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NoraV Borja

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**IN RE THE NORTHERN MARIANA ISLANDS
RULES OF ALTERNATIVE DISPUTE RESOLUTION**

ADMINISTRATIVE ORDER 2021-ADM-0020-RUL

ORDER

¶ 1 On October 14, 2021, the attached proposed *Northern Mariana Islands Rules of Alternative Dispute Resolution* were submitted to the Twenty-Second Northern Marianas Commonwealth Legislature for approval. Sixty days have elapsed since submission, and neither house of the Legislature has disapproved of the proposed Rules.

¶ 2 IT IS HEREBY ORDERED that the *Northern Mariana Islands Rules of Alternative Dispute Resolution* are adopted as permanent pursuant to Article 4, § 9 of the NMI Constitution. These Rules became effective on December 13, 2021.

SO ORDERED this 13th day of December 2021.

/s/

ALEXANDRO C. CASTRO
Chief

/s/

JOHN A. MANGLONA
Associate Justice

/s/

PERRY B. INOS
Associate Justice



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NORTHERN MARIANA ISLANDS

RULES OF ALTERNATIVE DISPUTE RESOLUTION

Effective December 13, 2021

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Rule 1. Title and Authority.

- (a) **Title.** These Rules shall be known as the NMI Rules of Alternative Dispute Resolution.¹
- (b) **Authority.** These Rules are promulgated pursuant to Article IV, Section 9(a) of the NMI Constitution.²
- (c) **Scope.**
 - (1) These Rules shall apply to all civil actions except small claims actions and family law matters.
 - (2) These Rules shall not apply to criminal actions, actions under the Holdover Tenancy Act, or judicial reviews of agency actions.

Rule 2. Definitions.

- (a) **“Mediation”** means a process by which a neutral person or persons facilitate(s) communication between disputants to assist them in reaching a mutually acceptable agreement for the resolution of one or more of their disputes.
- (b) **“Family law matter”** means any matter that has a case number that includes the letters “FCD” in the caption.
- (c) A case becomes **“at-issue”** when answers have been filed as to all of the claims that have been asserted in the action, including counter-, cross-, and third-party claims.
- (d) **“Chief Justice”** means the Chief Justice of the CNMI Supreme Court.
- (e) **“Initial Case Management Conference”** means a conference at which the parties and the court determine how a civil action will proceed procedurally.

¹ These Rules use Rule rather than Section for consistency with other NMI Judiciary Rules (e.g., § 1001 has become Rule 1).

² Mediation provides parties with a simplified and economical procedure for obtaining a prompt and equitable resolution and a greater opportunity to participate directly in resolving their disputes. Alternative dispute resolution processes can greatly benefit parties in civil actions when used early, before substantial discovery has begun and other litigation costs have been incurred. Mediation also reduces the backlog of cases burdening the courts. It is in the public interest for the courts to encourage and use mediation when appropriate.

- (f) **“Mediation Assessment Hearing”** means a hearing at which the judge determines whether to order a civil action to mediation.
- (g) **“Mediation Completion Date”** means a date by which the parties must have gone through mediation of a civil action that has been ordered to mediation.
- (h) **“Notice of Settlement”** means a notice the parties must submit to the Court after mediation has resulted in settlement which reports the outcome.
- (i) **“Order of Mediation”** means an order in which the judge compels a civil action to proceed to mediation and appoints a mediator.
- (j) **“Presiding Judge”** means the Presiding Judge of the CNMI Superior Court.
- (k) **“Registry of Court-Approved Mediators”** means a roster with the names and contact information of mediators approved by the CNMI Supreme Court.

Rule 3. Actions to be Submitted to Mediation.

- (a) **Actions Subject to Mediation.** Except as provided in Rule 3(b), all civil actions pending in the CNMI Superior Court after January 1, 2015 shall be ordered to non-binding mediation by the Presiding Judge or the judge presiding over such action, whether or not the action includes a prayer for equitable relief, and whether or not a party to the action is an agency of the CNMI government.
- (b) **Exception for Good Cause.** For good cause shown, an action may proceed without mediation.

Rule 4. Initiating Mediation.

- (a) **Initiation.** Mediation may be initiated by parties’ agreement or court order.
- (b) **Who May Initiate.** Any party may at any time request to refer a case to mediation.

Rule 5. Initial Case Management Conference & Mediation Assessment Hearing.

- (a) **At Plaintiff’s Request.** Within 21 days of a civil action becoming at issue, plaintiff shall request an Initial Case Management Conference & Mediation Assessment Hearing (“ICMC & MAH”).

- (b) **Court Scheduling.** Within 14 days of the request, the court shall schedule an ICMC & MAH to take place on a date between 60 and 75 days after filing the request, unless the parties stipulate to an earlier ICMC & MAH with the court's approval.
- (c) **Untimely Request and Show Cause.** If a plaintiff does not timely file a request for an ICMC & MAH, the court shall order the parties and/or their counsel to show cause as to why the case should not be dismissed, monetary sanctions should not be ordered, or mediation should not be scheduled sua sponte, or a combination of the foregoing.
- (d) **Mediation Determination and Scheduling.** At the ICMC & MAH, the court shall determine whether to order mediation. If so, the order shall set a date for completion of mediation and for a post-mediation case management conference.

Rule 6. Stay of Actions Ordered to Mediation.

- (a) **Stay of Action.** The court shall stay each civil action or part thereof that is ordered to mediation. The mediation stay will be lifted without further action by the Court or the parties when a party files a Notice of Mediation Completion Form (Form 1) in accordance with Rule 26.
- (b) **Exception for Good Cause.** Based upon a showing of good cause, the court may delay the commencement of the stay or exempt the action from being stayed.

Rule 7. Exemption from Mediation.

- (a) **Exemption Factors.** The court shall consider the following factors in determining whether to exempt a case from mediation:
 - (1) input from the parties' counsel and pro se parties;
 - (2) whether the case has previously been submitted to mediation or other alternative dispute resolution process;
 - (3) the age of the case;
 - (4) the complexity of issues;
 - (5) the degree of need for discovery and/or further case work;
 - (6) the likelihood of settlement;
 - (7) the subject matter of the action; and
 - (8) any and all other relevant factors.

- (b) **Settlement Discussion.** The court may discuss settlement potential with the parties' counsel and pro se parties.
- (c) **Sua Sponte Referral to Mediation.** The court may refer a case to mediation without party input and over a party's objection, but a party may request relief from a mediation order in accordance with Rule 16.

Rule 8. Amount in Controversy.

The amount in controversy of a civil action shall not constitute ground for allowing a civil action to proceed to trial without mediation.

Rule 9. Order for Mediation.

- (a) **Components.** The Order for Mediation shall:
 - (1) refer the case to a mediator on the list of court-approved Mediators, unless all parties stipulate to another mediator as described in Rule 10;
 - (2) stay the action pursuant to Rule 6;
 - (3) set a mediation completion date; and
 - (4) schedule a Post-Mediation Case Management Conference that is to be held within 14 days of the Mediation Completion Date which all parties' counsel and pro se parties must attend.
- (b) **Continuation for Good Cause.** A Mediation Completion Date and/or Post-Mediation Case Management Conference may be continued in the court's discretion for good cause.

Rule 10. Selection of Mediator.

- (a) **When to Select.** The court shall select a mediator at the time a case is ordered to mediation. The parties shall abide by the court's selection, whether or not the parties are present when the order of mediation is issued.
- (b) **Whom to Select.** The court shall select a mediator from the CNMI Supreme Court's List of Court-Approved Mediators.
- (c) **Selection by Stipulation.** The parties may stipulate to a mediator listed on the List of Court-Approved Mediators, or if the parties stipulate, to a mediator qualified in a U.S. state or territory. The court shall defer to the parties' preference whenever appropriate.

Rule 11. Registry of Court-Approved Mediators.

The Clerk of the Supreme Court shall maintain a registry of Supreme Court-approved mediators consisting of the names and contact information of the persons who have been approved as mediators.

Rule 12. Qualifications of Mediators.

To be qualified to serve as a CNMI mediator in relation to an action that has been ordered to mediation in accordance with these Rules, a person must be approved as a Court-Approved Mediator by the Supreme Court.

- (a) **Requirements for Approval.** To be approved as a mediator, a person must pay an application fee as provided in the Judiciary fee schedule and submit to the Chief Justice of the CNMI Supreme Court, and the Chief Justice must approve, a sworn Application for CNMI Court-Approved Mediator that sets forth:
 - (1) all information and agreements requested on the Application form and
 - (2) a sworn statement demonstrating:
 - (A) that the applicant has completed an acceptable mediation education and/or training program or course, or
 - (B) previous substantial experience as a mediator, or
 - (C) substantial professional experience including more than 5 years in practice in civil litigation and participation in at least 10 mediations or other substantial experience with mediation, or
 - (D) facts and/or circumstances that demonstrate qualification as a mediator and/or otherwise establishes a reasonable basis for approval as a Court-Approved Mediator.
- (b) **Additional Requirements.** The CNMI Supreme Court may require additional qualifications, training, and/or experience of mediators from time to time.
- (c) **Duty of Due Diligence.** Mediators have a duty of due diligence to ensure they are qualified to mediate pursuant to these Rules.

Rule 13. Mediator Standards of Conduct.

All Mediators shall become familiar with and shall conduct all mediations in accordance with the 2005 Model Standards of Conduct for Mediators together with all amendments to the 2005 Model Standards of Conduct then in effect on the date these Rules became effective. The Supreme Court may adopt subsequent revisions to the Model Standards as appropriate.

Rule 14. Mediator Fees & Expenses.

The mediator and the parties to the mediation shall agree upon the mediators' fees and expenses prior to the start of the mediation. All such agreements should be in writing and be signed by the parties and the mediator, unless requested otherwise by the parties.

Rule 15. Costs of Mediation & Financial Requirements.

- (a) **Equal Cost Sharing.** The parties shall bear all costs of mediation in equal proportions, unless otherwise agreed between the parties and the mediator or ordered by the court based upon a showing of extraordinary circumstances.
- (b) **Limitation on Gift-Giving.** Within the time between the issuance of an order requiring mediation and the time of completion of such mediation, gifts shall not be given to mediators without the written consent of all parties.
- (c) **Direct Compensation.** The parties shall directly compensate mediators for fees and costs.
- (d) **Mediation Fee.** Costs of mediation in addition to mediator fees may include only:
 - (1) reasonable expenses incurred by the mediator;
 - (2) reasonable expenses incurred by witnesses requested by the mediator with consent of the parties; and
 - (3) fees and costs of experts whose advice was requested by the mediator with consent of the parties.
- (e) **Financial Accommodation.** A party may request and the court may grant a financial accommodation in accordance with the provisions of Rule 17.
- (f) **Request for Court-Ordered Fee Payment.** The mediator may request a court order requiring the payment of fees and costs by the party who failed to pay in a timely manner. The court may order a nonpaying party to provide payment and may impose sanctions. If mediation is not completed by the Mediation Completion Date as a result of a party's failure to provide payment to a mediator, the court may impose sanctions pursuant to Rule 24.
- (g) **Court Disclaimer.** The court is not responsible for the payment or collection of mediator fees or costs.

Rule 16. Relief from Court-Ordered Mediation.

- (a) **Requesting Relief from Mediation.** When a case is ordered to mediation without all the parties' stipulation, any party

opposed to mediation may request the court for relief from the order for mediation and for the case to remain in the assigned judge's docket.

- (1) The request shall be filed not later than 10 days from the date of the Order for Mediation.
 - (2) The request must provide reasons why the case is not appropriate for mediation at that time.
 - (3) The request must provide facts supporting the requesting party's contentions.
- (b) Response to Request.** After filing the request for relief:
- (1) A party in favor of mediation may reply no later than 5 days after service of the request for relief.
 - (2) The court shall rule on the request for relief, with or without a hearing, no later than 15 days after the filing of the request for relief.
 - (3) If the request is granted, the case shall be removed from mediation and returned to the normal docket.
 - (4) If the request is denied, the Order for Mediation shall remain in effect.
- (c) CNMI Government as a Party.** When the CNMI government is a party to a civil action in which mediation shall occur, it may either proceed with mediation or, in the alternative, may request an order for the parties to participate in a mandatory settlement conference, which the court shall grant.
- (1) A mandatory settlement conference is a mediation conducted by a CNMI Superior Court Judge or judge pro tempore, in accordance with the rules, procedures, and requirements set forth in these Rules except that there shall be no fees or costs charged to the parties for participating in the conference.
 - (2) A judge other than the judge presiding over the action shall conduct the mandatory settlement conference. However, all parties may stipulate in writing or on the record that provides for the judge presiding over the action to conduct the conference.
 - (3) When a case is ordered to a mandatory settlement conference, the clerk of the Superior Court shall notify the Presiding Judge to assign a judge, which may include himself, to preside over the conference.

- (4) For purposes of Rule 16, the CNMI government does not include any autonomous agency or corporation of the CNMI government such as, but not limited to, the Commonwealth Ports Authority, CNMI Public School System, Northern Marianas College, Commonwealth Utilities Corporation, Commonwealth Health Center, Commonwealth Healthcare Corporation, Commonwealth Development Authority, Marianas Visitors Authority, and the Marianas Public Land Trust.

Rule 17. Financial Accommodations for Indigent Parties.

- (a) **Request for Financial Accommodation.** An indigent party may request financial accommodation for mediation costs in accordance with the NMI Rules of Indigent Representation.
 - (1) The request must be filed no later than 5 business days after mediation is ordered.
 - (2) The court shall rule on the request without a hearing within 10 days.
 - (3) If a request is granted, the court shall refer the case to a mediator, stating that the party qualifies for financial accommodation.
 - (4) The indigency determination shall not automatically result in an obligation on any other party to bear the entirety of the mediation fees and costs.
- (b) **Disqualification from Financial Accommodation.** No party qualifies for a financial accommodation if such party is represented by an attorney, unless such attorney is providing legal services pro bono or on behalf of a non-profit legal services provider.
- (c) **Mediation Fee Payment When a Party is Indigent.** When a party is granted indigent status, one of the following shall occur:
 - (1) One or more of the parties other than those who have been granted indigent status may agree to pay for the indigent party's share of the fees and costs of mediation, or
 - (2) The mediator may reduce the mediator's fee and/or waive entitlement to receive the indigent party's share of the fees and/or costs, or
 - (3) The parties and the mediator may enter into an agreement that alleviates the need for payment of mediation costs by the indigent party, or

- (4) If no agreement can be reached pursuant to Rule 17(f)(1), (2) or (3), the case shall be ordered, upon request, to a mandatory settlement conference conducted in accordance with Rule 16(e)(1)–(3).

Rule 18. Failure to Comply with Financial Requirements.

- (a) **Mediation May Proceed Without Full Payment.** A mediator may proceed with a mediation in a matter in which any of the parties has failed to provide the full amount of deposit, compensation, or other payment to the mediator.
- (b) **When Plaintiff Fails to Pay.** When a mediation does not take place before the mediation completion date due to a plaintiff's failure to pay the full amount of deposit, compensation, or other payment to the mediator, the court shall either:
 - (1) dismiss or stay the plaintiff's action if the court finds the plaintiff was capable of making payment or the plaintiff's failure was otherwise unreasonable, or
 - (2) order the action, or a portion thereof, to proceed with a mandatory settlement conference in accordance with Rule 16(e)(1)–(3) if the court finds the plaintiff's failure to provide such payment was reasonable and the plaintiff was incapable of providing payment.
- (c) **When Defendant Fails to Pay.** When mediation does not take place before the mediation completion date due to a defendant's failure to pay the full amount of deposit, compensation, or other payment to the mediator, the court shall either:
 - (1) strike the defendant's answer to the complaint if the court finds the defendant was capable of making payment or the defendant's failure was otherwise unreasonable; or
 - (2) order for the case, or a portion thereof, to proceed with a mandatory settlement conference in accordance with Rule 16(e)(1)–(3) if the court finds the defendant's failure to pay was reasonable and the defendant was incapable of providing payment.
- (d) **Alternative Order.** Nothing in this title shall preclude the court from issuing an alternative order that provides for payment of the entire requisite amount of deposit, compensation, or other payment to the mediator, facilitates the completion of mediation, is fair to the parties, and accomplishes the purposes of these Rules.
- (e) **Stipulated Fee Agreement.** Nothing in these Rules shall preclude the parties from entering into a stipulation that

provides for the payment of any portion of the deposit, compensation, or other payment to the mediator in any manner.

Rule 19. Conduct of Mediation.

- (a) **Mediation Procedure.** When the order for mediation is issued, the parties shall contact the mediator and determine the schedule and who should attend the mediation, establish mediation procedures, and do all things reasonably necessary to ensure that the mediation is completed by the mediation completion date.
- (b) **Mediation Statement.** Mediation statements shall be submitted to the mediator not less than 5 calendar days prior to the mediation or as determined by the mediator. The statement shall include:
 - (1) an identification of the parties and their counsel;
 - (2) an identification of all persons with authority to make settlement decisions;
 - (3) an identification of all persons who will attend the mediation;
 - (4) an identification of all persons connected with an opposing party whose presence at the mediation might substantially improve the utility of the mediation or the prospects of settlement;
 - (5) copies of relevant documents that are necessary or essential for proceeding with a meaningful mediation; and
 - (6) a description of the litigation, a discussion of the issues pertaining to liability, a discussion of the issues pertaining to the damages claimed, a description of any prior settlement negotiations and any other information that is necessary or essential for proceeding with a meaningful mediation.
- (c) **Confidentiality.** Confidential information disclosed in mediation shall not be communicated to the court unless all parties consent in writing or on the court record.
- (d) **Mediation Disclosure.**
 - (1) No writing by the mediator shall be disclosed to the parties or anyone unless the mediator and the parties' consent.
 - (2) All information disclosed, party admissions made, and documents produced in mediation shall not be admissible in any proceeding except as permitted by law.

- (3) The mediator has a duty to disclose to the proper authorities information obtained during mediation that the mediator reasonably believes will prevent a participant from committing an illegal act that is likely to result in death or serious injury.
- (4) No mediator may be compelled to testify as a witness or participate in any hearing or trial of the mediated matter.
- (e) **Mediation Attendance.** All parties, their representatives, insurers, and all other persons from whom settlement authority is required shall personally attend the mediation, unless excused by the mediator or the court based upon a showing of good cause, and shall arrive at the mediation in a timely manner.
- (f) **Mediation Participation.** All parties, their representatives, and counsel shall participate in the mediation in good faith and exert their best efforts to facilitate a resolution of the issues in dispute.
- (g) **Video Conferencing.** Any mediation may be conducted by way of video conferencing.

Rule 20. Mediator Immunity.

Mediators shall have privileges and immunities equivalent to those granted to masters pursuant to Rule 53 of the NMI Rules of Civil Procedure.

Rule 21. Evidence Admissible.

Evidence that is admissible or discoverable outside of mediation shall not be inadmissible or not discoverable solely because it was used in conjunction with mediation.

Rule 22. Evidence Not Admissible.

Evidence that is inadmissible or not discoverable outside of mediation that is disclosed during mediation, or any admission by parties or document produced during mediation, shall not become admissible at trial due to its disclosure in conjunction with a mediation, nor can any such disclosure made during mediation be compelled in any civil or criminal action, unless consented to by the parties.

Rule 23. Confidentiality of Mediation and Communications in the Course of Mediation.

- (a) **Confidentiality of Proceedings.** Mediation proceedings pursuant to these Rules shall remain confidential.

- (b) **Confidentiality of Communications.** All communications, verbal and written, made by the mediator, the parties, and their counsel during mediation shall be confidential.
- (c) **Confidentiality of the Fact Mediation has Occurred.** At the jury trial of the action, there shall be no mention of or reference to the fact that any mediation has taken place, except as otherwise provided in these Rules.
- (d) **Prejudice.** Any reference to mediation during a jury trial is prejudicial and, if not curable by a jury instruction, may constitute grounds for a mistrial.

Rule 24. Sanctions for Non-Appearance at Mediation.

- (a) **Sanctions.** The court may sanction a party, its counsel, or both, who:
 - (1) fails to appear at a scheduled mediation; or
 - (2) leaves the mediation prior to completion without being excused from further attending the mediation.
- (b) **Show Cause.** The court shall order the party, its counsel, or both, in Rule 24(a) to show cause why any or all of the following sanctions should not be assessed:
 - (1) the mediator's fees and costs in conjunction with the missed session;
 - (2) the opposing party's attorneys' fees and/or costs incurred in conjunction with the missed session; or
 - (3) any other sanctions deemed appropriate in the court's discretion.

Rule 25. Termination of Mediation.

- (a) **Termination.** Mediation may be terminated at any time upon:
 - (1) the mediator's determination that mediation efforts are not currently justified;
 - (2) a stipulation of all parties declaring an impasse as to particular parties or all parties; or
 - (3) the signing of a settlement agreement setting forth a confirmation that the case has been settled and the basic terms of the settlement, even if it is with the understanding that the settlement is subject to completion and/or execution of a more formalized agreement and/or execution of a release.

Rule 26. Reporting Mediation Result to Trial Court.

- (a) **Satisfactory Mediation.** After the parties have completed mediation, the plaintiff whose name first appears on the case caption (or any other party designated to do so pursuant to a filed, written stipulation) shall file a Notice of Mediation Completion Form (Form 1) reporting the mediation results to the Court.
- (b) **Unsatisfactory Mediation.** A mediator may submit to the Court a Report of Unsatisfactory Mediation (Form 2) if the mediator stipulates that a mediation did not proceed properly, was not pursued in good faith or was otherwise substantially unsatisfactory.

Rule 27. Annual Reporting to Supreme Court.

- (a) **Record of Mediations.** A mediator shall maintain a record of the mediations over which the mediator presides.
- (b) **Filing of Yearly Mediation Report.** A mediator shall file a report to the NMI Supreme Court by January 31 of each calendar year of the prior calendar year's mediations. The report shall set forth:
 - (1) each case presided;
 - (2) nature or type of case;
 - (3) number of parties;
 - (4) mediation dates;
 - (5) whether mediation resulted in a total settlement, partial settlement or no settlement; and
 - (6) any comments or suggestions the mediator wants to express regarding alternative dispute resolution and the NMI Rules for Alternative Dispute Resolution.

Rule 28. Enforcement of Settlement as Judgment.

If parties stipulate that the case or a part thereof has settled, the court upon motion may enter judgment pursuant to the terms of such settlement. At the parties' request, the court may retain jurisdiction over the parties to enforce the settlement until full performance of the settlement's terms.

Rule 29. Post-Mediation Case Management Conference.

- (a) **Post-Mediation Case Management Conference Order.** At a Post-Mediation Case Management Conference, the court shall determine:
 - (1) whether mediation has been completed or terminated;

- (2) whether further mediation should be ordered;
- (3) whether a trial date should be set or re-scheduled;
- (4) whether any other case management issues are relevant including, but not limited to, the setting or changing of a discovery cut-off date, dates for designations of expert witnesses, expert discovery, deadlines for and scheduling of motions, jurisdictional issues and any other issues pertinent to case management; and
- (5) whether any other order should be issued to facilitate the case to conclusion.

Upon making its determinations, the court shall issue a written order.

- (b) **When Attendance is Not Required.** A party shall not be required to attend a Post-Mediation Case Management Conference if a stipulation or request for a dismissal of the entire action has been filed with the court prior to the date set for the Post-Mediation Case Management Conference and the court has been notified that the entire action has been resolved or that a stipulation or request for a dismissal of the entire action has been filed.

Rule 30. Other Types of ADR.

Nothing in these Rules shall prevent the parties from pursuing other types of Alternative Dispute Resolution such as, but not limited to, binding arbitration, non-binding arbitration, or neutral case evaluation.

Rule 31. Forms and Revision.

- (a) **Standard Forms.** The Judiciary may from time to time add, amend, or update forms which are intended to indicate the simplicity and brevity of statement which these Rules contemplate.
- (b) **Error Correction.** The Judiciary may correct manifest clerical or typographical errors in these Rules without submission to the legislature.

Rule 32. Repeal; Tolling.

- (a) **Repeal.** The Commonwealth Rules Governing Court-Appointed, Certified Mediators that became effective on February 20, 2001 and the Rules for Mandatory Alternative Dispute Resolution effective from January 19, 2015 are repealed.

- (b) **Tolling of Time for Calculation of Case Age.** Cases referred to mediation are tolled for purposes of court administrative standards regarding “case age.” Tolling commences on the date of the issuance of an Order for Mediation and ends after the assigned judge determines mediation has been concluded or terminated.

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

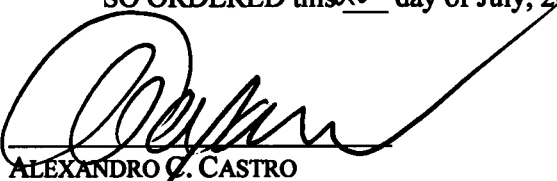
IN RE THE NORTHERN MARIANA ISLANDS
RULES FOR MANDATORY ALTERNATIVE DISPUTE RESOLUTION

SUPREME COURT NO. 2015-ADM-0013-RUL

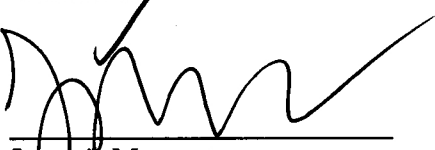
ORDER

The Northern Mariana Islands Rules for Mandatory Alternative Dispute Resolution (“Rules”) were adopted on January 19, 2015. Since that adoption, the Court found it necessary to establish an application form. Because this form does not alter the substance or function of the Rules, the Court hereby adopts the form without submission to the Legislature. The application form shall become effective immediately.

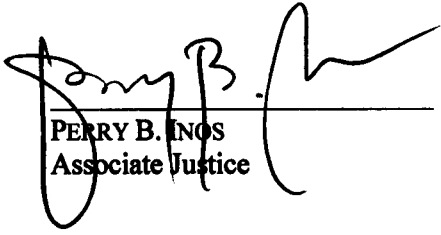
SO ORDERED this 26th day of July, 2015.



ALEXANDRO C. CASTRO
Chief Justice



JOHN A. MANGLONA
Associate Justice



PERRY B. INOS
Associate Justice

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN RE APPLICATION FOR CNMI COURT-APPROVED MEDIATOR OF
[APPLICANT'S NAME].

APPLICATION FOR CNMI COURT-APPROVED MEDIATOR OF [APPLICANT'S NAME]

I, [Applicant's Name], hereby respectfully submit this Application for Approval as a CNMI Court-Approved Mediator. I have personal knowledge of all of the facts set forth herein and, if called as a witness, could and would competently testify thereto under oath.

Date of Birth:	Click here to enter a date.
Law Firm Name:	Click here to enter text.
Business Address:	Click here to enter text.
Business Telephone Number:	Click here to enter text.
Cellular Telephone Number:	Click here to enter text.
Email Address:	Click here to enter text.

Bar Membership

Jurisdiction	Date of Admission	Bar Number
Click here to enter text.	Click here to enter a date.	Click here to enter text.
Click here to enter text.	Click here to enter a date.	Click here to enter text.
Click here to enter text.	Click here to enter a date.	Click here to enter text.

• If additional space is required, please attach page(s) to this form.

Mediator/ADR Training

Date	Location	Course Name
Click here to enter a date.	Click here to enter text.	Click here to enter text.
Click here to enter a date.	Click here to enter text.	Click here to enter text.
Click here to enter a date.	Click here to enter text.	Click here to enter text.

• If additional space is required, please attach page(s) to this form.

The number of mediations & settlement conferences I have conducted as a mediator, judge, or settlement officer:	Click here to enter text.
The number of mediations & settlement conferences I have attended as a party:	Click here to enter text.

Services as a Judge, Magistrate, or Commissioner

Jurisdiction(s)	Position(s)	Date(s)
Click here to enter text.	Click here to enter text.	Click here to enter a date.
Click here to enter text.	Click here to enter text.	Click here to enter a date.
Click here to enter text.	Click here to enter text.	Click here to enter a date.

• *If additional space is required, please attach page(s) to this form.*

In addition to the education, training, and experience set forth above, I have had the following education, training and experience in regard to mediation and/or ADR:

Click here to enter text.

In support of this Application, I submit the following additional factual information:

Click here to enter text.

I have carefully read and am familiar with the NMI Rules for Mandatory Alternative Dispute Resolution and the CNMI Supreme Court Guidelines and Requirements. If this Application is granted and I become a CNMI Court-Approved Mediator, I will abide by such Rules and Guidelines.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this ____ day of _____, 20 ____.

[APPLICANT'S NAME]



E-FILED
CNMI SUPREME COURT
E-filed: Mar 03 2015 04:04PM
Clerk Review: Mar 03 2015 04:22PM
Filing ID: 56851654
Case No.: ADM-2015
Nora Borja



NORTHERN MARIANA ISLANDS

RULES FOR MANDATORY ALTERNATIVE

DISPUTE RESOLUTION

Effective January 19, 2015



E-FILED
CNMI SUPREME COURT
E-filed: Mar 03 2015 04:04PM
Clerk Review: Mar 03 2015 04:22PM
Filing ID: 56851654
Case No.: ADM-2015
Nora Borja

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN RE THE NORTHERN MARIANA ISLANDS
RULES FOR MANDATORY ALTERNATIVE DISPUTE RESOLUTION

ADMINISTRATIVE ORDER 2015-ADM-0004-RUL

ORDER

¶ 1 On November 19, 2014, the attached proposed *Northern Mariana Islands Rules for Mandatory Alternative Dispute Resolution* were submitted to the Eighteenth Northern Marianas Commonwealth Legislature for approval. Sixty (60) days have elapsed since submission and neither house of the Legislature has disapproved of the proposed rules.

¶ 2 IT IS HEREBY ORDERED that the *Northern Mariana Islands Rules for Mandatory Alternative Dispute Resolution* are adopted as permanent pursuant to Article 4, § 9 of the NMI Constitution. These Rules became effective on January 19, 2015.

SO ORDERED this 3rd day of March, 2015.

/s/ _____
ALEXANDRO C. CASTRO
Chief Justice

/s/ _____
JOHN A. MANGLONA
Associate Justice

/s/ _____
PERRY B. INOS
Associate Justice

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§ 1001 Title, Findings and Purpose

(a) The peaceful efficient resolution of disputes in a fair, timely, appropriate and cost-effective manner is an essential function of the judicial branch of the government of the Commonwealth of the Northern Mariana Islands (“CNMI”) and is consistent with, and in furtherance of, the CNMI Constitution.

(b) In the case of many, if not most, disputes, litigation culminating in a trial is costly, time consuming and stressful for the parties involved. Many disputes can be resolved in a fair and equitable manner through less formal processes.

(c) Alternative processes for reducing the cost, time and stress of dispute resolution, such as mediation, have been effectively used in the CNMI, Guam, most U.S. states and elsewhere. It is recognized that mediation provides parties with a simplified and economical procedure for obtaining a prompt and equitable resolution of their disputes and a greater opportunity to participate directly in resolving their disputes. Mediation can also assist to reduce the backlog of cases burdening the CNMI judicial system. It is in the public interest for mediation to be encouraged and used by the courts whenever appropriate.

(d) Mediation and similar alternative processes can have the greatest benefit for the parties in a civil action when used early, before substantial discovery has been undertaken and other litigation costs have been incurred. Where appropriate, participants in disputes should be encouraged to utilize mediation and other alternatives to trial for resolving their differences in the early stages of a civil action.

(e) The courts of the CNMI, as well as the public, have a substantial interest in having cases referred to alternative dispute resolution processes such as mediation as an alternative to trial, consistent with the parties’ right to obtain a trial if a dispute is not resolved through such an alternative process.

(f) The essential purpose of these rules is to require the use of alternative dispute resolution methods in general, and mediation in particular, to facilitate efficient resolution of civil actions in the CNMI.

(g) The rules set forth in this title shall be referred to as the “CNMI Rules for Mandatory Alternative Dispute Resolution.”

§ 1002 Definition of Mediation

As used in this title, “mediation” means a process by which a neutral person or persons facilitate(s) communication between disputants to assist them in reaching a mutually acceptable agreement for the resolution of one or more of their disputes.

§ 1003 Actions to Which Title Applies

(a) This title shall apply to all civil actions except small claims actions and family law matters.

(b) For purposes of this title, a family law matter is any matter that has a case number that includes the letters “FCD.”

(c) This title shall not apply to criminal actions.

(d) Courts are authorized and directed to apply this title to all applicable civil actions pending or commenced on or after January 1, 2015.

(e) In relation to civil actions filed before the effective date of this title, Sections 1006 and 1007 shall not be applicable. However, any party may file a request for Case Management Conference and Mediation Assessment Hearing and seek from the court an order requiring Court-Ordered Mediation pursuant to this title; and/or the court may sua sponte issue an order setting a Case Management Conference and Mediation Assessment Hearing at which the court may in its discretion issue an order requiring Court-Ordered Mediation pursuant to this title.

§ 1004 Actions to be Submitted to Mediation

All civil actions pending in the CNMI Superior Court after January 1, 2015, whether or not the action includes a prayer for equitable relief, and whether or not a party to the action is an agency of the CNMI government, shall be ordered to non-binding mediation by the presiding judge or the judge to whom such

action is assigned, unless good cause is established for allowing the action to proceed without submission to mediation.

§ 1005 Stay of Actions Ordered to Mediation

As to each civil action or part thereof that is ordered to mediation pursuant to this title, the court shall issue an order that stays such action or part thereof pending completion of mediation. Based upon a showing of good cause, the court may delay the commencement of the stay or exempt the action from being stayed.

§ 1006 Initiation of Mediation

- (a) Mediation may be initiated by agreement of parties or by an order issued by the court.
- (b) Any party may at any time request a court order referring a case to mediation.
- (c) Mediation may be ordered by the court at any time after a civil action has been filed.
- (d) Nothing in this title shall limit the ability of parties to proceed to mediation in the absence of a court order on terms that are agreed upon by the parties.

§ 1007 Initial Case Management Conference & Mediation Assessment Hearing

(a) Within 21 days of a civil action becoming at-issue, plaintiff shall file and serve a Request for an Initial Case Management Conference & Mediation Assessment Hearing (“ICMC&MAH”).

(1) For purposes of this title, a case becomes at-issue when answers have been filed as to all of the claims that have been asserted in the action.

(b) Within 14 days of the court’s receipt of a Request for an Initial Case Management Conference & Mediation Assessment Hearing, the court shall issue an Order Setting Initial Case Management Conference & Mediation Assessment Hearing to take place that is not less than 60 and not more than 75 days after the court’s receipt of the Request for Initial Case Management Conference & Mediation Assessment Hearing.

(c) In the event of a failure on the part of a plaintiff to timely file and serve a Request for Initial Case Management Conference & Mediation Assessment, the court shall issue an Order to Show Cause as to why the case should not be dismissed and/or why a party and/or a party’s counsel should not be subjected to monetary and/or other sanctions.

(d) At the Initial Case Management Conference & Mediation Assessment Hearing, the court shall determine whether and/or when an Order for Mediation should be issued and shall address any other case management issues that are relevant including, but not limited to, the setting of a Mediation Completion Date, a stay of the action pending completion of mediation, the setting of a Post-Mediation Case Management Conference, the setting of a discovery cut-off date, the setting of a trial date, jurisdictional issues and any other issues pertinent to the management of the case; and the court shall issue an appropriate Initial Case Management Order in regard thereto.

§ 1008 Determination for Order for Mediation

(a) Factors that shall be considered by the court for purposes of determining when a case should be ordered to mediation include:

- (1) input from the parties’ counsel and pro se parties,
- (2) whether the case has previously been submitted to mediation or some other alternative dispute resolution process,
- (3) the age of the case,
- (4) the complexity of issues,
- (5) the degree of need for discovery and/or further case work-up,
- (6) the likelihood of settlement,
- (7) the subject matter of the action, and

- (8) any and all other relevant factors.
- (b) The judge may discuss settlement potential with the parties' counsel and pro se parties.
- (c) The court may refer a case to mediation without party input and over a party's objection, but a party may request relief from a mediation order in accordance with Section 1017 of this title.

§ 1009 Amount in Controversy

The amount in controversy of a civil action shall not constitute grounds for allowing a civil action to proceed to trial without being submitted to mediation.

§ 1010 Order for Mediation

(a) Upon a stipulation or request of the parties for an Order for Mediation, or upon a determination by the court that mediation should be ordered, the judge shall:

- (1) issue an Order for Mediation referring the case to a mediator included on the List of Court-Approved Mediators referred to in Section 1012 of this title, unless all parties otherwise stipulate to a particular mediator;
 - (2) issue an order that stays the action or a part thereof pending completion of mediation, in accordance with Section 1005 of this title.
 - (3) issue an order setting forth a Mediation Completion Date by which mediation shall be completed; and
 - (4) issue an order setting a Post-Mediation Case Management Conference that is to be held within 14 days of the Mediation Completion Date which all parties' counsel and pro se parties must attend.
- (b) A Mediation Completion Date and/or Post-Mediation Case Management Conference may be continued in the court's discretion for good cause.

§ 1011 Selection of Mediator

- (a) At the time a case is ordered to mediation, the court shall select a mediator from the CNMI Supreme Court's List of Court-Approved Mediators and specify in the Order for Mediation the particular mediator to whom the case is assigned.
- (b) If the parties stipulate to a mediator listed on the List of Court-Approved Mediators, the court shall defer to the parties' preference whenever appropriate.
- (c) Whether or not the parties are present at the time of the issuance of the Order for Mediation, they shall abide by the court's selection of the mediator unless all parties enter into a stipulation for selection of a mediator other than the mediator selected by the court.
- (d) Regardless of the method by which the mediator is selected, the court-ordered mediation shall be completed by the Mediation Completion Date.

§ 1012 List of Court-Approved Mediators

- (a) The clerk of the CNMI Supreme Court shall maintain a List of Court-Approved Mediators that sets forth the names and contact information of the persons who have been approved by the CNMI Supreme Court to preside over court-ordered mediations in the CNMI. The List shall be made available to the public.
- (b) The List of Court-Approved Mediators shall consist of persons who have met the qualifications set forth in Section 1013 of this title.

§ 1013 Qualifications of Mediators

- (a) In order to be qualified to serve as a mediator in relation to an action that has been ordered to mediation in accordance with this title, a person must be approved as a Court-Approved Mediator by the CNMI Supreme Court.

(b) In order to be approved as a Court-Approved Mediator by the CNMI Supreme Court, a person must submit to the CNMI Supreme Court, and the Supreme Court must approve, a sworn Application for Approval of Court-Approved Mediator that sets forth:

- (1) all information and agreements requested on the Application form, and
- (2) the applicant's acceptance of the limits set forth in the Court-Approved Mediator Fee Schedule, and
- (3) a sworn statement that sets forth either:
 - (i) a statement, and/or attaches a certification, that demonstrates that the applicant has completed an acceptable mediation education and/or training program or course, or
 - (ii) a statement that sets forth a description of substantial prior experience that the applicant has previously had as a mediator, or
 - (iii) a statement that sets forth a description of substantial professional experience that the applicant has had as a civil litigation attorney including more than 5 years in practice in the field of civil litigation and participation in at least 10 mediations or other substantial mediation experience, or
 - (iv) a statement that sets forth a description of facts and/or circumstances that demonstrate qualification as a mediator and/or otherwise establishes a reasonable basis for approval as a Court-Approved Mediator.

(c) The CNMI Supreme Court may require additional qualification, training and/or experience of mediators from time to time.

(d) A person who is certified by the Judiciary of Guam to serve as a mediator in relation to Guam civil actions shall automatically be deemed to be qualified to serve as a Court-Approved Mediator for purposes of this title unless otherwise determined or ordered by the CNMI Supreme Court. However, such persons shall not be included on the list of Court-Approved Mediators without completing the application and approval process referred to in Rule 1012.

(e) Mediators have a duty of due diligence to ensure they are qualified to preside over court-ordered mediations in the CNMI.

§ 1014 Mediator Standards of Conduct

The 2005 Model Standards of Conduct for Mediators promulgated by the American Bar Association shall apply as the ethical standards for all mediators who conduct court-ordered mediations in the CNMI. All Court-Approved mediators have a duty to become familiar with and comply with such Standards.

§ 1015 Court-Approved Mediator Fee Schedule

The Clerk of the CNMI Supreme Court shall maintain a Court-Approved Mediator Fee Schedule that sets forth the maximum amounts of fees and expenses that may be charged by Court-Approved Mediators in relation to CNMI cases that are ordered to mediation pursuant to this title. The limits set forth in the Court-Approved Mediator Fee Schedule shall be established by the CNMI Supreme Court based upon an assessment of the rates typically charged for mediations on Guam and in mainland US states balanced by the need to maintain affordable mediation opportunities in relation to court-ordered mediations in the CNMI.

§ 1016 Costs of Mediation & Financial Requirements

(a) All costs of mediation shall be borne by the parties in equal proportions unless otherwise agreed between the parties and the mediator or ordered by the court based upon a showing of extraordinary circumstances.

(b) Within the time between the issuance of an order requiring mediation and the time of completion of such mediation, gifts shall not be given to mediators without the written consent of all parties.

(c) Compensation for the services and expenses of mediators shall be paid by the parties directly to the mediator.

(d) Mediators who preside over court-ordered mediations shall not charge fees in excess of the limits set forth in the Court-Approved Mediator Fee Schedule.

(e) Subject to any contrary agreement between parties, the fees and costs of Court-Approved Mediators who preside over court-ordered mediations shall be fixed by the mediator upon written notice to the parties, subject to any limitations that may be set forth by the CNMI Supreme Court.

(f) Costs of mediation in addition to mediator fees may include ONLY:

(1) reasonable expenses incurred by the mediator;

(2) reasonable expenses incurred by witnesses requested by the mediator with consent of the parties; and

(3) fees and costs of experts whose advice was requested by the mediator with consent of the parties.

(g) A party may request and the court may grant a financial accommodation in accordance with the provisions of Section 1018.0 of this title.

(h) Upon the failure of a party to provide timely payment to a Court-Approved Mediator in relation to a Court-Ordered Mediation, the mediator may submit a request to the court for an order requiring payment. In relation to such a request, the court may issue an order requiring a party to provide payment to the mediator and the court may issue an order imposing sanctions upon a party for failure to make payment. If a Court-Ordered Mediation is not completed by the Mediation Completion Date as a result of a party's failure to provide payment to a mediator, Rule 1019 shall also be applicable.

(i) Except to the extent set forth in this title, neither the court nor any judge of the court is responsible for payment or collection of mediator fees or expenses.

§ 1017 Relief from Court-Ordered Mediation

(a) If a case is ordered to mediation by the court and any party is opposed to the order, such party opposed to the Order for Mediation may file and serve a Request for Relief from Order for Mediation.

(b) Any such Request shall be filed and served not later than 10 days from the date of the Order for Mediation.

(c) Any such Request must provide reasons why the case is not appropriate for mediation at that time.

(d) Any such Request must provide facts supporting the requesting party's contentions.

(e) Any such Request must request removal from mediation and return to the normal docket of the assigned judge.

(f) After filing and service of such a Request for Relief:

(1) A party that is in favor of the Order for Mediation may file and serve a Reply in Support of Mediation not later than 5 days after service of the Request for Relief.

(2) The judge assigned to the case shall rule on the Request for Relief (with or without a hearing) not later than 15 days after the filing of the Request for Relief.

(3) If the judge agrees with the Request, the judge shall issue an Order Removing Case from Mediation and return the case to the normal docket.

(4) If the judge disagrees with the Request, the Order for Mediation shall remain in effect.

(g) When the CNMI government is a party to a civil action as to which the court has determined that a mediation shall occur, the CNMI government shall have an option to either proceed with court-ordered mediation and comply with all of the rules and requirements of this title including, but not limited to, timely and proper payment of all deposits and payments to the mediator or, in the alternative, the CNMI government may request an Order to Proceed with a Mandatory Settlement Conference, in which event the court shall order the parties to participate in a Mandatory Settlement Conference.

(1) For purposes of this title, a Mandatory Settlement Conference is a mediation conducted by a CNMI Superior Court Judge, Commissioner or Judge Pro Tem in accordance with the rules,

procedures and requirements set forth in this title in relation to mediations, except that there shall be no fees or costs charged to either of the parties in the action in conjunction with their participation in the Mandatory Settlement Conference.

(2) A Mandatory Settlement Conference shall be conducted by a judge or judge pro tem other than the one who is presiding over the action (unless all of the parties enter into a stipulation that is memorialized in writing or on a court record that provides for the Conference to be conducted by the judge or judge pro tem presiding over the action).

(3) When a court orders an action to proceed to a Mandatory Settlement Conference, the court shall contact the clerk of the presiding judge of the CNMI Superior Court and request that the presiding judge of the CNMI Superior Court assign the action to a judge of the CNMI Superior Court to conduct a Mandatory Settlement Conference in accordance with this title. The presiding judge shall thereupon promptly issue such an order referring the action to a judge, commissioner or judge pro tem other than the one presiding over the subject action to conduct a Mandatory Settlement Conference. The presiding judge is included in the judges to whom a case may be assigned to conduct a Mandatory Settlement Conference.

(4) For purposes of this Section 1017, the CNMI government does not include any autonomous agency or corporation of the CNMI government including, but not limited to, the Commonwealth Ports Authority, CNMI Public School System, Northern Marianas College, Commonwealth Utilities Corporation, Commonwealth Health Center, Commonwealth Healthcare Corporation, Commonwealth Development Authority, Marianas Visitors Authority and the Marianas Public Land Trust.

§ 1018 Financial Accommodation for Indigent Parties

(a) An indigent party may file a request for a financial accommodation in relation to mediation costs in accordance with the rules and standards used for determination of indigency in CNMI criminal cases.

(b) Such a request must be filed not later than 5 business days after issuance of an Order for Mediation.

(c) No party qualifies for a financial accommodation if such party is represented by an attorney, unless such attorney is providing legal services pro bono or on behalf of a non-profit legal services provider.

(d) The judge shall rule on indigent status without a hearing within 10 days of a request for financial accommodation.

(e) If a request for financial accommodation is approved, the judge shall refer the case to a mediator with appropriate provisions for financial accommodation.

(f) The determination of a litigant's status as an indigent shall not automatically result in an obligation on the part of any other party to bear the entirety of the costs of mediation.

(g) In the event that a party to a case that has been ordered to mediation has been granted indigent status, either of the following shall occur:

(1) One or more of the parties other than those who have been granted indigent status can agree to pay for the indigent party's share of the costs of mediation, or

(2) The mediator can reduce the mediator's fee and/or waive entitlement to receive the indigent party's share of the mediator's fees and/or costs, or

(3) The parties and the mediator can enter into an agreement that alleviates the need for payment of mediation costs by the indigent party, or

(4) If no agreement can be reached pursuant to Section 1018 (g)(1), (2) or (3), the case shall be ordered, upon request, to a Mandatory Settlement Conference that is to be ordered and conducted in accordance with the provisions of Section 1017(g)(1)-(4) of these Rules.

§ 1019 Failure to Comply with Financial Requirements

(a) A mediator is not required to, but may, proceed with a mediation in a matter in which any of the parties has failed to provide the entire requisite amount of deposit, compensation or other payment to the mediator.

(b) In the event that a court-ordered mediation does not take place before the Mediation Completion Date due to a failure on the part of a plaintiff to provide the entire requisite amount of deposit, compensation or other payment to the mediator, the court shall either:

(1) issue an order dismissing or staying such plaintiff's action if the court finds that such plaintiff was not incapable of providing such payment or that such plaintiff's failure was otherwise unreasonable, or

(2) issue an order for the action, or a portion thereof, to proceed with a Mandatory Settlement Conference in accordance with the provisions of Section 1017(g)(1)-(4) if the court finds that such plaintiff's failure to provide such payment was not unreasonable and that such plaintiff was incapable of providing such payment.

(c) In the event that a court-ordered mediation does not take place before the Mediation Completion Date due to a failure on the part of a defendant to provide the entire requisite amount of deposit, compensation or other payment to the mediator, the court shall either:

(1) issue an order striking such defendant's answer to the complaint if the court finds that such defendant was not incapable of providing such payment or that such defendant's failure was otherwise unreasonable.

(2) issue an order for the case, or a portion thereof, to proceed with a Mandatory Settlement Conference in accordance with the provisions of Section 1017(g)(1)-(4) if the court finds that such defendant's failure to provide such payment was not unreasonable and that such defendant was incapable of providing such payment.

(d) Nothing in this title shall preclude the court from issuing an alternative order that provides for payment of the entire requisite amount of deposit, compensation or other payment to the mediator, facilitates the completion of mediation, and is fair and just to the parties and accomplishes the purposes of this title.

(e) Nothing in this title shall preclude the parties from entering into a stipulation that provides for the payment of any portion of the deposit, compensation or other payment to the mediator in any manner.

§ 1020 Conduct of Mediation

(a) As soon as practicable after the issuance of an Order for Mediation, the parties shall contact the mediator and make arrangements for the date, time and place of the mediation, assist the mediator in determining who should attend the mediation, establish with the mediator the procedures to be followed during the mediation and do all things reasonably necessary to ensure that the mediation is completed on or before the Mediation Completion Date.

(b) Mediation statements shall be submitted to the mediator within the time period established by the mediator. Such statements shall include:

(1) an identification of the parties and their counsel,

(2) an identification of all persons from whom authority is needed for making settlement decisions,

(3) an identification of all persons who will attend the mediation,

(4) an identification of all persons connected with an opposing party whose presence at the mediation might substantially improve the utility of the mediation or the prospects of settlement,

(5) copies of relevant documents that are necessary or essential for proceeding with a meaningful mediation, and

(6) a description of the litigation, a discussion of the issues pertaining to liability, a discussion the issues pertaining to the damages claimed, a description of any prior settlement negotiations and any other information that is necessary or essential for proceeding with a meaningful mediation.

(c) Confidential information used or discussed in mediation shall not be communicated to the judge or the court unless all parties consent in writing or on the court record.

(d) No writing by the mediator shall be disclosed to the parties or anyone else, unless the mediator and the parties consent.

(e) All information disclosed, party admissions made and documents produced in mediation shall not be admissible in any proceeding except as permitted by law.

(f) The mediator has a duty to disclose to proper authorities information obtained during mediation that he/she reasonably believes will prevent a participant from committing an illegal act that is likely to result in death or serious injury.

(g) No mediator may be compelled to testify as a witness or participate in any hearing or trial of the mediated matter.

(h) All parties, representatives of the parties, insurers and all other persons from whom settlement authority is required shall personally attend the mediation unless excused by the mediator or the court based upon a showing of good cause.

(i) All parties, their representative and counsel shall participate in Court-Ordered Mediation in good faith and exert their best efforts to facilitate a resolution of the issues in dispute.

§ 1021 Mediator Immunity

All Court-Approved Mediators shall have privileges and immunities equivalent to those granted to Special Masters pursuant to Rule 53 of the CNMI Rules of Civil Procedure.

§ 1022 Evidence Admissible

Evidence that is admissible or discoverable outside of mediation shall not become inadmissible or not discoverable solely because it was used in conjunction with mediation.

§ 1023 Evidence Not Admissible

Evidence that is inadmissible or not discoverable outside of mediation that is disclosed during mediation, or any admission by parties or document produced during mediation, shall NOT become admissible at trial due to its disclosure in conjunction with a mediation, nor can any such disclosure made during mediation be compelled in any civil or criminal action, unless consented to by the parties.

§ 1024 Confidentiality of Mediation and Communications in the Course of Mediation

Mediation proceedings pursuant to this title shall be held in private, and shall be and remain confidential. All communications, verbal and written, made by the mediator, the parties and their counsel during mediation shall be and remain confidential. At the trial of the action, there shall be no mention of or reference to the fact that any mediation has taken place. Any reference to the mediation during any subsequent trial shall constitute grounds for a mistrial.

§ 1025 Sanctions for Non-Appearance at Mediation

(a) As to any party or party's counsel who fails to appear at a scheduled mediation session, the court shall issue an Order to Show Cause as to why sanctions should not be assessed against such party or attorney including, but not limited to:

(1) requiring such party and/or such party's attorney to pay to the mediator the mediator's fees and costs in conjunction with the missed session, and/or

(2) requiring such party and/or such party's attorney to pay to the opposing party the opposing party's attorneys' fees and/or costs incurred in conjunction with the missed session, and/or

(3) any other sanctions that are deemed appropriate in the court's discretion.

§ 1026 Termination of Mediation

Mediation may be terminated at any time upon:

(a) a determination by the mediator that "mediation efforts are not currently justified" or

(b) a declaration by the parties to the mediator stating that all parties stipulate that mediation should be terminated as to all parties or only as to particular parties (e.g., due to impasse of only some of the parties) or

(c) the signing of a settlement agreement setting forth a confirmation that the case has been settled and the basic terms of the settlement, even if it is with the understanding that the settlement is subject to completion and/or execution of a more formalized agreement and/or execution of a release.

§ 1027 Enforcement of Settlement as Judgment

If parties to pending litigation stipulate in a writing signed by the parties outside the presence of the court or stipulate orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of such settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

§ 1028 Post-Mediation Case Management Conference

(a) At a Post-Mediation Case Management Conference the court shall:

- (1) determine whether mediation has been completed or terminated,
- (2) determine whether further mediation should be ordered and issue an appropriate order thereon,
- (3) determine whether a trial date should be set or re-scheduled and issue an appropriate order thereon,
- (4) address any other case management issues that are relevant including, but not limited to, the setting or changing of a discovery cut-off date, dates for designations of expert witnesses, expert discovery, deadlines for and/or scheduling of motions, jurisdictional issues and any other issues pertinent to the management of the case and the court shall issue appropriate orders thereon,
- (5) determine whether any other order should be issued to facilitate the efficient advancement of the case to conclusion.

(b) No party shall be required to attend a Post-Mediation Case Management Conference if a stipulation or request for a dismissal of the entire action has been filed with the court prior to the date set for the Post-Mediation Case Management Conference and the court has been notified that the entire action has been resolved and/or that a stipulation or request for a dismissal of the entire action has been filed.

§ 1029 Other Types of ADR

Nothing in this title shall prevent the parties from pursuing other types of Alternative Dispute Resolution such as binding arbitration, non-binding arbitration, neutral case evaluation or some other appropriate type of Alternative Dispute Resolution.

§ 1030 Repeal of Commonwealth Rules Governing Court-Appointed, Certified Mediators

The Commonwealth Rules Governing Court-Appointed, Certified Mediators that became effective in the CNMI on Feb 20, 2001 are hereby repealed.

§ 1031 Tolling of Time for Calculation of Case Age

Cases referred to mediation are tolled for purposes of court administrative standards regarding “case age.” Tolling commences on the date of the issuance of an Order for Mediation and ends after the assigned judge determines mediation has been concluded or terminated.