BEFORE THE 2006 JUDICIAL COUNCIL OF GUAM
RESOLUTION NO. JC 06-014

RELATIVE TO ADOPTION OF THE INTERIM PILOT PROGRAM FOR MEDIATION OF CIVIL ACTIONS IN THE SUPERIOR COURT OF GUAM

WHEREAS, Public Law 27-81, enacted on May 6, 2004, granted the Supreme Court of Guam the authority to "establish and promulgate rules and procedures for mediation for such civil, probate or domestic actions . . . as the Supreme Court deems appropriate in order to encourage the prompt and equitable resolution of disputes;" and

WHEREAS, USPL 108-378 amended the Organic Act of Guam at 48 U.S.C. 1424-1 on October 30, 2004 reiterating and expanding the Supreme Court's authority provided in PL 27-81 to promulgate rules for the proper administration of justice; and

WHEREAS, the Judicial Council recognizes that the Supreme Court's Alternative Dispute Resolution ("ADR") Subcommittee has invested considerable time in efforts to determine what ADR models might be the most effective for use within the Judiciary to facilitate the efficiency with which cases before the various courts are dispensed with; and

WHEREAS, the Judicial Council recognizes that the Judiciary's Staff Attorney, with the assistance of other Judiciary staff, has prepared Draft Interim Rules, a current working draft of which is attached hereto as Exhibit A, which would govern the Mediation Pilot Program for Civil Actions in the Superior Court of Guam, upon promulgation by the Supreme Court of Guam, in an effort to facilitate more efficient disposition of cases before the Superior Court of Guam; and

WHEREAS, the Judicial Council recognizes that the Draft Interim Rules have been disseminated to the members of the Guam Bar Association for comment, that comments have been received and are being considered for incorporation into the Draft Interim Rules, that the comment deadline has passed, and that a public forum was properly noticed to the members of the Guam Bar Association and took place on June 7, 2006; and

WHEREAS, the Judicial Council recognizes the potential value of various ADR models in improving the efficiency of the Judiciary's operations; and

WHEREAS, the Judicial Council recognizes that the Draft Interim Rules contemplate that the Judicial Council will appoint an Assignment Judge and an Alternative Assignment Judge within the Mediation Pilot Program; and

WHEREAS, the Judicial Council recognizes that the Draft Interim Rules contemplate service agreements being entered into by the Judiciary with two mediation services providers during the pendency of the Mediation Pilot Program;

NOW THEREFORE BE IT RESOLVED that the Judicial Council approves and herein adopts the creation of a Mediation Pilot Program for Civil Cases before the Superior Court of Guam.

BE IT FURTHER RESOLVED that the Judicial Council appoints Judge Michael J. Bordallo as the Assignment Judge within the Mediation Pilot Program and Judge Arthur R. Barcinas as the Alternate Assignment Judge within the Mediation Pilot Program.

BE IT FURTHER RESOLVED that the Judicial Council authorizes the Administrator of the Courts, with the concurrence of the Chairman of the Judicial Council, to enter into service provided agreements with mediation service providers consistent with the Interim Rules for the Mediation Pilot Program for Civil Actions as shall be promulgated by the Supreme Court.

DULY ADOPTED this 8th day of June, 2006 at a duly noticed meeting of the Judicial Council of Guam.

F. PHILIP CARBULLIDO, Chairman

Date: June 21, 2006

ATTEST:

ANNABELLE C. MAJILLO, Secretary

Date: June 21, 2006

EXHIBIT A

IN THE SUPREME COURT OF GUAM

RE:	)	**PROMULGATION ORDER NO. 06-___**
	)	
ADOPTION OF THE INTERIM RULES FOR MEDIATION PILOT PROGRAM FOR CIVIL ACTIONS IN THE **SUPERIOR COURT OF GUAM**	)	**[PROPOSED]**
	)	**INTERIM RULES**
	)	**DRAFT**

Pursuant to 48 U.S.C. § 1424-1, Title 7 GCA § 3107 (2005) and Guam Public Law 27-81 (enacted May 6, 2004), the Supreme Court of Guam hereby establishes the Mediation Pilot Program for Civil Actions in the Superior Court of Guam which shall remain in effect for a period of six (6) months. The Court further adopts and promulgates the following *Interim Rules for the Mediation Pilot Program for Civil Actions*. Such rules are effective on the date of the filing of this order and shall remain in effect for a period of six (6) months, unless otherwise ordered by this Court.

INTERIM RULES FOR THE MEDIATION PILOT PROGRAM FOR CIVIL ACTIONS

RULE I. Administration.

(a) The Mediation Pilot Program for Civil Actions ("Civil Pilot Program") shall be administered by the Assignment Judge of the Civil Pilot Program with the assistance of the Alternate Assignment Judge of the Civil Pilot Program.

(b) The Assignment Judge and Alternate Assignment Judge of the Civil Pilot Program shall be appointed by the Judicial Council. They shall preside over all cases which are enrolled in the Civil Pilot Program.

RULE 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 Pilot 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.

RULE 3. Referral of Cases to Assignment Judge and Selection of Cases for Pilot Program

(a) Each judge of the Superior Court of Guam shall undertake a cursory preliminary review of the civil actions assigned to them in consideration of which cases may be appropriate for mediation and each judge shall forward the case files they consider potentially appropriate for mediation to the Assignment Judge or Alternate Assignment Judge for further consideration.

(b) The Assignment Judge or Alternate Assignment Judge shall review all civil files forwarded by the other judges as well as civil files they themselves consider potentially appropriate for mediation and shall make a further preliminary determination in selecting the civil action that he or she considers 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 Pilot Program and an order shall issue indicating that the case has been preliminarily selected for inclusion in the Pilot Program.

(c) Parties who are preliminarily referred to the Civil Pilot Program shall serve and file an early mediation Status Conference Statement within fifteen (15) days of the filing 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. Within this same 15-day period a party may opt-out of this Civil Pilot Program for good cause shown.

(d) 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.

(e) 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.

(f) Attorneys and parties have an obligation to participate in the mediation process in good faith in accordance with program guidelines.

RULE 4. 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, 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.

RULE 5. Status Conference Statement

[stricken – renumbering will be necessary]

RULE 6. Referral for Mediation

(a) Within fifteen (15) days of filing the Status Conference Statement required by these Rules, the Assignment Judge or Alternate Assignment Judge shall refer the case for mediation 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) Upon referral to a mediation organization, the court shall issue an order which includes the name, address and telephone number of the mediation organization designated by the court. 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 9 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.

RULE 7. 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.

RULE 8. Conduct of Mediation Proceedings

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.

RULE 9. 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.

(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.

RULE 10. 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.

RULE 11. Qualifications of Mediator

The Supreme Court will establish qualifications required of mediators which the service providers will be required, through their service provider agreements, to assure the Supreme Court are being adhered to. The Supreme Court may establish additional qualifications required for a mediator, including training and experience requirements, during the Pilot Program.

RULE 12. 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.

RULE 13. 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.

RULE 14. 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 Assignment Judge or the Supreme Court.

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.
- 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.

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.

AMOUNT OF CLAIM	*FEE*
$50,001 TO $100,000	$100
$100,001 TO $250,000	$150
$250,001 TO $500,00	$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

INAFA'MAOLEK FEE SCHEDULE

The following fees apply to any mediation services conducted by or at Inafa'Maolek. All amounts are in U.S. dollars.

1. Mediator Fee: $100.00 per session

2. Administrative Fees

The mediator fee of $100 per session shall not include the cost of administrative functions performed by Inafa'Maolek or expenses such as airfare, hotel accommodations, transcription fees, etc. Such expenses and costs shall be a separate responsibility of the parties.