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NEW OPPORTUNITIES FOR NOTARIES: THE USE OF ALTERNATIVE DISPUTE RESOLUTION (ADR)

Do not advise the lawsuit and try to compromise with your neighbors.
Warn them that the winner is often the loser...
"For the expenses it assumes and the lost time". –
Abraham Lincoln, 1851

Keywords: Law, alternative means of dispute resolution, Civil Law Notary

Overview:

Today we have a relevant legal fact to face: globalization, that play an important role on internationalization, new technologies and some other global factors such as the desire to ensure fundamental rights. We can summarize in the novation of the Alternative means of Dispute resolution, (MARC) Some other authors call Alternative means of Dispute resolution (MARC) appropriate means, Alternative methods, regardless of how they were appointed or named, this it is nothing than A return to the ancestral and back to things that have been existed since ancient times, or at least as such for almost a hundred years ago.

Abstract:

En la actualidad nos encontramos ante un hecho jurídico relevante, en la globalización que enfrentamos, juegan un papel importante la internacionalización, las nuevas tecnologías y algunos otros factores mundiales tales como el deseo de velar por los Derechos Humanos, podemos resumir en la novación de los Mecanismos Alternativos de Solución de Controversias, Medios Alternativos de Solución de Conflictos que hemos denominado (MASC) algunos otros autores los denominan Medios Alternativos de Resolución de Conflictos, (MARC) medios adecuados, métodos alternos, independientemente de cómo se le nombre o denomine, esto no es otra cosa que un volver a lo ancestral y retomar cosas que han existido desde épocas antiguas, o al menos como tales desde hace casi cien años.

1. Background

A long time ago, it was possible to ask for justice in the tribal councils, in the clans, in the meeting of neighbors[1], in the matriarchy or patriarchy and all those existent forms explained to us in the first years of study. We could also find it in the passing through the Greek governments, the Roman state (base of our right since these great warriors imposed their language and system of rights to be able to continue exercising the control when they conquered a territory) and the Middle Ages. As time went by, and as the rulers were the highest authority, they began administering justice and creating the corresponding institutions until the creation of the Court[2], which unfortunately due to the workload, caused that justice was not that "prompt and expeditious" in certain places.

Let us take into account that the role of the judge is the application of right; he is by no means empowered to create it, since it is not his responsibility. This belongs to the legislative function. Thus, his

[1] Ancient Greece, China, Japan, and all of these civilizations of Mesopotamia, coupled with the more remote legal antecedents placing them as the beginning of the laws.

[2] *Es gibt noch Richter in Berlin! (Still judges in Berlin!)* The famous phrase of the mill owner in ancient Prussia. anecdote attributed to Voltaire and quoted by Gustav Radbruch in 1930, in his book introduction to the science of the right–

jurisdiction and action field do not go beyond than the law grants him to do.

The Law is dynamic. It evolves and must meet the needs demanded by the same society. Such demands vary according to the time. The legislator adapts the legal framework to the needs of the moment and seeks what right represents: Justice. The right evolves day by day, it refreshes and adapts to the social environment.

The Civil lawyer Couture [1]says:

Study. The law is constantly transforming. If you don't follow its footsteps, you'll be a little less of a lawyer every day.

The German jurist **Carl Schmitt**[2] points out that when an exceptional situation engenders or creates challenges that cannot be dealt with by ordinary means, the State must have extraordinary means, allowing the return to normal conditions.

Therefore, it is the same State, which in the search of a legal form to solve the controversies, decides to take the alternative means (ADR) that speed up and solve the differences favorably for both parties. The ADR[3] are viable techniques for the administration and prosecution of justice as it not only reduces the burden of the courts and the cost of judicial proceedings, but rather shortens the length of the dispute, preventing it from widening or modifying. They also maintain the personal relationship between the parties thanks to their collaborative approach through the fulfillment of the conventions.

One of the challenges of the State[4] is to satisfy the needs of its governed in a **prompt and expeditious** way, guaranteeing the security of fundamental rights, to ensure the interests and welfare of society. The State seeks to offer solutions that tend to generate efficiency and speed to legal acts for the sake of fundamental human rights.

The concept of Alternates or alternatives, is related to the fact that compared to the "traditional model" that as we know is the jurisdictional way, these are shown as "other" means allowed and recognized peacefully to "resolve the dispute" without having to get into a Trial. This means that it is possible to satisfy the social needs of fairness, which inclines to solve them by any legal means other than "privatization" of justice or taking justice by one's own hand.

"We can simply turn to see the latest reforms in terms of commercial orality where more agile procedures are envisaged, it is contemplated that the judge also does mediation and conciliation functions" as Soberón Mejía[5] has said.

However, in Mexico For example the Political Constitution also kno as Carta Magna, always updated to the present, the international trades signed and ratified and other general provisions that regulate the alternative means. It is sufficient to point out the recent constitutional amendment related to the matter, which in the need of justice considers:

1 **Eduardo Juan Couture** Etcheverry author of many books, especially in matters of civil procedural law, but it stands out in his work "Los mandamientos del abogado" where he develops ten "commandments" that a lawyer must fulfil in the exercise of his profession:

1 Studies: The law is constantly transformed. If you don't follow its footsteps, you'll be a little less of a lawyer every day.

2 Thinks: The law is learned by studying, but it is exercised thinking.

3 Works: Advocacy is an arduous fatigue placed at the service of the just causes.

4 Strives for justice: Your duty is to fight for the law; But the day you find in dispute between the law and the justice, fight for justice.

5 Be loyal: loyal to your client, whom you must not abandon until you understand that it is unworthy of you. Loyal to the adversary, even when he is disloyal to you. Loyal to the judge, who ignores the facts and must trusts what you say; And that, as to the right, some one that must again rely upon you to invoke him.

6 Tolerates: It tolerates the truth of others as much as you want your own to be tolerated.

7 Be patient: In the right, time comes from the things that are done without your collaboration.

8 Have faith: Trust in the right, as the best instrument for human coexistence; In justice, as a normal destination of law; In peace, as a kind substitute for justice. And above all, trust in freedom, without which there is no right, no justice, no peace.

9 Forget: Advocacy is a struggle for passions. If in every battle you are carrying your soul of resentment, there will come a day when life will be impossible for you. After the fight, you forget your victory as soon as your defeat.

10 Love your profession: try to consider the law in such a way that the day your child asks you for advice on his destiny, consider it an honor for you, propose that he becomes a lawyer.

2 RAZAFINDRABE, Tsiory. «La Gobernanza en Madagascar», Perfiles de las Ciencias Sociales, Year 1, vol. 1, No. 2, Jan-Jun. 2014, p. 68.

3 USA's Federal Government established the use of the ADR in 1947, when the Federal Mediation and Conciliation Service (FMCS) was created, in that regard, Vid. LOPEZ SOBERANO, José Rubicel, Medios Alternativos de Solución de Conflictos en Fuerza Jurídica, no.3, July 2004, p.22; PONS Y GARCIA, Jorge Vladimir. "Importancia de los MASC en el Siglo XXI", Notary Magazine, Colegio de Notarios de Tabasco, Year 1, no. 1, july 2015, p. 14.

4 In this regard, we also found that wars were accepted by international law, as the most common method to solve the problems between countries, in 1919 with the Treaty of Versailles that ended the First World War, for the first time the Regulation War. Vid. DIAZ, Luis Miguel, Negociaciones y Democracia, Diálogos por la Paz, year 3, No. 7, Centro de Mediación Notarial de la Asociación Nacional del Notariado Mexicano A.C. 2006, p. 27.

5 Sober MEJIA, Jose Ives. "Revolucionará la mediación al sistema judicial mexicano", Nexo jurídico, year VI, No. XXV, June 2015, p. 11.

Political Constitution of the Mexican United States[1]

Title One

Chapter I

Of fundamental rights and their guarantees

Denomination of the amended chapter DOF 10-06-2011[2]

Article 1. In the Mexican United States, all persons shall **enjoy the fundamental rights** recognized by this Constitution and the international trades in which the Mexican State takes part, **as well as the guarantees for their protection**. No right shall be restricted nor suspended except in the cases and under the conditions this Constitution establishes.

Article 17. No one may take the law unto his own hands, nor resort to violence to enforce his rights. Every person has the right to petition justice before courts of law, which shall be ready to provide it under the terms and conditions set forth by the laws, and shall issue their judgments in a prompt, complete and impartial manner. Their services shall be free and consequently, judicial fees are prohibited.

The Congress of the Union shall issue laws to regulate collective actions. Such laws shall determine how those actions shall be applied, the correspondent judicial procedures and the means to make amends. Federal Judges shall be exclusively competent to solve these procedures and means.

The laws shall provide alternative mechanisms to resolve controversies. In criminal matters, they shall regulate its application, ensure reparations and establish the cases in which judicial supervision shall be required.

Article 18. Pretrial detention may only be applied for crimes punishable by imprisonment. The place of confinement shall be different and shall be separate from the one used for convicted persons. The prison system shall be organized on the grounds of respect to human rights labor and the training for it, education, health and sports as a means to reinstall the inmate into society and to make sure he does not transgress again, noting the benefits that the law ensures him. Women and men shall be imprisoned in separate places.

The Federation, the States and the city of Mexico can make agreements to have the inmates accused of crimes within their field of cognizance serve their sentence in prisons under a different jurisdiction.

The Federation and the federal entities shall establish, within the field of their respective cognizance, an integral justice system for teenagers, which shall apply to those accused of a felony according to penal laws and are between twelve and eighteen years of age; in which the fundamental rights recognized for everyone by this Constitution are ensured, as well as those specific rights they are entitled to for their state of development. People under twelve years of age who have committed a crime shall only be subjected to rehabilitation and social assistance.

· Amended paragraph DOF 02-07-2015

The management of the system on every level of Government shall correspond to institutions, courts and authorities who are specialized on legal procedures regarding adolescents. In observance of the integral protection and interest of the adolescent, means of orientation, protection and treatment may be applied if the particular case merits it.

If appropriate, **alternative forms of justice** shall be observed when applying the system. Due process of law and independence among authorities in charge shall be observed whenever an adolescent is prosecuted. Every measure imposed by the authorities shall be proportional to the misconduct and shall seek social and familiar reintegration of the adolescent and the plain development of his person and capacities. Confinement shall only be used as an extreme measure and for a brief period of time, and it shall be applied only to adolescents above fourteen years of age who have committed grave and antisocial deeds.

As we know after the amendments of articles 17 and 18 of the Political Constitution (CPEUM) [3]

[1] Reforming the Political Constitution granted on 5 February 1857.

[2] On June 10, 2011, it is published in the Official Journal of the Federation, the decree amending various articles, as stated in the: "(...)" Single item.-The name of the first chapter of the first title is amended; The first and fifth paragraphs of article 1o; The second paragraph of article 3; The first paragraph of article 11; Article 15; The second subparagraph of article 18; The first paragraph of article 29; The first paragraph of article 33; The tenth fraction of article 89; The second subparagraph of article 97; The second and third paragraphs of article 102 (B); and subparagraph (g) of the second fraction of article 105; The addition of two new paragraphs, second and third, to article 1st. And the current ones are in their order; A new second subparagraph to article 11, the second, third, fourth and fifth paragraphs to article 29; A new paragraph (second) to article 33, through the current in its order and the new fifth, eighth and tenth paragraphs, the current ones in its order, to article 102 of subparagraph (B); All of the Political Constitution of the United Mexican States (...)
This reform, in addition to establishing the guiding principle in article 1st of the Constitution, changes are made to articles 11, 15, 18, 29, 33, 89, 97, 102, 105 in which the concept of individual guarantees for fundamental rights is amended, the bases of the A are broadened Constitutional shelter.

[3] ... laws will be provided for alternative dispute resolution mechanisms, in accordance with the reforms of the month of March 2008, relating to security and justice.
Exhibition of motives of the alternative media law in criminal matters for the state of Puebla. The constitutional reform of the eighteen of June of two thousand eight, by which ten articles of the Constitution were modified that establish

they reach a new height and we redefine their importance and application adapting federal laws or creating other state laws or regulations.

2. Alternative Justice Center from Aguascalientes to Yucatan (Mexico)

We need to change to end disputes. As Pérez Castañeda[1] points out, "**alternative justice** is defined as any non-jurisdictional procedure to resolve a civil, family, commercial or criminal dispute, to which the parties involved may voluntarily resort to find an agreed solution that will end such controversy, by procedure of specific techniques applied by specialist". The traditional lawyer of dispute (Litis) becomes now a constructive and collaborative lawyer.

The alternative justice can be a restitution plan: economic, in kind, with the provision of services to the community or in any way requested by the victim.

The diverse legislatures of the states that make up the Mexican Republic have considered the importance of an expedite justice application. Because of that we can found for example:

2.1 State of Tabasco

The Civil Code of Procedures of the State of Tabasco, establishes:

Article 9.-Procedural economics. The judge and his assistants shall endeavour to obtain in the best possible results in the process with the least possible use of time, activities and human and material resources.

In this respect, the legislators create the **Law on access for the Alternative Justice of the State of Tabasco** of August 29th, 2012, which presents its first amendment on November 14, 2013. The aforementioned law has forty-nine articles in which the benefits of alternative justice as part of the fundamental rights in Mexico are highlighted and which can be explicitly defined through the respective law based on doctrinal foundations aimed to seek procedural efficacy. To this end, the **Alternative Justice Centers** have emerged, the action of which is **preventive, simultaneous and alternative.**

The Criminal Alternative Justice Center of the Attorney general's Office of the State of Tabasco, created by agreement published in the official state newspaper number 76757, Supplement 7079b, dated on July 10th, of the year 2010. From effective date of this law shall be subject to the provisions thereof and to the regulatory provisions, which are issued in this regard.

Specialists use these alternate means or alternative methods as a means to avoid court or litigation. As we point out, negotiation, mediation and conciliation are the most used means and are often celebrated as a whole since their differences are minimal, and their elements often confused. Rumor has it, or not, that "the end justifies the means".

2.2 State of Puebla

The state of Puebla[2] has also considered the access to prompt justice, For this matter, it has the House of the Alternative Justice, or Center of Mediation, located in the Judicial City 21st century. Within its normative body the law of the State of Mediation State Center of Puebla, of December 30, 2013 with thirty-five articles calls the attention. It also has a Law on Alternative Means in Criminal Matters for the state of Puebla, of 14 September 2012 that applies procedures that coincide with the national reform in the field of criminal justice: mediation, conciliation and restorative procedure. Members of the Specialized Center of Alternative Means in Criminal Matters of the Procurator's Office General of Justice (PGJ in Spanish) are involved to reach agreements validated by a control judge.

3. The main characteristics of Alternative Dispute Resolutions (ADR)

As noted, the main ADR[3] are negotiation, mediation, conciliation and arbitration. Some of their characteristics are:

* ***As for Specialization***: a certain knowledge is required to cover the profile of the services provider. You must be an expert in communication, litigation and formality techniques.

* ***As for the voluntariness***: mediation, negotiation and arbitration are absolutely voluntary. The parties are free to receive the process, and therefore free to desist in case they consider it, at all times. Voluntariness of extrajudicial conciliation is limited to the unilateral decision of the party to attend or not to the hearing since, as an institution,

the axes of the criminal justice in Mexico, among them, the creation of the penal process accusation and the introduction of new Standards of due process and protection of fundamental rights in the criminal sphere, both for victims and for imputed ones, included alternative means of dispute resolution, as an important component to give the system viability as a whole.

[1] PÉREZ Castañeda, Jorge I. *Justicia Alternativa. http://www.justiciabc.gob.mx/sala_prensa/notas_fechas/17AGO10%20ZETA%20abog%20NSJP%20inauguracion.pdf*

[2] During 2013 Puebla was the state that fewer crimes and anti-social behaviors had registered at its center of Alternative Justice, as it reached 326 open records, while other states like Tamaulipas, Nuevo León and Baja California, in the Same time period, they started seven thousand, 13000 or up to 41000 procedures. http://elpopular.mx/local/puebla-promueve-justicia-alternativa/

[3] http://www.monografias.com/trabajos33/medios-de-solucion/medios-de-solucion.shtml#ixzz3PPLbis4r

the extra-judicial conciliation before the process is compulsory.

* ***As for formality***: mediation and negotiation do not have a formal structure while in arbitration and out of court conciliation they do have forms and stages to be fulfilled.

* ***As for the control of the parties on the process***: in mediation and negotiation, the parties exert a high control on the process. Out of court the exert a medium control and during the arbitration their control is minor.

* ***As for the intervention of neutral third parties***: during the negotiation, there is no intervention of neutral third parties (as the negotiator represents one of the parties); however, this does not apply in the other alternative means. In mediation, the third neutral party is called mediator; in the extrajudicial conciliation such is called extrajudicial conciliation and in arbitration he is called arbitrator.

* ***As for the duration of the process***: in the negotiation and mediation the duration of the process is generally short depending on the parties and the neutral third, while in the extrajudicial conciliation, the duration of the process is short and it subject to the legislator.

* ***As to the obligation to comply with the agreement or award***: in mediation and extrajudicial conciliation, the agreement is voluntary. It becomes obligatory once it occurs. In arbitration, the arbitral award is exclusive decision of the third neutral and is obligatory for the parties.

* ***As for confidentiality***: in mediation and negotiation, confidentiality is held by the parties. In out-of-court conciliation, both the parties and the conciliator must keep absolute reserve of what has been sustained or proposed. In arbitration the exception to confidentiality occurs in the event that the judgment is null and void.

* ***As for the economy***: in the negotiation, unless the appointment of negotiators, there may not be any disbursement of money as long as a neutral third party is not involved. On the other hand in mediation, arbitration and extrajudicial conciliation neutral third parties are involved and their private services are remunerated.

* ***In terms of flexibility:*** the procedure adapts to the dispute of the parties and these may be applied freely or amended, provided that the parties agree.

3.1 Negotiation

Negotiation comes from the Latin *negotiatio* which means action and effect of negotiating.

It's a Bilateral method. Negotiation is the process by which stakeholders – or their representatives – resolve disputes, agree on lines of conduct, seek individual and/or collective advantages and attempt to obtain results that serve their mutual interests. Some of its elements are the intervention of the parties to apply the professional secrecy committing to not to give publicity to what the parties treat and complying with continuous negotiations and a restricted work agenda.

3.2 Mediation

This is Trilateral Method. It turns out to be simple and without formalities. The parties involved seek a solution to a dispute through an impartial mediator who has no capacity to make decisions. It is an alternative mean to resolve a dispute by mediators with different specializations who will give a quick and effective response.

The law of mediation and conciliation in Aguascalientes (Mexico), indicates in its article six that: *it is the voluntary procedure by which the parties of the dispute seek to reach an agreement with the intervention of an impartial third party called mediator whose participation focuses in facilitating communication between those*.

In Puebla (Mexico) the legislation in this regard uses the concept of Re-mediation, by which due to the breach of the mediation agreement one of the parties requests, for the last time, the intervention of the Center in order to avoid a dispute of judicial nature.

Here, we have the intervention of a third party, designated by the parties or a court to measure the state of mind. The role of the mediator is that of a facilitator who collects concerns, translates moods and helps the parties to confront expectations with reality. In his role, the mediator reassures, lowers the exaggerated requests, explains positions and receives confidences.

The Mediator does not recommend to the parties any solution, except in exceptional cases and at the request of the parties; his work is focused on maintaining a positive and fluid negotiating process until the parties reach an agreement that both sides consider reasonable. Part of the mediator's work will be the suggestion of different possibilities so that the parties can consider various alternatives when it comes to reaching an agreement.

The mediator proposes a solution that may or may not be welcomed by the parties, through a process that can be divided into phases such as listening, orienting, settling and arranging to finally reach an agreement. We can talk about succession, civil, commercial, insurance, medical, new technologies, electoral, tax and family mediation or any other type.

They work through the models[1] practiced up to date. Each of such models have positive and negative issues, virtues and passions. We know them as:

Traditional-linear model (Harvard)
Circular-Narrative model (Sara Cobb)
Transformative model (Busch and Folger)

3.3 Conciliation

Trilateral method.

Conciliation implies the collaboration of a neutral third party who, in many cases, is a public official who is elected by a judicial authority to whom the parties give some control over the process but without leaving him the solution for it is the parties who will take the solution to the dispute. The role of the conciliator is to assist the parties so that they themselves agree on the solution. He leads them into the process of clarifying and delimiting the points of dispute.

The "conciliatory" faculty of the judges is also an interesting and effective tool recognized and developed in the legislation of several countries. Through it, the judges (in some countries the "family prosecutors"; the "Justices of the Peace"; the "conciliators in equity"; and also the "conciliation centers"), may call for conciliatory purposes the parties in dispute or trial at any state of the process. Conciliation (whether extra, pre or judicial) effectively ends with a conciliation, compromise or transaction agreement, which has legal force and produces the effects of a sentence. Do judges have time with all the workload and responsibilities to reconcile?

4. The Notarial function for dispute prevention by counselling

The well-known phrase of the Uruguayan jurist Joaquín Costa "open notary, closed court" has traveled the Latin world summarizing in those four words the notarial function. Notarial Public Certificate is that ability to recognize that whatever it certifies is credible and certain. It guarantees the existence of an official truth.

If the state is obliged to administer justice, that is, to resolve disputes among individuals, it is obliged to prevent them from appearing, it would be rather illogical to only resolve them and not to avoid them; because of this, the organs of the State must avoid disputes, through the courts, which are the bodies to which the Political Constitution entrusted the resolution of the disputes. For this reason, it is feasible that the notarial function should be entrusted in order to avoid a considerable number of trials.

Let us remember that the Civil Law notary[2] is at the same time an attester and a lawyer whose activity consists in listening, interpreting, advising and educating the parties, and in preparing, writing, authorizing and certifying the document, its function has the limits that the legal system gives him. He has a non delegatible power to intervene, which as we know is undelegated, for he is invested in the public faith is the notary, not his collaborator. In addition to this the legal elements or principles of veracity, exclusivity or impartiality.

In most cases, these-the parties-are unaware of the corresponding laws and regulations as well as the appropriate legal means to terminate their will, for this reason it is necessary to provide them with advice, legal matters, legal means and legal consequences. A notary cannot draw up documents related to illegal things, invalid legal acts, or revocable legal business for disability. They use a Deontology Code, In the event that the consent of another party is required, it will be necessary to previously obtain the document that approves the existence of the authorization.

When the grantors go to the notary for the authorization of a contract, the public notary tries to know the will of the grantors by providing the necessary information about the effects or consequences of the granting of the instrument. The writing of the document-as complicated as it is- shall be a part of the free consultation. Free notarial advice is similar to the legal consultation paid to the lawyer – and often this has nothing to do with notary services, people use it as their marriage counselor, confessor, and psychologist-.

4.1. Notary's Law for the state of Tabasco (Mexico)

The notaries Law in Tabasco[3], is at the forefront by retaking some elements mostly from the previous legislation, which highlights the following:

Article 2. The exercise of notaries in the state of Tabasco will be in charge of the executive power of the entity and by delegation, it is entrusted to professionals of the law, by virtue of the patent that for that purpose grants them.

Article 8. It is a professional of the law, invested in public faith in order to record the acts and legal facts to which the interested parties want or must give

[1] Vid. BARRERA ORDIERES, Patricia, La Mediación Transformativa, Diálogos por la Paz, año 3, nº 7, Centro de Mediación Notarial de la Asociación Nacional del Notariado Mexicano A.C. 2006, p.35.

[2] PONS y GARCIA, Jorge Vladimir: "La intervención de la función notarial en la material registral en Mexico", Revista del Notariado del Colegio de escribanos de la ciudad de Buenos Aires. Nº 904, 2011. p. 275.

[3] Published in the Official Newspaper on December 20th, 2003.

authenticity according to the laws, and authorized to intervene in the formation of such acts or legal acts, redressing them with solemnity and legal forms. **It will also serve as an assistant to the administration of justice**, in accordance with the provisions of the Organic Law of the judiciary of the state.

Article 12. Notaries must always exercise their duties under the principles of **legality, impartiality and probity**; they have the same obligations of **council and advisory panel** to all concurrent persons to the acts or events, even if they have not requested or get paid directly their services.

The notary[1] shall provide advice and legal basis, this concept of advice indicates that the notary gives to the interested parties the appropriate legal knowledge to write a suitable public instrument, according to what the parties try to perform, explaining its value and legal strength to carry out the objective of the notary system.

Article 27.-The functions of the notary are incompatible with all employment, public office or commission of the Federation, of the State and of the municipalities for which payment or remuneration is performed; with the employments or commissions of private individuals; with the performance of the judicial mandate; **with the exercise of the profession of Attorney at law, when the act or the fact in question is related to the contentious business that sponsors or has sponsored as sponsoring or mandatory attorney**; with the activity of agent of Change, Commissioner, mercantile broker and the minister of any religious cult, with the following exceptions:

The notary shall:

I. Accept private or public teaching and charitable positions,

II. Be the representative of his/her spouse, ascendants, descendants or siblings, in cases permitted by the civil code of the State,

III. Be tutor, guardian and executor,

IV. To serve as a member of the board of Directors, commissioner or secretary of societies, as well as director of associations,

V. **Provide advice and issue legal consultations**,

VI. **Be an arbitrator or secretary in arbitral proceedings**, and

VII. Sponsor those interested in the necessary administrative or judicial procedures....

4.2. Notary Law of Puebla

P.O. December 31 2012.

Similarly, the legislation of the state of Puebla, which proves to be more up-to-date, includes among its clause the same principles, detailing the following.

Article 4.-**Principles.-**The exercise of the Notarial function will be developed under the principles of honesty, legality, fairness, praying, authentication, reliability, secrecy, publicity and transparency.

Article 6.- The notary is the professional of the law invested in public faith by the state, which by delegation exercises a function of public order, and is in charge to receive, interpret, write and give legal form to the will of the people under his/her advice, as well as authenticate and give legal certainty to the acts and facts under his faith, by means of the appropriation of the same public instruments of his authorship.

The public faith, investing the notary, refers exclusively to the exercise of its functions and any statement made outside of this scope, will be considered as a testimonial and valued as per the applicable law.

The notary also acts as an assistant to the management of justice, as **counselor, arbitrator or mediator** in terms of the respective laws.

Art. 49.-**Exceptions**.-Notwithstanding the provisions of this chapter, the notary May:

...

XI.-**Be an arbitrator or mediator;** and

XII.-Intervene in non-contentious procedures and proceedings in accordance with this law and those applicable to the case.

Article 173.-**Obligations and powers of the Council**.-they are the responsibility of the Council of Notaries:

I.-...

XXII.-act as **arbitrator, conciliator and mediator** for the settlement of disputes between individuals; for this purpose he/she **may designate, among his members**, those who perform such functions;

...

4.3 Acts of the notaries before the ADR

Mediation and notarial arbitration [2] can be defined as the intervention of the notary in the resolution of the disputes between the stakeholders, proposing or recommending the transaction or conciliation. The notary[3], formed and/or accredited will then exert the preventive function of the litigation through advising intervention, arbitrator or mediator.

[1] Cf. Article 15 Notary's Law for the state of Tabasco (LNET)

[2] In this regard see HUDABIUNIGG, Eva Krisper. Beratun und Mediation als Beitrag des Notariats zur Streitverhütung, Schriftenreihe des österrreichischen Notariats, Manzsche, Wien, 2001, p. 2. As well as Japan National notaries Association, Report of the XXIII International Congress of Latin Notaries, 2001.

[3] Picot Jean Paul. La función notarial preventive de los litigious: el asesoramiento y la Mediación como uno de sus instrumentos, report of the French notary, Athens, 2001, p. 100.

We have been in the belief that it is forbidden for the notary to devote himself to another job, including the practice of advocacy, in order to maintain his impartiality in accordance with the law. Notarial intervention in mediation or arbitration of disputes between stakeholders does not belong to the notary's role; therefore, the notary is not authorized to perform mediation or arbitration in exercise of the function to prevent litigation. Those in charge of mediation or arbitration are only the court and the lawyer.

Furthermore, in the event that the grantees go to the notary [1] for a notarial deed, the notary may be deemed permissible to intervene in mediation or arbitration of the fact in the framework of Notarial advice[2]; proposing an appropriate project, persuading impartially the way to achieve the transaction resulting from the proper writing.

In other words to say, Sara Cobb says[3], "You can't think of control and much less when it comes to the lives of others".

The community has confidence in the notary who is dedicated to exercising his profession correctly, in an ethical and moral way, that has experience acquired in his long legal career and above all, that has a social prestige. Therefore, if the notary's mission is better understood and used more by people, it can be considered that alternative means of dispute resolution will be increasingly carried out to prevent litigation without altering current standards.

Nowadays, there is an insufficient penetration or knowledge in the public, -lack of social awareness- but that is no reason for limiting the notarial function to a function of authentication of facts and legal acts. His/her new functions have enabled him/her to transform the classical concept of the profession, by means of a more dynamic role or performance preserving at all times legal certainty as well as other social values.

4.3.1 Proceedings ADR by notaries

As an expert and professional of the law, the notary, in case of not acting as such, can use his/her experience and knowledge.

A. Contractual Material.- Interpretation of the contract, compliance clauses, conventional penalty, responsibility of the parties. In cases of divorce that contain payment of compensation for moral damages, the partition of property, the disbursement of expenses for child support, parental authority... in these cases, a project of compliance is drafted by the notary in an impartial manner, in accordance with the will of the parties through interviews with them. If they agree with such a contract, a notary – not the same acting as mediator– will authorize it.

B. Specific contracts.– Promise of sale, donation, mutual, association in participation, Commercial Commission, agreement of professional collaboration. Labor agreements.

C. Real estate.– Provide public faith in relation to the validity of the title, transmission, use, liens, limitations of domain, easements, surface, boundaries, surveying and demarcation, partition walls.

D. Succession.– Situations such as the disputes of heirs, legatees and even the appointment of executor, inventory and appraisals, as well as proper orientation in the partition of the properties.

E. Mercantile societies. – Corporate law, dispute between partners in moral persons, associations, civil societies, mercantile, agrarian, rights and obligations of the members and the representation body, as well as the annulment of the act of Assembly.

F. Taxation. – In this regard, given his/her faculties of retainer and joint guarantor, the notary can serve to solve some dispute that can be presented between the taxpayer and the tax authority.

4.3.2. Notary Associations and their role as Administrator of ADR.

However, if the Notary´s Law define the use of Notaries Association, which end is – give or take a few words – a mean necessary to comply with the institutional guarantee of notarial activity, being its members part of these. They can support the institution and provide the correct role of arbitration administrator, mediator and conciliator for the settlement of disputes between individuals. For this purpose, the qualified and appropriate people can be designated among the associates who want to perform such functions.

The Notaries Bar Association can be an instrument for this purpose with the proper training and support of an alternative Justice Institute, or a state court, since it is a moral person recognized by the laws that can provide these services. In addition, mostly with the guarantee and probity and honesty that the function requires. For this reason, it is considered an ideal entity to safeguard the integrity

[1] Situation that can be presented in Canada, since June 13, 1997, the National Assembly adopted a bill that makes family mediation compulsory in cases of divorce, a novelty introduced in the country since the 1970s. Cfr. MARSOLAIS, La mediacion familiar en Quebec. Bulletin of the National Association of Mexican Notaries, No. 5, March, 1998. p. 32.

[2] Cf. Art. 27 Notary's Law for the state of Tabasco (LNET)

[3] MUNUERA GOMEZ, Pilar. Sara Cobb´s Circular Narrative model and its techniques, Portularia Vol VII, Nº 1-2, 2007, p. 88.

of the parts, with the neutrality carried out daily in the activities.

5. Conclusions

Traditionally, the first instance of a judicial procedure, with all its various elements-ordinary and extraordinary resources, amparos[1], among others- the laws are not always contemplated by a prompt and expeditious justice, even though a solution will have as per the Law. Sometimes not in justice – because the judge would resolve in favor of the one who has proved his actions and his defense, but not necessarily is the one who is right. Litigants who prove to be more skillful will be more likely to succeed and there will always be a resentment in the losing party. There will be no litigant who accepts defeat because his client was not right, even less, that he did not have the knowledge or expertise to Defend. At other times, the affected person indicated that the lawyer and/or the judge was bribed or received a gift, and at best, that he/she resolved in the wrong way.

However, those who may or intend to use the alternative mechanisms of dispute resolution should seek to go with the people who are suitably equipped with the necessary morality and prudence, as well as being recognized as honest and expert in the subject. All these qualities and others have to be found in whom the problem will be entrusted. So, a single mediator or a group of arbitrators can be designated who should be in odd number to facilitate the result, considering further that the support of an Association of Professionals that provide legal certainty by providing their endorsement.

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[1] The amparo trial is a means of controlling the constitutionality of acts issued in connection with the exercise of power provided for by the Mexican legal system, which aims to protect human rights and fundamental rights established in the Constitution, as well as in the Internationals Treaties of which Mexico is a party, when these are violated by general norms, acts or omissions of authority or of individuals indicated in the law. The Mexican amparo proceeding is regulated by articles 103 and 107 of the Political Constitution of the United Mexican States and its regulatory law, called the Amparo Law.