Alternative Dispute Resolution

Effective Tool in Settlement of Business Disputes

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by: **Justice Myrna Dimaranan Vidal**

I. HISTORICAL BACKGROUND

History tells us that amicable settlement of litigious cases is a highly efficient and effective instrument in the settlement of disputes. Even the Holy Bible chronicled this mode in the Book of St. Matthew, Chapter 5:25-26 wherein Our Lord Jesus Christ preached the wisdom of going to and out of court settlement. Our Lord preached: *Settle with your opponent quickly while on the way to court with him. Otherwise, your opponent will hand you over to the judge, and the judge will hand you over to the guard, and you will be thrown into prison. Amen and I say to you, you will not be released until you have paid the last penny.*

Conflict is inherent in human society so much so that much effort has been expended in devising ways of resolving it. With the progress of civilization, physical fighting has been ruled out and instead, more pacific means have been evolved.

History dating back to the Golden Age of Rome reveals that *the early judges called upon to solve private conflicts were primarily the arbiters, persons not specially trained but in whose morality, probity and good sense the parties in conflict reposed full trust. Thus, in Republican Rome, arbiter and judge (judex) were synonymous. The magistrate or praetor, after noting down the conflicting claims of litigants, and clarifying the issues, referred them for decision to a private person designated by the parties, by common agreement, or selected by them from an apposite listing (the album judicium) or else by having the arbiter chosen by lot.*

In the Philippines, alternative dispute resolutions have come about to address the perennial problem of court delays.

II. CAUSES OF COURT DELAYS

As far back as in 1967, a survey disclosed the problem of judicial delay in the Philippines as due to such factors as the misuse of the due process and the abuse of legal technicalities; the intervention of political pressure in court cases; the sheer weight of court litigations arising from development and growth; the dilatory tactics of lawyers; and neglect and laxity on the part of judges.

We add to the list the matter of court vacancies which Associate Justice Artemio Panganiban of the Supreme Court acknowledged in a speech delivered during the 2005 anniversary celebration of *Bantay Katarungan* to be the major cause of court delay. There are no less than 739 vacancies out of 2,153 judicial positions in the Philippines. This means that more than one third of the judicial courts are vacant, or a vacancy rate of 34.3%.

III. LEGAL BASIS OF ALTERNATIVE DISPUTE RESOLUTION

o remedy the sad state of long-drawn-out court litigations, the 1987 Constitution mandates the Supreme Court to promulgate rules that shall provide *a simplified and inexpensive procedure for the speedy disposition of cases.* Pursuant to the constitutional provision, the Supreme Court issued S.C. Circulars, Memoranda and Administrative Orders of 2001 making mediation as mandatory in certain types of civil cases. The 1997 Rules of Civil Procedure requires the courts *to consider the possibility of an amicable settlement or of a submission to alternative modes of resolution.*

On 19 July 1953, the Philippine Congress enacted RA 876 otherwise known as the Arbitration Law which authorized the making of arbitration and submission agreements and provided for the appointment of arbitrators and the procedure for the arbitration in civil controversies.

On 2 April 2004, Congress enacted RA 9285 or the Alternative Dispute Resolution Act (ADR Law) of 2004 which declares that it is a policy of the State to encourage and actively promote the use of Alternative Dispute Resolution systems as an important means to achieve speedy and impartial justice and declog court dockets.

IV. FORMS OF ALTERNATIVE DISPUTE RESOLUTIONS

What is Alternative Dispute Resolution? It is defined as any process or procedure used to resolve a dispute or controversy, other than by adjudication of a presiding judge of a court or an officer of a government agency, in which a neutral third party participates to assist in the resolution of issues. It includes arbitration, mediation or conciliation, mini-trial, early neutral evaluation, or any combination thereof.

A. Arbitration

Arbitration is defined by ADR Law as a voluntary dispute resolution process in which one or more arbitrators, appointed in accordance with the agreement of the parties resolve a dispute by rendering an award. It is the reference by mutual agreement or consent of the parties of a controversy or dispute to selected persons for an informal hearing and extra-judicial determination and resolution. The hearing is usually held in private and the decision of the persons selected will be a substitute for a court judgment. This avoids the formalities, delay and expenses of ordinary litigation.

B. Mediation

Mediation is a dispute resolution procedure in which an impartial third party, mutually chosen by the parties, acts as the referee to help the contending parties settle their dispute. The mediator, unlike the arbitrator, has no authority to make the parties reach an agreement. He serves as a clarifier and facilitator without dictating settlement. The term mediation used under ADR Law includes conciliation.

C. Mini-trial

Mini-trial is defined under the ADR Law as a dispute resolution method in which the merits of a case are argued before a panel created by agreement of the parties comprising senior decision makers with or without the presence of a neutral third person after which the parties seek a negotiated settlement.

D. Early neutral evaluation

Early neutral evaluation is an alternative dispute resolution process whereby parties and their lawyers are brought together early in a pre-trial phase to present summaries of their cases and receive a non-binding assessment by an experienced, neutral person with expertise in the subject of the dispute.

E. Combination of Alternative Dispute Resolution

A particular alternative dispute resolution may be combined with the other types of alternative dispute resolutions. The most common is the mediation-arbitration (Med-Arb). In this kind of combination, parties first proceed to mediation to define the dispute and settle as many issues as possible, and then they engage in arbitration to settle issues that remain unresolved by the mediator.

V. ARBITRATION

One of the oldest forms of dispute resolution is arbitration which may be classified as either international or domestic. International arbitration is governed by the Model Law on International Commercial Arbitration per Section 19 of the ADR Law, while domestic arbitration shall continue to be governed by RA 876, as amended by the ADR Law. A highly specialized form of domestic dispute resolution involving construction disputes is governed by the Construction Industry Arbitration Law, EO No. 1008. This falls within the exclusive jurisdiction of the Construction Industry Arbitration Commission (CIAC).

VI. MEDIATION

A more popular form of alternative dispute resolution is mediation. The ADR Law mentions two kinds of mediation: court-annexed mediation and court-referred mediation.

Court-annexed mediation is defined under ADR Law as any mediation process conducted under the auspices of the court, after such court has acquired jurisdiction of the dispute. It is mandatory, being part of pre-trial. On the other hand, court-referred mediation is mediation ordered by a court to be conducted in accordance with an agreement of the parties when an action is prematurely commenced in violation of such agreement.

The distinction between court-annexed mediation and court-referred mediation is important. The provisions of the ADR Law do not apply to court-annexed mediation. They cover voluntary mediation only, not court-annexed mediation or mandatory mediation. Under this law, there must a binding agreement of the parties to mediate their dispute. This usually results when the parties insert a clause in their contract requiring a prior resort to mediation before the dispute may be brought to arbitration or filed in court.

VII. WAYS OF ENFORCEMENT OF SETTLEMENT AGREEMENTS IN MEDIATION UNDER ADR LAW (other than Court-Annexed)

A. The parties may deposit the settlement agreement arrived at during the mediation process under the ADR Law with the appropriate clerk of a Regional Trial Court of the place where one of the parties resides. Where there is a need to enforce the settlement agreement, a petition may be filed by any of the parties with the same court, in which case, the court shall proceed summarily to hear the petition, in accordance with such rules of procedure as may be promulgated by the Supreme Court.

B. The other mode of enforcing the settlement agreement is for the parties to agree that the mediator shall become a sole arbitrator for the dispute and to treat the settlement agreement as an arbitral award. This award shall be subject to enforcement under RA 876, otherwise known as the Arbitration Law wherein the party wishing to implement the agreement may apply to the RTC for an order confirming an award. Once granted, a judgment may be entered which shall have the same force and effect in all respects as a judgment in an action; and it may be enforced as if it had been rendered in the court in which it is entered.

VIII. COURT ANNEXED MEDIATION UNDER SUPREME COURT GUIDELINES

A. Order of Mediation – The trial court for civil cases with stamped-mark *Mediatable* is mandated to issue

an order during the pre-trial referring the case to the Philippine Mediation Center (PMC) unit for mediation and directing the parties to proceed immediately to the PMC unit. The order will be personally given to the parties during the pre-trial. There are PMC units in courthouses or near the court premises to mediate the parties.

In Cagayan de Oro City, the PMC unit was established on 18 October 2004. It is heartening to note that as of January 2005, there were 376 cases received by the Cagayan de Oro City Mediation Center and, out of these, 154 cases were settled, and 102 cases were returned to court either because the parties did not want to mediate or the parties mediated but failed to reach an amicable settlement. It has only 120 cases pending.

Since mediation is part of pre-trial, the trial court will impose the appropriate sanction including but not limited to censure, reprimand, contempt and such sanctions as are provided under the Rules of Court, in case any or both of the parties absent himself/themselves, or for abusive conduct during mediation proceedings.

B. Selection of Mediator – The Supervisor of the PMC unit will assist the parties to select a mutually acceptable mediator from the list of available mediators. The mediator will be considered an officer of the court. Lawyers may attend the mediation proceedings, but they must cooperate with the mediator to reach an amicable settlement of the case.

C. Conference – The mediator will hold a conference with all the parties involved in the case and will make serious attempts to settle the matter quickly.

If no settlement is reached, the mediator may, with the consent of both parties, hold separate caucuses with each party to enable the mediator to determine their respective real interests in the dispute. Thereafter, another joint conference may be held to consider various options proposed by the parties to the mediator to resolve the dispute.

D. Submission of Report – The mediator will submit to the trial court status report on the progress of the proceedings at the end of the mediation period. The mediator is mandated not to record the proceedings in any manner, but he may take down personal notes to guide him. The PMC will not keep a file of mediation proceedings except the report of the mediator. This is because court-annexed mediation proceedings like those voluntary mediation proceedings under the ADR Law are confidential.

E. Outcome of mediation – When the mediation results in realization of all claims of the plaintiff, a motion to dismiss may be filed in court. If there are obligations still to be complied with, the parties may execute a compromise agreement which will then be submitted to the court for approval. If the court finds the compromise agreement to be in order, judgment will be rendered in accordance therewith. If mediation fails, the case will be returned to the court of origin per a Certificate of Failed Mediation issued by the mediator.

IX. ADVANTAGES OF MEDIATION

1. It is effective – In a recent pilot project conducted by PHILJA, 85% of cases referred for court-annexed mediation had reached settlement. Surveys conducted after mediation sessions reveal a high level of satisfaction among disputing parties. As a result of mediation, close to 100% comply with agreements reached in mediation.

2. It is faster – Many cases reached settlement in 1-2 sessions. The enormous time and effort expended in litigation are avoided.

3. It is cost-saving – Unlike rigorous court proceedings, mediation is quick and devoid of legal intricacies.

4. It restores relationships – Mediation is a proven way to restore relationships long torn by conflict. The process addresses deep-rooted sources of misunderstanding which are inimical to business concerns.