

## **MEDIATION: GROWING APPLICATIONS OF AN OLD ART**

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Statehood triggered in Hawaii a period of dynamic and transformative growth. Rapid changes brought opportunities and turmoil. Labor management relations in the critical sugar, hotel and shipping industries were tumultuous. In those times, labor management disputes had the potential for upsetting Hawaii's growing but sensitive and fragile economy.<sup>1</sup> Since labor management conflict could easily cripple a fledgling industry or choke off critical ocean shipping facilities, then Governor John A. Burns appointed a small cadre of troubleshooters to mediate on behalf of the Governor and the State in those labor-management disputes where State mediation was requested by the parties involved. Often, by the time the assistance of an outside mediator was requested, the parties were at impasse. Sometimes the conflicts took on overtones of a life and death struggle between bitter and distrustful adversaries.

During the decade following 1964, one troubleshooter often called in to help was the State's Attorney General Bert Kobayashi, Sr. Later, Bert Kobayashi, Sr. continued his role as ad hoc mediator even after his appointment as an Associate Justice of the Hawaii Supreme Court. During one particularly bitter dock strike negotiation, fist pounding, tough-as-nails negotiators for both management and labor met with Mediator Kobayashi for many hours late into the evening. Anger, frustration and the clash of egos exploded at the conference table. Amidst yells and invectives, the chief negotiators for both sides squared off for a no-holds barred, bare knuckle brawl. In the flash of the moment, the short, not particularly big mediator leaped onto the conference table between the two imminent combatants and said "if you want to fight, you two will have to fight me first". The sublime silliness of the scene of this man standing on the negotiation table challenging two embittered negotiators to fight him first somehow broke the great tension in the room. Laughter rippled amongst the negotiating teams. All of the negotiators realized that things had gone too far and they needed to redouble their efforts to reach a workable settlement. Before long, a settlement was reached and a crippling dock strike was avoided.

Justice Kobayashi shared this story with a group of young mediators, as an example of a magical moment in negotiations when a breakthrough is achieved and an impasse is overcome. When asked what inspired him to do what he did, Justice Kobayashi could not explain. Sometime later it was learned that Justice Kobayashi held black belts in both judo and aikido and had ample skills to handle the situation. Justice Kobayashi possessed a constellation of talents that helped him to be especially effective in his role as mediator.

### **Culture and the Rapid Growth of Mediation in Hawaii:**

Many cultures in Hawaii value and utilize persons with peacemaking talents in traditional systems for conciliating and resolving disputes. Hawaiians use a process called "ho'oponopono" (to make right). Chinese use the "lao pengyou" (old friend) system. The

Japanese enlist someone within their "keiretsu" (circle of affiliation) to act as a go-between. Other cultures including some Pacific Island and Native American cultures consult a council of elders.

Outside of a cultural context, a survey of the courts, business and government scene in the 60's and early 70's shows mediation was generally used only in the labor management context. Mediation was not commonly used or available in the business, legal and court context. Today the courts, business and the broader community have found increasing opportunities to adopt and adapt various models of the conciliation art to resolve modern clashes and disputes.

The following chronology reflects the dynamic growth and development of mediation as a viable and attractive mechanism of conflict resolution in Hawaii:

- 1979            Formation of Neighborhood Justice Center. Volunteer mediators offer assistance to resolve conflicts amongst neighbors, merchants and members of the community.
- 1982            Department of Education mediation in the schools project. Students are trained to serve as peer mediators of school based conflicts.
- 1982            Divorce mediation experimental project.
- 1984            American Arbitration Association expands its services and begins to offer mediation as a means of resolving disputes in the commercial and construction industry.
- 1984            Juvenile restitution pilot project.
- 1984            Voluntary mediation offered in conjunction with the resolution of Small Claims Court cases.
- 1985            The Hawaii Supreme Court with instrumental leadership from Chief Justice Herman Lum makes Hawaii the first State to create a comprehensive alternative dispute resolution program for the Judiciary and founds the pilot Program on ADR.
- 1986            The Hawaii Supreme Court adopts Standards for Private and Public Mediators in the State of Hawaii

- 1987 The Judiciary's program on ADR begins to coordinate and administer the Judiciary's Purchase of Services contracts with community mediation centers on Oahu, Hawaii, Kauai and Maui.
- 1987 Public disputes mediation project. Program on ADR trains and begins to offer Court-sanctioned mediators to assist in public disputes involving major economic, social and environmental issues.
- 1988 Mediation of complex litigation. The Program on ADR begins to mediate complex litigation cases referred by Circuit Court judges. Cases included the Heptachlor case, special education, beach access and other conflicts.
- 1989 The Legislature passes Act 346 making the Program on ADR a Center for ADR and part of the Judiciary branch of government
- 1990 Small Claims mediation. The District Court of the First Circuit implements mandatory mediation of all small claim cases.
- 1991 The Hawaii State Legislature provides for mediation of condominium common assessment disputes.<sup>2</sup>
- 1992 Child custody/visitation mediation pilot project in Family Court, Second Circuit. All divorce cases involving custody and visitation referred to mediation unless specifically exempted.
- 1993 Landlord/tenant summary possession mediation project. The District Court of the First Circuit offers mediation to assist landlords and tenants in resolving tenancy and eviction disputes.
- 1993 The Family Court of the First Circuit expands mediation in a Kids First Pilot Project and a Chapter 587 (child protection) mediation pilot project for the facilitation of cases involving issues of child protection. Similar "Children First" and "Children in Transition" programs are adopted by the Courts of the Second and Third Circuit.
- 1994 The Hawaii Supreme Court adopts Rule 2.1 of the Hawaii Rules of Professional Conduct which states that lawyers should advise clients of alternative forms of dispute resolution.
- 1994-1995 Under leadership and direction provided by Chief Justice Ronald Moon, a statewide appellate mediation program is developed where retired and semi-retired justices, judges and highly experienced trial practitioners serve as

volunteers to mediate civil cases on appeal. With this, the Hawaii Judiciary now has ADR processes in all Courts of jurisdiction.

- 1994-1995 Mediation/criminal restitution program. Mediation is offered as an option in certain felony property criminal cases.
- 1995 Mediation pilot project. Mediation offered for Court Annexed Arbitration Program cases.
- 1996 Mediation in contested probate, trust and guardianship of property cases designed for implementation.
- 1997 New Circuit Court rules require counsel in First Circuit Court cases to have an in person conference with opposing counsel to discuss settlement as well as ADR options.<sup>3</sup> Pretrial statements must include a statement "identifying any party who objects to alternative dispute resolution and the reasons for objecting."<sup>4</sup> At the trial setting conference, the Court is empowered "in its discretion or upon motion by a party" to "order the parties to participate in alternative dispute resolution process subject to conditions imposed by the Court."<sup>5</sup>

With the adoption of the new Circuit Court rules effective January 1, 1997, attorneys handling Circuit Court cases in the First Circuit Court are now required to consult and consider ADR options including but not limited to mediation. Where the Court considers the circumstances appropriate, the Court may direct the parties to pursue an appropriate ADR mechanism. The new Circuit Court rules represents a major commitment by the Judiciary to insure a relatively early institutionalized assessment and referral mechanism for utilizing mediation and other ADR processes as alternative mechanisms for the resolution of Circuit Court cases. Hawaii is once again a leader in the nation in this effort.

Outside of the courts, nationally and locally, business and industry increasingly have adopted mediation as a desired mechanism for dispute resolution. In a national survey of over 500 of America's largest corporations, 88% reported using mediation in the last three years. Eighty-four percent (84%) report that they are likely or very highly likely to use mediation in the future. The reasons cited for using mediation were: cost savings, it provides "a more satisfactory process" than litigation, more "satisfactory settlements", "preserves good relationships" and a means of managing control over potentially risky disputes.<sup>6</sup>

Insurance companies have also realized great advantages of mediation - earlier evaluations, accelerated resolutions and cost savings. Many carriers, including DPIC, CNA, Zurich, American Home & Reliance, offer waivers or 50% reductions in deductibles as incentives where claims are resolved in mediation.<sup>7</sup>

The real estate industry represented by the National Association of Realtors and local Boards of Realtors have incorporated mediation as a key component of their internal industry conflict management process. In addition, standard real estate documents such as the listing agreement, Deposit Receipt, Offer and Acceptance (DROA) and Cooperating Brokerage contract forms all contain mediation clauses.

Given the phenomenal growth in the use of mediation and the clear and strong encouragement of ADR in the new Circuit Court rules, attorneys will increasingly be using and advising clients about the advantages and disadvantages of mediation. Here are some basic answers to questions our clients may ask when considering the appropriateness of mediation as an option for resolving a legal dispute.

### **Mediation - Facilitative or Evaluative.**

Mediation, like ice cream, comes in different flavors. Often, people have different definitions and expectations. Commonly, people confuse the facilitative and non-adjudicative process of mediation with that of arbitration or adjudication by a third-party. It is therefore helpful and sometimes necessary to clarify understandings and expectations of mediation as a conflict resolution process.

A classic, formal definition of mediation is "the intervention into a dispute or negotiation by an acceptable, impartial and neutral third-party who has no authoritative decision-making power to assist disputing parties in voluntarily reaching their own mutually acceptable settlement of issues in dispute."<sup>8</sup> Another less formal definition of mediation is bringing in a trusted third-party to facilitate communications, negotiations and the exploration of options in the search for a mutually acceptable solution to a dispute.

The mediation process is usually informal. It has several phases:

- a convening phase where parties are brought together;
- a forum phase, where problems and viewpoints are aired;
- an option generation phase where as many possible options and variations for possible solutions are identified;
- a problem solving or negotiation phase where options are considered and assessed by the parties, and
- an agreement phase where a settlement agreement is prepared as appropriate.

You will need to determine what type or "flavor" of mediation would be most effective for you, your client and sometimes, more importantly, for the other parties in the dispute. Do you want a facilitative mediator or an evaluative mediator? A facilitative mediator helps parties understand issues, focuses discussion on the underlying personal, business or societal relationships, needs and interests involved and helps parties develop options and proposals based upon meeting such needs and interests. An evaluative mediator fact-finds, assesses strengths and weaknesses of claims and parties, predicts court outcomes and the impact of not settling, helps parties evaluate proposals and often urges acceptance of a particular settlement.

The goal of a facilitative mediation is to assist parties to work together to find ways to meet their respective needs and interests; to maximize mutual benefits at the least possible costs to each party; to preserve important relationships; to empower parties to control their future and to reach agreements in the least adversarial manner. The chief advantages then of a facilitative mediation style is that the parties feel a sense of direct participation and control as to the outcome of their dispute. As a result, there is often a greater sense of commitment to honor agreements made. A facilitative mediation is especially effective in disputes where significant business, family, partnership, fiduciary or employment relationships are involved.

An evaluative mediation involves providing the benefit of one's experience, knowledge, expertise to help parties assess and understand their respective strengths and weaknesses and can include making recommendations for settlement. Advantages of an evaluative mediation are that it is quicker and parties can draw comfort from the recommendation of a knowledgeable and experienced third-party. Some risks associated with an evaluative mediation is that once a mediator commits to a recommendation, the mediator risks loss of perceived neutrality and may risk losing the trust of the parties. Another significant difficulty is that the evaluation may be made without knowing all the facts, needs and options and can sometimes drive parties further apart or cause one party to retrench thinking they now have the mediator's support on a solution. An evaluative approach can be too judgmental and harsh leaving parties and counsel feeling that they were muscled or abused by the process.

### **How to select a Mediator?**

After settling a major conflict involving the sugar industry, representatives of the sugar workers and the sugar companies identified the following characteristics or skills of Mediator Kobayashi which made him an effective mediator<sup>9</sup>:

- "Rare perception in identifying the real issues involved."
- "Great eloquence and persuasiveness."

- "Keen judgment in formulating recommendations which, while not palatable to either party, neither party could turn down."
- "In a short period . . . he gained completely the respect of all parties concerned."<sup>10</sup>
- "Patient and constructive."<sup>11</sup>
- "Complete trust and respect."
- "Man of his word."

Thus, the qualities of a mediator appreciated by the parties include a set of interpersonal, communication and diplomatic skills, a reputation of absolute integrity, knowledge, experience, and a respected position (attorney general/supreme court justice and designee of the Governor).

In selecting a mediator, you need to consider a number of matters. Give particular attention to selecting a mediator who will be persuasive and credible to the other side. Among the skills and personal qualities you may want in a mediator are the following:

- Reputation for integrity.
- Knowledge and experience appropriate to the dispute.
- An ability to listen and to observe not only what is said but what is not said.
- An ability to analyze problems, identify and separate issues from personalities and to frame issues appropriately for resolution.
- The ability to be non-judgmental and to identify and separate the mediator's personal values and opinions from the issues involved.
- The ability to deal with complex factual materials.
- Excellent interpersonal and diplomatic skills.
- Sensitivity to strongly felt values of the parties including personal, cultural, ethnic, gender and other differences.
- Ability to maintain a positive atmosphere, approach and attitude in problem solving.
- An ability to be creative and to encourage flexibility and creativity.

- Persistence and tenacity in the search for positive and principled options for solutions.
- An ability to understand and work with and not be phased by difficult personalities, people or tactics.

In addition, find out whether your prospective mediator has received any special mediation skills training and the source of such training. Ask also whether the mediator subscribes to ethical standards of mediation practice such as those adopted by the Hawaii Supreme Court<sup>12</sup> or the Society of Professionals in Dispute Resolution (SPIDR)<sup>13</sup>. Determine also whether the prospective mediator participates in continuing education and professional mediator associations<sup>14</sup>.

### **How do you find a Mediator?**

Word of mouth recommendations and lists or directories maintained by different organizations or publishers are common means of identifying mediators. You can consult colleagues or members of the Hawaii State Bar section on Alternative Dispute Resolution. Some dispute resolution services or agencies maintain lists or panels of mediators. Directories of dispute resolution providers are also available in the yellow pages under mediation services and in a Martindale-Hubbell dispute resolution directory. An international organization called the Society of Professionals in Dispute Resolution (SPIDR) and its Hawaii Chapter also have lists of possible mediators. Other good sources of experienced mediators are the various community mediation centers in existence on all major islands. Community mediation centers are available on the Big Island, Maui, Molokai, Kauai and Oahu. They are usually well trained and often provide service at very nominal rates. The Hawaii State Judiciary's Center for Alternative Dispute Resolution has published a useful and thoughtful guide for the public called *Selecting a Mediator*. It provides helpful checklists and steps to take during the course of selecting an appropriate mediator.<sup>15</sup>

Determining who is a competent mediator can be difficult. Most States, including Hawaii, do not require any special licensing or certification procedure for mediators. Some service providers such as the American Arbitration Association and community mediation centers like the Neighborhood Justice Center require mediation training for their panel of mediators. In addition, some Court mediation programs like the Second Circuit Family Court mediation program require a combination of experience, education, training and/or supervised observation to qualify persons to serve as appointed mediators.

## **What are the advantages of Mediation?**

Speed and cost effectiveness. "The single greatest advantage of mediation is that it accelerates the resolution of the dispute."<sup>16</sup> The time it takes to arrange for and conduct a mediation permits the process to be accomplished within a matter of days or weeks depending on the parties involved and the complexity of the dispute. An effective mediation can take place as soon as parties have sufficient information to make a meaningful assessment of the issues and dispute.

Part of the rationale for the new Circuit Court Rule 12 calling for pre-trial statements to be filed eight (8) months from the time of the filing of a Complaint<sup>17</sup> and requiring counsel to confer and consider ADR prior to trial setting is an effort to encourage utilization of appropriate ADR earlier in the litigation process. Mediating a resolution on the eve of trial is generally undesirable. While it may still be advantageous to mediate on the eve of trial, mediation early after parties have sufficient information to participate meaningfully in negotiations can result in saving substantial litigation fees and expenses for motions practice, discovery and pre-trial preparation.

Voluntary and consensual. Mediation is a consensual process. Parties control the outcome of the process. Since the mediator is not empowered to impose any resolution, any party can terminate a mediation if it is non-productive or misused.

Informal procedures. Mediation sessions are generally informal. They take place commonly in a conference room but can be held anywhere. Mediations have been successfully held in a living room, on the golf course, in the back of a church or over the hood of a car. An informal and relaxed atmosphere serves to de-escalate the adversarial nature that sometimes characterizes conflict and litigation. Informality enhances and encourages a solution oriented, personal approach to the search for solutions.

Creativity and flexibility. Another major advantage of mediation is the flexibility of the process. The process can be customized to suit the parties and the context of the dispute and issues. Solutions are not constrained by what may be obtained under Court rules, legal principles or precedents. Solutions can be creative. Opportunities presented by past dealings and future opportunities to work together can be considered and utilized as components of a mutually beneficial deal. Continued future dealings with mutual benefits can be incorporated. Creative options, letters of recommendation and apologies can also be valuable components of an agreement in mediation that would not be available if the matter is adjudicated.

The parties and the mediator need only be guided by what makes sense in the specific case. If fact finding is necessary to permit progress in the negotiations, the focus of the

mediation can shift to obtaining the necessary fact finding. Perhaps damages can be mediated leaving liability for adjudication. If a question of insurance coverage needs to be addressed, it can be done and further mediation sessions continued after the coverage issue is resolved. If critical parties are missing, they can be identified and added. The mediator can be authorized to obtain an appropriate neutral or expert where that is needed. This process might allow the parties to avoid having to engage separate experts with its concomitant extra or duplicate costs.

High settlement rates. Some mediation professionals and organizations are uncomfortable with looking at settlement rates as the measure of success in mediation. Resolution rates are convenient but they are incomplete measures of success. Mediations can facilitate fact-finding, narrow and focus issues and streamline the future progress of the case.

It is commonly reported where mediation is consensual and the parties willingly make a good faith effort to meet in the spirit of seeking a mutually acceptable resolution through mediation, resolution rates of 80 percent, more or less, are achieved. The Honolulu Regional Office of the American Arbitration Association reports that 85 percent of all DROA disputes that go into mediation are settled in mediation. This is consistent with the 85% settlement rate in mediated commercial cases experienced nationwide by the American Arbitration Association. Where participation in mediation is compulsory, resolution rates drop.<sup>18</sup>

Confidentiality. Confidentiality is a critical feature of many mediations. The ability to explore and to resolve conflict privately is of tremendous value to many disputants. Also, the ability for the mediator to review materials in camera and to receive information in confidence permits the mediator to have a more complete view of the facts, circumstances, strengths and weaknesses of a given dispute. That more complete view enhances the mediator's ability to identify and explore options for possible resolution which might not otherwise surface or be considered in an adversarial negotiation or litigation atmosphere. Mediation is expressly included within the privilege provided by Rule 408 of the Hawaii Rules of Evidence. Evidence of conduct and settlements offers made in mediation are not admissible<sup>19</sup>.

### **What are the disadvantages of Mediation?**

Mediation, as with any human process, can be misused or abused. Not all parties may approach and participate in mediation with the same good faith desire and commitment to search for mutually beneficial solutions. Some fear that mediation can be used by parties for one-way discovery. In such circumstances, the other parties and/or the mediator may need to call for cessation of the mediation process. When unsuccessful, mediation becomes "one more hoop to jump through" before obtaining an arbitrated or litigated decision. It then can involve added costs to the participants.

Although mediation has proven itself to be a highly effective, versatile and cost efficient process for achieving earlier resolutions to a very broad range of legal and business

disputes, there are circumstances where mediation may not be appropriate. Where a precedent needs to be established, a constitutional right interpreted or a developing principle of law articulated, a judicial determination will be necessary to establish the desired precedent.

Other situations where mediation is contraindicated include circumstances where:

- a dispute is subject to disposition by summary judgment;
- a public sanction, penalty or punitive damages is desired to set an example; and
- a party is untrustworthy or unstable such that meaningful negotiations are unlikely.

These are not absolute guidelines. Mediation can still be partly useful to help eliminate superfluous claims, facilitate fact finding, narrow issues and develop focus in the conflict resolution process.

There are also circumstances where mediation is sometimes felt to be inappropriate or at the least where special considerations need to be taken into account. Certain disputes which have a civil and a criminal component may not be appropriate for mediation. The civil aspect of the dispute, for example in a criminal property damage case, may be resolved by the parties with appropriate restitution. The State's interest in the matter is independent of the civil claims of the parties involved and must still be addressed.

Another situation calling for special consideration before mediation is sought involves domestic abuse or violence cases. Such conflicts often involve parties with widely unequal bargaining power. The mediator who handles such cases should have special training in domestic violence issues and should offer special techniques and procedures to minimize risk and maximize the safety of all participants.<sup>20</sup>

### **How Enforceable is an Agreement Reached in Mediation?**

Agreements made in mediation can range from a undocumented "handshake" agreement founded upon mutual trust to written agreements which are fully enforceable judicially. Mediated agreements can be documented as a:

- contract;
- stipulated judgment, if there is a pending legal action; or
- stipulated arbitration award (if no legal action is pending). (Under this procedure, the mediator can by stipulation be appointed an arbitrator for the sole purpose of

signing the agreement as a stipulated arbitration award). Then, if a party needs to have the stipulated arbitration award converted to a judicial judgment, that party can submit the stipulated arbitration award to court in a special proceeding and pursuant to arbitration statute H.R.S. Chapter 658-8. HRS '658-8 provides that a Circuit Court can confirm an arbitration award at any time within one year after the award is made. Upon conversion to a judgment, the award can then be enforced as any judgment rendered by the Court.

### **Tips for Advocates in Mediation**

In representing your client in a mediation, keep these points in mind:

- Know your case. Be prepared to give a brief and succinct statement of the critical facts and claims. A mediation session can be a very valuable opportunity to present a summation of your case to the mediator and the other parties.
- You and your client should be prepared to listen and look for all possible options and packages of possible solutions. Understanding the stated and unstated needs, hopes and dreams of your client and those the other party(ies) can help to fashion resolutions tailored to meet their special needs and interests.
- Appreciate the flexibility of the process. Determine if review and presentation of key information, testimony or even expert opinions will be helpful to develop focus on the critical issues and establish the strength of your case. Parties do not need to agree on the facts to settle. The key is that parties appreciate the risks and benefits of various settlement options and how they meet their particular needs and interests.
- Be creative and open to possibilities. Many times, solutions are not the ones thought of prior to mediation.
- Keep the mediator's role and function distinct from that of an adjudicator. Combining mediation and arbitration functions (med-arb) in a single person is not generally recommended. Parties need to have trust and confidence in the mediator. Mediation works best when no one fears that something said in mediation to a mediator might be prejudicial if the matter later goes before the same neutral then serving as an arbitrator.

### **CONCLUSION**

The greatest advantage of mediation is the flexibility of the process to adapt to the special facts and needs of the parties. Parties resolve their disputes in a private, confidential and

informal manner with direct involvement of the disputing parties. Parties maintain a greater degree of control over the outcome and resolution of their conflict and usually with substantial cost and time savings of cost, time, opportunity costs and aggravation. When parties are willing to mediate in a good faith attempt to search for solutions to mutual problems, they nearly always succeed.

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## FOOTNOTES

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1. "Governor Burns and Labor-Management Disputes in Hawaii", Donald R. Shuster, Industrial Relations Center, University of Hawaii 1978.
  2. See H.R.S. §514A-90(d) and H.R.S. §514A-121(b)(5).
  3. Rule 12(b)(6) of the Circuit Courts of the State of Hawaii
  4. Id. at Rule 12(b)(7).
  5. Id. at Rule 12.2.
  6. The Use of ADR in U.S. Corporations: Executive Summary, A joint initiative of Cornell University, The Foundation for the Preventions of Early Resolution of Conflict and Price Waterhouse LLP, 1997.
  7. Claims Forum, American Arbitration Association, Winter 96/97.
  8. Christopher W. Moore, The Mediation Process, 14 (1986).
  9. Id.
  10. Id. Letter from Philip Maxwell to Governor John A. Burns, March 8, 1966, Sugar Negotiations file, Governor's papers, State Archives.
  11. Id. Letter from Lewis Goldblatt to Burt Kobayashi, March 24, 1966. Sugar negotiations file, Governor's papers, State Archives.
  12. Standards for Private and Public Mediators in the State of Hawaii, adopted 1986 by the Hawaii Supreme Court.
  13. Ethical Standards of Professional Conduct for Members of the Society of Professionals in Dispute Resolution" adopted 1986 by the Society of Professionals in Dispute Resolution (SPIDR).
  14. Some professional associations to look for include the Society of Professionals in Dispute Resolution (SPIDR), the Academy of Family Mediators (AFM), the Alternative Dispute Resolution Section of the Hawaii State and American Bar Associations.
  15. Copies are available for the CADR office (phone: 522-6464).
  16. "Environmental Mediation Advantages to Parties and Insurers", Claims Forum, American Arbitration Association, Summer 1997.

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17. Rule 12(b) of the Circuit Court Rules of the State of Hawaii
  18. Data collected on the District Court Landlord/Tenant Summary Possession Mediation Project reflects that in FY 95-96, 55% of 248 total cases mediated were resolved through mediation. For the same time period, 34% of 1,226 small claim cases were resolved through mediation under the District Court of the First Circuit Mandatory Small Claims Mediation Project. Annual Report 1995-1996, Center for Alternative Dispute Resolution.
  19. Rule 408, Hawaii Rules of Evidence.
  20. Selecting a Mediator, A Guide for the Public Prepared by the Hawaii Judiciary Center for Alternative Dispute Resolution, 7, (1996).