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SUPREME COURT
OF GUAM

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4 **IN THE SUPREME COURT OF GUAM**

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6 **RE:**) Supreme Court Case No. PRM06-005
7)
8 **ADOPTION OF PERMANENT)**
COURT-REFERRED MEDIATION RULES IN)
9 **THE SUPERIOR COURT OF GUAM)** **PROMULGATION ORDER NO.**
10) **06-005-06**

11 A Subcommittee was established to review the Mediation Pilot Program and the rules
12 being used in that program. The Subcommittee was tasked with making a recommendation to
13 this court on whether the Pilot Program should be made permanent. The Subcommittee met
14 several times throughout 2013 to discuss proposed permanent mediation rules for use in the
15 Superior Court of Guam. The Subcommittee submitted its report to this court on February 6,
16 2014, and has now recommended adoption of permanent court-referred mediation rules. The
17 proposed rules and related forms were circulated to Guam Bar Association (“GBA”) members
18 and trial judges for comment on February 6, 2014. All comments received were fully
19 considered, and where deemed appropriate by the Subcommittee, incorporated into the proposed
20 rules recommended to the Supreme Court for adoption. The public comment period having
21 expired, the Subcommittee now recommends that the Supreme Court promulgate the proposed
22 mediation rules and the related forms.
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25 Upon the recommendation of the Subcommittee, and under the authority to “make and
26 promulgate rules governing the administration of the judiciary and the practice and procedure in
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1 the courts of the judicial branch of Guam," 48 U.S.C.A. § 1424-1(a)(6), the Supreme Court
2 hereby adopts the proposed mediation rules and the related forms which are attached as Exhibit
3 A. The mediation rules and the related forms shall be effective immediately upon adoption.
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5 **SO ORDERED** this 21st day of May, 2014.
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10 **F. PHILIP CARBULLIDO**
11 **Associate Justice**

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13 **KATHERINE A. MARAMAN**
14 **Associate Justice**

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ROBERT J. TORRES
Chief Justice

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COURT-REFERRED MEDIATION RULES

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MR 4.1. Title.

These rules shall be referred to as the Superior Court of Guam’s Court-Referred Mediation Rules.

MR 4.1.1. Purpose.

The Judiciary of Guam desires to encourage the prompt and equitable resolution of disputes, to reduce financial and emotional burdens of lengthy litigation, to promote restorative justice and peer mediation, and to resolve cases within recommended judicial time standards and these Rules support these principles.

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MR 4.1.2. Scope and Application.

These Rules apply to all parties involved in non-criminal cases and have limited application in juvenile proceedings.

MR 4.1.3. Definitions.

(a) *Mediation* means a process in which a neutral person or organization facilitates communication between the disputants to assist in reaching a mutually acceptable agreement.

(b) *Mediation costs* include the following, unless otherwise ordered or agreed between the parties to the mediation:

- (1) A reasonable fee to be paid to the mediator or mediators;
- (2) The travel and other reasonable expenses of the mediator or mediators;
- (3) The travel and other reasonable expenses of witnesses requested by the mediator or mediators with the consent of the parties;
- (4) The cost of any expert advice requested by the mediation or mediators with the consent of the parties; and
- (5) The costs of any court or other institution's administration of the mediation.

MR 4.1.4. Mediation Costs and Fees.

(a) Mediation should be accessible to all parties. Except for peer mediation, restorative justice, or court-ordered mediation in matters involving custody and visitation, mediation costs and fees shall be paid by the parties in equal proportions unless otherwise agreed to with the mediation service provider and parties. No party may offer or give a Mediator any gift without the consent of all the parties. A party may request the judge to be granted financial accommodation due to indigence as provided for below.

(b) Any and all fees charged by the mediator shall be in accordance with a fee structure approved by the Chief Justice and made a part of the service provider agreement entered into between the Judiciary of Guam and the mediation service provider. Compensation shall be paid directly to the mediation service provider or as otherwise directed by the mediation service provider. Failure of a party to make payments due may result, upon motion or application, in the issuance of an order to pay, and imposition of sanctions. The Judiciary of Guam shall not be responsible for the collection or payment of any mediation fees or costs.

MR 4.1.5. Case Management Review for Mediation.

At any time after a case is filed, parties may agree by stipulation or the assigned judge may initiate mediation. The assigned judge may undertake a case management review for mediation at any time, in the discretion of the assigned judge including but not limited to, after the filing of last responsive pleading, at the scheduling conference, on the discovery deadline, and/or at the first pretrial conference.

MR 4.1.6. Attorney Certification.

Prior to the filing under CVR 16.1 of a Proposed Scheduling Order and a Proposed Discovery Plan, and no later than seventy-five (75) days after filing of the initial complaint, the attorneys are required to file a written certification regarding mediation, using Form B1.

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MR 4.1.7. Parties' Duty to Confer and Report.

The parties shall meet and confer about whether they might benefit from mediation services, and the most appropriate time for mediation to be conducted. In every Proposed Scheduling Order and Proposed Discovery Plan parties must report their shared or separate views about the possible benefits of mediation in the particular case, and when mediation should occur.

MR 4.1.8. Mediation Referral Procedures.

The following procedures govern referral of a case to mediation services:

(a) **Judicial Referral.** All judges should conduct regular review of their case dockets for mediation referral. Consideration should include factors such as the age of the case, subject matter, the amount in controversy, the complexity of issues, the number of parties, prior referrals, and the likelihood of settlement. Prior to referral, the assigned judge may discuss with the parties the prospects for settlement of the case through mediation services.

(b) **Stipulation of Parties.** The parties may agree to engage in mediation by stipulation requesting the assigned judge to issue an Order of Mediation to an appropriate mediation service provider selected by the parties, or as determined appropriate by the assigned judge.

MR 4.1.9. Order For Mediation.

(a) An Order for Mediation, using Form B2, shall be issued requiring the parties to commence mediation promptly, appointing a designated mediation service provider, and ordering the parties to contact the mediation service provider promptly.

(b) **Designated Mediation Service Provider.** An Order for Mediation shall refer the parties to a mediation service provider approved by the Chief Justice of the Supreme Court of Guam, unless the parties agree by stipulation to mediation not covered by these rules.

(c) **Stay of Proceedings.** A stay of all proceedings, a portion of the proceedings or of discovery may be ordered when the assigned judge determines a stay would be beneficial, otherwise no stay should be entered while a case is in mediation. All applicable limitation periods, including periods of prescription, shall be tolled or extended upon commencement of mediation, and shall remain tolled until the tenth (10th) day following the termination of mediation.

(d) **Contact Information Required.** The Order for Mediation shall include the name, address and telephone number of the mediation services provider designated by the assigned judge to conduct mediation in the case. It shall also include the names and contact information of the attorneys or self-represented litigants participating in mediation.

(e) **Hearing on Status of Mediation.** The Order for Mediation shall provide for a hearing on the status of mediation services within sixty (60) days of the date the order is issued. The hearing may be continued where the parties have agreed to extend mediation services as herein provided.

MR 4.1.10. Relief from Judicially Referred Mediation.

(a) When an assigned judge has referred a case to mediation absent a stipulation of the parties, a party may file a "Statement Requesting Relief from Order for Mediation" using Form B3, seeking return of the case to the assigned judge's regular docket.

(b) The Statement must be filed within ten (10) calendar days of the date of filing the Order for Mediation, and must provide the reason(s), supported by relevant facts, why the party believes the case is not then appropriate for mediation.

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(c) If the assigned judge agrees that the case should be removed from mediation an Order For Relief From Mediation shall issue using Form B4 within 15 days of the filing of the Form B3 Statement Requesting Relief from Order for Mediation. The assigned judge may hold a hearing on the issue at his or her discretion. Absent such an order, the case shall remain in mediation. Unless and until an order removing a case from mediation is filed, the mediation process shall continue notwithstanding the filing of the Statement Requesting Relief from Order for Mediation.

MR 4.1.11. Financial Accommodation for Indigent Parties.

(a) The Judiciary recognizes that certain parties may not have the financial resources to pay for the costs and fees of mediation and does not want financial considerations alone to prevent parties from participating in court referred mediation. Therefore the Judiciary will permit parties to request indigent status.

(b) A party requesting indigent status shall file a Statement of Financial Indigence using Form B5 no later than five (5) business days after filing of the Order for Mediation.

(c) No party shall qualify for indigent status if represented by an attorney, except for pro bono or non-profit legal service representation for which the party pays no attorney fees. Financial qualification for indigent status shall be based on the same financial guidelines for eligibility for indigent representation in criminal cases in the Superior Court of Guam.

(d) The assigned Judge shall make a determination on a party's indigent status request, within ten (10) calendar days of the request, using Form B6.

(e) If indigent status is approved, the judge shall refer the indigent party to an appropriate mediation service provider, issuing an amended Order for Mediation using Form B2, where financial accommodations are available.

MR 4.1.12. Sanctions for Nonappearance of Party at Scheduled Session.

A party who fails to appear at mediation without good cause may be subject to contempt and sanctions upon the issuance of an Order to Show Cause by the judge assigned to the case using Form B7. Sanctions may be imposed on attorneys or parties and may include payment of mediation costs and fees incurred for the scheduled mediation session(s), as well as other costs and fees, including attorney's fees, of the party appearing for the scheduled session(s).

MR 4.1.13. Conduct of Mediation.

(a) Mediation is deemed to have commenced upon the filing of the Form B2 Order for Mediation.

(b) Scheduling Pre-Mediation Conference. The parties, and the attorneys primarily responsible for the litigation, shall promptly, after receiving an Order for Mediation, contact the designated mediation service provider to schedule a pre-mediation conference/teleconference with the mediator, at which all parties or their counsel must participate, to establish the date, time and place for mediation, the procedures to be followed in mediation, and the names of all persons who will be attending mediation sessions.

(c) Mediation Statements. Counsel should be prepared to discuss the following:

(1) Identity, by name and title or status of:

(A) Person(s) with decision making authority, who, in addition to counsel, will attend the mediation as representative(s) of the party; and

(B) Person(s) connected with a party opponent whose presence might substantially improve the utility of the mediation or the prospects for settlement;

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(2) Brief description of the substance of the suit, addressing the party's views of the key liability issues and damages and discussing the key evidence;

(3) Identify the discovery or motions that promise to contribute most to equipping the parties for meaningful settlement negotiations;

(4) Except to the extent prohibited by applicable laws of privilege, describe the history and current status of any settlement negotiations;

(5) Provide additional information about any needs, interests or other considerations not described elsewhere in the statement that might be pertinent to settlement; and

(6) Include copies of documents likely to make the mediation more productive or to materially advance settlement prospects.

SOURCE: U.S. Dist. Ct. Northern Dist. of Calif. ADR Local Rule 6-7.

MR 4.1.14. Confidentiality.

(a) Notwithstanding Guam Rule of Evidence 504.2, no information used or discussed in mediation shall be communicated to the assigned judge, unless expressly consented to by all parties. No writing of the mediator, except the Mediator's Statement as required by the Court to be filed, shall be disclosed to the parties, the public, or anyone other than the mediator, unless all parties consent to the disclosure. All information disclosed, admissions of the parties, and documents produced in mediation shall be inadmissible and protected from disclosure at all times before, during, or after mediation, except as permitted by law or these Rules.

(b) A mediator has the duty to disclose to the proper authorities information obtained in mediation which the mediator reasonably believes will prevent a participant from committing a criminal or illegal act likely to result in death or serious bodily injury. No mediator may be required to participate in any subsequent hearing or trial of the mediated matter or appear as a witness or counsel for any person in the same or related matter.

MR 4.1.15. Evidence Admissible.

Evidence which is admissible or subject to discovery outside mediation shall not become inadmissible or protected from disclosure solely by reason of its use in mediation.

MR 4.1.16. Evidence Not Admissible.

Evidence which is inadmissible or not otherwise subject to discovery outside of mediation which is disclosed during mediation proceedings, or any admission made by the parties or document produced in the course of mediation, shall not become admissible in evidence at a later trial in the case, nor can any disclosure therein made be compelled in any civil or criminal action, except upon consent of all the parties.

MR 4.1.17. Stipulated Extension of Mediation – Limited.

In the event the parties are unable to commence mediation or reach any agreement within sixty (60) calendar days of the filing of the Order for Mediation, the parties may agree that continued mediation is appropriate. The parties may stipulate to successive mediation to be commenced within ninety (90) calendar days of the filing of the Order for Mediation without further approval of the assigned judge. Notice of any such successive mediation shall be promptly provided to the assigned judge through the Mediation Service Provider's filing of a Mediator's Statement, using Form B8. No further extensions of mediation are permitted without approval of the assigned judge.

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MR 4.1.18. Termination or Conclusion of Mediation Services.

Mediation may be terminated or concluded at any time as follows:

- (a) A written declaration by the mediator that mediation efforts are not currently justified;
- (b) A written declaration by all the parties that mediation is terminated by mutual agreement of all the parties, or terminated as to particular parties; or
- (c) Signing of a mediation settlement agreement by all parties to that agreement.

MR 4.1.19. Mediator's Statement.

Within ten (10) calendar days of the completion of mediation services, or termination of mediation by all the parties, Form B8 -- Mediator's Statement shall be filed with the Court by the Mediation Services Provider advising the assigned judge of the outcome of the mediation.

MR 4.1.20. Stipulated Judgment Upon Mediation – Enforcement.

The parties may submit, and the assigned judge may enter, a Stipulated Judgment Upon Mediation, using Form B9, and which thereafter may be enforced as any Superior Court of Guam judgment may be enforced.

MR 4.1.21. Qualification of Mediators.

The Chief Justice of the Guam Supreme Court shall approve all mediators who are engaged by mediation service providers at the time the Judiciary enters into an agreement with the mediation service provider. Mediation service providers who are engaged at the time of the adoption of these Rules are deemed approved. All mediators engaged by an approved mediation service provider shall be deemed approved by the Chief Justice. Additional qualification, training and experience may be required of mediators from time to time by the Supreme Court. In the absence of training qualifications it shall be the duty and responsibility of the mediation service provider to exercise all proper due diligence to ensure the qualifications of all mediators it engages.

MR 4.1.22. Standards of Conduct for Mediators.

The ethical standards applicable to mediation service providers, and mediators, shall be the 2005 Model Standards of Conduct for Mediators. Attached as Appendix A.

MR 4.1.23. Data Collection Requirements.

The Clerk of Court shall collect all data pertaining to all Orders for Mediation, and Mediator's Statements, and shall report to the Chief Justice within a reasonable time following the end of each calendar year regarding mediation services within the Superior Court of Guam during the prior year.

MR 4.1.24. Judicial Time Standards Tolloed.

The aging of a case referred to mediation shall be tolled for case age time standard purposes until such time as mediation ends. Tolling commences from date of the issuance of the Order for Mediation and ends when the assigned judge determines mediation has concluded or terminated.

MR 4.1.25. Juvenile Proceedings.

(a) These rules do not strictly apply to juvenile special proceedings including, but not limited to, PINS, beyond control, truancy, guardianship, and delinquency cases. Judges may exercise discretion and order mediation in such proceedings.

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(b) These rules do not strictly apply to juvenile delinquency proceedings. Judges may exercise discretion and order mediation, peer mediation, or restorative justice in juvenile delinquency proceedings.

(c) For juvenile proceedings, the judge may refer such cases to appropriate government or non-government programs or to the mediators approved by the Chief Justice.

APPENDICES TO RULES

- A. Model Standards for Conduct of Mediators
- B. FORMS B1 – B9

**MODEL STANDARDS OF CONDUCT
FOR MEDIATORS**

AMERICAN ARBITRATION ASSOCIATION
(ADOPTED SEPTEMBER 8, 2005)

AMERICAN BAR ASSOCIATION
(APPROVED BY THE ABA HOUSE OF DELEGATES AUGUST 9, 2005)

ASSOCIATION FOR CONFLICT RESOLUTION
(ADOPTED AUGUST 22, 2005)

SEPTEMBER 2005

The Model Standards of Conduct for Mediators 2005

The Model Standards of Conduct for Mediators was prepared in 1994 by the American Arbitration Association, the American Bar Association's Section of Dispute Resolution, and the Association for Conflict Resolution¹. A joint committee consisting of representatives from the same successor organizations revised the Model Standards in 2005.² Both the original 1994 version and the 2005 revision have been approved by each participating organization.³

Preamble

Mediation is used to resolve a broad range of conflicts within a variety of settings. These Standards are designed to serve as fundamental ethical guidelines for persons mediating in all practice contexts. They serve three primary goals: to guide the conduct of mediators; to inform the mediating parties; and to promote public confidence in mediation as a process for resolving disputes.

Mediation is a process in which an impartial third party facilitates communication and negotiation and promotes voluntary decision making by the parties to the dispute.

Mediation serves various purposes, including providing the opportunity for parties to define and clarify issues, understand different perspectives, identify interests, explore and assess possible solutions, and reach mutually satisfactory agreements, when desired.

Note on Construction

These Standards are to be read and construed in their entirety. There is no priority significance attached to the sequence in which the Standards appear.

¹ The Association for Conflict Resolution is a merged organization of the Academy of Family Mediators, the Conflict Resolution Education Network and the Society of Professionals in Dispute Resolution (SPIDR). SPIDR was the third participating organization in the development of the 1994 Standards.

² Reporter's Notes, which are not part of these Standards and therefore have not been specifically approved by any of the organizations, provide commentary regarding these revisions.

³ The 2005 version to the Model Standards were approved by the American Bar Association's House of Delegates on August 9, 2005, the Board of the Association of Conflict Resolution on August 22, 2005 and the Executive Committee of the American Arbitration Association on September 8, 2005.

The use of the term "shall" in a Standard indicates that the mediator must follow the practice described. The use of the term "should" indicates that the practice described in the standard is highly desirable, but not required, and is to be departed from only for very strong reasons and requires careful use of judgment and discretion.

The use of the term "mediator" is understood to be inclusive so that it applies to co-mediator models.

These Standards do not include specific temporal parameters when referencing a mediation, and therefore, do not define the exact beginning or ending of a mediation.

Various aspects of a mediation, including some matters covered by these Standards, may also be affected by applicable law, court rules, regulations, other applicable professional rules, mediation rules to which the parties have agreed and other agreements of the parties. These sources may create conflicts with, and may take precedence over, these Standards. However, a mediator should make every effort to comply with the spirit and intent of these Standards in resolving such conflicts. This effort should include honoring all remaining Standards not in conflict with these other sources.

These Standards, unless and until adopted by a court or other regulatory authority do not have the force of law. Nonetheless, the fact that these Standards have been adopted by the respective sponsoring entities, should alert mediators to the fact that the Standards might be viewed as establishing a standard of care for mediators.

STANDARD I. SELF-DETERMINATION

- A. A mediator shall conduct a mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome. Parties may exercise self-determination at any stage of a mediation, including mediator selection, process design, participation in or withdrawal from the process, and outcomes.
1. Although party self-determination for process design is a fundamental principle of mediation practice, a mediator may need to balance such party self-determination with a mediator's duty to conduct a quality process in accordance with these Standards.
 2. A mediator cannot personally ensure that each party has made free and informed choices to reach particular decisions, but, where

appropriate, a mediator should make the parties aware of the importance of consulting other professionals to help them make informed choices.

- B. A mediator shall not undermine party self-determination by any party for reasons such as higher settlement rates, egos, increased fees, or outside pressures from court personnel, program administrators, provider organizations, the media or others.

STANDARD II. IMPARTIALITY

- A. A mediator shall decline a mediation if the mediator cannot conduct it in an impartial manner. Impartiality means freedom from favoritism, bias or prejudice.
- B. A mediator shall conduct a mediation in an impartial manner and avoid conduct that gives the appearance of partiality.
 - 1. A mediator should not act with partiality or prejudice based on any participant's personal characteristics, background, values and beliefs, or performance at a mediation, or any other reason.
 - 2. A mediator should neither give nor accept a gift, favor, loan or other item of value that raises a question as to the mediator's actual or perceived impartiality.
 - 3. A mediator may accept or give de minimis gifts or incidental items or services that are provided to facilitate a mediation or respect cultural norms so long as such practices do not raise questions as to a mediator's actual or perceived impartiality.
- C. If at any time a mediator is unable to conduct a mediation in an impartial manner, the mediator shall withdraw.

STANDARD III. CONFLICTS OF INTEREST

- A. A mediator shall avoid a conflict of interest or the appearance of a conflict of interest during and after a mediation. A conflict of interest can arise from involvement by a mediator with the subject matter of the dispute or from any relationship between a mediator and any mediation participant, whether past or present, personal or professional, that reasonably raises a question of a mediator's impartiality.

- B. A mediator shall make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for a mediator. A mediator's actions necessary to accomplish a reasonable inquiry into potential conflicts of interest may vary based on practice context.
- C. A mediator shall disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality. After disclosure, if all parties agree, the mediator may proceed with the mediation.
- D. If a mediator learns any fact after accepting a mediation that raises a question with respect to that mediator's service creating a potential or actual conflict of interest, the mediator shall disclose it as quickly as practicable. After disclosure, if all parties agree, the mediator may proceed with the mediation.
- E. If a mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, a mediator shall withdraw from or decline to proceed with the mediation regardless of the expressed desire or agreement of the parties to the contrary.
- F. Subsequent to a mediation, a mediator shall not establish another relationship with any of the participants in any matter that would raise questions about the integrity of the mediation. When a mediator develops personal or professional relationships with parties, other individuals or organizations following a mediation in which they were involved, the mediator should consider factors such as time elapsed following the mediation, the nature of the relationships established, and services offered when determining whether the relationships might create a perceived or actual conflict of interest.

STANDARD IV. COMPETENCE

- A. A mediator shall mediate only when the mediator has the necessary competence to satisfy the reasonable expectations of the parties.
 - 1. Any person may be selected as a mediator, provided that the parties are satisfied with the mediator's competence and qualifications. Training, experience in mediation, skills, cultural understandings and other qualities are often necessary for mediator

competence. A person who offers to serve as a mediator creates the expectation that the person is competent to mediate effectively.

2. A mediator should attend educational programs and related activities to maintain and enhance the mediator's knowledge and skills related to mediation.
 3. A mediator should have available for the parties' information relevant to the mediator's training, education, experience and approach to conducting a mediation.
- B. If a mediator, during the course of a mediation determines that the mediator cannot conduct the mediation competently, the mediator shall discuss that determination with the parties as soon as is practicable and take appropriate steps to address the situation, including, but not limited to, withdrawing or requesting appropriate assistance.
- C. If a mediator's ability to conduct a mediation is impaired by drugs, alcohol, medication or otherwise, the mediator shall not conduct the mediation.

STANDARD V. CONFIDENTIALITY

- A. A mediator shall maintain the confidentiality of all information obtained by the mediator in mediation, unless otherwise agreed to by the parties or required by applicable law.
1. If the parties to a mediation agree that the mediator may disclose information obtained during the mediation, the mediator may do so.
 2. A mediator should not communicate to any non-participant information about how the parties acted in the mediation. A mediator may report, if required, whether parties appeared at a scheduled mediation and whether or not the parties reached a resolution.
 3. If a mediator participates in teaching, research or evaluation of mediation, the mediator should protect the anonymity of the parties and abide by their reasonable expectations regarding confidentiality.
- B. A mediator who meets with any persons in private session during a mediation shall not convey directly or indirectly to any other person, any information that was obtained during that private session without the consent of the disclosing person.

- C. A mediator shall promote understanding among the parties of the extent to which the parties will maintain confidentiality of information they obtain in a mediation.
- D. Depending on the circumstance of a mediation, the parties may have varying expectations regarding confidentiality that a mediator should address. 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.

STANDARD VI. QUALITY OF THE PROCESS

- A. A mediator shall conduct a mediation in accordance with these Standards and in a manner that promotes diligence, timeliness, safety, presence of the appropriate participants, party participation, procedural fairness, party competency and mutual respect among all participants.
 - 1. A mediator should agree to mediate only when the mediator is prepared to commit the attention essential to an effective mediation.
 - 2. A mediator should only accept cases when the mediator can satisfy the reasonable expectation of the parties concerning the timing of a mediation.
 - 3. 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 all sessions.
 - 4. A mediator should promote honesty and candor between and among all participants, and a mediator shall not knowingly misrepresent any material fact or circumstance in the course of a mediation.
 - 5. The role of a mediator differs substantially from other professional roles. Mixing the role of a mediator and the role of another profession is problematic and thus, a mediator should distinguish between the roles. A mediator may provide information that the mediator is qualified by training or experience to provide, only if the mediator can do so consistent with these Standards.

6. A mediator shall not conduct a dispute resolution procedure other than mediation but label it mediation in an effort to gain the protection of rules, statutes, or other governing authorities pertaining to mediation.
 7. A mediator may recommend, when appropriate, that parties consider resolving their dispute through arbitration, counseling, neutral evaluation or other processes.
 8. A mediator shall not undertake an additional dispute resolution role in the same matter without the consent of the parties. Before providing such service, a mediator shall inform the parties of the implications of the change in process and obtain their consent to the change. A mediator who undertakes such role assumes different duties and responsibilities that may be governed by other standards.
 9. If a mediation is being used to further criminal conduct, a mediator should take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.
 10. If a party appears to have difficulty comprehending the process, issues, or settlement options, or difficulty participating in a mediation, the mediator should explore the circumstances and potential accommodations, modifications or adjustments that would make possible the party's capacity to comprehend, participate and exercise self-determination.
- B. If a mediator is made aware of domestic abuse or violence among the parties, the mediator shall take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.
 - C. If a mediator believes that participant conduct, including that of the mediator, jeopardizes conducting a mediation consistent with these Standards, a mediator shall take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.

STANDARD VII. ADVERTISING AND SOLICITATION

- A. A mediator shall be truthful and not misleading when advertising, soliciting or otherwise communicating the mediator's qualifications, experience, services and fees.

1. A mediator should not include any promises as to outcome in communications, including business cards, stationery, or computer-based communications.
 2. A mediator should only claim to meet the mediator qualifications of a governmental entity or private organization if that entity or organization has a recognized procedure for qualifying mediators and it grants such status to the mediator.
- B. A mediator shall not solicit in a manner that gives an appearance of partiality for or against a party or otherwise undermines the integrity of the process.
- C. A mediator shall not communicate to others, in promotional materials or through other forms of communication, the names of persons served without their permission.

STANDARD VIII. FEES AND OTHER CHARGES

- A. A mediator shall provide each party or each party's representative true and complete information about mediation fees, expenses and any other actual or potential charges that may be incurred in connection with a mediation.
1. If a mediator charges fees, the mediator should develop them in light of all relevant factors, including the type and complexity of the matter, the qualifications of the mediator, the time required and the rates customary for such mediation services.
 2. A mediator's fee arrangement should be in writing unless the parties request otherwise.
- B. A mediator shall not charge fees in a manner that impairs a mediator's impartiality.
1. A mediator should not enter into a fee agreement which is contingent upon the result of the mediation or amount of the settlement.
 2. While a mediator may accept unequal fee payments from the parties, a mediator should not allow such a fee arrangement to adversely impact the mediator's ability to conduct a mediation in an impartial manner.

STANDARD IX. ADVANCEMENT OF MEDIATION PRACTICE

- A. A mediator should act in a manner that advances the practice of mediation. A mediator promotes this Standard by engaging in some or all of the following:
 - 1. Fostering diversity within the field of mediation.
 - 2. Striving to make mediation accessible to those who elect to use it, including providing services at a reduced rate or on a pro bono basis as appropriate.
 - 3. Participating in research when given the opportunity, including obtaining participant feedback when appropriate.
 - 4. Participating in outreach and education efforts to assist the public in developing an improved understanding of, and appreciation for, mediation.
 - 5. Assisting newer mediators through training, mentoring and networking.

- B. A mediator should demonstrate respect for differing points of view within the field, seek to learn from other mediators and work together with other mediators to improve the profession and better serve people in conflict.

SUPERIOR COURT OF GUAM	[Reserved for Court stamp file]
MEDIATION CERTIFICATION MR 4.1 Form B1	
Plaintiff(s):	CASE NUMBER(S):
Defendant(s):	

I hereby certify that I have:

(1) Read the Judiciary of Guam's Brochure entitled, "How Mediation Can Work for You," and the Local Rules of Court for the Superior Court of Guam regarding Court Ordered Mediation, found at MR 4.1;

(2) Provided my client with a copy of the Judiciary of Guam's Brochure, and discussed mediation with my client as an alternative to proceeding with litigation; and

(3) Considered whether this case might benefit from mediation, or any other alternative dispute resolution options.

DATED:

[Name of Counsel]
Counsel for:

SUPERIOR COURT OF GUAM	[Reserved for Court stamp file]
ORDER FOR MEDIATION MR 4.1 Form B2	
Plaintiff(s):	CASE NUMBER(S):
Defendant(s):	

- The Court has determined this matter appropriate for mediation.
- The parties have mutually agreed or stipulated to refer this matter to mediation.

Now Therefore It Is Ordered, that this matter be referred to the following mediation service provider:

- Inafa' Maolek 297 West O'Brien Dr., Hagatna, Guam 96910 (475-1977)
- Pacific Arbitration & Mediation Services, Inc. ("PAMS"), 238 Archbishop Flores St., Ste. 801, Hagatna, GU 96910 (472-2089)
- Other:

It is Further Ordered that the parties immediately contact the mediation service provider to make arrangements for scheduling mediation. While this matter remains referred to mediation it is:

- Stayed in its entirety;
- Stayed, in part, as follows: _____

Names and contact information of attorneys and self-represented litigants participating in mediation:

A Hearing on Status of Mediation within sixty (60) days of this Order is set for:

_____.

SO ORDERED this: _____.

JUDGE, Superior Court of Guam

SUPERIOR COURT OF GUAM	[Reserved for Court stamp file]
STATEMENT REQUESTING RELIEF FROM ORDER FOR MEDIATION MR 4.1 Form B3	
Plaintiff(s):	CASE NUMBER(S):
Defendant(s):	

Relief from Order For Mediation is hereby requested. The reasons supporting this request are as follows:

(PROVIDE FACTS AND ARGUMENTS)

Dated: _____

[Name of Counsel]

Counsel for:

SUPERIOR COURT OF GUAM	[Reserved for Court stamp file]
ORDER FOR RELIEF FROM ORDER FOR MEDIATION MR 4.1 Form B4	
Plaintiff(s):	CASE NUMBER(S):
Defendant(s):	

THE COURT, having reviewed the Statement Requesting Relief from Order for Mediation filed by a party herein, and based on said application,

HEREBY ORDERS that this matter is removed from mediation and reactivated on the docket.

A hearing is therefore set in this matter for _____ day of _____ 20__ at _____ o'clock ____ . m. All previous stay orders are vacated.

SO ORDERED this: _____.

 JUDGE,
 Superior Court of Guam

SUPERIOR COURT OF GUAM	[Reserved for Court stamp file]
STATEMENT OF FINANCIAL INDIGENCE MR 4.1 Form B5	
Plaintiff(s):	CASE NUMBER(S):
Defendant(s):	

I, _____, **DECLARE UNDER PENALTY OF PERJURY**, the following:

- 1) That I am a party to these proceedings, and I am not represented by an attorney, or am represented by pro bono counsel or by a legal services organization for which I pay no attorney fees;
- 2) That I qualify for financially indigent status pursuant to Local Rule of the Superior Court of Guam M.R. 1.1 which places an impediment on my participation in mediation services;
- 3) That I submit herewith, attached hereto, my completed MR 1.1 Financial Declaration as required for purposes of the Court's review; and
- 4) I request an accommodation be made for my participation in mediation.

Dated:

Declarant

Plaintiff

Defendant

[Financial Declaration attached]

FINANCIAL DECLARATION

IN SUPPORT OF REQUEST FOR LEGAL COUNSEL WITHOUT PAYMENT OF FEE
 IN THE UNITED STATES TERRITORY OF GUAM: Family Court Superior Court Supreme Court

IN THE CASE OF: _____

vs.

PERSON REPRESENTED (show your full name): _____

SOCIAL SECURITY NUMBER: _____

CHARGE/OFFENSE (describe if applicable & check box): _____

Felony

Misdemeanor

DOCKET NUMBER

- | | |
|--|---|
| 1 <input type="checkbox"/> Defendant - Adult | 4 <input type="checkbox"/> Provation Violator |
| 2 <input type="checkbox"/> Defendant - Juvenile | 5 <input type="checkbox"/> Habeas Petitioner |
| 3 <input type="checkbox"/> Appellant (if so, was
counsel previously appointed
for you <input type="checkbox"/> Yes <input type="checkbox"/> No | 6 <input type="checkbox"/> Other (specify) |

ANSWERS TO QUESTIONS REGARDING ABILITY TO PAY

EMPLOYMENT

Are you now employed? Yes No Self Employed. Name and address of employer:
IF YES, how much do you earn per month?
IF NO, give month and year of last employment. _____ How much did you earn per month? \$
 If married, is your spouse employed? Yes No **IF YES**, how much does your spouse earn per month? \$
 If a minor under age 21, what is your parents' or guardian's approximate monthly income? \$

OTHER INCOME

Have you received within the past year any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, retirement or annuity payments, spousal support payments, or other sources? Yes No

IF YES, GIVE THE AMOUNT RECEIVED & IDENTIFY THE SOURCES

RECEIVED

SOURCES

\$ _____	_____
\$ _____	_____
\$ _____	_____

Are you currently receiving welfare benefits of any kind? Yes No **IF YES**, give the amount per month and describe the benefit.

AMOUNT

TYPE OF BENEFIT

\$ _____	_____
_____	_____

CASH

Have you any cash on hand or money in savings or checking accounts? Yes No **IF YES**, state total amount \$ _____

PROPERTY

Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? Yes No

IF YES, GIVE VALUE AND DESCRIBE

VALUE

DESCRIPTION

\$ _____	_____
_____	_____

DEPENDENTS

MARITAL STATUS

- Single
 Married
 Widowed
 Separated or Divorced

Total No. of Dependents:
()

List persons you actually support and your relationship to them.

DEBTS & MONTHLY BILLS

APARTMENT OR HOME

Creditors (List all creditors including banks, loan companies, charge accounts, etc.)

Total Debts

Monthly Payments

_____	\$	_____	\$	_____
_____	\$	_____	\$	_____
_____	\$	_____	\$	_____

I declare under penalty of perjury, the foregoing is true and correct. In addition, by my signature below, I hereby agree to make available to the courts of Gam any and all documents within my possession, or within the possession for the Department of Revenue and Taxation, relating to my financial status.

SIGNATURE OF DEFENDANT (or person to be represented): _____

WARNING: A FALSE OR DISHONEST ANSWER TO A QUESTION IN THIS DECLARATION MAY BE PUNISHABLE BY FINE OR IMPRISONMENT, OR BOTH. See Title 9, Guam Code Annotated, Sections 52.15 and 52.20.

SUPERIOR COURT OF GUAM	[Reserved for Court stamp file]
ORDER REGARDING INDIGENT STATUS MR 4.1 Form B6	
Plaintiff(s):	CASE NUMBER(S):
Defendant(s):	

_____, a party in this matter, has filed a Statement of Financial Indigence. Based on said statement and its accompanying Financial Declaration,

THE COURT HEREBY FINDS that:

The party is indigent, and therefore **ORDERS** the following accommodation(s):

- The indigent party shall pay ____% of mediation service fees.
- The indigent party shall not be required to pay.
- The first four (4) hours of mediation services shall be free of cost to the indigent party.
- Mediation is hereby dismissed.
- Other:

The party is not indigent.

SO ORDERED this: _____.

JUDGE,
Superior Court of Guam

SUPERIOR COURT OF GUAM	[Reserved for Court stamp file]
ORDER TO SHOW CAUSE REGARDING FAILURE TO MEDIATE MR 4.1 Form B7	
Plaintiff(s):	CASE NUMBER(S):
Defendant(s):	

TO:

YOU ARE HEREBY ORDERED TO APPEAR AND SHOW CAUSE WHY the Court should not hold you in contempt and sanction you for failing to participate in court ordered mediation.

YOUR APPEARANCE IS REQUIRED on _____ day of _____, 20__, at _____. Failure to appear at the hearing as herein required may result in the Court taking action against you, to include possible contempt of Court, and/or payment of costs and fees incurred by the mediator as a result of your failure to attend mediation as well as other costs and fees of the parties who appeared for the scheduled mediation.

SO ORDERED this: _____.

JUDGE,
Superior Court of Guam

SUPERIOR COURT OF GUAM	[Reserved for Court stamp file]
MEDIATOR'S STATEMENT MR 4.1 Form B8	
Plaintiff(s):	CASE NUMBER(S):
Defendant(s):	

Mediation was conducted in this matter with the following results:

- The parties have reached a written agreement as to all or some of the claims.
- The parties have agreed that a Stipulated Judgment shall be entered confirming their agreement(s).
- The parties have requested dismissal of the complaint initiating the case.
- The parties have agreed to terminate the mediation.
- The parties have stipulated to extend mediation by thirty (30) days pursuant to MR 4.1.17.
- Other (insert relevant summary explanation in space below):

DATED:

 Mediation Service Provider
 Address:
 Contact:

SUPERIOR COURT OF GUAM	[Reserved for Court stamp file]
STIPULATED JUDGMENT UPON MEDIATION MR 4.1 Form B9	
Plaintiff(s):	CASE NUMBER(S):
Defendant(s):	

The Parties herein, by and through their respective counsels, having engaged in successful mediation as ordered by the Court, do hereby mutually stipulate and agree that this JUDGMENT be entered as follows:

[INSERT LANGUAGE OF JUDGMENT]

[Name of Counsel]
Counsel for:

[Name of Counsel]
Counsel for:

SO ORDERED this: _____.

JUDGE,
Superior Court of Guam