

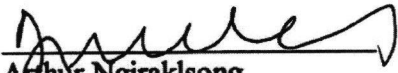
IN THE SUPREME COURT
OF THE REPUBLIC OF PALAU


IN RE RULES AND REGULATIONS
OF THE LAND COURT

ORDER

The following Rules and Regulations of the Land Court are promulgated by the Supreme Court of the Republic of Palau, in consultation with the Land Court, pursuant to 35 PNC § 1307(k), Article X, § 14 of the Constitution and 4 PNC § 101. They apply to all proceedings before the Land Court. These Rules and Regulations, numbered 13 through 16, replace existing Rules 13 and 14. Previously numbered Rules 15 through 32 are re-numbered to 17 through 34, sequentially.

So ordered the 19th day of October 1999.


Arthur Ngiraklsong
Chief Justice


Jeffrey L. Beattie
Associate Justice


Larry W. Miller
Associate Justice


R. Barrie Michelsen
Associate Justice

13. Mandatory Monumentation and Mediation Session

A monumentation and mediation session shall be scheduled not less than 45 days or more than 60 days before the date of each Land Court hearing, except that no monumentation and mediation session is required where the boundaries of the property at issue have already been resolved and monumented. Notice of the monumentation and mediation session shall be included in the notice of hearing. However, at the discretion of the Registration Officer, a separate notice may be served upon claimants after the deadline for filing claims has lapsed.

The session shall be held at a location near or at the site of the property, as determined by the Senior Judge. This location will not necessarily be in the same state as the property. The Senior Judge shall appoint one or more Registration Officer(s) and a mediator to attend each session. The mediator shall be appointed according to Rule 14 of these Rules.

All claimants shall be given a brochure explaining in English and Palauan the procedures of the Land Court with an emphasis on the procedures of the monumentation and mediation sessions. The brochure shall also be made available to the public.

Claimants may, if they wish, be represented by an attorney or trial counselor at the monumentation and mediation session. Adjoining land owners and traditional leaders of the area are encouraged to attend. All interested parties may also attend these sessions. Witnesses may not be called at the mediation session. A claimant may, however, present signed witness statements to the mediator and other claimants if he or she so chooses.

Attendance at the monumentation and mediation session is mandatory for all claimants to the Land. Registration Officers shall note the absence of claimants or their authorized representatives.

At each monumentation and mediation session, the Registration Officer shall explain the monumentation process, including claimants' obligation to clear of obstruction the perimeters of their claims, and to purchase the required boundary markers. Registration Officers shall also distribute copies of the following announcement in English and Palauan to all persons present and shall read it aloud (unless the content is modified by the Senior Judge in which case the Registration Officer shall distribute and read the modified announcement):

“THE PURPOSE OF THIS MEDIATION SESSION IS TO ASSIST EACH OF YOU IN RESOLVING YOUR DISPUTES. IF YOU ARE UNABLE TO RESOLVE YOUR DISPUTES THROUGH THIS SESSION, A HEARING WILL TAKE PLACE TO DETERMINE OWNERSHIP OF THIS PROPERTY. THERE ARE SEVERAL DISADVANTAGES TO A HEARING PROCESS:

- 1. FIRST, THE HEARING PROCESS CAN BE TIME-CONSUMING. EACH OF THE CLAIMANTS WILL NEED TO SPEND TIME PREPARING FOR AND ATTENDING THE HEARING. ORDINARILY, WITNESSES WILL BE**

- REQUIRED, AND THEY WILL ALSO HAVE TO SPEND THEIR TIME PREPARING FOR AND ATTENDING THE HEARING.**
- 2. SECOND, THE HEARING PROCESS CAN BE EXPENSIVE. YOU ARE NOT REQUIRED TO HAVE AN ATTORNEY, BUT IF YOU HIRE ONE, YOU WILL MOST LIKELY HAVE TO PAY THE ATTORNEY. YOU WILL ALSO VERY LIKELY BE RESPONSIBLE FOR PAYING COURT COSTS.**
 - 3. THIRD, THERE IS NO GUARANTEE YOU WILL WIN AT THE HEARING. EVEN THOUGH YOU MAY BELIEVE STRONGLY THAT YOU OWN THIS LAND, BY GOING TO COURT YOU RISK THAT THE COURT WILL RULE AGAINST YOU. YOU MAY END UP WITH NOTHING.**
 - 4. FOURTH, HEARINGS CAN INVOLVE VERY HEATED ARGUMENTS THAT CAN DAMAGE FRIENDSHIPS AND OTHER RELATIONSHIPS.”**

Registration Officers and the Mediator shall encourage claimants to discuss their claims among themselves and to attempt to resolve their disputes informally. However, in the event that the claimants are unable to resolve their disputes informally, the Registration Officer and the mediator shall work together to implement the following procedures:

- 1. Each claimant shall be allowed not less than 20 minutes to explain his position to all of the other claimants, provided that the mediator may, in his or her discretion, allow claimants additional time to explain;**
- 2. Each claimant shall be allowed not less than 10 minutes to respond to the explanation of the other claimants, provided that the mediator may, in his discretion, allow claimants additional time to respond;**
- 3. Each claimant shall have an opportunity to ask questions of any other claimant, provided that the mediator shall control both the amount and type of questions asked;**
- 4. After each claimant has been given an opportunity to speak, respond, and ask questions, the Mediator shall meet privately with each of the claimants to discuss the matter and to encourage settlement of all claims.**

The Rules of Evidence shall not apply during the mediation session, subject to the mediator's right to control the proceedings at all times. Statements made by any claimant or the mediator during a monumentation and mediation session shall be treated as settlement negotiations and may not be introduced into evidence in subsequent Land Court or Supreme Court proceedings.

Immediately after the meeting, Registration Officers shall assist the claimants to monument their claims. The Registration Officer shall make sketches of the claims, indicating the general shape and approximate location of corner markers.

Within 10 days after the session, the mediator shall prepare a written summary of the positions of the claimants, and a final recommendation as to determination of ownership. This summary and recommendation shall state the reasons upon which the recommendation is based and shall be

signed by the mediator. The summary and recommendation shall be served promptly on each claimant together with a statement explaining that if the claimant would like to settle, he or she should contact the mediator. The summary and recommendation is confidential and shall be made public only with the consent of all parties. The summary and recommendation may not be introduced into evidence in subsequent Land Court or Supreme Court proceedings. The mediator shall continue to work with all claimants until the hearing date to settle their claims.

If the parties wish to settle their disputes, the mediator shall complete the Settlement Form prepared by the Senior Judge and return it to the Land Court prior to the scheduled hearing.

14. Selection of Mediators by Claimants

Claimants personally served with notice of the Monumentation and Mediation Session shall also be served with a panel of mediators prepared by the Senior Judge and instructions regarding how the claimant may select a mediator from that panel. All persons filing claims after the first notice under Rule 7 shall be given the list of mediators when they file their claims and may select a mediator from that panel.

(1) The procedure used to appoint a mediator shall be as follows:

(A) At least 10 days in advance of the Mandatory Monumentation and Mediation Session, the claimants shall notify the Land Court if a particular mediator on the panel is mutually acceptable to all claimants; or

(B) If the claimants cannot agree on a mutually acceptable mediator, then no later than 10 days in advance of the Mandatory Monumentation and Mediation Session, each claimant shall return to the Land Court the list of mediators provided by the Court, ranked sequentially 1-n in order of the claimants' preference, with the mediator ranked number 1 being the most preferred by the claimant and the mediator ranked n being the least preferred. The Senior Judge of the Land Court shall appoint the mediator with the lowest cumulative ranking among those forms timely returned by the claimants, or one of the lowest-ranking mediators in the event of a tie. In the event that the Senior Land Court Judge concludes that the schedule of the lowest-ranking mediator will not allow the mediation session to occur promptly, the Senior Land Court Judge may appoint the next-lowest ranking mediator.

(C) If a claimant receiving a panel of mediators believes that one or more of the mediators on the panel has a conflict of interest in the proceedings, the claimant shall, as soon as possible, notify the Senior Land Court Judge in writing with an explanation of the claimed conflict. Selection of a mediator shall proceed as described above, but if, upon review of the situation, the Senior Land Court Judge determines that a conflict exists, the Senior Land Court Judge shall not appoint the

affected mediator, and shall instead appoint the next-lowest ranking mediator.

(D) If, at any time, a claimant questions the impartiality or independence of the selected mediator, the claimant shall immediately notify the Senior Judge in writing of the basis for the claimant's belief. If, upon review of the situation, the Senior Land Court Judge determines that the mediator's impartiality or independence is in doubt, the Senior Land Court Judge shall appoint a substitute mediator, giving preference to the next-lowest ranking mediator chosen by the claimants, if any.

(E) If the mediator appointed by the Senior Land Court Judge withdraws, dies, or for any reason is unable to conduct the mediation and monumentation session, the Senior Land Court Judge shall appoint a substitute mediator, giving preference to the next-lowest ranking mediator chosen by the claimants, if any.

15. Qualifications and Compensation of Mediators

The Senior Judge of the Land Court shall compile a list of qualified mediators. Mediators must be Palauan, at least 30 years old, have lived in Palau for not less than 7 years, have some legal training or expertise in customary matters, and be recognized in the community for either leadership capability or intelligence.

Within 60 days after his appointment, the Senior Judge shall prepare a mediation training seminar for each Registration Officer and mediator. Each mediator shall complete no less than 20 hours of mediation training within 120 days after the Senior Judge's appointment. All training shall take place in Palau. The Senior Judge may waive the mediation training requirement for mediators who provide satisfactory proof of expertise in and familiarity with the mediation process.

Mediators shall be compensated at an hourly rate of \$10.00 for all hours reasonably spent, subject to a maximum of \$100.00 per case. This maximum may be exceeded upon the written approval of the Senior Land Court Judge.

16. Penalty for Failure to Attend Mandatory Monumentation and Mediation Session

A claimant who fails to attend or send a representative to a scheduled monumentation and mediation session without reasonable cause shall pay a penalty of \$250 to the Clerk of Courts within 10 calendar days of the monumentation. If less than all claimants attend a scheduled monumentation, the Land Court shall re-schedule another session and promptly deliver to the absent claimant a statement directing him or her to pay the penalty and to submit a payment receipt to the Land Court prior to the re-scheduled monumentation. The Land Court may exclude a claimant from the monumentation until the penalty is paid.

Any claimant who fails for a second time to attend a scheduled monumentation and mediation session may not contest the boundary monumentation resulting from the session.