

LMDC Practice Direction on Mediation

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INTRODUCTION

The Negotiation and Conflict Management Group (NCMG), the initiators of the Multi-Door Courthouse concept in Nigeria in collaboration with the High Court of Lagos established The Lagos Multi-Door Courthouse (LMDC) in June, 2002. Thus was in a promotion of Private-Public sector partnership.

Since inception the NCMG had administered The LMDC under The NCMG Centre for Dispute Resolution Rules. However, following the promulgation of the Lagos Multi-Door Courthouse (LMDC) Law in May 2007, it has become necessary for the Lagos Multi-Door Courthouse (LMDC) to have its own Practice Direction for mediation procedure

Pursuant to the powers conferred upon me by section 30 of the Lagos Multi-Door Courthouse Law and other powers enabling me in that behalf, I hereby make this Practice Direction on Mediation Procedure for the Administration of mediation matters at the Lagos Multi-Door Courthouse.

The Articles

ARTICLE 1 Application of the Rules

- a) Whenever, by mutual agreement or contract, the parties have provided for or agreed to mediate existing or future disputes under the auspices of The Lagos Multi-Door Courthouse (LMDC), they shall be deemed to have made this Practice Direction a part of their agreement.
- b) These Practice Direction shall apply to matters referred to the LMDC for mediation from High Courts of Justice of in Lagos State and other jurisdictions outside Lagos State; Federal Courts; Private persons; Corporations; Public Institutions; and Dispute Resolution Organizations

ARTICLE 2 Commencement of action (Mediation)

Walk- Ins

- a) Any party or parties to a dispute may initiate mediation by filing with The LMDC a written request for mediation.
- b) Upon receipt of such a request, The LMDC will contact the other party involved in the dispute and attempt to obtain a submission to mediation.

Court Referrals

- c) Upon receipt of an Enrolment of Order from the referral court, the LMDC invites the parties to submit to the ADR Process.

Direct Intervention

- d) The LMDC can also assist parties in the resolution of their disputes by extending an invitation to the disputing parties.

ARTICLE 3: Request for Mediation

A request for mediation shall contain a brief statement of the nature of the dispute and the names, addresses, telephone numbers, telefax, email or other communication references of all parties to a dispute and those who will represent them (if any) in the mediation. The initiating party shall simultaneously file three copies of the request with The LMDC and one copy for every other party to the dispute.

ARTICLE 4 Submission to Mediation

- a) The other party on receipt of the Notice of Referral notifies the LMDC in writing within 7 days of its submission to the mediation process in accordance with the Practice Direction on Mediation Procedure.
- b) Upon the refusal to submit within the stipulated time to the ADR Process, the ADR judge shall order the recalcitrant party to appear before him and he shall make requisite orders and give directives as shall be considered.
- c) Where a party refuses to appear before the ADR judge as stipulated in (b) above, this shall be treated as contempt of court and the ADR judge shall give orders which include fines, cost in monetary terms or as may be considered in appropriate the circumstances.

ARTICLE 5: The Mediation Agreement

The parties, the Mediator and The LMDC will enter into an agreement (“Mediation Agreement”) in relation to the confidentiality and conduct of the mediation process.

ARTICLE 6: Appointment of the Mediator

- a) Upon filing of a request for mediation, The LMDC will, subject to the parties' approval, appoint a qualified mediator from its Panel of Neutrals, or alternatively, provide parties with a short list of mediators from its Panel of Neutrals to choose from.
- b) There shall be a single mediator appointed unless the parties or The LMDC advise otherwise.
- c) If by mutual agreement of the parties, or the contract between them a mediator is named, or a method of appointing a mediator is stipulated, the mediator so named, or the method so stipulated shall be followed.
- d) In the event that the parties are unable to agree within 7 days from the date of the notice initiating the mediation, on the choice of the mediator or on any issue concerning the conduct of the mediation, the LMDC will, at the request of either party, decide the issues for the parties having consulted with them.
- e) The LMDC is authorized to appoint another mediator if both parties are not satisfied with the appointed mediator or if the appointed mediator is unable to serve or serve promptly.
- f) The prospective mediator shall by accepting the appointment, be deemed to make himself/herself available to conduct the mediation expeditiously and professionally

ARTICLE 7: The Mediator's Qualification

- a) In appointing a mediator, such mediator must have considerable relevant experience in their particular field of ADR practice and have been trained and duly certified by a reputable and recognized organization such as the NCMG, SPIDR, CEDR, AFMA etc.

- b) No person shall serve as a mediator in any dispute in which he has any financial or personal interest in the result of the mediation, except with the written consent of all parties.
- c) Every prospective mediator shall, prior to accepting an appointment, disclose any circumstance likely to create a presumption of bias or prevent prior meeting with the parties.
- d) The LMDC shall upon receipt of such information either replace the mediator or immediately communicate the information to the parties for their comments.
- e) In recommending or appointing a mediator, The LMDC shall have regard to such considerations as are likely to secure the appointment of an independent, impartial and experienced mediator.
- f) The mediator shall abide by the terms of the LMDC Practice Directions for Mediation Procedure; the Mediation Agreement, and The SPIDR Code of Conduct for Mediators.

ARTICLE 8: Role of the Mediator

- a) The role of Mediator is to assist the parties in an impartial manner in their attempt to reach an amicable settlement of their dispute. He does not have the authority to impose a settlement on the parties
- b) The Mediator should in his conduct of the mediation process take into account the circumstances of the case, the underlying interest of the parties and the need for a speedy settlement of the dispute.
- c) The Mediator is authorized to end the Mediation whenever, in the judgment of the Mediator, further effort at mediation would not contribute to a resolution of the dispute between the parties.
- d) The Mediator may assist the parties in drawing up a Settlement Agreement.

ARTICLE 9: Role of Counsel

- a) The role of counsel is to give regard and ensure clients' accord respect to notices, invitations and directives from the LMDC.
- b) Ensure the appearance of his client at every Mediation session.
- c) Explore with the client various options available so as to ensure speedy conclusion of the mediation process
- d) Respect the confidentiality of the Mediation session(s).
- e) Embrace a cultural change and accept an advisory role while parties take the lead role in Mediation sessions
- f) Be cooperative and encourage his client to be cooperative during Mediation sessions to ensure a speedy resolution of the dispute.

ARTICLE 10: Role of the Parties

- a) The role of Parties is to attend all mediation sessions either personally or by a duly authorized representative.
- b) Parties are expected to attend the ADR session in good faith without undue requests for adjournments or unwarranted delays.
- c) Parties must prepare adequately for an ADR session, be actively involved and be willing to explore various options towards settlement.
- d) Parties must respect the confidentiality of the Mediation session(s).
- e) Parties must cooperate fully with the mediator and the other party throughout the mediation process to ensure a speedy resolution of the dispute.

ARTICLE 11: Role of the Courts

It will be the responsibility of the Judges of the High Court of Lagos:

- a) to control and manage proceedings in Court and issue orders which would encourage the adoption of ADR methods in dispute resolution
- b) To mandatorily refer parties directly to the Lagos Multi-Door Courthouse (LMDC) to explore settlement of their dispute
- c) To ensure the adoption and enforcement of Terms of Settlement reached at the LMDC in the same manner as a Judgment or Order of Court.

ARTICLE 12: Date, Time and Place of Mediation

- a) The mediator shall in conjunction with The LMDC fix the date and time of each mediation session. The mediation shall be held at the appropriate office of The LMDC, or at any other convenient location agreed by the mediator and the parties.
- b) The dates fixed by the mediator and the parties for each mediation session shall not exceed ten (10) days from the date of the last mediation session.
- c) The mediator shall exercise all due diligence in encouraging the parties to reach a settlement within a maximum of three (3) mediation sessions

ARTICLE 13: Representation of Parties and Attendance at Meetings.

- a) Each party must be properly represented at every mediation session. Any party who is unable (for any reason whatsoever) to attend or make arrangements to be properly represented at a fixed mediation session must notify The LMDC at least 48 hours before the mediation session is scheduled to take place.
- b) Failure to comply with this Article attracts a penalty fee of =N=10,000.00 (Ten thousand naira) per session missed or such other amount may be directed by the ADR judge. The fee becomes immediately payable by the offending party.
- c) Where a party fails to pay the penalty fees as stated above, this act of omission shall be treated as contempt of court and sanctions shall apply accordingly.
- d) The parties may be represented by persons of their choice, provided such representatives have the requisite written authority to settle the dispute on behalf of the parties.
- e) The names and addresses of such persons are to be communicated in writing to all the other parties and to The LMDC before the first Mediation Session

ARTICLE 14: The Mediation Process

- a) The Mediator is authorized to conduct joint and separate meetings with the parties.
- b) No formal record or transcript of the mediation will be made without the prior consent of the parties
- c) Each party shall cooperate in good faith with the mediator to advance the mediation as expeditiously as possible.
- d) In addition, each party may send to the Mediator (through The LMDC) and/or bring to the Mediation further documentation which it wishes to disclose in confidence to the Mediator but not to any other party, clearly stating in writing that such documentation is confidential to the Mediator and/or the LMDC.
- e) At any stage of the Mediation process, the Mediator may request a party to submit to him such additional information as he deems appropriate.
- f) If the parties are unable to reach a settlement in the negotiations at the Mediation and if all the parties, or their representatives, so request and the Mediator agrees, the Mediator will

produce for the parties a non-binding recommendation on terms of settlement. This will not attempt to anticipate what a court might order but merely set out what the mediator suggests are appropriate settlement terms in all of the circumstances.

- g) Endeavours shall be made to conclude the mediation within 30 days of the appointment of the mediator; which includes the signing of the Settlement Agreement by the mediator and the parties and endorsement by the ADR /Referral Judge.

ARTICLE 15: Confidentiality

- a) Every person involved in the mediation particularly the mediator; the parties, their representatives and advisors; any independent experts and any other persons present during the meetings of the parties with the mediator, shall respect the confidentiality of the mediation set (unless otherwise agreed by the parties and the mediator) for any collateral or ulterior purpose:
 - i. All information, (whether given orally, in writing or otherwise) produced for, or arising in relation to, or in connection with the mediation including the settlement agreement, except in so far as is necessary to implement and enforce any such settlement.
 - ii. proposals made or views expressed by the Mediator
- b) All records, reports or other documents, arising in relation to the Mediation will be without prejudice, privileged and not divulged or admissible as evidence or discoverable in any current or subsequent arbitration, litigation or other proceedings whatsoever, except any document or other information which would in any event have been admissible or discoverable in such arbitration or litigation proceedings.
- c) None of the parties to the Mediation Agreement will call the Mediator or The LMDC (or any employee, consultant or representative of The LMDC) as a witness, consultant, arbitrator or expert in any arbitration, litigation or any other proceedings whatsoever arising from, or in connection with the dispute.
- d) All parties to the Mediation, including the Mediator, are bound by the Confidentiality Agreement even after conclusion of the Mediation.

ARTICLE 16: Settlement Agreement

- a) When it appears to the Mediator that there exists elements of a settlement which would be acceptable to the parties, he may formulate possible terms of settlement and submit them to the parties for their observations. On receipt of redraft the Mediator may reformulate the terms of a possible settlement in the light of such observations.
- b) Each party may, on his own initiative or at the invitation of the Mediator, submit to the Mediator suggestions for the settlement of the dispute.
- c) Upon a resolution of the dispute, parties will draw up and sign a written Settlement Agreement embodying the terms thereof. Where requested by the parties, the Mediator shall draw up or assist to parties in drawing up the Settlement Agreement.
- d) The parties on signing the Settlement Agreement are bound by the terms of the agreement

ARTICLE 17: Enforcement

Once reduced into writing and signed by the parties, the Settlement Agreement is forwarded to the Referral Judge (court -referred matters) or the ADR Judge (Walk-in & Direct Intervention matters) for endorsement and Section 19 of the LMDC Law, 2007 and Order 39 Rule 4(3) of the High Court of Lagos State (Civil Procedure) Rules, it shall be deemed to be enforceable as a

judgment of the High Court of Lagos State under Section 11 of the Sheriffs and Civil Process Law.

ARTICLE 18: Termination

The Mediation shall be terminated:

- a) by the execution of a settlement agreement by the parties;
- b) by a written declaration of the Mediator to the effect that further efforts at mediation are no longer worthwhile;
- c) Any other reason which in the opinion of the LMDC warrants a termination

ARTICLE 19: Expenses, Fees and Costs

- a) Parties are required to pay a non-refundable administrative fee upon submission of Statement of Issues or Statement in Response or as may be directed by the LMDC.
- b) Parties are also required to pay Session Fees before commencement of Mediation or as may be directed by the LMDC.
- c) All other incidental expenses shall be borne equally by the parties, unless they agree otherwise.
- d) The expenses of witnesses, (if any), called by parties shall be borne by each party.
- e) Payment of these fees and expenses will be made to The LMDC in accordance with its fee schedule, and terms and conditions of service.

ARTICLE 20: Fees of the Mediator

The amount and currency of the mediators' fees including the modalities and timing of their payment shall be fixed by the LMDC taking into consideration the amount in dispute, the complexity of the subject matter of the dispute, circumstances of the case, and other relevant criteria.

ARTICLE 21: Privacy

- a) Mediation sessions are private. Other persons may attend only with the permission of the parties and with the consent of the Mediator.
- b) There shall be no stenographic or any other record of the Mediation process without the prior consent of the parties.

ARTICLE 22: Suspension of Running of Limitation Period under the Statute of Limitation

The parties agree that, to the extent permitted by the applicable law, the running of the limitation period under the statute of Limitation or an equivalent law shall be suspended in relation to the dispute that is the subject matter of the mediation from the date of the commencement of the mediation until the date of the termination of the mediation.

ARTICLE 23: Waiver of Liability

Neither the Mediator nor The LMDC shall be liable to the Parties for any act or omission in connection with the services provided by them (Mediator/the LMDC) in, or in relation to, the Mediation, unless the act or omission is fraudulent or involves wilful misconduct in which case only the individual person(s) directly responsible for the fraud or wilful misconduct shall bear the consequent liability.

ARTICLE 24: Interpretation & Application of Article

- a) Once The LMDC secures the parties' agreement to submit a dispute to Alternative Dispute Resolution, it will administer the case under the LMDC Law, No 56, Vol. 40, 2007, its applicable rules of procedure or under such rules stipulated by the parties.
- b) Beyond mediation, The LMDC might offer, (or the parties might choose) Arbitration, Executive Dialogue, Neutral Evaluation or any variation of these procedures on which the parties agree.
- c) All articles herein shall be interpreted and applied by The LMDC.

Definition Section

In this rule, unless the context otherwise requires,

“Alternative Dispute Resolution” (ADR) refers to a range of processes designed to aid parties in resolving their dispute outside of the formal judicial proceedings.

“ADR judge” refers to a serving Judge of the High Court of Lagos State who has been appointed by the Chief Judge of Lagos State to carry out such activities and functions as contained in these rules.

“Mediation” is a process in which a neutral third party called a mediator facilitates communications between parties to assist them in reaching a mutually acceptable resolution of their dispute;

NCMG means the Negotiation and Conflict Management Group, the independent, non-profit and nongovernmental organization which founded the LMDC.

An initiating party is the person who brought the matter to the LMDC

Panel of Neutrals refers to the assembly of Mediators, Arbitrators and Neutral evaluators already screened and accredited by the LMDC to provide Mediation and Arbitration services at the LMDC.

SPIDR means the Society of Professionals in Dispute Resolution. This is the organization that maintains and sustains standards in Dispute Resolution in Nigeria.

AFMA means African Mediation Association. It is the organization set up by top African Dispute Resolution organizations to set standards for Mediation and Mediation Training in Africa.

CEDR means the Centre for Effective Dispute Resolution. It is a UK based independent non-profit, dispute resolution organization involved in Mediation Training and Conflict Management.

Dated this _____ day of _____ 2008

Hon. Justice A. Ade Alabi
Chief Judge of Lagos State