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Mediation Can Offer Impartiality During Times of Racial, Cultural and Social Strife

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We are living in a tumultuous time. First, the COVID-19 crisis threatens the economic and physical health of everything and everyone we know and love. Second, we are in the midst of tremendous social upheaval. There are demands for changes to the way law enforcement is funded and how officers are trained as a result of numerous incidents of police brutality and excessive force. Third, as the school year begins, there are divisive opinions on whether educating should be conducted virtually or in person. With all of these issues bubbling about and an impending presidential election approaching, it is pivotal to hire a mediator who avoids bias and maintains neutrality.

Impartiality is the cornerstone of mediation. By definition, mediation is a process where parties can focus on resolving their conflicts rather than having to respond to input from the mediator. A mediator with an unbiased and even tone will help your

client establish trust with the mediator and focus on resolving the dispute.

How can you select an impartial mediator? First, interview a prospective mediator to determine whether their personality and demeanor are consistent with your expectations for neutrality. Ask some pointed questions on the issues that might jeopardize the impartiality of the mediator. Second, look at a mediator's footprint on social media. Arguably, a mediator who conducts themselves with a neutral stance on social media may be more reflective of impartiality than a person who posts polarizing and opinionated messages.

Third, as part of your investigation, pay attention to any disclosures or pre-existing relationships between the parties that may put you or your client at a disadvantage. If you or your client do not feel comfortable with a mediator's connection to another party, you should listen to your instincts and continue your search.



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Fourth, look for a mediator who is adaptable and flexible enough to handle situations with grace and diplomacy. It is not unusual for a mediator to conduct a mediation featuring parties that are broadly different from the mediator or parties who are different from each other.

While the legal community and alternative dispute resolution providers like JAMS are committed to continuing to build a diverse panel of neutrals, many mediators are not yet reflective of the different cultures and races of mediation participants. Mediators have traditionally been fairly homogeneous. While strides are being made to train and to hire

mediators with an eye toward diversity and inclusion, this process has not been a quick one and there is still work to be done. In the short term, attorneys need to select a mediator who is sensitive to these issues. A mediator will be digging deep in the mediation should consider a client's background and be sensitive to any disparities. This entails having well-developed listening skills on the part of the mediator and the ability to adapt to the unique perspective of a given party.

Furthermore, there are also differences in race, culture and gender among mediation participants. While there are surface differences such as one's skin color, there are also other differences that may not be so obvious and may be revealed during the course of the mediation. Political affiliations might be uncovered during a mediation. The parties may have great power imbalances as well. Sometimes there are disparities stemming from the educational backgrounds or the economic levels of the parties. For example, it is not unusual to have a lawsuit involving a CEO of a large company with an advanced degree on one side and an injured person with a high school diploma and limited financial resources on the other side. A mediator needs to be open, flexible and able to relate to all parties in an impartial way. If a mediator is not able to treat both sides with equal deference,

the mediation will feel biased and one party will feel that the mediator is favoring the party in the mediation that most closely resembles the mediator.

Fifth, select a mediator who is savvy enough to effectively manage the process. A mediator needs to be adept at screening out harmful comments and opinions, especially in this polarizing time when everyone seems to have an opinion on everything. It is common to see colleagues launch into arguments about their respective views of any of the controversial social, economic and political topics mentioned earlier. Water cooler conversations before, during and after a mediation have the ability to further polarize the differences of the parties if you do not have a skilled, diplomatic and unbiased neutral managing the mediation session.

When you interview your mediator to gauge how he or she will conduct the mediation, you should try to ascertain his or her ability to adapt to an ever-changing landscape. As nearly all mediations are being conducted virtually, this ability to adapt to the changing circumstances of the parties and the lawsuit has never been more important. There may be a hybrid mediation, where one party will appear in person with the mediator at their offices and the other party will appear virtually. Special attention should be directed to how the mediator is going to

balance this power differential. The mediator may need to make a concerted effort to connect with the party that is appearing remotely. One way to do this is to schedule pre-mediation calls or virtual sessions with the mediator ahead of time. This will help both parties build rapport with the mediator, which will enhance the prospects of resolution.

Overall, choosing a mediator who has the personality and aptitude to adjust to our changing world in a mediation is most important. Selecting a mediator who will remain impartial and unbiased yet skillfully manage the conflict remains the most important aspect of having a successful mediation during this volatile time.

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