

PART TWO: LESOTHO'S COURT-ANNEXED MEDIATION PROGRAMME (CAM)

The First Hearing Session

The Court-Annexed Mediation (CAM) Programme is one of the new initiatives introduced under the Civil Legal Reform Project with the support of the Millennium Challenge Account – Lesotho (MCA-Lesotho) and the International Law Institute –African Centre for Legal Excellence (ILI-ACLE). In the last article, we examined the initial steps for referring a dispute to the CAM programme. Two scenarios were explained – namely, automatic referral of all “new” cases – those filed **after** 26 May 2011 (the commencement date of the Mediation Rules); and referral, by presiding High Court Judges, of “pending” cases – those filed **before** 26 May 2011.

In this new article, we focus on the next step of the Mediation Procedure: what happens to the case after the referral order has been made. First, the Mediation Administrator will assign the case to a substantive Mediator from one of the High Court’s Mediators – who have been trained extensively over time, to hone their skills as Mediators. Even though they are all lawyers (Assistant Registrars and Judges Clerks), their Function as Mediators calls for specialized training outside the practice of law. Their role is to guide the Parties discover hidden possibilities and salient options of finding a constructive way forward along the Parties’ freely chosen path to a destination of mutual settlement of their dispute.

Mediators do not engage in the legal merits and complexities of the case. Indeed, a mediator need not be a lawyer at all. A trained mediator could belong to any other profession: e.g. Accountancy, Architecture, Medicine, Engineering etc. Mediators do not have authority to impose any decisions on the Parties. Above all, they are not judges – they have no authority to deliver a judgment in the matter. They are facilitators of the process for the Parties themselves to find a mutual solution to their dispute – that is all. These are the skills the High Court Mediators have mastered in the course of their various training sessions – in both theory and practice.

Second, within 14 days of the referral, the Mediator calls the first session of the Mediation. At this point, all judicial activities and the usual court time limits cease to run – from the date of the referral, until the final report of the Mediator on the outcome of the mediation effort.

Third, each session lasts a maximum of two days only – subject to extension in compelling cases – for instance, where the Parties need more time to wrap up an ongoing settlement effort. This underlines one of the primary principles of the Mediation Programme –

namely, to conduct the process with speed and diligence, thereby to conserve costs and time.

At this first hearing, the Mediation Administrator, sitting with the Parties and their counsel, focuses on the issues to be mediated; the times within which to complete the mediation sessions; the Parties that will be required to attend the mediation sessions in person; and any other matter that may be necessary or desirable to facilitate the efficacy of the mediation process.

It is at this first hearing also, that the Mediation Administrator will make a recommendation to exempt a Party who may be opposed to mediation – if the Party shows proper cause for the exemption. However, for any such exemption to be entertained, the opposing Party must have clearly indicated his opposition at the time of filing his initial case documents filed before the Court. In this connection, the Mediation Rules require each Party to a dispute to include, in their initial court documents, a brief statement indicating whether the Party consents to or opposes referral of the dispute to mediation under the CAM Programme.

Where the mediation takes off, the Rules require that they be completed within a maximum of 30 days from the date the Mediator received the referral order.

In the next article, we will consider the next step in the Mediation process – namely, attendance at the mediation sessions; and consequences of non-attendance.

For more information, please contact:

The Office of the Registrar

Palace of Justice

P. O. Box 90

Maseru

Tel: 22323164

Fax: 22321375