

# FAMILY MEDIATION TRAINING

Winter Issue 2018

## Same Sex Divorce and the Mediation Process

Gay and lesbian couples may face unique challenges when it comes to family law disputes. If you and your partner are going through a breakup there may be many different agreements to settle involving support payments, property division and child custody. While many of these issues are addressable in Court they oftentimes result in divisiveness and hostility that are permanently destructive to children of the relationship. Example: One partner has adopted a child. The other partner has not. Despite this both parents have been in the child's life from the age of six months. The courts and the rights of the non adoptive parent are analogous to that of a stepparent — limited to none. How much better to work through the mediation process because the mediator must take into consideration "promoting the awareness by the parties of the interests of non-participating persons". Rule 10.300 Standards of Professional Conduct.



## The Challenge of Different Cultures and the Mediator.

When parties from different cultures come to the mediation table negotiations may be particularly challenging. Cultural misunderstandings can result in both sides either being angered for no reason or confused by the other party as well as the process. What then can the mediator do to avoid having to terminate a mediation? Here is a brief example: A shipment of goods arrives with 50 percent damaged goods. The "Westerner" pays for less than half assuming that she has, based on lost business paid the proper percent and therefore is in the "right". The Chinese seller who knows that fifty percent was not damaged has asked for Mediation.

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## How are you related and mediator disclosure.

An attorney mediator sought clarification on what MEAC agreed was a waivable conflict of interest involving the mediator and an attorney for one of the parties who selected him as the mediator in an upcoming civil mediation ("Attorney B"). In MEAC Opinion 2018-003, MEAC opined that the "extended family relationship" as opposed to an "immediate family member" representing one of the parties, required disclosure of a potential conflict of interest, but was a waivable conflict of interest. What was this "extended family relationship?" Mediator's daughter is engaged to marry an attorney (Attorney "A") who is the brother of Attorney B. The mediator has a limited social relationship with Attorney "B". He sees Attorney "B" at family gatherings such as dinners hosted by Attorney "A", two or three times a year. He sees Attorney "B" at an annual dinner party hosted by Attorney "B's" father. Does the answer to this question change when the Mediator is paying for his daughter's wedding, or other wedding-related events, to which Attorney "B" is invited as the uncle of the groom, and the Mediator is paying for Attorney "B's" food, beverages, and other costs of attending the wedding or wedding-related events? Does the answer change when Attorney "B" becomes his daughter's brother-in-law?

IF YOU HAVE AN ARTICLE OF INTEREST, WE WOULD BE PLEASED TO PUBLISH IT FOR YOU.

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## The Challenge of Different Cultures and the Mediator.

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Throughout, the “Westerner” based on lost business, pushes for agreement and throughout, the Chinese seller is commenting “yes” while eyes are averted and the head is down. The Mediator drafts an agreement. Everyone is stunned when the Agreement is refused by the Chinese seller. Simply put, the Chinese seller was only being polite and not agreeing to anything. Would it not have assisted all parties had the Mediator been aware of the “culture” of politeness that had one side just nodding to be polite versus nodding assent? This example is not to say that every Mediator must now become a student of culture and/or of history. But it does show that every Mediator must be or become aware that different cultures do different things differently and it is clearly in the best interests of all to clarify, define and be aware of the nuances of negotiation by different cultures.

## And one of our subscribers has written the following:

**“Skills for a Successful Mediation. Part I. Effective Speaking.” By Pamela Wiggins, Ed.D., Florida Supreme Court Certified Family Mediator.**

**Successful mediation requires having certain skills. One such skill is Effective Speaking. Without this skill, negotiations during mediation will be difficult if not impossible. The necessity for mediation arises because neither party will be able to get everything they want. Knowing that there must be concessions, each party in the negotiation is required to adopt an attitude of understanding that they must get the best outcome possible in a way which is acceptable to the other party. The importance of effective speaking and listening is clear; it is necessary to establish what you are looking for and what you are prepared to accept, while understanding what the other parties will be happy with.**

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