



ADVOCATE AS A MEDIATOR IN CIVIL CASES

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Annotation:

In this article, the activity of advocate as a mediator in civil cases is analyzed, the norms of national legislation and the legislation and practice of foreign countries are studied in this regard.

Keywords: mediator, advocate, civil cases, legislation of Uzbekistan and legislation of other countries.

Under the legislation of Uzbekistan, mediators are divided into 2 types: professional mediators and non-professional mediators. Their main difference from each other: in order to become a professional mediator, it is necessary to pass a special training course on the mediator training program approved by the Ministry of Justice of the Republic of Uzbekistan, as well as to be included in the register of professional mediators. A non-professional mediator can also undergo a special training course under the mediator training program. To study in special educational courses, citizens apply to the Centers directly in person or electronically [1]. Therefore, legal education is not required to become a professional mediator. However, the activities of a professional mediator can be performed for a fee or for free. The activity of a mediator on a non-professional basis is carried out free of charge. A non-professional mediator may be reimbursed for expenses incurred in connection with the implementation of the mediation procedure, including travel expenses, accommodation and meals to the place of dispute resolution [2]. However, the activity of a mediator is not considered a business activity.

According to Article 3 of the Law of the Republic of Uzbekistan "On Advocacy", a lawyer can engage in mediation activities [3]. A lawyer can work as a professional or non-professional mediator as mentioned above. But in order to work as a professional mediator, a lawyer must also study in special training courses.

There are a number of advantages to using a lawyer as a mediator. In particular, because he knows the legislation well, he can correctly apply the norms related to mediation. For example, According to the Law "On Advocacy":





The period of implementation of the mediation procedure is determined in the agreement on the implementation of the mediation procedure. In this case, the mediator and the parties must take all possible measures to complete the mediation procedure within a period of no more than thirty days. If necessary, the period for the implementation of the mediation procedure can be extended up to thirty days with the mutual consent of the parties.

Therefore, in the Civil Procedural and Economic Procedural Codes of the Republic of Uzbekistan, when an agreement is concluded on the implementation of the mediation procedure, civil proceedings are suspended until the completion of the mediation procedure, but for a period of no more than sixty days. If the parties do not reach a mediation agreement, they can apply to the court to continue the case within 60 days. If, as a result of using mediation, the parties manage to conclude a mediation agreement and present it to the court, the court issues a decision to leave the application unheard. The legal consequence of this ruling is the return of the state duty and the preservation of the right to appeal to the court again within the framework of the same basis, the same subject and the same persons. If the parties do not submit a mediation agreement to the court within 60 days or do not apply to the court to continue the case, the court will issue a decision to leave the application unheard, and in this case the state fee will not be returned.

Can the parties repeatedly apply for mediation within the same civil case?

There is no norm prohibiting this situation in the Civil Procedural and Economic Procedural Legislation of the Republic of Uzbekistan and the Law "On Mediation". Therefore, the parties can implement the mediation procedure several times. Only a mediation agreement can be concluded by the parties in the court of first instance before the court goes to a separate room (consulting room) to receive the court document. The statute of limitations is suspended during the mediation process.

Those who participated as mediators in the implementation of the mediation procedure related to this dispute may not be represented in court, except for the cases stipulated by the law and when there is a mutual agreement regarding the participation of the mediator [4].

The role of lawyers in the mediation process can be understood in three stages. They are as follows:

Pre- Mediation – Legal practitioners play an important role in making the parties aware of the whole procedure. The client and the advocate can together formulate the key points of the mediation. The client and the advocate should discuss the issues related to the dispute, the range of possible outcomes, and the issues in which the client may have an edge as compared to the other party. The advocates also ensure



that all the relevant documents are available and prepared prior to mediation. The clients are mostly clueless if advocates are not present to guide them through the whole process.

During Mediation- The advocate plays the role of a guide. He guides and advises his client as to how to present the issues during the procedure. In some cases, the advocates may also represent his clients and negotiate on their behalf. During mediation, various proposals are made by the parties. The advocate guides the client in understanding the legal aspects of such proposals along with the risks and gains associated with it. They help formulate proposals beneficial for his client. The advocates can come up with creative solutions in order to solve the disputes. They also save their client from entering into a pressured settlement.

Post- Mediation- There are two outcomes to the mediation procedure. If the process is successful, then the advocate prepares the agreement, that the clients have settled upon. If the parties have settled on an agreement, then the advocate ensures that the decree or order passes by the mediator is executed. If the mediation is not successful, then the next best remedy for the client to approach the court. An advocate is required for the purpose of litigation. Either way, the advocate plays a significant role after the process of mediation also.

It can be concluded that legal practitioners are significantly important in guiding the parties and assisting their clients to enter into a settlement that is beneficial for their clients. The mediation process shall not be effective and efficient if legal practitioners are not included in it [5].

How is mediation advocacy relevant for corporate lawyers?

If you are a corporate lawyer, securing mediation advocacy skills can be very advantageous. On the other hand, if you lack these skills, there are a few areas where you will struggle to bring results.

Firstly, as a corporate or a transaction lawyer, you will frequently be involved in drafting contracts and agreements. Rarely will you come across agreements where the clients are unwilling to adopt alternative dispute resolution methods. Unless you clearly understand how the mediation process works, you are unlikely to do an excellent job of drafting these clauses.

For instance, if the med-arb clause provides for mediation to proceed arbitration, but doesn't provide for the appointment of the mediator at all, it will become an issue. This is because both the parties will want to bring in their own mediators and may find it difficult to agree to any mechanism of appointment at a time when a disagreement has already arisen. This means that since the mediation cannot be proceeded with despite the mediation clause being present, the dispute will proceed



directly into arbitration, which can drag on for a year or more. Whereas mediation could have resulted in a solution in a few months.

This is why we have covered the aspect of how med-arb clauses are to be drafted and what care you need to take in this regard, together with the likely pitfalls in our Certificate Course in International Commercial Arbitration and Mediation.

Secondly, as a corporate lawyer, you will be handling a lot of pre-litigation related work. If you can double up as a mediation advocate, you may be able to sort and bring about a resolution to the dispute right at the mediation stage itself, with an outcome which is mutually acceptable for both the parties. Even otherwise, you may be able to help your client clearly lay down the points that they need to bring about at a mediation hearing, how to react to the other party's proposals or how to respond to their reactions to your proposals. You may be able to help your client put forth his case persuasively since in mediation hearings, a lot of discussions happens informally and is drawn towards arriving at a solution as against merely refuting the claims of the other party as it happens in litigation

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