



Supreme Court - THE JUDICIARY • COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

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Miguel S. Demapan
CHIEF JUSTICE

December 21, 2000

The Honorable Paul A. Manglona
President of the Senate
The Senate
12th CNMI Legislature
P.O. Box 500129
Saipan, MP 96950

The Honorable Benigno R. Fitial
Speaker of the House of Representatives
House of Representatives
12th CNMI Legislature
P.O. Box 500586
Saipan, MP 96950

Dear President Manglona and Speaker Fitial:

Pursuant to Article IV, Section 9(A) of the Commonwealth Constitution, I am submitting the attached proposed Rules Governing Court-appointed, Certified Mediators for your approval.

As defined in proposed Rule 210, mediation is a process whereby a neutral third party encourages and facilitates the resolution of a dispute without prescribing what it should be. The mediator helps the disputing parties reach a mutually acceptable agreement. The mediation program is apparently in line with our island culture and custom, in that a third party is called in to assist in a dispute so that the courtroom can be avoided as much as possible.

The court then seeks to establish the attached rules on certification and ethical standards of conduct for mediators. As explained in the proposed rules, the public's use, understanding and satisfaction with mediation can only be achieved if mediators embrace the highest ethical principles.

Please feel free to contact me should you have any questions or require additional information.

COMMONWEALTH RULES
GOVERNING COURT-APPOINTED, CERTIFIED MEDIATORS
(Effective February 20, 2001)

PART I. MEDIATOR QUALIFICATIONS

Rule 100. General Qualifications

(a) Certification. For certification, a mediator of matters pending in the courts of the Commonwealth of the Northern Mariana Islands must:

(1) complete a **minimum of 40** hours in a mediation training program approved by the Commonwealth Supreme Court, or the courts of any state, territory, or possession of the United States;

(2) have a bachelor's degree; or at least five (5) years practical experience in the fields of social work, mental health, education, business, public administration or behavioral or social sciences;

(3) observe at least one court mediation conducted by a certified mediator and conduct at least one court mediation under the supervision and observation of a certified mediator; and

(4) be of good moral character.

(b) Referral for Discipline. If the certification or licensure necessary for any person to be certified as a mediator is suspended or revoked, or if the mediator holding such certification or licensure is in any other manner disciplined, such matter shall be referred to the judge presiding over the case which is the subject of mediation, for appropriate action.

Rule 110. Good Moral Character

(a) General Requirement. No person shall be certified by the Supreme Court as a mediator unless such person first produces satisfactory evidence of good moral character as required by Rule 100.

(b) Purpose. The primary purpose of the requirement of good moral character is to ensure

mediator shall have, as a prerequisite to certification and as a requirement for continuing certification, the good moral character sufficient to meet all of the Mediator Standards of Professional Conduct set out in Rules 200-540.

(c) **Initial Certification.** The following shall apply in relation to determining the good moral character required for mediator certification:

(1) The applicant's good moral character may be subject to inquiry when the applicant's conduct is relevant to the qualifications of a mediator.

(2) A person who has been convicted of a felony or a crime of moral turpitude shall not be eligible for certification.

(3) A person who is serving a sentence of felony probation shall not be eligible for certification until termination of the period of probation.

(4) In assessing whether the applicant's previous conduct demonstrates a present lack of good moral character the following factors shall be relevant:

(A) the extent to which the conduct would interfere with a mediator's duties and responsibilities;

(B) the area of mediation in which certification is sought;

(C) the factors underlying the conduct;

(D) the applicant's age at the time of the conduct;

(E) the date of the conduct;

(F) the reliability of the information concerning the conduct;

(G) the seriousness of the conduct as it relates to mediator qualifications;

(H) the cumulative effect of the conduct or information;

(I) any evidence of rehabilitation;

(J) the applicant's candor during the application process; and

(K) disbarment or suspension from any profession.

Rule 120. Application.

An applicant for certification, together with the required supporting documents, shall be submitted to the Supreme Court, or at an office designated by the chief justice of the Supreme Court. The application and supporting documents shall be processed and reviewed by the designee(s) of the chief justice.

Rule 130. Certification

Upon satisfaction of all requirements under these rules, the chief justice of the Supreme Court, or his designee, will issue a certificate and administer the oath to the mediator. The chief justice or his designee, has the discretion to waive any of the requirements under Rule 100 (a). Reasonable administrative fees, where appropriate, may be imposed on mediators.

PART II. STANDARDS OF PROFESSIONAL CONDUCT

Rule 200. Scope and Purpose

These Rules provide ethical standards of conduct for certified and court-appointed mediators. They are intended to both guide mediators in the performance of their services and instill public confidence in the mediation process. The public's use, understanding, and satisfaction with mediation can only be achieved if mediators embrace the highest ethical principles. Whether the parties involved in a mediation choose to resolve their dispute is secondary in importance to whether the mediator conducts the mediation in accordance with these ethical standards.

Rule 210. Mediation Defined

Mediation is a process whereby a neutral and impartial third person acts to encourage and facilitate the resolution of a dispute without prescribing what it should be. It is an informal and non-adversarial process intended to help disputing parties reach a mutually acceptable agreement.

Rule 220. Mediator's Role

The role of the mediator is to reduce obstacles to communication, assist in the identification of issues and exploration of alternatives, and otherwise facilitate voluntary agreements resolving the dispute.

The ultimate decision-making authority, however, rests solely with the parties.

Rule 230. Mediation Concepts

Mediation is based on concepts of communication, negotiation, facilitation, and problem-solving that emphasize:

- (a) self determination;
- (b) the needs and interests of the parties;
- (c) fairness;
- (d) procedural flexibility; and
- (e) confidentiality.

Rule 300. Mediator's Responsibility to the Parties

The purpose of mediation is to provide a forum for consensual dispute resolution by the parties. It is not an adjudicatory procedure. Accordingly, a mediator's responsibility to the parties includes honoring their right of self-determination; acting with impartiality; and avoiding coercion, improper influence, and conflicts of interest. A mediator is also responsible for maintaining an appropriate demeanor, preserving confidentiality, and promoting the awareness by the parties of the interests of non-participating persons. A mediator's practices should reflect fairness, integrity and impartiality.

Rule 310. Self-Determination

(a) **Decision-making.** Decisions made during a mediation are to be made by the parties. A mediator shall not make substantive decisions for any party. A mediator is responsible for assisting the parties in reaching informed and voluntary decisions while protecting their right of self-determination.

(b) **Coercion Prohibited.** A mediator shall not coerce or improperly influence any party to make a decision or unwillingly participate in a mediation.

(c) **Misrepresentation Prohibited.** A mediator shall not intentionally or knowingly misrepresent any material fact or circumstance in the course of conducting a mediation.

(d) **Postponement or Cancellation.** If, for any reason, a party is unable to freely exercise self-determination, a mediator shall cancel or postpone a mediation.

Rule 320. Nonparticipating Persons

A mediator shall promote awareness by the parties of the interests of persons affected by actual or potential agreements who are not represented at mediation.

Rule 330. Impartiality

(a) **Generally.** A mediator shall maintain impartiality throughout the mediation process. Impartiality means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual.

(b) **Withdrawal for Partiality.** A mediator shall withdraw from mediation if the mediator is no longer impartial.

(c) **Gifts and Solicitation.** A mediator shall neither give nor accept a gift, favor, loan, or other item of value in any mediation process. During the mediation process, a mediator shall not solicit or otherwise attempt to procure future professional services.

Rule 340. Conflicts of Interest

(a) **Generally.** A mediator shall not mediate a matter that presents a clear or undisclosed conflict of interest. A conflict of interest arises when any relationship between the mediator and the mediation participants or the subject matter of the dispute compromises or appears to compromise the mediator's impartiality. A mediator shall not participate in mediation where one of the parties is related to the mediator within the second degree of consanguinity under the civil law system.

(b) **Burden of Disclosure.** The burden of disclosure of any potential conflict of interest rests on the mediator. Disclosure shall be made as soon as practical after the mediator becomes aware of the interest or relationship giving rise to the potential conflict of interest.

(c) **Effect of Disclosure.** After appropriate disclosure, the mediator may serve if all parties agree. However, if a conflict of interest clearly impairs a mediator's impartiality, the mediator shall withdraw regardless of the express agreement of the parties.

(d) **Conflict During Mediation.** A mediator shall not create a conflict of interest during the

mediation. During a mediation, a mediator shall not provide any services that are not directly related to the mediation process.

Rule 350. Demeanor

A mediator shall be professional, patient, dignified, and courteous during the mediation process.

Rule 360. Confidentiality

(a) **Scope.** A mediator shall maintain confidentiality of all information revealed during mediation except where disclosure is required by law.

(b) **Caucus.** Information obtained during caucus may not be revealed by the mediator to any other mediation participant without the consent of the disclosing party.

(c) **Record Keeping.** A mediator shall maintain confidentiality in the storage and disposal of records and shall not disclose any identifying information when materials are used for research, training, or statistical compilations.

(d) **Disclosure.** Prior to undertaking the mediation, the mediator shall inform the parties of limitations of confidentiality imposed by statute and court rules, including disclosure of child abuse and child neglect pursuant to 6 CMC § 5313.

Rule 370. Professional Advice Or Opinions

(a) **Providing Information.** Consistent with standards of impartiality and preserving party self-determination, a mediator may provide information that the mediator is qualified by training or experience to provide.

(b) **Independent Legal Advice.** When a mediator believes a party does not understand or appreciate how an agreement may adversely affect legal rights or obligations, the mediator shall advise the party of the right to seek independent legal counsel.

(c) **Personal or Professional Opinion.** A mediator shall not offer a personal or professional opinion intended to coerce the parties, decide the dispute, or direct a resolution of any issue. Consistent with standards of impartiality and preserving party self-determination however, a mediator may point out possible outcomes of the case and discuss the merits of a claim or defense. A mediator shall not offer a personal or professional opinion as to how the court in which the case has been filed will resolve the

dispute.

Rule 380. Mediator's Responsibility to the Mediation Process

A mediator is responsible for safeguarding the mediation process. The benefits of the process are best achieved if the mediation is conducted in an informed, balanced and timely fashion. A mediator is responsible for confirming that mediation is an appropriate dispute resolution process under the circumstances of each case.

Rule 390. Balanced Process

A mediator shall conduct mediation sessions in an even-handed, balanced manner. A mediator shall promote mutual respect among the mediation participants throughout the mediation process and encourage the participants to conduct themselves in a collaborative, non-coercive, and non-adversarial manner.

Rule 400. Conduct of Mediation

(a) **Orientation Session.** Upon commencement of the mediation session, a mediator shall describe the mediation process and the role of the mediator, and shall inform the mediation participants that:

(1) mediation is a consensual process; and

(2) the mediator is an impartial facilitator without authority to impose a resolution or adjudicate any aspect of the dispute; and

(b) **Adjournment or Termination.** A mediator shall:

(1) adjourn the mediation upon agreement of the parties;

(2) adjourn or **terminate** any mediation which, if continued, would result in unreasonable emotional stress to the parties;

(3) adjourn or terminate the mediation if the mediator believes the case is unsuitable for mediation or any party is unable or unwilling to participate meaningfully in the process;

(4) terminate a mediation entailing fraud, duress, the absence of bargaining ability, or unconscionability; and

(5) terminate any mediation if the physical safety of any person is endangered by the continuation of mediation.

(c) **Closure.** The mediator shall cause the terms of any agreement reached to be memorialized appropriately and discuss with the parties and counsel the process for formalization and implementation of the agreement.

Rule 410. Scheduling Mediation

A mediator shall schedule a mediation in a manner that provides adequate time for the parties to fully exercise their right of self-determination. A mediator shall perform mediation services in a timely fashion, avoiding delays whenever possible.

Rule 420. Mediator's Responsibility to the Courts

A mediator is accountable to the referring court with ultimate authority over the case. Any interaction discharging this responsibility, however, shall be conducted in a manner consistent with these ethical rules.

Rule 430. Information to the Court

A mediator shall be candid, accurate, and fully responsive to the court concerning the mediator's qualifications, availability, and other administrative matters.

Rule 440. Compliance with Authority

A mediator shall comply with all statutes, court rules, administrative orders, and policies and procedural guidelines relevant to the practice of mediation.

Rule 450. Improper Influence

A mediator shall refrain from any activity that has the appearance of improperly influencing a court to secure an appointment to a case.

Rule 460. Mediator's Responsibility to the Mediation Profession

A mediator shall preserve the quality of the profession. A mediator is responsible for maintaining professional competence and forthright business practices, fostering good relationships, assisting new mediators, and generally supporting the advancement of mediation.

Rule 470. Advertising:

A mediator shall not engage in marketing practices which contain false or misleading information. A mediator shall ensure that any advertisements of the mediator's qualifications, services to be rendered, or the mediation process are accurate and honest. A mediator shall not make claims of achieving specific outcomes or promises implying favoritism for the purpose of obtaining business.

Rule 480. Integrity and Impartiality

A mediator shall not accept any engagement, provide any service, or perform any act that would compromise the mediator's integrity or impartiality.

Rule 490. Professional Competence

A mediator shall acquire and **maintain** professional competence in mediation. A mediator shall regularly participate in educational activities promoting professional growth with a **minimum** of ten (10) hours every two years.

Rule 500. Skill and Experience

A mediator shall decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of the case are beyond the mediator's skill or experience.

Rule 510. Concurrent Standards

Other ethical standards to which a mediator may be professionally bound are not abrogated by these rules. In the course of performing mediation services, however, these rules prevail over any conflicting ethical standards to which a mediator may otherwise be bound.

Rule 520. Relationships with Other Mediators

A mediator shall respect the professional relationships of another mediator.

Rule 530. Relationship with Other Professionals

A mediator shall respect the roles of other professional disciplines in the mediation process and shall promote cooperation between mediators and other professionals.

Rule 540. Advancement of Mediation

(a) New Mediator Training. An experienced mediator should cooperate in training new mediators, including serving as a mentor.

(b) Support of Mediation. A mediator should support the advancement of mediation by encouraging and participating in research, evaluation, or other forms of professional development and public education.

Rule 550. Privilege to Mediate

Certification to mediate confers no **vested right** to the holder thereof, but is a conditional privilege that is revocable for cause.

Rule 560. Grievance

Any person who believes that a court-appointed certified mediator has violated any rule of the Rules Governing Court-appointed, Certified Mediators may file a grievance in writing with the judge presiding over the case in which the mediator is appointed to conduct. The judge, upon receipt of a filed grievance, shall review the grievance and may then proceed to have the grievance promptly investigated or conduct hearings as may be necessary.

Rule 570. Sanctions

If, after a hearing, there is a finding that there is clear and convincing evidence to support a violation of the rules, the following sanctions may be imposed:

(1) Imposition of costs of the proceeding.

(2) Oral admonishment.

- (3) Written reprimand.
- (4) Additional training, which may include the observation of mediations.
- (5) Restriction on types of cases which can be mediated in the future.
- (6) Suspension for a period of up to one 1 year.
- (7) Decertification.
- (8) Such other sanctions as may be deemed just and fair.

Rule 580. Citation.

These rules may be cited as Com. R. Cert. Med.