
Kluwer Mediation Blog

Second Letter to A Young Mediation Enthusiast

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Dear Young Mediation Enthusiast,

Last December, I sent you a letter and shared three topics of mediation, namely, (1) qualifications; (2) practice and marketing; and (3) training, with you.

Thank you for keeping in touch with me despite the pandemic. I am glad that you are still keen to start your mediation practice. Your further question on “what next after accreditation” indicates your passion for mediation practice and eagerness to learn more. Before I share further with you, I need to emphasise that the way I am managing my mediation practice is not a one-size-fits-all approach. While you are welcome to consider my approach, it is more important that you develop your own practice styles with which you are comfortable.

Upon accreditation, some mediators are keen to seek opportunities from the senior mediators with the hope to observe how real-life mediations are being conducted. I have been repeatedly approached and requested by junior mediators to provide them with chances to be observers. My usual reply is that the parties and their lawyers may not be willing to take the risk of having an additional person in the room. I trust you appreciate that one of the important features of mediation is confidentiality. The parties and their legal representatives are willing to attempt mediation probably because they treasure the importance of confidentiality. As such, it is understandable that a professional mediator may have reservation to put a mentee’s interests before the parties’ interests by persuading the parties to allow a mentee to be in the room as an observer.

As mediators, we must be able to step into the shoes of the others. By putting yourself into the position of the disputants, the legal representatives and/or the mediator, you probably will realise that unless the junior mediator possesses unique language talents or specialised knowledge on a particular area, a practising mediator may find it difficult to nudge the paying disputants and their lawyers to give green light to the inclusion of a mentee mediator in the session solely for the benefit of that mentee mediator especially when we are under the shadow of Covid-19.

Instead of requesting for observation opportunities, a young mediator may consider interviewing senior mediators with a view to gathering information on how seasoned mediators had commenced their mediation practice and have maintained a sustainable practice. One may also talk to the mediation advocates and learn from them under what circumstances will they recommend and/or engage a newly accredited mediator. While it is hardly possible for a newly accredited mediator to interview a sizeable population of disputants and prospective disputants, he/she may use the local and international mediation survey results as a reference to find out more about the expectations of

the users.

On the question of finding the first case, I would refer to Louis Pasteur's famous quote "Chance favours the prepared mind". While one may not be able to tell when the first case will come, a prospective mediation practitioner is advised to prepare (i) one's *curriculum vitae* (CV); (ii) a script on answering telephone enquiries; and (iii) a detailed letter/email explaining the fee structure and one's style of mediation; with great care.

I have recently come across a CV of a young barrister with very impressive academic/litigation credentials under the cover of a letter showing interest to be appointed as a mediator in a high-profile mediation case. Unfortunately, the CV has given me and those who are entrusted to consider her candidacy the impression that it is a template CV with no reference to the mediation experience of that barrister. As such, the perception that the prospective mediator is either too busy or does not have the necessary commitment to serve the disgruntled wholeheartedly could easily be formed.

One should not underestimate the importance of answering an enquiry call from a party or a lawyer. It is likely that the caller is not only making an enquiry but at the same time assessing the potential service provider's competence and suitability. Therefore, I encourage newly accredited mediators to form a practice group to role-play among themselves and work out appropriate ways to handle telephone enquiries. Where possible, they should work out a script to deal with possible questions raised by the caller. The script should also contain tips on dealing with emotional callers. Such a script will be particularly useful when a difficult call comes to you unexpectedly. Apart from the script, a stopwatch or a like device must be ready. As a mediator, you must be conscious not to devote too much time to one party at the enquiry stage since neutrality must be seen to be done.

Occasionally, the caller may disclose that you are a candidate mediator under consideration. If that happens, you should not ask who the other candidates are and must not black-mouth other mediators. The legal circle and the mediation community are very small. While we are promoting win-win, we must walk the talk by not taking a distributive approach to compete for a piece of work.

Since oral communication may be forgotten easily, a mediator should have the habit of preparing a follow-up email/letter after the telephone conversation. With a detailed explanation of the scope of services and fee structure, the chance of having miscommunication will be substantially reduced. A prompt follow-up correspondence will also give the recipient a positive image that the mediator candidate is highly professional. As the caller may be calling several mediators at the same time, a follow-up correspondence with all the necessary contact details will surely assist the busy caller to come back to you again.

It is common that a newly accredited mediator is not sure about the future of his/her mediation practice. As such, one may have the mindset of "let me try to see whether mediation practice is my cup of tea." While this mindset *per se* is understandable, it is not encouraged. Mediation practice requires tremendous perseverance. No matter how skilful a mediator is, one's performance in the room can easily become unsatisfactory if there is insufficient determination on the part of the mediator to walk on the tough journey with the parties. My personal view is that mediation practice is not a secondary occupation and one could hardly engage in mediation practice as a pastime rather than as a profession. So as a newly accredited mediator, you must not give the others the

wrong thinking that you look for the first case for the purpose of trying it out.

I would like to end this letter by a Chinese idiom “Distance tests a horse’s strength and time reveals a person’s heart”. Mediation practice is a long-term professional practice. One may not need to rush to get an appointment shortly after accreditation although an early appointment certainly makes one feel good. I started my first professional mediation case seven years after accreditation. While I must admit that I am a slow learner, I firmly believe that getting the job done well is a more effective marketing strategy. “Large streams from little fountains flow, Tall oaks from little acorns grow”. The big cases will come if we are able to do the small ones beautifully. The small cases will come if we are able to complete the first one properly.

As the year of 2021 is drawing to a close, I take this opportunity to wish you and all the mediators a healthy and fruitful year of 2022.

With best wishes,

Yours sincerely,

TK Iu

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