SHOULD JUDGES MEDIATE: MALAYSIA PERSPECTIVE

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ABSTRACT

The judicial mediation which is very important in the society to resolve the problems quickly between the parties, but this judicial mediation has recently been in constant criticism as to whether Judges should mediate in undertaking disputes or not. This paper explains that judges are unable to maintain the mediation because there is a lacuna of proper mediation skills by the judges that how to handle the mediation. Further, the element of confidentiality and private discussions with parties puts a judge at risk of being seen as not impartial and they do not achieve a settlement from sitting on the trial, limiting the available judges for the case. This paper also shows that judges are accused of unfairness with the parties in private discussion, even make threats through judicial mediation purposes which goes against the public confidence of the parties. Nevertheless, the aim of this paper is that why judges should not mediate regarding critical issues when lawyers provide swift results to the clients because of remaining mediation training with better knowledge than judges. If the judges make mediation, clients will be deprived of their original mediation's right by the biases of the judges. On the contrary, lawyers are very expert in unraveling such types of perilous problems which are applied in Malaysia. In this paper, I will show some moral sides of the judges for mediation on my first stage and then it will be focused that judges should not mediate through the mediation process.

Keywords: Party Autonomy, Lawyers, Mediation, Acts, Cases, Statistics

1.1 INTRODUCTION

Mediation is a dynamic, controlled, collaborating process where a neutral third party supports disputing parties in resolving conflict using specialized communication and negotiation techniques. However, the question may be rose who can perform the mediation. The answer of this critical question is difficult to identify because according to the Malaysian Mediation Act 2012 [Act 749] refers that mediation, in general, comes under the purview of this Act. The Act states that for mediation, a written offer regarding the mediation is sent to the person, with whom he has a dispute.[i] In fact, it depends largely on the parties, not for Judges or lawyers or others when the parties are obliged to mention when there is a mediation clause as an alternative dispute resolution in their contractual agreement.[ii] However, the mechanism of mediation as an alternative dispute resolution (ADR) is widely recognized by the courts in the developed countries[iii] and it has come in Malaysia since its embryonic days in the mid-nineties. It is described as being "*at the fundamental of today's civil justice system*," and *"an unofficial, non-binding and non-authoritative process,"* and the humble meaning of mediation is resolving disputes which supports the parties to reach a settlement.[iv] Now, it is used as a generic term to denote a choice of processes, remarkably mediation, in which impartial third party contributions those in a dispute to settle the issues between them.[v] Under the Malaysian Practice Direction No. 5 of 2010, there are two types of mediation i.e. (i) Judge-led mediation and (ii) Mediator agreeable by both parties. Nevertheless, the purpose of this study is, whether Judges should be appointed as a Mediator or not? In my view, the legal practitioners are quarreling on both sides of the debate regarding the issue. In this paper, I will try to identify and explain that the judges should not mediate using judicial mediation.

2.1 WHY JUDGES SHOULD MEDIATE?

The supporters of judicial mediation believe Judges should mediate. This is because they respect the parties and improve collaboration for a faster settlement. The element of such respect can be of important assistance in safeguarding cooperation in the process and willingness to reflect options for settlement. Judges like to refer cases for mediation because every case that settles is one less case the Judges must deal in the court docket. Moreover, mediation saves a lot of time and work for the Judges. A Court ordered mediation will be more successful and it could be improved with a little more court involvement in setting up the process for success rather than failure.[vi] According to **Joseph C. Markowitz,**[vii] "

> *"Of course, judges often have to get a lot more involved in settlement negotiations, employing a variety of mediation techniques to help the parties reach a settlement. Some of them are masters at mediation. But the real power of the judge usually rests on the parties' perception of the judge as an authority figure."*

2.1.1 Benefits of Judicial Mediation

There are some significant benefits if judicial mediation is being initiated. In most recent times, judicial mediation is gaining popularity among the parties and the Judges are also leaning towards the success of judicial mediation. The benefits of judicial mediation are listed out below:

- Judicial mediation evades litigation by arriving a settlement, which saves time and money[viii]
- It presents a culture of mediation permitting courts to exemplify the concept of a multi-door courthouse [ix]
- It introduces a difference in the capacity of a Judge.[x]

- Judges increase cooperation for the settlement of the dispute between the parties and records a high settlement rate is successful.[xi]

Further**, according to Justice Debelle**[xii] a renowned Judge, has contended in very pragmatic terms that a Judge should mediate pointing out few advantages which are as follows:

i. Fears as to impartiality at a post-meditation trial by the same Judge is determined by the Judge saves him or herself.[xiii]

ii. If the courts do not *"train themselves with practices to resolve clashes by means in addition to litigation where can be seen the risks in the courts*.[xiv]

iii. In the Federal Court and the Supreme Court of South Australia, Judicial mediation has been very efficacious.[xv] However, **Nadja Alexander**[xvi] who stated regarding judicial mediation,

> *"In England, the Woolf (1995) and Jackson Reports (2009) made the case for the courts to play an active role in providing information about, and encouraging, mediation and other forms of ADR. Judicial mediation and other non-determinative judicial processes are redefining the traditional concept of judges as disinterested decision-makers. These processes are referred to collectively as judicial dispute resolution or JDR."*

In common law jurisdictions, there are signs of interest in Judicial mediation within some courts in countries such as Australia, New Zealand and the common law Canadian provinces. Some judicial codes of conduct specifically recognize the role of Judges as mediators. In addition, access to justice creativities in common law countries has cemented the way for revolutions in case management such as hot-tubbing in which expert witnesses present their evidence simultaneously and are subject to questions from one another and from the judge.[xvii]

In many countries, the judicial settlement function becomes a tradition with civil law traditions, as for example, Germany and China.[xviii] Germany and Scandinavia are considered a form of mediation whereas the distinction between judicial settlement and judicial mediation is recognized by two cross-border legal instruments – the European Directive on Mediation in Civil and Commercial Matters and the Uniform Mediation Act (2001 in the United States (s 3(b)(3)).[xix]

In Canada and Australia, there are examples of facilitative judging which can be noticed including initiatives such as, problem-solving courts, therapeutic justice, and courts that assimilate the basics of indigenous dispute resolution such as the Murri Court in Australia.[xx]

2.1.2 Perceptions of The Parties

Judges are suitable for several reasons relating both to specific skills possessed and perceptions of the respective parties. They make a degree of moral authority for the perception of the judicial office as impartial and independent.[xxi]

Exercising moral authority is extremely subtle however, the consent of the parties is an essential pillar of any mediation scheme, and Judge-mediators must never use their position to operate this consent. The Judge-mediator is not there to steer the process towards a result or extract a settlement, but instead to help the parties come to their own resolution of their existing conflict. The parties' opinion of it can lend reliability to the process and preserve it moving when it might otherwise break, but to use the office to control the process is to destabilize it.[xxii]

2.1.3 Efficiency

The parties benefit from substantial savings of time and cost by eliminating the need for the preparation of facts or briefs and court transcriptions and efficiency gains can result even from a mediation process that does not end in settlement.

When considering a Judge as a mediator, it may be helpful to ask what else that Judge carries to the table aside from his judicial knowledge and authority, or is that knowledge sufficient to settle the case in a satisfactory way.[xxiii] The best Judge-mediators hold their aura of authority while abstaining from being too quick to judge the outcome, and they continue working with the parties beyond the case valuation stage of conciliation.[xxiv]

2.1.4 Qualities and Skills

Apart from the insights of the parties, Judges hold many qualities and skills which make them effective mediators; for example, Judges have long experience in resolving a dispute between the parties. This practical experience is bolstered namely the judge's commitment both to attain resolution and to provide justice.[xxv]

I think that Judges must be trained to mediate and, more precisely, to negotiate the problems of judicial mediation. **For example,** in Canada, Judges have the judicial mediation program for special mediation training. These training courses are essential to the needs of Judges and permit them both to negotiate the transition from adjudication to mediation and to mediate successfully.[xxvi] The Judge-mediator's training and the changing the judicial mindset; must be addressed plainly, because there is no place for an adjudicator in a mediation session.[xxvii]

In summary, the role of a Judge-mediator is not to compel the parties to settle by holding the law over their heads like a sword, but rather to guide the parties to a better understanding of their differences to resolve the conflict between them since judicial mediation is a voluntary

process. The presence of a Judge reminds the parties of what is at stake, ensures that the process is capable to run in all instances, and allows continued vigilance of issues like the balance of bargaining power.

3.1 WHY JUDGES SHOULD NOT MEDIATE?

In Australia, the National Alternative Dispute Resolution Advisory Council (NADRAC)[xxviii] opposes judicial mediation. In fact, under Section 2.2, there is a strict prohibition which explicitly states that Judges and judicial officers are strictly not permitted to mediate cases which they hear. The said section goes on to state that the risk of Judges being wrongly accused of being unfair should they mediate their own trial list of cases.[xxix] Further, NADRAC itself also raised the following concerns: The mediation may only succeed because of the judicial imprimatur and the agreement reached based on the judicial imprimatur may leave a party dissatisfied. Secondly, Public confidence in the integrity and impartiality of the court can be threatened by a Judge. Moreover, it is said that judicial time is expensive, whereas mediation is more cost-effective and left to private ADR providers.[xxx] As such, unhappiness with judicial conduct of mediation may reflect destructively upon the judiciary.

Sir Lawrence Street mentioned Judicial mediation is a contradiction in terms and Judges are supposed to judge (not mediate), to evaluate (not facilitate), and to decide (not settle) to apply the law (not interests), to order (not accommodate).[xxxi] This discussion is crucial as the prospect of Judges mediating cases has the potential to impact the practice of mediation.

3.1.1 The Risk of Judicial Mediation

1. There are also other risks of Judicial mediation, **for instance,** Judges set at risk of the private discussions and element of confidentiality but not impartial.[xxxii]

2. If mediation by the Judge does not reach in the settlement; it has to understand that Judge is limiting the available Judges in the case when he is on trial.

3. Judges are respected person in the judiciary and them left-over their original skills using the mediation especially when there are plenty of private mediators available[xxxiii]

3.1.2 Abuse of Judicial Function

Professor Freiberg, Dean of Law School of Monash University, has analyzed the adversarial paradigm and drawn attention to the benefits of non-adversarial justice.[xxxiv] He focuses that despite the strength of adversarial system- its contested nature, judicial impartiality, party control and autonomy, the power and effectiveness of examination and cross-examination, as well as observance of the laws- it can be criticized. The adversarial system encourages conflict, not collaboration, pursues proof, rather than the truth, determinations conflict, but does not resolve problems, is also lengthy and costly, delivers insufficient remedies and is unsuited to many disputes.[xxxv]

Judges should evade engaging in the political side with administrative pragmatism while involving with mediation and abusing of the judicial function. Basically, the judicial role should not be diluted which is a pure one.

3.1.3 Influence over the Process

Further, judicial skills such as applying the law and approaching to a determination are not applicable in mediation. Hence, there is a possible risk by judges who make a confusion of their roles as mediators and could have conducted evaluative mediation than mimic a trial. The court may also have influence over the process in court-referred cases and the parties may feel

constrained by the framework of the law and procedural rules which limit the boundaries of their negotiations.

3.1.4 Judges might be too Forceful in their Dealings

Judges depend on judicial authority to convey an agreement and make forceful in their dealings with the parties, such as Judges may find facilities than being the decision-makers. On the contrary, the disputants may experience coercion as they may lose or control of their dispute through the Judges asserting the position of decision-makers. Judges may wrongly interpret during mediation as authoritative and parties feel pressured to settle with the status of a Judge.

Nonetheless, the lack of training and method, a Judge provides potential coercive opinion on the charge of the case by providing an illegal offer to the parties.[xxxvi] It is factual that some Judges will take mediation training before coming to the judicial bench and will participate in a proper course during their judicial tenure, but experience says that the number of judges has not any ADR training for doing mediation.[xxxvii] Judges mediating cases allocated to them for trial are problematic because the only guidance provided by the judicial ethical standards is blanket statements in favor of impartiality and against coercion.[xxxviii]

3.1.5 The Problem of Party Autonomy

In my opinion, Judges should not mediate unless the parties agree with the Judge conducting mediation. If Judges make mediation which goes against section 7 of the Mediation Act 2012 of Malaysia which said that the parties shall employ a mediator to support them. As a result, Judges cannot interfere with the party's autonomy. It is essential to remember that Judge mediator is a guardian of fairness in the process where his role is limited to settlement. This caveat is even more important for Judge-mediators that their role is to facilitate and promote the autonomy of the parties and not to adjudicate.[xxxix]

4.1 CRITICISM

Practice Direction No. 5 of 2010 states that all Judges of the High Court and its Deputy Registrars and all Judges of the Sessions Court and Magistrates and their Registrars may, at the pre-trial case management stage stipulated under Order 34 Rule 4 of the Rules of the High Court 1980 or by order for directions provided in Order 19 Rule 1(1) (b) of the Subordinate Court Rule 1980, give such directions that the parties to facilitate the settlement of the matter before the court by way of mediation. Does the new Rule of the Rules of Court 2012 intend the Judges to be the settling or mediating Judges for their own cases?

To answer this, it is best to refer to the definition of mediation. The term meditation is defined in Section 3 of the Mediation Act (include the definition). From the definition, it is clear that a person handling the mediation session is to facilitate and assist the parties to come to a conclusion. When discussing meditation, we can never run away from its cardinal rule that a mediator must be impartial[xl] and neutral. These qualities are fundamental because a mediator is merely to assist the parties to arrive at a solution, without judging and taking sides. Having all these qualities of a mediator in mind, we can safely say that a Judge may be questioned of his or her impartiality when mediating their own case

In Paragraph 2 (ii), it is clearly stated that all Judges and judicial officers are strictly not permitted to mediate cases that are on their own trial list. The Guideline also provides for the reason for this rule, in which to avoid the accusation of attempting to avoid hearing certain cases. In fact, this has been the practice in Malaysia. In the case of ***Tripple International Limited v Belia Cermat Sdn Bhd & Ors***[xli], we can infer that the mediation session was held before a different Judge for the presiding the matter. At this point, it is can be summarized that in Malaysia, no Judge can mediate his or her own case.

In Malaysia, mediators come from court-annexed mediators or panel mediators in mediation bodies, such as the Malaysia Mediation Centre (MMC). The Mediation Centre in Kuala Lumpur Court Complex is equipped with facilities to cater to an effective mediation process and has judicial officers who are specifically tasked and stationed there to mediate. They have no other role to hold, not as a Judge or as a Magistrate. They are called as Mediation Officers. It seems to be no violation of the Rule *"no judge should mediate his or her own case"*. However, not every court has such a luxurious and in fact, State Courts are yet to be equipped and stationed with an adequate number of judicial officers to handle mediation process.

Furthermore, the Guidelines also provide that Judges or judicial officers who act as mediators should always remind themselves that they have no authority to impose any settlement or solution upon the parties[xlii] and they should not try the case themselves in the event mediation fails[xliii]. The fundamental qualities of a mediator are being taken care of, in which to be impartial, neutral and voluntariness to settle.

In the case of *Lock Han Chng Jonathan*[xliv], it was an *obiter dictum* that a District Judge is favorable to be a settlement Judge (mediator) for the reason being that he commands public confidence and respect which in turn makes him an effective mediator. In that case, one of the issues before the Court was whether the mediation proceeding could be turned into a court process, to which it was held that the fact that a District Judge conducts mediation should not ipso facto convert the CDR mediation process into a court proceeding. Although the case does not directly discuss the position of Judges-cum-mediator, it touches on the reason why a Judge is an effective mediator.

From this case, it can be inferred that the issue of a Judge being a mediator is real and has become a concern. Taking the opinion of the Judges into consideration, it can be safely said

that a Judge who has been exposed to court trials have a better ability to understand the full facts of a matter before them.

In the Civil Trials Guidebook, Order 93 Rule 13 (1) of the Rules of Court 2012 is regarded as an encouragement for mediation. This Rule allows for the Magistrate presiding the Small Claim Procedure to play an active role to assist settlement between the disputed parties. These – assist and settlement is magic words found in the definition of mediation. Thus, can the Magistrate here be said to mediate his or her own case?

Looking into the statistics, it was conveyed that mediation has settled 40% to 50% of the court cases[xlv]. The Chief Justice, Tun Raus Sharif when conveying this to the press on February 2018, has informed that these cases were settled through Court-Annexed mediation processes without having gone through a full trial. The figure of 40% to 50% of case settlement through mediation is something to be proud of. Only successful mediators can achieve such a proud figure. From this fact, it can be deduced that Magistrates, Judges or even judicial officers have done a very virtuous hat-changing process and instill themselves the qualities of a mediator.

Table: Profile of mediation cases conducted by CMCKL (2011~2013)

Year	Origin of cases	Period	Number of cases registered at CMCKL	Status of cases				
				Settled		Total settled	Not settled	Pending @ December
				Judge as mediator (part-time)	CMCKL mediator (full-time)			
2011	High Court	June ~ December	180	31	2	33	31	11
	Lower courts	October ~ December	9	0	4	4	5	6
	CMCKL ("running down" cases)	-	0	0	0	0	0	0
								0
	Total 2011		*189*	*31*	*6*	*37*	*36*	*116*

2012	**High Court January ~ December**	391	58	71	129	30	72
	Lower courts January ~ December	169	0	73	73	6	20
	CMCKL ("running down" cases) -	0	0	0	0	76 0	0
	Total 2012	*560*	*58*	*144*	*202*	*382*	*92*
2013	**High Court January ~ December**	249	20	76	96	208	17
	Lower courts January ~ December	259	0	94	94	165	20
	CMCKL ("running down" cases) April ~ December	779	0	387	387	289	103
	Total 2013	*1287*	*20*	*557*	*577*	*662*	*140*
	Total High Court	***820***	***109***	***149***	***258***	***545***	***17***
	Total Lower courts	***437***	***0***	***171***	***171***	***246***	***20***
	Total CMCKL ("running down" cases)	***779***	***0***	***387***	***387***	***289***	***103***
	Grand Total	***2036***	***109***	***707***	***816***	***1080***	***140***
			5%	*35 %*	*40 %*	*53%*	*7%*

Source: The Court-Annexed Mediation Centre Kuala Lumpur, March 2014

To above chart, it is clearly determined that in Malaysia Judges led mediation is settled only 5% in those years when CMCKL mediation mediated shapely 35% and settled approximately 40% which is more than judicial mediation. To end this status, I have understood that there is a lack of judicial mediation. So, judicial mediation should be avoided unless proper training is taken by the Judges. Since mediation has become a very popular and favored alternate dispute resolution, there are few bodies that provide for training and accredited courses for mediators.

For example, the Malaysian Mediation Centre (MMC) which has been established by the Malaysian Bar Council in 1999 is now proactive in providing training in mediation techniques, accredits, and maintains a panel of mediators.[xlvi] They have been providing training to members of the public, Judges, and judicial officers, and accredited them with a certificate to become sole mediators. In the training, they will be taught of the techniques and soft skills on how to become an effective mediator. MMC has so far been the number one choice for the Judiciary

in sending their judicial officers for training. Those judges and judicial officers need to complete at least 40 hours of training and assessments before they can be accredited as mediators.

These kinds of pieces of training and courses are very useful for the Judges and judicial officers, especially in equipping them with skills needed to mediate, are impartial, neutral and to oust away the 'judge' quality they have in them. Some of them are even sent to attend mediation courses overseas, such as in Singapore and Australia.

Personally, I do not support Judges as a mediator because parties loss their confidentiality at that time. That's why ***Choong Yeow Choy, Tie Fatt Hee, and Christina Ooi Su Siang***[xlvii] said that

> *"It also goes against the fundamental rule on confidentiality in mediation where all materials, communication, and information exchanged and shared during mediation are kept confidential and cannot be communicated to the trial judge."*

On the other hand, N.A.D.R.A.C. is the Victorian Bar which said that Judges are selected to judge, and not to negotiate in commercial negotiations between commercial parties and that judges are appointed not for their mediation skills, but for their judicial aptitudes.[xlviii] However, Judges can mediate in exceptional situations between the parties.[xlix]

5.1 CONCLUSION

In nut a shell, it can be concluded that Judges should not mediate the dispute because judicial mediation makes ethical problems for the parties. As such, Judges will not be encouraged to facilitate the parties unless they are well-qualified by experience or mediation training, mindful

of the line between firmness and coercion, effective, courteous to the parties. We can see more that there is no place for an adjudicator in a mediation session, which is the key by changing the judicial mindset. Therefore, it is my opinion that there can be strong benefits in having a judicial officer by taking mediation and if any judicial officer who mediates a matter should be precluded from taking any decision-making role in the proceedings and Judge-mediator must work to protect the integrity of the mediation process from abuses of influence or power. The challenges for the Judges as mediator have increased, since they remain Judges in the eyes of the parties, even when they are in the informal setting of the mediation room.[l] I think that Judges can be mediator if they apply mediation techniques by taking mediation skill training like MMC in Kuala Lumpur, Malaysia but Judges increase the barriers to achieve in trial and appeal hearing. So, it can be decided that a Judge can inspire parties and lawyers to resolve the matters in dispute, including mediation, but shall not perform the trial of the same case.[li]

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[xix] *Ibid.*

[xx] *Ibid.*

[xxi] See generally MARTIN L. FRIEDLAND, CANADIAN JUDICIAL COUNCIL, A PLACE APART: JUDICIAL INDEPENDENCE AND ACCOUNTABILITY IN CANADA (May 1995). This is a controversial subject, and public perceptions of the judiciary vary in different countries (and in different jurisdictions within countries) as well as over time. For the United States, see AN INDEPENDENT JUDICIARY: REPORT OF THE ABA COMMISSION ON SEPARATION OF POWERS AND JUDICIAL INDEPENDENCE, AM. BAR ASS'N (1997).

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[xxiv] *Ibid.*

[xxv] Otis, *loc.cit.*

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[xxxiii] *Ibid.*

[xxxiv] Arie Freiberg, "Non-Adversarial Judtice", (unpublished paper presented at the Supreme Court of Victoria Judges' Conference, Melbourne, 5-6 November 2009). See also, Micheal King, Arie Freiberg, Becky Bagatol, and Ross Hyams, Non-Adversarial jJustice (1st ed, 2009); and, Micheal King, *Solution- Focused Judging Benchbook (1t ed, 2009).*

[xxxv] Warren, M. (2010). Should Judges be Mediators?. *The Supreme & Federal Court Judges' Conference Canberra*, (pp. 1-18). Canberra. Retrieved from <http://www.austlii.edu.au/au/journals/VicJSchol/2010/1.pdf>

[xxxvi] Frank E.A. Sander, *A FriendlyAmendment,* DISP. RESOL. MAG., Fall 1999, at 11, 22. Judges who have not been trained in mediation skills are far more likely to use personalized methods of dispute resolution and expedite the process to achieve a quick result. As noted by Professor Sander, "[tihe skills required of judges and mediators are sufficiently different that we cannot assume that even first-rate judges will turn out to be first-rate mediators. Some judges, of course, do turn out to be good mediators, but that is surely not the norm."

[xxxvii] These studies cover the years from 1984 to the present. While the views of the bar about judicial settlement activity are not uniform or consistent from state to state, they are far more positive than negative. *See* Carrie Menkel-Meadow, *For and Against Settlement: Uses andAbuses of the MandatorySettlement Conference*, 33 UCLA L. REv. 485, 497 (1985) ("[It is instructive to note that despite all the academic criticism of the judicial settlement role, lawyers overwhelmingly seem to favor judicial intervention."). Almost ten years later, Professor Galanter reached the same conclusion: "Nevertheless, lawyers generally approve of judicial intervention. Indeed, lawyers appear to approve of 'judicial mediation' even more than judges themselves." *See* Galanter & Cahill, *supra* note 9, at 1345. For detailed statistical studies confirming the high rates of lawyer approval of judicial settlement activities, see Dale E. Rude, Lawrence F. Schiller & James A. Wall, *Judicial Participationin Settlement*, 1984 Mo. J. DIsP. RESOL 25; Jonathan M. Hyman & Milton Heumann, *Minitrials and Matchmakers: Styles of Conducting Settlement Conferences*, 80 JUDICATURE 123 (1996). *See also* Peter Agnes,
Results of Attorney/Judge Survey for the Flaschner Judicial Institute Conference on Judges and the Settlement of Cases 7 (May 1999) (unpublished survey, on file with author) (finding that 80.2% of the attorneys and 90.1% of the judges surveyed in Massachusetts felt the judge is responsible for encouraging and promoting settlement). This survey was composed by Judge Peter Agnes and sent to all the judges in Massachusetts and to 400 randomly selected civil litigators in the Commonwealth of Massachusetts. *Id.* at 1

[xxxviii] Robinson, P. (2006). Adding judicial mediation to the debate about judges attempting to settle cases assigned to them for trial. *J. Disp. Resol.*, 335. At 352.

[xxxix] *Infra* at 23.

[xl] Civil Trials Guidebook, 2013

[xli] *Tripple International Limited v Belia Cermat Sdn Bhd & Ors* [2016] 6 MLJU 573

[xlii] Para. 11(i) of the Guidelines for Court Annexed Mediation

[xliii] Para. 12 of the Guidelines for Court Annexed Mediation

[xliv] *Lock Han Chng Jonathan (Jonathan Luo Hancheng) v Goh Jessiline* [2007] SGHC 58

[xlv] Available at <http://m.utusan.com.my/berita/mahkamah/proses-mediasi-selesai-40-50-peratus-kes-mahkamah-1.614260>

[xlvi] *See*, <http://www.malaysianbar.org.my/malaysian_mediation_centre_mmc.html?date=2015-12-01>

[xlvii] Choy, C. Y., Hee, T. F., & Siang, C. O. S. (2016). Court-Annexed Mediation Practice in Malaysia: What the Future Holds. *U. Bologna L. Rev.*, *1*, 271. DOI 10.6092/issn.2531-6133/6751

[xlviii] *Id, 290.*

[xlix] Ibid.

[l] Otis, L., & Reiter, E. H. (2006). Mediation by judges: A new phenomenon in the transformation of justice. *Pepp. Disp. Resol. LJ*, *6*, 351.

[li] Cratsley, J. C. (2005). Judicial ethics and judicial settlement practices: time for two strangers to meet. *Ohio St. J. on Disp. Resol.*, *21*, 569.