

ANNEX H
A.M. No. 04-3-05-SC

Republic of the Philippines
Supreme Court
Manila

Gentlemen:

Quoted hereunder, for your information, is a resolution of the Court En Banc dated 9 March 2004

“A.M. No. 04-3-05-SC.- Re: Guidelines for Parties Counsel in Court-Annexed Mediation Cases. -The Court Resolved to

(a) **NOTE** the Letter dated 26 February 2004 of Justice Ameurfina A. Melencio Herrera, Chancellor, Philippine Judicial Academy, submitting the proposed “Guidelines for Parties’ Counsel in Court-Annexed Mediation Cases” of the ADR Sub-Committee; and

(b) **APPROVE** the aforesaid proposed “Guidelines for Parties’ Counsel in Court-Annexed Mediation Cases,” to wit:

TO : ALL MEMBERS OF THE BAR

SUBJECT: GUIDELINES FOR PARTIES’ COUNSEL IN COURT-ANNEXED MEDIATION CASES

Re-orientation of Attitudes towards Dispute

Litigation is based on the attitude that disputes involve rights and remedies that are fought through the adversarial system of justice for which lawyers have been specially trained for. When litigation is shifted to mediation, a different attitude is called for that would view the dispute as a problem-solving opportunity for lawyers to assist the parties resolve their differences in ways that are productive for their future lives.

Re-orientation of Lawyer’s Role in Mediation

“I envision the day when attorneys will be viewed as counselors, problem solvers, and deliverers of prompt, appropriate and affordable justice”

David R. Brink

It is important to stress that the lawyer’s role as counsel for a party radically changes as the mode of dispute resolution shifts from adjudication to mediation. The premise must be accepted that counsel must drop his combative role in adjudication and view his new role in mediation as a collaborator with the other counsel in working together toward the common goal of helping their clients resolve their differences to their mutual advantage. Whereas he is clearly dominant in judicial trials, he must now accept a less directive role to allow the parties more opportunities to craft their own agreement. He must shift gears and accept the role of an adviser or consultant.

After understanding and accepting his new role in the mediation process, he must help the client also comprehend and appreciate the mediation process and its benefits, as well as the client's greater personal responsibility for the success of mediation in resolving the dispute.

Preparation for Participation in Mediation

Upon receipt from the trial court of the order to proceed to mediation, counsel shall confer and discuss with his client the following:

- * the mediation process as essentially a negotiation between the parties assisted by their respective counsel, and facilitated by a mediator, stressing its difference from litigation, its advantage and benefits, the client's heightened role in mediation and responsibility for its success and explaining the new role of the lawyer.

- * the substance of the upcoming mediation, such as:
 - the substantive issues involved in their dispute with the other party and their prioritization in terms of importance to client.

 - study of the other side's position in relation to the issues with a view to understanding the underlying fears, concerns and needs underneath said position.

 - information or facts to be gathered or sought from the other side or to be exchanged that are necessary for informed decision making.

 - possible bargaining options but stressing the need to be open-minded about other possibilities.

 - the best, worst, and most likely alternatives to a negotiated agreement.

Participation in the Mediation Sessions

During the initial mediation session (before the court-accredited mediator) when the mediator introduces the parties to the process of mediation, it is helpful for the lawyers to give support to the mediator so that their clients fully understand the rules and processes of mediation.

To contribute to the success of mediation, the lawyers must allow their clients to take responsibility for making decisions during the negotiations within the mediation process. The lawyers must restrain themselves from dominating the process and instead allow their clients to take the initiative in discussions and create various options that are relevant to their own personal interests.

However, if the client is unable to bargain effectively and it appears that he is on the short-end of the power imbalance, and the mediator is not doing enough to even up this imbalance, the lawyer may have to take a somewhat more active role in the process.

Where necessary, a lawyer may ask for a recess, as often as may be necessary, in order to give advice or suggestions to client in private.

Should mediation before the court-accredited mediator fail, and the case is referred back to the Court, the lawyer may have to take a more active role during the mediation proceedings before the judge.

Assistance in Preparing a Compromise Agreement or Withdrawal of Complaint and Satisfaction of Claim

The lawyers shall assist the mediator in putting in writing the terms of the compromise agreement that the parties have entered into and seeing to it that they are not contrary to law, morals, good customs, public order or public policy so that the same may be approved by the trial court for a judgment based upon a compromise.

The lawyers shall pay particular attention to issues of voluntary compliance with what has been agreed upon or otherwise, to issues of enforcement.

Where applicable, the lawyers shall assist in the preparation of a manifestation of mutual satisfaction of claims and counterclaims as basis for the court to issue and order of dismissal.

Puno, J., on leave. Panganiban, J., on official leave.

Very truly yours,

(SGD) **LUZVIMINDA D. PUNO**
Clerk of Court

Hon. Ameurfina A. Melencio-Herrera (x)
Chancellor
Philippine Judicial Academy
Supreme Court

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