

# JUDICIAL DISPUTE RESOLUTION: The Philippine Experience\*

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A pleasant day or night to all our distinguished participants. It is both an honor and a pleasure to be here with all of you today.

I am Jose Midas P. Marquez, one of the fourteen (14) Associate Justices of the Philippine Supreme Court. In behalf of Chief Justice Alexander G. Gesmundo, allow me to share with you the Philippine Experience on Judicial Dispute Resolution or JDR.

Let me first note that, in our jurisdiction, JDR is part of a three-stage process of court diversion of pending cases. For this reason, a discussion of the JDR always entails reference to present Alternative Dispute Resolution (ADR) mechanisms in the Judiciary.

ADR in the Judiciary is intended to **end pending litigation** through a compromise agreement resulting to reduction of docket congestion in courts and litigation expenses. These mechanisms likewise **promote party autonomy** and **recognize indigenous modes** of dispute resolution.<sup>1</sup> All in all, they give practical effect to the State Policy on ADR enunciated in the *Alternative Dispute Resolution Act of 2004*.<sup>2</sup>

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\* Sharing of experiences in the Judicial Dispute Resolution Process, presented at the **International Judicial Dispute Resolution Network Inaugural Meeting on 18-19 May 2022**.

<sup>1</sup> *Consolidated Guidelines to Implement the Expanded Coverage of Court-Annexed Mediation (CAM) and Judicial Dispute Resolution (JDR)*, A.M. No. 11-1-6-SC-PHIL, 11 January 2011.

<sup>2</sup> *Id.*

## **DEVELOPMENT OF JDR IN THE PHILIPPINES**

But even prior to the enactment of the ADR Act of 2004, the Supreme Court has already encouraged and prioritized the use of alternative modes in settling disputes.

In the 1997 Rules of Civil Procedure, Rule 18 on Pre-Trial requires courts to consider the possibility of amicable settlement or of submission to alternative modes of dispute resolution.

In 1999, as part of its *Action Program for Judicial Reform* (APJR), particularly the establishment of a court-annexed mediation system, the Supreme Court pilot tested the mandatory mediation/conciliation in the trial courts.<sup>3</sup>

In 2001, the Court institutionalized CAM with the issuance of relevant guidelines on implementation of mediation proceedings. Likewise, the Supreme Court established the Philippine Mediation Center Office (PMCO) for the development, implementation and monitoring of ADR mechanisms in the Judiciary under the operational control and supervision of the Philippine Judicial Academy (PHILJA).<sup>4</sup> Quite recently, or twenty years later, the Supreme Court transferred the PMCO to the Office of the Court Administrator for more efficient coordination in effecting its mandate.<sup>5</sup>

In 2002, the Supreme Court began to test the conduct of Appellate Court Mediation in the Court of Appeals and was fully implemented in 2004.<sup>6</sup> The Court of Tax Appeals followed suit and likewise implemented mediation in 2011.<sup>7</sup>

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<sup>3</sup> A.M. No. 99-6-01-SC-PHILJA, 22 June 1999.

<sup>4</sup> A.M. No. 01-10-5-SC-PHILJA, 16 October 2001.

<sup>5</sup> A.M. No. 21-08-01-SC-PHILJA, 5 October 2021.

<sup>6</sup> A.M. No. 02-2-17-SC, 16 April 2002.

<sup>7</sup> A.M. No. 11-1-5-SC-PHILJA, 18 January 2011.

The concept of JDR was first introduced in Philippine jurisdiction in 2004 through the *Justice Reform Initiatives Support Project (JURIS)*, funded by the *Canadian International Development Agency (CIDA)*, in support of the Supreme Court's reform program.<sup>8</sup>

The project was conceptualized, together with the PHILJA, as the *Enhanced Pre-Trial Proceeding Through Conciliation and Neutral Evaluation* and pilot-tested in two model court sites in two Provinces in the Philippines, Pampanga and Bacolod. It intends to strengthen conciliation at the pre-trial stage as a means of expediting the resolution of cases and decongesting court dockets, *after court-annexed mediation has failed*. Through this process, the pre-trial judge acts as conciliator, early neutral evaluator, and/or mediator.<sup>9</sup>

In 2006, the Court revised the Guidelines for the Enhanced Pre-Trial Proceeding Through Conciliation and Neutral Evaluation. Among others, the pre-trial judge is then called a JDR judge, and additional pilot courts were introduced in three (3) Provinces, namely, of Benguet, La Union, and Cagayan de Oro.<sup>10</sup> Following the training of more judges on the conduct of JDR, the Court declared additional JDR sites nationwide.

In 2011, the Supreme Court promulgated the **Consolidated Guidelines to Implement the Expanded Coverage of Court-Annexed Mediation (CAM) and Judicial Dispute Resolution (JDR)** providing for its coverage, procedure and monitoring.<sup>11</sup> The *Guidelines* enumerated cases that are mandatorily covered by both CAM and JDR including civil cases and the civil liability of criminal cases.

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<sup>8</sup> A.M. No. 04-1-12-SC, 20 January 2004.

<sup>9</sup> *Id.*

<sup>10</sup> A.M. No. 04-1-12-SC-PHILJA, 29 August 2006.

<sup>11</sup> *Supra* note 1.

In 2017, the Court promulgated the *Revised Guidelines for Continuous Trial of Criminal Cases*<sup>12</sup> which includes an enumeration of cases subject to mediation. However, as the 2017 Guidelines did not provide for JDR, it was no longer included in criminal proceedings.

In 2019, the Court then issued the 2019 Amendments to the 1997 Rules of Civil Procedure which now formally includes Mediation and JDR as components of Pre-Trial.<sup>13</sup>

In 2020, to facilitate the conduct of JDR proceedings despite the restrictions brought by the pandemic, the Office of the Court Administrator allowed the conduct of JDR through videoconferencing hearings.<sup>14</sup>

In 2021, the Court promulgated the ***2020 Guidelines for the Conduct of the CAM and JDR in Civil Cases*** incorporating the relevant revisions in the implementation of CAM and JDR.<sup>15</sup>

## **JDR PROCESS IN THE PHILIPPINES**<sup>16</sup>

As mentioned, JDR is part of a three-stage process of court diversion of pending cases.<sup>17</sup>

1. The first stage, **Court-Annexed Mediation** or **CAM**, is the **mandatory** referral of parties to the PMC for the mediation of their dispute by trained and accredited mediators;
2. The second stage, **Judicial Dispute Resolution** or **JDR**, takes place when parties fail to secure a

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<sup>12</sup> A.M. No. 15-06-10-SC, 25 April 2017, effective 1 September 2017.

<sup>13</sup> A.M. No. 19-10-20-SC, 15 October 2019, effective 1 May 2020.

<sup>14</sup> OCA Circular No. 127-2020, 10 August 2020.

<sup>15</sup> A.M. No. 19-10-20-SC, 09 February 2021, effective 1 March 2021.

<sup>16</sup> *Id.*

<sup>17</sup> *Supra* note 1.

settlement of the dispute during the CAM, but the presiding judge is convinced that settlement is still possible, and refers the same to a JDR Judge;

3. The third stage, **Appellate Court Mediation** or **ACM**, takes place when a case is brought on appeal to the Court of Appeals or to the Court of Tax Appeals of cases covered by CAM, and the case is referred to the PMC-Appellate Court Mediation Unit of the Court of Appeals or the Court of Tax Appeals for the conduct of mediation.

Both CAM and JDR are now governed by the 2020 Guidelines on CAM and JDR, and are available in pending cases before the first and second level courts or trial courts in the Philippines. Second level courts include the Regional Trial Courts and Family Courts, while First level courts include the Metropolitan Trial Courts, Municipal Trial Court in Cities, Municipal Trial Courts, and Municipal Circuit Trial Courts. ACM, as indicated, is utilized in the appellate courts.

### **What Cases are Covered?**

**CAM.** Referral to CAM is mandatory in civil and criminal cases. Civil cases covered by CAM are enumerated in the 2020 Guidelines for CAM and JDR which includes almost all civil cases except those which cannot be a subject of compromise. Criminal cases subject for mediation, however, are enumerated in the Revised Guidelines for Continuous Trial of Criminal Cases.

**JDR.** As noted earlier, JDR is availed of after CAM has failed and covers the following cases:

- a) Cases covered by CAM, except environmental cases
- b) Cases brought on appeal from first level courts:

- 1) all civil cases and settlement of estate, testate and intestate;
- 2) all cases of forcible entry and unlawful detainer;
- 3) all civil cases involving title to, or possession of, real property or an interest therein; and
- 4) habeas corpus cases decided by the first level court in the absence of any RTC Judge.

However, environmental cases and small claims cases are not covered by JDR as they are covered by the Rules on Environmental Cases and Rules on Small Claims Cases. Also, as stated earlier, Criminal Cases are not covered by JDR.

### **How is JDR Availed of?**

In civil cases covered by mediation, the Judge issues a referral order for the parties to undergo mediation before the Philippine Mediation Center. If the parties fail to secure a settlement during CAM, then JDR may be availed of through:

1. Referral to a JDR Judge – in case parties fail to secure settlement after CAM but the judge is convinced that settlement is still possible
2. Oral manifestation or written motion by parties – in all other actions or proceedings where compromise is not prohibited. (Permissive Referral)
3. Agreement to Mediate – in cases brought on appeal from first level courts, except cases involving purely legal issues. (JDR on Appeal)

In **TUAZON v. FUENTES** (2021), the Supreme Court recognized the new 2020 Guidelines and that referral to a judicial dispute resolution in case of failed CAM is made only when the judge to whom the case was originally filed is convinced that settlement is still possible.

## **Who May Conduct JDR?**

Only judges who have undergone skills-based training in JDR procedures and stationed in areas declared as JDR sites, are authorized to conduct JDR proceedings in accordance with these Guidelines.

## **How is JDR Conducted?**

*First*, the Presiding Judge shall refer the parties for JDR. However, at any time before the scheduled date, the parties may file a joint written manifestation requesting the Presiding Judge to proceed with JDR subject to the condition that if JDR does not succeed, the same Judge shall continue with the case.

*Then*, the JDR Judge shall conduct the process as mediator, conciliator, and/or neutral evaluator to actively assist and facilitate negotiations among the parties for them to settle their dispute.

*Finally*, the JDR Judge shall submit a report and return the case to the Presiding Judge, within 15 days, regardless of the outcome.

## **Proceedings After JDR**

After submission of the JDR Report, if the case is settled, the Presiding Judge shall render judgment approving compromise agreements with a statement that it was achieved through JDR. However, if the parties still fail to settle, the Presiding Judge shall proceed to trial.

## **CAM and JDR IMPLEMENTATION DATA<sup>18</sup>**

From 2002, the Court established 144 PMC Units nationwide to handle mediation in the lower courts, with 544 accredited mediators presently assigned to cover 2,168 courts, and a success rate of 60%.

For JDR, the Court has rolled-out and implemented the same nationwide covering 1,744 courts, with a success rate of 35%.

These data show how mediation and JDR, together with other court management systems, help in decongesting court dockets. But more than disposing pending cases, these mechanisms minimize the expenses of litigants and restore peace among parties to the case.

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<sup>18</sup> Report from the Philippine Mediation Center Office.