

Experience and Challenges in Implementing the JDR process

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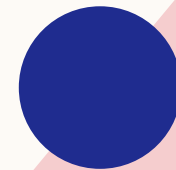
PRESENTATION OUTLINE

First, a Distinction

The Philippine Experience

Challenges

Wishlist/Proposed Solutions



**FIRST,
A DISTINCTION**

**THE JDR PROCESS OF
THE JDRN**

v.

JDR IN THE PHILIPPINES

THE JDR PROCESS OF THE JDRN

Refers to the proactive, judge-led management of cases, twinned with the use of a range of Court ADR modalities to achieve the resolution of court disputes in full or in part so that judicial time is saved.
(No. 5 of the Best Practice Guide for the Establishment, Implementation and Promotion of the JDR Process)

JDR IN THE PHILIPPINES

Refers to a process whereby the judge (called the JDR Judge) employs conciliation, mediation or early neutral evaluation in order to settle a case at the pre-trial stage. In the event the JDR fails, then another judge (called the trial judge) shall proceed to hear and decide the case.

JDR IN THE PHILIPPINES

- Philippine JDR is limited in scope as compared to that in the JDRN
- This presentation, while focusing on JDR as we know it, will also cover the larger concept of JDR as used before the JDRN
- Reference shall be DR to distinguish from the Philippine JDR process

THREE STAGES OF DR IN THE PHILIPPINES

1. Court-Annexed Mediation
2. Judicial Dispute Resolution
3. Appellate Court Mediation

JDR IN THE PHILIPPINES

- It comes after a failed Court-Annexed Mediation
- It is conducted when the Judge to whom a case is raffled off to is convinced that settlement is still possible
- Permissive referral is available upon motion or manifestation of any of the parties in case there is a significant likelihood of a settlement; The common denominator is the possibility of settlement
- Only civil actions are subject to JDR
- The entire JDR proceedings is only for a non-extendible 15 calendar day period



**THE PHILIPPINES'
EXPERIENCE ON
JDR**



ALL OUT SUPPORT FOR JDR

10

2020 Guidelines

Supreme Court

Office of the Court Administrator

Philippine Mediation Center

Philippine Judicial Academy

2020 GUIDELINES FOR CAM AND JDR HIGHLIGHTS

11

- The Pre-Trial Order will contain schedules for CAM and JDR
- The court **may** refer the parties to CAM and JDR at any stage of the proceedings, when either or both of the parties request, there is a significant likelihood of settlement, and there are still factual issues to be resolved
- A JDR judge can make a non-binding impartial evaluation of the chances of the parties' success
- A party that fails to attend CAM or JDR or bring the required authorization without valid cause, or having full authority, refuses to exercise the same or claims that require further approval from the principal, may merit sanctions such as dismissal of plaintiff's case, *ex parte* presentation of plaintiff's evidence, contempt, or reimbursement of costs
- CAM should not exceed 30 calendar days. JDR should not exceed 15 calendar days. Both are non-extendible
- Representatives must have binding authority until end

PLUS POINTS

Our Judges already enjoy a modicum of moral ascendancy

Incentives given for successful JDR – JDR Judge shall be entitled to a credit for every successfully settled case in JDR – shall be exempt from receiving a newly filed case during raffle equivalent to the number of cases settled during JDR

SUPREME COURT OFFICE OF THE COURT ADMINISTRATOR

- Overseer of entire trial court system
- Leads Judges in effective Court Management and case tracking
- Philippine Mediation Office Center is under its wing
- Court Annexed Mediation (CAM) and Judicial Dispute Resolution (JDR) better monitored
- Reporting of referrals, successes and failures

PHILIPPINE MEDIATION CENTER OFFICE

Oversees SC ADR mechanisms, namely, Court-Annexed Mediation (CAM), Appellate Court Mediation (ACM), Judicial Dispute Resolution (JDR), Mobile Court-Annexed Mediation (MCAM), and eventually Court-Annexed Arbitration (CAA); and other Alternative Dispute Resolution mechanisms

It is also tasked with the organization of PMC Units throughout the country

Training Programs

- Recruitment and Screening of Prospective Mediators
- Internship Program
- Inventory of Cases and Internship Period



PHILIPPINE JUDICIAL ACADEMY¹⁵

- Training arm of the judiciary
- Regularly rolls out training programs for JDR
- 2023 training –
 - Curriculum Review and Training of Trainers on the Refresher Course Program for JDR
 - Online Basic Mediation Course Curriculum Review
 - Pilot Run of the Refresher Course Program on Judicial Dispute Resolution
 - Enhanced Refresher Course for CAM
 - Judicial Settlement Conference for Judges on Judicial Dispute Resolution (Skills-Based Course)

WHAT OUR JDR JUDGES SAY

“Patience in dealing with parties”

“Successful JDR can be achieved with skills taught”

“Training really matters and helps immensely”

“The JDR judge needs to let the parties know and feel that he/she believes that settlement is very much possible and the best way forward”

“JDR is a big help in settling cases”

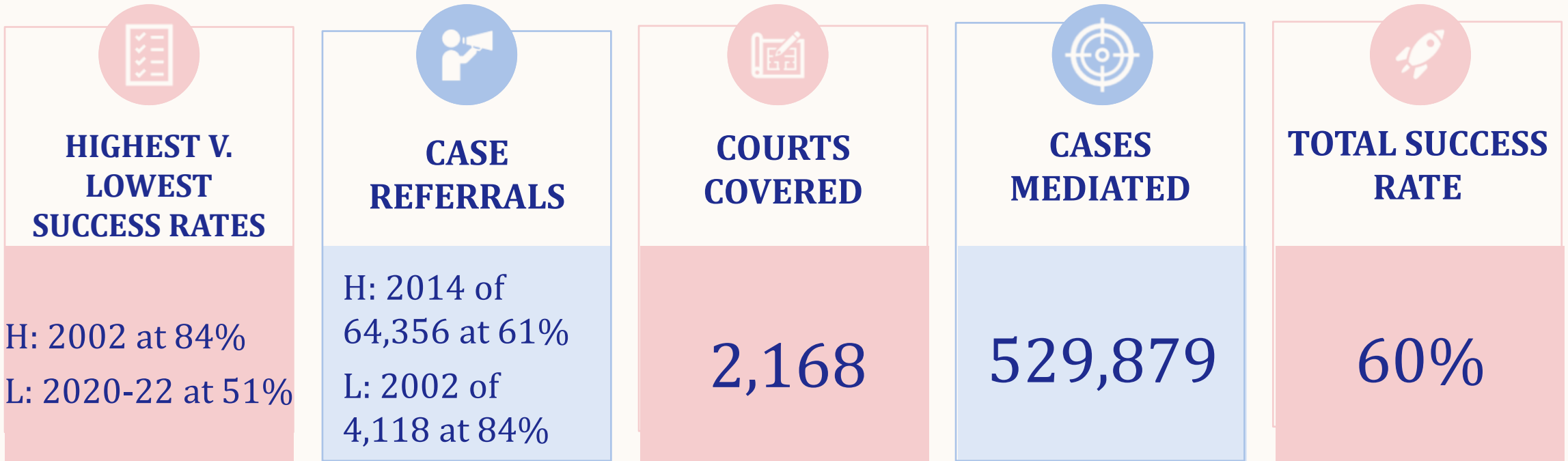
“Patience is certainly a virtue in JDR especially when lawyers, not the parties, are the ones reluctant to settle”

“Skills learned during seminars are a plus in settling cases”



**SUCCESS RATE OF
COURT ANNEXED
MEDIATION (CAM)**

CAM FIGURES





SUCCESS RATE OF JUDICIAL DISPUTE RESOLUTION (JDR)

Guess Success Rate to date

JDR FIGURES



HIGHEST V. LOWEST SUCCESS RATES

H: 2004 at 68%
L: 2022 at 15%



CASE REFERRALS

H: 2016 of 22,767 at 31%
L: 2004 -22 at 68%



COURTS COVERED

1,744



CASES MEDIATED

148,564



TOTAL SUCCESS RATE

35%

CHALLENGES

FOCUS ON THE JUDGE

- Developing a correct mindset - some Judges still cling to traditional role as final arbiter detached from the parties; JDR requires a lot of effort from the Judges who are used to be at the receiving end of information in the form of arguments and evidence
- Adequate training on Dispute Resolution
- Raising expertise in subject matter – both for Mediators & Judges
- Exposing Judges to criticism and diminishing Public Confidence in Judiciary
- Difference in dispute resolution methods and success rates of Judges

OTHER CHALLENGES

- Culture of litigation
- Physical venue for conducting JDR – existing court facilities is not ideal, usually chambers
- Time limitations (non-extendible 15 calendar days only for JDR)
- Parties who are relatives or impleaded with in-laws are the most difficult to mediate or facilitate
- Corporations not duly represented by proper officers usually cause delay to the JDR process
- Sometimes lawyers instead of helping the parties to enter into settlement are the ones hindering it
- For intracorporate disputes, JDR is seen by some commercial court Judges as an added layer of delay; the simplification of issues and stipulations in the Pre-Trial proceeding is already comprehensive enough to show to the Judge how the resolution of the case can be expedited

SOLUTIONS/ WISH LIST

Rules Amendment
Training
Practical Solutions

RULES AMENDMENT

Filtering Provisions

Pre-Filing Requirements

Notice of Claim sent to other party

Mandatory resort to two neutral evaluators

Meeting

Barangay Conciliation when required

Mediation, Arbitration, Neutral Evaluation, Mini Trial

Petition for Confirmation of Settlement Agreement

Complaint – must show prior resort to any two ADR modes,
otherwise dismissed

Maximize utility of ADR institutions, Neutral Evaluators

Primary Goal – decongest Court dockets

CONTINUING EDUCATION ON DISPUTE RESOLUTION

- with focus on skills development
- basic training on psychology
- best practices from region with similar cultural complexion and from jurisdictions with advanced JDR processes
 - face to face training
 - remote or online training opportunities
 - materials sharing and links
- familiarization with concepts of conflict analysis, communication theory, negotiation practices, power imbalances; dealing with deadlocks, ice breakers, maintaining control
- focus on raising the level of confidence of the Judges to conduct JDR

PRACTICAL SOLUTIONS

- Provision of Conference Room for JDR with tools like White Board
- Provision of templates for different types of Compromise Agreements – will allow immediate signing and ease in negotiations
- Set aside dedicated JDR day



THANK YOU

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