

# ..... THE PHILIPPINE ..... ADR REVIEW

*Broadening its scope of arbitration advocacy*

JUNE 2015

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## PDRCI joins 2015 In-House Congress

PDRCI will join the panel discussion "*Where do I arbitrate? Pros and Cons of Various Arbitration Institutions*" at the 2015 In-House Congress to be held at the Makati Shangri-La Hotel on July 8, 2015.

The panel discussion (Practice Area Workshop A) aims to address how to select an international arbitration institution and the advantages and disadvantages of each. Representatives from Hong Kong International Arbitration Center (HKIAC), International Chamber of Commerce-Asia International Court of Arbitration (ICC-Asia), Kuala Lumpur Regional Center for Arbitration (KLRCA), Singapore International Arbitration Center (SIAC), and PDRCI will be part of the panel. PDRCI will be represented by its Secretary General, Atty. Roberto N. Dio.

2015  
**IN-HOUSE  
Congress**  
MANILA



The In-House Congress circuit, which is now on its 17th year, is the largest series of annual gatherings specifically for in-house lawyers along the New Silk Road and has become a regular fixture on the corporate counsel calendar across Asia. This year's Congress will bring together leading in-house lawyers, compliance professionals and senior business executives from both the private and public sectors in the Philippines.

## WHAT'S INSIDE

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PDRCI joins 2015 In-House Congress



## Learning from Experience: Travails of a Court-Annexed Mediator

By: Francisco Pabilla, Jr.

*Part I discusses the background of court-annexed mediation in the Philippines and a typical day in the life of a mediator, including pre-mediation preparations.*

### Background

Court-annexed mediation (CAM) started in 2001 as a priority project of the Philippine Supreme Court to unclog case dockets, particularly in the trial courts. The responsibility to supervise its implementation was delegated to the Philippine Judicial Academy (PHILJA), which became a component unit of the Supreme Court in CAM and other alternative dispute resolution (ADR) processes.

I was among the pioneer batch of trainees who were accredited as a mediator by the Supreme Court in 2002. In the same year, I was hired by the Philippine Mediation Foundation, Inc. (PMFI) as its Executive Director to assist PHILJA in the implementation of CAM, particularly in the establishment of Philippine Mediation Center (PMC) units and supervision of almost 200 CAM mediators in Metro Manila.

In 2008, I was engaged by the Philippine Mediation Center Office (PMCO) of PHILJA as a Consultant (Mediation Adviser) to coordinate the establishment of PMC units in the Visayas and Mindanao and the conduct of Settlement Week in those areas.

I share my experiences when I was an accredited court-annexed mediator from 2002 to 2012, when my accreditation expired, and as former Executive Director of the Philippine Mediation Foundation, Inc. (PMFI), a non-government organization headed by Atty. Eduardo de los Angeles as President. I hope that the current CAM mediators may learn from my experience to effectively perform their role in assisting the parties resolve their disputes.

I believe that the experiences I share in this article will help disputants better understand mediation and make the process work in resolving disputes. I said “resolving disputes” because mediation is not about winning as in a zero-sum game; it is more about restoring the relationship between the parties in the dispute. In mediation, the lawyers’ role changes from litigators to problem-solvers who help clients resolve their differences.

### Pre-mediation preparations

My preparation as a mediator starts before I go to sleep the night before and up to the time of my waking up in the morning of the following day. This basically involves the conditioning of my mind about the process and imagining my role in each stage of the mediation. My morning prayers would always include asking the Almighty to make me an instrument to promote His peace to whoever would entrust their case to me.

These helped build my confidence to effectively perform my role as a mediator and thus effectively assist the parties resolve their disputes.

However, I was not always selected as a mediator everyday. While the parties had the power to select and agree on the mediator, the mediators in each PMC Unit adopted an informal but more equitable way of mediator selection, depending on the unique circumstances obtaining in the PMC Unit where they volunteered to mediate (e.g., first-come, first-served basis).

### **A day at the PMC Unit**

The PMC Unit is the venue where mediatable cases are referred by the courts for mediation. There are 17 PMC Units in Metro Manila, one in each city. The PMCO assigns a court-annexed mediator to a PMC Unit where he or she initially volunteers. Depending on the need of a particular PMC Unit, the PMCO may assign a court-annexed mediator to two PMC Units.

Once, when I was a Mediation Supervisor, I was sued by a mediator for loss of income after I disallowed him from handling cases. This happened after I asked the PMC Unit Coordinator not to assign cases to this mediator because of his misconduct in soliciting cases from parties. The complaint was eventually endorsed by the court to PHILJA for proper disposition.

In the early years of the CAM project, the mediators were practically on their own to man the so-called "PMC Units" because no tangible PMC Unit then existed. Mediators were left alone to find a space along the corridors of a Hall of Justice, sometimes near the restrooms where a cigarette vendor allowed them to use his dilapidated wooden bench. In one city north of Manila, settlement agreements were prepared on the borrowed typewriter of a court clerk.

Mediators would sometimes bring their laptop computers to prepare documents required during and after the mediation. Mediators in another city pooled their own funds to buy a new air-conditioning unit to cool their office during the hot summer.



The establishment of the Mediation Fund by the Supreme Court pursuant to A.M. No. 04-2-04-SC, which took effect on August 16, 2004, provided the much-needed impetus to keep mediation going not only in Metro Manila but throughout the country. The Fund paid for the setting up and operation of PMC Units, including the hiring of one to three staff to provide clerical and administrative support to mediators.

As the Mediation Fund grew, the problem of lack of physical office space for the PMC Units in the Hall of Justice, lack of office supplies and equipment, etc. during the early days of CAM was addressed. To this day, however, I continue to receive text messages from mediators from PMC Units in the provinces complaining of inadequate office supplies and equipment.

*Next issue: The role of parties and counsel.*

### **About the Author**



*Francisco Pabilla, Jr. was a court-annexed mediator for 12 years and at the same time the Executive Director of the Philippine Mediation Foundation, Inc. He earned his bachelor's degree in Political Science in University of the Philippines in Diliman and Master of Arts degree in Development Studies at the Institute of Social Studies, The Hague, The Netherlands. He is currently the Assistant Secretary General of PDRCI.*

## IN MEMORIAM



**Atty. Claro V. Parlade**  
(Nov. 22, 1964 - June 22, 2015)

Atty. Claro "Lalen" Parlade passed away on June 22, 2015 after waging a valiant seven-month battle with lymphoma. He is a former Trustee of PDRCI and chair of its Committee on Online Dispute Resolution.

Lalen was the senior privacy counsel (Asia Pacific) for Google at the time of his death. A leading expert in the fields of data privacy, technology law and policy and online ADR, Lalen also served as the executive director for Cyberspace Policy Center for Asia-Pacific and former chairman of the Legal and Regulatory committee of the Information Technology and E-Commerce Council of the Philippines. He was also the chair of the Commission on E-business and Telecommunications of ICC Philippines, and was the private sector representative of the National Telecommunications Commission Advisory Council.

Lalen graduated in 1989 from the University of the Philippines College of Law and was an associate for several years at the law firm of Sycip Salazar Hernandez & Gatmaitan. In 1995, he joined Panganiban Benitez Parlade Africa & Barinaga Law Offices (later Parlade Hildawa Parlade Eco & Panga Law Offices), where he was a senior partner.

From 1999 to 2000, Lalen lived in Washington, D.C. as a Hubert Humphrey Fellow for Information Technology Law and Policy. In 2007, he received his LL.M. in Alternative Dispute Resolution from York University in Canada. In 2009, he joined the Business Software Alliance in Singapore as its Director for Software Policy, Asia-Pacific, and moved to Google in 2011.

Lalen is survived by his wife Billie, also a former senior partner at PHPEPLAW, and his three children. He is the son of PDRCI President Emeritus Dean Custodio Parlade.

## A seminar on "The Changing Landscape of International Arbitration and Mediation: Perspectives from Singapore" and Signing of Memorandum of Understanding between SIMC and PDRCI

Launched in November 2015, the Singapore International Mediation Center (SIMC) is the first center of its kind to focus on providing world-class mediation services targeted at the needs of parties facing cross-border commercial disputes. SIMC builds on Singapore's reputation for quality legal services and the success of the Singapore International Arbitration Center (SIAC), which has been recognised as the fourth most preferred arbitral institution in the world. Come and hear experts from the SIAC and SIMC, and the Philippine Dispute Resolution Center, Inc. discuss the latest developments in international arbitration and mediation in Singapore, including the new SIAC-SIMC Arb-Med-Arb service, and share their perspectives about what this could mean for international businesses in the Philippines.

**DATE / TIME:** Tuesday, July 7, 2015 at 1:00 p.m. - 4:30 p.m.

**VENUE:** IPOPHL Multipurpose Hall, Ground Floor, Intellectual Property Center World Finance Plaza, No. 28 Upper McKinley Road, McKinley Hill Town Center, Taguig City

**FOR RESERVATION:** Contact the PDRCI Secretariat telephone: 555-0798 / 822-4102 or email: [secretariat@pdrcli.org](mailto:secretariat@pdrcli.org)

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