



## RAJASTHAN STATE LEGAL SERVICES AUTHORITY

RAJASTHAN HIGH COURT PREMISES, JAIPUR BENCH, JAIPUR

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### **Standard Operating Protocol for the Securing Presence of Parties during the Process of Mediation**

Mediation is a method of Alternative Dispute Resolution, wherein an independent third party, the Mediator assists the parties in dispute to identify the disputed issues, develop options, considers alternatives and tries to reach an agreement. It is a negotiation facilitated by the neutral third party. It is a procedure that parties to a dispute can follow as an attempt to resolve their disputes without using court proceedings. All parties, directly involved in the case are invited to attend the Mediation proceedings. The parties to the Mediation process, controls its outcome. The Mediator neither gives any advice, nor makes any decisions on behalf of the parties. The Mediator helps the parties to draft a written agreement, known as 'Settlement'.

Whereas grievance raised several times by the Mediators that parties (either one of them or both of them) are not attending process of mediation and desired result could not be achieved due to non-attendance of parties. Therefore, proposed procedure describes the steps required to be undertaken for ensuring presence of the parties in process of Mediation and it shall be applicable for all Mediation Centre of Rajasthan running under the aegis of RSLSA.

The requirement for personal attendance is significant because the genius of Mediation is about dialogue and flexible one-to-one negotiation. Mediation is the empowerment of the parties themselves to resolve their own disputes strictly on their own terms and conditions. It, therefore requires the parties themselves to remain present during hearing sessions. It underscores two important philosophies of Mediation:-

1. The personal touch in mediation is critical for a heart-to-heart dialogue,



2. The importance of expeditious, efficient and effectiveness of the process are key factors for resolving the dispute quickly, fairly, effectively and economically.

The purpose of mediation can only be achieved, if the parties to the mediation are personally present at the negotiating table. This may be further fortified by this complementary rule, which requires Mediation session to proceed without adjournment. To achieve all these, following protocol requires to be adopted for ensuring the presence of the parties in process of Mediation and also to indicate consequence for non-appearance:

### **At the time of Referral**

1. As far as possible, every matter shall be referred in the presence of the parties, however if the Court or Judge, is of the opinion that referral is in best interest of parties, then same may be referred in the presence of lawyers but lawyers may be directed to inform parties to remain present before Mediation proceedings.
2. The Referral Judge shall take all immediate and effective steps to ensure presence of the parties before referring matter for Mediation.
3. The Referral Judge may even adopt all possible methods and means of process, authorized under the law to procure attendance of the parties.
4. It shall be duty of every Referral Judge or Registrar (Judicial), in case of Reference to Mediation by Hon'ble High Court to send full particulars of parties (including contact details i.e. mobile number, e-mail, complete address etc.) to the Mediation Centre.

### **During Mediation**

1. As soon as matter is received from the Court or otherwise, the Coordinator of Mediation Centre will issue notice to parties by E-mail/WhatsApp/ SMS/ Speed Post, if parties were not present during referral and specific date is not assigned for appearance before the Mediation Centre or Party(ies) remained absent after the specification of date of appearance.



2. At the first session by Mediator, if any of the party (ies) do not turn up, then it is the duty of the Mediator to report same to the Coordinator of Mediation Centre.
3. After receipt of information, the Coordinator of Mediation Centre shall submit report in prescribed format to the Referral Judge or Hon'ble Court with request to initiate effective steps and pass such order, as deems fit for procuring attendance of party (ies).
4. If during the Mediation sessions, the party (ies) fails to attend proceedings without good cause, the Mediator may, if there is possibility of settlement, fix another date under intimation to absentee party (ies).
5. If after attending one or two sessions, either of the party (ies) indicates in writing that he/she is not willing to continue the Mediation, then it would be a good ground to terminate Mediation process.
6. If either of the parties not willing in Mediation process, it may request in writing to the concerned Court/ Referral Judge under intimation to the Coordinator of Mediation Centre and thereafter no proceeding for procuring his/ her presence would be initiated.
7. If any party to the Mediation process, may intimate in writing regarding cause for non-appearance but atleast 24 hours prior to forthcoming date through email, Registered/ Speed post to the Coordinator of Mediation Centre or Mediator, then same shall be intimated to the other party (ies) at earliest.
8. If request for non-appearance by any party is received well in advance, then the opposite party (ies) and Mediator shall be intimated by the Coordinator of Mediation Centre.
9. If any party chooses not to appear in further proceedings before the Mediator, then the Mediator will refrain from continuing the process.
10. In case of any difference regarding implementation of this Protocol or process, opinion of the Coordinator of Mediation Centre (subject to directions of Hon'ble Judge Incharge, in case of the RHC Mediation Centre Jodhpur/ Jaipur) shall be final and binding, subject to overall supervision of Hon'ble Executive Chairman of RLSA.



### Settlement

If during Mediation process parties agree for terms of settlement but failed to remain present during final session for recording settlement then notice by way of Speed Post/ E-mail/WhatsApp/ SMS shall be issued but if after service, any party (ies) fail to appear, then proceedings would terminate as '**unsuccessful**'.

The Mediation Centre shall maintain a proceeding register, wherein attendance during proceedings of every matter may be recorded on day to day basis and shall be signed by parties present and the Mediator.

BY ORDER

  
Member Secretary, RLSA