

Resolution No. 02-04

Proposed Implementing Rules and Regulations on Mediation in the Trial Courts and Revised Guidelines for the Payment of Mediation Fees to Mediators and Daily Supervisors, to wit:

IMPLEMENTING RULES AND REGULATIONS ON MEDIATION IN THE TRIAL COURTS

WHEREAS, on October 16, 2001, the Supreme Court issued an en banc Resolution A.M. No. 01-10-5-SC PHILJA, covering the following:

1. Administrative Order establishing the Philippine Mediation Center (PMC);
2. Second Revised Guidelines for the Implementation of Mediation Proceedings;
3. Code of Ethical Standards for Mediators;
4. Standards and Procedure for Accreditation of Mediators for court-referred court related mediation cases.
5. Compensation Guidelines for Mediators and Supervisors;
6. Memorandum of Agreement with the Philippine Mediation Foundation Inc. (PMFI).

WHEREAS, in the aforementioned Resolution, the Philippine Judicial Academy (PHILJA) was designated by the Court as its component unit for court-referred, court-related mediation cases and other alternative dispute resolution mechanisms;

WHEREAS, pursuant to the aforementioned designation, PHILJA shall direct and manage the PMC and implement procedures for its operation;

WHEREAS, on May 1, 2002, a Contract of Services was signed between PHILJA and PMFI relative to the administrative supervision of Supervisors and Mediators in the Metro Manila area;

WHEREAS, on April 24, 2002, Chief Justice Hilario G. Davide, Jr., in Administrative Circular (AC) No. 20-2002, directed PHILJA to formulate and issue implementing rules and regulations for the proper implementation of court-referred mediation;

WHEREFORE, in view of the foregoing, the following Implementing Rules and Regulations are hereby promulgated to govern the operation of the PMC.

I. MEDIATION PROCESS (refer to the attached flowchart)

II. ROLES AND FUNCTIONS

A. The Court Administrator

1. Monitors and ensures that the inventory and referral of cases for mediation are properly observed and undertaken.
2. Requires monthly reports from judges on number of cases referred to the PMC Unit for mediation and how many cases were settled through mediation.

B. Executive Judges

1. Direct and periodically remind the judges within the jurisdiction where PMC units are organized and existing, to refer cases to mediation pursuant to the Second Revised Guidelines for the Implementation of Mediation Proceedings and AC No. 20-2002;
2. Assist in providing a permanent mediation office/space, to house the PMC Units within their respective jurisdictions;
3. Arrange with local governments to provide typewriter/computer and/or fax machine, including basic equipment and furniture for PMC Units;
4. Encourage the Judges and Court Personnel, before whose court the case subject of mediation is pending, to extend to the Mediator, every possible support and assistance.
5. Designate a Clerk-in-Charge, in consultation with PHILJA and the Office of Court Administrator (OCA), for the PMC Unit.
6. Direct the Clerk of Court to collect and deposit Mediation Fees pursuant to the procedures prescribed in the Compensation Guidelines for Mediators and Supervisors and these rules.
7. Direct the Clerk-in-Charge to submit a monthly mediation report of all the cases referred to Mediation duly noted by the Executive Judge to the Mediation Division of PHILJA furnishing a copy thereof to the OCA and the PMC unit.
8. Ensure the proper implementation of approved mediation structure, procedures, and guidelines in their respective areas, so as to institutionalize mediation in the Philippines.

C. Presiding Judge/Trial Court

1. Extend to the Mediator, as an officer of the court, every possible support and assistance during Mediation proceedings.
2. Direct the Branch Clerk of Court to conduct a MONTHLY INVENTORY OF MEDIATABLE CASES for submission to OCA and PHILJA at least one week before actual referral to PMC Unit for mediation.
3. Issue an Order referring the case/s identified in number 2 above to the PMC Unit for mediation without prejudice to cases which are referred by the Judge during pre-trial.
4. Confirm the selection/appointment of the Mediator.
5. Impose the appropriate sanction, including but not limited to censure, reprimand, contempt, payment of costs and fees assessed against the absent party to the attending party and counsel, and such sanctions as are provided under the Rules of Court for failure to appear for pre-trial, in case any or both of the parties absent themselves, or for abusive conduct during mediation proceedings.
6. Ensure the successful implementation of mediation, as one of the key modes of Alternative Dispute Resolution (ADR) and thereby reduce docket congestion.

D. Clerk-of-Court

1. The Clerk-of Court shall ensure the proper collection, deposit and payment/withdrawal to and from the PMC Trust Funds and render the proper report thereon pursuant to the approved Compensation Guidelines and these rules.
2. Coordinate with PMC Coordinator for the set-up and maintenance of PMC Units.

E. Branch Clerk-of Court

1. For pending cases, conduct a MONTHLY INVENTORY OF MEDIATABLE CASES for submission to OCA and PHILJA. Henceforth, the petitioner or appellant shall specify – by writing or by stamping on the right side of the caption of the initial pleading (under the case number) that the case is mediatable.
2. Ensure the regular referral of cases for mediation to the PMC Unit.
3. Provide a copy of the daily calendar of cases for pre-trial to the PMC Unit.

F. Clerk-in-Charge

1. Liaise between the Trial Courts and Mediators and Supervisors in the PMC Unit.
2. Ensure that cases referred by the Trial Court for mediation were actually received by the PMC unit and acted upon.
3. Submit a MONTHLY MEDIATION REPORT OF ALL THE CASES REFERRED TO MEDIATION duly noted by the Executive Judge to the Mediation Division of PHILJA furnishing a copy thereof to the OCA and the PMC Unit.

G. PMC Unit Coordinator

1. Act as the de facto Officer-in-Charge of their respective PMC Unit.
2. Monitor the referral of cases from the courts.
3. Ensure that the Daily Supervisors and Mediators are always available in the PMC Unit where they volunteered to mediate. Maintain an up-to-date list of Mediators and Daily Supervisors serving in the PMC Unit.
4. Reminds the Mediators at every opportunity about their specific responsibilities as provided for in the Code of Ethical Standards for Mediators.
5. Report as soon as possible to PHILJA and the Executive Director of the PMFI (or the designated individual/head of the organization enlisted by PHILJA to give technical and management assistance) any wrongdoing by any of the mediators under their supervision and/or any fortuitous event in the PMC Unit.
6. Collate and submit to the trial court which referred the case to mediation, the Mediator's Report at the end of the mediation period. A copy shall be retained for the file of the PMC Unit.
7. Assist the PMFI Executive Director (or the designated individual/head of the organization enlisted by the PHILJA to give technical and management assistance) in the performance of his responsibilities particularly in monitoring and supervising Mediators in their work in developing systems and programs for the selection, monitoring and periodic evaluation of mediators as a whole, including the preparation of reports required by PHILJA and the OCA.

8. Submit to the Mediation Division of the Judicial Reforms Office, PHILJA and the PMFI Executive Director (or the designated individual/head of the organization enlisted by the PHILJA to give technical and management assistance) a MONTHLY REPORT OF THE PMC UNIT'S ACTIVITIES AND OPERATIONS, duly noted by the Executive Judge, furnishing a copy thereof to the OCA on or before the 10th day of the next month.

H. Daily Supervisor

1. Perform specific roles and responsibilities pertaining to the Mediation process as described in the Mediation Process Flowchart.
2. Ensure with the assistance of parties' counsel, that the draft Compromise Agreements are not contrary to law, morals, good customs, public policy and public order and, otherwise, to see to it that it is in accordance with the guidelines laid down by PHILJA.
3. Review Mediator's Report, before parties are requested to affix their signature therein, to ensure that the guidelines laid down by PHILJA have been complied with.

I. Mediator

1. Deemed an Officer of the Court when performing his functions and whose appointment/selection has been confirmed by the Court.
2. Performs specific roles and responsibilities pertaining to the Mediation process as described in the Mediation Process Flowchart.
3. Prepares a MEDIATOR'S REPORT, to include whether one or both of the parties and/or counsel was absent to enable the court to determine the imposition of the proper sanctions.
4. Conducts the mediation proceedings with utmost degree of professionalism and dedication.
5. Abides by the Code of Ethical Standards for Mediators.
6. Respects the relationship between Mediators and other professional disciplines including law, medicine, science, accounting, mental health and social services and shall promote harmony and cooperation between Mediators and other professionals.
7. In cases of voluntary withdrawal as a Mediator, requests PHILJA, in writing for the cancellation of his/her accreditation. Upon confirmation of the cancellation of accreditation, the Mediator shall

immediately surrender his/her identification card and shall be dropped from the list of Accredited Mediators.

8. Submits at the end of each month, to the PMC Unit Coordinator a monthly status report of all the cases handled.

III. REFERRAL OF CASES FOR MEDIATION

- A. Where the parties expressed their desire to undergo mediation, but are not willing to pay the fees and they are not indigent litigants qualified for pro bono services, it should be construed as refusal to mediate.
- B. Only cases included in the MONTHLY INVENTORY OF MEDIATABLE CASES prepared and submitted by the Branch Clerk of Court will be scheduled for mediation, except upon appearance of the parties during pre-trial in cases covered by mediation, where the Judge immediately orders the parties to appear before the PMC Unit.
- C. If the parties cannot agree on a Mediator, the Daily Supervisor shall assign the Mediator. Unless the parties choose and agree on a particular mediator, for a fair and equal distribution of cases, the Daily Supervisor shall assign a number to the Mediators in the order in which they arrive in the PMC Unit. Their names and numbers shall be posted daily. The Mediator who first arrived will be assigned to handle the first case. Before a case will be referred back to the first Mediator, the Daily Supervisor must see to it that the cycle of assignment is completed, that is, all mediators present for the day have already handled a case regardless of their outcome.

The Unit Coordinator/ Daily Supervisor/ Mediators, in the interest of equity and fairness, may agree on a more appropriate process of distributing cases, depending on the circumstances, with the approval of PHILJA, upon recommendation of PMFI or the organization enlisted by PHILJA to give technical and management assistance.

- D. Priority shall be given to those Mediators assigned in the particular PMC Unit. On-call Mediators must leave their contact numbers with the Daily Supervisor for urgent coordination. In the case of mediators who serve in different areas, a specific day must be designated for each area with the approval of PHILJA to give technical and management assistance.
- E. A mediator must inform his/her Daily Supervisor of the schedule for the day. If a Mediator has a case which was reset on that day, the same must be made known to the Daily Supervisor so that it can be considered in the assignment of cases.

- F. Upon assignment of a Mediator to handle a case, the Mediator shall immediately proceed with the mediation proceedings. Cases that have to be reset shall be scheduled, if possible, within the next five working days as agreed by the Mediator and the parties. The status of the case shall be reported to the trial court upon its settlement, or upon request of the Presiding Judge; or in case of the expiration of 30 days and no settlement has been reached.
- G. In no case shall a Daily Supervisor assign a case to himself. This is, however, without prejudice to the freedom of the parties to choose their preferred Mediator. In a situation where there are more cases than Mediators could handle, the Daily Supervisor should reschedule the other cases on the date agreed by the parties, except that if the parties are not amenable to reschedule their mediation hearing, the Daily Supervisor may call the other Mediators who have signified to be “on-call” for the day.

If the assigned Mediator will not be able to attend a reset case due to unavoidable circumstances, he/she must coordinate with the Daily Supervisor and should get the consent of the parties before assigning the case to a new Mediator.

- H. There should be no co-mediation except when the assigned Mediator asks for assistance from another Mediator. In such case, the parties must be informed about the co-Mediator and must agree to such. In addition, the name of the co-Mediator must be submitted to the trial court for confirmation.
- I. Mediation shall proceed on the date and time agreed upon without the need of further notice. If the parties do not appear on the time agreed upon, the concerned Mediator must report the matter to the trial court concerned for proper action.

IV. MEDIATOR’S CONDUCT

- A. Only Mediators, whose accreditation is valid and effective, may mediate cases referred by the Court.
- B. The Mediator’s Identification (ID) card must be worn in the PMC Unit at all times. Said ID shall also be used during mediation of cases referred by the Court.
- C. All Mediators must wear proper attire as Officers of the Court.
- D. The Daily Supervisors and Mediators assigned for the day must arrive on time in their respective PMC Unit. In case a Daily Supervisor will not be available on the day of his/her assignment, he/she must report the matter at least a day in advance to the PMC Unit Coordinator. If a Mediator

assigned on a particular day is not available, it shall be his/her duty to inform the Daily Supervisor.

- E. So as to avoid any conflict of interest or appearance of conflict of interest, a Mediator, who is also a practicing lawyer with pending case/s in a particular court cannot be assigned to mediate cases pending before that court until all of the said case/s have been terminated. In family cases, the Court may assign a duly accredited Social Worker or Branch Clerk of Court as the Mediator.
- F. In the same manner, a Mediator who is also a court personnel in a particular court can neither be assigned to mediate cases pending in such court. In such cases, it is the duty of the Mediator to inform the Daily Supervisor and/or unit Coordinator about the situation to avoid any perception of conflict of interest.
- G. In no particular case and/or circumstance can a Mediator go directly to the Trial Court or the Branch Clerk of Court to solicit cases to be mediated.
- H. In case a mediator is also a practicing private mediator, in no case shall mediation proceedings for private mediation be done inside the PMC unit or in any other area within the premises of the courthouses. As Accredited Mediators for court-annexed mediation cases, it is his/her primary duty to give priority to court-annexed cases, and to ensure that there should be no conflict between his duty as an accredited court-annexed mediator and as a private mediator. In no case shall there be private mediation for cases already filed in court.
- I. In no case shall a Mediator use the logo of the Supreme Court-PHILJA-PMC in any letterhead or business card. The ID card issued by PHILJA is (enough representation) to be used by Mediators for court-annexed mediation cases only.
- J. All Supervisors and Mediators must attend all meetings called for by the PMC and perform such other duties and functions as may be necessary.
- K. Teamwork and mutual respect among the PMC Unit Coordinator, Daily supervisors, mediators, Clerks-in-Charge as well as other court personnel must be observed at all times.

V. GRIEVANCE MACHINERY

- A. A Grievance Committee, composed of three (3) members, shall be constituted by the Chancellor. The head and members of the Grievance Committee shall be appointed by the PHILJA Chancellor, to serve for a term of six (6) months. The Committee shall be headed by a member of

the PHILJA ADR Subcommittee and its members shall be a Supervisor and a Mediator.

- B. All Supervisors and Mediators shall conduct themselves properly at all times.
- C. Any report/complaint against or incident involving any Supervisor or Mediator must be made known in writing to the PHILJA-PMC and to the designated individual/head of the organization enlisted by the PHILJA to give technical and management assistance. Any mediator or Supervisor who is aggrieved by any action of PHILJA or its designee may also file a written petition with the Grievance Committee for relief.
- D. If the complaint or petition is found prima facie meritorious, the PHILJA Chancellor shall direct the Grievance Committee to conduct an investigation and to submit a report, which shall include its findings and recommendations within thirty (30) days from receipt of the directive. Due process must be afforded the Supervisor/Mediator concerned.
- E. PHILJA shall review the report submitted by the Committee. Unless the sanction is a cancellation of accreditation or non-renewal thereof with respect to mediators, or removal from office of a supervisor – which shall be referred for appropriate action to the Supreme Court, the decision of the PHILJA Chancellor shall be final.
- F. During the period of investigation, the Mediator concerned shall be placed on preventive suspension. Upon the expiration of the thirty (30) day period, the Mediator shall be automatically reinstated even if the investigation has not yet been conducted.
- G. If the recommendation is for the dismissal of the complaint, the Mediator concerned shall immediately be reinstated without a gap in his service for accreditation purposes. However, if the recommendation is for the cancellation of the accreditation or non-renewal thereof, the suspension of the Mediator stays until the cancellation of the accreditation or non-renewal becomes effective upon resolution of the Supreme Court.
- H. The Supreme Court has the discretion to impose (additional) appropriate penalties for the erring Mediator depending on the severity of the action.

VI. COLLECTION AND PAYMENT OF MEDIATION FEES

- A. The Clerks of Court, Officers-in-Charge of the Office of the Clerk of Court, or their accountable duty authorized representative designated by them in writing, shall receive the PMC collections, issue proper receipts therefore, maintain two (2) separate cash books properly marked Cash Book for PHILJA-PMC Fund (75%) and Cash Book for PHILJA-PMC Fund (25%),

deposit such collections in the manner to be prescribed for the purpose and render the proper MONTHLY REPORT OF COLLECTIONS, DEPOSITS AND WITHDRAWALS for the said Fund. Auditing for the said Fund shall be made by the Fiscal Monitoring Division of the OCA.

- B. The PMC General Trust Fund/SC-PHILJA-PMC Fund under LBP Acct. No. 0592-1055-60 shall be the depository account for the 25% share allocated for the PMC operational expenses authorized under the approved Compensation Guidelines by the Supreme Court. PHILJA shall manage the said Fund. In addition, the Executive Judge and Clerk of Court shall open a Savings Account with the nearest Land Bank of the Philippines in their area, which is an authorized depository bank under the account name RTC-PHILJA-PMC Trust Fund. The signatories of the account would be the depository account for the 75% share allocated for the Mediators and Supervisors. PHILJA through a Memorandum of Agreement with Land Bank shall make arrangements for proper implementation of the procedure prescribed in these rules.
- C. Upon receipt of payment, the Clerk of Court or Officers-in-Charge of the Office of the Clerk of Court shall issue separate receipt for the 25% and 75% mediation fee, respectively, and shall immediately deposit said amount separately. The 25% shall be deposited to the PMC General Trust Fund/SC-PHILJA-PMC Fund under LBP Acct. No. 0592-1055-60 while the 75% shall be deposited to the Savings Account opened by the Executive Judge and Clerk of Court of their respective station as mentioned in the preceding section.
- D. At the end of each month, the Unit Coordinator shall compute the amounts due to each Daily Supervisor and Mediators. Proper voucher and payroll shall be prepared and submitted to the Clerk of Court for his/her approval and notation of the Executive Judge.
- E. Upon submission, an Authorization to Withdraw shall be issued and signed by the Executive Judge and Clerk of Court, and submit the same to the Land Bank. Thereafter, the Daily Supervisors and Mediators can directly withdraw the amounts due them for the month upon presentation of the SC-PHILJA Mediators Identification Card.
- F. Upon receipt of their payment, the Daily Supervisors and Mediators must sign the PAYROLL REPORT prepared by the PMC Unit Supervisor. The Unit Supervisor shall submit the completed payroll to the Clerk of Court for proper reporting.
- G. The Clerk of Court shall transfer the Interest earned net of tax of the Savings Account/RTC-PHILJA-PMC Fund to the PMC General Trust Fund every year.

- H. A separate set of Official Receipts issued for the fund shall invariably indicate the prefix initial of the name of the Fund "PMC" followed immediately by the description of the kind and nature of the collection, including the name of the assigned Mediator and Case No. if it refers to Mediation Fee. There shall be one type of receipt for the 25% and another one for the 75%.

Official Receipts for the fund shall be provided by the Property Office of OCA. Should Official Receipts be not immediately available, the Official Receipts which were previously requisitioned and issued may be used provided that they are properly marked "Philippine Mediation Center Fund".

If the OFFICIAL CASH BOOKS are unavailable, the ordinary Record Book (7" x 12") may be used for the purpose, provided that the same shall be marked "CASH BOOK FOR THE PHILIPPINE MEDIATION CENTER FUND".

- I. The Clerk of Court shall prepare six (6) copies each of the separate MONTHLY REPORT OF COLLECTIONS, DEPOSITS AND WITHDRAWALS for both PMC Funds. The original copy thereof together with the PMC Unit Supervisor's PAYROLL REPORT shall be submitted within ten (10) days after the end of every month to the PHILJA Finance Division. Copies shall be given to the : (1) Accounting Division, OCA; (2) the Fiscal Monitoring Division, OCA; (3) the Chief Accountant of the Supreme Court; and (4) the PMC Unit in their area. The Clerk of Court shall retain the last copy for their file.

The aggregate amount of the Deposit Slips for any particular month should always equal to, and tally with the collections for that month as reflected in the Monthly Report of Collections.

If no collection is made during the month, notice to that effect should be submitted to the Chief Accountant of the OCA, copy furnished the PHILJA Finance Division, within ten (10) days after the end of every month.

- J. Mediation fees are separate from the filing fees. Mediation Fees should be based on the filing fee of the case on the year it was docketed. In cases where only a particular issue in a case is referred for mediation, mediation fee should be based on the filing fee of the original case. Where there is consolidation of cases, mediation fees should be based on the consolidated amount. In case of quasi-offenses under Title 14 and there is no filing fee, the mediation fee should be the minimum flat rate depending on the level of Mediators as stated in the Compensation Guidelines.
- K. In no case shall a Mediator or Supervisor accept money for payment of mediation fees from the parties. If the parties request the Mediator or Supervisor to pay for them, said Mediator or Supervisor should request

another person in the unit to accompany the parties to the Office of the Clerk of Court.

- L. The mediator's Fee shall be computed based on the "total collected mediation fees" for settled and back-to-court cases for the month, allocation of which shall be in accordance with the Compensation Guidelines for Mediators and Supervisors.
- M. The total amount of fees that may be allowed for government employees who rendered service as Mediators for a given month shall not exceed 50% of his basic salary.
- N. In case of co-mediation approved by the trial court, both Mediators shall share in the Mediator's fee.
- O. The daily Supervisor for whom cases were referred initially for mediation, shall receive the proportionate share of the mediation fee, regardless of who was the assigned Daily Supervisor at the time of the actual payment was made.
- P. All ordinary and reasonable expenses incurred for the remittance of collections and transmittal of reports for the Philippine Mediation Center Fund shall be reimbursed by the PHILJA, chargeable against the Fund, upon submission of the duly accomplished voucher together with the necessary original receipts and other supporting papers required in audit direct to the Chief of the PHILJA Finance Division.

In no case shall expenses incurred for the PMC Fund be deducted from the collections, which should be remitted in full.

VII. ACCREDITATION OF MEDIATORS

- A. The accreditation of mediators shall be effective for a period of two (2) years. To maintain good standing, the Mediator must attend at least 75% of all activities conducted by the PMC, including but not limited to refresher courses, meetings and other trainings within the two (2) year period. In addition, the Mediator must fulfill his commitment to serve the PMC Unit, continue to be of good moral character, and participate in the annual Settlement Month.

In case the Mediator has other commitments within which he will not be able to comply with any of the aforementioned requirements the concerned Mediators should inform PHILJA-PMC regarding the reasons therefore at least one (1) week before the activity.

- B. For purposes of upgrading the level of Mediators on the next accreditation, each case settled is equivalent to one case. When there is consolidation of

cases by the trial court and the Mediator for all such cases perform only one mediation proceeding, then such consolidated cases settled are considered as only one case.

- C. After the expiration of the Mediator's accreditation, the Mediator's conduct and performance shall be extensively reviewed by his respective PMC Coordinator for recommendation to the Evaluation and Accreditation Committee to determine whether the concerned Mediator can be re-accredited. With respect to the Coordinator, his conduct and performance shall likewise be reviewed by the PHILJA upon consultation with the respective Executive Judge, Clerk of Court and Mediators in the Unit.
- D. Only PHILJA-PMC sponsored or accredited activities will be considered for the determination of official attendance. The training programs of PMFI (or the organization enlisted by PHILJA to give technical and management assistance) may be accredited by PHILJA upon submission of the proposed program before the aforesaid activity and upon submission of a report thirty (30) days after the training. Attendance in any other training aside from those conducted by PMFI (or the organization enlisted by PHILJA to give technical and management assistance) on mediation may be allowed but will not be considered as completion of the requirements for accreditation.
- E. For the purpose of maintaining good standing and complying with the requirement of attending 75% of all activities conducted may be credited provided the Mediators submit the description of the program one (1) month before the said activity for assessment by PHILJA/PMFI (or the organization enlisted by PHILJA to give technical and management assistance). If the program is relevant, attendance of the Mediators in the said activity will be considered. At the end of the program, the Mediator concerned must also submit a brief report and proof of attendance. Upon submission, PHILJA shall issue a confirmation that the program was credited.

VIII. SUBMISSION OF REPORTS

- A. Forms must be properly accomplished and submitted to the proper authorities to facilitate approval of the Compensation Agreement, crediting of cases to the concerned Mediator and Supervisor, and payment of Mediator's fee.
- B. The PMC Unit Coordinator shall consolidate all reports before submission to PHILJA/PMFI (or the organization enlisted by PHILJA to give technical and management assistance). He must see to it that the monthly reports submitted are complete. There must be proper coordination with the Clerk of Court regarding the timely submission of financial reports. It is

advisable that all reports together with the attachments be submitted together, not later than on the 10th day of each month.

FOR STRICT COMPLIANCE.

_____, 2004.

EDUARDO D. DE LOS ANGELES
Chair, ADR Sub-Committee

ALFREDO F. TADIAR PACIFICO A. AGABIN
Member Member

BERNARDO T. PONFERRADA
Head, Judicial Reform Office

ANTONIO M. MARTINEZ
Vice Chancellor

AMEURFINA A. MELENCIO HERRERA
Chancellor

REVISED GUIDELINES FOR THE PAYMENT OF MEDIATION FEE TO THE MEDIATORS AND DAILY SUPERVISORS

All mediation fees shall be deposited in a Supreme Court-PHILJA-PMC Trust Fund. All fees for Mediators, Supervisors and operating expenses shall be paid from the Fund.

The Clerk-of-Court shall submit a MONTHLY REPORT ON THE COLLECTION, DEPOSIT AND WITHDRAWAL to the Finance and Management Division of PHILJA BANK REMITTANCE ADVICE shall also be submitted to support the collections and deposits made per report.

Breakdown of Mediation Fee Sharing:

70%	To the Mediator who mediated the case	To open a Savings Account with nearest Landbank branch under account name RTC-PHILJA-PMC Trust Fund
5%	To the Daily Supervisor	
15%	To Qualified ADR Organization or Individual providing technical assistance to PHILJA or if none, to PMC Trust Fund	To be deposited in Landbank SC-PHILJA-PMC Fund/ LBP#0592-1055-60
10%	To PMC Trust Fund	
100%		

PROCEDURES IN MAKING WITHDRAWALS TO PAY THE MEDIATORS AND DAILY SUPERVISORS:

1. Withdrawal slip shall be signed by the Clerk-of-Court and countersigned by the Executive Judge.
2. No withdrawal shall be allowed unless there is a lawful Court Order to Pay the MEDIATORS and DAILY SUPERVISORS issued by the Executive Judge.
3. There shall be a ready payroll prepared by any court personnel duly designated/authorized by the Clerk-of-Court. The total amount of the payroll, is the only amount to be withdrawn from the Land Bank in your area using the savings account for the 75% of the PMC deposits.

4. Within two (2) weeks after the end of each quarter, all Clerks-of-Court are required to submit to the Chief Financial Officer of PHILJA a quarterly report of the mediation fees, indicating the outstanding balance maintained with the depository bank, and the amount of all deposits and withdrawals made within the period.

Reimbursement of Expenses:

duly accomplished voucher with the necessary receipts and other supporting papers required in audit.

In no case shall expenses incurred be deducted from the collections, which should be remitted in full. All reports and correspondence relative to collections and deposits of the PMC Trust Fund shall be addressed to:

THE CHIEF FINANCIAL AND MANAGEMENT OFFICER
PHILIPPINE JUDICIAL ACADEMY (PHILJA)
SUPREME COURT OF THE PHILIPPINES
MANILA

The Clerks-of-Court, shall exercise close supervision over their respective duly authorized representatives to ensure strict compliance, and shall be held accountable for failure to do so.

_____, 2004.

EDUARDO D. DE LOS ANGELES
Chair, ADR Sub-Committee

ALFREDO F. TADIAR PACIFICO A. AGABIN
Member Member

BERNARDO T. PONFERRADA
Head, Judicial Reform Office

ANTONIO M. MARTINEZ
Vice Chancellor

AMEURFINA A. MELENCIO HERRERA
Chancellor

Proposed Guidelines for Parties' Counsel in Court-Annexed Mediation Cases

TO : ALL MEMBERS OF THE BAR

SUBJECT : GUIDELINES FOR PARTIES' COUNSEL IN COURT-ANNEXED MEDIATION CASES

Re-orientation of Attitudes towards Dispute

Litigation is based on the attitude that disputes involve rights and remedies that are fought through the adversarial system of justice for which lawyers have been specially trained for. When litigation is shifted to mediation, a different attitude is called for that would view the dispute as a problem-solving opportunity for lawyers to assist the parties resolve their differences in ways that are productive for their lives.

Re-orientation of Lawyer's Role in Mediation

"I envision the day when attorneys will be viewed as counselors, problem solvers, and deliverers of prompt, appropriate and affordable justice"

David R. Brink

It is important to stress that the lawyer's role as counsel for a party radically changes as the mode of dispute resolution shifts from adjudication to mediation. The premise must be accepted that counsel must drop his combative role in adjudication and view his new role in mediation as a collaborator with the other counsel in working together toward the common goal of helping their clients resolve their differences to their mutual advantage. Whereas he is clearly dominant in judicial trials, he must now accept a less directive role to allow the parties more opportunities to craft their own agreement. He must shift gears and accept the role of an adviser or consultant.

After understanding and accepting his new role in the mediation process, he must help the client also comprehend and appreciate the mediation process and its benefits, as well as the client's greater personal responsibility for the success of mediation in resolving the dispute.

Preparation for Participation in Mediation

Upon receipt from the trial court of the order to proceed to mediation, counsel shall confer and discuss with his client the following:

1. The mediation process as essentially a negotiation between the parties assisted by their respective counsel, and facilitated by a mediator, stressing its difference from litigation, its advantage and benefits, the

client's heightened role in mediation and responsibility for its success and explaining the new role of the lawyer.

2. The substance of the upcoming mediation, such as:
 - a. the substance issues involved in their dispute with the other party and their prioritization in terms of importance to client.
 - b. study of the other side's position in relation to the issues with a view to understanding the underlying fears, concerns and needs underneath said position.
 - c. information or facts to be gathered or sought from the other side or to be exchanged that are necessary for informed decision making.
 - d. possible bargaining options but stressing the need to be open-minded about other possibilities.
 - e. the best, worst, and most likely alternatives to a negotiated agreement.

Participation in the Mediation Sessions

During the initial mediation session (before the court-accredited mediator) when the mediator introduces the parties to the process of mediation, it is helpful for the lawyers to give support to the mediator so that their clients fully understand the rules and processes of mediation.

To contribute to the success of mediation, the lawyers must allow their clients to take responsibility for making decisions during the negotiations within the mediation process. The lawyers must restrain themselves from dominating the process and instead allow.

However, if the client is unable to bargain effectively, and it appears that he is on the short-end of the power imbalance, and the mediator is not doing enough to even up this imbalance, the lawyer may have to take a somewhat more active role in the process.

Where necessary, a lawyer may ask for a recess, as often as may be necessary, in order to give advice or suggestions to client in private.

Should mediation before the court-accredited mediator fail, and the case is referred back to the Court, the lawyer may have to take a more active role during the mediation proceedings before the judge.

Assistance in Preparing a Compromise Agreement or Withdrawal of Complaint and Satisfaction of Claim

The lawyers shall assist the mediator in putting in writing the terms of the compromise agreement that the parties have entered into and seeing to it that they are not contrary to law, morals, good customs, public order or public policy so that the same may be approved by the trial court for a judgment based upon a compromise.

The lawyers shall pay particular attention to issues of voluntary compliance with what has been agreed upon or otherwise, to issues of enforcement.

Where applicable, the lawyers shall assist in the preparation of a manifestation of mutual satisfaction of claims and counterclaims as basis for the court to issue an order of dismissal.

Vitug and Panganiban, JJ., on official leave.

Very truly yours,

LUZVIMINDA D. PUNO
Clerk of Court

Resolution A.M. No. 04-3-15-SC
March 23, 2004

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Chairman, Judicial Reforms Academy
Supreme Court

The Presiding Judge (x)
Court of Appeals
Manila

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