

Major Points on Federal Courts Court-led Mediation Directive

Description

By Dagnachew Tesfaye, Attorney-at-law at DMLO

Introduction

The Federal Supreme Court(FSC) has issued Federal Courts Court-led Mediation Directive No 12/2021 effective as of December 27/2021. The Directive provides procedure of court-led mediation, structural organization of court-led mediation, principles of mediation, and about mediators and their fees. Few core contents of the court-led mediation will be dealt here below.

Structural Organization of Court-led Mediation

There shall be a Court-led Mediation Committee organized under the FSC with 9(nine) members with mandates to oversee the whole court-led mediation process and particularly duties and responsibilities and disciplinary matters. The Committee shall engage in presenting recommendations for improvement of the court-led mediation.

Court-led Mediation Coordination Office shall be established in the FSC, FHC and FFIC. The Coordination Office in the FFIC and FHC shall be accountable to their respective presidents and are subordinate to the one in the FSC. Each coordination office shall have coordinators and relevant employees.

There will also be Court-led Mediation Centers at FHC and FFIC branches. These centers shall have mediation officers and mediation secretaries.

Finally, the FSC shall organize a Court-led Mediation Roster that registers interested and qualified mediators. The registered mediators shall pay an annual fee of ETB 750 as a membership fee and for initial registration ETB 300.

Court-led Mediators

Court-led mediators could be employees of the court who have taken mediation training. Any other person whose name is entered in the FSC Roster as a mediator can also be a mediator. Not only lawyers but also engineers, psychologists, agricultural professionals, medical professionals can be included in the FSC Roster. For lawyers, a first degree in law and 5(five) years relevant experience and for non-lawyers 10(Ten) years relevant experience is required. Both lawyers and non-lawyers should take a training of 80 hours in mediation and obtain certification. The idea of certification entails the establishment of not only mediation training centers but also ADR training centers. These centers can be private or governmental. It is part of making Addis Ababa as the hub for arbitration and mediation centers in Africa.

The fee for the mediator in principle is the agreed amount by the parties to the case. However, when the mediator is the employee of the court, the mediator shall not be paid mediation fee. Whenever

there is no agreement on the fee by the mediator and the parties, the standard mediation fee arrangement as attached to this Directive shall apply. The manner of payment of the fee by the parties is that each party shall divide equally the fee and pay. To whom the parties pay the fee is not clear. Since it is court-led mediation, probably the parties pay directly to court and not personally to the mediator. The mediator who is registered in the roster of the FSC has the obligation to do at least two pro bono court-led mediation cases in a year.

Procedure of Court-led Mediation

New cases that are subject for mediation shall be referred to mediation before oral hearing is conducted on the cases. Civil cases that are subject to automatic court-led mediation are labour cases, commercial cases, construction cases, family cases, succession cases, contract cases and extra-contractual cases. Nevertheless, bankruptcy cases, cases in which the government or public enterprise are parties to the case as a plaintiff, defendant or intervening party, cases that have public interest in them, cases in which the judge thinks court judgment should be passed on the cases, consensual divorce and consensual division of property after divorce shall not be referred to court-led mediation.

Not only new cases, but cases that are pending with a judge can also be referred to court-led mediation if the judge thinks there is a possibility of resolving the case through court-led mediation.

The parties to the case are at liberty to choose a mediator from the Mediation Center before the date assigned for mediation. If there is no agreement, the Coordinator shall assign one mediator from the roster or assign a mediator from those employees of the court that are hired for mediation purposes.

On the date of appointment of mediation and afterwards, the mediator is obliged to conduct the mediation following mediation principles and mediation procedures. Non appearance of both parties or one of the parties at the time of assignment for agreement has the consequences of payment of ETB 1000 cost. To whom this cost is paid is not specified. The cost is paid to the court or to the appearing party if any or that of the mediator has to be cleared out.

The mediation has to be completed within 30 days of the commencement of the court-led mediation. Prolongation for an additional 20 days is possible if there are sufficient reasons to do so.

The participating parties to the court-led mediation are the parties themselves or their duly assigned proxies with special power of attorney to mediate. The Attorney's role is limited. The attorney can participate in the proceeding and only speak at the end of the mediation upon the permission of the mediator. Whether the Attorney can advise his client on legal matters to enable his client to reach agreement is left silent here as the focus is on the mediator and the mediation process. The possibility of an attorney of the client receiving a special power of attorney to mediate is not a closed option. Since a special proxy to mediate is a possibility, attorneys may take up the mediation on behalf of their clients.

If the parties reach an agreement, the mediator shall prepare the agreement. The mediator shall make sure the agreement is read for the parties and both parties sign them. The Coordinator shall prepare a cover letter and send the agreement for the approval of the court. Whether the judge has the discretion to reject the agreement is not clearly mentioned, but since agreements are approved as per the Civil Procedure Code, the judge shall make sure the agreement is not contrary to law and morals. In those cases that agreement is not reached, the mediator shall return the file back to the court through the

Coordinator.

Place of Mediation

The court-led mediation can be conducted in a designated place chosen by the Court-led Mediation Committee that is outside of the court. However, in all other circumstances, the place of court-led mediation shall be inside the offices of the different branches of the FFIC and FHC mediation centers. Here the question raised will be the unavailability of space suitable for mediation, how to conduct the mediation of multiple cases assigned by different judges at the same time and how to manage individual mediator's case loads.

Principles of Mediation

The mediator should show professional competence, due diligence and secure quality of the mediation process. In doing so the mediator has to assure confidentiality, equality between the parties, neutrality and assist the parties reach an agreement by themselves.

Conclusion

The court-led mediation Directive is issued following the Federal Court Proclamation No 1234/2021 Article 55(2) whereby the FSC is assigned the task to issue a directive to implement the Proclamation. The rules indicated in Article 45-48 of the Proclamation on court-led mediation are now elaborately detailed for easier execution by this Directive. The Directive has established organs to implement the tasks of court-led mediation. Mediators are required to undergo training and strictly follow basic mediation principles. Court-led mediation shall benefit in resolving issues between parties in a short amount of time and as a result reduce the courts' caseloads.

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