

NATCCO NETWORK



Education, Training and Consultancy Group

Compliance Seminar on

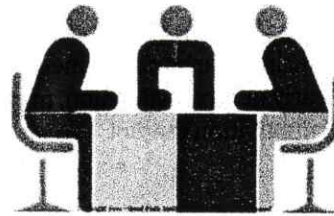
CONFLICT MANAGEMENT



August 25-26, 2014 |
Gaithe Hall, NATCCO
Building, 227 JP Rizal
St., Project 4, Quezon
City

**CONCILIATION
MEDIATION
PROGRAM**

The ADR Revolution
comes of age



**Alternative Dispute Resolution
Act of 2004**

**Republic Act No. 9285
April 2, 2004**

Declaration of Policy. - it is hereby declared the policy of the State to actively promote party autonomy in the resolution of disputes or the freedom of the party to make their own arrangements to resolve their disputes. Towards this end, the State shall encourage and actively promote the use of Alternative Dispute Resolution (ADR) as an important means to achieve speedy and impartial justice and declog court dockets.

Alternative Dispute Resolution System -

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, as defined in this Act, in which a neutral third party participates to assist in the resolution of issues, which includes arbitration, mediation, conciliation, early neutral evaluation, mini-trial, or any combination thereof.

ADR Provider - means institutions or persons accredited as mediator, conciliator, arbitrator, neutral evaluator, or any person exercising similar functions in any Alternative Dispute Resolution system. This is without prejudice to the rights of the parties to choose non accredited individuals to act as mediator, conciliator, arbitrator, or neutral evaluator of their dispute.

Arbitration - means a voluntary dispute resolution process in which one or more arbitrators, appointed in accordance with the agreement of the parties, or rules promulgated pursuant to this Act, resolve a dispute by rendering an award.

Mediation - a voluntary process in which a mediator, selected by the disputing parties, facilitates communication and negotiation, and assist the parties in reaching a voluntary agreement regarding a dispute.

Ad hoc Mediation - any mediation other than institutional or court-annexed

Institutional Mediation - any mediation process conducted under the rules of a mediation institution.

Court-Annexed Mediation - mediation process conducted under the auspices of the court and in accordance with Supreme Court approved guidelines, after such court has acquired jurisdiction of the dispute.

Court-Referred Mediation - mediation ordered by a court to be conducted in accordance with the agreement of the parties when an action is prematurely commenced in violation of such agreement.

Exception to the Application of the ADR Act - The provisions of the ADR Act shall not apply to the resolution or settlement of the following:

- (a) labor disputes covered by Presidential Decree No. 442, otherwise known as the "Labor Code of the Philippines, as amended", and its Implementing Rules and Regulations;
- (b) the civil status of persons;
- (c) the validity of marriage;
- (d) any ground for legal separation;
- (e) the jurisdiction of courts;
- (f) future legitimate;
- (g) criminal liability;
- (h) those disputes which by law cannot be compromised; and
- (i) disputes referred to court-annexed mediation.

USE OF ADR IN THE PHILIPPINES

-Katarungang Pambarangay

-CIAC

-NCMB

-NLRC

-Court Annexed Mediation


-Mediation in the CDA


A. REVISED KATARUNGANG PAMBARANGAY LAW

[SECTIONS 399-422, CHAPTER VII, TITLE I, BOOK III, R. A. 7160, OTHERWISE KNOWN AS THE LOCAL GOVERNMENT CODE OF 1991]

-All disputes are subject to Barangay conciliation pursuant to the Revised Katarungang Pambarangay Law and prior recourse there to is a pre-condition before filing a complaint in court or any government offices, *except* in the following disputes:




1. Where one party is the government, or any subdivision or instrumentality thereof;
 2. Where one party is a public officer or employee and the dispute relates to the performance of his official functions;
 3. Where the dispute involves real properties located in different cities and municipalities, unless the parties thereto agree to submit their difference to amicable settlement by an appropriate Lupon;
 4. Any complaint by or against corporations, partnerships or juridical entities, since only individuals shall be parties to Barangay conciliation proceedings either as complainants or respondents [Sec. 1, Rule VI, Katarungang Pambarangay Rules];
 5. Disputes involving parties who actually reside in barangays of different cities or municipalities, except where such barangay units adjoin each other and the parties thereto agree to submit their differences to amicable settlement by an appropriate Lupon;
 6. Offenses for which the law prescribes a maximum penalty of imprisonment exceeding one [1] year or a fine of over five thousand pesos (P5,000.00);
 7. Offenses where there is no private offended party;
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8. Disputes where urgent legal action is necessary to prevent injustice from being committed or further continued, specifically the following:
 - [a] Criminal cases where accused is under police custody
 - [b] Petitions for habeas corpus by a person illegally deprived of his rightful custody over another or a person illegally deprived of or on acting in his behalf;
 - [c] Actions coupled with provisional remedies such as preliminary injunction, attachment, delivery of personal property and support during the pendency of the action; and
 - [d] Actions which may be barred by the Statute of Limitations.
 9. Any class of disputes which the President may determine in the interest of justice or upon the recommendation of the Secretary of Justice;
 10. Where the dispute arises from the Comprehensive Agrarian Reform Law (CARL)
 11. Labor disputes or controversies arising from employer-employee relations
 12. Actions to annul judgment upon a compromise which may be filed directly in court
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B- CONSTRUCTION INDUSTRY ARBITRATION COMMISSION
[EXECUTIVE ORDER NO. 1008 February 4, 1985]

The CIAC shall have original and exclusive jurisdiction over construction disputes, which arose from, or is connected with contracts entered into by parties involved in construction in the Philippines whether the dispute arose before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts.

The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual provisions; amount of damages and penalties; commencement time and delays; maintenance and defects; payment default of employer or contractor and changes in contract cost.




C. NATIONAL LABOR RELATIONS COMMISSION

The National Labor Relations Commission is a quasi-judicial body tasked to promote and maintain industrial peace by resolving labor and management disputes involving both local and overseas workers through compulsory arbitration and alternative modes of dispute resolution.

It is attached to the Department of Labor and Employment for program and policy coordination.

To resolve labor disputes in the fairest, quickest, least expensive and most effective way possible as an alternative to judicial proceedings, which may restore the disrupted harmonious and friendly relationships between or among the parties.



D. NATIONAL CONCILIATION AND MEDIATION BOARD

The NCMB, created under Executive Order No. 126, reorganizing the DOLE, shall formulate policies, develop plans and programs and set standards and procedures relative to the promotion of conciliation and mediation of labor disputes through the preventive mediation, conciliation and voluntary arbitration; facilitation of labor-management cooperation through joint mechanisms for information sharing, effective communication and consultation and group-problem solving.

To sustain harmonious labor and management relations through continuous education, mainstreaming of alternative dispute resolution (ADR) mechanisms, and implementation of innovation approaches towards worker's empowerment.



E. Court-Annexed Mediation

An enhanced pre-trial procedure that involves settling mediatable cases filed in court with the assistance of a mediator who has been accredited by the Philippine Supreme Court. The mediator assists party litigants to identify issues and develop proposals to resolve their disputes.

Scope:

- All civil cases, settlement of estates, and cases covered by the Rule on Summary Procedure, except those which by law may not be compromised;
- Cases covered by the Lupong Taga pamayapa under the Katarungang Pam barangay Law;
- Civil aspect of BP 22
- Civil aspect of quasi-offenses under Title 14 of the Revised Penal Code;
- Civil aspect of Estafa and Libel cases where damages are sought (A.M. No.04-2-04-SC, dated July 20, 2004, effective August 16, 2004).



Why conduct ADR in the Coop Sector?

CONFLICTS OCCUR IN AND AMONG COOPERATIVES

- ❖ Section 8 of RA 6939, Mediation and Conciliation by the CDA
- ❖ Article 137 of RA 9520 (Previously, Article 121 of RA 6938)



RA 6939 , Section 8

1. *Mediation and Conciliation* - Upon request of either or both parties, the Authority shall mediate and conciliate disputes within a cooperative or between cooperatives: Provided, That if no mediation or conciliation succeeds within three (3) months from request thereof, a certificate of non-resolution shall be issued by the commission prior to the filing of appropriate action before the proper courts.



Article 137 of RA 9520

ART. 137. Settlement of Disputes
 Conciliation, and Mediation Proceedings

Disputes among members, officers, directors, and committee members, and intra-cooperative, inter-cooperative, intra-federation or inter-federation disputes shall, as far as practicable, be settled amicably in accordance with the conciliation or mediation mechanisms embodied in the bylaws of cooperatives and in such other applicable laws.

"The conciliation and mediation committee of the cooperative shall facilitate the amicable settlement of intra-cooperative disputes and disputes among members, officers, directors, and committee members.

"Should such conciliation or mediation proceeding fail, the matter shall be settled through voluntary arbitration: Provided, however, That before any party can validly file a complaint with the Authority for voluntary arbitration, it must first secure a certification from its conciliation and mediation committee and from the cooperative union or federation to which it belongs that despite all efforts to settle the issues, the same have failed."

Article 121 of RA 6938

Section 121. Settlement of Disputes.

Disputes among members, officers, directors and committee members and intra-cooperative dispute shall, as far as practicable, be settled amicably in accordance with the conciliation or mediation mechanisms embodied in the bylaws of the cooperative, and in such other applicable laws.

Should such a conciliation/mediation proceeding fail, the matter shall be settled in a court of competent jurisdiction.

I. Tri-level ADR Guidelines

The Tri-level ADR Guidelines was formulated to respond to the apparent need for mechanisms to mitigate the debilitating social and economic effects of conflicts in the cooperative sector. This was a result of consultations facilitated by the CDA in 6 regional centers nationwide.

The Tri-level guidelines seeks to effectively establish Conciliation-Mediation systems in the following levels:

- Primary level
- Union/Federation
- The CDA

Guiding principles in conduct of Coop ADR

Subsidiarity

- all disputes shall be primarily resolved amicably at the cooperative level

Confidentiality

- no transcript of the proceedings
- notes and admissions inadmissible in any other proceedings;

Speedy inexpensive conciliation-mediation process

- no technical rules of evidence shall be applicable including presence of counsel;

Flexibility

- ample discretion to conduct the con-med process and to pursue whatever conciliation-mediation options as agreed upon by the parties;

Liberal Construction

- liberally construed in favor of attaining the paramount objective of amicably settling disputes at the lowest level;

Independence and Autonomy

a Con-Med Officer and Conciliator-Mediators shall be insulated from all types of external influences and pressures;

Accessibility

the process is open to all disputants desirous of solving their disputes and/or problems as the CDA recognizes the need to make justice accessible as widely as possible to all members of the cooperative.

Voluntariness

submission to the conciliation-mediation process shall be completely voluntary.