



## **Alternative Dispute Resolution**

**Monday, March 10, 2014**

**2:00 pm – 3:00 pm**

- Chair: Hon. Colin Doherty  
Judge of the District Court  
District Court of New Zealand
- Speaker: Hon. Justice Ambeng Kandakasi  
Supreme and National Court of Justice  
Papua New Guinea
- Commentator: Hon. Frances Tydingco-Gatewood  
Federal Chief Judge  
District Court of Guam

## COURT-SPONSORED ADR PROCESSES

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Each United States district court is mandated by Congress, pursuant to [28 U.S.C. 651](#) et seq., to authorize the use of alternative dispute resolution (ADR) processes in all civil actions, to implement its own ADR program, and to encourage its use. These ADR programs typically consist of up to four different processes: Settlement Conference, Mediation, Arbitration, and Early Neutral Evaluation.

### 1. SETTLEMENT CONFERENCE WITH A MAGISTRATE JUDGE

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The goal of a settlement conference is to facilitate the parties' efforts to negotiate a settlement of all or part of the dispute. In the District Court of Guam, a settlement conference generally will be conducted by our Magistrate Judge, but in some limited circumstances may be conducted by a Senior District Judge or a visiting federal judge. [See the Local Rules governing this process in Attachment A, and a general description of the proceedings of settlement conferences in Attachment B.]



Adelup Point, Guam

At any time after an action or proceeding is commenced, any party may request, or the assigned judge on his or her own initiative may order, a settlement conference. [See Attachment C.] As a general rule, the judge assigned to try the matter will not conduct the settlement conference. Upon written stipulation of all parties, however, the assigned judge, in the exercise of his or her discretion, may conduct the conference. None of the matters or information discussed during the conference is communicated to any judge assigned to the action, unless all parties have expressly stipulated to such communications.

After the initiation of the settlement conference process, the settlement conference judge will issue an order governing the process and procedure utilized by that judge for the settlement conference. [See Attachment D.] A docket entry order with the Court will reflect whether settlement was or was not achieved. Settlement agreements are reached in over 60% of the cases referred to the magistrate judge.



### 2. MEDIATION

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Mediation encourages the peaceable resolution of disputes and early settlement of litigation with higher level of participant satisfaction.

The Judiciary of Guam (JOG) has implemented Mediation as part of its standard strategy of managing civil cases. Under its Rule of Civil

Procedure 16, attorneys have to certify to the judge that the benefits of mediation have been discussed with their client, provide them a brochure developed by the JOG that explains in layman terms what mediation is and how it can assist their clients, and provide the judge notice in the Scheduling Order within 75 days of the filing of the complaint that mediation is requested or not requested. A case can be referred to mediation services either by the judicial officer or by stipulation of the parties. Each judge makes a preliminary determination regarding referral for mediation, considering the subject matter, the amount in controversy, complexity, the number of parties, the interests of the parties, the availability of mediation, and the likelihood of settlement by a mediator. Parties preliminarily referred to mediation must file a statement within 15 days discussing the appropriateness of mediation and whether they request to remove the case from mediation. The assigned judge then makes a final determination. Over 60% of cases referred to mediation are resolved. [See Attachment D, Local Rules of the Superior Court of Guam.]

### 3. ARBITRATION

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The U.S. District Court for the Northern District of California offers a very good example of arbitration. (See <http://www.cand.uscourts.gov/adr>) The purpose of court-sponsored arbitration is to provide parties with an adjudication that is earlier, faster, less formal, and less expensive than trial. A proposed judgment in a non-binding arbitration may either:

1. become the judgment in the case if all parties accept it, or
2. serve as a starting point for settlement discussions.



Sirena Beach, Guam

One arbitrator or a panel of three arbitrators presides at a hearing where the parties present evidence through documents, other exhibits, and testimony. The application of the rules of evidence is relaxed in order to save time and money.

Parties may use subpoenas to compel witnesses to attend or present documents, witnesses testify under oath, through direct and cross-examination, the proceedings can be transcribed, and testimony could, in some circumstances, be used later at trial for impeachment. Arbitrators apply the law to the facts of the case and issue a non-binding award on the merits. Arbitrators do not “split the difference” and do not conduct mediations or settlement negotiations.

### 4. EARLY NEUTRAL EVALUATION (ENE)

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The U.S. District Court for the Northern District of California also offers a very good example of another ADR process, called Early Neutral Evaluation (ENE). ENE is an assessment of the merits of the case by a neutral expert. The goals of an ENE are to:

1. enhance direct communication between the parties about their claims and supporting evidence,
2. provide a “reality check” for clients and lawyers,
3. identify and clarify the central issues in dispute,
4. assist with discovery and motion planning or with an informal exchange of key information, and
5. facilitate settlement discussions, when requested by the parties.

ENE aims to position the case for early resolution by settlement agreement, dispositive motion, or trial. It may serve as a cost-effective substitute for formal discovery and pretrial motions. Although settlement is not the major goal of ENE, the process can lead to settlement.

The evaluator, an experienced attorney with expertise in the case's subject matter, hosts an informal meeting of clients and counsel. At the meeting, each side presents the evidence and arguments supporting its case without regard to the rules of evidence and without direct or cross-examination of witnesses.

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For more information, please contact:



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District Court of Guam

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# Attachment A

## District Court of Guam Local Rules of Civil Practice

### CVLR 16-2 Alternative Dispute Resolution

#### (a) Purpose and Scope.

(1) Purpose. Pursuant to the findings and directives of Congress in 28 U.S.C. § 651 *et seq.*, the primary purpose of this local rule is to provide parties to civil cases and proceedings in bankruptcy in this district with an opportunity to use alternative dispute resolution (ADR) procedures. This rule is intended to improve parties' access to the dispute resolution process that best serves their needs and fits their circumstances, to reduce the financial and emotional burdens of litigation, and to enhance the Court's ability to timely provide traditional litigation services. Through this rule, the Court authorizes and regulates the use of mediation and arbitration.

(2) Scope.

(A) Cases Pending Before a District Judge or Magistrate Judge. This local rule applies to all civil cases pending before any district judge or magistrate judge in this district.

(B) Proceedings Pending Before a Bankruptcy Judge. Under 28 U.S.C. § 651 *et seq.*, and the Court's inherent authority, proceedings pending before any bankruptcy judge in this district also may be afforded an opportunity to participate in mediation and arbitration.

#### (b) ADR Procedures and Rules.

(1) Judicial Settlement Conference.

(A) Definition. A Judicial Settlement Conference is a process in which a Settlement Conference Judge is made available in order to facilitate communication between the parties and assist them in their negotiations, *e.g.*, by clarifying underlying interests, as they attempt to reach an agreed settlement of their dispute. A Judicial Settlement Conference generally will be conducted by a Magistrate Judge, but in some limited circumstances may be conducted by a Senior District Judge or a visiting federal judge. Whether a settlement results from a Judicial Settlement Conference and the nature and extent of the settlement are within the sole control of the parties.

(B) Initiation of a Judicial Settlement Conference. At any time after an action or proceeding is commenced, any party may request, or the assigned judge on his or her own initiative may order, a Judicial Settlement Conference. As a general rule, the judge assigned to try the matter will not conduct the Judicial Settlement Conference. Upon written stipulation of all parties, however, the assigned judge, in the exercise of his or her discretion, may conduct a Judicial Settlement Conference. None of the matters or information discussed during the conference will be communicated to any judge assigned to the action, unless all parties expressly stipulate to such communications.

(C) Procedure for Judicial Settlement Conference. After the initiation of the Judicial

Settlement Conference process, the Settlement Conference Judge will issue an order governing the process and procedure utilized by that judge for the Judicial Settlement Conference.

(D) **Report of Settlement Conference Judge.** At the conclusion of a Judicial Settlement Conference, a docket entry order with the Court will reflect whether settlement was or was not achieved.

(2) **Mediation.**

(A) **Definition.** Mediation is a process in which a private, impartial third party (the “Mediator”) is hired or retained by the parties to facilitate communication between them to assist in their negotiations, *e.g.*, by clarifying underlying interests, as they attempt to reach an agreed settlement of their dispute. Whether a settlement results from a Mediation and the nature and extent of the settlement are within the sole control of the parties.

(B) **Initiation of a Mediation.** At any time after an action or proceeding is at issue, any party may request, or the assigned judge on his or her own initiative may order, a Mediation. None of the matters or information discussed during the conference will be communicated to any judge assigned to the action.

(C) **Selection of a Mediator.** The parties may either select from the list of approved Mediators found on the Court’s website or select someone not on the Court’s list through mutual agreement. The parties may contact the Court’s ADR Coordinator for facilitation of the selection of a mediator from the Court’s list.

(D) **Compensation.** The list of approved Mediators on the Court’s website shall include a disclosure of the fee schedule to be charged by each Mediator. If appropriate in light of the circumstances of the dispute, a Mediator may opt to charge no fee. No party may offer or give the Mediator any gift or gratuity without consent of all parties.

(E) **Payment.** All terms and conditions of payment must be clearly communicated to the parties. Unless agreed otherwise, plaintiffs jointly and defendants jointly shall each be responsible for equal portions of the Mediator’s fee. The parties may agree to pay the fee in other than equal portions. The parties must pay the Mediator directly, or the Mediator’s law firm or employer, as directed by the Mediator. On a form questionnaire provided by the Court, the mediator must promptly report to the Court’s ADR Coordinator the amount of any payment received.

(F) **Report of Mediator.** Within five days of the conclusion of a Mediation, the Mediator shall file a report with the Court’s ADR Coordinator indicating when mediation occurred and merely whether settlement was or was not achieved.

(3) **Arbitration.**

(A) **Definition.** Arbitration is a process whereby an impartial third party (the “Arbitrator”) is hired or retained by the parties to hear and consider the evidence and testimony of the disputants and others with relevant knowledge and issues a decision on the merits of the dispute. The Arbitrator makes an award on the issue(s) presented for decision. The Arbitrator’s award is

binding or non-binding as the parties may agree in writing.

(B) Cases Eligible for ADR Arbitration. No civil action, or proceeding in bankruptcy, shall be referred to Arbitration as the parties' ADR method, except upon written consent of all parties. Additionally, no matter will be referred to arbitration if the Court finds that:

- (i) the action is based upon an alleged violation of a right secured by the Constitution of the United States;
- (ii) jurisdiction is based in whole or in part on 28 U.S.C. § 1343;
- (iii) the relief sought includes money damages in an amount greater than \$150,000.00; or
- (iv) the objectives of arbitration would not be realized for any other reason.

(C) Initiation of an Arbitration. At any time after an action or proceeding is at issue, any party may request an Arbitration. All parties must consent in a writing, signed by all parties and their counsel, before an Arbitration will be ordered by the judge assigned to the matter.

(D) Selection of an Arbitrator. The parties may select from the list of approved Arbitrators found on the Court's website. The parties, for good cause, may select an Arbitrator not on the Court's approved Panel of Arbitrators only with the approval of the judge assigned to the case.

(E) Procedure for Arbitration. After the initiation of Arbitration, the Arbitrator will issue to the parties a document setting forth the process and procedure utilized and to be followed.

(F) Award. At the conclusion of an Arbitration, the Arbitrator shall issue to the parties a written award.

(c) **Selection of ADR Procedure.**

(1) Mandated Early ADR Selection Process.

(A) The Parties' Duty to Consider ADR, Confer and Report. Prior to the Rule 16-1 scheduling conference, unless otherwise ordered, in every case to which this rule applies, the parties must meet and confer about (i) whether they might benefit from participating in some ADR process; (ii) which type of ADR process is best suited to the specific circumstances in their case; and (iii) when the most appropriate time would be for the ADR session to be held. In their Scheduling and Planning Conference Report, the parties must report their shared or separate views about the utility of ADR, which ADR procedure would be most appropriate, and when the ADR session should occur.

(B) Designation of Process. After considering the parties' submissions, the Court may order the parties, on appropriate terms and in conformity with this rule, to participate in ADR. The Court may refer the case to Judicial Settlement Conference, Mediation or, with written consent of all parties, to an ADR procedure which, by stipulation of all parties, has been tailored to meet the specific needs of the parties and the case.

(2) Referral to ADR During Pretrial Period. Notwithstanding the provisions of paragraph (c)(1) above regarding the early selection process, at any time before entry of final judgment, the Court may, on its own motion or at the request of any party, order the parties to participate in a Judicial Settlement Conference or Mediation or, with the written consent of all parties, Arbitration.

(3) Protection Against Unfair Financial Burdens. Assigned judges shall take appropriate steps to assure that no referral to ADR results in an imposition on any party of an unfair or unreasonable economic burden. Right to Secure ADR Services Outside the Programs Sponsored by the Court. Nothing in this rule precludes the parties from agreeing to seek ADR services outside the Court's program. Parties remain free to use any form of ADR and any neutral they choose. To the extent resources permit, Court staff may assist mediators outside of the Court's ADR program.

**(d) Process Administration.**

(1) ADR Coordinator. The ADR Coordinator is responsible for implementing, administering, overseeing and evaluating, along with the judges, the ADR program and procedures covered by this local rule. The ADR Coordinator may be contacted through the Court's website: [www.gud.uscourts.gov](http://www.gud.uscourts.gov) or as follows:

District Court of Guam ADR  
Coordinator  
4th Floor, U.S. Courthouse 520 W.  
Soledad Avenue Hagatna, GU 96910  
(671) 473-9100 (telephone)  
(671) 473-9152 (facsimile)

(2) ADR Resources. The ADR Coordinator maintains the requirements for, and roster of, available neutrals and information regarding the ADR process and procedures set forth in this rule.

## **Attachment B**

### **Settlement conferences in the District Court**

The current practice is that a settlement conference is scheduled between the parties when the parties actually request the court for one. In most instances, these requests come to the court after the parties have completed their discovery. In some instances, they have been directed by the Chief Judge to explore settlement immediately prior to the scheduled trial date. In a few instances, a settlement conference is conducted early in the proceedings.

Once a request for a settlement conference comes in, the parties are sent a letter in which the parties are asked to outline the strengths and weaknesses of their respective cases and also provide the court with a monetary figure that represents the amount they are willing to settle with. The parties are also ordered to appear at the settlement conference with a person who has authority to settle the case. In cases involving insurance companies, a representative from the company with authority to settle appears. If such persons are unable to be present, they must be available for telephonic discussions throughout the settlement conference .

The parties appear at the scheduled settlement conference. The court meets with both parties and generally discusses the facts of the case and advises the parties as to the manner in which the conference will take place. The court then splits up the parties with the plaintiff staying in the room where the parties initially met and the defendant moved to another room.

The court meets with the plaintiff separately and discusses the factual scenario and then strengths and weaknesses of the case before a settlement amount is submitted to the other party for consideration.

The court then takes the offer to defendants and engages in discussions relative to the strengths and weaknesses of their cases. Once those matters are discussed, a counter offer is submitted to plaintiffs for their consideration.

The process goes back and forth with similar discussion and counters to offers previously made. Sometimes the settlement process moves forward smoothly and the parties reach an agreement.

Other times, when an impasse seems to be imminent, the court tries to bring creative solutions to keep settlement discussions alive, and ultimately to bring the parties closer to settlement. The ability to reach creative solutions sometimes requires the court to key in on concepts that a party may have alluded to.

In some situations, if an amount appears to be reasonable for settlement purposes, the key to settlement might be to work out an instalment plan that is acceptable to the parties. In many instances, the court attempts to further narrow a gap where there previously existed a huge gap between the settlement numbers of the parties. Sometimes, the conferences may span several days before a settlement is reached. Sometimes one full day is sufficient and in others, a mere

couple of hours is all that is required.

The court, however, must be able to maneuver these discussions and constantly bring in new concepts for discussion in order to keep the settlement process open in the hope of eventually reaching a settlement.

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# Attachment C

DISTRICT COURT OF GUAM  
TERRITORY OF GUAM

JAMES L. ADKINS,  
Plaintiff,

vs.

D.B. ANCIANO, SERAFINO ARTUI,  
JOHN F. TAITANO, J.P. RODIRGUEZ, and  
DOES 1-10,  
Defendants.

CIVIL CASE NO. 09-00029

## ORDER

Based upon the parties request, the court hereby schedules a settlement conference to be held on Tuesday, October 29, 2013, at 1:30 p.m. The court directs the parties to read this Order carefully as it controls the settlement procedure for this case.

**1. Presence of Lead Counsel.** Unless a party is proceeding *pro se*, the attorney attending the settlement conference must be the lead trial counsel.

**2. Presence of All Parties.** All parties or the party's representative to the litigation must attend the settlement conference, and a representative with *unrestricted* settlement authority must appear on behalf of corporations and other business entities.

**3. Insurance Matters.** In cases involving insurance, a representative with *unrestricted* settlement authority must appear on behalf of the insurance company.

**4. Confidential Settlement Letters.** Each party must submit a confidential settlement letter, no more than ten (10) pages in length, by Monday, October 21, 2013. The letter should not be filed, but should be submitted in a sealed envelope and labeled with the case name and

1 number and the words “SEALED: CONFIDENTIAL SETTLEMENT LETTER FOR IN  
2 CAMERA REVIEW ONLY.” The letter should set forth the party’s statement of the case,  
3 including strengths and weaknesses, and the party’s settlement position, including the last offer  
4 or demand made by the party, and a statement of the offer or demand the party is prepared to  
5 make at the settlement conference. The settlement conference letter shall be returned to the  
6 party that submitted the letter at the end of the settlement conference.

7 **5. Date and Time of Conference.** The settlement conference shall be held on  
8 **Tuesday, October 29, 2013, at 1:30 p.m.**

9 IT IS SO ORDERED.



**/s/ Joaquin V.E. Manibusan, Jr.**  
**U.S. Magistrate Judge**  
**Dated: Oct 04, 2013**

**Attachment D**

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DISTRICT COURT OF GUAM  
TERRITORY OF GUAM

JAMES L. ADKINS,  
Plaintiff,

vs.

D.B. ANCIANO, SERAFINO ARTUI,  
JOHN F. TAITANO, J.P. RODRIGUEZ, and  
DOES 1-10,  
Defendants.

CIVIL CASE NO. 09-00029

**FOURTH POST-SETTLEMENT  
CONFERENCE NOTICE**

The court hereby gives notice that the parties and counsel met with the below-signed Magistrate Judge for a continued settlement conference on December 2, 2013, from 2:30 p.m. to 3:45 p.m. A settlement between the parties was achieved.



**/s/ Joaquin V.E. Manibusan, Jr.**  
**U.S. Magistrate Judge**  
**Dated: Dec 02, 2013**

# Attachment D

## LOCAL RULES OF THE SUPERIOR COURT OF GUAM

### MEDIATION PROGRAM

#### **MR 4.1. Interim Rules for the Mediation Program for Superior Court of Guam Civil Actions.**<sup>1,2</sup>

##### **MR 4.1.1. Administration.**

The Mediation Program for Civil Actions (“Civil Pilot Program”) shall be administered on a case-by-case basis by the Judge assigned to each civil case that may become enrolled in the Civil Pilot Program.

##### **MR 4.1.2. Policy, Purpose and Application.**

(a) It shall be the policy of the courts of Guam to encourage the peaceable resolution of disputes and early settlement of pending litigation and to identify cases appropriate for referral to mediation pursuant to the guidelines set out in these Rules.

(b) The purpose of the Civil Program is to determine the effects of mediating larger numbers of cases early in the litigation process. It is hypothesized that the Civil Pilot Program will lead to earlier disposition of civil cases, with higher participant satisfaction.

(c) These Rules shall apply only to those civil cases in the Superior Court of Guam, and parties to such cases, enrolled in the Civil Pilot Program.

##### **MR 4.1.3. Selection of Cases for Pilot Program.**

(a) Each judge of the Superior Court of Guam shall review all civil files assigned to them and make a preliminary determination of which civil actions are appropriate for referral to mediation, giving consideration to such factors as the subject matter of the case, the amount in controversy, the complexity of the case, the number of parties, the interests of the parties, the availability of mediation, and the likelihood of settlement by a mediator.

The cases selected shall be preliminarily referred to the Civil Pilot Program by the assigned judge and an order shall issue indicating that the case has been preliminarily selected for inclusion in the Civil Pilot Program.

(b) Parties who are preliminarily referred to the Civil Pilot Program shall serve and file an early mediation Status Conference Statement with the Superior Court of Guam within fifteen (15) days of the filing of the order preliminarily referring the case to the Civil Pilot Program. This Status Conference Statement shall include a discussion of the appropriateness of the case for referral to mediation. If a party believes a case should be removed from the Civil Pilot Program, they shall include in the Status Conference Statement an express Request to Remove

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<sup>1</sup> Pursuant to Supreme Court of Guam Promulgation Order Nos. 06-005-01 and 06-005-02 in Supreme Court Case No. PRM 06-005, the Court adopted and promulgated the following *Interim Rules for the Mediation Pilot Program for Civil Actions* as Rule 16 of the Rules of the Superior Court of Guam. These Interim Rules shall be in effect, pursuant to Promulgation Order 06-005-02, for a six (6) month period following January 19, 2007, unless otherwise ordered by the Supreme Court of Guam.

<sup>2</sup> **SOURCE:** Adopted as Interim Rule 16 of the Rules of the Superior Court of Guam by Promulgation Order No. 06-005-01 (July 20, 2006), extended and amended by Promulgation Order No. 06-005-02 (Jan. 19, 2007).

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SUPERIOR COURT OF GUAM**

which shall include a summary of the facts which support their contentions. The assigned judge who preliminarily referred a case to the Civil Pilot Program shall make all final determinations regarding such referral and may hold a conference on the issue of the referral at his or her discretion.

**MR 4.1.4. Referral for Mediation.**

(a) Within fifteen (15) days of the deadline for the parties to file the Status Conference Statements required by these Rules, the relevant assigned judge shall issue an order either referring the case to mediation or stating that the case is not appropriate for mediation and referring it back to the assigned judge. An order referring a case to mediation shall do so as provided herein:

(1) For actions in which the amount in controversy is greater than fifty thousand dollars (\$50,000.00), the matter shall be referred to the Guam International Arbitration Center (“GIAC”).

(2) For actions in which the amount in controversy is fifty thousand dollars (\$50,000.00) or less, the matter shall be referred to Inafa’ Maolek.

(b) If an order refers a case to mediation, the order shall include contact information for the parties as well as the name, address and telephone number of the mediation organization designated by the court. Further, the order may include the date and time of the first mediation conference and may stay the Superior Court case pursuant to Rule 6. The respective mediation organization shall appoint a qualified mediator as provided herein and shall issue a scheduling order.

(c) If the parties reach either an entire or partial agreement, notice of the agreement shall be filed with the court by the mediator consistent with Rule 8 herein. If the parties fail to reach an agreement, the parties shall first determine if successive mediation is appropriate, and if so, they shall stipulate to successive mediation to be held within fifteen (15) days of the stipulation. The stipulation must be filed with the court. If, however, the parties determine that successive mediation is not appropriate, the mediator shall file a notice with the court indicating such and the parties shall return to court for a progress hearing. If the parties experience a breakdown of an existing mediation, the mediator shall file a notice with the court indicating such and the parties shall return to court for a progress hearing.

**MR 4.1.5. Sanctions.**

If a party or a party’s attorney, absent good cause, fails to obey an order made pursuant to these rules, fails to appear at the scheduled mediation, or fails to participate in good faith, in accordance with program guidelines, the other parties shall report such circumstances to the court. The court may make such orders with regard thereto as are just within the discretion of the court, including requiring the party, or the attorney representing the party, or both, to pay the reasonable expenses incurred because of any noncompliance with these rules, including attorney’s fees and mediator’s fees; provided, however, the mediator shall not be called as a witness or otherwise be required to give evidence at a sanctions hearing. For purposes of this rule, good faith requires, but is not necessarily limited to, the following:

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- (1) Personal appearance by the parties, unless excused by the mediator;
- (2) Appearance by counsel, if the party(s) is/are represented;
- (3) Preparation by participants for the mediation, and willingness to listen to and consider statements of other participants and the mediator;
- (4) Ability to articulate the basis for an unwillingness to change position during the mediation;
- (5) Compliance with the format set out by the mediator; and
- (6) Compliance with the procedures set forth in the Supreme Court of Guam's Interim Pilot Program Rules and any court orders relating to the mediation.

**MR 4.1.6. Stay of Proceedings.**

The court may, in the mediation referral order, stay all proceedings, actions, and discovery in the case for a specific or indeterminate period. Nothing herein precludes the parties from mutually agreeing to limited discovery during the mediation process.

**MR 4.1.7. Conduct of Mediation Proceedings.**

(a) Mediation proceedings shall commence with an opening statement by the mediator describing the purpose and procedures of the process. Non-party witnesses may be heard in the discretion of the mediator, and other non-parties shall be permitted to attend only with the consent of the parties and the mediator. Multiple sessions may be scheduled or held by the mediator based on the progress achieved in the mediation thus far or as agreed between the parties and the mediator.

(b) Except as otherwise provided by these Rules, the court may require the parties to attend a mediation session at any time following the filing of a complaint.

(c) The attorneys for all parties must appear at the mediation unless otherwise ordered by the court or mediator. Each party including a person with authority to settle the case on the party's behalf shall be present during the mediation unless otherwise ordered by the court or mediator.

**MR 4.1.8. Filing of Statement by Mediator.**

(a) Within 10 days of the conclusion of the mediation, the mediator shall file a written statement advising the court whether the parties to the mediation reached an entire agreement, partial agreement, or no agreement. This written statement shall state:

- (1) Whether the parties have agreed that an order of the court shall be entered confirming their agreement;
- (2) Whether the parties have requested dismissal of the complaint initiating the case;
- (3) Whether the parties have agreed to terminate the mediation proceedings initiated by the complaint; or
- (4) Whether the mediator finds that the continuation of mediation proceedings has for any other reason become unnecessary or impossible.

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SUPERIOR COURT OF GUAM**

(b) If the parties reach a written agreement, notice of such written agreement shall be included in the mediator's written statement to the court.

**MR 4.1.9. Confidentiality.**

Except as otherwise provided by this Rule and unless the parties otherwise consent, no disclosure made by a party during mediation shall be admitted as evidence against that party in any civil, criminal, or quasi-criminal proceeding. A party may, however, establish the substance of the disclosure in any such proceeding by independent evidence. A mediator has the duty to disclose to a proper authority information obtained at a mediation session on the reasonable belief that such disclosure will prevent a participant from committing a criminal or illegal act likely to result in death or serious bodily harm. No mediator may participate or be required to participate in any subsequent hearing or trial of the mediated matter or appear as witness or counsel for any person in the same or any related matter.

**MR 4.1.10. Qualifications of Mediator.**

The Chief Justice of the Supreme Court shall approve all mediators who are contracted by service providers to perform mediation services pursuant to service provider agreements. The Supreme Court may establish additional qualifications required for a mediator, including training and experience requirements, from time-to-time during the Civil Pilot Program as it deems necessary and appropriate.

**MR 4.1.11. Standards of Conduct for Mediators.**

The ethical standards applicable to mediators providing mediation services under this court referred mediation program shall be the Model Standards of Conduct for Mediators, attached hereto as Appendix A and incorporated by this reference.

**MR 4.1.12. Compensation of Mediators.**

Parties assigned to mediation pursuant to this Rule shall equally share the fees and expenses of the mediator on an ongoing basis, subject to court review and allocation to create equity. Any and all fees to be charged the parties for mediation under this Civil Pilot Program shall be in accordance with Appendix B for mediation services referred to GIAC and Appendix C for mediation services referred to Inafa' Maolek. The court shall not be responsible for the collection or payment of any mediation fees or costs. Compensation shall be made directly to the mediator and/or mediator organization. Failure to pay the mediator or mediator organization may result, upon motion or application, in an order by the court to pay and imposing appropriate sanctions.

**MR 4.1.13. Mediation Pilot Program Data Collection Requirements.**

All parties, counsel and mediators participating in the Pilot Program shall complete any questionnaires provided to them by the mediator, mediator organization, the relevant assigned judge or the Supreme Court.

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**APPENDICES TO INTERIM RULE 4.1**

- A. Model Standards for Conduct of Mediators
- B. GIAC Fee Schedule
- C. Inafa' Maolek Fee Schedule

**APPENDIX A**

**MODEL STANDARDS FOR CONDUCT OF MEDIATORS  
INTRODUCTORY NOTE**

The initiative for these standards came from three professional groups: The American Arbitration Association, the American Bar Association, and the Society of Professionals in Dispute Resolution.

The purpose of this initiative was to develop a set of standards to serve as a general framework for the practice of mediation. The effort is a step in the development of the field and a tool to assist practitioners in it – a beginning, not an end. The model standards are intended to apply to all types of mediation. It is recognized, however, that in some cases the application of these standards may be affected by laws or contractual agreements.

**PREFACE**

The model standards of conduct for mediators are intended to perform three major functions: to serve as a guide for the conduct of mediators; to inform the mediating parties; and to promote public confidence in mediation as a process for resolving disputes. The standards draw on existing codes of conduct for mediators and take into account issues and problems that have surfaced in mediation practice. They are offered in the hope that they will serve an educational function and provide assistance to individuals, organizations, and institutions involved in mediation.

Mediation is a process in which an impartial third party — a mediator — facilitates the resolution of a dispute by promoting voluntary agreement (or “self-determination”) by the parties to the dispute. A mediator facilitates communications, promotes understanding, focuses the parties on their interests, and seeks creative problem solving to enable the parties to reach their own agreement. These standards give meaning to this definition of mediation.

**I. Self-Determination: A Mediator shall recognize that mediation is based on the principle of self-determination by the parties.**

Self-determination is the fundamental principle of mediation. It requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement. Any party may withdraw from mediation at any time.

**Comments**

- The mediator may provide information about the process, raise issues, and help parties explore options. The primary role of the mediator is to facilitate a voluntary resolution of a dispute. Parties shall be given the opportunity to consider all proposed options.

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- A mediator cannot personally ensure that each party has made a fully informed choice to reach a particular agreement, but it is a good practice for the mediator to make the parties aware of the importance of consulting other professionals, where appropriate, to help them make informed decisions.

**II. Impartiality: A Mediator shall conduct the mediation in an impartial manner.**

The concept of mediator impartiality is central to the mediation process. A mediator shall mediate only those matters in which she or he can remain impartial and evenhanded. If at any time the mediator is unable to conduct the process in an impartial manner, the mediator is obligated to withdraw.

**Comments**

- A mediator shall avoid conduct that gives the appearance of partiality toward one of the parties. The quality of the mediation process is enhanced when the parties have confidence in the impartiality of the mediator.
- When mediators are appointed by a court or institution, the appointing agency shall make reasonable efforts to ensure that mediators serve impartially.
- A mediator should guard against partiality or prejudice based on the parties' personal characteristics, background or performance at the mediation.

**III. Conflicts of Interest: A Mediator shall disclose all actual and potential conflicts of interest reasonably known to the Mediator. After disclosure, the Mediator shall decline to mediate unless all parties choose to retain the mediator. The need to protect against conflicts of interest also governs conduct that occurs during and after the mediation.**

A conflict of interest is a dealing or relationship that might create an impression of possible bias. The basic approach to questions of conflict of interest is consistent with the concept of self-determination. The mediator has a responsibility to disclose all actual and potential conflicts that are reasonably known to the mediator and could reasonably be seen as raising a question about impartiality. If all parties agree to mediate after being informed of conflicts, the mediator may proceed with the mediation. If, however, the conflict of interest casts serious doubt on the integrity of the process, the mediator shall decline to proceed.

A mediator must avoid the appearance of conflict of interest both during and after the mediation. Without the consent of all parties, a mediator shall not subsequently establish a professional relationship with one of the parties in a related matter, or in an unrelated matter under circumstances which would raise legitimate questions about the integrity of the mediation process.

**Comments**

- A mediator shall avoid conflicts of interest in recommending the services of other professionals. A mediator may make reference to professional referral services or associations which maintain rosters of qualified professionals.
- Potential conflicts of interest may arise between administrators of mediation programs and mediators and there may be strong pressures on the mediator to settle a particular case or

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cases. The mediator's commitment must be to the parties and the process. Pressure from outside of the mediation process should never influence the mediator to coerce parties to settle.

**IV. Competence: A Mediator shall mediate only when the Mediator has the necessary qualifications to satisfy the reasonable expectations of the parties.**

Any person may be selected as a mediator, provided that the parties are satisfied with the mediator's qualifications. Training and experience in mediation, however, are often necessary for effective mediation. A person who offers herself or himself as available to serve as a mediator gives parties and the public the expectation that she or he has the competency to mediate effectively. In court-connected or other forms of mandated mediation, it is essential that mediators assigned to the parties have the requisite training and experience.

**Comments**

- Mediators should have information available for the parties regarding their relevant training, education and experience.
- The requirements for appearing on a list of mediators must be made public and available to interested persons.
- When mediators are appointed by a court or institution, the appointing agency shall make reasonable efforts to ensure that each mediator is qualified for the particular mediation.

**V. Confidentiality: A Mediator shall maintain the reasonable expectations of the parties with regard to confidentiality.**

The reasonable expectations of the parties with regard to confidentiality shall be met by the mediator. The parties' expectations of confidentiality depend on the circumstances of the mediation and any agreements they may make. The mediator shall not disclose any matter that a party expects to be confidential unless given permission by all parties or unless required by law or other public policy.

**Comments**

- The parties may make their own rules with respect to confidentiality, or the accepted practice of an individual mediator or institution may dictate a particular set of expectations. Since the parties' expectations regarding confidentiality are important, the mediator should discuss these expectations with the parties.
- If the mediator holds private sessions with a party, the nature of these sessions with regard to confidentiality should be discussed prior to undertaking such sessions.
- In order to protect the integrity of the mediation, a mediator should avoid communicating information about how the parties acted in the mediation process, the merits of the case, or settlement offers. The mediator may report, if required, whether parties appeared at a scheduled mediation.
- Where the parties have agreed that all or a portion of the information disclosed during a mediation is confidential, the parties' agreement should be respected by the mediator.

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- Confidentiality should not be construed to limit or prohibit the effective monitoring, research, or evaluation of mediation programs by responsible persons. Under appropriate circumstances, researchers may be permitted to obtain access to statistical data and, with the permission of the parties, to individual case files, observations of live mediations, and interviews with participants.

**VI. Quality of the Process: A Mediator shall conduct the mediation fairly, diligently, and in a manner consistent with the principle of self-determination by the parties.**

A mediator shall work to ensure a quality process and to encourage mutual respect among the parties. A quality process requires a commitment by the mediator to diligence and procedural fairness. There should be adequate opportunity for each party in the mediation to participate in the discussions. The parties decide when and under what conditions they will reach an agreement or terminate a mediation.

**Comments**

- A mediator may agree to mediate only when he or she is prepared to commit the attention essential to an effective mediation.
- Mediators should only accept cases when they can satisfy the reasonable expectations of the parties concerning the timing of the process. A mediator should not allow a mediation to be unduly delayed by the parties or their representatives.
- The presence or absence of persons at a mediation depends on the agreement of the parties and the mediator. The parties and mediator may agree that others may be excluded from particular sessions or from the entire mediation process.
- The primary purpose of a mediator is to facilitate the parties' voluntary agreement. This role differs substantially from other professional-client relationships. Mixing the role of a mediator and the role of a professional advising a client is problematic, and mediators must strive to distinguish between the roles. A mediator should, therefore, refrain from providing professional advice. Where appropriate, a mediator should recommend that parties seek outside professional advice, or consider resolving their dispute through arbitration, counseling, neutral evaluation, or other processes. A mediator who undertakes, at the request of the parties, an additional dispute resolution role in the same matter assumes increased responsibilities and obligations that may be governed by the standards of other processes.
- A mediator shall withdraw from a mediation when incapable of serving or when unable to remain impartial.
- A mediator shall withdraw from a mediation or postpone a session if the mediation is being used to further illegal conduct, or if a party is unable to participate due to drug, alcohol, or other physical or mental incapacity.
- Mediators should not permit their behavior in the mediation process to be guided by a desire for a high settlement rate.

**VII. Advertising and Solicitation: A Mediator shall be truthful in advertising and solicitation for mediation.**

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Advertising or any other communication with the public concerning services offered or regarding the education, training, and expertise of the mediator shall be truthful. Mediators shall refrain from promises and guarantees of results.

**Comments**

- It is imperative that communication with the public educate and instill confidence in the process.
- In an advertisement or other communication to the public, a mediator may make reference to meeting state, national, or private organization qualifications only if the entity referred to has a procedure for qualifying mediators and the mediator has been duly granted the requisite status.

**VIII. Fees: A Mediator shall fully disclose and explain the basis of compensation, fees, and charges to the parties.**

The parties should be provided sufficient information about fees at the outset of a mediation to determine if they wish to retain the services of a mediator. If a mediator charges fees, the fees shall be reasonable, considering among other things, the mediation service, the type and complexity of the matter, the expertise of the mediator, the time required, and the rates customary in the community. The better practice in reaching an understanding about fees is to set down the arrangements in a written agreement.

**Comments**

- A mediator who withdraws from a mediation should return any unearned fee to the parties.
- A mediator should not enter into a fee agreement which is contingent upon the result of the mediation or amount of the settlement.
- Co-mediators who share a fee should hold to standards of reasonableness in determining the allocation of fees.
- A mediator should not accept a fee for referral of a matter to another mediator or to any other person.

**IX. Obligations to the Mediation Process: Mediators have a duty to improve the practice of mediation.**

**Comment**

- Mediators are regarded as knowledgeable in the process of mediation. They have an obligation to use their knowledge to help educate the public about mediation; to make mediation accessible to those who would like to use it; to correct abuses; and to improve their professional skills and abilities.

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**APPENDIX B  
GIAC FEE SCHEDULE**

The following fees apply to any mediation services conducted by or at the Guam International Arbitration Center, LLC. All amounts are in U.S. dollars.

1. Mediator Fee: \$200.00 per hour
2. Administrative Fees:

The administrative functions performed by GIAC shall be subject to the following per-day fee schedule. Any portion of a day will result in a full-day charge. If an off-island mediator is selected by the parties, the mediator's travel expenses, accommodations and per diem will be equally borne by the parties. Requested services such as transcription, translation, and reproduction will be obtained by GIAC for the parties but the costs for such services will be the separate responsibility of the parties.

<i>AMOUNT OF CLAIM</i>	<i>FEE</i>
\$50,001 TO \$100,000	\$100
\$100,001 TO \$250,000	\$150
\$250,001 TO \$500,000	\$200
\$500,001 TO 1,000,000	\$350
\$1,000,001 TO \$10,000,000	\$500
OVER \$10,000,000	As determined by GIAC

**APPENDIX C  
INAFI' MAOLEK FEE SCHEDULE**

The following fees apply to any mediation services conducted by or at Inafa' Maolek during the Mediation Pilot Program for Civil Actions. All amounts are in U.S. dollars.

1. Mediator Fee:
  - a. For cases involving less than \$25,000: Each disputant shall pay \$100 per session.
  - b. For cases involving \$25,000 to \$50,000: Each disputant shall pay \$125 per session.
    - \* For purposes of this fee schedule, a "mediation session" is defined as time spent by a mediator together with the parties, up to a maximum of three hours, attempting to resolve the case.
2. Administrative Fees:

Requested services such as transcription, translation or reproduction may be obtained by Inafa' Maolek for the parties but the costs for such services will be the separate responsibility of the parties.