not to be bound by the code of ethics and mediation rules set by the Institution providing mediation services.

**PROCEDURES FOR MEDIATION PROCESS BY PRIVATE
MEDIATORS AGREED BY THE PARTIES**

1. The parties may select one or more Private Mediator-to conduct the mediation process for cases that have been filed in Court.
2. The parties or counsel shall notify the Private Mediator in writing of the parties' agreement to conduct the mediation process within seven (7) days from the date the Court allows the proceedings to be referred to the mediation process.
3. The appointed Private Mediator must fulfill the following criteria:
 - (a) the appointed Private Mediator shall be agreed upon by the parties; and
 - (b) the appointed Private Mediator must –
 - (i) possess the qualification as a mediator;
 - (ii) have specialized knowledge or experience in conducting the mediation process; and
 - (iii) meet the conditions and qualifications as determined by the relevant institution as provided under the Mediation Act 2012 [Act 749].

Mediation Process

4. The management and conduct of the mediation process by the Private Mediator shall be carried out as provided under Act 749.

5. Notwithstanding the provisions of paragraph 4 above, while conducting the mediation process, the Private Mediator may choose to comply or not comply with the mediation ethics and rules issued by the mediation institution in which the mediator is registered.