

DEVELOPMENTS IN PHILIPPINE MEDIATION FOR COURT CASES

by:

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The Philippine judiciary has a backlog of more than 800,000 cases in 1999 for 2,300 trial courts. Because of this tremendous backlog, the Supreme Court searched for ways to promulgate an inexpensive procedure for the expeditious disposition of cases in all courts. Thus, the Supreme Court through the Philippine Judicial Academy (PHILJA) introduced the Court-Annexed Mediation (CAM) to the Philippine judicial system.

In line with the Action Program for Judicial Reforms (APJR 2001-2006) adopted by the Supreme Court of the Philippines, PHILJA initiated the structure to implement CAM and other Alternative Dispute Resolution (ADR) mechanisms in the Philippine judicial system.

The Supreme Court *en banc* issued Resolution Administrative Matter No. 01-10-5-SC PHILJA dated October 16, 2001 implementing and institutionalizing court-annexed mediation (CAM) and other ADR mechanisms in the Regional Trial Courts and First Level Courts nationwide.

Furthermore, the said Resolution designated the Philippine Judicial Academy as the component unit for CAM and other ADR mechanisms and established the Philippine Mediation Center Units nationwide. The CAM has the following objectives:

- to assist the courts in decongesting court dockets;
- to enhance access to justice, more particularly the poor and marginalized sectors of society; and
- to implement Sec. 2(a), Rule 18 of the Rules of Court.

The following are the present mediation mechanisms adopted by the Philippine Supreme Court, namely:

- 1) Court-Annexed Mediation (CAM) with Mobile Court-Annexed Mediation (MCAM);
- 2) Judicial Dispute Resolution (JDR); and
- 3) Appellate Court Mediation (ACM).

Presently, the mediation mechanisms are under the auspices of the Philippine Judicial Academy (PHILJA) - Philippine Mediation Center Office (PMCO).

The Supreme Court identified cases that can be referred for mediation, namely:

- 1) all civil cases, settlement of estates and cases covered by the Rule on Summary Procedure except which by law may not be compromised;
- 2) cases cognizable by the barangay justice system;
- 3) civil aspect of the violation of the bouncing checks law cases; and
- 4) civil aspect of the quasi offenses under the Revised Penal Code of the Philippines.

Necessarily, commercial cases, environmental cases, intellectual property cases and family cases without penal provisions are subject to mediation proceedings.

To ensure the success of the mediation mechanisms, advocacy sessions, bench and bar dialogues, focus group discussions and coordination meetings with judges and court personnel, together with all major stakeholders, were conducted by the PHILJA-PMCO.

To strengthen the mediation process and to further decongest case dockets of courts, the Supreme Court declared settlement periods conducted every two (2) years for CAM and JDR. During settlement period, the Supreme Court directs trial courts where CAM and/or JDR are in place to select a number of cases (at least twenty (20) cases for the 2008 Settlement Period) to be referred to mediation.

COURT-ANNEXED MEDIATION (CAM)

Court-Annexed Mediation (CAM) in the Philippines began in 2002 in three (3) major sites [Metro Manila, Cebu and Davao]. Thereafter, since CAM was gaining support from the public as a viable alternative dispute resolution mechanism to decongest court dockets, the PHILJA-PMCO aggressively established additional PMC Units and trained mediators in order that more areas in the Philippines may avail of the mediation proceedings for the early termination of disputes filed in courts. In fact, some local government units through their local executives have expressed great interest in mediation and are willing to assist and support the PHILJA-PMCO in establishing the PMC Unit in their jurisdiction. Thus, three (3) CAM sites (Misamis Oriental, Pampanga, Negros Occidental) were added in 2004; two (2) CAM sites (Leyte, South Cotabato) were added in 2005; two (2) CAM sites (La Union, Benguet) were added in 2006; four (4) CAM sites (Batangas, Bulacan, Zamboanga, Cagayan) were added in 2007; and six (6) CAM sites (Camarines Sur, Lanao del Norte, Lanao del Sur, Misamis Occidental, Pangasinan) were added in 2008. As of December 2008, there are already 75 Philippine Mediation Center (PMC) Units in the whole Philippines with 675 mediators.

Although the 75 PMC units were not simultaneously established, cumulatively, from 2002 to 2008 or a period of seven (7) years for 20 sites (including Rizal and some parts of Bulacan for MCAM), a total of 184,741 cases were referred to CAM and 109,833 cases underwent mediation proceedings or an acceptance rate of 60%. 74,505 cases resulted to

successful mediation or a success rate of 68%. Thus, 74,505 cases were out of the dockets of 871 courts in 20 sites for a period of seven (7) years or an average of 86 cases were out of the docket per court for the said period or 12 cases were out of the docket per court per year.

Significantly, statistics gathered by the PHILJA-PMCO reveal that during the regular period for 2008 in 19 sites (including Rizal through the Mobile Court Annexed Mediation [MCAM]) covering 871 courts, there were 43,099 cases referred to CAM and MCAM of which 34,325 were mediated or parties in 34,325 cases agreed to undergo mediation proceedings (79.64% acceptance rate). 22,311 cases out of the 34,325 cases mediated resulted in successful mediation or a success rate of 65% for the 2008 regular period. Thus, 22,311 cases were taken out of the 871 courts' dockets in 19 sites. Effectively, an average of 26 cases was out of the case docket of each court in 2008 through CAM.

For the settlement period directed by the Supreme Court from November to December of 2008, 26,422 cases were referred to CAM by 857 courts in 20 sites (including Rizal through MCAM). 485 Mediators participated during the settlement period. Out of the 26,422 cases referred, 6,638 were returned to the courts; thus, 19,784 underwent mediation proceedings or an acceptance rate of 74.88%. 15,590 cases were already mediated of which 10,800 were successfully mediated or a success rate of 69.28%. 4,194 cases are still on-going mediation proceedings. Thus, 10,800 cases were taken out of the 871 courts' dockets in 20 sites. Effectively, an average of 12 cases was out of the case docket of each court during settlement period (November to December) in 2008 through CAM.

Combining the regular and settlement periods for 2008, 69,521 cases were referred to CAM and MCAM of which 50,015 cases were mediated or an acceptance rate of 71.94%. 33,111 out of the 50,015 mediated cases resulted to successful mediation or a success rate of 66.20% for the regular and settlement period of 2008. Thus, 33,111 cases were taken out of the 871 courts' dockets in 20 sites.

Effectively, an average of 38 cases was out of the case docket of each court in 2008 through CAM.

**CAM & MCAM STATISTICAL REPORT FROM 2002 TO
2008
(Regular and Settlement Periods)**

YEAR	Number of Cases Referred	Number of Cases Mediated	Number of Successful Mediation	Number of Unsuccessful Mediation	Success Rate
2002	4,118	3,559	3,000	559	84.29%
2003	4,246	3,097	2,410	687	77.82%
2004	20,277	7,490	5,899	1,591	78.76%
2005	25,745	11,717	7,626	4,091	65.08%
2006	20,911	13,050	8,159	4,891	62.52%
2007	39,923	20,905	14,300	6,605	68.40%
2008	69,521	50,015	33,111	16,904	66.20%
TOTAL	184,741	109,833	74,505	35,328	67.83%

Based on the foregoing statistics, Court-Annexed Mediation (CAM) should be considered as a vital mechanism to de-clog court dockets. Although CAM is conducted only for a period of thirty (30) days and extendible for another thirty (30) days, the limitation in the period has not been a hindrance for mediators to successfully assist parties settle their disputes. The success of CAM is attributed to the effective skills training of the mediators, their internship and the personal conviction of the mediators to assist in the administration of justice. Clearly, accredited CAM mediators have established themselves as true partners in the expeditious administration of justice.

JUDICIAL DISPUTE RESOLUTION (JDR)

One of the innovative mechanisms instituted by the Supreme Court through PHILJA to enhance mediation in the

Philippine judiciary is the Judicial Dispute Resolution (JDR). JDR was introduced through the Judicial Reforms Initiatives Support (JURIS) Project and the National Judicial Institute (NJI) of Canada. Judicial Dispute Resolution is an innovative tool integrated in the judicial system to enhance mediation proceedings aimed at delivering immediate justice for the parties and by the parties through the active assistance of the judge for disputes already locked in judicial proceedings.

JDR is conducted by a judge after parties fail to settle during Court-Annexed Mediation (CAM). JDR proceedings are conducted in thirty (30) days for first level courts (Municipal Trial Court, Municipal Circuit Trial Courts, Municipal Trial Courts in Cities, Metropolitan Trial Courts) and sixty (60) days for second level courts (Regional Trial Courts) subject to extension at the discretion of the JDR judge if settlement appears highly feasible.

The JDR judge becomes a conciliator, early neutral evaluator and/or mediator. In fact, the JDR judge could be one or a combination of some or all of said roles when conducting JDR. As a conciliator, the JDR judge persuades parties to reconsider their reluctance to compromise. As an early neutral evaluator, the JDR judge gives a confidential, reasoned oral evaluation but non-binding opinion on the strengths and weaknesses of each party's case and their chances of success. Based on practice, early neutral evaluation is conducted during private caucus. As a mediator, the JDR judge actively facilitates and assists negotiations among the parties.

The JDR judge shifts from rights-based approach to problem-solving approach in resolving cases. The JDR judge focuses on interests and motivation of parties and not their demands and positions. Thus, the JDR judge is not bound by legal remedies but helps parties develop their own creative options for their mutual gain.

As conciliator, early neutral evaluator, and/or mediator, the JDR judge receives information in absolute confidence that could affect neutrality. Bias may be created that could

affect the impartiality of the judge in the trial of the case. Moreover, parties will be more spontaneous once they are assured that the JDR judge will not be the trial judge. Thus, in sites where JDR is in place, there is a two-judge system – the JDR judge and the Trial judge.

Before conducting JDR, judges underwent three (3) to four (4) days of intensive skills training in conflict resolution. Peer to peer training was adopted while Psychologists and Communications Experts shared their expertise to enhance the communication and people-skills of the judges. Role-plays, videos, case exercises were utilized during the JDR training. Thereafter, new JDR judges were mentored by the senior JDR judges in conducting their initial judicial proceedings.

JDR was not simultaneously established in the present existing six (6) JDR sites. Two (2) sites (Pampanga, Negros Occidental) were established in 2004, two (2) sites (Misamis Oriental, Benguet) were established in 2006, one (1) site (La Union) was established in 2007 and another site (Makati) was established in 2008.

Cumulatively, from 2004 to 2008 or a period of five (5) years in the six (6) sites, 16,885 cases were referred to JDR. 11,109 or 65.79% of the 16,885 cases underwent JDR proceedings. 4,344 cases of the 11,109 cases were successfully mediated. The success rate for JDR in a period of five (5) years from 2004 to 2008 is 39% or 4,344 out of the 143 courts' dockets in six (6) sites or an average of 31 cases per court for the said period or 6 cases per year per court.

Notably, for the regular period in 2008 covering six (6) sites with 143 trial courts, 7,149 cases were referred to JDR. 4,353 cases were mediated while 1,797 cases out of the 4,353 cases were successfully mediated or a success rate of 41.28%. Thus, the success rate for JDR in the year 2008 regular period is 41.28% or. Thus, 1,797 cases were out of the 143 courts' dockets in six (6) sites or an average of 13 cases per court.

During the settlement period from November to December 2008, 1,420 cases that were already in the trial

stage were referred by 143 courts for JDR. 1,094 cases underwent JDR for a period of 2 months. 213 cases of the 1,094 cases were successfully mediated resulting to a success rate of 19.47%. Effectively, 213 cases already in the trial stage were out of the 143 courts' dockets or an average of 2 cases was out of docket per court in 2 months.

**JDR STATISTICAL REPORT FROM 2004 TO 2008
(Regular and Settlement Periods)**

YEAR	Number of Cases Referred	Number of Cases Mediated	Number of Successful Mediation	Number of Unsuccessful Mediation	Success Rate
2004	22	22	15	7	68.18%
2005	487	487	205	282	42.09%
2006	1,437	1,171	454	717	38.77%
2007	6,370	3,982	1,660	2,322	41.69%
2008	8,569	5,447	2,010	3,437	36.90%
TOTAL	16,885	11,109	4,344	6,765	39.10%

To date, trial courts in JDR sites do not only conduct JDR proceedings in cases initially filed with them since the Supreme Court has already issued Administrative Order No. 28-2009 dated March 2, 2009 directing all regional trial courts in JDR sites acting as appellate courts in appeals from first level courts to conduct JDR on appeal.

The cases settled through CAM and JDR do not only result in the decongestion of the trial courts dockets but would also benefit the appellate courts since fewer cases may be raised on appeal with them.

APPELLATE COURT MEDIATION (ACM)

Recognizing the efficacy of CAM for docket decongestion, the Supreme Court expanded CAM to the Court of Appeals in 2002 (Administrative Matter No. 02-2-17-SC, April 16, 2002). Court of Appeals mediators were, however, limited to retired

justices and judges, senior members of the Bar and senior law professors who are trained and accredited by the Supreme Court.

In 2002, 618 cases were chosen by the Court of Appeals to undergo mediation. However, parties in 162 appealed cases agreed to undergo mediation or an acceptance rate of 26.21% but only 105 cases actually underwent mediation because of lack of authority of parties to represent corporations or parties changed their minds during mediation proceedings. 70 cases out of the 105 mediated cases were successfully mediated or a 66.67% success rate. Thus, effectively, for seventeen (17) divisions of the Court of Appeals, an average of six (6) cases was taken out of the court dockets per division.

It is worthy to note that the Singapore Mediation Center was instrumental in the training of the first batch of Philippine mediators that included the Court of Appeals mediators in 2002.

Based on the statistics provided by the ACM Unit, cumulatively from 2005 to 2008, 188 cases were referred to ACM. 28 cases of the 188 cases were returned to the Court while 96 cases were mediated or an acceptance rate of 51.06%. 32 cases of the 96 mediated cases were successfully settled or a success rate of 33%. Thus, there was an average of 2 cases taken out of the court dockets per division from 2005 to 2008.

The ACM statistics for 2008 show that 161 cases were referred for mediation, 27 cases were returned to court while 77 cases were mediated or an acceptance rate of 47.82%. 25 cases of the 77 cases were successfully mediated with a success rate of 32%. Thus, for 2008, an average of 2 cases was removed from the backlog of the Court of Appeals per division.

ACM STATISTICAL REPORT FROM 2005 TO 2008

YEAR	Number of Cases Referred	Number of Cases Mediated	Number of Successful Mediation	Number of Unsuccessful Mediation	Success Rate
2005	1				
2006	3	2	1	1	50.00%
2007	23	17	6	11	35.29%
2008	161	77	25	52	32.47%
TOTAL	188	96	32	64	33.33%

As of December 2008, there is still only one (1) Appellate Court Mediation (ACM) Unit specifically for the seventeen (17) divisions of the Court of Appeals in Manila.

Since acceptance rate for Appellate Court Mediation is relatively high at 50%, probably, a greater referral rate from the Court of Appeals would result to more appealed cases being settled that could ultimately reduce the case backlog at the Court of Appeals.

To further propagate ACM, forty-four (44) Court of Appeals Mediators in Cebu and Cagayan de Oro were trained in December 2007 and the PMCO-Philippine Judicial Academy undertook preparatory activities to establish the PMC-Court of Appeals Unit in Cebu and Cagayan de Oro.

CONCLUSION

Based on the statistics and the Philippine experience, mediation is truly one of the best alternatives and cost-efficient means of resolving cases filed before the courts.