

MEDIA COUNCIL ACT 2013

THE COMPLAINTS COMMISSION MEDIATION RULES, 2019

IN EXERCISE of the powers conferred by Section 50 (1) of the Media Council Act, 2013 the Cabinet Secretary for the Ministry of Information Communications and Technology makes the following Rules —

Rule 1: Citation.

These Rules may be cited as the Complaints Commission (Mediation) Rules, 2019.

Rule 2: Application of the Rules.

- (a) Rules may apply to any dispute before the Complaints Commission that had arisen prior to commencement of these Rules and all disputes commenced upon the enactment of these Rules.

Rule 3: Interpretation.

In these Rules, unless the context otherwise requires—

“Act” means the Media Council Act No.46 of 2013;

“Accredited Mediator” means an independent mediator accredited by the Complaints Commission for purposes of undertaking mediation under rule 4(1) of these Rules.

“Chairperson” refers to the Chairperson of the Complaints Commission

“Commission” refers to the Complaints Commission

“Certificate of acceptance of settlement” means a document issued to both parties after successful mediation proceedings by a mediator.

“Mediation” refers to the process stipulated under Section 36 of the Act

“Mediator” means a member of the Commission appointed under Section 36(1) of the Act including the Chairperson of the Commission or an accredited mediator to facilitate the mediation process.

Settlement” means a final and binding agreement voluntarily entered into by the parties before a mediator.

Rule 4: Appointment of a mediator.

- (1) The Chairperson may appoint one of the members of the Commission, including the Chairperson, as a mediator, or select a mediator from the list of the Complaints Commission’s accredited mediators to attempt to facilitate an early voluntary settlement of the dispute between the parties to the dispute.
- (2) Where the parties disagree on the appointed mediator, the Chairperson of the commission shall, within seven (7) days thereafter propose a mediator by providing the parties with the names of three mediators from the Commission to choose from.
- (3) The parties shall, within Seven (7) days of receipt of the proposed names of mediators, jointly select a mediator and inform the Chairperson in writing of their selection.
- (4) If the parties do not agree on a mediator from the names proposed under Rule 3, each party shall reply to the Chairperson, within seven days of receipt of the list of proposed mediators, indicating their order of preference for the proposed mediator and which of the proposed mediator is unacceptable.
- (5) The Chairperson shall appoint a mediator in accordance with the order of preference submitted by the parties.
- (6) Where a party does not reply to the Chairperson as required under Rule 4, the list of proposed mediators shall be considered as accepted by all parties, in accordance with the order of preference indicated in the returned list.
- (7) Where the parties fail to agree on a mediator under this rule, the Chairperson may consider the failure by the parties to agree on a mediator within the stipulated timelines, as failure of the mediation process and refer the matter for adjudication.

Rule 5: Commencement of the Mediation Process

- (a) The parties shall sign a Commitment form in the prescribed form before commencement of the mediation process
- (b) The mediation process shall be voluntary and shall be conducted in accordance with these rules.
- (c) The mediation process shall take a maximum of 30 days unless extended by the Chairperson of the Complaints Commission

Rule: 6 Confidentiality

(1) The mediation proceedings shall be—

- (a) private and confidential; and
- (b) conducted on a without prejudice basis.

(2) No person shall refer to anything said at the mediation proceedings during any subsequent proceedings, unless the disclosure is necessary to give effect to a mediation agreement or to enforce an agreement reached to settle or resolve the whole or any part of the dispute;

(3) The parties and participants in a mediation shall sign a Confidentiality undertaking in the prescribed form.

(4) Any information submitted to the Mediator by a party in caucus or private session shall be considered as confidential information between the party providing the information and the Mediator, unless the party providing the information consents to its disclosure to any other party to the mediation.

Rule 7: Limitations of a mediator.

- (a) No person shall act as mediator in a dispute if that person has a conflict of interest that may affect the independence or impartiality of the Mediator.
- (b) Where a mediator is appointed and that mediator realizes a circumstance that may create a perception of bias, the Mediator shall immediately inform the parties and the Chairperson.
- (c) Where a party objects to the continued service of a mediator, the Mediator shall cease from acting in the dispute and the Chairperson shall, within seven days appoint a new mediator pursuant to Rule 4.

Rule 8 : Role of a Mediator.

- (a) A Mediator shall keep the parties engaged in the mediation exercise with a view of facilitating an early voluntary settlement.
- (b) A Mediator shall be independent and impartial in the discharge of duties.
- (c) Maintain the Confidentiality of the mediation exercise
- (d) Conduct the mediation in accordance with these rules.
- (e) The Mediator shall conduct the mediation while taking into consideration-
 - i. the circumstances of the dispute;
 - ii. the wishes of the parties; and

- iii. any practical considerations that may be relevant in the prompt resolution of the dispute.

(g) Where a Mediator terminates or withdraws from a mediation, the Mediator shall promptly inform the Chairperson of the termination or withdrawal, who shall, within seven days appoint a new mediator pursuant to this rule.

(h). When a new mediator is appointed pursuant to Rule (8)(g) the mediation process shall start afresh.

Rule 9: Termination of Mediation proceedings

If mediation proceedings are not concluded within 30 days from the date of commencement of the mediation proceedings, the Chairperson of the Commission shall terminate the mediation proceedings and the matter shall be set down for adjudication.

Rule 10: Role of the parties

- (1) A party to a mediation has a duty to:
- (a) act in good faith.
 - (b) maintain the confidentiality of the mediation process.
 - (c) co-operate with the other party in settlement of the dispute.
 - (d) endeavor to reach an amicable settlement of the dispute.

Rule 11: Preliminary conference.

- (a) Prior to the commencement of the mediation, the parties shall participate in a preliminary conference with the assistance of the Mediator.
- (b) The purpose of the preliminary conference is to enable the parties, with the assistance of the Mediator to:
 - i. commit to the mediation process
 - ii. identify the issues in dispute;
 - iii. agree on the ground rules for the mediation process.
 - iv. make any other necessary arrangements to facilitate the mediation process.

Rule 12: Authority and Representation.

- (a) A party to mediation may be represented by any person and the role and personal details of the representative shall be disclosed to all parties.
- (b) The representative selected under Rule 12(a) shall sign the Commitment Form to bind the party to the mediation process.
- (c) A party to mediation shall have authority to settle a dispute or be represented by a person having full authority to settle the dispute, and where the authority is limited, the limits of authority shall be disclosed to the parties and the Mediator.
- (d) The Mediator shall require that a representative provide proof of authority granted by the party to the representative in such form as the Mediator may determine.
- (e) Any Communication made to the representative is deemed to be received by the party.

Rule: 13 Place and language.

- (a) The Mediation shall ordinarily be held at the Complaints Commission Secretariat, but, the parties may, in consultation with the Mediator, select an alternative venue for the mediation and ensure that they have the necessary administrative services required for the mediation.
- (b) The mediation shall be conducted in English, Kiswahili or Kenyan Sign language.

Rule 14: Termination of the mediation.

A mediation process shall stand terminated if—

- (a) one of the parties writes to the Mediator to terminate the mediation.
- (b) If one party withdraws from the Mediation.
- (c) If the parties fail to reach an agreement.
- (d) the parties are involved in illegal or fraudulent conduct.
- (e) the parties have not acted in good faith in the mediation.
- (f) One of the parties dies.

Rule 15: Costs.

- (a) Each party to a mediation shall bear its own costs.
- (b) The costs of the mediation shall include—
 - i. the cost of hiring the venue for the mediation including meeting rooms or breakout rooms;

- ii. the administrative costs, including fees for photocopying, internet access, meals and communication expenses;
- iii. any other costs reasonably incurred in respect of the organization or conduct of the mediation.

(c) The parties shall be jointly and severally liable for costs and expenses set out in Rule 15(b).

(d) This rule shall not apply to Commission appointed Mediators and Commission accredited Mediators.

Rule 16: Administrative assistance.

Subject to Rule 13, the Chairperson may, on the request of the Mediator or the parties, arrange for language translators, Sign language interpreters, or other assistance in order to facilitate the mediation.

Rule 17: Indemnification from liability.

A mediator shall not be liable for acts or omissions done in good faith in the discharge of his functions as a mediator or arising out of a settlement reached in a mediation conducted under these Rules.

Rule 18: Inadmissibility of Proceedings

A statement, whether written or oral, made in the course of the mediation shall not be relied upon by any party to institute or maintain an action for defamation or any other related complaint.

Rule 19: Settlement.

Upon the parties arriving at an amicable settlement to the dispute, the parties shall be issued with a Certificate of Acceptance of Settlement which shall be binding on all parties.

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