



NORTHERN MARIANA ISLANDS
RULES OF ALTERNATIVE DISPUTE RESOLUTION

Effective December 13, 2021

EXHIBIT A

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Rule 1. Title and Authority.

- (a) **Title.** These Rules shall be known as the NMI Rules of Alternative Dispute Resolution.¹
- (b) **Authority.** These Rules are promulgated pursuant to Article IV, Section 9(a) of the NMI Constitution.²
- (c) **Scope.**
 - (1) These Rules shall apply to all civil actions except small claims actions and family law matters.
 - (2) These Rules shall not apply to criminal actions, actions under the Holdover Tenancy Act, or judicial reviews of agency actions.

Rule 2. Definitions.

- (a) **“Mediation”** means a process by which a neutral person or persons facilitate(s) communication between disputants to assist them in reaching a mutually acceptable agreement for the resolution of one or more of their disputes.
- (b) **“Family law matter”** means any matter that has a case number that includes the letters “FCD” in the caption.
- (c) A case becomes **“at-issue”** when answers have been filed as to all of the claims that have been asserted in the action, including counter-, cross-, and third-party claims.
- (d) **“Chief Justice”** means the Chief Justice of the CNMI Supreme Court.
- (e) **“Initial Case Management Conference”** means a conference at which the parties and the court determine how a civil action will proceed procedurally.

¹ These Rules use Rule rather than Section for consistency with other NMI Judiciary Rules (e.g., § 1001 has become Rule 1).

² Mediation provides parties with a simplified and economical procedure for obtaining a prompt and equitable resolution and a greater opportunity to participate directly in resolving their disputes. Alternative dispute resolution processes can greatly benefit parties in civil actions when used early, before substantial discovery has begun and other litigation costs have been incurred. Mediation also reduces the backlog of cases burdening the courts. It is in the public interest for the courts to encourage and use mediation when appropriate.

- (f) **“Mediation Assessment Hearing”** means a hearing at which the judge determines whether to order a civil action to mediation.
- (g) **“Mediation Completion Date”** means a date by which the parties must have gone through mediation of a civil action that has been ordered to mediation.
- (h) **“Notice of Settlement”** means a notice the parties must submit to the Court after mediation has resulted in settlement which reports the outcome.
- (i) **“Order of Mediation”** means an order in which the judge compels a civil action to proceed to mediation and appoints a mediator.
- (j) **“Presiding Judge”** means the Presiding Judge of the CNMI Superior Court.
- (k) **“Registry of Court-Approved Mediators”** means a roster with the names and contact information of mediators approved by the CNMI Supreme Court.

Rule 3. Actions to be Submitted to Mediation.

- (a) **Actions Subject to Mediation.** Except as provided in Rule 3(b), all civil actions pending in the CNMI Superior Court after January 1, 2015 shall be ordered to non-binding mediation by the Presiding Judge or the judge presiding over such action, whether or not the action includes a prayer for equitable relief, and whether or not a party to the action is an agency of the CNMI government.
- (b) **Exception for Good Cause.** For good cause shown, an action may proceed without mediation.

Rule 4. Initiating Mediation.

- (a) **Initiation.** Mediation may be initiated by parties’ agreement or court order.
- (b) **Who May Initiate.** Any party may at any time request to refer a case to mediation.

Rule 5. Initial Case Management Conference & Mediation Assessment Hearing.

- (a) **At Plaintiff’s Request.** Within 21 days of a civil action becoming at issue, plaintiff shall request an Initial Case Management Conference & Mediation Assessment Hearing (“ICMC & MAH”).

- (b) **Court Scheduling.** Within 14 days of the request, the court shall schedule an ICMC & MAH to take place on a date between 60 and 75 days after filing the request, unless the parties stipulate to an earlier ICMC & MAH with the court's approval.
- (c) **Untimely Request and Show Cause.** If a plaintiff does not timely file a request for an ICMC & MAH, the court shall order the parties and/or their counsel to show cause as to why the case should not be dismissed, monetary sanctions should not be ordered, or mediation should not be scheduled sua sponte, or a combination of the foregoing.
- (d) **Mediation Determination and Scheduling.** At the ICMC & MAH, the court shall determine whether to order mediation. If so, the order shall set a date for completion of mediation and for a post-mediation case management conference.

Rule 6. Stay of Actions Ordered to Mediation.

- (a) **Stay of Action.** The court shall stay each civil action or part thereof that is ordered to mediation. The mediation stay will be lifted without further action by the Court or the parties when a party files a Notice of Mediation Completion Form (Form 1) in accordance with Rule 26.
- (b) **Exception for Good Cause.** Based upon a showing of good cause, the court may delay the commencement of the stay or exempt the action from being stayed.

Rule 7. Exemption from Mediation.

- (a) **Exemption Factors.** The court shall consider the following factors in determining whether to exempt a case from mediation:
 - (1) input from the parties' counsel and pro se parties;
 - (2) whether the case has previously been submitted to mediation or other alternative dispute resolution process;
 - (3) the age of the case;
 - (4) the complexity of issues;
 - (5) the degree of need for discovery and/or further case work;
 - (6) the likelihood of settlement;
 - (7) the subject matter of the action; and
 - (8) any and all other relevant factors.

- (b) **Settlement Discussion.** The court may discuss settlement potential with the parties' counsel and pro se parties.
- (c) **Sua Sponte Referral to Mediation.** The court may refer a case to mediation without party input and over a party's objection, but a party may request relief from a mediation order in accordance with Rule 16.

Rule 8. Amount in Controversy.

The amount in controversy of a civil action shall not constitute ground for allowing a civil action to proceed to trial without mediation.

Rule 9. Order for Mediation.

- (a) **Components.** The Order for Mediation shall:
 - (1) refer the case to a mediator on the list of court-approved Mediators, unless all parties stipulate to another mediator as described in Rule 10;
 - (2) stay the action pursuant to Rule 6;
 - (3) set a mediation completion date; and
 - (4) schedule a Post-Mediation Case Management Conference that is to be held within 14 days of the Mediation Completion Date which all parties' counsel and pro se parties must attend.
- (b) **Continuation for Good Cause.** A Mediation Completion Date and/or Post-Mediation Case Management Conference may be continued in the court's discretion for good cause.

Rule 10. Selection of Mediator.

- (a) **When to Select.** The court shall select a mediator at the time a case is ordered to mediation. The parties shall abide by the court's selection, whether or not the parties are present when the order of mediation is issued.
- (b) **Whom to Select.** The court shall select a mediator from the CNMI Supreme Court's List of Court-Approved Mediators.
- (c) **Selection by Stipulation.** The parties may stipulate to a mediator listed on the List of Court-Approved Mediators, or if the parties stipulate, to a mediator qualified in a U.S. state or territory. The court shall defer to the parties' preference whenever appropriate.

Rule 11. Registry of Court-Approved Mediators.

The Clerk of the Supreme Court shall maintain a registry of Supreme Court-approved mediators consisting of the names and contact information of the persons who have been approved as mediators.

Rule 12. Qualifications of Mediators.

To be qualified to serve as a CNMI mediator in relation to an action that has been ordered to mediation in accordance with these Rules, a person must be approved as a Court-Approved Mediator by the Supreme Court.

- (a) **Requirements for Approval.** To be approved as a mediator, a person must pay an application fee as provided in the Judiciary fee schedule and submit to the Chief Justice of the CNMI Supreme Court, and the Chief Justice must approve, a sworn Application for CNMI Court-Approved Mediator that sets forth:
- (1) all information and agreements requested on the Application form and
 - (2) a sworn statement demonstrating:
 - (A) that the applicant has completed an acceptable mediation education and/or training program or course, or
 - (B) previous substantial experience as a mediator, or
 - (C) substantial professional experience including more than 5 years in practice in civil litigation and participation in at least 10 mediations or other substantial experience with mediation, or
 - (D) facts and/or circumstances that demonstrate qualification as a mediator and/or otherwise establishes a reasonable basis for approval as a Court-Approved Mediator.
- (b) **Additional Requirements.** The CNMI Supreme Court may require additional qualifications, training, and/or experience of mediators from time to time.
- (c) **Duty of Due Diligence.** Mediators have a duty of due diligence to ensure they are qualified to mediate pursuant to these Rules.

Rule 13. Mediator Standards of Conduct.

All Mediators shall become familiar with and shall conduct all mediations in accordance with the 2005 Model Standards of Conduct for Mediators together with all amendments to the 2005 Model Standards of Conduct then in effect on the date these Rules became effective. The Supreme Court may adopt subsequent revisions to the Model Standards as appropriate.

Rule 14. Mediator Fees & Expenses.

The mediator and the parties to the mediation shall agree upon the mediators' fees and expenses prior to the start of the mediation. All such agreements should be in writing and be signed by the parties and the mediator, unless requested otherwise by the parties.

Rule 15. Costs of Mediation & Financial Requirements.

- (a) **Equal Cost Sharing.** The parties shall bear all costs of mediation in equal proportions, unless otherwise agreed between the parties and the mediator or ordered by the court based upon a showing of extraordinary circumstances.
- (b) **Limitation on Gift-Giving.** Within the time between the issuance of an order requiring mediation and the time of completion of such mediation, gifts shall not be given to mediators without the written consent of all parties.
- (c) **Direct Compensation.** The parties shall directly compensate mediators for fees and costs.
- (d) **Mediation Fee.** Costs of mediation in addition to mediator fees may include only:
 - (1) reasonable expenses incurred by the mediator;
 - (2) reasonable expenses incurred by witnesses requested by the mediator with consent of the parties; and
 - (3) fees and costs of experts whose advice was requested by the mediator with consent of the parties.
- (e) **Financial Accommodation.** A party may request and the court may grant a financial accommodation in accordance with the provisions of Rule 17.
- (f) **Request for Court-Ordered Fee Payment.** The mediator may request a court order requiring the payment of fees and costs by the party who failed to pay in a timely manner. The court may order a nonpaying party to provide payment and may impose sanctions. If mediation is not completed by the Mediation Completion Date as a result of a party's failure to provide payment to a mediator, the court may impose sanctions pursuant to Rule 24.
- (g) **Court Disclaimer.** The court is not responsible for the payment or collection of mediator fees or costs.

Rule 16. Relief from Court-Ordered Mediation.

- (a) **Requesting Relief from Mediation.** When a case is ordered to mediation without all the parties' stipulation, any party

opposed to mediation may request the court for relief from the order for mediation and for the case to remain in the assigned judge's docket.

- (1) The request shall be filed not later than 10 days from the date of the Order for Mediation.
 - (2) The request must provide reasons why the case is not appropriate for mediation at that time.
 - (3) The request must provide facts supporting the requesting party's contentions.
- (b) Response to Request.** After filing the request for relief:
- (1) A party in favor of mediation may reply no later than 5 days after service of the request for relief.
 - (2) The court shall rule on the request for relief, with or without a hearing, no later than 15 days after the filing of the request for relief.
 - (3) If the request is granted, the case shall be removed from mediation and returned to the normal docket.
 - (4) If the request is denied, the Order for Mediation shall remain in effect.
- (c) CNMI Government as a Party.** When the CNMI government is a party to a civil action in which mediation shall occur, it may either proceed with mediation or, in the alternative, may request an order for the parties to participate in a mandatory settlement conference, which the court shall grant.
- (1) A mandatory settlement conference is a mediation conducted by a CNMI Superior Court Judge or judge pro tempore, in accordance with the rules, procedures, and requirements set forth in these Rules except that there shall be no fees or costs charged to the parties for participating in the conference.
 - (2) A judge other than the judge presiding over the action shall conduct the mandatory settlement conference. However, all parties may stipulate in writing or on the record that provides for the judge presiding over the action to conduct the conference.
 - (3) When a case is ordered to a mandatory settlement conference, the clerk of the Superior Court shall notify the Presiding Judge to assign a judge, which may include himself, to preside over the conference.

- (4) For purposes of Rule 16, the CNMI government does not include any autonomous agency or corporation of the CNMI government such as, but not limited to, the Commonwealth Ports Authority, CNMI Public School System, Northern Marianas College, Commonwealth Utilities Corporation, Commonwealth Health Center, Commonwealth Healthcare Corporation, Commonwealth Development Authority, Marianas Visitors Authority, and the Marianas Public Land Trust.

Rule 17. Financial Accommodations for Indigent Parties.

- (a) **Request for Financial Accommodation.** An indigent party may request financial accommodation for mediation costs in accordance with the NMI Rules of Indigent Representation.
 - (1) The request must be filed no later than 5 business days after mediation is ordered.
 - (2) The court shall rule on the request without a hearing within 10 days.
 - (3) If a request is granted, the court shall refer the case to a mediator, stating that the party qualifies for financial accommodation.
 - (4) The indigency determination shall not automatically result in an obligation on any other party to bear the entirety of the mediation fees and costs.
- (b) **Disqualification from Financial Accommodation.** No party qualifies for a financial accommodation if such party is represented by an attorney, unless such attorney is providing legal services pro bono or on behalf of a non-profit legal services provider.
- (c) **Mediation Fee Payment When a Party is Indigent.** When a party is granted indigent status, one of the following shall occur:
 - (1) One or more of the parties other than those who have been granted indigent status may agree to pay for the indigent party's share of the fees and costs of mediation, or
 - (2) The mediator may reduce the mediator's fee and/or waive entitlement to receive the indigent party's share of the fees and/or costs, or
 - (3) The parties and the mediator may enter into an agreement that alleviates the need for payment of mediation costs by the indigent party, or

- (4) If no agreement can be reached pursuant to Rule 17(f)(1), (2) or (3), the case shall be ordered, upon request, to a mandatory settlement conference conducted in accordance with Rule 16(e)(1)–(3).

Rule 18. Failure to Comply with Financial Requirements.

- (a) **Mediation May Proceed Without Full Payment.** A mediator may proceed with a mediation in a matter in which any of the parties has failed to provide the full amount of deposit, compensation, or other payment to the mediator.
- (b) **When Plaintiff Fails to Pay.** When a mediation does not take place before the mediation completion date due to a plaintiff's failure to pay the full amount of deposit, compensation, or other payment to the mediator, the court shall either:
 - (1) dismiss or stay the plaintiff's action if the court finds the plaintiff was capable of making payment or the plaintiff's failure was otherwise unreasonable, or
 - (2) order the action, or a portion thereof, to proceed with a mandatory settlement conference in accordance with Rule 16(e)(1)–(3) if the court finds the plaintiff's failure to provide such payment was reasonable and the plaintiff was incapable of providing payment.
- (c) **When Defendant Fails to Pay.** When mediation does not take place before the mediation completion date due to a defendant's failure to pay the full amount of deposit, compensation, or other payment to the mediator, the court shall either:
 - (1) strike the defendant's answer to the complaint if the court finds the defendant was capable of making payment or the defendant's failure was otherwise unreasonable; or
 - (2) order for the case, or a portion thereof, to proceed with a mandatory settlement conference in accordance with Rule 16(e)(1)–(3) if the court finds the defendant's failure to pay was reasonable and the defendant was incapable of providing payment.
- (d) **Alternative Order.** Nothing in this title shall preclude the court from issuing an alternative order that provides for payment of the entire requisite amount of deposit, compensation, or other payment to the mediator, facilitates the completion of mediation, is fair to the parties, and accomplishes the purposes of these Rules.
- (e) **Stipulated Fee Agreement.** Nothing in these Rules shall preclude the parties from entering into a stipulation that

provides for the payment of any portion of the deposit, compensation, or other payment to the mediator in any manner.

Rule 19. Conduct of Mediation.

- (a) **Mediation Procedure.** When the order for mediation is issued, the parties shall contact the mediator and determine the schedule and who should attend the mediation, establish mediation procedures, and do all things reasonably necessary to ensure that the mediation is completed by the mediation completion date.
- (b) **Mediation Statement.** Mediation statements shall be submitted to the mediator not less than 5 calendar days prior to the mediation or as determined by the mediator. The statement shall include:
 - (1) an identification of the parties and their counsel;
 - (2) an identification of all persons with authority to make settlement decisions;
 - (3) an identification of all persons who will attend the mediation;
 - (4) an identification of all persons connected with an opposing party whose presence at the mediation might substantially improve the utility of the mediation or the prospects of settlement;
 - (5) copies of relevant documents that are necessary or essential for proceeding with a meaningful mediation; and
 - (6) a description of the litigation, a discussion of the issues pertaining to liability, a discussion of the issues pertaining to the damages claimed, a description of any prior settlement negotiations and any other information that is necessary or essential for proceeding with a meaningful mediation.
- (c) **Confidentiality.** Confidential information disclosed in mediation shall not be communicated to the court unless all parties consent in writing or on the court record.
- (d) **Mediation Disclosure.**
 - (1) No writing by the mediator shall be disclosed to the parties or anyone unless the mediator and the parties' consent.
 - (2) All information disclosed, party admissions made, and documents produced in mediation shall not be admissible in any proceeding except as permitted by law.

- (3) The mediator has a duty to disclose to the proper authorities information obtained during mediation that the mediator reasonably believes will prevent a participant from committing an illegal act that is likely to result in death or serious injury.
- (4) No mediator may be compelled to testify as a witness or participate in any hearing or trial of the mediated matter.
- (e) **Mediation Attendance.** All parties, their representatives, insurers, and all other persons from whom settlement authority is required shall personally attend the mediation, unless excused by the mediator or the court based upon a showing of good cause, and shall arrive at the mediation in a timely manner.
- (f) **Mediation Participation.** All parties, their representatives, and counsel shall participate in the mediation in good faith and exert their best efforts to facilitate a resolution of the issues in dispute.
- (g) **Video Conferencing.** Any mediation may be conducted by way of video conferencing.

Rule 20. Mediator Immunity.

Mediators shall have privileges and immunities equivalent to those granted to masters pursuant to Rule 53 of the NMI Rules of Civil Procedure.

Rule 21. Evidence Admissible.

Evidence that is admissible or discoverable outside of mediation shall not be inadmissible or not discoverable solely because it was used in conjunction with mediation.

Rule 22. Evidence Not Admissible.

Evidence that is inadmissible or not discoverable outside of mediation that is disclosed during mediation, or any admission by parties or document produced during mediation, shall not become admissible at trial due to its disclosure in conjunction with a mediation, nor can any such disclosure made during mediation be compelled in any civil or criminal action, unless consented to by the parties.

Rule 23. Confidentiality of Mediation and Communications in the Course of Mediation.

- (a) **Confidentiality of Proceedings.** Mediation proceedings pursuant to these Rules shall remain confidential.

- (b) **Confidentiality of Communications.** All communications, verbal and written, made by the mediator, the parties, and their counsel during mediation shall be confidential.
- (c) **Confidentiality of the Fact Mediation has Occurred.** At the jury trial of the action, there shall be no mention of or reference to the fact that any mediation has taken place, except as otherwise provided in these Rules.
- (d) **Prejudice.** Any reference to mediation during a jury trial is prejudicial and, if not curable by a jury instruction, may constitute grounds for a mistrial.

Rule 24. Sanctions for Non-Appearance at Mediation.

- (a) **Sanctions.** The court may sanction a party, its counsel, or both, who:
 - (1) fails to appear at a scheduled mediation; or
 - (2) leaves the mediation prior to completion without being excused from further attending the mediation.
- (b) **Show Cause.** The court shall order the party, its counsel, or both, in Rule 24(a) to show cause why any or all of the following sanctions should not be assessed:
 - (1) the mediator's fees and costs in conjunction with the missed session;
 - (2) the opposing party's attorneys' fees and/or costs incurred in conjunction with the missed session; or
 - (3) any other sanctions deemed appropriate in the court's discretion.

Rule 25. Termination of Mediation.

- (a) **Termination.** Mediation may be terminated at any time upon:
 - (1) the mediator's determination that mediation efforts are not currently justified;
 - (2) a stipulation of all parties declaring an impasse as to particular parties or all parties; or
 - (3) the signing of a settlement agreement setting forth a confirmation that the case has been settled and the basic terms of the settlement, even if it is with the understanding that the settlement is subject to completion and/or execution of a more formalized agreement and/or execution of a release.

Rule 26. Reporting Mediation Result to Trial Court.

- (a) **Satisfactory Mediation.** After the parties have completed mediation, the plaintiff whose name first appears on the case caption (or any other party designated to do so pursuant to a filed, written stipulation) shall file a Notice of Mediation Completion Form (Form 1) reporting the mediation results to the Court.
- (b) **Unsatisfactory Mediation.** A mediator may submit to the Court a Report of Unsatisfactory Mediation (Form 2) if the mediator stipulates that a mediation did not proceed properly, was not pursued in good faith or was otherwise substantially unsatisfactory.

Rule 27. Annual Reporting to Supreme Court.

- (a) **Record of Mediations.** A mediator shall maintain a record of the mediations over which the mediator presides.
- (b) **Filing of Yearly Mediation Report.** A mediator shall file a report to the NMI Supreme Court by January 31 of each calendar year of the prior calendar year's mediations. The report shall set forth:
 - (1) each case presided;
 - (2) nature or type of case;
 - (3) number of parties;
 - (4) mediation dates;
 - (5) whether mediation resulted in a total settlement, partial settlement or no settlement; and
 - (6) any comments or suggestions the mediator wants to express regarding alternative dispute resolution and the NMI Rules for Alternative Dispute Resolution.

Rule 28. Enforcement of Settlement as Judgment.

If parties stipulate that the case or a part thereof has settled, the court upon motion may enter judgment pursuant to the terms of such settlement. At the parties' request, the court may retain jurisdiction over the parties to enforce the settlement until full performance of the settlement's terms.

Rule 29. Post-Mediation Case Management Conference.

- (a) **Post-Mediation Case Management Conference Order.** At a Post-Mediation Case Management Conference, the court shall determine:
 - (1) whether mediation has been completed or terminated;

- (2) whether further mediation should be ordered;
- (3) whether a trial date should be set or re-scheduled;
- (4) whether any other case management issues are relevant including, but not limited to, the setting or changing of a discovery cut-off date, dates for designations of expert witnesses, expert discovery, deadlines for and scheduling of motions, jurisdictional issues and any other issues pertinent to case management; and
- (5) whether any other order should be issued to facilitate the case to conclusion.

Upon making its determinations, the court shall issue a written order.

- (b) **When Attendance is Not Required.** A party shall not be required to attend a Post-Mediation Case Management Conference if a stipulation or request for a dismissal of the entire action has been filed with the court prior to the date set for the Post-Mediation Case Management Conference and the court has been notified that the entire action has been resolved or that a stipulation or request for a dismissal of the entire action has been filed.

Rule 30. Other Types of ADR.

Nothing in these Rules shall prevent the parties from pursuing other types of Alternative Dispute Resolution such as, but not limited to, binding arbitration, non-binding arbitration, or neutral case evaluation.

Rule 31. Forms and Revision.

- (a) **Standard Forms.** The Judiciary may from time to time add, amend, or update forms which are intended to indicate the simplicity and brevity of statement which these Rules contemplate.
- (b) **Error Correction.** The Judiciary may correct manifest clerical or typographical errors in these Rules without submission to the legislature.

Rule 32. Repeal; Tolling.

- (a) **Repeal.** The Commonwealth Rules Governing Court-Appointed, Certified Mediators that became effective on February 20, 2001 and the Rules for Mandatory Alternative Dispute Resolution effective from January 19, 2015 are repealed.

- (b) **Tolling of Time for Calculation of Case Age.** Cases referred to mediation are tolled for purposes of court administrative standards regarding “case age.” Tolling commences on the date of the issuance of an Order for Mediation and ends after the assigned judge determines mediation has been concluded or terminated.