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7 hrs
MCLE
CREDIT

MCLE Webinar Schedule:

Ethics Panel 1:

Ethical Mediation Strategies and Lessons Part 1

Time: 9:00 am – 11:00 am (2 hrs credit)

Competence Issues:

Mental Health and Substance Abuse During the Pandemic

Time: 11:15 am – 12:15 pm (1 hr credit)

Elimination of Bias:

Bias in the Law: Mitigating an Inherent Human Condition

Time: 12:30 pm – 1:30 pm (1 hr credit)

General Credit:

Mastering Mediation: Tips for Optimizing Settlement Outcomes

Time: 1:45 pm – 2:45 pm (1 hr credit)

Ethics Panel 2:

Ethical Mediation Strategies and Lessons Part 2

Time: 3:00 pm – 5:00 pm (2 hrs credit)

January 13, 2021

ADR Services, Inc.'s

Complimentary MCLE Day



Your Partner in Resolution

SESSION 1: ETHICS – ETHICAL MEDIATION STRATEGIES AND LESSONS PART 1



Presented by: Glenn Barger, Esq., David Casselman, Esq., Jake Courtney, Esq. and Pat Kelly, Esq.

- Lawyers often struggle with distinctions concerning what can, should or must be disclosed in a mediation vs. a binding arbitration vs. a court ordered Mandatory Settlement Conference. This panel will take a look at these distinctions.
 - What are the ethical limitations of mediations?
 - Can you have a case mediated by a former law partner?
 - Can you mediate a case for a family member?
- Puffery. What is Puffery and what is a misrepresentation of a material fact? Under generally accepted conventions in negotiations, certain types of statements are ordinarily made like “my client has no intention of settling today”. If you thereafter make an offer, have you misrepresented a material fact? We will take a look at Rule 4.1 and discuss hypothetical examples.
- Cassel v. Superior Court decided in 2011 set forth strict parameters of confidentiality in a mediation setting. Those parameters expand protections to pre-mediation conversations between lawyer and client even without the presence of the mediator. Similar communications during mediation cannot be discovered or admitted into evidence, notwithstanding claims against lawyers arising out of alleged mediation conduct. Panelist David Casselman was a party to the Cassel case and will share his insights on the reasons why they made the difficult choice to enforce the strict mediation confidentiality protections set forth in Evidence Code Section 1119 et seq, and why these provisions ultimately help facilitate mediated resolutions.
- In 2018 the California State Bar enacted new Rules of Professional Conduct that affect all California attorneys. Many of these Rules are new and can affect attorneys involved in mediation. The panel will discuss several of these changes including: Competence, Client confidential information; Conflicts of interest, Truthfulness; and, duties of lawyers who use remote technology.

SESSION II: COMPETENCE ISSUES – MENTAL HEALTH AND SUBSTANCE ABUSE DURING THE PANDEMIC



Presented by: Hon. Elizabeth Feffer

- **Law is an inherently stressful profession:**
 - Conflict is built-in; it's called the "adversarial system" for a reason.
 - Perfection is seen as the norm. If your client loses, it's the lawyer's fault...
 - A lawyer can always work harder...
 - Show no weakness: you exploit your opponent's weakness for a living

- **Coping mechanisms that were shut down (and may be shut down again) in the pandemic:**
 - Exercise classes: gym, yoga, kickboxing
 - Outdoor trails were even closed for a while!
 - Restaurants
 - Movie theaters
 - Visiting or attending a cultural event or venue: concert, museum, play: MOCA, Huntington Library (even the grounds), summer at the Hollywood Bowl, car show
 - Attending sporting events, whether professional, collegiate, amateur, or youth sports
 - Travel: planned vacations
 - Art classes
 - Music classes
 - Restaurants
 - Churches (even for Easter), synagogues (Shabbat, High Holy Days), mosques
 - In-person support groups, e.g. AA
 - Life cycle events: weddings, graduations, Bar/Bat Mitzvah, school or family reunions, summer camps for kids, summer school
 - Shopping

- **Professional:**
 - Loss of income to you, associates, and staff
 - Civil courts closed
 - Clients' businesses affected
 - Cancellation of Bar events and seminars

- **Personal:**
 - Illness: the virus

- Children are home from school: education and social life suffers
 - Family members moving back in (e.g. adult children who went away to college, etc.)
 - No more visits with friends, relatives (particularly those who are elderly and sick)
 - Loss of ability to participate in the religious community
 - Doctor's visits and personal care
 - Hoarding of groceries
- **Guilt:**
 - Healthy
 - Little financial difficulty
 - Enjoying spending time at home and/or with family

Key cause of stress is the uncertainty, of when will this end, and life returns to "normal."

What to do when many or most of your normal "stress reducing mechanisms" are gone?

- **Suggestions for mental health:**
 - Gratitude
 - Exercise
 - Meditation/mindfulness
 - Read a book (preferably a fiction novel)

Man's Search for Meaning, by Dr. Victor Frankl

"Meaning" is an essential part of being human. Being a lawyer or a judge is so central to who we are. It's not what we do...it's who we are. One arrives at meaning of life by:

- Creating something: a marriage, a family, a law practice, a movie, a novel, a song
- Experiencing something or encountering someone: love; other people; travel, etc.
- Choosing one's attitude, i.e. how one reacts, even in the face of tremendous suffering

Dr. Frankl referred to the "defiant power of human spirit"

SESSION III: ELIMINATION OF BIAS – BIAS IN THE LAW: MITIGATING AN INHERENT HUMAN CONDITION



Presented by: Mayra Fornos, Esq.

- **Bias: What is it really?**
 - Definition of Bias
 - State Bar Regulations and Guidelines
 - Biases are inherent
 - Bias fostered by unfamiliarity and/or ignorance
 - Bias fostered by unique circumstances

 - **Snapshot view of societal biases and how it is manifested in law firms, the courtrooms, mediations, attorney/client relationships and society Gender Bias**
 - Gender Bias
 - Ethnicity Bias
 - Disability Bias
 - Physical Disability
 - Mental Disability
 - Physicality Differences
 - Sexual Orientation Bias
 - Cultural Bias*
 - Political Bias*
 - Religious and Faith-Based Bias*
 - Additional Unconscious Biases
- * Heightened biases during the pandemic
- **The Elements of the Negative Impact of Human Bias**
 - Hostility
 - Discrimination
 - Divisiveness
 - Prejudice
 - Judgmental Attitude
 - Alienation
 - Negativity in attitude and action
 - Disrespectfulness
 - Lack of teamwork & support

- Decrease in productivity
- Decrease in morale
- Decrease in optimism
- Subjection to potential legal claims and lawsuits

- **The Solution: Problem Awareness & Mitigation/Elimination Strategies**

- Anti-Bias Training: workplace & individual training
 - Information, Education & Resources
 - Diversity & Inclusion
 - Making the team
 - Playing the game
 - Creating/Managing Harmony: the assimilation of differences
 - “e pluribus unum”...out of many, one (USA motto)
- Creating Awareness: Stop Look & Listen
 - Behavior
 - Action
- Acknowledge, Admit & Own Your Biases
 - Frame it
 - Challenge it
- Make the Necessary Changes

SESSION IV: GENERAL CREDIT – MASTERING MEDIATION: TIPS FOR OPTIMIZING SETTLEMENT OUTCOMES



Presented by: Stacie Hausner, Esq. and Hon. Richard Rico

Stacie Hausner, Esq. and Hon. Richard Rico (Ret.) will discuss how they best think attorneys can enhance their settlement at Mandatory Settlement Conferences as compared to Private Mediations. Topics will include:

- **How to Prepare and the Impact of those Preparations**
 - Know your case. Information is power.
 - Prepare your client on the role they will take in Settlement Conference v Private Mediation
 - Prepare your client that you will work collaboratively – different role than in litigation
 - Information to put in mediation briefs
 - Sharing mediation briefs?
 -
- **Potential Pitfalls and Obstacles to Avoid**
 - Anchoring Numbers
 - How and when to use creative resolutions?
 - When, how and what information to share?
 - If and when should you share your bottom line?
 - How to have your judge and private mediator to work effectively for you
 - Flexible as to process
- **Persuasive Negotiation Strategies to Enhance Outcomes**
 - Robert Cialdini's influence techniques applied to negotiation
 - Negotiation tips and tricks

SESSION V: ETHICS – ETHICAL MEDIATION STRATEGIES AND LESSONS PART 2



Presented by: Glenn Barger, Esq., David Casselman, Esq., Jake Courtney, Esq. and Pat Kelly, Esq.

- Authority to settle. The client must make the key decisions that affect the client's substantial legal rights. This would include but not be limited to whether to accept a settlement offer or whether to appeal a verdict. This discussion will address a lawyer's authority to bind the client under the laws of agency. The difference between actual and apparent authority. How to deal with authority in Class Actions and Mass Tort cases will be addressed. If a lawyer acted without authority can the client subsequently ratify the act?
- The COVID pandemic has turned our world upside down. But out of this extremely difficult time, our profession has developed Zoom mediations to a level that offers an excellent alternative to live mediations.
 - Does it also raise new issues concerning ethics and civility?
 - When the pandemic is behind us, will we want to fully return to in person mediations?
 - In what ways are Zoom mediations actually better?
- We will discuss ways to sharpen your mediation skills in ethical and civil ways.
 - How much faith do you place in your mediator?
 - Do you share all of your strategy in advance, or at all?
 - When, if ever, do you share your true "bottom line" with your mediator?
 - Do you share or acknowledge all of your weaknesses to your mediator, or do you treat him or her like an opponent?
 - Do you use your mediator to help convince your client that settlement with terms within reach would be in their best interest, or do you deal privately with your client?
 - What other tools may be available to help you settle more cases during mediations, which you may not be using to maximum advantage?
- Arbitration disclosure rules are strict and mandatory.
 - Are there similar rules governing mediations?
 - Why would there be a difference between them?
- Many lawyers take great pleasure in practicing law, yet find that their JD may also be of value pursuing more personal passions.

- Have you ever considered how you can use your training to help you advance your personal passion projects, like helping animals, or conserving the environment, or helping children, or addressing food insecurity in our community, or advocating for social changes you consider important? If you want to make a difference in the world we live in, what can you do with your legal training to do exactly that? The panel will discuss some concrete steps you can take to move in the direction of your choice, and effect positive change in our world.

Stay Connected!



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