



A CRITICAL ANALYSIS OF STANDARDS OF PRACTICE FOR THE FAMILY MEDIATOR IN NIGERIA

S. T. James

Nigerian Law School Lagos Campus, Ozumba Mbadiwe Street, Victoria Island, Lagos, Nigeria.

Email: james@lawschoollagos.org

Cite this article:

S. T. James (2024), A Critical Analysis of Standards of Practice for the Family Mediator in Nigeria. African Journal of Law, Political Research and Administration 7(3), 25-35. DOI: 10.52589/AJLPRA-RGOFLDPH

Manuscript History

Received: 12 Jul 2024

Accepted: 13 Sep 2024

Published: 20 Sep 2024

Copyright © 2024 The Author(s).

This is an Open Access article distributed under the terms of Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International (CC BY-NC-ND 4.0), which permits anyone to share, use, reproduce and redistribute in any medium, provided the original author and source are credited.

ABSTRACT: *Family disputes are particularly peculiar because of the ties between the parties involved. The settlement of such conflicts requires a resolution mechanism that not only decides the rights and obligations of the parties but addresses the root causes of the dispute and preserves their relationships. This is mediation's forte – settling disputes and addressing the root cause of disputes. Concerning family disputes, mediation plays a significant role. This article finds that mediation is a practical and effective tool for family dispute resolution and makes recommendations for its wider adoption and use in Nigeria.*

KEYWORDS: Mediation, Family Mediation, Family, Divorce, Marriage.



INTRODUCTION

A family is “a group of closely related people, known by a common name and consisting of a man and his wife (wives) and children and probably other near relations”ⁱ. Under Nigerian law, the concept of family is closely linked to marriage.

Disputes arise between members of the family due to disagreement over certain matters leading to disharmony, this is mostly called family disputes. Disagreements over the rights, duties, and liabilities of each member of the family may cause family disputes. Over the years, disputes were majorly resolved through negotiation.

However, since human beings are dynamic, a need for a revolution in the dispute resolution mechanisms became paramount as negotiation was no longer effective. This requirement for change led to the application of litigation in settling family disputes. Application of litigation allowed husbands and wives to seek settlement of family disputes in Court; especially by initiating divorce proceedings through a petition in court.

Family disputes which require more privacy, confidentiality, and quick dispensation need an effective way of resolving disputes. Litigation has not been able to protect the secrecy that family disputes require. This is because the courtroom is open to all except in a few cases where matters are heard on camera; although case files for such cases are still readily available to the public. It is against this backdrop, that this article seeks to explore the need for Mediation to address family disputes.

Mediation is a voluntary process that involves parties working together on solving their problem and using a neutral person (the mediator) to facilitate the discussions. The focus is on solving the problem rather than trying to convince one another of anything that has occurred in the past. Mediation is an ‘interest-based’ process rather than forcing an entrenched position adopted by the parties to the dispute.

The three key elements for Mediation are the following:

It is a voluntary and confidential process focused on interests rather than positions.

The parties are assisted by a neutral third party to explore solutions.

The parties focus on the future rather than past actions, to reach a future-focused resolution that is acceptable to both of them.ⁱⁱ

Under family disputes, parties can agree to mediation in resolving their disputes and also mediation can be ordered by a Court when parties have already commenced court proceedings to try and help them resolve the matter more efficiently and cost-effectively.

An agreement made at mediation can be binding on the parties to the mediation particularly if there are court proceedings already before the court. Any agreement reached at mediation can then be made into court orders.

At this juncture, it should be noted that the concept of family mediation is different from that of general mediation. Family mediation is about helping spouses resolve their differences by a neutral third party known as a family mediator. Family Mediators are trained to work with people whose relationships have broken down, and their scope of mediation covers disputes



over contact arrangements, residence and parental Responsibility, child maintenance, property, and financeⁱⁱⁱ. Also, is the reconciliation of spouses, child custody, access to the child, visitation rights, medicals, division of property and assets between the husband and wife, feeding, clothing, upkeep, and school fees.

Family mediation apart from being voluntary, gives parties a lot of privacy and shields their issues from the public, unlike litigation that is public. It is also an avenue where parties are relaxed in reaching an agreement based on the confidential approach in mediation. Family disputes that involve children are particularly challenging because it can mean children are torn between parents or sides of the family or are out of school. Mediation helps families to navigate a peaceful settlement that prioritizes the best interest of a child, which can be a challenge for traditional litigation or long-term court processes.

A mediator is an individual who facilitates the resolution of disputes or paves the way for a mutually beneficial agreement by serving as a bridge between individuals or groups in conflict. By acting as a middleman or intermediary, this person helps to ease tensions and foster understanding between the parties involved, ultimately bringing about a harmonious outcome^{iv}. He facilitates the resolution of a disagreement or negotiation between individuals or factions by serving as a mediator or bridge-builder, enabling the parties involved to reach a mutually beneficial understanding^v. A mediator is a skilled practitioner who serves as a detached conciliator, providing a neutral and impartial environment for the mediation process to unfold. The earliest written accounts of the term 'mediator' date back to the 1200s. It comes from the Latin verb *mediāre*, meaning “to be in the middle” or “to intercede.”^{vi} The words intermediary and medium are related. The suffix -tor is used to indicate a person who performs a certain action—in this case, the action of mediating^{vii}.

Being a mediator entails intervening in the middle of a conflict. The mediator plays a crucial role in facilitating a dialogue between disputing parties, fostering a collaborative environment that enables them to find common ground and ultimately arrive at a mutually beneficial resolution, thereby nurturing the path to reconciliation.

The mediator initiates the meeting to discuss the issue in dispute at hand and helps the parties to arrive at suitable solutions. A mediator must maintain a detached and impartial stance. Rather than imposing a solution, the mediator facilitates a collaborative process where parties arrive at their own mutually agreeable terms. The mediator's role is to facilitate open communication, actively listen to the concerns and disputes of each party, and work towards finding a compromise that meets the needs of all parties. Ultimately, the parties themselves are responsible for making the final decisions, ensuring a fair and practical outcome^{viii}.

Qualifications of a Mediator in Nigeria

In Nigeria, the Institute of Chartered Mediators and Conciliators is the premier professional organization for dispute resolution specialists, responsible for overseeing the practice of mediation, nurturing the skills of aspiring mediators, and promoting the adoption of mediation and conciliation as the preferred approach for resolving conflicts within organizations and institutions^{ix}. In Nigeria, the Institute of Chartered Mediators and Conciliators is the premier professional organization for dispute resolution specialists, responsible for governing the field of mediation, developing the skills of aspiring mediators, and promoting the adoption of mediation and conciliation as a primary approach to resolving



conflicts within organizations and institutions.* There are three levels of qualification in Nigeria:

Associate Member

Member

Fellow

Associate member

To be eligible for registration, applicants must possess a Bachelor's degree or a Higher National Diploma. Furthermore, they must have obtained a minimum of five (5) O'level credits, including English Language and Mathematics, which are compulsory subjects.

Member

Participate successfully in the Mediation Skills Accreditation and Certification Course with 25 Continuing Professional Development (CPD) Units. Note that successful participation in the Mediation Skills Accreditation and Certification Course qualifies a person to be inducted into the Associate Member Cadre

Fellow

Members of the Institute of Chartered Mediators and Conciliators who have maintained membership (MICMC) for a minimum of five (5) years

Respected judges, comprising both active and retired High Court justices, Khadis, and senior judges of Customary Courts of Appeal

Executive Directors and Heads of Public and Private Establishments/Enterprises

Serving Civil Servants on GL15 (Assistant Director) or above

Holders of a Doctor of Philosophy (PhD), in any field

Holders of a Master's Degree, in any field, obtained at least 5 years preceding the year of application

Holders of a Bachelor's Degree, in any field, obtained at least fifteen years preceding the year of application

Experienced lawyers with a minimum of 15 years of professional practice following their call to the bar. Skilled professionals with a minimum of 15 years of accumulated expertise in legal practice since their initial admission.



Critical Qualities of a Good Mediator

Some of the qualities of a good mediator include:

Honesty and Transparency

Impartiality and Fairness

Confidentiality

Efficiency

People management

Good listening and communication skills.

Empathy

Good problem-solving skills.

Adaptability, resourcefulness, and creative thinking

Ability to detach to be a fair umpire

Credibility

Understanding of the subject matter of the dispute

Duties of the mediator

The mediator is there to bridge the interests of two opposing parties by defining their issues and eliminating obstacles to communication. They guide the process to minimize or eliminate arguments and encourage conversation. They encourage the parties to give concessions to one another as well as identify the middle ground thus allowing for the parties to arrive at a reasonable solution. The mediator's duties and obligations encompass^{xi}:

Convener:

A convener is a person who arranges meetings for an official group of people.^{xii} As a facilitator, the mediator coordinates the gathering, guarantees the attendance of the participants, and makes key decisions regarding the schedule, venue, and stakeholders involved.

Educator:

The mediator educates the involved parties about the process, other alternatives for resolving the conflict, issues that are usually addressed during the mediation process, court standards, research, and principles that may be considered.

Facilitator:

As a neutral third party, the mediator is present to ensure each party is fully heard during mediation by facilitating communication and ensuring proper language, behavior, and listening.



Translator:

In some cases, the mediator may help to increase understanding by rephrasing or translating communication so it is better received and more accurately presented.

Clarifier:

The mediator confirms that everyone sitting at the mediation table fully understands one another by clarifying through repetition or summarization.

Process advisor:

They act as an advisor, suggesting procedures for moving forward with mediation discussions. This can include consulting with legal counsel or outside experts.

Voice of Reason: The mediator may exercise the right to question the practicality of solutions and whether they are consistent with the goals and interests that the parties expressed when beginning the mediation process.

Catalyst: To facilitate a swift consensus, the mediator can propose alternative settlement paths, inspire fresh viewpoints, or provide anchor points for consideration.

Detailer: The mediator keeps track of necessary information and writes up the final agreement after the parties resolve.

Standards of a Mediator

The purpose of these Standards is to establish a foundation for family mediators to uphold in their professional practice. Rather than being prescriptive, these Standards aim to inspire and guide mediators towards best practices. They provide a framework for excellence in the field of family mediation, promoting high-quality service to clients.

Core Principles for Family Mediation Encompass Four Essential Functions^{xiii}:

To serve as a guide for the conduct of family mediators;

To inform the mediating participants as to what they can expect;

To promote public confidence in mediation as a process for resolving family disputes;

To maintain the integrity of the mediation process by creating and maintaining boundaries between family mediation and other adjudicative ADR processes.

Code of Conduct for Mediators^{xiv}

Principle of Self-Determination

Autonomy in decision-making is the inherent right of parties in a mediation to arrive at their own unforced and uncoerced choices regarding the potential resolution of any contentious matter. This fundamental principle of mediation is one that mediators must uphold and nurture, allowing the parties to exercise their freedom to make informed and voluntary decision^{xv}.



Before commencing mediation, mediators must clearly inform the parties about their role and responsibilities. This includes the crucial fact that decision-making authority lies with the parties themselves, not the mediators. Mediators are not legal representatives, and although they may provide general information about the relevant legal framework, they are not authorized to offer legal counsel or guidance to the parties. In cases where necessary, mediators have a duty to advise parties to seek out additional expertise from other professionals, in order to ensure that they make informed decisions.

Impartiality

Mediators shall only engage in mediations where they can maintain their objectivity. These mediators have a fundamental obligation to preserve their impartial stance throughout the mediation process. If mediators become aware of circumstances that could compromise their impartiality, they must promptly notify the parties and withdraw from the mediation, as they are unable to maintain their neutrality.

Conflict of Interest

Mediators have a duty to promptly inform the disputing parties of any potential conflict of interest that comes to their attention. Unless the parties agree to proceed with the mediation after being informed of the conflict, mediators who have disclosed a conflict of interest must step aside and withdraw from the mediation process if the parties do not consent to their continued involvement.

Mediators, their affiliates, and/or co-workers shall not form a personal or professional bond with any party involved in a mediation matter that could potentially compromise their impartiality, unless all parties have provided their explicit consent. A Mediator's commitment is to the parties and the process, and they shall not allow pressure or influence from third parties (persons, service providers, mediation facilities, organizations, or agencies) to compromise their impartiality.^{xvi}

Confidentiality

Mediators have a duty to disclose to the parties that mediation is a confidential process. Mediators are prohibited from revealing to anyone who is not a party to the mediation any information or documentation shared prior to, during, or after the mediation process, except:

With the mediating parties' written consent.

When ordered to do so by a court or otherwise required to do so by law.

When the information/documentation discloses criminal activities and/or an actual or potential threat to human life.

For any report or summary that is required to be prepared by mediators.

When the information/documentation is non-identifiable (unless all of the parties otherwise authorize identification), and is used for research, statistical, accreditation, or educational purposes and is limited to only what is required to achieve these purposes^{xvii}.



When mediators conduct private discussions with a party, they must first inform all parties about the nature and purpose of these private sessions. Mediators must maintain confidentiality and not reveal any information shared or disclosed during these private meetings unless the party gives explicit consent for them to do so. Mediators shall maintain confidentiality in the storage and disposal of mediation notes, records, and files.

Quality of the Process

Mediators shall make reasonable efforts to ensure the parties understand the mediation process before mediation starts.

Mediators must have a duty to ensure that the mediation process provides all parties with the opportunity to participate in the mediation and disallows disrespect among the parties. Mediators must inform parties to a dispute that mediation is most effective when the parties with authority to settle are in attendance and are willing to consider options for settlement. Mediators who are lawyers shall not represent any party or parties in the mediation. Mediators must develop and continually hone their professional expertise to ensure the integrity and excellence of the mediation process.

Agreement to Mediate

Before mediation starts, mediators shall ensure that the parties understand the terms of mediation, whether or not they are contained in an agreement/contract to mediate. The terms shall include, but are not limited to:

Confidentiality of communications and documents.

The right of the mediator and parties to terminate or suspend mediation.

The fact that the mediator is not compellable as a witness in court proceedings by any parties to the mediation.

Termination or Suspension of Mediation

Mediators are required to step down from the mediation process if they are unable to maintain a neutral and unbiased stance or if a conflict of interest arises. In such cases, mediators may choose to pause or discontinue the mediation at the request of one or more of the parties involved.

Mediators may suspend or terminate mediation if, in their opinion:

One or more of the parties is using the process inappropriately.

One or more of the parties is delaying the process to the detriment of another party or parties.

The mediation process is detrimental to one or more of the parties, or the mediator.

It appears that a party is not acting in good faith.

Other factors may be inadvertently sabotaging or obstructing the process.



Ethical Standards of a Mediator^{xviii}

Self-determination:

Self-determination is the fundamental principle of mediation. A mediator shall respect and encourage self-determination by the parties in their decision on whether, and on what terms, to resolve their dispute.

Informed Consent:

A mediator shall make reasonable efforts to ensure that each party understands the mediation process and the options available to him/her and that each party is free and able to make whatever choices he/she desires regarding participation in mediation and specific settlement options. In addition, if a mediator believes a party does not understand his/her options or that consent is not freely given, the mediator may terminate mediation or withdraw from the case.

Confidentiality:

Except for sharing concerns about case issues with program staff and fulfilling mandatory reporting requirements for threats of violence or child abuse, a mediator shall not divulge any information obtained in confidence to anyone outside the mediation process, either directly or indirectly.

Impartiality:

A mediator shall not exhibit favoritism or prejudice toward any party or any position taken by a party in mediation. A mediator shall be committed to serving to serve all parties, as opposed to a single party, in exploring the possibilities for resolution. In cases in which the mediator believes that he/she cannot be impartial, the mediator shall withdraw from the mediation. A mediator should address any concerns regarding his/her impartiality and, when appropriate, should offer to withdraw.

Conflict of interest:

A mediator shall impartially serve the parties in the dispute by avoiding any conflicts of interest. A conflict of interest can arise from involvement by a mediator with the subject matter of the dispute or any relationship between a mediator and any mediation participant, whether past or present, personal or professional, that reasonably raises a question of a mediator's impartiality. A mediator shall disclose all actual and potential conflicts that may call into question his/her impartiality to the parties. After disclosure, it is the right of the parties to decide if they wish the mediator to continue. The mediator also has the right to recuse him/herself from mediation if he/she feels his/her impartiality is impaired.

Quality of the process:

A mediator shall work to ensure a quality process and to encourage mutually respectful behavior among the parties. A quality process requires a commitment by the mediator to diligence and procedural fairness. If a mediator believes a party is intentionally abusing the process, the mediator should encourage the party to alter the conduct. If the person does not alter his/her behavior, the mediator may terminate the mediation, doing so in a way that



preserves any confidential communications. In addition, a mediator shall not make promises regarding the results of the process.

Distinction between Mediation and Counselling or Legal and Financial Advice:

A mediator shall limit him/herself solely to the role of mediator and shall refrain from giving legal, financial, or therapeutic advice and otherwise engaging in counselling or advocacy during mediation. A mediator shall encourage parties to seek advice from a lawyer or other professional to ensure they are making informed decisions.

Competence:

A mediator shall maintain professional competence in mediation skills and, if lacking in the skills necessary for a particular case, shall consult with the family mediation clinic to discuss the possibility of declining to serve or withdrawing from the case. A mediator is obligated to disclose any significant limitations of skill or expertise, both to program staff and the participants involved, whenever relevant.

.

CONCLUSION AND RECOMMENDATION

Family mediation apart from being voluntary, gives parties a lot of privacy and shields their issues from the public, unlike litigation which is public. It is also an avenue where parties are relaxed in reaching an agreement based on the confidential approach in mediation. Family disputes that involve children are particularly challenging because it can mean children are torn between parents or sides of the family or are out of school. Mediation helps families to navigate a peaceful settlement that prioritizes the best interest of a child, which can be a challenge for traditional litigation or long-term court processes.

There are several professional bodies for mediators in Nigeria. The Nigerian Institute of Chartered Arbitrators and other professional bodies are independent international centers for the resolution of disputes, particularly commercial disputes. Although NICArb has its main focus on the resolution of disputes using arbitration, it also has a mediation center for the resolution of disputes through mediation. The Mediators who are members of NICArb, undergo continual training to ensure that the standard practice of mediators consistently meets the expectations of citizens and global standards.

The main advantage of resolving family disputes through mediation is that it gives the parties a quicker resolution and confidentiality to their family issues rather than proceeding through the court, which is increasingly taking many months if not years to resolve their case. Mediating from family issues will ameliorate some of the harsh effects of the current divorce system.

ⁱ Nwogugu, E. I, *'Family Law in Nigeria'* 3rd edn, HEBN Publishers Plc. (2014).



ⁱⁱ *Mediation, Collaboration, Arbitration – To resolve family law disputes, what's the difference?* <<https://www.mondaq.com/australia/family-law/909656/mediation-collaboration-arbitration-to-resolve-family-law-disputes>> accessed on 23rd July, 2024.

ⁱⁱⁱ *'Family Mediation: A Separate Category of Mediation'* <<https://www.mediate.com/articles/Egbunike-Umegbolu-family.cfm>> accessed on 23rd July, 2024.

^{iv} Dictionary.com <<https://www.dictionary.com/browse/mediator>> accessed 16 March 2023

^v Ibid

^{vi} ibid

^{vii} Dictionary.com <<https://www.dictionary.com/browse/mediator>> accessed 16 March 2023

^{viii} "Roles and Duties of a Mediator" (Whitecode VIA Mediation and Arbitration Centre) <https://viamediationcentre.org/readnews> accessed 16 March 2023

^{ix} ICMC <https://www.icmng.org/become-an-associate-member/> accessed 16 March 2023

^x ICMC <<https://www.icmng.org/become-an-associate-member/>> accessed 16 March 2023

^{xi} Indeed Editorial 'What Is a Mediator? Definition, Roles and Steps' (*Indeed*, 4 February 2023) <<https://www.indeed.com/career-advice/career-development/what-is-a-mediator>> accessed 16 March 2023

^{xii} Definition of convener from the Cambridge Advanced Learner's Dictionary & Thesaurus <<https://dictionary.cambridge.org/dictionary/english/convenor>> accessed 16 March 2023

^{xiii} Steve Erickson, 'APFM Standards of Practice for Professional Family Mediators' (Academy of Professional Family Mediation) (*Academy of Professional Family Mediators*) <<https://apfmnet.org/standards-practice-professional-family-mediators/>> accessed 16 March 2023

^{xiv} Obtained from Code of Conduct for Mediators' Penn Human Resources <<https://www.hr.upenn.edu/workplace-issues/workplace-issues-resolution-program/code-of-conduct-for-mediators>> accessed 16 March 2023

^{xv} ibid

^{xvi} 'Code of Conduct for Mediators' Penn Human Resources <<https://www.hr.upenn.edu/workplace-issues/workplace-issues-resolution-program/code-of-conduct-for-mediators>> accessed 16 March 2023

^{xvii} 'Code of Conduct for Mediators' Penn Human Resources <<https://www.hr.upenn.edu/workplace-issues/workplace-issues-resolution-program/code-of-conduct-for-mediators>> accessed 16 March 2023

^{xviii} Obtained from the Code of Ethical Standards for Mediators, Multi-Door Dispute Resolution Division, Superior Court of the District of Columbia <<https://www.dccourts.gov/sites/default/files/MultiDoor-PDFs/MD%20Mediators%20Code%20of%20Ethics.pdf>> accessed 16 March 2023