

**DEPARTMENT OF THE INTERIOR
OFFICE OF INSULAR AFFAIRS**

**ALTERNATIVE DISPUTE
RESOLUTION CONFERENCE
MAY 18-19, 2011**

DEPARTMENT OF THE INTERIOR
OFFICE OF INSULAR AFFAIRS
ALTERNATIVE DISPUTE RESOLUTION CONFERENCE
MAY 18-19, 2011

FOSTERING ADR: Guam's Unique Approach
(Selected Conference Materials)

1. Guam ADR Statutes:

- a. 7 G.C.C §§ 42101 et. seq. (Guam International Arbitration/Court-Referred Arbitration & ADR)
- b. 7 G.C.A. §§ 43101 et. seq. (Guam Mediation/Court Referred Mediation)

2. Relevant Guam Practice Rules re: ADR

- a. Guam Rules of Professional Conduct 5.5. (Supreme Court of Guam Promulgation Order 04-02 (Feb. 11, 2004)).
- b. Supreme Court of Guam Rules Governing Admission to Practice of Law, Rule 8.02 (as amended Feb.14, 2010).
- c. Temporary Practice by Foreign Lawyers. (Supreme Court of Guam Rules Governing Admission to the Practice of Law (Part H) (Promulgation Order 04-01 (Feb. 9, 2004)).

3. Guam Mediation Pilot Program

- a. Interim Rules for the Mediation Pilot Program for Civil Actions. (Guam Supreme Court Promulgation Order 06-005-01 (July 20, 2006).)
- b. Rules Creating the Mediation Pilot Program. (Guam Supreme Court Promulgation Order 05-003 (April 4, 2005).)

4. Executive Order re: ADR Clauses in Government Contracts. (E.O. 2004-22 (October 11, 2004).)

5. Excerpts From District Court of Guam 2010 Annual Report

6. Guam Statistics

1

7 GCA CIVIL PROCEDURE
CH. 42A GUAM INTERNATIONAL ARBITRATION

CHAPTER 42
CIVIL ARBITRATION LAWS

NOTE: Chapter 42 was repealed by P.L. 27-81:2. Chapters 42-A and 42-B were enacted by P.L. 27-81:3 and 4 (May 6, 2004). Chapter 42-A becomes effective immediately.

CHAPTER 42A
GUAM INTERNATIONAL ARBITRATION

- Article 1. General Provisions.
- Article 2. Arbitration Agreement.
- Article 3. Composition of Arbitral Tribunal.
- Article 4. Jurisdiction of Arbitral Tribunal.
- Article 5. Conduct of Arbitral Proceedings.
- Article 6. Making of Award and Termination of Proceedings.
- Article 7. Enforcement of Certain Awards.
- Article 8. Miscellaneous Arbitration Provisions.

ARTICLE 1
GENERAL PROVISIONS

- § 42101. Scope of Provisions.
- § 42102. Definitions and Rules of Interpretation.
- § 42103. Receipt of Written Communications.
- § 42104. Waiver of Right to Object.
- § 42105. Extent of Court Intervention.
- § 42106. Court or Other Authority for Certain Functions. Arbitration Assistance and Supervision.
- § 42107. Authority to Enact Rules.

§ 42101. Scope of Application.

(a) This Chapter 42-A shall be known as and may be cited as the *Guam International Arbitration Chapter*.

(b) This Chapter 42-A is intended to govern all international commercial arbitrations. It is based on the UNCITRAL Model Law and should be interpreted having regard to international comity.

7 GCA CIVIL PROCEDURE
CH. 42A GUAM INTERNATIONAL ARBITRATION

(c) Solely for the purposes of this Chapter 42-A, Guam is considered a State; and the states of the United States, including the District of Columbia, territories and commonwealths of the United States and any foreign nation, shall be considered a different State.

(d) The provisions of this Chapter 42-A apply to international commercial arbitration and domestic arbitration, subject to any agreement in force between Guam and any other State or States.

(e) The provisions of this Chapter 42-A, except Sections 42202, 42403, and 42702 apply only if the place of the international commercial arbitration is in Guam.

(f) An arbitration is international if:

(1) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or

(2) one of the following places is situated outside the State in which the parties have their places of business:

(A) the place of arbitration if determined in, or pursuant to, the arbitration agreement;

(B) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected;
or

(C) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one State.

(g) An arbitration is domestic if:

(1) The arbitration is not an international commercial arbitration as defined in paragraph (f) above; and

(2) the place of the arbitration is Guam.

(h) For the purposes of paragraph (f) of this Section:

(1) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement; and

(2) if a party does not have a place of business, reference is to be made to his or her habitual residence.

(i) The term commercial should be given a wide interpretation so as to

7 GCA CIVIL PROCEDURE
CH. 42A GUAM INTERNATIONAL ARBITRATION

cover matters arising from all relationships of a commercial nature, whether contractual or not. An agreement is *commercial* if it arises out of a relationship of a commercial nature including, but not limited to, any of the following:

- (1) A transaction for the supply or exchange of goods or services.
- (2) A distribution agreement.
- (3) A commercial representation or agency.
- (4) An exploitation agreement or concession.
- (5) A joint venture or other, related form of industrial or business cooperation.
- (6) The carriage of goods or passengers by air, sea, rail, or road.
- (7) Construction.
- (8) Insurance.
- (9) Licensing.
- (10) Factoring.
- (11) Leasing.
- (12) Consulting.
- (13) Engineering.
- (14) Financing.
- (15) Banking.
- (16) The transfer of data or technology.
- (17) Intellectual or industrial property, including trademarks, patents, copyrights and software programs.
- (18) Professional services.
- (19) Investment.

(j) This Chapter 42-A shall not affect any other law of Guam by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Chapter 42-A including, but not limited to, arbitrations conducted pursuant to 10 G.C.A. §§ 10100-10147.

Note: Subsection (f) originally enacted as subsection (a), relettered since subsection (a) already exists.

7 GCA CIVIL PROCEDURE
CH. 42A GUAM INTERNATIONAL ARBITRATION

§ 42102. Definitions and Rules of Interpretation.

For the purposes of this Chapter 42-A:

(a) *Arbitration* means any arbitration whether or not administered by a permanent arbitral institution.

(b) *Arbitral tribunal* means a sole arbitrator or a panel of arbitrators.

(c) *Court* means a body or organ of the judicial system of a State.

(d) Where a provision of this Chapter 42-A, except Section 42601, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination.

(e) Where a provision of this Chapter 42-A refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement.

(f) Where a provision of this Chapter 42-A, other than in Sections 42508 and 42605(b) (1), refers to a claim, it also applies to a counter-claim, and where it refers to a defense, it also applies to a defense to such counter-claim.

(g) *Writing* means handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

(h) *Award* means any award which meets the requirements of this Chapter 42-A and was awarded by any arbitral tribunal formed under the terms of this Chapter 42-A.

§ 42103. Receipt of Written Communications.

(a) Unless otherwise agreed by the parties:

(1) Any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his or her place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing

7 GCA CIVIL PROCEDURE
CH. 42A GUAM INTERNATIONAL ARBITRATION

address by registered letter or any other means which provides a record of the attempt to deliver it; and

(2) the communication is deemed to have been received on the day it is so delivered.

(b) The provisions of this Section do not apply to communications in court proceedings.

§ 42104. Waiver of Right to Object.

A party who knows that any provision of this Chapter 42-A from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his or her objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his or her right to object.

§ 42105. Extent of Court Intervention.

In matters governed by this Chapter 42-A, no court shall intervene except where so provided in this Chapter 42-A or federal law.

§ 42106. Court or Other Authority for Certain Functions of Arbitration Assistance and Supervision.

The functions referred to in Sections 42203, 42302, 42304, 42305, 42401 and 42402 shall be performed by the Superior Court of Guam.

§ 42107. Authority to Enact Rules.

The Supreme Court of Guam is authorized to enact rules and procedures implementing the provisions of this Chapter 42-A.

**ARTICLE 2
ARBITRATION AGREEMENT**

§ 42201. Definition and Form of Arbitration Agreement.

§ 42202. Arbitration Agreement and Substantive Claim Before Court.

§ 42203. Consolidation.

§ 42201. Definition and Form of Arbitration Agreement.

(a) '*Arbitration agreement*' is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual

7 GCA CIVIL PROCEDURE
CH. 42A GUAM INTERNATIONAL ARBITRATION

or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(b) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, facsimile, electronic mail, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defense in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

§ 42202. Arbitration Agreement and Substantive Claim Before Court.

(a) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his or her first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(b) Where an action referred to in paragraph (1) of this Section has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the action is pending before the court.

§ 42203. Consolidation.

(a) A party to an arbitration agreement may petition the court or other authority specified in Section 42106 to consolidate separate arbitration proceedings, and the court or other authority specified in Section 42106 may order consolidation of separate arbitration proceedings when:

(1) Separate arbitration agreements or proceedings exist between the same parties; or one party is a party to a separate arbitration agreement or proceeding with a third party; and

(2) The disputes arise from the same transactions or series of related transactions; and

(3) There is a common issue or issues of law or fact creating the possibility of conflicting rulings by more than one arbitrator or panel of arbitrators.

(b) If all of the applicable arbitration agreements name the same arbitrator, arbitration panel, or arbitration tribunal, the court or other authority specified in Section 42106, if it orders consolidation, shall order

7 GCA CIVIL PROCEDURE
CH. 42A GUAM INTERNATIONAL ARBITRATION

all matters to be heard before the arbitrator, panel, or tribunal agreed to by the parties. If the applicable arbitration agreements name separate arbitrators, panels, or tribunals, the court or other authority specified in Section 42106, if it orders consolidation, shall, in the absence of an agreed method of selection by all parties to the consolidated arbitration, appoint an arbitrator in accordance with the procedures set forth in Section 42302.

(c) In the event that the arbitration agreements in consolidated proceedings contain inconsistent provisions, the court or other authority specified in Section 42106 shall resolve such conflicts and determine the rights and duties of the various parties to achieve substantial justice under all the circumstances.

(d) The court or other authority specified in Section 42106 may exercise its discretion under this Section to deny consolidation of separate arbitration proceedings or to consolidate separate arbitration proceedings only as to certain issues, leaving other issues to be resolved in separate proceedings.

(e) Nothing in this Section shall be construed to prevent the parties to two or more arbitrations from agreeing to consolidate those arbitrations and taking any steps that are necessary to effect that consolidation.

ARTICLE 3
COMPOSITION OF ARBITRAL TRIBUNAL

- § 42301. Number of Arbitrators.
- § 42302. Appointment of Arbitrators.
- § 42303. Grounds for Challenge.
- § 42304. Challenge Procedure.
- § 42305. Failure or Impossibility to Act.
- § 42306. Appointment of Substitute Arbitrator.
- § 42307. Immunity of Arbitrators.
- § 42308. Arbitrator Writings.
- § 42309. Ethical and Training Standards for Neutrals.

§ 42301. Number of Arbitrators.

- (a) The parties are free to determine the number of arbitrators.
- (b) Failing such determination, the number of arbitrators shall be one.

7 GCA CIVIL PROCEDURE
CH. 42A GUAM INTERNATIONAL ARBITRATION

§ 42302. Appointment of Arbitrators.

(a) No person shall be precluded by reason of his or her nationality from acting as an arbitrator, unless otherwise agreed by the parties in the interest of neutrality.

(b) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (d) and (e) of this Section.

(c) Failing such agreement, appointment of arbitrators shall be made as directed by the court.

(d) Where, under an appointment procedure agreed upon by the parties,

- (1) a party fails to act as required under such procedure, or
- (2) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or

(3) a third party, including an institution, fails to perform any function entrusted to it under such procedure, any party may request the court or other authority specified in Section 42106 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(e) A decision on a matter entrusted by paragraphs (c) or (d) of this Section to the court or other authority specified in Section 42106 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

§ 42303. Grounds for Challenge.

(a) When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose any circumstances reasonably likely to give rise to material justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him or her.

7 GCA CIVIL PROCEDURE
CH. 42A GUAM INTERNATIONAL ARBITRATION

(b) An arbitrator may be challenged only if circumstances exist that give rise to material justifiable doubts as to his or her impartiality or independence, or if he or she does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him or her, or in whose appointment he or she has participated, only for reasons of which he or she becomes aware after the appointment has been made.

§ 42304. Challenge Procedure.

(a) The parties are free to agree on a procedure for challenging an arbitrator, and the decision reached pursuant to that procedure shall be final.

(b) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of his or her appointment as an arbitrator or within fifteen days after becoming aware of any circumstance referred to in Section 42303(b), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his or her office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge. If such a challenge is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the Court or other authority specified in Section 42106 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

§ 42305. Failure or Impossibility to Act.

(a) If an arbitrator becomes *de jure* or *de facto* unable to perform his or her functions or for other reasons fails to act without undue delay, his or her mandate terminates if he or she withdraws from his or her office or if the parties agree on the termination.

(b) If a controversy remains concerning any of the grounds referred to in Subsection (a), any party may request the arbitral tribunal to terminate the relevant arbitrator's mandate, provided such request is made to the arbitral tribunal within fifteen days of becoming aware of the grounds referred to in Subsection (a). The arbitral tribunal shall, in its sole discretion, determine whether termination of the arbitrator's mandate is appropriate.

(c) If the arbitral tribunal does not terminate the mandate, the challenging party may request the court or other authority specified in Section 42106 to decide on the termination of the mandate, provided that such request is made within thirty days of the arbitral tribunal's decision. If

7 GCA CIVIL PROCEDURE
CH. 42A GUAM INTERNATIONAL ARBITRATION

no such request is received by the court or other authority specified in Section 42106 within thirty days of the arbitral tribunal's decision, the decision of the arbitral tribunal is final and binding. If the court or other authority specified in Section 42106 receives a request to decide on the termination of the mandate, the decision shall be final and subject to no appeal.

(d) If, under this Section or Section 42304(b), an arbitrator withdraws from his or her office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this Section or Section 42304(b).

§ 42306. Appointment of Substitute Arbitrator.

Where the mandate of an arbitrator terminates under Sections 42304 or 42305 or because of his or her withdrawal from office for any other reason or because of the revocation of his or her mandate by agreement of the parties or in any other case of termination of his or her mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced. Where any arbitrator is replaced, the entire membership of the arbitral tribunal may require hearings previously held to be repeated, unless otherwise agreed to by the parties.

§ 42307. Immunity of Arbitrators.

(a) An arbitrator, and those acting pursuant to the order or rules of the arbitrator as his or her employees or agents, shall not be held liable for any action performed or omission made in the course of their official duties undertaken pursuant to this Chapter 42-A.

(b) The institution which administers the arbitration shall not be liable for any action performed or omission made in connection with any arbitration, unless the action performed or omission made is committed with reckless disregard with respect to the rights of one or more of the parties.

(c) No person who has served as an arbitrator may act as a representative or counsel of a party in any judicial proceedings in respect of a dispute that is the subject of the arbitration proceedings. No person who has served as an arbitrator may be a witness in any such proceedings.

§ 42308. Arbitrator Writings.

An arbitrator is not required to disclose to the parties, the public, or anyone other than the arbitrator, any writing produced by the arbitrator that has not been deliberately communicated by the arbitrator to one or more of the parties, unless all parties to the arbitration expressly agree otherwise, in

7 GCA CIVIL PROCEDURE
CH. 42A GUAM INTERNATIONAL ARBITRATION

writing, or disclosure of the writing is otherwise required by court rule, local rule or other law.

§ 42309. Ethical and Training Standards for Neutrals.

(a) Where the place of the arbitration is in Guam, a person serving as an arbitrator shall comply with the ethics and training standards for neutrals adopted by the Supreme Court of Guam pursuant to this Section. The Supreme Court of Guam shall adopt ethical and training standards for all neutral arbitrators and mediators.

Subsection (a) does not apply to an arbitration conducted pursuant to the terms of a public or private sector collective bargaining agreement.

**ARTICLE 4
JURISDICTION OF ARBITRAL TRIBUNAL**

§ 42401. Competence of Arbitral Tribunal to Rule on its Jurisdiction.

§ 42402. Power of Arbitral Tribunal to Order Interim Measures.

§ 42403. Arbitration Agreement and Interim Measures by Court.

§ 42404. Interim Award Enforcement.

§ 42405. Interest.

§ 42406. Costs.

§ 42401. Competence of Arbitral Tribunal to Rule on its Jurisdiction.

(a) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

7 GCA CIVIL PROCEDURE
CH. 42A GUAM INTERNATIONAL ARBITRATION

(b) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defense. A party is not precluded from raising such a plea by the fact that he or she has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(c) The arbitral tribunal may rule on a plea referred to in Paragraph (b) of this Section either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in Section 42106 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

§ 42402. Power of Arbitral Tribunal to Order Interim Measures.

(a) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

(b) Provided a party can demonstrate by clear and convincing evidence that a request for such interim measures to the arbitral tribunal would prejudice its rights, any party may apply to the court defined in Section 42106 for interim relief. Measures which the court may grant in connection with a pending arbitration include, but are not limited to, preliminary injunction granted in order to protect trade secrets or to conserve goods which are the subject matter of the arbitral dispute.

(c) In considering a request for interim relief, the court shall give preclusive effect to any and all findings of fact of the arbitral tribunal.

(d) Applications may be made to the court under Subsection (b) of this Section on an *ex parte* basis.

§ 42403. Arbitration Agreement and Interim Measures by Court.

It is not incompatible with an arbitration agreement for a party to request, before the constitution of an arbitral tribunal, from a court an interim measure of protection and for a court to grant such measure.

7 GCA CIVIL PROCEDURE
CH. 42A GUAM INTERNATIONAL ARBITRATION

§ 42404. Interim Award, Enforcement.

The arbitral tribunal may, at any time during the arbitral proceedings, make an interim, interlocutory or partial arbitral award on any matter with respect to which it may make a final arbitral award. The interim award may be enforced in the same manner as a final arbitral award. This interim award shall not have the effect of terminating the proceedings.

§ 42405. Interest.

Unless otherwise agreed to by the parties; every person who is entitled to recover damages certain, or capable of being made certain by calculation, under an arbitration award, and the right to recover which is vested in him, upon a particular day, is entitled also to recover interest thereon from that day, except during such time as the debtor is prevented by law, or by the act of the creditor, from paying the debt. Such interest shall be added to the arbitral award.

§ 42406. Costs.

(a) Unless otherwise agreed by the parties, the costs of an arbitration shall be at the discretion of the arbitral tribunal.

(b) In making an order for costs, the arbitral tribunal may include as costs any of the following:

- (1) The fees and expenses of the arbitrators and expert witnesses;
- (2) Legal fees and expenses;
- (3) Any administration fees of the institution supervising the arbitration, if any; and
- (4) Any other expenses incurred in connection with the arbitral proceedings.

(c) In making an order for costs, the arbitral tribunal may specify any of the following:

- (1) The party entitled to costs;
- (2) The party who shall pay the costs;
- (3) The amount of costs or method of determining that amount;
and
- (4) The manner in which the costs shall be paid.

(d) For the purposes of this Chapter 42-A, *costs* are defined as the costs described in this Section.

ARTICLE 5
CONDUCT OF ARBITRAL PROCEEDINGS

- § 42501. Equal Treatment of Parties.
- § 42502. Determination of Rules of Procedure.
- § 42503. Place of Arbitration.
- § 42504. Commencement of Arbitral Proceedings.
- § 42505. Language.
- § 42506. Statements of Claim and Defense.
- § 42507. Hearings and Written Proceedings.
- § 42508. Default of a Party.
- § 42509. Expert Appointed by Arbitral Tribunal.
- § 42510. Court Assistance in Taking Evidence.
- § 42511. Specific Powers of the Tribunal in Taking Evidence.
- § 42512. Choice of Parties: Qualification.

§ 42501. Equal Treatment of Parties.

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his or her case.

§ 42502. Determination of Rules of Procedure.

(a) Subject to the provisions of this Chapter 42-A, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(b) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Chapter 42-A, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

§ 42503. Place of Arbitration.

(a) The parties are free to agree on the location of arbitration within Guam.

(b) Notwithstanding the provisions of paragraph (a) of this Section, the arbitral tribunal may, unless otherwise objected to by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

7 GCA CIVIL PROCEDURE
CH. 42A GUAM INTERNATIONAL ARBITRATION

§ 42504. Commencement of Arbitral Proceedings.

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by:

(a) the institution nominated by the parties. Such a request must include a demand for arbitration that includes the contact details for the respondent to the arbitral proceeding; and the institution nominated by the parties, upon receipt of the request, shall notify the respondent of the receipt of the request for arbitration; or

(b) the respondent, if no such institution referred to in Subsection (a) of this Section has been nominated by the parties.

§ 42505. Language.

(a) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(b) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

§ 42506. Statements of Claim and Defense.

(a) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his or her claim, the points at issue and the relief or remedy sought, and the respondent shall state his or her defense in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(b) Unless otherwise agreed by the parties, either party may amend or supplement his or her claim or defense during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

§ 42507. Hearings and Written Proceedings.

(a) Subject to any contrary agreement by the parties, the arbitral

7 GCA CIVIL PROCEDURE
CH. 42A GUAM INTERNATIONAL ARBITRATION

tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(b) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

(c) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also, any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

(d) Unless otherwise agreed by the parties, all oral hearings and meetings in arbitral proceedings shall be held in camera.

§ 42508. Default of a Party.

Unless otherwise agreed by the parties, if, without showing sufficient cause,

(a) the claimant fails to communicate his or her statement of claim in accordance with Section 42506(a), the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his or her statement of defense or the claimant has failed to communicate his or her statement of reply (where applicable), in accordance with Section 42506(a), the arbitral tribunal may impose monetary sanctions on such party, and grant such party an extension of time to file a defense or reply. If such party remains in noncompliance with Section 42506(a) after the extension has expired, the tribunal may enter a default award in favor of the opposing party;

(c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

§ 42509. Expert Appointed by Arbitral Tribunal.

(a) Unless otherwise agreed by the parties, the arbitral tribunal:

(1) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal; or

7 GCA CIVIL PROCEDURE
CH. 42A GUAM INTERNATIONAL ARBITRATION

(2) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his or her inspection.

(b) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his or her written or oral report, participate in a hearing where the parties have the opportunity to put questions to him or her and to present expert witnesses in order to testify on the points at issue.

§ 42510. Court Assistance in Taking Evidence.

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of Guam assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

§ 42511. Specific Powers of the Tribunal in Taking Evidence.

The arbitrators selected, either as prescribed in this Chapter 42-A or otherwise, or a majority of them, may summon, in writing, any person to attend before them or any of them as a witness at a time and place therein specified. The fees for such attendance shall be the same as the fees of witnesses before the Superior Court of Guam. A summons to produce books or tangible items therein designated, to produce documents or to permit inspection of books, documents or tangible items at a time and place therein specified may be joined with a command to appear as witness, or may be issued separately. A summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subpoenas to appear and testify before the court. An attorney representing a party before the arbitral tribunal may issue and sign a summons on behalf of the tribunal. If any person or persons so summoned shall refuse or neglect to obey said summons, upon petition, the court may compel such person or persons to obey said summons, or punish said person or persons for contempt in the same manner provided by law for failure to obey a subpoena.

§ 42512. Choice of Parties; Qualification.

The parties may appear in person or be represented or assisted by any person of their choice. A person assisting or representing a party is required to be licensed to practice law in at least one State.

7 GCA CIVIL PROCEDURE
CH. 42A GUAM INTERNATIONAL ARBITRATION

ARTICLE 6
MAKING OF AWARD AND
TERMINATION OF PROCEEDINGS

- § 42601. Rules Applicable to Substance of Dispute.
- § 42602. Decision Making by Panel of Arbitrators.
- § 42603. Settlement.
- § 42604. Form and Contents.
- § 42605. Termination of Proceedings.
- § 42606. Correction and Clarification of Award; Additional Award.

§ 42601. Rules Applicable to Substance of Dispute.

(a) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(b) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(c) The arbitral tribunal shall decide *ex aequo et bono* or as *Amiable Compositeur* only if the parties have expressly authorized it to do so.

(d) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

§ 42602. Decision Making by Panel of Arbitrators.

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

§ 42603. Settlement.

(a) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(b) An award on agreed terms shall be made in accordance with the provisions of Section 42604 and shall state that it is an award. Such an

7 GCA CIVIL PROCEDURE
CH. 42A GUAM INTERNATIONAL ARBITRATION

award has the same status and effect as any other award on the merits of the case.

§ 42604. Form and Contents of Award.

(a) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(b) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under Section 42603.

(c) The award shall state its date and the place of arbitration as determined in accordance with Section 42503(a). The award shall be deemed to have been made at that place.

(d) After the award is made, a copy signed by the arbitrators in accordance with paragraph (a) of this Section shall be delivered to each party.

§ 42605. Termination of Proceedings.

(a) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with Paragraph (b) of this Section.

(b) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:

(1) the claimant withdraws his or her claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his or her part in obtaining a final settlement of the dispute;

(2) the parties agree on the termination of the proceedings; or

(3) the arbitral tribunal finds that the continuation of the proceedings has, for any other reason, become unnecessary or impossible.

(c) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of Sections 42606 and 42701(e).

§ 42606. Correction and Clarification of Award; Additional Award.

(a) Within thirty days of receipt of the award, unless another period of

7 GCA CIVIL PROCEDURE
CH. 42A GUAM INTERNATIONAL ARBITRATION

time has been agreed upon by the parties:

(1) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;

(2) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give a clarification of a specific point or part of the award. If the arbitral tribunal considers the request to be justified, it shall make the correction or give the clarification within thirty days of receipt of the request. The clarification shall form part of the award.

(b) The arbitral tribunal may correct any error of the type referred to in paragraph (a) (1) of this Section on its own initiative within thirty days of the date of the award.

(c) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

(d) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, clarification or an additional award under paragraphs (a) or (c) of this Section.

The provisions of Section 42604 shall apply to a correction or clarification of the award or to an additional award.

ARTICLE 7
ENFORCEMENT OF CERTAIN AWARDS

§ 42701. Application for Setting Aside as Exclusive Recourse Against Arbitral Award.

§ 42702. Recognition and Enforcement, Papers Filed with Order on Motions; Judgment; Docketing; Force and Effect; Enforcement.

§ 42701. Application for Setting Aside as Exclusive Recourse Against Arbitral Award.

(a) This Section only applies where the place of the arbitration is Guam and neither the Federal Arbitration Act nor the New York Convention on

7 GCA CIVIL PROCEDURE
CH. 42A GUAM INTERNATIONAL ARBITRATION

the Recognition and Enforcement of Foreign Arbitral Awards apply.

(b) In any of the following cases the court may make an order vacating the award upon the application of any party to the arbitration:

(1) where the award was procured by corruption, fraud, or undue means;

(2) where there was evident partiality or corruption in the arbitrators, or either of them;

(3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence that is pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or

(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(c) If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

(1) If an award is vacated because of a violation of (b) (2) or (3) above, the court shall direct a rehearing by the arbitrator or arbitrators found not to be in violation of (b) (2) or (3) and the additional arbitrator or arbitrators shall be selected or appointed pursuant to Article III of this Chapter.

(d) Notice of a motion to vacate an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered. If the adverse party is a resident of Guam, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served in like manner as other process of the court. For the purposes of the motion, any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

(e) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take

7 GCA CIVIL PROCEDURE
CH. 42A GUAM INTERNATIONAL ARBITRATION

such other action as, in the arbitral tribunal's opinion, will eliminate the grounds for setting aside.

§ 42702. Recognition and Enforcement, Papers Filed with Order on Motions; Judgment; Docketing; Force and Effect; Enforcement.

(a) This Section only applies where the place of the arbitration is Guam and neither the Federal Arbitration Act nor the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards apply.

(b) If the parties, in their agreement, have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in Sections 42606 and 42701. If no court is specified in the agreement of the parties, then such application may be made to the court. Notice of the application shall be served upon the adverse party, and thereupon the Court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of Guam, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

(c) The party moving for an order confirming, or setting aside an award or part of an award shall, at the time such order is filed with the clerk for the entry of judgment thereof, also file the following papers with the clerk:

(1) The agreement referred to in Section 42201 as a duly certified copy thereof; the selection or appointment, if any, of an additional arbitrator or umpire; and each written extension of the time, if any, within which to make the award.

(2) The duly authenticated original award or duly certified copy thereof.

(3) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application.

(d) All documents filed pursuant to this Section if not made in

7 GCA CIVIL PROCEDURE
CH. 42A GUAM INTERNATIONAL ARBITRATION

English, shall be filed with a duly certified translation into English.

(e) The judgment shall be docketed as if it were rendered in an action.

(f) The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

ARTICLE 8
MISCELLANEOUS ARBITRATION PROVISIONS

§ 42801. Proceedings Begun by Libel in Admiralty and Seizure of Vessel or Property.

§ 42801. Proceedings Begun by Libel in Admiralty and Seizure of Vessel or Property.

If the basis of jurisdiction be a cause of action otherwise justiciable in admiralty, then, notwithstanding anything herein to the contrary, the party claiming to be aggrieved may begin his proceeding hereunder by libel and seizure of the vessel or other property of the other party according to the usual course of admiralty proceedings, and the Superior Court of Guam shall then have jurisdiction to direct the parties to proceed with the arbitration and shall retain jurisdiction to enter its decree upon the award.

**7 GCA CIVIL PROCEDURE
CH. 42B COURT-REFERRED ARBITRATION AND
ALTERNATIVE DISPUTE RESOLUTION**

NOTE: Chapter 42 was repealed by P.L. 27-81:2. Chapters 42-A and 42-B were enacted by P.L. 27-81:3 and 4 (May 6, 2004). Chapter 42-B, pursuant to P.L. 27-81:9, will become effective upon the promulgation and enactment of rules mentioned therein by the Supreme Court of Guam.

CHAPTER 42B

**ARTICLE I
COURT-REFERRED ARBITRATION
AND ALTERNATIVE DISPUTE RESOLUTION**

- § 42901. Actions in the Superior Court.
- § 42902. Funding of Court-Referred Arbitration or Other Alternative Dispute Resolution Programs.
- § 42903. Finality of Award; *De Novo* Trial; Request.
- § 42904. Judgment on Trial *De Novo* Equal to or Less Favorable than Arbitration Award for Party Electing; Payment of Nonrefundable Costs and Fee.
- § 42905. Award; Writing, Signature and Filing; Entry in Judgment Book; Force and Effect.
- § 42906. Reference to Arbitration Proceedings or Award During Trial; Grounds for New Trial.
- § 42907. Application of Chapter to Actions with Public Agency or Entity as Party.
- § 42908. Administrative Costs; Compensation of Arbitrators; Payment.

§ 42901. Actions in the Superior Court.

(a) The Supreme Court of Guam is authorized to establish and promulgate rules and procedures for arbitration for such civil actions, except custody cases in which the authority is separately provided for, as the Supreme Court of Guam finds appropriate in order to encourage the prompt and equitable resolution of disputes.

(b) The Supreme Court of Guam is authorized to establish and promulgate rules and procedures for alternative dispute resolution for any civil, probate or domestic actions, except custody cases in which the authority is separately provided for, as the Supreme Court of Guam deems appropriate in order to encourage the prompt and equitable resolution of disputes.

(c) Upon stipulation of the parties, any action, except custody cases in which the authority is separately provided for, may be submitted to an alternative method of resolving disputes established by rules and procedures to be promulgated by the Supreme Court of Guam, including, without

7 GCA CIVIL PROCEDURE
CH. 42B COURT-REFERRED ARBITRATION AND
ALTERNATIVE DISPUTE RESOLUTION

limitation, binding arbitration, a settlement conference, mediation, early neutral evaluation, case evaluation, expert fact finding or a binding short trial or any combination of these processes, which method may result in a binding disposition of the action.

(d) Arbitrators shall be selected and compensated in accordance with rules adopted by the Supreme Court of Guam and the Supreme Court of Guam shall further establish standards, compensation and certification for all personnel conducting alternative dispute resolution programs in the courts of Guam.

(e) The rules and regulations promulgated by the Supreme Court of Guam pursuant to this Section shall be submitted to *I Liheslaturan Guåhan* for approval. Said rules and regulations shall be deemed approved unless otherwise acted upon by *I Liheslaturan Guåhan* within ninety (90) days plus one (1) Legislative Day of receipt.

(f) Any arbitration conducted pursuant to § 42901(a) shall be defined as a *court-referred arbitration*.

§ 42902. Funding of Court-REFERRED Arbitration or Other Alternative Dispute Resolution Programs.

Court-referred arbitration and other alternative dispute resolution programs should be accessible to all parties regardless of financial status and the Judicial Council may adopt and levy fees to implement provisions of this Chapter 42-B.

§ 42903. Finality of Award; *De Novo* Trial; Request.

(a) An arbitral award resulting from a Court-referred arbitration shall be final unless a request for a *de novo* trial is filed within thirty days after the date the arbitrator files the award with the court.

(b) Any party may elect to have a *de novo* trial, by court or jury, as the law permits both as to law and facts. Such trial shall be calendared, insofar as possible, so that the trial shall be given the same place on the active list as it had prior to arbitration, or shall receive civil priority on the next setting calendar.

(c) If a party attempts to withdraw a request for a *de novo* trial, after the expiration of the thirty day period referred to in Subsection (a) of this Section, such an attempted withdrawal shall not be valid, unless all parties stipulate in writing to agree to such a withdrawal.

NOTE: Renumbered by Compiler to follow the chapter's outline sequence.

§ 42904. Judgment on Trial *De Novo* Equal to or Less Favorable than

7 GCA CIVIL PROCEDURE
CH. 42B COURT-REFERRED ARBITRATION AND
ALTERNATIVE DISPUTE RESOLUTION

Arbitration Award for Party Electing; Payment of Nonrefundable Costs and Fee.

(a) If the judgment upon the trial *de novo* is not more favorable in either the amount of damages awarded or the type of relief granted for the party electing the trial *de novo* than the court-referred arbitration award, the court shall order that party to pay the following nonrefundable costs and fees incurred in the trial *de novo*, unless the court finds, in writing and upon motion, that the imposition of such costs and fees would create such a substantial economic hardship as not to be in the interest of justice:

(1) To the Superior Court, the costs of the arbitration, less any amount paid pursuant to paragraph (4);

(2) To the other party or parties, all costs including legal fees and expenses, and the party electing the trial *de novo* shall not recover his or her costs including legal fees and expenses;

(3) To the other party or parties, the reasonable costs of the services of expert witnesses, who are not regular employees of any party, actually incurred or reasonably necessary in the preparation or trial of the case; and

(4) To the other party or parties, the costs of the arbitration paid by the other party or parties, pursuant to Subsection (b) of Section 42908. Such costs and fees, other than the compensation of the arbitrator, shall include only those incurred from the time of election of the trial *de novo*.

(b) If the party electing the trial *de novo* has proceeded in the action *in forma pauperis* and has failed to obtain a more favorable judgment, the costs and fees under paragraphs (2) and (3) of Subsection (a) shall be imposed only as an offset against any damages awarded in favor of that party.

(c) If the party electing the trial *de novo* has proceeded in the action *in forma pauperis* and has failed to obtain a more favorable judgment, the costs under paragraph (1) of Subsection (a) shall be imposed only to the extent that there remains a sufficient amount in the judgment after the amount offset under Subsection (b) has been deducted from the judgment.

7 GCA CIVIL PROCEDURE
CH. 42B COURT-REFERRED ARBITRATION AND
ALTERNATIVE DISPUTE RESOLUTION

§ 42905. Award; Writing, Signature and Filing; Entry in Judgment Book; Force and Effect.

All arbitration awards resulting from court-referred arbitration shall be in writing, signed by the arbitrator and filed in the court in which the action is pending. Such an award shall conform with the requirements of Section 42604 of this Chapter 42-B. If there is no request for a *de novo* trial and the award is not vacated, the court-referred arbitration award shall be entered as a judgment of the court in the amount of the award. Such award shall have the same force and effect as a judgment in any civil action or proceeding, except that it is not subject to appeal and it may not be attacked or set aside except as provided by Section 42701 of this Chapter 42-B or Guam Rule of Civil Procedure 60.

§ 42906. Reference to Arbitration Proceedings or Award During Trial; Grounds for New Trial.

Any reference to the court-referred arbitration proceedings or court-referred arbitration award during any subsequent trial shall constitute grounds for a new trial and/or amendment of judgment for the purposes of Guam Rule of Civil Procedure 59.

§ 42907. Application of Chapter to Actions with Public Agency or Entity as Party.

This Article shall apply to any civil action otherwise within the scope of this Chapter 42-B in which a party to the action is a public agency or public entity but shall not waive the limits on liability of a public agency or public entity otherwise provided by law.

§ 42908. Administrative Costs; Compensation of Arbitrators; Payment.

(a) All costs of court-referred arbitrations conducted pursuant to Section 42901(a), including the compensation of arbitrators, shall be paid for in equal shares by the parties, unless the Superior Court of Guam determines that the imposition of these costs would create such a substantial economic hardship for any party as not to be in the interest of justice. The determination as to substantial economic hardship may be reviewed by the court.

(b) All costs of court-referred arbitrations conducted pursuant Section 42901(c), including the compensation of the arbitrators, shall be paid for in equal shares by the parties.

7 GCA CIVIL PROCEDURE
CH. 43A GUAM MEDIATION

CHAPTER 43
ALTERNATE DISPUTE RESOLUTION OFFICE
(COURT MEDIATION DIVISION)

NOTE: Chapter 43 was repealed by P.L. 27-81:5. Chapters 43-A and 43-B were enacted by P.L. 27-81:6 and 7 (May 6, 2004). Chapter 43-A is effective immediately.

CHAPTER 43A
GUAM MEDIATION CHAPTER

- Article 1. Mediation.
- Article 2. Evidence.
- Article 3. Termination.
- Article 4. Costs/Termination.
- Article 5. Mediator and Miscellaneous Provisions.

ARTICLE 1
MEDIATION

- § 43101. Short Title.
- § 43102. Definitions.
- § 43103. Validity, Irrevocability and Enforcement of Agreements to Mediate.
- § 43104. Conduct of Proceedings; Criteria; Other Codes.
- § 43105. Representation.
- § 43106. Agreement to Stay Judicial or Arbitral Proceedings; Time Period.
- § 43107. Limitations: Tolling.
- § 43108. Nonwaiver of Rights or Remedies by Submission to Mediation.

§ 43101. Short Title.

This Chapter 43-A shall be known as and may be cited as the *Guam Mediation Chapter*.

§ 43102. Definitions.

For purposes of this Chapter 43-A, the following terms apply:

- (a) *Mediation* means a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement.

7 GCA CIVIL PROCEDURE
CH. 43A GUAM MEDIATION

(b) *Mediator* means a neutral person who conducts a mediation. *Mediator* includes any person designated by a mediator either to assist in the mediation or to communicate with the participants in preparation for a mediation.

(c) *Mediation consultation* means a communication between a person and a mediator for the purpose of initiating, considering, or reconvening a mediation or retaining the mediator.

(d) *Writing* means handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

§ 43103. Validity, Irrevocability and Enforcement of Agreements to Mediate.

An agreement in a writing to settle a controversy by mediation shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

§ 43104. Conduct of Proceedings; Criteria; Other Codes.

The mediator or mediators may conduct the mediation proceedings in such a manner as they consider appropriate. Except as otherwise provided in this Chapter 43-A, other provisions of this Code, the Guam Rules of Evidence (Title 6 of the Guam Code Annotated), or the Guam Rules of Court (Title 7, Appendix A of the Guam Code Annotated), shall not apply to mediation consultations.

§ 43105. Representation.

The parties may appear in person or be represented or assisted by any person of their choice. A person assisting or representing a party need not be a member of the legal profession or licensed to practice law in Guam.

§ 43106. Agreement to Stay Judicial or Arbitral Proceedings; Time Period.

Unless otherwise agreed by the parties, the agreement to submit a dispute to mediation shall be deemed an agreement between or among those parties to stay all judicial or arbitral proceedings from the commencement of mediation until the termination of mediation proceedings, provided, however, that nothing in this Section shall prevent a party to a mediation

7 GCA CIVIL PROCEDURE
CH. 43A GUAM MEDIATION

from pursuing injunctive or other temporary relief during the course of the mediation.

§ 43107. Limitations; Tolling.

All applicable limitation periods, including periods of prescription, shall be tolled or extended upon the commencement of mediation proceedings to mediate a dispute under this Chapter 43-A and all limitation periods shall remain tolled and periods of prescription extended as to all parties to the mediation proceedings until the tenth (10th) day following the termination of mediation proceedings. For purposes of this Section, mediation proceedings are deemed to have commenced as soon as (a) a party has requested mediation of a particular dispute or disputes, and (b) the other party or parties agree to participate in the mediation proceeding.

§ 43108. Nonwaiver of Rights or Remedies by Submission to Mediation.

By submitting to mediation, no party shall be deemed to have waived any rights or remedies which that party would have had if mediation had not been initiated, other than those set forth in any mediation settlement agreement which results from the mediation or as otherwise prescribed in this Chapter 43-A.

ARTICLE 2
EVIDENCE

§ 43201. Admissibility of Evidence: Nondisclosure; Exception.

§ 43202. Mediator's Writings.

§ 43203. Otherwise Admissible Evidence.

§ 43204. Protections Before and After Mediation Ends.

§ 43201. Admissibility of Evidence; Nondisclosure; Exception.

When persons agree to participate in mediation under this Chapter 43-A:

(a) Evidence of anything said or of any admission made in the course of the mediation is not admissible in evidence, and disclosure of any such evidence shall not be compelled, in any civil or criminal action in which, pursuant to law, testimony may be compelled to be given. However, this Subsection does not limit the admissibility of evidence if all parties participating in mediation consent to its disclosure;

(b) In the event that any such evidence is offered in contravention

**7 GCA CIVIL PROCEDURE
CH. 43A GUAM MEDIATION**

of this Section, the arbitration tribunal or the court shall make any order which it considers to be appropriate to deal with the matter, including, without limitation, orders restricting the introduction of evidence, or dismissing the case without prejudice; and

(c) Unless the document otherwise provides, no document prepared for the purpose of, or in the course of or pursuant to, the mediation, nor any copy thereof, is admissible in evidence, and disclosure of any such document shall not be compelled in any arbitration or civil action in which, pursuant to law, testimony may be compelled to be given.

§ 43202. Mediator's Writings.

(a) Any writing produced by the mediator shall not be disclosed to the parties, the public, or anyone other than the mediator, unless all parties to the mediation expressly agree otherwise in writing, or disclosure of the writing is otherwise mandated by court rule, local rule or other law.

(b) Neither a mediator nor anyone else may submit to a Court or other adjudicative body, and a court or other adjudicative body may not consider, any writing by the mediator concerning a mediation conducted by the mediator, other than a report that is mandated by court rule, local rule or other law, unless all parties to the mediation expressly agree otherwise in writing.

§ 43203. Otherwise Admissible Evidence.

(a) Evidence otherwise admissible or subject to discovery outside of a mediation or a mediation consultation shall not be or become inadmissible or protected from disclosure solely by reason of its introduction or use in a mediation or a mediation consultation.

(b) This Section does not limit any of the following:

(1) the admissibility of an agreement to mediate a dispute;

(2) the effect of an agreement not to take a default or an agreement to extend the time within which to act or refrain from acting in a pending civil action; or

(3) disclosure of the mere fact that a mediator has served, is serving, will serve, or was contacted about serving as a mediator in a dispute.

§ 43204. Protections Before and After Mediation Ends.

Anything said, any admission made, or any writing that is inadmissible, protected from disclosure, and confidential under this Chapter 43-A before a mediation ends, shall remain inadmissible, protected from disclosure, and confidential to the same extent after the mediation ends.

7 GCA CIVIL PROCEDURE
CH. 43A GUAM MEDIATION

ARTICLE 3
TERMINATION

§ 43301. Termination Circumstances.

§ 43302. Termination-Particular Parties.

§ 43301. Termination Circumstances.

The mediation proceedings may be terminated as to all parties by any of the following:

(a) A written declaration of the mediator or mediators, after consultation with the parties, to the effect that further efforts at mediation are no longer justified, on the date of the declaration.

(b) A written declaration of the parties addressed to the mediator or mediators to the effect that the mediation proceedings are terminated, on the date of the declaration.

(c) The signing of a mediation settlement agreement by all of the parties, on the date of the agreement.

§ 43302. Termination-Particular Parties.

The mediation proceedings may be terminated as to particular parties by either of the following:

(a) A written declaration of a party to the other party and the mediator or mediators, if appointed, to the effect that the mediation proceedings shall be terminated as to that particular party, on the date of the declaration.

The signing of a mediation settlement agreement by some of the parties, on the date of the agreement.

7 GCA CIVIL PROCEDURE
CH. 43A GUAM MEDIATION

ARTICLE 4
COSTS/TERMINATION

§ 43401. Mediation Costs; Inclusions.

§ 43402. Equality of Costs Among Parties; Expenses.

§ 43403. Enforcement of Mediation Settlement After Termination of
Mediation.

§ 43401. Mediation Costs; Inclusions.

Subject to any contrary agreement between or among the parties, upon termination of the mediation proceedings, the mediator shall fix the costs of the mediation and give written notice thereof to the parties. As used in this Section, 'costs' includes only the following:

(a) A reasonable fee to be paid to the mediator or mediators.

(b) The travel and other reasonable expenses of the mediator or mediators.

(c) The travel and other reasonable expenses of witnesses requested by the mediator or mediators with the consent of the parties.

(d) The cost of any expert advice requested by the mediator or mediators with the consent of the parties.

(e) The costs of any court or other institution's administration of the mediation.

§ 43402. Equality of Costs Among Parties; Expenses.

Subject to any contrary agreement between or among the parties, the costs referred to in § 43401 shall be borne equally by the parties. All other expenses incurred by a party shall be borne by that party.

§ 43403. Enforcement of Mediation Settlement After Termination of Mediation.

(a) Any party to a mediation settlement agreement as described in §§ 43301(c) and 43302(b) above, may enforce that mediation settlement agreement at the Superior Court of Guam by filing a motion for summary judgment without filing a complaint, by serving the other party or parties to that mediation settlement agreement with:

(1) a summons,

(2) a copy of the signed mediation settlement agreement, and

(3) a notice of motion for summary judgment and the supporting

**7 GCA CIVIL PROCEDURE
CH. 43A GUAM MEDIATION**

papers.

(b) The summons served under Subsection (a) (1) of this Section shall require the defendant to submit answering papers on the motion within the time provided in the notice of motion. The minimum time such motion shall be noticed to be heard is thirty days after service. If the plaintiff sets the hearing date of the motion later than thirty days, the plaintiff may require the defendant to serve a copy of defendant's answering papers upon the plaintiff within such extended period of time, not exceeding ten days, prior to such hearing date.

(c) No default judgment may be entered pursuant to Guam Rule of Civil Procedure 55(a) prior to the hearing date of the motion. If the motion is denied, the moving and answering papers shall be deemed the complaint and answer, respectively, unless the court orders otherwise.

(d) Both the summons and the motion for summary judgment referred to in Subsections (a) (1) and (3) must be created in accordance with the applicable Guam Rules of Civil Procedure.

(e) The purpose of this Section is to encourage mediation and to expedite the enforcement of mediated settlement agreements by allowing a party or parties to move for summary judgment in lieu of filing a complaint.

(f) Nothing in this Section should be interpreted to restrict the rights of the parties to enforce the mediation settlement agreement in any way or other manner permitted under the laws of Guam.

ARTICLE 5

MEDIATOR AND MISCELLANEOUS PROVISIONS

- § 43501. Mediator as Arbitrator: Ineligibility for Appointment; Exception.
- § 43502. Costs for Seeking to Compel Mediator.
- § 43503. No Consent to Court Jurisdiction Upon Failure of Mediation.
- § 43504. Service of Process; Immunity of Participants in Mediation.
- § 43505. Action for Damages; Nonliability of Mediators.
- § 43506. Conflicts/Superiority Provision.
- § 43507. Ethical and Training Standards for Mediators.

7 GCA CIVIL PROCEDURE
CH. 43A GUAM MEDIATION

§ 43501. Mediator as Arbitrator; Ineligibility for Appointment; Exception.

No person who has served as mediator may act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceedings with respect to a dispute that is the subject of the mediation proceedings. No person who has served as a mediator may be a witness in any such arbitral or judicial proceedings.

§ 43502. Costs for Seeking to Compel Mediator.

If a person subpoenas or otherwise seeks to compel a mediator to testify or produce a writing as defined in § 43102(d), and the court or other adjudicative body determines that the testimony or writing is inadmissible under this Chapter 43-A, or protected from disclosure under this Chapter 43-A, the court or adjudicative body making the determination shall award reasonable attorney's fees and costs to the mediator against the person seeking the testimony or writing.

§ 43503. No Consent to Court Jurisdiction Upon Failure of Mediation.

Neither the request for mediation, the consent to participate in the mediation proceedings, the participation in such proceedings, nor the entering into a mediation agreement or settlement shall be deemed as consent to the jurisdiction of any court in Guam in the event mediation fails.

§ 43504. Service of Process; Immunity of Participants in Mediation.

Neither the mediator or mediators, the parties, nor their representatives shall be subject to service of process on any civil matter while they are present in Guam for the purpose of arranging for or participating in the mediation pursuant to this Chapter 43-A.

§ 43505. Action for Damages; Nonliability of Mediators.

(a) A mediator, and those acting pursuant to the order or rules of the mediator as his or her employees or agents, shall not be held liable for any action performed or omission made in the course of their official duties undertaken pursuant to this Chapter 43-A.

(b) The institution which administers the mediation shall not be liable for any action performed or omission made in connection with any mediation, unless the action performed or omission made is committed with reckless disregard with respect to the rights of one or more of the parties.

7 GCA CIVIL PROCEDURE
CH. 43A GUAM MEDIATION

§ 43506. Conflicts/Superiority Provision.

In the event that any provision of this Chapter 43-A conflicts with the provisions of any other Title, Chapter or Section of the Guam Code Annotated, the provisions of this Chapter 43-A shall be controlling.

§ 43507. Ethical and Training Standards for Mediators.

A person serving as a mediator shall comply with the Ethical and Training Standards for Neutrals adopted by the Supreme Court of Guam pursuant to Section 42309.

7 GCA CIVIL PROCEDURE
CH. 43B COURT-REFERRED MEDIATION

CHAPTER 43B

NOTE: Chapter 43 was repealed by P.L. 27-81:5. Chapters 43-A and 43-B were enacted by P.L. 27-81:6 and 7 (May 6, 2004). Chapter 43-B, pursuant to P.L. 27-81:9, will become effective upon the promulgation and enactment of rules mentioned therein by the Supreme Court of Guam.

**ARTICLE 1
COURT-REFERRED MEDIATION**

§43601. Actions in the Superior Court.

§43602. Funding of Court-Referred Mediation.

§43601. Actions in the Superior Court.

(a) The Supreme Court of Guam is authorized to establish and promulgate rules and procedures for mediation for such civil, probate or domestic actions, except custody cases in which the authority is separately provided for, as the Supreme Court of Guam deems appropriate in order to encourage the prompt and equitable resolution of disputes.

(b) Upon stipulation of the parties, any action, except custody cases in which the authority is separately provided for, may be submitted to mediation established by rules and procedures to be promulgated by the Supreme Court of Guam, which mediation may result in a binding disposition of the action.

(a) Mediators shall be selected and compensated in accordance with rules adopted by the Supreme Court of Guam and the Supreme Court of Guam shall further establish standards, compensation and certification for all mediators in the courts of Guam.

(b) Any mediation conducted pursuant to §43601(a) shall be defined as a 'court-referred mediation.'

(e) The rules and regulations promulgated by the Supreme Court of Guam pursuant to this Section shall be submitted to *I Liheslaturan Guåhan* for approval. Said rules and regulations shall be deemed approved unless otherwise acted upon by *I Liheslaturan Guåhan* within ninety (90) days plus one (1) Legislative Day of receipt.

§43602. Funding of Court-Referred Mediation.

Court-referred mediation should be accessible to all parties regardless of financial status and the Judicial Council may adopt and levy fees to implement provisions of this Chapter 43-B.

**7 GCA CIVIL PROCEDURE
CH. 43B COURT-REFERRED MEDIATION**

2

FILED
SUPREME COURT
OF GUAM

FEB 11 11 36 AM '04

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

IN THE SUPREME COURT OF GUAM

RE:) PROMULGATION ORDER NO.: 04-002
AMENDMENTS TO THE)
GUAM RULES OF)
PROFESSIONAL CONDUCT)

On September 29, 2003, the matter of amendments to the Guam Rules of Professional Conduct came before the Supreme Court for action.

Prior to that, in June of 2002, the Guam Bar Ethics Committee was tasked with reviewing the 2002 American Bar Association Model Rules of Professional Conduct for adoption by the Supreme Court of Guam. The Ethics Committee solicited comments from the membership of the Guam Bar Association and received one response. On February 12, 2003, the Ethics Committee submitted its report recommending that the Supreme Court adopt the model rules without changes.

In October of 2002, the Subcommittee on Multijurisdictional Practice was formed to review the recommendations of the 2002 ABA Commission on Multijurisdictional Practice on rules which address the growing needs of clients for legal assistance in business transactions in multiple jurisdiction due to the globalization of business and finance. The Subcommittee solicited comments from the membership of the Guam Bar Association and received no responses. On February 18, 2003, the Subcommittee submitted its report recommending the adoption of the ABA Model Rule on the Multijurisdictional Practice of Law (Rule 5.5 of the Model Rules of Professional Conduct), and the ABA Model Rule on Disciplinary Authority; Choice of Law (Rule 8.5 of the Model Rules of Professional Conduct).

Upon the recommendation of the Guam Bar Ethics Committee and the Subcommittee on Multijurisdictional Practice, and under the authority granted by the Organic Act of Guam at 48 U.S.C. § 1424-1(c) and by 7 GCA § 9101, on September 29, 2003, the Supreme Court adopted the

20040442


1 2002 ABA Model Rules of Professional Conduct and Model Rules 5.5 and 8.5.

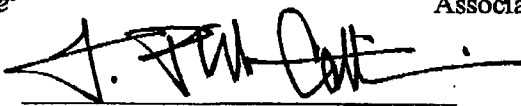
2 These new rules are attached hereto, marked Exhibit "A" and incorporated herein by
3 reference. The new rules were effective as of the date of adoption on September 29, 2003.

4 **SO ORDERED**, this 11th day of February, 2004.

5
6
7
8

BENJAMIN J.F. CRUZ
Justice Pro Tempore¹


FRANCES TYDINGCO-GATEWOOD
Associate Justice

9
10 
11

F. PHILIP CARBULLIDO
Chief Justice

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26 ¹ Retired Chief Justice Benjamin J.F. Cruz was appointed Justice Pro Tempore for this matter on August 26,
27 2003. Subsequent to the September 29, 2003 action of the panel, Justice Cruz became ineligible to sit as a Justice Pro
Tempore.

Exhibit A

GUAM RULES OF PROFESSIONAL CONDUCT

(Adopted from the 2002 ABA Model Rules of Professional Conduct)

PREAMBLE: A LAWYER'S RESPONSIBILITIES

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

[3] In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

[4] In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

[5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

RULE 5.5: MULTIJURISDICTIONAL PRACTICE OF LA W

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized by federal or other law to provide in this jurisdiction.

RULE 5.6: RESTRICTIONS ON RIGHT TO PRACTICE

A lawyer shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

RULE 5.7: RESPONSIBILITIES REGARDING LAW-RELATED SERVICES

(a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

(2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

(b) The term "law-related services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

RULE 6.1: VOLUNTARY PRO BONO PUBLICO SERVICE

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

SUPREME COURT OF GUAM

**RULES GOVERNING ADMISSION
TO THE PRACTICE OF LAW**

(As amended pursuant to Promulgation Order No. 06-007-06, February 14, 2010)

GUAM RULES GOVERNING THE ADMISSION
TO THE PRACTICE OF LAW

(2) Familiarity with Rules. An applicant shall become familiar with the rules of professional conduct, rules of discipline of the Supreme Court of Guam, local court rules, and policies and procedures of the court before which the applicant seeks to practice.

Rule 8.02. Out-of-State Proceedings, Potential Guam and Out-of-State Proceedings, and all ADR.

(a) Guam Ancillary Proceeding Related to Pending Out-of-State Proceeding. In connection with proceedings pending outside Guam, an out-of-state lawyer admitted to appear in that proceeding may render in Guam legal services regarding or in aid of such proceeding.

(b) Consultation by Out-of-State Lawyer.

(1) Consultation with Guam Lawyer. An out-of-state lawyer may consult with a Guam lawyer concerning the Guam lawyer's client's pending or potential proceeding in Guam.

(2) Consultation with Potential Client. At the request of a person in Guam contemplating a proceeding or involved in a pending proceeding, irrespective of where the proceeding is located, an out-of-state lawyer may consult in Guam with that person about that person's possible retention of the out-of-state lawyer in connection with the proceeding.

(c) Preparation for Guam Proceeding. On behalf of a client in Guam or elsewhere, the out-of-state lawyer may render legal services in Guam in preparation for a potential proceeding to be filed in Guam, provided that the out-of-state lawyer reasonably believes he is eligible for admission pro hac vice in Guam.

(d) Preparation for Out-of-State Proceeding. In connection with a potential proceeding to be filed outside Guam, an out-of-state lawyer may render legal services in Guam for a client or potential client located in Guam, provided that the out-of-state lawyer is admitted or reasonably believes the lawyer is eligible for admission generally or pro hac vice in the jurisdiction where the proceeding is anticipated to be filed.

(e) Services Rendered Outside Guam for Guam Client. An out-of-state lawyer may render legal services while the lawyer is physically outside Guam when requested by a client located in Guam in connection with a potential or pending proceeding filed in or outside Guam.

(f) Alternative Dispute Resolution ("ADR") Procedures. An out-of-state lawyer may render legal services to prepare for and participate in an ADR procedure regardless of where the ADR procedure is expected to take or actually takes place.

(g) No Solicitation. An out-of-state lawyer rendering services in Guam in compliance with this Rule or here for other reasons is not authorized by anything in this rule to hold out to the public or otherwise represent that the lawyer is admitted to practice in this jurisdiction. Nothing in this Rule authorizes out-of-state lawyers to solicit, advertise, or otherwise hold themselves out in publications as available to assist in litigation in Guam.

(h) Temporary Practice. An out-of-state lawyer will only be eligible for admission pro hac vice or to practice in another lawful way only on a temporary basis.

(i) Authorized Services. The foregoing services may be undertaken by the out-of-state lawyer in connection with a potential proceeding in which the lawyer reasonably expects to be admitted pro hac vice, even if ultimately no proceeding is filed or if pro hac vice admission is denied.

FEB 9 3 45 PM '04

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SUPREME COURT OF GUAM

RE:) PROMULGATION ORDER NO.: 04-01
AMENDMENTS TO THE)
SUPREME COURT OF GUAM)
RULES GOVERNING)
ADMISSION TO THE)
PRACTICE OF LAW)

On September 29, 2003, the matter of amendments to the Supreme Court of Guam Rules Governing Admission to the Practice of Law came before the Supreme Court for action.

Prior to that, in October of 2002, the Supreme Court formed the Subcommittee on Multi-jurisdictional Practice to review the recommendations of the 2002 American Bar Association Commission on Multijurisdictional Practice on rules which address the growing needs of clients for legal assistance in business transactions in multiple jurisdictions due to the globalization of business and finance.

The Subcommittee solicited comments from the membership of the Guam Bar Association and received no responses. On February 18, 2003, the Subcommittee submitted its report recommending the adoption of the 2002 ABA Model Rule on *Pro Hac Vice* Admissions and the 2002 ABA Model Rule for Temporary Practice by Foreign Lawyers.

Upon the recommendation of the Subcommittee on Multi-jurisdictional Practice, and under the authority granted by the Organic Act of Guam at 48 U.S.C. § 1424-1(c) and by 7 GCA § 9101, the Supreme Court, on September 29, 2003, adopted:

1. the 2002 ABA Model Rule on *Pro Hac Vice* Admissions, as modified herein, to replace the current *pro hac vice* rule, Part F of the Supreme Court of Guam Rules Governing Admission to the Practice of Law; and
2. the 2002 ABA Model Rule on Temporary Practice by Foreign Lawyers, to form Part H of the Supreme Court of Guam Rules Governing Admission to the Practice of Law.

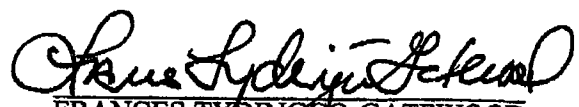
20040400

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

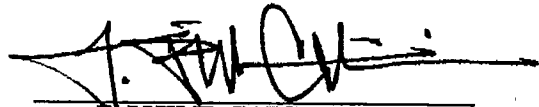
These new rules are attached hereto, marked Exhibit "A" and incorporated herein by reference. The new rules were effective as of the date of adoption on September 29, 2003.

SO ORDERED, this 9th day of February, 2004.

BENJAMIN J.F. CRUZ
Justice Pro Tempore¹



FRANCES TYDINGCO-GATEWOOD
Associate Justice



P. PHILIP CARBULLIDO
Chief Justice

I do hereby certify that the foregoing is a full true and correct copy of the original on file in the office of the clerk of the Supreme Court of Guam Dated at Hagatna, Guam

FEB 09 2004



Imelda B. Duenas
Deputy Clerk, Supreme Court of Guam

¹ Retired Chief Justice Benjamin J.F. Cruz was appointed Justice Pro Tempore for this matter on August 26, 2003. Subsequent to the September 29, 2003 action of the panel, Justice Cruz became ineligible to sit as a Justice Pro Tempore.

**SUPREME COURT OF GUAM
RULES GOVERNING ADMISSION
TO THE PRACTICE OF LAW**

**Part H
TEMPORARY PRACTICE BY FOREIGN LAWYERS**

(1) A lawyer who is admitted only in a non-United States jurisdiction shall not, except as authorized by this Rule or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law, or hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. Such a lawyer does not engage in the unauthorized practice of law in this jurisdiction when on a temporary basis the lawyer performs services in this jurisdiction that:

(a) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(b) are in or reasonably related to a pending or potential proceeding before a tribunal held or to be held in a jurisdiction outside the United States if the lawyer, or a person the lawyer is assisting, is authorized by law or by order of the tribunal to appear in such proceeding or reasonably expects to be so authorized;

(c) are in or reasonably related to a pending or potential arbitration, mediation or other alternative dispute resolution proceeding held or to be held in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice;

(d) are not within paragraphs (b) or (c) and

(i) are performed for a client who resides or has an office in a jurisdiction in which the lawyer is authorized to practice to the extent of that authorization; or

(ii) arise out of or are reasonably related to a matter that has a substantial connection to a jurisdiction in which the lawyer is authorized to practice to the extent of that authorization.

(e) are governed primarily by international law or the law of a non-United States jurisdiction.

(2) For purposes of this grant of authority, the lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation and discipline by a duly constituted professional body or a public authority.

3

APR 4 3 36 PM '00

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:

20050903

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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

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

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

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

RULE 3. Status Conference Statement

In the Pilot Program, the parties shall serve and file an early mediation status conference statement within fifteen (15) days of filing the answer. This status conference statement shall include a 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 4th day of April, 2005.

15

16

Robert J. Torres

Frances Tydingco-Gatewood

17

ROBERT J. TORRES
Associate Justice

FRANCES M. TYDINGCO-GATEWOOD
Associate Justice

18

19

20

F. Philip Carbullido

F. PHILIP CARBULLIDO
Chief Justice

21

22

23

24

25

26

27

28

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.

IN THE SUPREME COURT OF GUAM

FILED

Supreme Court Case No. PRM06-005 2006 JUL 20 AM 11: 27

RE:)
)
ADOPTION OF THE INTERIM)
RULES FOR MEDIATION)
PILOT PROGRAM FOR)
CIVIL ACTIONS IN THE)
SUPERIOR COURT OF GUAM)
_____)

SUPREME COURT
OF GUAM
PROMULGATION ORDER NO. 06-005-01

Pursuant to 48 U.S.C. § 1424-1, Title 7 GCA § 3107 (2005) and Guam Public Laws 27-79 and 27-81, the Supreme Court of Guam hereby establishes the Mediation Pilot Program for Civil Actions in the Superior Court of Guam. The Court further adopts and promulgates the following *Interim Rules for the Mediation Pilot Program for Civil Actions* as Rule 16 of the Rules of the Superior Court of Guam. These Rules are effective July 19, 2006 and shall remain in effect for a period of six (6) months, unless otherwise ordered by this Court. A draft version of these Rules and notice of a June 7, 2006 Public Forum regarding the draft Rules were provided to the members of the Guam Bar Association through its President on May 25, 2006 for comments. Timely comments were duly considered and further revisions were made to the draft Rules.

RULE 16. INTERIM RULES FOR THE MEDIATION PILOT PROGRAM FOR SUPERIOR COURT OF GUAM CIVIL ACTIONS

Rule 16.1 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 Alternative Assignment Judge of the Civil Pilot Program.

20061257

ORIGINAL

**Supreme Court Case No. PRM 06-005
Promulgation Order No. 06-005-01
Interim Rules for the Mediation Pilot
Program for Civil Actions
Page 2 of 15**

- (b) The Assignment Judge and Alternative 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 16.2 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 16.3 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 for further consideration. The Assignment Judge shall request the assistance of the Alternative Assignment Judge if necessary.
- (b) The Assignment Judge shall review all civil files forwarded by the other judges as well as the civil files assigned to him or her, with the assistance of the Alternative Assignment Judge, as needed, and shall make a further preliminary determination of which civil actions are 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 Civil Pilot Program by the Assignment Judge or Alternative Assignment Judge and an order shall issue indicating that the case has been preliminarily selected for inclusion in the Civil Pilot Program.

**Supreme Court Case No. PRM 06-005
Promulgation Order No. 06-005-01
Interim Rules for the Mediation Pilot
Program for Civil Actions
Page 3 of 15**

- (c) Parties who are preliminarily referred to the Civil Pilot Program shall serve and file an early mediation Status Conference Statement with the Superior Court of Guam within fifteen (15) days of the filing of 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. If a party believes a case should be removed from the Civil Pilot Program, they shall include in the Status Conference Statement an express Request to Remove which shall include a summary of the facts which support their contentions. The Assignment Judge who preliminarily referred a case to the Civil Pilot Program shall make all final determinations regarding such referral and may hold a conference on the issue of the referral at his or her discretion.

Rule 16.4 Referral for Mediation

- (a) Within fifteen (15) days of the deadline for the parties to file the Status Conference Statements required by these Rules, the Assignment Judge or Alternate Assignment Judge shall issue an order either referring the case to mediation or stating that the case is not appropriate for mediation and referring it back to the assigned judge. An order referring a case to mediation shall do so 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) If an order refers a case to mediation, the order shall include contact information for the parties as well as the name, address and telephone number of the mediation organization designated by the court. Further, the order may include the date and time of the first mediation conference and may stay the Superior Court case pursuant to Rule 16.6. 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 16.8 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,

**Supreme Court Case No. PRM 06-005
Promulgation Order No. 06-005-01
Interim Rules for the Mediation Pilot
Program for Civil Actions
Page 4 of 15**

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 16.5 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, in accordance with program guidelines, 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. For purposes of this rule, good faith requires, but is not necessarily limited to, the following:

- (1) Personal appearance by the parties, unless excused by the mediator;
- (2) Appearance by counsel, if the party(s) is/are represented;
- (3) Preparation by participants for the mediation, and willingness to listen to and consider statements of other participants and the mediator;
- (4) Ability to articulate the basis for an unwillingness to change position during the mediation;
- (5) Compliance with the format set out by the mediator; and
- (6) Compliance with the procedures set forth in the Supreme Court of Guam's Interim Pilot Program Rules and any court orders relating to the mediation.

Rule 16.6 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 16.7 Conduct of Mediation Proceedings

- (a) 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.
- (b) 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.
- (c) 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.

Rule 16.8 Filing of Statement by Mediator

- (a) Within ten (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.

**Supreme Court Case No. PRM 06-005
Promulgation Order No. 06-005-01
Interim Rules for the Mediation Pilot
Program for Civil Actions
Page 6 of 15**

- (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 16.9 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 16.10 Qualifications of Mediator

The Chief Justice of the Supreme Court shall approve all mediators who are contracted by service providers to perform mediation services pursuant to service provider agreements. The Supreme Court may establish additional qualifications required for a mediator, including training and experience requirements, from time-to-time during the Civil Pilot Program as it deems necessary and appropriate.

Rule 16.11 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 16.12 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

Supreme Court Case No. PRM 06-005
Promulgation Order No. 06-005-01
Interim Rules for the Mediation Pilot
Program for Civil Actions
Page 7 of 15

result, upon motion or application, in an order by the court to pay and imposing appropriate sanctions.

Rule 16.13. 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.

SO ORDERED, effective the 19th day of July, 2006.



ROBERT J. TORRES

Associate Justice



FRANCES TYDINGCO-GATEWOOD

Associate Justice



F. PHILIP CARBULLIDO

Chief Justice

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

**Supreme Court Case No. PRM 06-005
Promulgation Order No. 06-005-01
Interim Rules for the Mediation Pilot
Program for Civil Actions
Page 10 of 15**

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.

<i>AMOUNT OF CLAIM</i>	<i>FEE</i>
\$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

INAFI' MAOLEK FEE SCHEDULE

The following fees apply to any mediation services conducted by or at Inafa' Maolek during the Mediation Pilot Program for Civil Actions. All amounts are in U.S. dollars.

1. Mediator Fee:
 - a. For cases involving less than \$25,000: Each disputant shall pay \$100 per session.
 - b. For cases involving \$25,000 to \$50,000: Each disputant shall pay \$125 per session.
 - * For purposes of this fee schedule, a "mediation session" is defined as time spent by a mediator together with the parties, up to a maximum of three hours, attempting to resolve the case.

2. Administrative Fees:

Requested services such as transcription, translation or reproduction may be obtained by Inafa' Maolek for the parties but the costs for such services will be the separate responsibility of the parties.

4



RECEIVED

OCT 11 2004

SECRETARY OF THE GOVERNMENT

OFFICE OF THE GOVERNOR
HAGATÑA, GUAM 96910
U.S.A.

EXECUTIVE ORDER NO. 2004-22

RELATIVE TO INTEGRATING DISPUTE
RESOLUTION CLAUSES INTO CONTRACTS
ENTERED INTO BY GOVERNMENT OF GUAM
AGENCIES, DEPARTMENTS, PUBLIC
CORPORATIONS AND INSTRUMENTALITIES

WHEREAS, traditional adjudicatory processes have become increasingly costly, time consuming and contentious; and

WHEREAS, alternative dispute resolution offers a means of resolving disputes more quickly, less expensively, and with more satisfying results; and

WHEREAS, Alternative Dispute Resolution ("ADR") has been used with great success in both the public and private sectors throughout the United States and has seen increased use by state secretariats, departments and agencies; and


WHEREAS, *I Maga'låhen Guåhan* is committed to ensuring that government of Guam agencies, departments, public corporations and instrumentalities utilize more efficient and less expensive dispute resolution mechanisms such as arbitration and mediation than traditional court administered litigation; and

WHEREAS, with *I Maga'låhen Guåhan* signing into law Public Law 27-81, the Guam International Arbitration Law serves to provide a quicker, less expensive and potentially more satisfying alternatives to continuing litigation without impairing the quality of justice or the right to trial.


NOW, THEREFORE, I, FELIX P. CAMACHO, *I Maga'låhen Guåhan*, Governor of Guam, by virtue of the authority vested in me by the Organic Act of Guam, as amended, and the laws of Guam, do hereby encourage Government of Guam agencies, departments, public corporations and instrumentalities to allow, upon agreement and after all sovereign, discretionary, and qualified immunity issues are resolved, the inclusion and use of mediation and arbitration clauses into contracts entered into by these entities as appropriate.

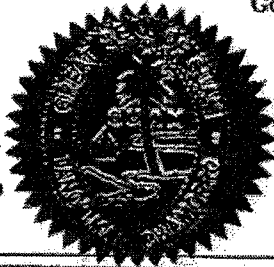
BE IT FURTHER ORDERED that this order shall be in effect until altered or amended by the Governor of Guam in subsequent Executive Orders on this subject.

SIGNED AND PROMULGATED at Hagatña, Guam, this 14 day of September, 2004.


FELIX P. CAMACHO
I Maga'låhen Guåhan
Governor of Guam

COUNTERSIGNED:


KALEO S. MOYLAN
I Segundo Maga'låhen Guåhan
Lieutenant Governor



5

CRIMINAL, CIVIL AND BANKRUPTCY FILINGS

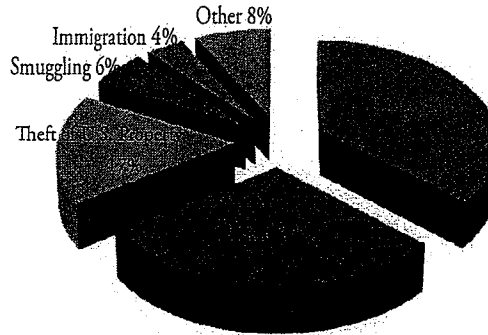
Criminal Defendant Case Filings* 12-month Period Ending September 30

Year	# Defendants
2008	106
2009	98
2010	101

* includes magistrate case defendants

The total number of criminal defendant cases has held steady for the last few years, although the Court has seen a drop in felony filings and an increase in the number of Class A Misdemeanor filings.

Criminal Felony Filings 12-month Period Ending September 30



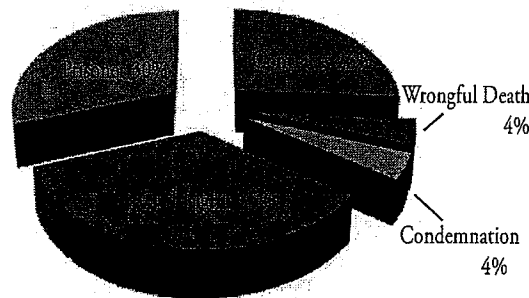
While drug and theft of government property offenses remain a significant part of the Court's caseload, the Court has seen a decrease in immigration and firearms offenses since 2009.

Civil Case Filings 12-month Period Ending September 30

Year	# Cases
2008	22
2009	35
2010	28

Civil Case filings have not changed significantly since 2009, but remain low.

Civil Cases Filed 12-month Period Ending September 30



The Court has seen few personal injury cases since 2009, but an increase in civil rights cases.

Magistrate Felony Proceedings 12-month Period Ending September 30

Year	Total	Arrest Warrants	Initial Appearances	Arraignments	Detention/Bail Hearings	Felony Guilty Pleas	Supervised Release Revocation Hearings
2008	326	98	98	68	10	46	6
2009	192	36	79	37	7	33	0
2010	151	21	73	31	5	20	1

The slight decrease in felony proceedings handled by the magistrate judge matches the decrease in felony filings that the Court has experienced over the last several years.

Other Criminal Magistrate Work
12-month Period Ending September 30

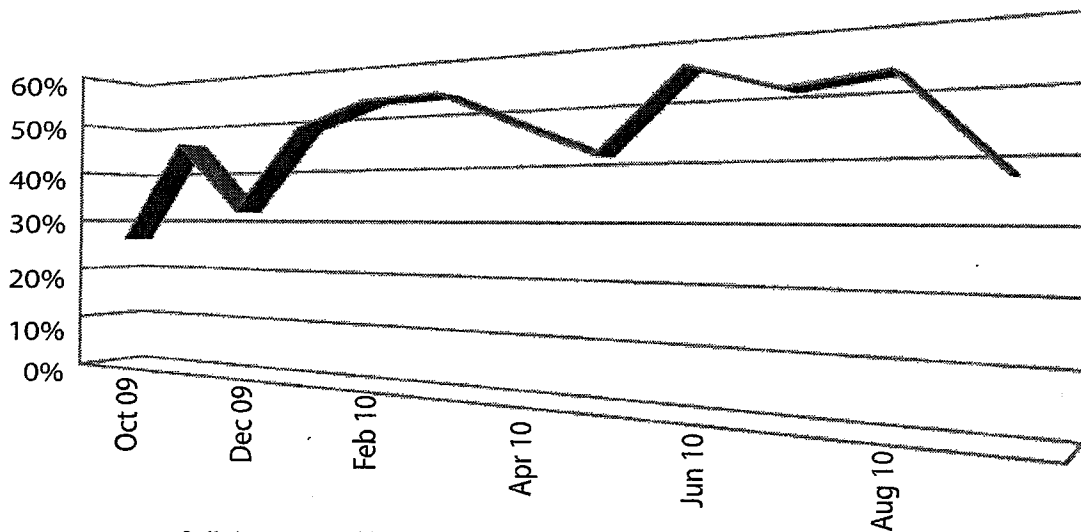
Non-CVB Petty Offenses Disposed	Class A Misdemeanors Disposed	Initial Appearances	Jury Trials	Sentencings
3	31	115	3	21

Bankruptcy Case Filings
12-month Period Ending September 30

Year	Chapter 7	Chapter 11	Chapter 13
2008	107	0	21
2009	185	2	22
2010	173	1	33

Chapter 7 filings for 2010 have generally kept pace with 2009 filings, but we have seen a 50% increase in Chapter 13 filings.

Electronically Filed Documents
(Percent filed electronically)*
12-month Period ending September 30



*% of all documents filed, except orders, minutes, and staff entries

The average rate of electronic filing of eligible documents for the 12-month period ending September 30 was 44.8%, up from 24.2% for the previous 12 months.

6

GUAM

Political Relationship to US and Micronesia:

- Unincorporated territory, subject to plenary control by US Congress
- Regional hub to Micronesia
- Close Collaboration with Pacific-Area Courts: Pacific Judicial Counsel
- Closest U.S. jurisdiction to Asia
- Currently commencing largest peacetime military in history

Size:

- 30 miles (48 km) long and 4 mi (6 km) to 12 mi (19 km) wide

Annual Budget:*

- General Fund Revenues: \$600,811,600
 - Federal Grants: \$ 291,433,708
 - Estimated Deficit: (\$228,511,403)
- Population
- 207,473 (2010)**
 - resident, military/buildup support populations
 - 240,395 (Est. 2015)**
 - resident, military/buildup support populations
 - Over 1 million tourists/year

*<http://bbmr.guam.gov/FY%202011%20Executive%20Budget%20Request.pdf>

** NCSC Final Report: Judiciary of Guam Facilities Master Plan at 10 (Dec. 2009).