

FAMILY MEDIATION TRAINING

N E W S L E T T E R

Spring Issue 2020

HAS THE TIME COME TO ABANDON FACE TO FACE MEDIATION AND MOVE TOWARD ON LINE, ZOOM OR OTHER FORMAT OF NON FACE TO FACE MEDIATION? AN OP-ED

Certainly, when parties live very far apart and the costs of face to face mediation are prohibitive, mediations have been held telephonically, via email, or zoom, etc. And certainly when there is Interpersonal Violence, for the obvious reasons mediation might continue within the same parameters as if the parties lived far apart and best not to be in the same area.

However, due to "social distancing," mediations of late have had the need to be done on line or some other non face to face method. Is this the new norm? Should it be? As a trainer I have fully realized that the "lecture" portion of my training programs could be on line (zoom etc). Will I hear the shuffling of papers or the



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

NEWS FLASH

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About our one day programs:
Track I: 3.0 CME hours of Marketing/technology; Track II: learn about dealing with pro se clients; Track III emphasizes the workplace and Track IV emphasizes LGBTQ including mediating with temporary restraining orders. Each Track has 2.0 Ethics, 2.0 Interpersonal violence and 1.0 for ALL Mediators including Appellate Mediators.

movement of feet? These will tell me I must change gear for this group or that group or have a quick stand up break. Probably not. But then, it is still "lecture" and the lecture parallels the manual. One hopes that eventually the students will pick up a blank spot on their own.

What to do then with regard to the role play in mediation? All mediation trainings require at least a minimum of one mandatory role play for each trainee. How can the trainer properly critique that moment when the fledging mediator misses the nuances in the role play e.g. one party "feels" annoyed, the other "appears disengaged" while neither says anything? Can this be picked up by anything other than face to face? If it is a probable NO in the minds of any of you who are reading this, then think of how on line real life mediation would be if the parties never face to face. The mediator is there to assist both parties with issues and the exploration of options. Most importantly, the mediator explores their ability to communicate with each other. This is something quite crucial in family mediation where the participants who have children will always be in some way tied to each other. How is the mediator to sense the discomfort, the change in body language, the nuance of the shift in a chair, the look in the

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eye? How can one interpret these nuances when not in the room and face to face? Most importantly, the parties have spent year(s) together. They, most of all, notice the shift and the nuance of any change. How are they to see this and how can they respond unless they are face to face?

On March 26 the Harvard Law School Program on Negotiation reported this:

“Negotiation thrives on physical presence. Handshakes, eye contact, shared meals, and long meetings in stuffy conference rooms are everyday tools of the trade, and with good reason: Negotiators who meet in person reach better deals than those who negotiate online, research shows. Face to face meetings offer invaluable nonverbal and verbal cues, such as eye contact, body language and tone of voice, that *facilitate understanding and build lasting bonds.*”

CONCLUSION

This mediator's years of experience in the field of family mediation lead to the belief that non face to face mediation, while it might be necessary, is only a very poor second best to mediations through personal contact. The alternative is tantamount to mediating by caucus for no reason other than the mediator's desire to stave off "conflict" and negotiate a settlement. While a settlement is acceptable, it is not the mediator's ethical goal. The goal of mediation is to assist the parties to an understanding that might hopefully lead to a settlement. Settlement itself is not the goal. When the parties are together, they are listening and learning of the other's concerns, fears and interests while moving forward toward a goal that is finally acceptable for them both.