
III. SPECIAL ISSUES AND CONCERNS

1. What should a mediator do if after the orientation by the PMC Unit Head, one of the parties still refuses to undergo mediation proceedings?

This is a clear case of refused mediation due to the refusal of the parties to mediate, and the case should be sent back to the court for further proceedings. Only the appearance before the PMC Unit is compulsory but the parties cannot be forced to mediate.

2. What should the mediator do if one of the parties agrees to mediation but refuses to pay the mediation fees?

This shall be construed as refusal to mediate, and the case shall be sent back to court for further proceedings.

3. What sanctions could be imposed on a party who agrees to mediation, pays the mediation fees, but consistently fails to appear for mediation or fails to show adequate authority to mediate?

If the plaintiff or the defendant consistently failed to appear on scheduled mediation conferences, the mediator may recommend to the judge that appropriate sanctions be given to the party who failed to appear.

4. Can mediation be held in a place other than the official venue?

No, until further notice.

5. Is there a pre-trial procedure in cases involving settlement of estates? Is there a need for the appointment of an administrator or executor before the referral?

As general rule, no pre-trial is conducted. After the publication of the notice of hearing and the first hearing on jurisdictional matters, the Judge can refer the case for mediation at any time after an opposition has been filed and also after the creditors have filed claims against the estate. The appointment of an administrator or an executor is left to the sound discretion of the pre-trial judge.

6. Can cases where provisional remedies like preliminary attachment and preliminary injunction are requested be mediated?

Yes. Due to the urgency of the provisional remedies prayed for, it is suggested that these incidents be resolved first before referral to mediation.

7. What is the difference between Diversion in Family Courts and Court-Annexed Mediation?

Diversion in Family Courts is a form of ADR employed when the accused is a minor and the punishment for the crime committed is not more than 6 months, instead of arraignment, the case is referred to a Diversion Committee. The Committee is headed by the Branch Clerk of Court, and membership includes the fiscal for the case, a court social worker and the counsel for the accused. They come up with a compromise agreement for the civil and criminal aspects of the case. Court-Annexed Mediation or court-related mediation refers to those mediatable cases pending before the court which are referred to the PMC unit.

It is no longer necessary to refer the case to PMC but when a minor is charged with a crime punishable by more than 6 months but less than 1 year or a fine not exceeding Php5,000.00 or both, the Family Court shall refer the case to PMC.

8. What if the mediator is showing some form of bias towards my case? What can I do?

The party can go to the supervisor and request that the mediator inhibits himself and be changed.

9. I am a woman litigant and I feel threatened and harassed by the male opposing party during mediation, and the male mediator does not seem to mind. What can I do?

The party can go to the supervisor and request that the mediator inhibits himself and be changed.

10. What can I do if the mediator or the pre-trial judge (in JDR) leaks certain information which was divulged during the mediation proceedings, which is supposed to be confidential?

This action could be the subject of a disciplinary action. In the case of the mediator, this is a violation of the Code of Ethical Standards for Mediators and his accreditation could be revoked through the grievance machinery process. In the case of a judge, a complaint could be lodged with the Office of the Court Administrator, and the proper sanctions could be imposed after due notice and hearing.

11. Can parties request for a mediator who is not in the PMC Unit roster of mediators? What procedures should be taken to accommodate such request?

Yes, the parties' preference of mediator is given paramount consideration. The parties can jointly submit a written request to the Judge. If the Judge approves the request, the PMC Unit Coordinator will inform the mediator and facilitate the scheduling of mediation conferences. The PMC Unit Coordinator shall likewise inform the PHILJA and its designee of such approved request.