

KOSRAE STATE COURT

FEDERATED STATES OF MICRONESIA

GENERAL COURT ORDER)
)
) ADOPTING A MEDIATION PROCESS
) FOR STATE COURT & LAND COURT
)

Pursuant to Kosrae State Code, Section 6.101, the Court is authorized to make rules, and to do all acts, not inconsistent with law or rule, required for the due administration of justice. This General Court Order is adopted to establish a mediation process in a suitable form for Kosrae. This Order does not replace any other General Court Order.

I. MEDIATION OF CASES FILED IN STATE AND LAND COURT

The purpose of mediation under these rules is to allow parties to resolve disagreements without resorting to an adversarial court process.

A. Definition

- **Mediation** is defined by the Court as:

A process of negotiation where the parties in dispute make use of a third party (mediator) to assist them to find mutually acceptable solutions to their dispute. The mediator is neutral and has no authority to impose a solution on the parties in dispute. The parties themselves retain the ultimate control over the process. The mediator’s job is to assist the parties in dispute to find their own solutions.

Mediation is not applicable for all matters that come before the court. Crimes should be dealt with by the court. It may be helpful before sentence for the offender and his family to face the victim and family with a mediator present to ease his guilt and offer an apology. This would help to repair some of the damage if the apology is genuine and it would mean that the subsequent prison sentence would not be just punishment and getting even.

Matters that may **NOT** be appropriate to go to mediation include:

- Constitutional law issues (disputes) involving the State;
- Serious crimes; and
- Complex legal issues.

B. OBJECTIVES OF MEDIATION PROCESS

The Court's objectives for using mediation are:

- resolve or limit the issues in dispute;
- be accessible;
- use resources efficiently;
- resolve disputes as early as possible;
- produce outcomes that are lawful, effective and acceptable to the parties and the Court; and
- increase the satisfaction of the parties.

As a general principle, all civil disputes are potentially suitable for mediation.

C. Commencing the Mediation

1. Initiating Mediation

Any party or parties to a dispute may initiate mediation by filing a written request with the Court. The Court may also refer a dispute to mediation. Upon a request by a party or a referral by the Court, the Mediation Coordinator will contact all parties within ten days to obtain their agreement to mediation.

When deciding whether to refer a matter to mediation the Court considers:

- Attitudes of the parties
- Stage of preparation of the Court proceeding
- Progress of other applications which may impact on any decision
- Nature of the issues in dispute; ie: law, expert evidence, credit
- Impediments to settlement

The Mediation Coordinator will record the request and the information about contacting the parties on a Mediation Referral Form attached to these rules.

2. Panel of Mediators

The Court, shall establish and maintain a panel of mediators and shall appoint mediators as provided in these rules.

3. Appointment of Mediator

1. If the parties have not agreed on a mediator and have not mutually agreed on a method of appointment, the Mediation Coordinator shall send the list of Mediators to all parties at the same time. Either a single mediator or co-mediators may be appointed.

2. Each party to the dispute shall have ten (10) days from the transmittal date to take the following steps:

- Cross out the names of the mediators they object to (limit of four names);
- Number the remaining names in order of preference; and,
- Return the list to the Mediation Coordinator.

If a party does not return the list within 10 days, all Mediators shall be deemed acceptable to that party. From among the persons who have been approved on the relevant lists, and in accordance with the designated order of mutual preference, the Mediation Coordinator shall invite the Mediator to serve.

If the parties fail to agree on any of the persons named, or if acceptable mediators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the Chief Justice shall have the power to make the appointment from among other members of the panel without the submission of additional lists. To the extent possible, the Court will abide by any agreement of the parties regarding the desired qualifications of the mediator.

4. Challenge of Mediator

Persons serving as mediators shall be neutral, independent and impartial. No person shall serve as a mediator in any dispute in which that person has any financial or personal interest in the matters in dispute between the parties or the result or outcome of the mediation.

Prior to accepting an appointment, the prospective mediator shall confirm his/her availability and disclose any circumstance likely to create justifiable doubts as to impartiality or independence. Upon receipt of such information, the Mediation Coordinator shall either replace the mediator or immediately communicate the information to the parties for their comments. In the event that the parties disagree as to whether the mediator shall serve, the Mediation Coordinator will appoint another mediator. The Mediation Coordinator is authorized to appoint another mediator whenever the appointed mediator is unable to serve promptly.

5. Replacement of Mediator

If any mediator becomes unwilling or unable to serve or is disqualified, the Mediation Coordinator will appoint another mediator, taking into account the expressed preferences of the parties.

6. Authority of Mediator

1. The mediator is neutral and does not have the authority to impose a settlement on the parties but will seek to assist them in reaching a satisfactory resolution of the dispute. The mediator is authorized to conduct joint and separate meetings with

the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided that the parties agree and bear the costs of obtaining such advice. Arrangements for obtaining such expert advice shall be made by the mediator or the parties, as the mediator shall determine.

2. The mediator is authorized to end the mediation whenever, in the judgment of the mediator, further efforts at mediation would not contribute to a resolution of the dispute between the parties.

D. General Conditions

1. Representation

- a. By agreeing to mediate under these rules, the parties undertake to conduct the mediation in a honest and respectful manner and make a serious attempt to resolve the dispute.
- b. Any party may be represented in the mediation. The names, addresses and telephone numbers of such persons shall be communicated in writing to all parties and to the Mediation Coordinator.
- c. The mediator has the discretion to conduct the mediation with or without the representatives of the parties present. However, if one or more representative is excluded from a mediation session, then the representatives of all parties shall be excluded from a mediation session.

2. Date, Time, and Place of Mediation

The mediator shall fix the date and the time of each mediation session in consultation with the parties.

The mediation may be held at any convenient location agreeable to the mediator and the parties, as the mediator shall determine. The Court shall make space available, if requested.

E. Mediation Process

The process has seven stages.

Stages 1-4 and 6-7 are usually conducted in joint session. Stages 1-4 focus on the past and present and stages 6-7 focus on the future. At all stages, the mediator will assist the parties to define their own interests and needs and understand those of the other parties.

1. Preparation and Mediator's Opening Statement

The opening statement includes a brief description of the role of the mediator and participants, the mediation process and any ground rules.

2. Parties' Statements and Mediator's Summaries

Each party presents a statement of the dispute from his or her perspective. Parties' statements are noted and summarized back by the mediator, checking with the parties for accuracy. The advantages of this procedure include:

- assuring the parties that their concerns have been heard by the mediator and each other;
- providing opportunities to create a positive social atmosphere favorable to effective negotiation; and
- providing two opportunities for an appreciation of each party's perspective.

Emerging needs and options for resolution are recognized for use later in the mediation.

3. Identification and Listing of Issues (Agenda Setting)

The use of a whiteboard or equivalent may allow parties to refer to the topics or issues during the mediation. The listed issues form the basis for more effective negotiation and co-operative problem-solving. The topics are expressed in neutral and, whenever possible, mutual terms.

4. Joint Exploratory Discussion

Parties are encouraged to focus on a topic for discussion or negotiation from the list of issues. The mediator encourages parties to communicate directly with each other. The parties' interests and needs are further clarified.

5. Private Meeting

Parties meet privately with the mediator to express opinions and give information if they feel more comfortable doing so than in joint sessions. The private meeting can also assist parties to prepare to negotiate, generate options and ensure that particular proposals are realistic.

6. Joint Negotiation

This provides the basis for joint problem solving, exploring an agreement and may be followed by further private meetings and joint sessions where necessary.

7. Final Session

In the final session, the parties meet together in the presence of the mediator to discuss issues and possible options for resolution. The mediator facilitates final negotiations and fine-tuning of the agreement. Alternatively, the mediation may need to be adjourned or terminated.

Stages 1-4 usually take place in order. Other stages, with the exception of the concluding joint session are seen as optional depending on the circumstances.

If the matter has not resolved, the mediator will discuss with the parties the next steps to be taken, including the need to obtain any further material.

In all mediation processes the parties must act in good faith.

F. Privacy

Mediation sessions are private. The parties and their representatives may attend mediation sessions, in the discretion of the mediator. Other persons may attend only with the permission of the parties and with the consent of the mediator.

G. Confidentiality

1. Mediator

Confidential information disclosed to a mediator by the parties or participants in the course of the mediation shall not be divulged by the mediator. All records, reports or other documents received or made by the mediator while serving in that capacity shall be confidential. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversarial proceeding or judicial forum.

2. Parties

The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding:

- (a) views expressed or suggestions made by another party with respect to a possible settlement of the dispute;
- (b) admissions made by a party in the course of the mediation proceedings;
- (c) documents, notes, or other information obtained during the mediation proceeding;
- (d) proposals made or views expressed by the mediator; or,

(e) the fact that a party had or had not indicated willingness to accept a proposal.

H. No Stenographic Record

There shall be no stenographic record of the mediation proceedings.

I. Termination of Mediation

The mediation shall be terminated:

- (a) by a written settlement agreement by the parties;
- (b) by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or,
- (c) by a written declaration of a party or parties to the effect that the mediation proceedings are terminated.

The mediator shall communicate the outcome of the mediation to the Mediation Coordinator in writing within three days of termination.

J. Mediation Settlement

Parties who undertake to mediate under these rules agree to carry out any settlement agreement without delay.

K. Exclusion of Liability

Neither the mediator nor any court staff member is a necessary party in judicial proceedings relating to the mediation.

Neither the mediator nor any court staff shall be liable to any party for any act or omission in connection with any mediation conducted under the Supreme Court Rules, save that they may be liable for the consequences of conscious and deliberate wrongdoing.

A mediator, in mediating any matter referred by a Judge has the same protection and immunity as a Judge has in performing the functions of a Judge.

L. Interpretation and Application of Rules

The mediator shall interpret and apply Court Rules relating to the mediator's power and duties. All other rules shall be interpreted and applied by the Court.

M. Expenses

The expenses of any information production shall be paid by the party producing such information. All other expenses of the mediation shall be shared equally by the parties unless they agree otherwise.

N. Administrative Fees

The filing fee payable in U.S. dollars at the time mediation is requested is \$ ___ for small claims and \$ ___ for other matters.

Before mediation begins, the parties shall deposit an equal share of the fee covering the cost of mediation as the Mediation Coordinator shall direct and all appropriate additional sums that the Mediation Coordinator deems necessary to defray the expenses of the proceeding. When the mediation has terminated, the Mediation Coordinator shall render an accounting and return any unexpended balance to the parties.

Once the mediation file is opened, no refund of filing fees will be made.

O. Statistics

The Mediation Coordinator shall keep statistics of all cases referred for mediation to include:

- File number;
- Names of parties;
- Representatives, if any;
- Name of mediator;
- Date of filing of proceedings in Registry;
- Date of referral for mediation;
- Date of mediation meeting;
- Duration of mediation meeting; and
- Outcome – “settled/not settled.”

This General Court Order is effective immediately.

SO ORDERED, this _____ day of June 2008.

ALIKSA B ALIKSA
Chief Justice

Service on: Office of the Attorney General
Office of the Public Defender
Kosrae State Legislature
Micronesia Legal Services Corporation
Posting and distribution at Clerk’s Offices (Kosrae State Court and Land Court)
Distribution to active trial counselors and attorneys (via call boxes and fax)

21 pending

KOSRAE STATE COURT
NON REFERRAL CASES (MEDIATION)

Case No.	Case Name	Date filed	Date Disposed
NRC#			
001-10	Tafunsak Munic. Gov. vs. Marlene Skilling	8/23/2010	pending
002-10	Tafunsak Mun. Gov. vs. Helen Rolphy	8/23/2010	2/10/2011
003-10	Tafunsak Mun. Gov. vs. madlin Etse	8/23/2010	2/10/2011
004-10	Tafunsak Mun. Gov. vs. Alikxa A. Alik	8/23/2010	2/10/2011
005-10	Tafunsak Mun. Gov. vs. Solome Kinere	8/23/2010	10/27/2010
006-10	Tafunsak Mun. Gov. vs. Elmet Asu	8/23/2010	9/6/2010
007-10	Tafunsak Mun. Gov. vs. Starling Mongkeya	8/23/2010	9/6/2010
008-10	Tafunsak Mun. Gov. vs. Adelin Fletcher	8/23/2010	9/20/2010
009-10	Tafunsak Mun. Gov. vs. Sepe Emrick	8/23/2010	2/10/2011
010-10	Tafunsak Mun. Gov. vs. Procula Jackson	8/23/2010	9/23/2010
011-10	Tafunsak Mun. Gov. vs. Sepe Welsin	8/23/2010	9/27/2010
012-10	Tafunsak Mun. Gov. vs. Carrie Alwin	8/23/2010	2/10/2011
013-10	Tafunsak Mun. Gov. vs. Marthalina Ned	8/23/2010	10/30/2010
014-10	Tafunsak Mun. Gov. vs. Shrue S. Kephas	8/23/2010	10/27/2010
015-10	Tafunsak Mun. Gov. vs. Melinda Akin	8/23/2010	9/23/2010
016-10	Tafunsak Mun. Gov. vs. Nancy Soloman	8/23/2010	pending
017-10	Tafunsak Mun. Gov. vs. Rolinson Ned	8/23/2010	pending
018-10	Tafunsak Mun. Gov. vs. Isaac Nithan	8/23/2010	11/18/2010
019-10	Tafunsak Mun. Gov. vs. Ace Hardware	8/23/2010	pending
020-10	Tafunsak Mun. Gov. vs. Versalin Alik	8/23/2010	1/6/2011
021-10	Tafunsak Mun. Gov. vs. Josepha Weilbach	8/23/2010	pending
022-10	Tafunsak Mun. Gov. vs. Widmer Mongkeya	8/23/2010	pending
023-10	Tafunsak Mun. Gov. vs. Gloria N. Salik	8/23/2010	9/21/2010
024-10	Sepe Semeon Ottis vs. Senolyn Danny	9/23/2010	10/4/2010
025-10	Isalnd Bakery vs. Salik Taulung	9/28/2010	10/6/2010
026-10	Island Bakery vs. Roland George	9/28/2010	10/22/2010
027-10	Island Bakery vs. Rose Hemul	9/28/2010	10/12/2010
028-10	Island Bakery vs. Rose Bing	9/28/2010	10/14/2010
029-10	Arthy Andrew vs. Jerry Palsis	12/30/2010	1/28/2011
001-11	We Care Prog. Vs. Kesia Dixon	11/28/2010	2/21/2011
002-11	We Care Prog vs. Julia Ned	11/28/2010	pending
003-11	We Care Prog vs. Standon George	11/28/2010	pending
004-11	We Care Prog vs. Kilafwa Palik	11/28/2010	3/24/2011
005-11	We Care Prog vs. Shrue K. Asher	11/28/2010	pending
006-11	We Care Prog vs. Judy T. Sigrah	11/28/2010	3/29/2011
007-11	We Care Prog vs. Kenye Ellington	11/28/2010	2/21/2011
008-11	We Care Prog vs. Akiyusi Palsis	11/28/2010	pending
009-11	Island Bakery vs. Kenye K. Tosie	1/29/2011	2/15/2011
010-11	Henry Phillip vs. Anthony George	2/8/2011	2/15/2011
011-11	Henry Phillip vs. Sepe Tony	2/8/2011	Dismissed
012-11	Eldon Joseph vs. Caleen Jolly		
013-11	Eldon Joseph vs. Thurbin Edmond		
014-11	Loan Center vs. Hemul Timothy	3/6/2011	3/28/2011
015-11	Loan Center vs. Witson Ofter	3/6/2011	refer to Court
016-11	Loan Center vs. Sepe N. Talley	3/6/2011	pending
017-11	Eldon Joseph vs. Takeo Jack		
018-11	LLT Lending Co. vs. Leeroy Ittu	2/10/2011	3/1/2011

019-11	LLT Lending Co. vs. Sepe J. Taulung	2/10/2011	3/1/2011
020-11	LLT Lending Co. vs. Serah Ittu	2/10/2011	3/1/2011
021-11	LLT Lending Co. vs. Notwe D. Abraham	2/10/2011	3/1/2011
022-11	Kosrae Central Video vs. Romeo Aliksa	3/8/2011	3/29/2011
023-11	Kosrae Central Video vs. Sylvia K. Palik	3/8/2011	3/29/2011
024-11	Kosrae Central Video vs. Mary H. Aliksa	3/8/2011	3/29/2011
025-11	Kosrae Central Video vs. Dakumar Joseph	3/8/2011	4/7/2011
026-11	Kosrae Central Video vs. Hitoyoshi Noda	3/8/2011	Pending
027-11	KCV vs. Beudan Robert	3/8/2011	pending
028-11	KCV vs. Meltina Kibby	3/8/2011	4/7/2011
029-11	KCV vs. Elsiner Welley	3/8/2011	pending
030-11	KCV vs. Sakae P. Abraham	3/8/2011	pending
031-11	KCV vs. Joyce Weilbacher	3/8/2011	4/5/2011
032-11	KCV vs. Rebecca Weilbacher	3/8/2011	4/5/2011
033-11	KCV vs. Hellen K. Albert	3/8/2011	4/6/2011
034-11	Hostino Livaie vs. Agnis Paul Ned	3/18/2011	3/30/2011
035-11	A-1 Store vs. Merida Winton	3/8/2011	
036-11	A-1 Store vs. Wilson Oter	3/8/2011	4/5/2011
037-11	A-1 Store vs. Wilton Wakuk	3/8/2011	3/24/2011
038-11	A-1 Store vs. Shruie K. Asher	3/8/2011	3/24/2011
039-11	A-1 Store vs. Stevenus George	3/8/2011	
040-11	A-1 Store vs. Senely Alik	3/8/2011	
041-11	JL Store vs. Remah Welley	3/9/2011	3/29/2011
042-11	LLT Lending Co. vs. Hiteo S. Noda	3/9/2011	3/29/2011
043-11	JL Store vs. Stephenie Welley	3/9/2011	3/23/2011
044-11	Kenye Rodney vs. Coleen Jollee		
045-11	Kenye Rodney vs. Johniel Langu		
046-11	Kenye Rodney vs. Diaka Jim		
047-11	Kenye Rodney vs. Jr. Freddy		
048-11	Jack Santos vs. Amako L. Seymour	4/4/2011	Pending
049-11	Jack Santos vs. Likiak Seymour	4/4/2011	Pending
050-11	Tafunsak Mun. Gov. vs. Reedson Abraham	8/23/2010	3/29/2011
051-11	Kosrae Central Video vs. Marilyn Bill Tosie	4/5/2011	Pending
052-11	Kosrae Central Video vs. Lisa Marcus	4/5/2011	Pending
053-11	Kosrae Central Video vs. Alik Jack	4/5/2011	Pending

INTRODUCTION

Mediation is a confidential and informal way of resolving a dispute with the help of a neutral third person who is called a mediator.

The mediator works with the parties to the dispute to help them reach a mutually agreeable, practical and lasting solution to their differences.

Setting a dispute through mediation is a quicker, less expensive option than taking a case through the standard legal channels.

There are now a number of qualified mediators in the State of Kosrae who have received specialized training in conflict resolution and in working with difficult situations.

There are two ways in which a dispute can be referred to mediation:

First, if court proceedings have been issued in a civil or land case, the judge may refer the dispute to a mediator before setting the case down for trial: Court-Referred mediation.

Secondly, prior to any court proceedings being issued, the parties themselves may reach agreement to refer the dispute to mediation: Pre-litigation mediation.

RULES FOR COURT-REFERRED MEDIATION

RULE 1. APPLICATION OF RULES

VACANT

RULE 2. PURPOSE OF RULES

The purpose of these rules is to provide for the process and procedure of Court-referred mediation in the State of Kosrae in accordance with the overriding objective of promoting a fair, efficient and expeditious resolution of disputes which are the subject of litigation before court.

RULE 3. JURISDICTION

Any party to litigation before a court in Kosrae shall, subject to the operation of rule 8(a) of these rules, be deemed to have submitted to court-referred mediation directed by a judge pursuant to these rules.

RULE 4. DEFINITIONS

court-- means the Kosrae State Court, the Land Court, or the Municipal Court.

Mediator—means a duly qualified mediator.

Mediation Coordinator—means the court administrator or other person suitably qualified in mediation appointed from time to time by the Chief Justice.

RULE 5. FUNCTION OF MEDIATION COORDINATOR

- a) The Mediation Coordinator shall be responsible for the administration and operation of all mediations in Kosrae.
- b) The Mediation Coordinator shall ensure (subject to the provision of adequate financial resources) that a panel of mediators is available in Lelu, Tafunsak, Malem and Utwe as the Chief Justice may from time to time designate.
- c) In allocating a mediator to a particular case, the Mediation Coordinator shall ensure that the mediator has no financial or personal interest in the result of the mediation or the way in which it is conducted and that there are no circumstances likely to create a presumption of bias or a perception of actual or apprehended bias.
- d) The Mediation Coordinator shall keep in a Register Book statistics of all cases referred to mediation including: file number; names of parties; age and sex of parties; nature of dispute; approximate values of dispute; representatives if any; name of mediator; date of filing of proceedings in registry; date of referral to mediation; date of mediation; duration of mediation; outcome of mediation *settled/not settled*, *settled in part*, or *adjourned* and, if settled, the amount or nature of the settlement.
- e) The Mediation Coordinator shall also be responsible for keeping proper records of all financial transactions relating to mediations.
- f) The Mediation Coordinator shall report to the Chief Justice from time to time as may be required on the mediation statistics and financial transactions.

RULE 6. NATURE OF MEDIATION

Mediation under these rules is a confidential, private dispute resolution Process initiated by the court in which a neutral person (the mediator) is appointed to assist the parties in exploring options to achieve a negotiated final settlement of the dispute out-of-court before the matter goes to trial.

RULE 7. MEDIATION FEE/ALLOWANCE

- (a) Upon completion of a mediation, the Mediation Coordinator shall pay to the mediator an allowance in the amount of thirty five dollars (\$35.00).
- (b) The Mediation Coordinator shall pay to the mediator an allowance in the amount of \$20.00 for any meeting attended depending upon the availability of funds.

RULE 8. REFERENCE TO MEDIATION

- (a) A judge may, after consultation with counsel and/or the parties, make an order at any time referring a proceeding before the court to mediation and any such referral shall be deemed to be subject to these rules.
- (b) The judge shall note on the court file the agreed mediation date which shall, unless there are extenuating circumstances, be within 30 days of the referral being made and then refer the file to the Mediation Coordinator.
- (c) The Mediation Coordinator shall confirm by notice to the parties the name of Mediator appointed (who could be the Mediation Coordinator), the venue and date and time of mediation and the Notice shall include a brief outline of how the mediation hearing will be conducted.

RULE 9. REPRESENTATION AT MEDIATION

- (a) Where a party is an individual, he or she must attend in person (unless for sound reasons such personal attendance is excused by a judge either upon referral or at a subsequent date).
- (b) A party may be represented or assisted by counsel and/or up to two other persons of their choice.
- (c) Where a party is a company, government body or an organization, Such party may participate through a person or persons authorized to speak on its behalf assisted if desired by counsel or other person(s) of their choice.
- (d) The names and roles of such representatives shall be communicated To all parties and to the mediator prior to the commencement of the mediation.
- (e) In the event of a dispute, the mediator shall determine any issue

immediately to the Mediation Coordinator who shall, unless the parties agree otherwise, appoint another mediator.

- (f) The mediator may, but only as a last resort, adjourn a mediation.
- (g) There shall be no stenographic record of the mediation proceedings.

RULE 13. ROLE OF THE PARTIES

- (a) The parties shall participate in the mediation in good faith in a forthright manner and in a genuine attempt to resolve the dispute.
- (b) A party may request a private and confidential meeting with the mediator at any time.
- (c) The parties shall give full assistance to enable the mediation to proceed and be concluded in a timely manner.
- (d) Each party attending the mediation shall have full authority to resolve the dispute or be accompanied by a person with such authority or be able in the course of the mediation to obtain authority to settle the dispute.

RULE 14. CONDUCT OF THE MEDIATION

- (a) The provisions of this rule shall apply in all mediations which do not result in a settlement agreement.
- (b) Confidential information disclosed to a mediator by the parties or participants in the course of the mediation shall not be divulged by the mediator.
- (c) All notes, records, reports or other documents received or made by the mediator while serving in that capacity shall be confidential during the course of the mediation and shall be destroyed by the mediator at the conclusion of the mediation.
- (d) The mediator shall not divulge any such records or testify in regard to the mediation in any adversarial proceedings or judicial forum unless directed to do so by a judge.
- (e) Unless authorized by the parties, the mediator shall not give any

information gained in the mediation to the court other than a report of "not settle" or "settled".

- (f) The parties shall maintain the confidentiality of the mediation and shall not rely on or introduce as evidence in any court proceedings admissions made or views expressed or suggestions made by another party in the course of the mediation hearing. Any such admissions or views shall be inadmissible as evidence in any legal proceedings.
- (g) Parties shall not seek to introduce as evidence in any court proceedings any proposals made or views expressed by the mediator or documents, notes or other information obtained during the mediation proceeding.

RULE 15. TERMINATION OF MEDIATION

- (a) The mediation shall be terminated:
 - (i) by written settlement agreement between the parties.
 - (ii) by a declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile.
- (b) The mediator shall communicate the outcome of the mediation to the Mediation Coordinator in writing within three days of termination.
- (c) The Mediation Coordinator shall report to the referring judge on the outcome of every mediation within five days of receiving notice from the mediator or, in the event that the Mediation Coordinator is the mediator, from the date of the termination of the mediation.

RULE 16. SETTLEMENT

- (a) In the event that the mediation is successful resulting in a binding settlement, the mediator shall record the settlement in writing and he or she shall date the settlement agreement and witness the signatures of the parties thereto.
- (b) The mediator shall forthwith refer the executed settlement Agreement together with the court file to the judge who made the referral or, in his or her absence, to the Chief Justice and the respective judge shall thereupon confirm the settlement in the form of a consent court order which upon sealing and issuance from the court shall be enforceable as a consent judgment.

RULE 17. CONFIDENTIALITY ORDERS

- (a) If the parties so request, a judge may make a confidentiality order in relation to a mediated settlement agreement and in such event the court order recording the settlement shall be substantially in the following terms:

(Set out the heading and appropriate recitals recording the reference to mediation)

IT IS ORDERED;

1. By consent of the parties judgment is hereby entered in accordance with the terms of the written settlement agreement executed between the parties dated (insert date)
 2. The terms of the settlement agreement shall remain confidential unless a judge orders disclosure in connection with enforcement proceedings.
- (b) in making a confidentiality order under this rule a judge may make such other order and give such directions as he thinks fit including directions relating to custody of the settlement agreement and the particulars to be included in the Register Book maintained by the Mediation Coordinator.

RULE 18. MATTERS NOT PROVIDED FOR

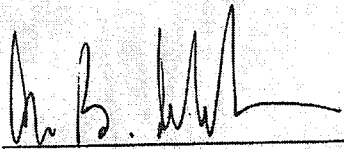
In the event of an issue arising which is not covered by these rules, the Mediation Coordinator may, after consultation with the referring judge if he or she thinks fit, make such determination as the Mediation Coordinator considers appropriate having regard to the purpose of these Rules.

RULE 19. EXCLUSION OF LIABILITY

The Mediation Coordinator and any mediator acting pursuant to these shall be exempt from any civil liability save for the consequences of fraud or dishonesty.

RULE 20. INTERPRETATION

In the event of any difference in meaning arising between the English text and the Kosraen text of these rules, the meaning of the English text shall prevail.



Hon. Aliksa B. Aliksa
Chief Justice
Kosrae State Court

June 10th, 2010
Date

Relating to representation.

RULE 10. INTERPRETERS

If a party requires an interpreter at the mediation and is not, for some good reason, able to make arrangements to have an interpreter present then the party must notify the Mediation Coordinator at least one week before the mediation and the Mediation Coordinator may, if he or she deems it appropriate, make arrangements for a court interpreter to be present.

RULE 11. NON-APPEARANCE AT MEDIATION

If after receiving notice, a party fails to appear at a mediation hearing then the mediator shall notify the referring judge of the non-appearance and, in the absence of extenuating circumstances, the judge shall award costs against the defaulting party.

RULE 12. ROLE OF MEDIATOR

- (a) The mediator shall assist the parties to identify the issue between them and explore options and endeavour to achieve the expeditious resolution of the dispute by agreement between them.
- (b) The mediator may conduct the mediation in such manner as he or she considers appropriate taking into account the circumstances of the case, the wishes of the parties and the overriding objective of promoting a fair, efficient and expeditious resolution of the dispute.
- (c) The mediator has the discretion to conduct all or part of the mediation with or without the representatives of the parties present.
- (d) The mediator may initiate private and confidential meetings with each party at any time during the mediation. What is said at any such meeting to the mediator is strictly confidential unless the party authorizes the mediator to divulge what is said to the other party(ies).
- (e) If, at any time, it becomes apparent to the mediator that circumstances exist which might reasonably create justifiable doubts as to his or her impartiality or independence, or create a presumption or perception of actual or apprehended bias on the part