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BROADENING ITS SCOPE OF ARBITRATION ADVOCACY



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PDRCI elects new Board

By Juan Paolo E. Colet



PDRCI Chairman and former Chief Justice Artemio Panganiban inducts new members Gina Sarmiento, Roland Eco, Shalemar Buenaventura, and Vic Fernandez.


(photo insert) Atty. Lope Manuel, Jr. delivers his lecture on IP arbitration.



PDRCI elected a new Board of Trustees for the 2011 term at its general membership meeting held on August 15, 2011 at Brasserie 21, Security Bank Center in Makati City. Nineteen of the current trustees were reelected. Donemark Calimon, a litigation partner of Quisumbing Torres and regular contributor of *The Philippine ADR Review*, was elected as new trustee. His article on the new rule on judicial dispute resolution is featured in this issue.

President Victor P. Lazatin reported on the inauguration of the new PDRCI office and on the launching of the Philippine Intellectual Property Office's (IPO-PHL) arbitration program in

partnership with PDRCI. Atty. Lope Manuel, Jr. of the IPO-PHL gave a lecture on intellectual property rights mediation and arbitration.

New members Attys. Regina Irene P. Sarmiento, Shalemar H. Buenaventura, Victor Fernandez, and Rolando O. Eco were also inducted. 

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The Revised Rules on Court-Annexed Mediation and Judicial Dispute Resolution

By: Donemark Joseph L. Calimon



This is the first part of a two-part article on CAM and JDR. This part of the article will discuss the expanded coverage of CAM and JDR. The CAM and JDR procedures will be discussed in the October issue.

On January 11, 2011, the Philippine Supreme Court approved new guidelines to expand the coverage of court-annexed mediation (CAM) and judicial dispute resolution (JDR) ["Guidelines"]. The Guidelines were

issued through Resolution A.M. No. 11-1-6-SC-PHILJA .

The Guidelines adopted the policy of diverting court cases to CAM and JDR to "put an end to pending litigation through a compromise agreement of the parties and thereby help solve the ever-pressing problem of court docket congestion." While recognizing that criminal cases may not be compromised, this policy strongly indicates that the ultimate objective of CAM and JDR is to

end all litigation, not merely its civil aspect.

The Guidelines are empowers the parties to resolve their own disputes and give practical effect to the State policy in Rep. Act No. 9285 (The ADR Act of 2004) "to actively promote party autonomy in the resolution of disputes or the freedom of the parties to make their own arrangement to resolve disputes" (Sec. 2). The reference to RA 9285 is interesting because the Act does

not cover court-annexed mediation (Sec. 7). Moreover, the mandatory nature of CAM and JDR and the restriction of the parties' ability to choose their mediators makes CAM and JDR somehow inconsistent with the idea that in an alternative dispute resolution system, the parties have the freedom to determine how their dispute should be resolved.

Three stages of diversion

The Guidelines define three stages of court diversion, namely: CAM, JDR and Appeals Court Mediation (ACM). Each was previously covered by a separate Supreme Court issuance, which somehow made it difficult to see that they were meant to complement each other. The Guidelines now clarify that CAM, JDR and ACM have the same objective and that they are merely different stages of a comprehensive dispute resolution process aimed at abating or ending court-docket congestion.

1. During CAM, the first stage of court diversion, the judge refers the parties to the Philippine Mediation Center (PMC) for the mediation of their dispute by trained and accredited mediators.

2. If CAM fails, the second stage, called the JDR, is undertaken by the JDR judge, acting as a mediator-

conciliator-early neutral evaluator.¹

3. The third stage is during appeal, where covered cases are referred to ACM.


Expanded jurisdiction

In addition to consolidating the existing CAM and JDR rules, the Guidelines covers the civil aspect of less grave felonies punishable by correctional penalties not exceeding six years imprisonment, where the offended party is a private person.²

The purpose is for the court diversion process to achieve a greater impact. The expansion to less grave offenses is needed since civil cases constitute only a small 16 percent of all cases filed in court, while special proceedings constitute even a smaller 7.6 percent. Since correctional penalties are intended for rehabilitation and correction of the offender, there is no reason why crimes punishable by correctional penalties may not be compromised, as to their civil aspect. However, it is not clear if the Guidelines applies to the civil aspect of criminal cases that are governed by special laws, although punishable with imprisonment not exceeding six years. In a strict sense, the term "less grave felonies" applies to crimes under the Revised Penal Code but not crimes governed by special laws.

Despite the non-mediatable nature of the principal action, like annulment of marriage, other issues such as custody of children, support, visitation, property relations and guardianship may be referred to CAM and JDR to limit the issues for trial.

Role of lawyers

Finally, the Guidelines define the role of lawyers in CAM and JDR as that of adviser and consultant to their clients. They are encouraged to drop their combative role in the adjudicative process and to give up their dominant role in judicial trials, in order to allow the parties more opportunities to craft their own agreement. 

About the Author



Donemark J.L. Calimon is a senior associate at the Litigation and Dispute Resolution Group of Quisumbing Torres Law Offices, a member firm of Baker & McKenzie

International. He is a member and an accredited arbitrator of PDRCI, an associate of the Chartered Institute of Arbitrators, East Asia Branch (Philippine Chapter) and a director/officer of the Philippine Institute of Arbitrators. He obtained his law degree at the University of the Philippines in 2000 and was admitted to the Philippine Bar in 2001.

¹The JDR judge acts as a mediator, neutral evaluator and/or conciliator. As mediator and conciliator, he facilitates the settlement discussions between the parties and tries to reconcile their differences. As a neutral evaluator, he assesses the relative strengths and weaknesses of each party's case, makes a non-binding and impartial evaluation of the chances of each party's success in the case, and persuades the parties to a fair and mutually acceptable settlement of their dispute.

²The other cases subject to mandatory CAM/JDR are:

(1) All civil cases and the civil liability of criminal cases covered by the Rule on Summary Procedure, including the civil liability for violation of B.P. 22, except cases which may not be compromised.

(2) Special proceedings for the settlement of estates.

(3) All civil and criminal cases filed with a certificate to file action issued by the Punong Barangay or the Pangkat ng Tagapagkasundo under the Revised Katarungang Pambarangay Law.

(4) The civil aspect of Quasi-Offenses under Title 14 of the Revised Penal Code.

(5) The civil aspect of estafa, theft and libel.

(6) All civil cases, probate proceedings, forcible entry and unlawful, cases involving title to or possession of real property or an interest therein, and habeas corpus cases decided by the first level courts in the absence of the Regional Trial Court judge, brought on appeal from the exclusive and original jurisdiction granted to the first level courts.


MEMBER SPOTLIGHT
Atty. Miguel B. Varela


Atty. Miguel B. Varela is the Vice Chairman of the Philippine Dispute Resolution Center, Inc. He also chairs the Philippine Association of Voluntary Arbitration

Foundation and is one of the accredited arbitrators of the International Court of Arbitration.

Atty. Varela earned his law degree from the Ateneo de Manila Law School and his degree in Liberal Arts from the San Beda College. He attended the Top Management and Productivity Program of the Asian Institute of Management, as well as special courses on management and organizational development, productivity, labor and industrial relations and development of small and medium enterprises sponsored by several international organizations. He is a member of the Philippine Bar Association, a Commissioner of the Consultative Commission on Constitutional Reform, and a Lifetime Member of the Philippine Constitution Association.

Atty. Varela is involved in several corporations and business organizations. He is the Chairman Emeritus of the Philippine Chamber of Commerce and Industry and a Trustee of the Philippine Trade Foundation, Inc. He chairs the Employers Confederation of the Philippines and the Pribadong Institusyon Laban sa Kahirapan (PILAK). He is Vice President of the International Labor Organization Foundation, Inc. He is also a Director of Manila Bulletin Publishing Corporation, MegaWorld Corporation, Ausphil Tollways Corporation, NPC Alliance Corporation, and Vice Chairman of the Richmond Group.

Atty. Varela is a recipient of various awards such as Presidential Medal of Merit for Outstanding Service to the Republic of the Philippines. 

SC favors liberal reading of arbitration clause in construction contracts

By Juan Paolo Colet

In a Decision promulgated last April 4, 2011, the Philippine Supreme Court favored a liberal reading of an agreement to submit a dispute to arbitration before the Construction Industry Arbitration Commission (CIAC), ruling that an arbitration clause in a construction contract should be interpreted in its “widest signification” to enable the CIAC to acquire jurisdiction over a construction claim.

The ruling was rendered in the consolidated case of *Licomcen, Inc. vs. Foundation Specialists, Inc.*, G.R. Nos. 167022 and 169678. The dispute arose between mall developer Licomcen, Inc. and contractor Foundation Specialists, Inc. (FSI) over the suspension of certain works and the payment of billings and other amounts. Licomcen and FSI had a Construction Agreement, with General Conditions of Contract (GCC), whereby FSI undertook to construct and install bored piles foundation for the LCC Citimall project in Legazpi City.

Immediately after signing the agreement, FSI began work on the project but in January 1998, Licomcen ordered it to halt construction due to an administrative case filed against officials of the City Government of Legazpi and Licomcen before the Ombudsman. The suspension was formalized through a letter of Licomcen’s engineering consultant, E.S. de Castro & Associates (ESCA), to FSI on January 19, 1998. In its reply letters, FSI claimed payment for work and materials. ESCA rejected FSI’s claims in a letter dated March 24, 1998.

Three years later, FSI sent a final demand letter to Licomcen for payment of its claims. As this letter was ignored, FSI filed a request for arbitration with the CIAC in October 2002, claiming unpaid billings, costs, unrealized profit, attorney’s fees and interest. Licomcen contested the request, arguing, among others, that (a) the claims were non-arbitrable because the arbitration clause provides for the arbitration of disputes “in connection with, or arising out of the execution of the Works,” but FSI’s money claims do not involve a dispute as to the execution of the Works since they do not involve an issue as to physical construction activities; and (b) FSI failed to comply with the condition precedent that a dispute must first be referred to Licomcen for resolution, and such resolution may only be assailed within 30 days from receipt thereof through a notice to contest through arbitration.

The CIAC ruled in favor of FSI, which decision was upheld with some modification by the Court


of Appeals. Both parties moved for reconsideration, which was denied. On appeal, the Supreme Court upheld the Court of Appeals’ decision with modification and affirmed that the CIAC properly acquired jurisdiction over the parties’ dispute.

Expansive interpretation of arbitration clause

The Supreme Court ruled that the CIAC’s jurisdiction cannot be limited by the parties’ stipulation that only disputes in connection with or arising out of the execution of the Works are arbitrable before the said agency. According to the Supreme Court, the mere fact that the parties incorporated an arbitration clause in their contract *ipso facto* vested the CIAC with jurisdiction over any construction controversy or claim between the parties.

The Supreme Court also added that the parties did not intend to limit resort to arbitration only to disputes relating to physical construction activities, holding that “an arbitration clause pursuant to E.O 1008 [Construction Industry Arbitration Law] should be interpreted at its widest signification.” The Tribunal liberally applied the parties’ arbitration clause so that FSI’s money claims were considered connected with or arising out of construction activities, thereby making such claims arbitrable.

CIAC jurisdiction not subject to condition precedent

On the principle that the CIAC’s jurisdiction can neither be enlarged nor diminished by the parties, the Supreme Court also held that such jurisdiction cannot be subject to a condition precedent. Hence, even if FSI failed to timely contest Licomcen’s denial of its money claims by filing a proper notice of arbitration within 30 days from the denial, the Supreme Court ruled that the CIAC acquired jurisdiction of the parties’ dispute due to the mere presence of an arbitration clause in their construction contract. 

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