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CH. 43A GUAM MEDIATION

**CHAPTER 43**  
**ALTERNATE DISPUTE RESOLUTION OFFICE**  
**(COURT MEDIATION DIVISION)**

**NOTE:** Chapter 43 was repealed by P.L. 27-81:5. Chapters 43-A and 43-B were enacted by P.L. 27-81:6 and 7 (May 6, 2004). Chapter 43-A is effective immediately.

**CHAPTER 43A**  
**GUAM MEDIATION CHAPTER**

- Article 1. Mediation.
- Article 2. Evidence.
- Article 3. Termination.
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**ARTICLE 1**  
**MEDIATION**

- § 43101. Short Title.
- § 43102. Definitions.
- § 43103. Validity, Irrevocability and Enforcement of Agreements to Mediate.
- § 43104. Conduct of Proceedings; Criteria; Other Codes.
- § 43105. Representation.
- § 43106. Agreement to Stay Judicial or Arbitral Proceedings; Time Period.
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- § 43108. Nonwaiver of Rights or Remedies by Submission to Mediation.

**§ 43101. Short Title.**

This Chapter 43-A shall be known as and may be cited as the *Guam Mediation Chapter*.

**§ 43102. Definitions.**

For purposes of this Chapter 43-A, the following terms apply:

- (a) *Mediation* means a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement.

(b) *Mediator* means a neutral person who conducts a mediation. *Mediator* includes any person designated by a mediator either to assist in the mediation or to communicate with the participants in preparation for a mediation.

(c) *Mediation consultation* means a communication between a person and a mediator for the purpose of initiating, considering, or reconvening a mediation or retaining the mediator.

(d) *Writing* means handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

**§ 43103. Validity, Irrevocability and Enforcement of Agreements to Mediate.**

An agreement in a writing to settle a controversy by mediation shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

**§ 43104. Conduct of Proceedings; Criteria; Other Codes.**

The mediator or mediators may conduct the mediation proceedings in such a manner as they consider appropriate. Except as otherwise provided in this Chapter 43-A, other provisions of this Code, the Guam Rules of Evidence (Title 6 of the Guam Code Annotated) , or the Guam Rules of Court (Title 7, Appendix A of the Guam Code Annotated) , shall not apply to mediation consultations.

**§ 43105. Representation.**

The parties may appear in person or be represented or assisted by any person of their choice. A person assisting or representing a party need not be a member of the legal profession or licensed to practice law in Guam.

**§ 43106. Agreement to Stay Judicial or Arbitral Proceedings; Time Period.**

Unless otherwise agreed by the parties, the agreement to submit a dispute to mediation shall be deemed an agreement between or among those parties to stay all judicial or arbitral proceedings from the commencement of mediation until the termination of mediation proceedings, provided, however, that nothing in this Section shall prevent a party to a mediation

from pursuing injunctive or other temporary relief during the course of the mediation.

**§ 43107. Limitations; Tolling.**

All applicable limitation periods, including periods of prescription, shall be tolled or extended upon the commencement of mediation proceedings to mediate a dispute under this Chapter 43-A and all limitation periods shall remain tolled and periods of prescription extended as to all parties to the mediation proceedings until the tenth (10th) day following the termination of mediation proceedings. For purposes of this Section, mediation proceedings are deemed to have commenced as soon as (a) a party has requested mediation of a particular dispute or disputes, and (b) the other party or parties agree to participate in the mediation proceeding.

**§ 43108. Nonwaiver of Rights or Remedies by Submission to Mediation.**

By submitting to mediation, no party shall be deemed to have waived any rights or remedies which that party would have had if mediation had not been initiated, other than those set forth in any mediation settlement agreement which results from the mediation or as otherwise prescribed in this Chapter 43-A.

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**ARTICLE 2  
EVIDENCE**

§ 43201. Admissibility of Evidence: Nondisclosure; Exception.

§ 43202. Mediator's Writings.

§ 43203. Otherwise Admissible Evidence.

§ 43204. Protections Before and After Mediation Ends.

**§ 43201. Admissibility of Evidence; Nondisclosure; Exception.**

When persons agree to participate in mediation under this Chapter 43-A:

(a) Evidence of anything said or of any admission made in the course of the mediation is not admissible in evidence, and disclosure of any such evidence shall not be compelled, in any civil or criminal action in which, pursuant to law, testimony may be compelled to be given. However, this Subsection does not limit the admissibility of evidence if all parties participating in mediation consent to its disclosure;

(b) In the event that any such evidence is offered in contravention

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of this Section, the arbitration tribunal or the court shall make any order which it considers to be appropriate to deal with the matter, including, without limitation, orders restricting the introduction of evidence, or dismissing the case without prejudice; and

(c) Unless the document otherwise provides, no document prepared for the purpose of, or in the course of or pursuant to, the mediation, nor any copy thereof, is admissible in evidence, and disclosure of any such document shall not be compelled in any arbitration or civil action in which, pursuant to law, testimony may be compelled to be given.

**§ 43202. Mediator's Writings.**

(a) Any writing produced by the mediator shall not be disclosed to the parties, the public, or anyone other than the mediator, unless all parties to the mediation expressly agree otherwise in writing, or disclosure of the writing is otherwise mandated by court rule, local rule or other law.

(b) Neither a mediator nor anyone else may submit to a Court or other adjudicative body, and a court or other adjudicative body may not consider, any writing by the mediator concerning a mediation conducted by the mediator, other than a report that is mandated by court rule, local rule or other law, unless all parties to the mediation expressly agree otherwise in writing.

**§ 43203. Otherwise Admissible Evidence.**

(a) Evidence otherwise admissible or subject to discovery outside of a mediation or a mediation consultation shall not be or become inadmissible or protected from disclosure solely by reason of its introduction or use in a mediation or a mediation consultation.

(b) This Section does not limit any of the following:

(1) the admissibility of an agreement to mediate a dispute;

(2) the effect of an agreement not to take a default or an agreement to extend the time within which to act or refrain from acting in a pending civil action; or

(3) disclosure of the mere fact that a mediator has served, is serving, will serve, or was contacted about serving as a mediator in a dispute.

**§ 43204. Protections Before and After Mediation Ends.**

Anything said, any admission made, or any writing that is inadmissible, protected from disclosure, and confidential under this Chapter 43-A before a mediation ends, shall remain inadmissible, protected from disclosure, and confidential to the same extent after the mediation ends.

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**ARTICLE 3**  
**TERMINATION**

§ 43301. Termination Circumstances.

§ 43302. Termination-Particular Parties.

**§ 43301. Termination Circumstances.**

The mediation proceedings may be terminated as to all parties by any of the following:

(a) A written declaration of the mediator or mediators, after consultation with the parties, to the effect that further efforts at mediation are no longer justified, on the date of the declaration.

(b) A written declaration of the parties addressed to the mediator or mediators to the effect that the mediation proceedings are terminated, on the date of the declaration.

(c) The signing of a mediation settlement agreement by all of the parties, on the date of the agreement.

**§ 43302. Termination-Particular Parties.**

The mediation proceedings may be terminated as to particular parties by either of the following:

(a) A written declaration of a party to the other party and the mediator or mediators, if appointed, to the effect that the mediation proceedings shall be terminated as to that particular party, on the date of the declaration.

The signing of a mediation settlement agreement by some of the parties, on the date of the agreement.

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**ARTICLE 4**  
**COSTS/TERMINATION**

§ 43401. Mediation Costs; Inclusions.

§ 43402. Equality of Costs Among Parties; Expenses.

§ 43403. Enforcement of Mediation Settlement After Termination of Mediation.

**§ 43401. Mediation Costs; Inclusions.**

Subject to any contrary agreement between or among the parties, upon termination of the mediation proceedings, the mediator shall fix the costs of the mediation and give written notice thereof to the parties. As used in this Section, ‘costs’ includes only the following:

- (a) A reasonable fee to be paid to the mediator or mediators.
- (b) The travel and other reasonable expenses of the mediator or mediators.
- (c) The travel and other reasonable expenses of witnesses requested by the mediator or mediators with the consent of the parties.
- (d) The cost of any expert advice requested by the mediator or mediators with the consent of the parties.
- (e) The costs of any court or other institution’s administration of the mediation.

**§ 43402. Equality of Costs Among Parties; Expenses.**

Subject to any contrary agreement between or among the parties, the costs referred to in § 43401 shall be borne equally by the parties. All other expenses incurred by a party shall be borne by that party.

**§ 43403. Enforcement of Mediation Settlement After Termination of Mediation.**

(a) Any party to a mediation settlement agreement as described in §§ 43301(c) and 43302(b) above, may enforce that mediation settlement agreement at the Superior Court of Guam by filing a motion for summary judgment without filing a complaint, by serving the other party or parties to that mediation settlement agreement with:

- (1) a summons,
- (2) a copy of the signed mediation settlement agreement, and
- (3) a notice of motion for summary judgment and the supporting

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papers.

(b) The summons served under Subsection (a) (1) of this Section shall require the defendant to submit answering papers on the motion within the time provided in the notice of motion. The minimum time such motion shall be noticed to be heard is thirty days after service. If the plaintiff sets the hearing date of the motion later than thirty days, the plaintiff may require the defendant to serve a copy of defendant's answering papers upon the plaintiff within such extended period of time, not exceeding ten days, prior to such hearing date.

(c) No default judgment may be entered pursuant to Guam Rule of Civil Procedure 55(a) prior to the hearing date of the motion. If the motion is denied, the moving and answering papers shall be deemed the complaint and answer, respectively, unless the court orders otherwise.

(d) Both the summons and the motion for summary judgment referred to in Subsections (a) (1) and (3) must be created in accordance with the applicable Guam Rules of Civil Procedure.

(e) The purpose of this Section is to encourage mediation and to expedite the enforcement of mediated settlement agreements by allowing a party or parties to move for summary judgment in lieu of filing a complaint.

(f) Nothing in this Section should be interpreted to restrict the rights of the parties to enforce the mediation settlement agreement in any way or other manner permitted under the laws of Guam.

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**ARTICLE 5  
MEDIATOR AND MISCELLANEOUS PROVISIONS**

- § 43501. Mediator as Arbitrator: Ineligibility for Appointment; Exception.
- § 43502. Costs for Seeking to Compel Mediator.
- § 43503. No Consent to Court Jurisdiction Upon Failure of Mediation.
- § 43504. Service of Process; Immunity of Participants in Mediation.
- § 43505. Action for Damages; Nonliability of Mediators.
- § 43506. Conflicts/Superiority Provision.
- § 43507. Ethical and Training Standards for Mediators.

**§ 43501. Mediator as Arbitrator; Ineligibility for Appointment; Exception.**

No person who has served as mediator may act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceedings with respect to a dispute that is the subject of the mediation proceedings. No person who has served as a mediator may be a witness in any such arbitral or judicial proceedings.

**§ 43502. Costs for Seeking to Compel Mediator.**

If a person subpoenas or otherwise seeks to compel a mediator to testify or produce a writing as defined in § 43102(d), and the court or other adjudicative body determines that the testimony or writing is inadmissible under this Chapter 43-A, or protected from disclosure under this Chapter 43-A, the court or adjudicative body making the determination shall award reasonable attorney's fees and costs to the mediator against the person seeking the testimony or writing.

**§ 43503. No Consent to Court Jurisdiction Upon Failure of Mediation.**

Neither the request for mediation, the consent to participate in the mediation proceedings, the participation in such proceedings, nor the entering into a mediation agreement or settlement shall be deemed as consent to the jurisdiction of any court in Guam in the event mediation fails.

**§ 43504. Service of Process; Immunity of Participants in Mediation.**

Neither the mediator or mediators, the parties, nor their representatives shall be subject to service of process on any civil matter while they are present in Guam for the purpose of arranging for or participating in the mediation pursuant to this Chapter 43-A.

**§ 43505. Action for Damages; Nonliability of Mediators.**

(a) A mediator, and those acting pursuant to the order or rules of the mediator as his or her employees or agents, shall not be held liable for any action performed or omission made in the course of their official duties undertaken pursuant to this Chapter 43-A.

(b) The institution which administers the mediation shall not be liable for any action performed or omission made in connection with any mediation, unless the action performed or omission made is committed with reckless disregard with respect to the rights of one or more of the parties.

**§ 43506. Conflicts/Superiority Provision.**

In the event that any provision of this Chapter 43-A conflicts with the provisions of any other Title, Chapter or Section of the Guam Code Annotated, the provisions of this Chapter 43-A shall be controlling.

**§ 43507. Ethical and Training Standards for Mediators.**

A person serving as a mediator shall comply with the Ethical and Training Standards for Neutrals adopted by the Supreme Court of Guam pursuant to Section 42309.

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