

THE PHILIPPINE ADR REVIEW

MAY 2011

BROADENING ITS SCOPE OF ARBITRATION ADVOCACY



SECRETARIAT

3rd Floor, Commerce and Industry Plaza
(besides Blue Leaf and Venice Piazza Mall)
1030 Campus Avenue cor. Park Avenue
McKinley Town Center, Fort Bonifacio
1634 Taguig City

Telefax: 822-4102
Email: secretariat@pdrci.org
Website: www.pdrci.org

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PDRCI moves to new office

By Juan Pablo P. Colet



PDRCI will soon move to its new office under a special lease agreement with the Philippine Chamber of Commerce and Industry (PCCI).

PCCI President Dr. Francis Chua confirmed during his meeting with PDRCI President Victor P. Lazatin on April 7, 2011 that PCCI will not charge rent to PDRCI for the latter's new office at the third level of the Commerce and Industry Plaza at the McKinley Town Center in Fort Bonifacio, Taguig City.

President Lazatin credited Dr. Chua as well as PDRCI Vice Chairman for Internal Affairs Miguel B. Varela, who is also PCCI Chairman Emeritus, and PDRCI Assistant Treasurer Dr. Eduardo G. Ong, a former PCCI director, for facilitating the office arrangement with PCCI.

“Truly, PDRCI owes a huge debt of gratitude to PCCI and Dr. Francis Chua as well as to Atty. Mike Varela and Dr. E. G. Ong, who made the common dream and vision of a permanent office and hearing venue a reality,” Atty. Lazatin said.

PDRCI Vice Chairman for External Affairs Eduardo R. Ceniza cited the able leadership of President Lazatin and the “invaluable help” of Dr. Chua, Atty. Varela and Dr. Ong **PAGE 4** ▶

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Lessons in mediating disputes between clients

By Roberto N. Dio



Last issue (*PADRR April 2011*), I wrote about the challenges of mediating a dispute between two clients. What made the assignment difficult, I noted, was not the amount involved or the complexity of the issues but the emotions attached by the parties to the dispute.

In the case that I handled, both my clients eventually agreed to a mediated settlement eight months after the process started. They jointly moved the commercial court in the intra-corporate case to render judgment on their compromise. They also agreed to permanently drop the criminal case that was filed by one party against the other.

About a month after the parties filed and exchanged their closing documents, I got a call from an obviously relieved client, one of the parties, who remarked about the high cost of the settlement to him, in terms of cash that had to be paid to the other party. While the settlement amount was substantial, the client was pleased with the result, judging from the relaxed tone of the voice and the lack of recrimination about the other party, who was pictured as the devil just a few months back.

At the time I accepted my appointment as mediator, it seemed impossible to resolve the dispute. But now the settlement was a done deal. Both sides complied in good faith with their undertakings,

literally buying peace between them.

To an observer, it may sound like just another day in the mediation office. Reading the settlement documents, one does not get a feel of the bitter words and feelings that used to be served as regular fare on the negotiating table. The compromise agreement is straightforward and precise, as if the parties closed a simple commercial transaction.

Although I hesitate to describe the result of the mediation as a success, since I could not benchmark the settlement with an older, similar case, I was quite satisfied with what happened. Looking back, there were some key lessons I picked up from my unique mediation experience.

Training works. I took my first mediation training in March 1995, under the auspices of Concord Foundation, Inc. This was an intensive, four-day workout with highly qualified mediators from The Accord Group Australia, which included several mock mediation sessions. Although we only used a basic module, the theories and

techniques we learned were quite advanced. The training materials applied plain language and simplified methods that were easy to grasp.

Although I underwent two more formal mediation trainings after that, I found that the techniques I learned in 1995 not only helped but worked well.

Remain neutral. When I sat down during the first mediation session with my clients, I doffed my hat as a litigator and put on my mediator's cap. Although it was tough for my clients to deal with me other than as a counsel whom they could summon, instruct and dismiss, I made it clear on day one that I would remain an impartial mediator throughout the process. I viewed the negotiation from all sides, not merely from both sides, and resisted all attempts by them to solicit my comments and opinions on the demands and positions of either side.

Be firm but courteous. Since mediation is based on trust, it was important for me to keep the confidence of the parties as we moved the process forward. This meant sticking to the

ground rules, which we fixed in advance in a formal document signed by the parties and their counsel, maintaining decorum throughout the process, and politely reminding the parties to observe schedules and deadlines. Courtesy was essential, because the parties could walk out of the mediation out of frustration, disgust or even a slight offense to their self-esteem.

Accept criticisms with an open mind.

The parties are sensitive to the mediator's every word and gesture. They will expect the mediator to remain neutral but secretly wish him to favor their side as their counsel. Any hint of bias, whether justified or not, will earn reprobation from a suspicious client. No client wants to share her weaknesses and secrets with a disloyal counsel, who is rightfully viewed as a traitor.

When a client criticized me for appearing to favor the other side in the negotiation, I accepted the criticism and apologized for my behavior but maintained my independence. By doing so, I avoided a possible pitfall. The criticism could have the opposite effect of making me defensive and subconsciously compensate by favoring the unhappy client.

The mediation is not about the mediator. Early in the process, I recognized my limited role as a peacemaker. My services came to be



because of a need to quickly and amicably resolve disputes without the parties going through prolonged litigation or arbitration, which could hurt their existing relationship. I exist because of the parties, not the other way around.

To paraphrase Rule 5.04 of the Code of Judicial Conduct, I refused to fall into the attitude of mind that the parties were made for the mediator, instead of the mediator for the parties. When one of the parties raised issues that were too personal for me, I offered to withdraw from the mediation so I would not be a hindrance to a settlement.

Commercial experience helps.

Mediation, like the law, is not an end in itself but only a means to end a temporary commercial dispute. Since the underlying transaction that led to the dispute is often a commercial one, the mediator must be prepared to offer long-term commercial solutions that would benefit both sides. Sometimes the solution is not obvious because the short-term gains are not measurable in terms of money or consist merely of cost savings, not profits.

I found that I was more effective when I thought more like a businessperson and less like a lawyer, in the sense of not insisting on who had a better right and responding more to the needs of both sides to minimize costs and maximize gains. Of course, minimizing costs also meant concluding the mediation as early as possible. 📍

About the Author



Atty. Dio is the editor of *The Philippine ADR Review*. He is a senior litigation partner of *Castillo Laman Tan Pantaleon & San Jose*, where he has practiced for the past 25 years. He is an accredited Court of Appeals mediator, construction arbitrator, and bankruptcy practitioner. He has represented claimants and respondents in both domestic and foreign arbitrations.

MEMBER SPOTLIGHT

Atty. Ray Anthony O. Pinoy




Atty. Ray Anthony Pinoy obtained his Bachelor of Laws degree from the University of the Philippines in 1994. He was admitted

to the practice of law on the following year. In law school, Tony was a member of the editorial board of *The Philippine Law Journal*.

Prior to taking up law, Atty. Pinoy attended the U.P. School of Economics, obtaining a Bachelor of Science degree in economics in 1990, *cum laude*. He also wrote for the college paper, *Sidhi*.

After passing the bar examinations in 1994, he joined the law firm of Castillo Laman Tan Pantaleon & San Jose (CLTPSJ), where he is presently a partner. He is also the head of the intellectual property (IP) litigation practice group of the firm.

Tony has represented clients in arbitrations before the International Court of Arbitration, Singapore International Arbitration Center, Philippine Construction Industry Arbitration Commission (CIAC), and in *ad hoc* arbitrations.

Atty. Pinoy is an accredited arbitrator of PDRCI and CIAC and a member of the Philippine Institute of Arbitrators. He was recently accredited as an intellectual property arbitrator of the Intellectual Property Office of the Philippines. 

PDRCI is moving!

Dear Members and Colleagues:

We are pleased to announce that the PDRCI Secretariat has moved to its new office on Wednesday, May 4, 2011.



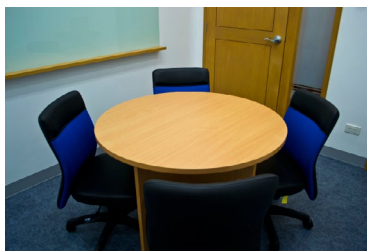
The new office is located at:

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PDRCI moves to new office




FROM PAGE 1 ► in making the PDRCI office arrangement with PCCI possible. Atty. Ceniza also thanked PDRCI Trustee Eng. Salvador P. Castro, who designed the new PDRCI office for free.



PCCI, the country's largest business organization, was established in July 1978 with the merger of the Chamber of Commerce of the Philippines and the Philippine Chamber of Industry.



In the same year, President Ferdinand Marcos issued Letter of Instructions No. 780 recognizing PCCI as the "sole official representative and voice of the entire private business community." Today, PCCI has more than 20,000 members.

PDRCI was set up in 1996 as the arbitration arm of PCCI. 

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Roberto N. Dio, *Editor*

Shirley Alinea, Donemark Calimon,
 Ramon Samson, *Contributors*

Arveen N. Agunday, Germai C. Abella,
 Juan Pablo P. Colet, *Staff Writers*