

## **Ogorodnik Zh. Possibility and necessity to provide functions of mediator to the notary public**

There is a demand in the society for settling disputes in an extrajudicial manner. This is conditioned by the fact that in persons who encountered some conflict situations, in most cases, they would like to resolve them out of court, that is, to agree, this is due to a number of factors, in particular, the length of litigation, the financial burden of the parties to the dispute (court fees, services lawyers, etc.). However, because individuals are parties to a dispute, it is sometimes difficult for them to meet and start a dialogue, and then there is a need for a mediation procedure.

The parties who entered into a conflict situation after some time come to the conclusion that it is better to settle in an extrajudicial manner and the necessary person who could organize a meeting of the conflicting parties, their negotiations, to suggest ways to resolve the dispute and the results of such negotiations should be implemented in the relevant legal document.

On November 3, 2016, the draft law "On Mediation" was adopted in the first reading No. 3665. Consideration of this bill is in line with Directive 2008/52 / EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters (Strasbourg, May 21 2008).

An important place in the mediation procedure is the mediator, that is, the person who is an independent mediator between the conflicting parties. And, in my opinion, the notary may act as such a professional independent mediator (mediator).

An analysis of recent research and publications on this issue suggests that the issue of mediation is relevant to today and attracts attention. In detail, the legal literature deals with the issues, stages and consequences of mediation, but, speaking of the need for legislative consolidation of the mediation procedure, the authors, in my opinion, pay very little attention to the requirements of the persons who will conduct mediation - mediators, their professional criteria. And a very small number of authors are considering the notary as a mediator, which is not entirely justified. Therefore, there is a need to focus more on the possibility of performing a mediator's functions as a notary.

The purpose of this article is to investigate the need to provide the notary for mediator functions and appropriate legislative consolidation. I believe that accelerating the implementation of the procedure for mediation in the legal field is possible by providing the notary with the powers and functions of the mediator with minor changes in the current legislation of Ukraine, in particular, the Law of Ukraine "On Notary". Therefore, this article is devoted to consideration of the possibility and necessity to perform the functions of an independent mediator during the mediation by the notary.

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At the same time, I believe that the notary is already a ready-made professional mediator in settling disputes, in particular civil, economic, family, inheritance, and, accordingly, does not require additional time for preparation for mediation. To date, a notary in performing notarial acts carries out some functions of the mediator: hears the parties, offers ways to resolve disputes, provides legal advice, certifies contracts based on the agreements reached.

It is important that the final result of the mediation is the conclusion of the relevant agreement (agreement). The certification of such a contract by a notary, which at the same time served as a mediator, would help to resolve the conflict situation on the principle of a "one-stop shop". Notary mediator: Preparation for mediation - Consideration of the essence of the conflict - Consideration of ways to resolve the conflict - Notarization of the agreement as a result of mediation. An additional positive leverage in favor of the notary as a mediator may be further notarization of contracts (for the performance of the contract by the result of the mediation), for example, sale and purchase agreements, divorce of the spouses property, etc.

In addition, the issue of confidentiality is important for mediation. And a notary who, by virtue of his duties, is required to keep a notarial secret (Article 8 of the Law of Ukraine "On Notary"), it will certainly adhere to the principle of confidentiality in the procedure of mediation.

In order for the mediation procedure to work fully, it is necessary to adopt the relevant Law of Ukraine "On Mediation"; also, it is necessary to amend the Law of Ukraine "On Notary" and to provide the functions of the notary's mediator, as it was done in many countries of the Latin Notary.

**Key words:** mediation, notary, independent mediator, extrajudicial settlement of a dispute, conflict situation.