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**IN THE SUPREME COURT OF GUAM**

**RE: ) PROMULGATION ORDER NO. 05-003**  
**ADOPTION OF THE )**  
**RULES FOR MEDIATION )**  
**PILOT PROGRAM )**

Pursuant to 48 U.S.C. § 1424-1 and Title 7 GCA § 3107 (2004), and Guam Public Law 27-79 (enacted May 6, 2004), the Supreme Court of Guam hereby adopts and promulgates the rules creating the Mediation Pilot Program. These rules are effective on the date of the filing of this order.

**RULES FOR THE MEDIATION PILOT PROGRAM**

**RULE 1. Purpose and application**

- (a) The rules shall apply only to the Mediation Pilot Program ("Pilot Program") approved by the Supreme Court.
- (b) Unless otherwise provided by law, or in the discretion of the trial judge when there exists a pattern of family violence, the first five (5) domestic cases filed each month involving a contested child custody issue shall be placed in the Pilot Program.
- (c) The Pilot Program shall last for a duration of one (1) year.

**RULE 2. Panel of mediators**

- (a) The Pilot Program shall maintain a panel of mediators, and/or mediator organizations;
- (b) The Supreme Court in consultation with judges, local Alternative Dispute Resolution providers and Guam Bar Association, shall establish the minimum qualifications required for a mediator to be included on the court's panel, including training and experience requirements. The required qualifications shall not include membership in the local bar association.
- (c) Mediators included in the panel for the Pilot Program must comply with the following standards:

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**ORIGINAL**

1 (1) Basic Mediation Training: Complete a minimum of fifteen (15) hours of basic  
2 mediation training consisting of a combination of lecture, discussion, practice, and  
3 processing, including the following substantive content:

- 4 • Information gathering
- 5 • Communication and facilitation skills
- 6 • Relationship and interaction skills
- 7 • Problem solving
- 8 • Decision making
- 9 • Agreement writing
- 10 • Neutrality
- 11 • Standards of conduct and ethical considerations
- 12 • Confidentiality
- 13 • A minimum of five (5) hours in coached role-playing.

14 (2) Mediation apprenticeship: Complete an mediation apprenticeship, which includes:

- 15 • Observe a minimum of one (1) mediation session
- 16 • Co-mediate a minimum of two (2) mediation sessions with an experienced  
17 mediator who will provide feedback and guidance.

18 (3) Specialized training: To qualify to mediate divorce/child custody issues, the  
19 mediator must provide a certificate of completion from a divorce/custody mediation training  
20 workshop, of not less than four (4) hours, approved by the Mediation Subcommittee.

21 (4) Complete six (6) sessions per year of documented mediation.

22 (5) Submit a court clearance.

23 (6) Continuing mediation education: Complete four (4) hours per year of  
24 documented continuing mediation education, which is defined as:

- 25 • Advanced mediation training
- 26 • Refresher training
- 27 • Related training (e.g., domestic violence, multi-party, child development)
- 28 • Mediation course work at an accredited university

- 1 • Professional association conferences
- 2 • Other related educational opportunities may be approved upon request on
- 3 a case-by-case basis upon a participant's submission of a detailed description
- 4 of the course content to the Inafa Maolek Credentialing Committee
- 5 ("Credentialing Committee") for review. The Credentialing Committee is the
- 6 committee of members organized by Inafa Maolek to evaluate and review
- 7 mediators and mediator educational programs.

8 (d) Evaluation of mediators from other programs: Mediators not trained by Inafa Maolek  
9 must be evaluated by the Credentialing Committee to determine their qualifications and must submit  
10 the following documentation to the Credentialing Committee for review before they may be included  
11 on the panel of mediators:

- 12 • Certificate of completion from a divorce/custody mediation training
- 13 workshop, of not less than four (4) hours, approved by the Mediation
- 14 Subcommittee
- 15 • Resume
- 16 • Court clearance
- 17 • Record of advanced mediation related training (including date, location and
- 18 instructor/trainer or agency)
- 19 • Documented divorce/child custody mediation experience.

20 (e) The ethical standards applicable to the mediators on the court's panel shall be the Model  
21 Standards of Conduct for Mediators, attached hereto as appendix A and incorporated by this  
22 reference.

23 (f) As a condition for inclusion on the court's panel, the Supreme Court shall require that  
24 mediators shall serve on a pro bono or reduced-fee basis in at least one case per year.

25 **RULE 3. Status Conference Statement**

26 In the Pilot Program, the parties shall serve and file an early mediation status conference statement  
27 within fifteen (15) days of filing the answer. This status conference statement shall include a  
28 discussion of the appropriateness of the case for referral to mediation.

1 **RULE 4. Selection of mediator**

2 (a) Within fifteen (15) days of filing the Status Conference Statement required by Rule 4, the  
3 court shall select a mediator or mediation organization from the court's panel of mediators or  
4 mediation organization. The selection from the court's panel shall be on a rotating basis.

5 (b) Upon selection of the mediator or mediation organization, the court shall issue a  
6 scheduling order which shall indicate the date and time of the parties' mediation session. The order  
7 shall include the name, address, and telephone number of the mediator or mediation organization  
8 selected by the court.

9 (c) If the parties reach either an entire or partial agreement, the agreement shall be filed with  
10 the court immediately. If the parties fail to reach an agreement, the parties shall first determine if  
11 a successive mediation session is appropriate, and if so, they shall stipulate to a successive mediation  
12 session to be held within fifteen (15) days of the stipulation. The stipulation must be filed with the  
13 court. If, however, the parties determine a successive mediation session is not appropriate, they shall  
14 return to court for a progress hearing. If the parties experience a breakdown of an existing mediation  
15 agreement, the parties shall return to court for a progress hearing.

16 **RULE 5. Compensation of mediators**

17 (a) Compensation shall be provided to mediators and/or mediator organizations on its panel  
18 of mediators who provide mediation services for the Pilot Program. Each party ordered to mediation  
19 under the Pilot Program shall pay a fee of fifty dollars (\$50) prior to the first mediation session. If  
20 a successive mediation session is requested by the parties, each party shall pay an additional fee of  
21 fifty dollars (\$50) prior to the mediation session. Compensation shall be made directly to the  
22 mediator and/or mediator organization.

23 (b) Recognizing that mediation should be accessible to all parties regardless of financial  
24 status, the Guam Legislature has authorized the Judicial Council of Guam to enact fees to implement  
25 mediation programs for child custody cases, such as the Pilot Program.

26 **RULE 6. Filing of statement by mediator**

27 (a) Within 10 days of the conclusion of the mediation, the mediator shall file a written  
28 statement advising the court whether the parties to the mediation reached an entire agreement, partial

1 agreement, or no agreement. This written statement shall state:

2 (1) Whether the parties have agreed that an order of the court shall be entered  
3 confirming their agreement;

4 (2) Whether the parties have requested dismissal of the complaint initiating the case;

5 (3) Whether the parties have agreed to terminate the mediation proceedings initiated  
6 by the complaint;

7 (4) Whether the mediator finds that the continuation of mediation proceedings has  
8 for any other reason become unnecessary or impossible

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

11 **RULE 7. Mediation Pilot Program data collection requirements**

12 All parties, counsel and mediators participating in the Pilot Program shall complete any  
13 questionnaires provided to them by the mediator or mediator organization, or the court.

14 **SO ORDERED** this 4<sup>th</sup> day of April, 2005.

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17 **Robert J. Torres**

**Frances Tydingco-Gatewood**

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ROBERT J. TORRES  
Associate Justice

FRANCES M. TYDINGCO-GATEWOOD  
Associate Justice

19  
20 **F. Philip Carbullido**

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F. PHILIP CARBULLIDO  
Chief Justice

## APPENDIX A

### **Model Standards of Conduct For 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.
- 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 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.
- 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**

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.