

Commonwealth of Puerto Rico
OFFICE OF THE COMMISSIONER OF INSURANCE

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Commonwealth of Puerto Rico

OFFICE of the COMMISSIONER of INSURANCE
San Juan, Puerto Rico

RULE NO. 79

RULE ON THE CONFLICT MEDIATION PROGRAM

CHAPTER II

GENERAL PROVISIONS

SECTION 1. - LEGAL BASIS

This Rule on the Conflict Mediation Program is promulgated in conformance with Public Law No. 77, enacted on June 19, 1957, as amended, known as the Puerto Rico Insurance Code and Public Law No. 170, enacted on August 12, 1988, as amended, known as the Uniform Administrative Procedures Act of the Commonwealth of Puerto Rico.

SECTION 2. - PURPOSE

The Puerto Rico Insurance Code imposes on the Commissioner of Insurance of the Commonwealth of Puerto Rico the duty to administer public policy on the regulation of insurance by maintaining the highest standards of excellence and efficiency, adequately protecting the public interest, and addressing the needs of the times and changes that are occurring or are foreseeable in the insurance industry and its regulation.

Accordingly, this Rule is adopted for the purpose of establishing the procedures for the Conflict Mediation Program of the Office of the Commissioner of Insurance of the Commonwealth of Puerto Rico.

SECTION 3. - INTERPRETATION

The provisions of this Rule shall be interpreted broadly with a view to proving prompt, fair, economical, and equitable attention to any controversy accepted for mediation at the Office of the Commissioner of Insurance of the Commonwealth of Puerto Rico ("the Office").

SECTION 4. - SCOPE

The Mediation Program will be available for all clients whose applications or actions taken with the Office indicate the existence of controversies that may be amenable to resolution through mediation. The use of the Office's Mediation Program shall be free of charge for the participants, provided that the Mediator to be used in the proceedings set forth herein is an employee of the Office designated by the Commissioner or alternatively, an external Mediator designated by the Commissioner.

Furthermore, any person or entity who is interested in obtaining additional information on the Mediation Program may request orientation at the Office.

SECTION 5. - DEFINITIONS

- (a) Agreement - means the result of the mediation proceedings containing the stipulations of the parties for the partial or full resolution of the controversy.
- (b) Case - means a controversy that has been accepted for mediation under the Mediation Program of the Office.
- (c) Caucus - means a short private individual meeting held separately by the Mediator with each of the parties in a case at any time after the initiation of the mediation process.
- (d) Co-mediation - means the participation of two mediators in the management of mediation proceedings, where the functions that each will perform, the strategies to be followed, and other procedural matters have been previously decided.
- (e) Co-mediator - means one of the mediators in charge in Co-mediation proceedings.
- (f) Communication - means any kind of oral or written communication between the parties and the Mediator of the Mediation Program of the Office or in their presence, as well as any kind of oral or written expression to which a third party has justified and authorized access as part of an investigation, observation or study. It also includes all information provided in the initial interview,

documents, letters, referrals and other material attached to the initial interview sheets; any document, letter, referral and other written material that is part of the case record; any telephone communication, any personal expression or expression made during any kind of interview, meeting or orientation related to the case; all case records; any log book and card files on cases for which orientation or referrals have been made or that have been accepted for mediation which show the names of the parties; and any electronic record related to such information, records, or expressions as described above.

- (g) Confidentiality and privilege -- means that the mediator will not disclose any information provided as part of the mediation process, except in the cases that are specified in Section 24 of this Rule. It also means that the parties and any person present in the mediation process may not require the mediator to disclose or use in any legal, administrative or arbitration proceedings any communication provided in the mediation process.
- (h) Conflict of Interest - means a situation in which the personal or economic interest of the mediator or of the mediator's relatives is or may reasonably be in conflict with the interests of the parties to the case under mediation.
- (i) Controversy - a conflict between entities regulated by this Office and their clients that is brought to the Mediation Program to determine whether it will be admitted as a case.
- (j) Document of Representation - means a power of attorney, sworn statement, corporate resolution or other document that fulfills the requirements set forth in this Rule, and by means of which a party confers on another person the authority to represent the party in a case under mediation in the Mediation Program of the Office.
- (k) Initial interview - means the private and individual interview that is carried out with the parties for the purpose of gathering information on the controversy, determining their eligibility for mediation, and providing them with orientation

on the Mediation Program at the Office.

- (l) Mediation - means the voluntary non-adjudicatory intervention process in which a Mediator helps or assists the parties in conflict to communicate in order to reach an agreement to solve the controversy in a mutually acceptable manner.
- (m) Mediator - means the person who is duly certified as a neutral intervenor to preside over the case under mediation at the Mediation Program of the Office.
- (n) Observer - a person who is authorized by the parties and the mediator to be present at the mediation, whose participation will be subject to the rules of confidentiality as defined in this Rule.
- (ñ)¹ Office - means the Office of the Commissioner of Insurance of the Commonwealth of Puerto Rico.
- (o) Parties- means the persons in conflict that participate in the mediation under the Mediation Program of the Office.
- (p) Mediation Program - means the Conflict Mediation Program of the Office.
- (q) Rule - means the Rule that governs of the Mediation Program.

CHAPTER III

MEDIATION PROCEDURE

SECTION 6. - REFERRAL FOR MEDIATION

The referral is the point of departure for initiating the mediation procedure. Referrals for mediation will originate principally in the Consumer Services Unit at the Customer Service Division at the Office, further to being identified during the investigation process of requests for investigation submitted to the Office to the effect that there are private controversies existing between regulated entities and other clients of the Office that could be resolved through the mediation procedure. Notwithstanding the above, referrals may be accepted from other

¹ Letter in the Spanish alphabet

divisions of the Office, and it is further provided that at no time will the Office accept any referral of a case that is not related to the insurance business in Puerto Rico.

SECTION 7. - COMMUNICATION AND INTERVIEW WITH THE PARTIES

Once a referral is received for the Mediation Program, the Commissioner or the mediator authorized by delegation of the Commissioner shall notify the parties to the controversy. In the notification each of the parties to the controversy will be called to an initial interview and orientation meeting.

The interview and orientation meeting will be private, confidential, and privileged and participation in the meeting will be limited to the mediator, the parties and their representatives.

Upon the conclusion of the interview and the corresponding orientation, it shall be the mediator's responsibility to confirm the interest of the parties to freely and voluntarily submit the controversy for evaluation by the Mediation Program.

SECTION 8. - CRITERIA FOR SELECTION OF CASES

When the parties have accepted to submit a controversy for evaluation by the Mediation Program, the mediator will carry out a full evaluation of the controversy in order to determine whether it should be admitted as a case for mediation. In the evaluation the mediator shall consider the nature of the controversy and will take into account, among other aspects, the following criteria for selecting cases:

- (a) The controversy is related to or be a product of an activity or transaction in the insurance business in the Commonwealth of Puerto Rico;
- (b) The controversy should not be under consideration of a court, administrative forum, or any other forum at which formal adjudication will be made on the controversy;
- (c) The controversy should not be in and of itself a violation of the provisions of the Insurance Code and its Regulations, the provisions of any Ruling Letter or Administrative Order, or the public policy of the Office.

Furthermore, the mediator will be responsible for verifying that the parties to the controversy fulfill the following requirements:

- (a) In the case of an individual, being of legal age and having full legal capacity as defined in the Puerto Rico Civil Code;
- (b) In the case of a minor, or any individual who for any other reason lacks full legal capacity, having a caregiver, guardian or duly authorized representative to act and make decisions on behalf of and for the benefit of the individual.
- (c) In the case of a corporation or legal person, being duly organized under the laws of the Commonwealth of Puerto Rico and being in compliance with all requirements for maintaining registration and authorization.
- (d) in the case of a regulated entity that is appearing as such, being duly authorized by the Office to act in the insurance business in Puerto Rico.

SECTION 9. - ADMISSION OF THE CONTROVERSY FOR MEDIATION

Upon the admission of a controversy as a case for mediation, the mediator:

- (a) will carry out at least one individual interview with each of the parties at which all of the necessary information will be obtained;
- (b) confirm that the participation of the parties in the mediation process is free and voluntary;
- (c) obtain the consent of the parties in writing; and
- (d) assign a number to the case.

SECTION 10. - ACCEPTANCE OF THE MEDIATION SERVICE

The consent of the parties to participate in the mediation process and consequently their acceptance of the service shall be established by the reading and signing of the Acceptance of the Mediation Service form. If any of the parties is a minor or lacks full legal capacity, or if any of the parties is a corporation, the form should contain the signature of any person who will participate in the process as a caregiver, guardian or representative of the party.

SECTION 11. - ASSIGNMENT OF CASES

The Commissioner or the person authorized by delegation of the Commissioner may assign and delegate the management of the case under mediation to employees of the Office who have fulfilled the training requirements as provided in Section 28 of this Rule.

Furthermore, the Commissioner, exercising the Commissioner's discretion, may designate an external mediator (non-employee) to mediate the controversy. This mediator must be certified as such by the Puerto Rico Supreme Court and/or show evidence of experience in alternative conflict resolution methods.

SECTION 12. - NOTICE OF MEDIATION SESSIONS

The chief mediator in the mediation process must contact the parties to the case in order to coordinate the date and time at which the mediation session will be held. Upon reaching an agreement to this effect, the mediator will send the parties a Notice to Appear at the mediation session. The Notice to Appear shall for the mediation sessions shall be in writing and made to all of the parties and their representatives, with a copy for the record, using the form designed for this purpose.

The mediation session shall be private, confidential, privileged and participation in the session will be limited to the mediator, the parties and their representatives, and any other participant, and it is further provided that participation by other persons in the mediation process, including observers and investigators, shall be subject to the consent of the mediator and the parties.

SECTION 13. - PARTICIPATION AS OBSERVERS OR INVESTIGATORS

Participation by persons as observers or investigators at the orientations or mediations will be limited to investigation and training purposes as well as evaluation of these services, and will be subject to the consent of the mediator and the parties. These observers will document their obligation and appearance by signing the document titled "Acceptance of the Mediation Service," and the rules of confidentiality of the mediation process as described in Chapter III of this Rule will be applicable to them.

SECTION 14. - SUSPENSIONS

Any request for the suspension of a mediation session must be requested from the Office in writing at least five (5) calendar days before the date set for the mediation, indicating the reasons for such a request. If any party fails to appear at a previously coordinated mediation session that has been formally notified without requesting a suspension of the session within the aforementioned period of time, it will be deemed to be renouncing any interest in participating in the mediation and the case will be closed. Except in extraordinary circumstances, which will be evaluated by the mediator, ordinarily more than one request for a suspension of a mediation session will not be permitted. In such extraordinary cases, the mediator will have the discretion to decide to allow more than one request for a suspension of session.

Furthermore, if the suspension is requested by the Office and/or the mediator, the Office will notify the parties in a timely manner of such a need and the mediator will promptly coordinate a new date and time to hold the mediation session.

SECTION 15. - RECUSAL

Mediators must recuse themselves from participating in any case assigned to them or that they have accepted, as soon as they realize that there exists or that there could reasonably exist a conflict of interest as defined in this Rule. The mediator will set forth the reasons that justify the recusal so that an appropriate manner to manage the situation may be determined. For this purpose, the mediator will indicate all factors that could affect his or her impartiality or the fulfillment of the function of facilitator in the process. If the mediation cannot be carried out due to factors that disqualify the mediator, the session will be rescheduled with another mediator.

SECTION 16. - REPRESENTATION OF PARTIES

If any of the parties decides to appear at the mediation session through a legal custodian, caregiver, guardian or representative, this person must have the necessary the authority to make binding undertakings on behalf of the party and be prepared to present specific alternatives to solve the controversy.

The legal custodian, caregiver, guardian or representative that appears at the mediation

shall present a document signed by the party, explicitly stating that the party has authorized them to represent the party at en the mediation session and in all related proceedings. The document will establish that the party authorizes his or her representative to make binding undertakings on behalf of the party and that the party accepts as the party's any agreement that the representative enters into and signs as a result of the mediation.

SECTION 17. - AUTHORITY OF THE MEDIATOR

The mediator will have the authority to facilitate an agreement between the parties. The mediator will be authorized to call joint and separate sessions with the parties and make conciliatory recommendations regarding possible arrangements to assist the parties with a view to reaching a mutually acceptable agreement.

If needed, the mediator may also request the advice of experts with regard to technical aspects of the conflict, provided that the parties accept this and assume the respective expenses. The arrangements for obtaining this advice will be made by the mediator or by the parties, as may be determined by the mediator.

The mediator will have the authority to ensure orderly progress of the proceedings and establish such procedural rules as deemed appropriate to facilitate achieving the objectives of the mediation. The mediator may postpone any session as he or she may deem appropriate or relevant, taking into account the interests of the parties. Furthermore, the mediator is authorized to terminate the mediation at any time.

SECTION 18. - THE CAUCUS MECHANISM

During the mediation process, the caucus mechanism will be available to the parties and will be used to overcome emotional, procedural or substantive obstacles that may arise during the mediation process.

The caucus may be held at the request of any of the parties or be called on his or her own initiative by the mediator at any time the mediator may deem advisable to do so.

The caucus sessions will be held by the mediator and each party individually, and all provisions regarding confidentiality established in this Rule will be applicable. Once the caucus

session with one of the parties is completed, the mediator will meet in a caucus with the other party.

SECTION 19. - AGREEMENTS

Agreements reached as part of the mediation process will be managed according to the provisions of Chapter IV of this Rule.

The mediator will indicate on the appropriate form whether an agreement was reached, in which case, the agreement will be written out on the form provided by the Office and signed by all of the parties to the mediation process and their representatives, if any. If an agreement has not been reached, this will be noted and the mediator will declare the process to be finished.

SECTION 20. - TERMINATION OF THE MEDIATION

Mediation proceedings will be terminated:

- (a) if the participants decide to reach an agreement or
- (b) due to the lack of an agreement;
- (c) renunciation of the mediation process;
- (d) at the request of any the participants or
- (e) at the request of the mediator in a written statement of the causes for which the mediator is deciding to terminate the mediation.
- (f)

SECTION 21. - EVALUATION

Upon the completion of the mediation process, the mediator will give the participants the form prepared by the Office for the evaluation of the process. The parties will complete the form voluntarily, anonymously, and confidentially. The participants will be advised where they may deposit the completed forms.

CHAPTER II

PRIVILEGE AND CONFIDENTIALITY

SECTION 22. - CONFIDENTIALITY OF THE INFORMATION

Any information provided by the parties to the mediation process, including, but not limited to, offers, promises, conduct, and statements, whether oral or written, expressed during the mediation by any of the parties, their agents, employees, experts and attorneys, or by the mediators, will be confidential and privileged. Likewise, all documents and work records of the mediator will be confidential and privileged. Therefore, during the mediation or orientation no record may be taken of the proceedings by means of a voice recording, stenographer, or video recording or nor will any other means be allowed.

The information provided in mediation proceeding may be disclosed if there is written consent of all of the parties involved in the mediation proceedings. This authorization, as well as any other matter related to confidentiality, will be subject to applicable law.

The confidentiality of the mediation process will be extensive to any person who may be designated by the Commissioner to carry out any investigation with a view to gathering statistics for evaluation of the Mediation Program.

In view of the fact that the mediation process could involve participation by entities covered by the Health Insurance Portability and Accountability Act of 1996, P. Law 104-191, 110 Stat. 1936 (hereinafter HIPAA) and other applicable legislation, the parties and their representatives, the mediator, and any other participant are subject and bound to strict compliance with such legislation.

SECTION 23. - USE OF INFORMATION

The information provided by the parties in the mediation process may not be required or used in legal, administrative or arbitration proceedings. The mediator may not be required to testify on the content of the proceedings or anything set forth before the mediator, nor may the views, suggestions or admissions made by any of the parties, any of the participants, or by the

mediator with regard to possible agreements during the mediation process be brought as evidence.

Nevertheless, evidence previously brought in discovery or known to any of the parties, or that may be in any manner admissible or susceptible to discovery, will not be considered confidential and inadmissible for the sole reason of having been used during the mediation.

SECTION 24. - EXCEPTIONS TO CONFIDENTIALITY AND PRIVILEGE

Privilege and confidentiality will not be applicable when any of the parties, participants, representatives or any other persona present during the mediation process incurs in any of the following behaviors during the mediation proceedings:

- (a) violating any provision of law of the Puerto Rico Insurance Code or its Regulations;
- (b) having requested assistance from the mediator, or any other person present in the proceedings to commit a crime or act that constitutes fraud or expressing the intention to commit any crime or fraudulent act;
- (c) having committed a crime in the presence of the other participants during the mediation process or
- (d) having incurred in abuse or negligence against any person participating in the mediation process, or there being a suspicion of such abuse or neglect.

CHAPTER IV

CLASSIFICATION AND CONTROL OF DOCUMENTS

SECTION 25. - OFFICE PROCEDURES

The records of cases brought to mediation will be kept at the Unit or Division designated by the Commissioner. The content of such records will not be subject to public inspection, under the provisions of Section 2.120 of the Puerto Rico Insurance Code, 26 L.P.R. A. sec. 212. The details of any mediation proceedings or agreement may not be disclosed by the employees of the Unit or Division designated to safeguard the records, nor by any employees involved in the Mediation Program, except to notify the Unit or Division if the parties have reached an agreement.

SECTION 26. - ACCESS TO DOCUMENTS

Staff of the Mediation Program are the only persons authorized to examine or handle the documents and records of the cases. Other Office employee or officials and the observers will have limited access to the documents and records under the conditions that have been previously agreed to between them and the Office, according to the standards and procedures established in this Rule regarding confidentiality.

SECTION 27. - CONTENT OF RECORDS

The record of any case accepted for mediation will be the following documents: the initial interview sheet, Acceptance of the Mediation Service, Summons and Agreement Forms and the Agreement, Partial Agreement or Non- Agreement forms signed by the parties.

CHAPTER V

MISCELLANEOUS PROVISIONS

SECTION 28. - MEDIATOR TRAINING

Mediators to be used by the Office will have completed at least forty (40) hours of training provided by trainers certified by the Supreme Court of Puerto Rico. The training will include dynamics and role-playing related to issues that may arise during mediation in the insurance field. Mediators must obtain at least ten (10) hours of continuing education in alternate conflict resolution methods during a two (2) year-period.

SECTION 29. - QUALIFYING CLAUSE

Any matter not covered by this Rule will be decided by the Commissioner according to applicable laws, regulations, and executive orders, and any matter not provided in such will be governed by the standards of sound public administration and current principles of public policy.

SECTION 30. - SEVERABILITY

Any provision of this Rule or of any of the amendments that may be made to it in the future that is found to be null or unconstitutional by a legal authority of competent jurisdiction will not affect the effect and validity of the remaining provisions, and the effect of such ruling will be limited to the word, paragraph, sentence, section or part that is specifically affected.

SECTION 31. - EFFECTIVE DATE

This Rule will enter into effect within 30 days from the time of filing with the Department of State, under the provisions of Public Law No. 170, enacted on August 12, 1988, as amended, known as the Uniform Administrative Procedures Act of the Commonwealth of Puerto Rico.

(Signed)
DORELISSE JUARBE-JIMENEZ
COMMISSIONER OF INSURANCE

Date of Approval: October 14, 2004

Date of Filing at
The Department of State

Date of Filing at
The Legislative Library