

**IPOPHL MEMORANDUM CIRCULAR NO. 2020-047**

**SUBJECT: Amendments to the Revised Rules on Mediation**

**WHEREAS**, Rep. Act No. 9285, also known as the Alternative Dispute Resolution Act of 2004, directed all government agencies to encourage and actively promote the use of Alternative Dispute Resolution ("ADR") as an efficient tool and procedure for resolving disputes or cases;

**WHEREAS**, the Intellectual Property Office of the Philippines (IPOPHL) has an ADR program, particularly, mediation services that is effective in expediting the resolution of cases of disputes involving intellectual property;

**WHEREAS**, Rep. Act No. 11032, also known as Ease of Doing Business and Efficient Government Service Delivery Act of 2018, encourages government agencies to the use of automation and information technology to enhance the delivery of service;

**WHEREAS**, allowing the parties to determine by themselves the venue of the mediation proceedings is consistent with the party autonomy principle in ADR;

**WHEREAS**, conducting mediation through online videoconference and similar Information Technology tools or platforms is consistent with the directive under Rep. Act No. 11032, and ensures the continuity and resiliency of IPOPHL-BLA mediation services in times of crisis like the State of Public Health Emergency brought by the Covid-19 virus, as contained in Presidential Proclamation No. 922, Series 2020;

**WHEREAS**, the proposed amendments to the IPOPHL Revised Rules of Mediation (Memorandum Circular No. 008-2018), are beneficial to the parties and to the Office in terms of minimizing the costs of conducting and participating in the mediation proceedings;

**NOW, THEREFORE**, and pursuant to the authority of the Director General under Section 7.1 of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines, the Rules on Mediation Proceedings, as revised per Memorandum Circular No. 008, series of 2018 is further amended as follows:

**Section 1.** Section 2 is hereby amended to read as follows:

Section 2. Commencement of mediation proceedings. A case filed in any of the originating bureau or an appeal to the Director General shall be submitted to the Bureau of Legal Affairs-Alternative Dispute Resolution Services (BLA-ADRS) immediately after the filing of the answer or comment to the appeal. The proceeding in the originating bureau/office is suspended until the case is returned by the BLA-ADRS to the originating bureau/office.

~~The Order submitting the case to mediation shall direct the parties to appear before the ADRS for a pre-mediation conference on the date and time indicated therein. The parties themselves shall appear before the ADRS. FOR THIS PURPOSE, THE ORIGINATING BUREAU OR OFFICE CONCERNED SHALL ISSUE THE ORDER STATING THAT THE CASE IS SUBMITTED TO MANDATORY MEDIATION AND DIRECTING THE PARTIES TO INFORM THE BLA-ADRS WITHIN THREE (3) DAYS FROM RECEIPT THEREOF, OF THE NAMES, ADDRESSES, TELEPHONE NUMBERS, EMAIL ADDRESSES AND ANY OTHER CONTACT DETAILS OF THE PERSON(S) WHO WILL ATTEND OR REPRESENT THE PARTIES IN THE PROCEEDINGS. THE ORDER SHALL ALSO STATE THAT A PARTY NOT PRESENT IN PERSON, OR IN THE CASE OF A CORPORATION, PARTNERSHIP OR ASSOCIATION, ITS MOST SENIOR OFFICER, SHOULD MAKE HIMSELF REACHABLE BY PHONE OR ANY COMMUNICATION FACILITY DURING EACH MEDIATION SESSION TO RECEIVE ANY QUERY OR OTHER COMMUNICATION FROM THE MEDIATOR OR THE BLA-ADRS. THE AFOREMENTIONED THREE-DAY PERIOD SHALL BE RECKONED FROM THE DATE THE ORDER IS SENT IF THE RULES OF THE ORIGINATING BUREAU OR OFFICE SO PROVIDE THAT THE MODE OF SERVICE OF ORDERS, NOTICES, SUMMONS AND OTHER DOCUMENTS, SHALL BE VIA ELECTRONIC MAIL (EMAIL), ONLINE OR OTHER ELECTRONIC MEANS. The parties, including partnerships, associations or corporations, or any juridical person, however, may be represented.~~

**IF A PARTY IS REPRESENTED, THE** ~~The representative(s) shall submit to the BLA-ADRS the~~ **MUST HAVE** proof of written authority such as Special Power of Attorney, Secretary's Certificate or Board Resolution, stating that the representative(s) is/are fully empowered to offer, negotiate, accept, decide and enter into a compromise agreement. ~~The Order shall also state that a party not present in person, or in the case of a corporation, partnership or association, its most senior officer, should make himself reachable by phone or any communication facility during each mediation session to receive any query or other communication from the mediator or the ADRS.~~ **THE PARTY CONCERNED SHALL SEND VIA EMAIL TO THE BLA-ADRS A SCANNED COPY OF THE ORIGINAL PROOF OF AUTHORITY PRIOR TO, OR SHALL PRESENT THE SAME DURING THE PRE-MEDIATION CONFERENCE.**

**THE HEAD OF THE BLA-ADRS OR HIS REPRESENTATIVE SHALL COMMUNICATE WITH THE PARTIES AND/OR REPRESENTATIVE(S) TO SET THE TIME AND DATE OF THE ONLINE PRE-MEDIATION CONFERENCE.**

**Section 2.** A new section is added to become the new Section 3, as follows:

**SECTION 3. PRE-MEDIATION CONFERENCE. THE PRE-MEDIATION CONFERENCE SHALL BE VIA ONLINE/VIRTUAL VIDEO CONFERENCE HOSTED OR MODERATED BY THE BLA-ADRS.** During the pre-mediation conference, the parties shall be briefed on the mediation process, **INCLUDING THE OPTION TO USE THE WIPO OPTION FOR MEDIATION** and shall

be assisted in the selection and appointment of their mediator from the list of IPOPHL accredited mediators.

**Section 3.** Section 3 is hereby amended to become the new Section 4 and is hereby amended, as follows:

Section **4. MEDIATION PROCEEDINGS.**~~3.Venue. The mediation proceedings shall be conducted within the IPOPHL offices. Upon the request of both parties, however, the mediation may be conducted at~~**THE MEDIATION PROCEEDINGS SHALL NO LONGER BE CONDUCTED WITHIN THE IPOPHL PREMISES, BUT THROUGH ONLINE/VIRTUAL VIDEO CONFERENCE, USING THE APPROPRIATE INFORMATION TECHNOLOGY OR PLATFORM CONDUCIVE TO MEDIATION. THE PARTIES, HOWEVER, MAY OPT FOR FACE-TO-FACE PHYSICAL CONFERENCE OR MEETING AND SHALL BE FREE TO DETERMINE THE** other venue, provided all related expenses, including transportation, food and accommodation, shall be borne by both parties or as they may agree upon.

**Section 4.** Section 4 becomes the new Section 5 is hereby amended, as follows:

Section ~~4.5.~~**Mediation Fees.** Each party shall pay a non-refundable fee of Four Thousand (P 4,000.00) Pesos. The initial payment will entitle the parties to have four (4) sessions at a maximum of one (1) hour per session. Additional session may be held subject to payments of an extension fee of Two Thousand (P 2,000.00) Pesos each party. The extension fee will entitle the parties to two (2) one-hour sessions. The mediation fees cover the mediator's compensation, administrative costs and other related expenses. **THE RATES OF THE FEES SHALL BE AUTOMATICALLY ADJUSTED IN CASE OF CHANGES UNDER THE IPOPHL FEE STRUCTURE.**

~~Both parties shall pay the mediation fees during the pre-mediation conference. On meritorious grounds, a party may be allowed to pay the mediation fees five (5) days after the pre-mediation conference or the issuance of the Statement of Account by the ADRS.~~ **THE PARTIES SHALL PAY THE FEES WITHIN FIVE (5) DAYS AFTER THE CONDUCT OF THE ONLINE PRE-MEDIATION CONFERENCE AND SHALL SEND VIA EMAIL A SCANNED COPY OF THE PROOF OF PAYMENT TO THE BLA-ADRS.**

**Section 5.** Section 5 becomes Section 6 and is hereby amended as follows:

Section ~~5.~~**Effect of NON-PARTICIPATION OF THE PARTIES.**~~the failure of parties to appear during the mediation and/or pay the appropriate mediation fees. The failure OR REFUSAL of the party who initiated the case, such as the opposer, petitioner or complainant, to appear for~~ **PARTICIPATE IN THE** mediation, including the **ONLINE** pre-mediation conference, ~~without, and/or to pay the fees, shall be grounds for the dismissal of the case. On the other hand, if the respondent fails OR REFUSES to appear~~ **PARTICIPATE** and/or to pay the fees, ~~he~~ **THE RESPONDENT** shall be declared as in default. For this purpose, a party shall be considered absent if the representative fails to show the appropriate and valid authorization.

Consistent with the objective of expeditious resolution of disputes, a party may be excused for non-appearance in any mediation meeting or session including the **ONLINE** pre-mediation conference only once, and only if a valid cause or explanation is submitted through a motion together with the payment of fee therefor within five (5) days after the mediation meeting.

The BLA-ADRS shall immediately return the case to the originating bureau/office with the notice of failure of a party to appear during mediation and/or to pay the fees.

**Section 6.** Section 6 becomes Section 7 and is hereby amended as follows:

Section 7. Successful mediation. If the mediation is successful, the BLA-ADRS shall, within five (5) days from the parties' submission **VIA EMAIL** of their compromise agreement, refer the agreement to the Head of the originating bureau/office. The latter shall, within three (3) days from receipt of the draft decision based on Compromise Agreement, approve the same unless the terms or part thereof is contrary to law, public policy, morals or good customs, in which case the agreement shall be sent back **VIA EMAIL** to the parties, through the BLA-ADRS for revision or modification. Upon the parties' revision or amendment of the agreement, the same shall be returned to the originating bureau/office for approval.

An approved Compromise Agreement shall have the effect of a decision or judgement on the merits and shall be immediately executory and enforced accordingly in accordance with the pertinent rules of IPOPHL and suppletorily, the Rules of Court.

**Section 7.** Section 7 becomes Section 8 and is hereby amended as follows:

Section 8. Non-Settlement of dispute. If within sixty (60) days from submission of the case to mediation the parties are unable to settle their dispute, the mediator shall declare the mediation as unsuccessful and forthwith terminate the proceedings by issuing a Notice of Non-Settlement of Dispute, **COPY OF WHICH SHALL BE FURNISHED TO THE PARTIES VIA EMAIL**. The period of sixty (60) days, however, may be extended for another thirty (30) days upon joint written request of the parties **TO BE SUBMITTED VIA EMAIL** to the originating bureau/office with the concurrence of the Mediator. Should no agreement be reached within the additional period, the mediation proceedings shall likewise be terminated .

In meritorious instances, however, wherein the parties are already finalizing the terms and conditions of their settlement and/or completing legal and formal requirements in relation thereto, or any analogous circumstances, the parties may file **VIA EMAIL** a written request or motion with the originating bureau/office, together with the payment of applicable fees, for extension of time to finalize the agreement. The originating bureau/office shall evaluate the request or motion taking into account the extension of time sought and the possibility of successful settlement.

If mediation fails and/or is terminated, the BLA-ADRS shall advise the Head of the originating bureau/office and furnish said office of a copy of the Notice of the Non-Settlement of Dispute. ~~Unless the parties agree to submit their dispute to an arbitration proceeding, the originating bureau/office shall resume the adjudication proceedings. If they agree to refer to arbitration, the originating bureau/office shall dismiss the case.~~

**Section 8.** Sections 8 to 13 become Sections 9 to 14, respectively.

**Section 9.** Applicability of the Revised Rules. These amended Rules shall apply to all cases submitted to mandatory mediation, including those on-going as of date of effectivity.

**Section 10.** Repealing Clause. All Memorandum Circulars, Rules or Regulations, or parts thereof which are inconsistent with these amended Rules are hereby repealed.

**Section 11.** Separability Clause. If any action or provision of these amended Rules is declared unconstitutional or void by any court of competent jurisdiction, or the applicability thereof to any person or circumstances shall be held invalid, the constitutionality and validity of the remainder of amended Rules and the applicability thereof to other persons and circumstances shall not be affected thereby, and to this end the sections and provisions of these amended Rules.

**Section 12.** Effectivity. These Rules shall take effect thirty (30) days after publication in a newspaper of general circulation and posting in the IPOPHL website.

**Section 13.** Submission to the University of the Philippines Law Center. The Bureau of Legal Affairs is hereby directed to immediately file three (3) certified copies of these Rules with the National Administrative Registry at the University of the Philippines Law Center.

Done this 21<sup>st</sup> day of December, 2020, Taguig City.

  
**ATTY. ROWEL S. BARBA**  
Director General

IPOPHL '21 JAN 08 14:00

RECEIVED BY 