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..... THE PHILIPPINE ADR REVIEW

Broadening its scope of arbitration advocacy


JULY 2015



PDRCI and SIMC to collaborate on mediation

The Philippine Dispute Resolution Center, Inc. (PDRCI) and the Singapore International Mediation Center (SIMC) signed on July 7, 2015 a Memorandum of Understanding (MOU) to collaborate in promoting international commercial mediation and mediation services and the use of their respective mediation facilities in their respective jurisdictions.

The MOU was signed by PDRCI President Gregorio S. Navarro (second from the left) and SIMC chief executive officer Lim Seok Hui (second from right) and witnessed by Trustee Victoriano Orocio (rightmost in photo) and Treasurer Donemark Calimon (leftmost).

The MOU signing was the highlight of the second seminar on “The Changing Landscape of International Arbitration and Mediation: Perspectives from Singapore” held at the IPO Center, World Finance Plaza, Taguig City, co-hosted by PDRCI, SIMC and the Intellectual Property Office of the Philippines. 

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Member Spotlight: **Atty. Manuel M. Cosico**



Learning from Experience: Travails of a Court-Annexed Mediator

By: Francisco Pabilla, Jr.

Part I discussed the background of court-annexed mediation in the Philippines and a typical day in the life of a mediator, including pre-mediation preparations. Part II discusses the role of the parties and their counsel.

The role of parties and counsel

Most of the time the parties did not know what to do or to expect when they attended the mediation conference for the first time.

Because of this, I made it a point to give the parties a warm welcome to make them feel at ease and not intimidated before I gave my opening statement. The opening statement, which I gave after the introductions, explained to the parties the reasons for the mediation, what to expect during the proceeding, the ground rules, the confidentiality rules, my role as a mediator, and what was expected of the parties and their counsel.

I considered the opening statement very important because it was when the parties decided if they would proceed with the mediation or not. While referral of a mediatable case by the court to the PMC Unit is mandatory, the mediation process cannot start until the parties give their consent.

If they agree to proceed with the mediation, it makes the process voluntary, although still subject to court sanctions. If the parties say no after the opening statement, then the mediation is immediately terminated. The parties may also call it off at any time during mediation if they believe that the mediation process does not seem to be working. At this point, the mediator will have no choice but return the case back to the court.

The opening statement also gave me the opportunity to present myself as a trusted neutral. The parties usually developed their first impression of the mediator at the point when I gave my opening statement. As a mediator, I took every opportunity while delivering the opening statement to earn the trust of the parties and be perceived as neutral to both of them. This trust and my being neutral allowed me to gain the respect and credibility necessary to shepherd the mediation process.

When lawyers attended the mediation conference with the parties, I usually requested the counsel to sit farthest from me to allow their clients to take the nearest seat. This ensured that the parties clearly heard my opening statement because a typical PMC Unit could be so noisy with all the mediation meetings going on. The seating arrangement also assured the parties of my full attention at every stage of the mediation.

I considered the presence of lawyers during mediation to be at least as important as their presence in court hearings. When I delivered my opening statement, I wanted the parties to know the role of their lawyers in mediation and the lawyers to validate this in front of me and their clients.

I recall one case when the parties arrived at the PMC Unit but the complainant did not have a lawyer and was unfamiliar with the case he filed in court. We decided to wait for his lawyer, who came very late from another court case he first attended.

Often, lawyers were not as convinced as their clients that mediation would result in something better than litigation. This was especially true when the case was only recently filed in court and counsel still believe that the probability of winning their case was high. While it was true that litigation ended with a winner and a loser, the results of mediation were far better than the benefits of winning a case in court. Before filing cases, lawyers should discuss and explain to their clients the importance of mediation as a mode of ADR and their role in the process.

I often experienced lawyers who were already familiar with mediation requesting permission to leave their clients at the mediation conference after I delivered my opening statement. I considered the gesture a vote of confidence in me and a message to their clients that they could trust me throughout the mediation process.


Before the lawyers left the PMC Unit, however, I asked them to be back before the mediation ended to help me craft the compromise agreement in case their clients agreed to the terms of settlement. Sometimes, I would request them to help their clients in finding a win-win resolution of their dispute. I observed that parties quickly came to a successful settlement of their dispute when their counsel cooperated with each other at every stage of the mediation process.

It was at the last stage of the mediation, when the compromise agreement was drafted, that the role of lawyers was most critical. In asking the lawyers to work together in preparing the compromise agreement, my purpose was to allay the fears of their clients, remove any lingering doubts, and assure the parties that

whatever was agreed during the mediation session would be consistent with their respective interests. After the compromise agreement was drafted, I explained the terms to the parties in the presence of their counsel and make sure that the parties understand them fully.

Before everyone left the PMC Unit, I congratulated and thanked the parties for having successfully reached a settlement. I also acknowledged the important role their respective counsel played in the mediation process.

The success of CAM or any form of mediation, whether facilitative or evaluative or the recent arbitration-mediation-arbitration protocol, depends to a large extent on the understanding and appreciation of the parties of the importance of their participation in the process of resolving their disputes. In maintaining a supportive role throughout the mediation, the lawyers ensure that their clients' interests are served without being adversarial. And the mediators, to be able to effectively facilitate communication between the parties and effectively control the mediation process, must first gain the trust and confidence of both the parties and their counsel.

At the institutional level, however, continuing support like the availability of a conducive venue devoted exclusively to mediation and manned by qualified and capable staff, mediation rules and policies that promote and strengthen mediation, training program that caters not only to developing skills but also improving mediator performance, play a big role in the overall success of CAM in unclogging court dockets. 

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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 PDRC.

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MEMBER SPOTLIGHT




Atty. Manuel M. Cosico is a senior partner of the law firm of Romulo, Mabanta, Buenaventura, Sayoc & de los Angeles. He has served since November 2011 as Chairman of the Construction Industry Arbitration Commission (CIAC).

Atty. Cosico received his Bachelor of Laws degree from the Ateneo De Manila University in 1967. He attended a course in U.S. maritime laws and practice at the California Maritime Institute and trained in the admiralty law firms of Walker Corsa in New York City and John Meadows & Associates in San Francisco, California.

From 1988 to 1991, he served as Presiding Judge of Branch 136 of the National Capital Regional Trial Court in Makati City.

After his tenure in the judiciary, Atty. Cosico returned to private law practice where he specialized in arbitration law, among other fields. As an arbitration lawyer, he handled and appeared as counsel in both domestic and international arbitration tribunals.

In 2001, he became an accredited CIAC arbitrator and served as chairman and as a member of various tribunals that resolved construction disputes between owners, contractors, subcontractors and sureties. 



PDRCI 9TH COMMERCIAL ARBITRATION TRAINING SEMINAR:

“The Law and Practice of Commercial Arbitration”

July 13-16, 2015

**BA Securities Multi-Purpose Hall
3F, Commerce & Industry Plaza (PCCI Bldg.)
1030 Campus Avenue cor. Park Avenue
McKinley Town Center, Fort Bonifacio, Taguig City**

REGISTRATION FEE

Non-Member	P25,000
Member (10% discount)	P22,500
Early bird	P23,750

(5% for non-members only, must be paid by June 30, 2015)

Note: Groups of 3 or more participants from the same company/firm are entitled to an additional 5% discount. The maximum allowed discount is 10%. The fee includes the training kit, meals, certificates and optional written examination.

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