

**IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU**

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IN RE: :
 :
 : **STANDING ORDER 13-01**
MEDIATION PROCEDURE :
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ORDER

Mediations conducted pursuant to Rule 72 of the Rules of Civil Procedure shall be governed by the following rules:

- (a) **Appointment of Mediator:** Upon an order for mediation, the Mediation Clerk shall appoint a qualified mediator. A single mediator shall be appointed unless the mediator determines otherwise.

- (b) **Qualifications of Mediator; Impartiality; and Appearance of Bias:** In Court-ordered mediations, the mediator shall be qualified and impartial.
 - (1) A mediator shall be deemed qualified if:
 - i. He/she has been certified as a Mediator by the Palau Bar Association; or
 - ii. He/she has those qualifications the Court or Mediation Clerk may deem appropriate given the subject matter of the mediation.
 - (2) A mediator shall be deemed impartial if:
 - i. He/she has no personal or financial interest in the underlying action; or
 - ii. He/she has a personal or financial interest in the underlying action, discloses such interest to all parties to the action and obtains a written waiver from all parties to the action.
 - (3) Before accepting an appointment, the prospective mediator shall disclose to the parties any circumstances likely to create an appearance of bias or likely to prevent the mediation from commencing within a reasonable time. Upon receipt of such disclosure, the parties may request a different person as mediator. If the parties disagree as to

whether a prospective mediator should serve, the Mediation Clerk shall appoint a different mediator. The appearance of bias shall be determined under the same standards applicable to judges of the Republic of Palau under the 2011 Code of Judicial Conduct.

(c) Declining Mediation Assignment; Replacement of Mediators:

- (1) A mediator may decline a mediation assignment.
- (2) If any mediator becomes unwilling or unable to serve, the Mediation Clerk shall appoint another mediator. The appointment of a successor mediator shall be by the same procedures and upon the same terms as an initial appointment.

(d) Parties to be Present at Mediation; Notice:

- (1) Any party not represented by an attorney may be assisted by persons of his or her choice in the mediation. Each party, or that party's representative, must be prepared to discuss during mediation sessions the issues submitted to mediation and, unless otherwise expressly agreed upon by the parties or ordered by the Court before the first mediation session, someone with authority to settle those issues must be present at the mediation session or reasonably available to authorize settlement during the mediation session. Mediation sessions are private. Persons other than the parties and their representatives may attend mediation sessions only with the permission of the parties and with the consent of the mediator.
- (2) No later than five days before a scheduled mediation, parties to the mediation shall submit to the mediator and to all other parties to the mediation a proposed list of persons to be present at such mediation.

(e) Time and Place of Mediation: The Mediation Clerk shall fix the time of each mediation session. The mediation sessions shall be held at any convenient location agreeable to the mediator and the parties or as otherwise designated by the Mediation Clerk.

- (f) **Position Statements:** A mediator may require each party concerned, within a reasonable time before the first scheduled mediation session, to provide the mediator with a brief memorandum setting forth the party's position with regard to the issues that need to be resolved. The mediator shall not distribute the memoranda to the parties without their consent. At the first session, the parties shall produce all information reasonably required for the mediator to understand the issues presented. The mediator may require either party to supplement this information.
- (g) **Mediator Authority:** The mediator does not have authority to impose a settlement upon the parties, but the mediator shall attempt to help the parties reach a satisfactory resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the parties, to communicate offers between the parties as the parties authorize, and, at the request of the parties, to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties agree to the mediator's obtaining such advice and assume the expenses of obtaining it. Arrangements for obtaining such advice shall be made by the mediator or by the parties. The mediator is authorized to end the mediation whenever, in the judgment of the mediator, further efforts at mediation would not contribute to a resolution of the dispute between the parties.
- (h) **Mediator Protection:** A mediator shall be immune from suit for all conduct in the course of the mediation.
- (i) **Confidentiality:** All information disclosed in the course of a mediation, including oral, documentary, or electronic information, shall be deemed confidential and shall not be divulged by anyone in attendance at the mediation except as permitted under this Standing Order or by statute.
- (1) The term "information disclosed in the course of a mediation" shall include, but not be limited to:
- i. views expressed or suggestions made by another party with respect to a possible settlement of the dispute;
 - ii. admissions made by another party in the course of the mediation proceedings;
 - iii. proposals made or views expressed by the mediator;

- iv. the fact that another party had or had not indicated a willingness to accept a proposal for settlement made by the mediator; and
 - v. all records, reports, or other documents received by a mediator while serving as mediator.
- (2) A court shall neither inquire into nor receive information about the positions of the parties taken in mediation proceedings; the facts elicited or presented in mediation proceedings; or the cause or responsibility for termination or failure of the mediation process.
- (3) A mediator shall not be compelled in any adversary proceeding or judicial forum, including, but not limited to, a hearing on sanctions brought by one party against another party, to divulge the contents of documents received, viewed, or drafted during mediation or the fact that such documents exist nor shall the mediator be otherwise compelled to testify in regard to statements made, actions taken, or positions stated by a party during the mediation.
- (4) There shall be no record made of the mediation proceedings.
- (5) Notwithstanding the foregoing:
- i. A mediator or a party to a mediation may disclose information disclosed in the course of a mediation when the mediator and the parties to the mediation all agree to the disclosure.
 - ii. Information otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its use in mediation.
 - iii. This subsection also does not require exclusion of evidence that is offered for another purpose such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.
 - iv. The confidentiality provisions of this Standing Order shall not apply:
 - 1. to a communication made during a mediation that constitutes a threat to cause physical injury or unlawful property damage;
 - 2. to a party or mediator who uses or attempts to use the mediation to plan or to commit a crime; or
 - 3. to the extent necessary if a party to the mediation files a claim or complaint against a mediator or mediation

program alleging professional misconduct by the mediator arising from the mediation.

4. To the extent necessary if a party to the mediation seeks to enforce a settlement executed during the course of the mediation.

(j) Termination of Mediation:

(1) The mediation process may be terminated at any time after the initial mediation session by any party to the mediation. It also may be terminated by the mediator. Court-ordered mediations shall be terminated by filing with the Court one of the following:

- i. Notice that the parties concerned have executed a settlement agreement. Such a notice shall be signed by all parties concerned or by their attorneys; or
- ii. A written declaration signed by the mediator stating that in the mediator's judgment further efforts at mediation will not contribute to a resolution of the dispute among the parties.

(2) The fact that mediation has once been terminated as to a particular dispute shall not bar the entry of a later order to mediate that dispute.

(k) Interpretation and Application of Standing Order: The mediator shall interpret and apply this Standing Order insofar as it relates to the mediator's duties and responsibilities. In other respects, this Standing Order shall be interpreted and applied by the Court.

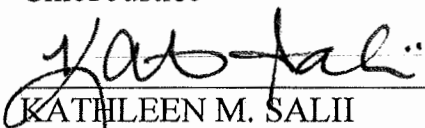
(l) Sanctions: The Court may, upon petition of a party or upon the recommendation of the mediator, award sanctions against any party or attorney for failure to comply with any provision of this Rule. Before imposition of a sanction, the Court shall issue an order to show cause as to why a sanction should not be imposed. Sanctions may include costs and attorneys' fees reasonably incurred by all other parties to the mediation and in the prosecution of the petition or recommendation for sanctions.

(m) **Mediation Fee:** A mediation fee as set by the Court shall be paid by the date ordered in the order for mediation, which shall be before the mediation or when mediation is requested by a party. The fee entitles the parties to two mediation sessions. An additional mediation fee is due for any further mediation. When a mediation session is not held due to failure of one or more participants to appear, the Court may reschedule the mediation session at no additional cost and/or impose sanctions.

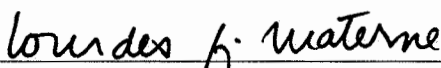
SO ORDERED this ^o27 day of February, 2013.



ARTHUR NGIRAKLSONG
Chief Justice



KATHLEEN M. SALII
Associate Justice



LOURDES F. MATERNE
Associate Justice