

# Mediation Training Program

# Welcome!



# Welcome / Introduction of Trainers

- Timothy M. Linnehan, Esq.
  - ADR Coordinator for the Trial Court
  - Executive Office of the Trial Court
- Yariely Camacho, Asst. Chief Housing Specialist, Eastern Division
- Josh Hoch
- Nnena Odim



# Coaches



Elise Ramos



Alnoor Maherali



Diana Chiang



Carol Kamm



# Zoom Basics

- Problems? Text Josh at 857-719-6642
- Doomsday, 712-775-8962, Conference Code: 681708



# Housekeeping

- Start at 9:00 AM, end at 3:00 PM
- Stay hydrated and comfortable
- Break at 10:45 AM
- Lunch at 12:30 PM
- BIN
- Training Manuals – [www.mwi.org/housing-resources](http://www.mwi.org/housing-resources)



# Day 3: Mediation Training

- Confidentiality
- Rule 9 / Ethical Duties
- Ethical Dilemmas in Mediation
- Notetaking
- Role Play II
- Reaching Closure: Goals and Skills of the Final Joint Session
- Mediation Skills Checklist
- Yariely Camacho, Asst. Chief Housing Specialist, Eastern Division
- Mid-Training Evaluations



# Group Norms

- Confidentiality
- Nonjudgmental
- Participate
- Patience
- Try new (different) things
- Take risks
- Keep an open mind
- Learn from others
- Stay present
- Encourage others



# Introductions

- Groups of 2
- Name
- Share your “superpower”
- Be prepared to introduce your partner to the large group



# 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



# 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 be helpful in providing guidance for 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 be helpful in providing guidance for 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 he 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 her partner or she will quit the mediation.

## Questions

1. What ethical standards apply and/or would be helpful in providing guidance for 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; 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 be helpful in providing guidance for 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.)



# Negotiation – 17 Camels



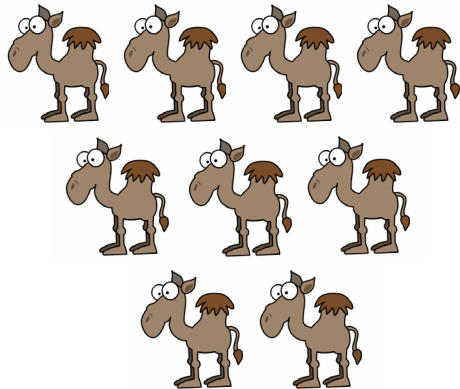
$$17 \div 2$$

$$17 \div 3$$

$$17 \div 9$$

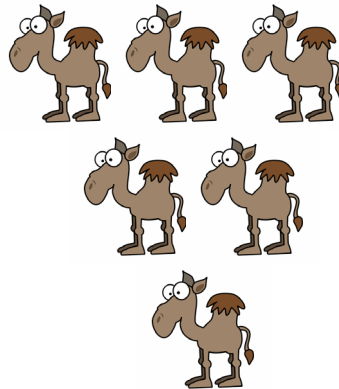
$$18 \div 2$$

The first son took his half --



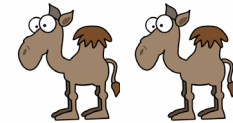
$$18 \div 3$$

The second son took his third --



$$18 \div 9$$

The youngest son took his ninth --



= 17 Camels

They had one camel left over. They gave it back to the wise old woman.



# Notes – To keep or not to Keep?

## Destroy:

- Protects the confidentiality of mediation
- Eliminates the burden on the mediator to store and secure notes
- Reduces the risk that the parties will subpoena the mediator later if negotiations fail, particularly if the mediator informs the parties in the agreement to mediate that he or she routinely destroys notes as a matter of practice



# Notes – To keep or not to Keep?

Keep:

- If follow-up sessions - refresh the mediator's recollection of the case
- Notes can be used to create case studies
- Insurance coverage says to do so
- A mediator could conceivably be charged with destruction of evidence in a criminal or federal investigation
- Because you always keep notes



# Role Play 2

11:00 AM to 12:30 PM

Introduction of Coaches

Roles:

- See [www.mwi.org/housing-resources](http://www.mwi.org/housing-resources)
- Day 2 – Role Play 1

To help with feedback: See *Questions for Observers*



# Role Play 2 – Debrief



# Final Joint Session: Reaching Closure

## Goals

- Encourage direct negotiation between parties
- Support joint problem solving
- Assist in trouble-shooting and managing remaining differences
- Confirm commitments

## How

- Set the Stage
- Focus on shared and individual interests
- Encourage collaboration.
- Problem-solve remaining differences.



# Final Joint Session: Reaching Closure

## Practice Tips:

- Let the parties talk
- Intervene to stay on track
- Focus on progress
- Discuss the future



# Mediation Skills Checklist

1. Managing the Process
2. Managing the Interactions
3. Managing the Information
4. *Managing the Technology*



# Remarks from the Expert

- Yariely Camacho, Asst. Chief Housing Specialist, Eastern Division



# Mid Training Evaluations

Please take time to provide feedback thus far:

[www.mwi.org/housing-mid-eval](http://www.mwi.org/housing-mid-eval)



# Wrap Up

- Day 4: Monday, September 18, 2023, from 9:00 AM to **3:00 PM**
- Same Zoom Link
- Catarina Andrade, Chief Housing Specialist, Metro South Division

