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NoraV Borja

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

**IN RE ADOPTION OF THE NMI
RULES OF FAMILY DISPUTE MEDIATION**

ADMINISTRATIVE ORDER 2023-ADM-0011-RUL

ORDER ADOPTING RULES OF FAMILY DISPUTE MEDIATION

¶1 On March 15, 2023, the proposed *NMI Rules of Family Dispute Mediation* were submitted to the Twenty-Third Northern Marianas Commonwealth Legislature for approval. On May 10, 2023, the House of Representatives approved the proposed rules. The Senate did not disapprove the proposed rules during the sixty-day period.

¶2 IT IS HEREBY ORDERED that the *NMI Rules of Family Dispute Mediation* are adopted pursuant to Article IV, § 9 of the NMI Constitution. These rules supersede any previous conflicting court rules and is effective May 16, 2023.

SO ORDERED this 19th day of May, 2023.

/s/

ALEXANDRO C. CASTRO
Chief Justice

/s/

JOHN A. MANGLONA
Associate Justice

/s/

PERRY B. INOS
Associate Justice



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NORTHERN MARIANA ISLANDS

RULES OF FAMILY DISPUTE MEDIATION

Effective May 16, 2023

EXHIBIT

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Rule 1. Title, Scope, Authority, and Forms

- (a) **Title.** These rules shall be known as the NMI Rules of Family Dispute Mediation and cited as “NMI R. FAM. DISP. M.”¹
- (b) **Scope.** These rules apply to family court mediation proceedings commenced after the effective date of these rules.
- (c) **Authority.** These rules are promulgated pursuant to Article IV, Section 9(a) of the NMI Constitution.
- (d) **Forms.** The court maintains all forms in the appendix and may modify them at any time without notice.
 - (1) Use of the forms in the appendix is not required. If another document is used in place of a corresponding form in the appendix, the document must clearly indicate what it purports to be and convey the information requested by the form.

Rule 2. Definitions

- (a) **“Communications”** means a statement, whether oral or in a record or verbal or nonverbal, that occurs during a mediation.
- (b) **“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.

¹ 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. The objectives of FDM include encouraging parties to make their own decisions on issues that will affect their lives and those of their children; increasing parties' satisfaction and compliance with final decrees; reducing the backlog of family court cases; reducing the time and expense required to complete cases; encouraging parties to develop the working relationship they will need to enable them to parent their children effectively after the final decree; and reducing the trauma endured by children affected by family law cases. It is in the public interest for FDM to be encouraged and used whenever appropriate.

- (c) **“Court-Approved Mediator”** means a mediator who is qualified as a mediator pursuant to Rule 7 of these rules.²
- (d) **“Mediation Completion Date”** means a date by which the parties must have gone through mediation pursuant to these rules.

Rule 3. Subjects for Mediation

Unless otherwise determined by the court, all matters under Division 1 of Title 8 of the Commonwealth Code may be considered for Family Dispute Mediation (“FDM”). If a mediator engages in mediation pursuant to 8 CMC § 1936(b), the mediator shall not mediate the issue of whether domestic or family violence occurred.

Rule 4. Initiation of Mediation

- (a) Unless otherwise provided by law, mediation may be initiated by consent of the parties or court order.
- (b) Any party may, at any time, make their desire for mediation known to the court.
- (c) Within 90 days after either a stipulation or request of the parties for FDM or a determination by the court that mediation may best serve the interests of the parties, the judge shall:
 - (1) Issue an order setting a Mediation Completion Date and a Status Conference, which all parties’ counsel and pro se parties must attend, that is to be held within 30 days after the Mediation Completion Date.
- (d) A Mediation Completion Date and Status Conference may be continued in the court's discretion for good cause.

Rule 5. Determination of Factors Necessary to Recommending Mediation

Factors that shall be considered by the court for purposes of determining when a case should be ordered to mediation under Rule 4(a) include:

² The role of the mediator is to serve as a facilitator of discourse between the parties in dispute. The mediator does not impose decisions on the parties. Instead, the mediator's goal is to help the parties talk with each other, enabling the parties to reach an acceptable agreement. During mediation, the mediator assists the parties in identifying the issues in dispute and clarifying the parties’ priorities. The mediator also aids the parties in discussing and exploring various options available to them.

- (a) Input from the parties' counsel and pro se parties;
- (b) Whether the case has previously been submitted to mediation or some other alternative dispute resolution process;
- (c) The age of the case;
- (d) The complexity of issues;
- (e) The degree of need for discovery or further case work;
- (f) The subject matter of the action; and
- (g) Any and all other relevant factors.

Rule 6. Selection of Mediator

- (a) At the time a case enters mediation, the court shall select a mediator and shall specify in the Order Approving 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 or to a mediator qualified in any state, territory, or possession of the United States, the court shall defer to the parties' preference whenever appropriate.
- (c) Regardless of the method by which the mediator is selected, the mediation shall be completed by the Mediation Completion Date, unless for good cause, the Mediation Completion Date is extended.

Rule 7. Qualification and Certification of Mediators

- (a) No person shall be certified to serve as an FDM Court-Approved Mediator in a mediation under these rules unless that person:
 - (1) has completed a minimum of 40 hours in a mediation training program approved by the Commonwealth Supreme Court, or the courts of any state, territory, or possession of the United States;
 - (2) has a bachelor's degree or at least five years of experience in the fields of social work, mental health, education, business, public administration, or behavioral or social sciences;

- (3) Possesses substantial relevant experience as an attorney or mediator in the field of family law;
 - (4) has observed at least one court mediation conducted by a certified mediator and has conducted at least one court mediation under the supervision and observation of a certified mediator;
 - (5) is of good moral character, as defined by the Commonwealth Rules Governing Court-Appointed, Certified Mediators; and
 - (6) has, in a mediation involving domestic violence, completed a program approved by the Commonwealth Supreme Court, or the courts of any state, territory, or possession of the United States that includes training specific to mediation involving domestic violence.
- (b) An applicant for certification as an FDM Court-Approved Mediator, together with any required supporting documents, shall be submitted to the Supreme Court, or at an office designated by the Chief Justice of the Supreme Court. The application and supporting documents shall be processed and reviewed by the designee(s) of the Chief Justice.
- (c) The CNMI Judiciary may require additional qualifications, training, and experience of mediators from time to time.
- (d) A person certified by the Judiciary of Guam to serve as a mediator in relation to Guam family law disputes shall automatically be deemed qualified to serve as a Court-Approved Mediator unless otherwise determined or ordered by the CNMI Judiciary.
- (e) Upon satisfaction of the requirements of this rule, the Chief Justice of the Supreme Court, or his or her designee, will issue a certificate and administer the oath to the mediator. The Chief Justice or his or her designee may waive any of the requirements of this rule. Reasonable administrative fees, where appropriate, may be imposed on mediators.

Rule 8. Domestic Violence Screening.

- (a) Following either a stipulation or request of the parties for FDM or a determination by the court that mediation may

best serve the interests of the parties, the court shall screen for the occurrence of domestic or family violence between the parties.

- (b) Upon appointment, the mediator shall screen for the occurrence of domestic or family violence between the parties. Prior to mediation, the mediator shall provide an individual initial screening session with each party to assess the presence of domestic or family violence.³

Rule 9. Mediation in Cases Involving Domestic Violence

When a screening or representation by any party, made at any time before or during mediation, indicates the presence of domestic violence, no mediation shall occur unless permitted by 8 CMC § 1936(b).

Rule 10. Mediator Standards of Conduct

The ABA Model Standards of Practice for Family and Divorce Mediation 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.

Rule 11. Mediator Fees and 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 shall be in writing and shall be signed by the parties and the mediator unless requested otherwise by the parties.

Rule 12. Mediation and 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) 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) Subject to any contrary agreement between parties, the fees and costs of Court-Approved Mediators who preside

³ Mediators are encouraged to utilize Form A in the Appendix in conjunction with this screening.

over FDM mediations shall be fixed by the mediator upon written notice to the parties.

- (e) 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.
 - (4) A party may request, and the court may grant, a financial accommodation in accordance with the CNMI's Title X Rules of Indigent Representation.
 - (5) Upon the failure of a party to provide timely payment to a Court-Approved Mediator in relation to FDM, 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.

Rule 13. Failure to Comply with Financial Requirements

- (a) A mediator is not required to, but may, proceed with 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-Approved mediation does not take place before the Mediation Completion Date due to a failure on the part of a party 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 party's action if the court finds that such party was not incapable of providing such payment or that such party's failure was otherwise unreasonable; or
 - (2) Issue an order to show cause as to why a party failed to compensate the mediator; or

- (3) Issue 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.

Rule 14. 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 to determine indigency in the Rules of Indigent Representation.
- (b) No party qualifies for a financial accommodation if such party is represented by an attorney, unless such attorney is court-appointed or is providing legal services pro bono or on behalf of a non-profit legal services provider.
- (c) The judge shall rule on indigent status without a hearing within a reasonable time after a request for financial accommodation is received.
- (d) If a request for financial accommodation is approved, the judge shall refer the case to a mediator with appropriate provisions for financial accommodation.
- (e) The determination of a party's status as indigent shall not automatically result in an obligation on the part of any other party to bear the entirety of the costs of mediation.
- (f) In the event that a party to a case that has been ordered to mediation has been 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 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 waive entitlement to receive the indigent party's share of the mediator's fees and 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, the court shall:

- (A) return the matter to the court's docket and lift any stay on actions involving the matter; or
- (B) upon request, order the case to a mandatory settlement conference; or
- (C) issue an alternative order pursuant to Rule 12(b)(3) of these rules.

Rule 15. Conduct of Mediation

- (a) As soon as practicable, 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 counsels, if applicable;
 - (2) An identification of all persons from whom authority is needed for making relevant decisions in the matter;
 - (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 reaching amicable decisions;
 - (5) Copies of relevant documents that are necessary or essential for proceeding with a meaningful mediation; and
 - (6) A description of the litigation, if ongoing, including a discussion of the issues, a discussion of the issues pertaining to any relief claimed, including damages, and a description of any other information deemed necessary or essential for proceeding with a meaningful mediation.

- (c) The mediator shall disclose to proper authorities any information that he or she reasonably believes will prevent a participant from committing any illegal act.
- (d) All parties and their representatives or counsel shall participate in Court-Approved Mediation in good faith and exert their best efforts to facilitate a resolution of the issues in dispute.
- (e) If any party alleges during a mediation session that domestic violence has occurred, or if the mediator otherwise becomes aware of the occurrence of domestic violence, he or she shall immediately suspend all scheduled mediation sessions and refer the matter to the court for screening pursuant to Rule 8. If the domestic violence involves child abuse, the mediator shall, within 24 hours, report their knowledge or suspicion directly to the Department of Public Safety. The report shall contain a statement of the time, date, circumstances, and details or information which gave rise to the knowledge or suspicion that the child in question is, or will become, a victim of child abuse.

Rule 16. Mediator Immunity

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

Rule 17. Written Agreement of Confidentiality

The parties to the mediation shall agree in writing that the mediation communications shall be confidential, non-discoverable, and inadmissible. The agreement to participate in a confidential mediation must refer to Rule 18.

Rule 18. Confidentiality and Inadmissibility of Mediation Communications

- (a) Except as provided otherwise by these Rules, mediation communications:
 - (1) Are confidential;
 - (2) Shall not be disclosed to any other person, including the judge or the court;
 - (3) Shall not be disclosed during testimony or during any discovery conducted as part of any proceeding; and

(4) Are inadmissible and shall not be introduced as evidence by the parties, the mediator, or witnesses in any proceeding.

(b) Mediation communications may be disclosed:

- (1) When consented by both parties in writing;
- (2) As required by Rule 15(c) and 15(e) of these Rules;
- (3) When necessary to prove coercion or fraud that led to the mediated settlement;
- (4) In order to establish the existence or terms of a settlement agreement; or
- (5) When necessary to impose sanctions or to discipline counsel or the mediator in connection with a mediation proceeding.

Rule 19. Sanctions for Non-Appearance at Mediation

If any party or party's counsel fails to appear at a scheduled mediation session when attendance is required, 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:

- (a)** Requiring such party or such party's attorney to pay the mediator the mediator's fees and costs in conjunction with the missed session; or
- (b)** Requiring such party or such party's attorney to pay the attorney fees and costs of the opposing party incurred in conjunction with the missed session; or
- (c)** Any other appropriate sanction.

Rule 20. Termination of Mediation

- (a)** During or after a scheduled mediation session, mediation may be terminated at any time upon:
 - (1) A determination by the mediator that mediation efforts are not currently justified; or
 - (2) A declaration by the parties to the mediator stating that all parties stipulate that mediation should be terminated as to all parties; or

- (3) The signing of a stipulation that matters pertinent to the mediation have been settled between the parties and that the basic terms of the settlement serve the interests of the parties, even if it is with the understanding that the settlement is subject to completion, execution of a more formalized agreement, execution of a release, or any combination thereof.
- (b) In the mediation of a matter involving domestic violence, mediation shall be terminated if any party withdraws his or her consent to mediation.

Rule 21. Post-Mediation Management

- (a) At a Status Conference post-mediation, the court shall:
 - (1) Determine whether mediation has been completed or terminated;
 - (2) Determine whether further mediation would best serve the parties, and if consented to by all parties, set forth another Status Conference;
 - (3) Determine whether a hearing date should be set or rescheduled and issue an appropriate order thereon;
 - (4) Address any other relevant issues, 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 the management of the case. 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) Regarding Court-Approved FDM, no party shall be required to attend a Status 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 Status 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 22. Mediation Procedure

- (a) Procedure prior to the commencement of mediation.** If a party arrives at the first mediation session without having read the mediation process document or having it read to them, the mediator shall read the document to that party and require the party to sign an acknowledgment to that effect. Prior to the commencement of mediation, the mediator shall inform the parties that the mediator may report suspected child abuse or neglect pursuant to law.
- (b) Procedure upon conclusion of mediation.** If a mediated agreement is reached, the mediator shall inform the parties that the agreement has no binding legal effect until it is adopted by court order and that either party may withdraw from the agreement prior to the court's adoption of the agreement. Within 15 calendar days of the conclusion of mediation, the mediator shall reduce any mediated agreement to writing; prepare a Mediation Outcome Report; file the agreement and the Mediation Outcome Report with the court; and send copies of the agreement to the parties.
- (c) Court's consideration of mediated agreement.** Upon receipt of a mediated agreement, the court shall review the agreement to determine if it is knowing, voluntary, and in the best interests of the parties' children, should they exist. After assessing the mediated agreement, and if satisfied that the interests of the parties and the best interests of the parties' children, should they exist, are accurately represented in the agreement, the court shall incorporate the mediated agreement in an order.

Rule 23. Annual Reporting

- (a)** Between January 1 and January 31 of each calendar year, all Court-Approved Mediators shall provide to the Family Court Division an Annual Report⁴ that sets forth as to each case over which the mediator presided within the immediately previous calendar year the following information:

 - (1) nature or type of case;
 - (2) number of parties;

⁴ Proper completion of Form B in the Appendix constitutes compliance with this rule.

- (3) dates on which mediation took place; and
 - (4) whether mediation resulted in a total settlement, partial settlement, or no settlement.
- (b)** Prior to February 28 of each calendar year, the Family Court Division shall issue to the Supreme Court a summary of all Annual Reports submitted by mediators and exclude any information identifying the parties. The summary shall be made public.