

Mediation Training Program

Welcome!

Day 5



Welcome / Introduction of Trainers

- Timothy M. Linnehan, Esq.
 - ADR Coordinator for the Trial Court
 - Executive Office of the Trial Court
- Nnena Odum
- Josh Hoch



Housekeeping

- Problems? Text Josh at 857-719-6642
- www.mwi.org/tc-mediation-training
- Start at 9:00 AM, and end by 3:30 PM
- Stay hydrated and comfortable
- Break at 10:45 AM
- Lunch at 12:30 PM
- BIN



Group Norms

- Try new things
- Participate
- Support each other
- Don't be shy, find your voice
- Help us manage time
- Create a safe environment
- Confidentiality
- Be open-minded
- Be open to learning new things



Day 5: Mediation Training

- Confidentiality and Mediator Liability
- Rule 9 / Ethical Duties
- Ethical Dilemmas in Mediation
- Live Mediation Demo
- Challenging Behaviors - Prep
- Application - Dealing with Challenging Behaviors
- BIN List / Q&A
- Lessons Learned
- Class Photo
- Evaluation
- Closing Remarks



Introductions

- Name
- Court
- Show & Tell – no cell phones / cell phone photos



MGL Chapter 233, Section 23C

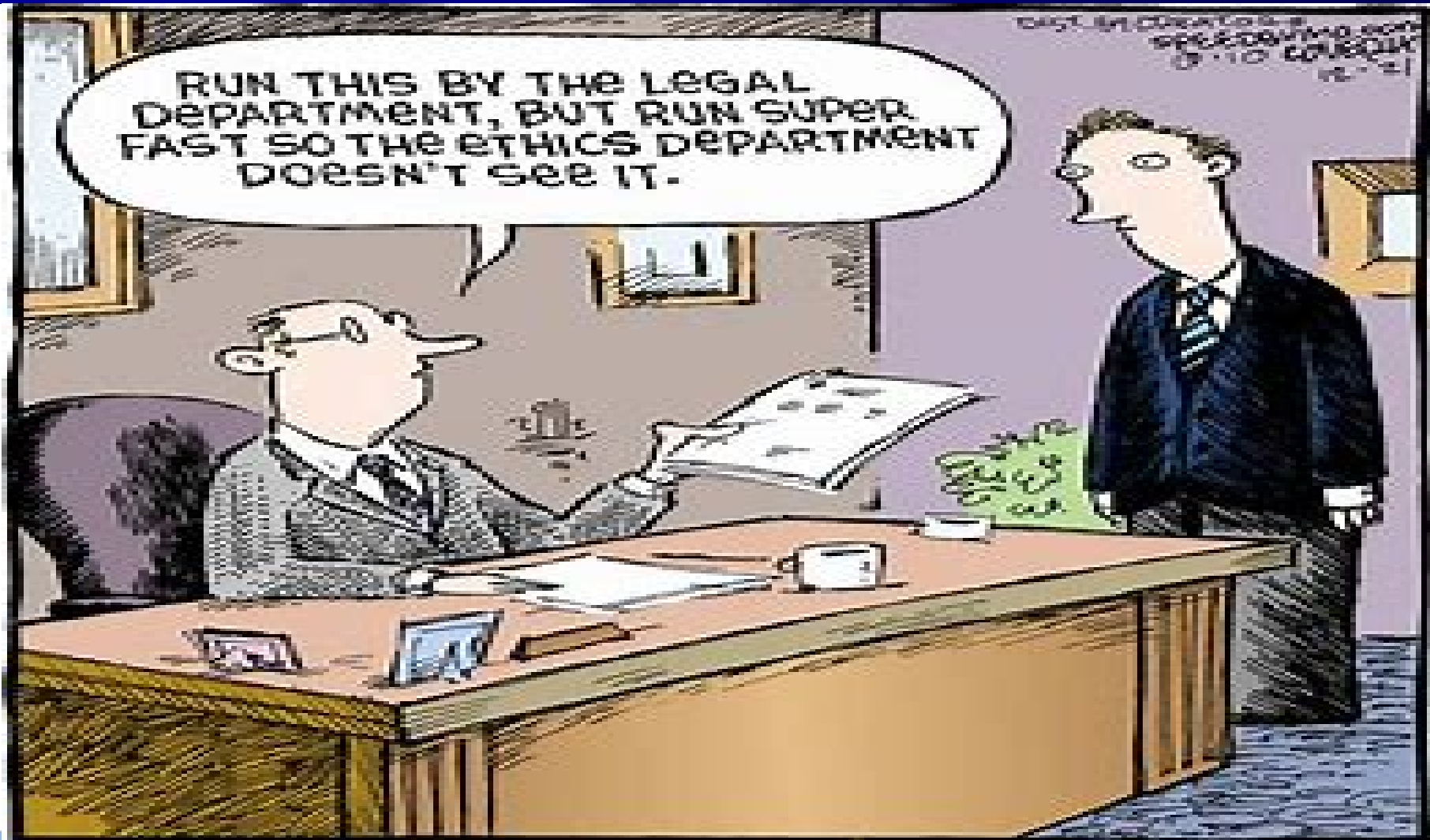
Section 23C. All memoranda, and other work product prepared by a mediator and a mediator's case files shall be confidential and not subject to disclosure in any judicial or administrative proceeding involving any of the parties to any mediation to which such materials apply.

Any communication made in the course of and relating to the subject matter of any mediation and which is made in the presence of such mediator by any participant, mediator or other person shall be a confidential communication and not subject to disclosure in any judicial or administrative proceeding; provided, however, that the provisions of this section shall not apply to the mediation of labor disputes.

For the purposes of this section a "mediator" shall mean a person not a party to a dispute who enters into a written agreement with the parties to assist them in resolving their disputes and has completed at least thirty hours of training in mediation and who either has four years of professional experience as a mediator or is accountable to a dispute resolution organization which has been in existence for at least three years or one who has been appointed to mediate by a judicial or governmental body.



Ethics



Summary of Ethical Standards

- Impartiality
- Informed Consent
- Conflict of Interest
- Confidentiality
- Withdrawal



Rule 9 - Ethical Standards

IMPARTIALITY

- Freedom from favoritism or bias in conduct and appearance
- Impartiality regarding parties & subject matter
- Withdrawal by neutral (even if there is no objection)
- No gifts, no compensation beyond court-established ADR fees



Rule 9 - Ethical Standards

INFORMED CONSENT

- Effort to ensure party consent to process & agreement
- If unable to understand, limit the scope or terminate process
- Flag unrepresented party if needed for expert info or advice
- Inform parties of the right to withdraw at anytime
- No coercion by neutral



Rule 9 - Ethical Standards

CONFLICT OF INTEREST

- Disclose all actual or potential conflicts of interest
- Examples: personal, professional, financial relationship; financial interest in subject of dispute; appearances
- When to proceed, if not significant & parties consent
- When to withdraw, if significant, regardless of consent
- Post- ADR process considerations; representation on related and unrelated matters



Rule 9 - Ethical Standards

CONFIDENTIALITY

- Maintaining confidentiality of ADR Process- what's included
- Informing parties of confidentiality
- Not disclosing information obtained in private session without party's consent
- Exceptions to confidentiality – ADR program supervision; research, training, statistics; law



Rule 9 - Withdrawal

A neutral **must withdraw**: Violation of ethical standard; jeopardizes party safety; neutral unable to be effective.

When a neutral **may withdraw**: Party not in good faith; agreement illegal; appearance of impropriety; harm to nonparty or public; not in party's and continuing the process would not be in the best interest of the parties or the program.

Must protecting all parties' safety and rights when withdrawing.



Uniform Rules on Dispute Resolution

Scenario #1

The mediator knows the lawyer for one of the parties; the lawyer was a college classmate of the mediator, and they see each other yearly at college reunions.

Questions

1. What ethical standards apply and/or would help guide the mediator in this scenario?
2. What course of action would you take as the mediator?
3. How would you do it? What would you say to the parties? (Role-play this in your small group.)



Uniform Rules on Dispute Resolution

Scenario #2

- The parties disagree about the meaning of the settlement agreement they worked out with the mediator, and counsel for Party A issues a deposition subpoena, ordering the mediator to testify about the discussion in the mediation and to bring her notes from the mediation session. Party B opposes the testifying of the mediator.

Questions

1. What ethical standards apply and/or would help guide the mediator in this scenario?
2. What course of action would you take as the mediator?
3. How would you do it? What would you say to the parties? (Role-play this in your small group.)



Uniform Rules on Dispute Resolution

Scenario #3

In a business divorce case, Partner A discloses to the mediator that she is personally about to receive a substantial contract from one of the partnership's best clients and that her partner does not know this; Partner B would balk at their 50/50 division of assets if he knew. Partner A insists that the mediator not disclose this information to him partner, or she will quit the mediation.

Questions

1. What ethical standards apply and/or would help guide the mediator in this scenario?
2. What course of action would you take as the mediator?
3. How would you do it? What would you say to the parties? (Role-play this in your small group.)



Uniform Rules on Dispute Resolution

Scenario #4

Consumer dispute with an insurance company over alleged over-charge; the mediator is currently in a dispute with his insurance company over another issue (underpayment on a loss claim.) Disclose?

Questions

1. What ethical standards apply and/or would help guide the mediator in this scenario?
2. What course of action would you take as the mediator?
3. How would you do it? What would you say to the parties? (Role-play this in your small group.)



Dealing with Challenging Behaviors - Prep

- Generate two – three challenging behaviors or challenging situations.



Mediation Demo

- Mediator: Nnena
- Attorney: Tim
- Plaintiff: Elise
- Defendant: Josh
- Facilitator: Diana



Preparation: Challenging Behaviors



Preparation: Challenging Behaviors or Situations

Groups of 4

- Create short role-play using a challenging behavior/situation
- Assign roles (husband, wife, neighbor, landlord, tenant, attorney)
 - two parties
 - two mediators – mediators will co-mediate a role-play created by another group



Mediation Fishbowl

1. What were the challenging behaviors?
2. What Worked Well?
 - Watch and create a list of skills/tools
3. What Additional Skills or Tools Might You Use?
 - Discussion



BIN / Q&A



Program Evaluation / Wrap Up

- Class Photo
- Please complete evaluations before leaving:

<https://www.mwi.org/tc-mediation-eval/>

- Certificate of Completion / Book / Photo

Thank you for taking the time to provide feedback.



Thank you!

Thank you for participating in
30 hours,
5 days
of
mediation training!

