

THE PHILIPPINE ADR REVIEW

NOVEMBER 2013

BROADENING ITS SCOPE OF ARBITRATION ADVOCACY



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PDRCI eyes partnership with DRBF

By Juan Paolo Colet

The Philippine Dispute Resolution Center, Inc. (PDRCI) is exploring potential tie-ups with the Dispute Resolution Board Foundation (DRBF), an international non-profit organization that promotes the use of Dispute Boards to resolve disputes in construction projects.

DRBF, which was founded in 1996, has more than 700 members throughout the world.

PDRCI Trustee Salvador P. Castro Jr. met with key officers of DRBF in September on the sidelines of the FIDIC Centenary Conference in Barcelona, Spain. Among the key officers of DRBF present during the meeting were James Perry, President of DRBF Region 2, and Christopher Miers, President Elect of DRBF Region 2.

The parties informally discussed the possibility of designating PDRCI as partner of DRBF in the Philippines and establishing a protocol for cooperation.

DRBF was also open to collaborating with PDRCI to conduct an International Dispute Board Training in the Philippines. This is a four-day advanced skills interactive course for users and potential

chairs/members of Dispute Boards in construction projects. DRBF is a recognized leader in the training of Dispute Board practitioners and users.



PDRCI is also looking into becoming an official affiliate of DRBF's 14th Annual International Conference and Training Workshop in May 2014 at Singapore. The event attracts top Dispute Board practitioners, employers, funding institutions, contractors and legal professionals, and it is the first time it will be hosted in Asia. 🇵🇭

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PART ONE

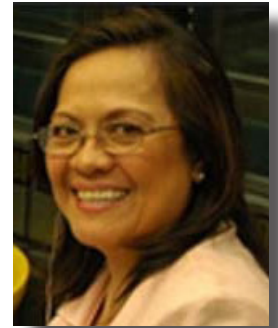
A short history of ADR in the Philippines

By Victor P. Lazatin

When the Philippine Department of Justice (DOJ) promulgated the Implementing Rules and Regulations (IRR) of The Alternative Dispute Resolution (ADR) Act of 2004 on November 9, 2010, I took the occasion to go into the history and development of ADR in the Philippines from my perspective.

I acknowledged certain individuals whom I thought were in the forefront of the development of various ADR modes or institutions, among them DOJ Undersecretary Jose Vicente B. Salazar, Department of Trade and Industry Undersecretary Zenaida N. Maglaya, Department of the Interior and Local Government Director Nelda D. Leda, Dean Custodio O. Parlade representing the arbitration profession, Prof. Alfredo F. Tadiar and Prof. Annabelle T. Abaya representing the mediation profession, Atty. Mario E. Valderrama representing the ADR organizations, and myself, representing the President of the Integrated Bar of the Philippines.

I recalled my first experience in one International Chamber of Commerce (ICC) arbitration in Switzerland with Dean Gonzalo T. Santos as our party-nominated arbitrator. At that time, other than labor arbitration in employer-employee disputes, there was hardly



FROM LEFT TO RIGHT: DOJ Undersecretary Jose Vicente B. Salazar, Prof. Annabelle T. Abaya, and Department of Trade and Industry Undersecretary Zenaida N. Maglaya.

any organized or institutional effort to pursue ADR—whether mediation or arbitration.

This situation prevailed despite the fact that the Civil Code of the Philippines, approved on June 18, 1949, contained provisions on arbitration and the Philippine Arbitration Law came into force on June 19, 1953. Whatever ADR activities were then going on, if any, were meager, sporadic and *ad hoc*. But Dean Santos continued to be active in the ICC and in arbitration. He

attended several international conferences on arbitration.

Sometime in 1984, Dean Santos asked me to help him draft a Presidential Decree (PD) to promote the compulsory arbitration of disputes in the construction industry under the proposed “Construction Industry Arbitration Commission” (CIAC). The CIAC was intended to be for construction disputes, much like the National Labor Relations Commission (NLRC) was for labor disputes.



Atty. Mario E. Valderrama



Dean Custodio O. Parlade.

However, there was resistance from the Department of Public Works and Highways (DPWH). So the proposed PD became an Executive Order and became voluntary instead of compulsory. To achieve this, a sentence was added at the end of the first paragraph of Section 4 of the draft Executive Order, which now reads as follows:

Jurisdiction – the CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the disputes arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.

Ultimately, the CIAC proposal became law and was promulgated as Executive Order No. 1008 on February 4, 1985. However, the

CIAC became functional only in 1989 when CIAC rules were adopted and promulgated with Dean Santos as the first Chairman of the CIAC.

I was part of the team that drafted the Rules. I was also a member of the original faculty that trained the first batch of CIAC arbitrators. Thus, the father of construction arbitration in the Philippines is undoubtedly the late Dean Gonzalo T. Santos.

Dean Custodio O. Parlade was in the second batch of arbitrators trained by CIAC. Dean Parlade saw a vacuum in the development and growth of commercial arbitration in the Philippines. Aware of other international and regional arbitration institutes like the ICC, Hong Kong International Arbitration Centre, and Singapore International Arbitration Centre, among others, he organized the Philippine Dispute Resolution Center Inc. (PDRCI) which he nursed and nurtured in his own office.

Dean Parlade pooled a number

of lawyers and businessmen who shared his vision and belief in ADR as a better mode than litigation to resolve commercial disputes. He then prepared and finalized the PDRCI Rules and promoted PDRCI as an alternative and viable ADR institution for Filipino parties.

He further forged cooperation agreements with other ADR institutes within the region and was a charter member of the Asia Pacific Regional Arbitrator Group (APRAG). Thus, Dean Custodio O. Parlade is unquestionably the father of PDRCI and of commercial arbitration in the Philippines.

Next issue: *The development of mediation and The ADR Act of 2004.*

About the Author



Atty. Victor P. Lazatin is the immediate past President of the Philippine Dispute Resolution Center, Inc. He

is a senior partner and former Managing Partner of the law firm of Angara Abello Concepcion Regala & Cruz. He served as the President of the Philippine Institute of Construction Arbitrators and Mediators (PICAM) in 2005 to 2006. He is a member of the faculty and a Construction Arbitrator of the Construction Industry Arbitrator Commission (CIAC). He is also an accredited arbitrator with CIAC, PDRCI, and the Singapore International Arbitration Centre. He has assisted numerous domestic and foreign entities in arbitration, either as an advocate or arbitrator.

MEMBER SPOTLIGHT


Atty. Jose Martin R. Tensuan



Atty. Jose Martin R. Tensuan is a litigation partner at Angara Abello Concepcion Regala & Cruz (AC-CRA). He specializes in alternative dispute resolution, particularly arbitration and mediation; commercial, banking, and corporate litigation, insolvency and corporate rehabilitation; and *writs of kalikasan* cases.

He studied philosophy at the University of the Philippines (U.P.) in Diliman in 1991 and earned his law degree from the Ateneo de Manila University School of Law in 1996. In law school, he was the class president and the team captain of the Ateneo football team.

Atty. Tensuan served as a councilor in the college student council and was an active member of U.P. In-Christ Thrust for University Students (ICTUS), an organization of Roman Catholics in U.P. He was also a member of the U.P. Zoological Society, U.P. Days with the Lord, and the LATEO (La Salle-Ateneo) football team, a club of former high school varsity soccer standouts in U.P.

He serves as a trustee of the Ateneo Law Alumni Foundation, Inc. (ALAFI) and is trustee-in-charge of its Outreach Committee. He also sits in ALAFI's Awards Committee. Atty. Tensuan is a member of PDRCI's Membership Committee and the ASEAN Law Association. 

PDRCI and ABA hold arbitration seminar for OGCC

By Juan Paolo Colet




ABA ROLI arbitration consultant Daniel Yamshon emphasizes a point during the simulated arbitration.

The Philippine Dispute Resolution Center, Inc. (PDRCI) and the American Bar Association Rule of Law Initiative (ABA ROLI) held an arbitration seminar for lawyers of the Office of the Government Corporate Counsel (OGCC) last October 7 to 11, 2013 at the Kimberly Hotel in Tagaytay City. Nearly fifty OGCC lawyers attended the seminar.

PDRCI trustees and officers discussed various arbitration topics, including: introduction to domestic and international commercial arbitration (Arthur P. Authea); pre-arbitration issues (Salvador S. Panga Jr.); commencing arbitration (Gwen B. Grecia De Vera); pre-hearing considerations (Victor P. Lazatin); conducting arbitration proceedings (Roberto N. Dio); and recognition, enforcement, challenge and vacation of arbitral awards (Custodio O. Parlade).

There was a special lecture on arbitration of inter-agency disputes under Presidential Decree No. 242 and related rules.

The OGCC lawyers also participated in simulations of domestic and international commercial arbitration conducted by Atty. Panga and Daniel Yamshon, an American arbitration specialist and international ADR consultant of ABA ROLI. 

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