

INTEGRATING MEDIATION ADVOCACY AS A PROFIT CENTRE INTO THE LAW FIRM STRUCTURE

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SETTLEMENT IS TRANSFORMING LAW PRACTICE

Employing one or more forms of ADR is trending as an attractive means of dispute resolution. This is because:

- Settlement is transforming Law Practice
- Often-times clients want a resolution not war.
- Legal needs are changing dramatically – In house counsels are looking for cost effective alternatives ways of resolving their disputes.
- Smaller legal bills not larger ones.
- Law firms and lawyers will therefore have to adapt to meet this changing legal needs to survive.

Our ability to deliver is rewarded by client loyalty who can bring us new clients.

On the other hand, our inability is to do so in the current economic climate is likely to result in client dissatisfaction and alienation.

In a recent widely acclaimed book by a Canadian Law; Professor Julie Macfarlane titled “**The New Lawyer: How settlement is transforming the practice of Law**” – the reality today is that corporate and personal clients are resisting spending large amounts of money on litigation and there is an increased use negotiation, mediation and collaboration in resolving disputes.

Professor Macfarlane makes the following observation which should be the watchword for lawyers and law firms looking to respond to the changing market:

“As settlement processes become more mainstream and accepted, the expectation of skillful ADR performance and its market value rises. Firms Begin to market themselves as mediation and alternative dispute “specialists” as this expertise become more valuable.”

As an ADR Practitioner or an aspiring one – we need to follow the trend and examine how best we can structure our practice to generate revenues or increase our revenues from ADR business.

KEY WORDS OF THE TOPIC

“Integrating” – simply means to combine two or more things so that they work together. (*Oxford Dictionary*)

“Profit Centre” – simply means is a section of a company or firm treated as a separate business. Thus profits or losses for a profit centre are calculated separately. (*Wikipedia*)

“**Mediation Advocacy**” is the technique of presenting and arguing a client's position, needs and interests in a non-adversarial way.

In this context, we are talking about combining Mediation Advocacy with other ADR mechanisms and other areas of practice of the Law Firm to increase the revenues.

BUILDING AN ADR PRACTICE

Before we can talk of the viability of Integrating Mediation Advocacy as a Profit Centre in a Law firm structure, a Law Firm must first be well structured to accommodate Mediation Advocacy.

Mediation Advocacy does not operate in a vacuum it must be integrated with other aspects of ADR and potential ADR in other areas of practice of the firm.

I don't think that the ADR space in Nigeria has grown to the level where Mediation Advocacy as a stand-alone can be a profit centre.

The firm must therefore have an ADR practice.

- Clients want to have more options to settling a dispute than litigation
- ADR through its many diverse components is indeed a separate discipline and should be recognized as such.
- The Lawyers in the firm must have the requisite training and culture for ADR work

Whether a Sole Proprietorship or Partnership the drivers of the firm must purpose to develop internal structures that see ADR as an integral part of the firm's business.

DEVELOP AN INTERNAL STRUCTURE

The first step is to develop an internal structure:

Each firm has its own style and culture, it may be called department, group unit or practice, whatever name you choose or just an area of practice – it is important to have an internal structure.

In a firm like mine, apart from other units, we have:

- A Litigation and ADR Unit

Other firms may have a stand-alone ADR Unit. Check out websites of major law firms in Nigeria.

Both corporate and personal clients must recognize that you offer ADR options as part of your practice.

DEVELOP POLICIES AND AN ADR CULTURE

The firm's policies must actively support ADR. In my firm our policy when we are briefed is to first explore the ADR options that are best suited for the dispute.

TALENT SPOT SUITABLE LAWYERS IN THE FIRM

To assume the firms litigators can simply step into the role of an ADR practitioner is a mistake.

Not all lawyers are peacemakers and problem solvers, choose carefully the lawyers that are best suited for ADR work and find this type of work .

INVEST IN TRAINING

- Invest in Training.
- Tailor ADR training to the firm's culture
- Take advantage of various trainings that exist in various forms of ADR
- ADR training does not come cheap.

COST OF TRAINING

For a lawyer wanting to make a successful career in ADR be it Mediation or Arbitration he/she must have the requisite training.

The LMDCH and most of the ADR bodies supporting this initiative run various trainings on becoming a Mediator, a Mediation Advocate or an Arbitrator.

LMDCH

- SCMA Accredited Mediation Advocate – NGN30,000.00
- LMDCH Accredited Mediator – NGN200,000.00

Chartered Institute of Arbitrators (Nigeria) Branch

- Associate – 95 pounds (Online Training with UK Branch)
- Member – NGN175,000.00 (Two days Training)
- Fellow – NGN300,000.00 for Fellowship Assessment (Two days) + NGN300,000.00 for Award Writing
- Chartered Arbitrator - 240 pounds + NGN120,000.00

The Lagos Court of Arbitration/International Centre for Arbitration and ADR

The LCA also offers training courses on ADR.

For example the LCA Executive Training School is holding a training programme from Monday the 20th to the 25th of November 2017:

- Arbitrators Beginners Class – NGN160,000.00
- Arbitrators Master's Class – NGN180,000.00

International Mediation Certification

- CEDR Mediator Skills Training Course is about 5,000 pounds. (5 days Training from December 6 to 12 2017 cost 4,900 pounds + 20% VAT. This excludes visa, air fare, hotel and transportation in the UK). 4,900 pounds @480 is NGN2,352,000.00
- Accredited Trainer of Standing Conference of Mediation Advocates – NGN200,000.00 + Air fare, hotel and transportation in the UK.

Lesson: Take advantage of local training opportunities to help improve your ADR skills. These are initial costs for persons seriously interested in ADR.

DO PROPER CASE ANALYSIS

(Needs and interest of clients)

Interest based negotiations look underneath the entrenched position of the parties to better understand their needs, motives and objectives and uses the information to creatively generate options that are responsive to those needs.

It requires completely different skills from position bargaining.

PROMOTE A FULL SPECTRUM OF ADR SERVICES

Negotiation, Mediation, Conciliation and Arbitration. Mediation Advocacy

YOU NOW HAVE A FULL ADR UNIT – WHAT NEXT?

Deploy Mediation Advocacy skills effectively in Mediation and other ADR options which involve trying to get the parties to reach a settlement i.e. Negotiation, Conciliation but certainly not in Arbitration.

DEVELOP EFFECTIVE ADR ADVOCACY STRATEGIES

Mediation Advocacy which is more apt for a Mediation Setting is an important skill in developing effective ADR Advocacy strategies.

A good Mediation Advocate must have some of the following qualities:

- Strategist
- Problem Solver
- Adviser
- Informer
- Advocate
- Facilitator
- Negotiator
- Peacemaker

BUILD A REPUTATION AS A LAWYER OR LAW FIRM THAT ENCOURAGES ADR

- Law firms will have to develop a specialty or reputation for their ability to provide cost effective alternative ways of resolving their disputes.
- Speak, Write, Live and breathe ADR

PROFIT CENTRE AND MINDSET

– WHAT SHOULD A LAWYER CHARGE FOR ADR WORK?

- Lawyers doing ADR work should be able to create both a profitable practice and make a good living.
- My view is that a lawyer should use his or her usual litigation or consultancy rate as a base figure for charging.

GET YOUR BILLING RIGHT – FACTORS TO BE CONSIDERED WHEN BILLING

A lawyer may take into account all or any of the following considerations in ascertaining the value of the service rendered:

- The fee must be reasonable and commensurate with the services rendered;
- The time and effort required and spent;
- The novelty and difficulty of the matter;
- The importance of the matter to the client;
- Whether special skill or service has been required and provided;
- The amount involved or the value of the subject matter;
- The results obtained;
- The experience and the ability of the lawyer; and:
- The contingency or the certainty of the compensation.

BILLING OPTIONS

Taking the above factors into consideration, the following billing options may be adopted:

1. **Consultation Fees**
2. **Retainer** – (General retainer or a Special retainer)

The good thing about a Retainer fee is that the lawyers' cost does not fluctuate based on number of hours worked because the fee is arranged and often paid upfront.

3. **Fixed Fee/Flat Fee**

Like a Retainer, the lawyers' cost in Flat Fee billing does not fluctuate based on number of hours worked because the fee is arranged and often paid upfront.

4. **Time based charging:**

- Billing in the legal industry is typically done hourly. This means most of the time, lawyers cost an amount proportionate to the time they spend working on your case. In general, hourly rates will vary depending on the experience and expertise of the lawyer.
- A particular lawyer's hourly rate will depend on 4 factors:
 - The size and prestige of the law firm

- The area of law, or the type of legal work being done
- The experience level of the lawyer [Much like a fine wine, lawyers get better with age.]
- The location where the legal services are being performed [Rural or Urban)

5. Contingency Fees

- Contingency Fee arrangements are a model of efficiency – Both lawyer and client have an incentive to keep the expenses low, resolve the matter quickly and recover as much as possible.

6. A la carte /Packaged Fee: In charging professional fees – one size does not fit all. You may choose any of the above fee arrangements or have an *al-carte* fee/package fee structure.

- Charge per sessions of mediation
Estimate number of sessions for the mediation
Charge a higher rate for extra sessions
- Charge per hour/ Estimate hours/ Charge for extra hours
- Charge per hour/Contingency Fee arrangement if successful.
- Charge a Flat Fee/Contingency Fee.

HAVE VALID ENFORCEABLE AGREEMENT

Make sure there is a valid enforceable agreement in black and white with the client about your professional fees.

TEMPLATE OF TYPICAL LETTER AGREEMENT OF AA&CO.

Date

The Managing Director,

.....
,
,
,

Lagos.

Attention:

Dear Sir,

LEGAL SERVICES AGREEMENT

This Letter Agreement (“Agreement”) confirms that And (referred to as “the”) has engaged (referred to as “.....”) as its Solicitor to provide legal services to recover the sum of owed by.....

.....has agreed to provide legal services to recover the debt pursuant to the following terms and conditions:

1. Scope of Services.

1.1 will act as Solicitor on behalf of the Employers to recover the debt from and in that role perform the tasks outlined below:

1. Review all letters, correspondence, Invoices and other documents supplied;
2. Commence a Walk- In- Mediation on behalf of the Employers at the Lagos Multi-Door Court House;
3. Attend Mediation sessions with the Employers’ representative as and when the need arises;
4. If Mediation is unsuccessful, will commence legal action at the Lagos State High Court against
5. Represent throughout the duration of the case of the High Court.

2. Fees and Expenses

2.1 In consideration of the services stated above, shall pay a fee of ₦.....[.....] to cover Consultation Fees, all expenses and filing fees incurred during the Walk- In- Mediation.

2.2 If Mediation is unsuccessful and desires to institute legal action at the Lagos State High Court, shall bear all filing expenses and other expenses as assessed by the Court.

2.3 It is hereby agreed that shall pay a sum equivalent to 10% on all and any sum recovered (either by Mediation or Litigation) from and;

2.4 The fees payable to pursuant to the Agreement are in consideration for legal services described in Section 1 hereof. To the extent that is requested to provide additional legal services not specifically set forth in this Agreement, such fees shall be mutually agreed upon by and the in writing and shall be in addition to the fees described above.

2.5 All Invoices submitted by in respect of funds received fromshall be settled promptly by

If the following correctly sets forth our understanding, please sign the acceptance below and return an executed copy of the Agreement to.....

.....looks forward to working with you on this important engagement.

Yours truly,

.....

Accepted by

Accepted by

Name: _____

Title: _____

Date: _____

Signature: _____

AVOID DISPUTE ON FEES

- If there is no agreement;
- If your fee is not fair and commensurate with services rendered;
- If you are not responsive to the Client's concerns; (If billing is per hour keep an impeccable record of the time and make it available to the client
- Give up a little (Discounts);
- Be an open book;
- Be professional at all times.
- No hidden Fees

WHERE WILL YOUR ADR PRACTICE COME FROM?

Many lawyers who wish to undertake ADR activity follow the same trend:

- They associate themselves with ADR Institutions/panels/training providers such as the CIARB, LMDCH, LCA, ICAMA, LCIA, ICC etc.
- Referral by other departments/units or practice groups in the law firm.
- Referrals from other lawyers.

BE MORE CREATIVE AND STOP WAITING FOR SOMEONE ELSE

- Take advantage of ADR opportunities that Arbitration/ADR specific statutes present such as:
 - National Health Insurance Scheme Act, (Arbitration Boards)
 - Nigerian Communications Act (Consumer Disputes use ADR)
 - The Electricity Power Sector Reform Act (Market Rules);
 - The Nigerian Investment Promotion Commission Act,
 - The Nigerian LNG Act;
 - The Oil Pipelines Act;
 - The Petroleum Act,
 - Labour Employment Disputes,
 - ADR Centre of the National Industrial Court.
- On-line Disputes
- Companies and Corporations (Internal Disputes, Human Resources, Labour, Consumer Issues)
- Schemes (Sign on) (CIArb has a MSME Arbitration Scheme) (LCA Small claims scheme)

- Create Private Schemes with Markets (Computer Village/Apongbon/Alaba, Saka Tinubu)
- Community Mediation
- Sports (Most disputes require ADR)
- Faith-Based (Religious organizations)
- Ombudsman
- MOJ

ACCOUNTING PROCEDURE/SOFTWARE

Keep track. From time to time evaluate whether ADR is adding value to the firms business. It will take time – slowly but sure you will get there.

ALWAYS DO THE RIGHT THING

As an ADR practitioner always give your client the best possible advice. You will not lose money.

Mahatma Gandhi, speaking about his experience encouraging a settlement by a client of a commercial dispute, said:

“My joy was boundless. I had learnt the true practice of law. I had learnt to find out the better side of human nature and to enter men’s hearts. I realized the true function of a lawyer was to unite parties riven asunder. The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby – not even money, certainly not my soul.”

CONCLUSION

The market place is demanding services that can be offered by ADR professionals. Law firms should embrace a new way of looking at conflict as well as their business model.

No less a figure than **Abraham Lincoln** has seen the promise in such a practice. He said:

“Discourage litigation. Persuade your neighbors to compromise whenever they can. Point out to them how the normal winner is often a real loser – in fees, expenses and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man. There will still be business enough.”

Adopting some of the recommendations above will help in your journey to integrate Mediation Advocacy as part of your ADR practice and turn ADR into Profit Centre in your law firm structure.

THANK YOU FOR YOUR ATTENTION!