

# Kluwer Mediation Blog

## Third Letter to A Young Mediation Enthusiast

Ting-Kwok IU (Kwok, Ng & Chan, Solicitors & Notaries) · Sunday, October 2nd, 2022

Dear Young Mediation Enthusiast,

Thank you for writing to me again. Time really flies as my last letter to you was written ten months ago on 2 December 2021.

It is most encouraging to hear that you have been doing mediation cases of different nature and you find the work as a family mediator most satisfying and meaningful. I am glad that you enjoy your work and am proud of your achievements.

In your letter, you said you are shocked by a recent situation where a stepmother had displayed explicit disapproval behaviour when her grown-up stepson suggested that a mediator be engaged to help resolve their family disputes. You do not think that the suggestion itself is ridiculous and you feel upset that the stepmother and her husband still think that they could resolve the conflict without pulling in a neutral third-party professional. In your letter, you have indicated that you like to hear from a mediator with some years of practice.

Thank you very much for your trust in me. As mentioned in my previous letters, I do not have a model answer for you and other fellow mediators. What has been set out below are merely some of my preliminary thoughts:-

1. A professional should not express any opinions on what is reported in the news or on the social media platforms. The reason is that if one is too keen to give unsolicited opinions on matters that he/she has no full knowledge about, that person may be perceived negatively by others who will probably think that the mediator is judgemental, indiscreet and thinking too highly of himself/herself. No mediator would like to have such an image as that will certainly undermine his/her career as a professional neutral.
2. A professional mediator must be able to demonstrate that he/she is always ready to take on a new case no matter how small the chance may be. As such, the expression of a mediator's view on the relevant issues in particular when it is made in the public domain is in substance conflicting himself/herself out from the possible appointment.

**Do not judge a book by its cover. Likewise, mediators must not judge a person by reference to what has been quoted in a book and/or reported or on social media. Forming a view of a person without actually knowing the person and interacting with him/her is recklessly dangerous on the part of a mediator, who is supposed to be impartial. An experienced mediator understands that a person does say different things in different circumstances and the quoted statements do not necessarily reflect the personality and thoughts of the statement maker. As such, it is important for us to observe a party by way of our mediation skills such as questioning and listening.**

- 4. Although mediators are keen to share with others that mediation is an effective way of resolving disputes, a mature mediator should bear in mind that participation in mediation sessions is on a voluntary basis; and whether the parties come to a mediated settlement agreement is entirely up to them. If the mediation is conducted without all parties showing commitment to proceed, the mediator will face tremendous resistance and the mediation in question will not be conducted and run effectively and efficiently.**
- 5. The mediator's desire and enthusiasm to work on a dispute should be properly managed at the preparation stage so as to avoid giving the parties or one of them the wrong impression that he/she is overzealous to the extent that those parties who are less forthcoming in the mediation will be treated unfavourably. If one party genuinely believes that the matter could be resolved without involving an outsider, that is the choice of that party and mediators must respect that choice. A common desire to negotiate with a view to reaching a settlement is of utmost importance in mediation.**
- 6. One thing that less experienced mediators must note is that a mediator is a service provider to all the parties rather than an agent of the party initiating the mediation or a mouthpiece of the party nominating him/her as the mediator. Hence, we must not form an opinion of any individuals who are skeptical about mediation or are not ready to join the mediation yet.**
- 7. We have to remind ourselves that we should not have any negative feelings if some members of the public are not receptive to mediation yet. As peacemakers, we must reflect and consider whether we have done sufficient to promote mediation and educate the public of its features and advantages. We should also explore how we may improve our knowledge and skills to do our job better. We should also keep an open mind that refusal of mediation does not necessarily mean permanent breakdown of communication or a no-return decline of fixing the problem together. By way of illustration, the family issue may be better resolved by way of family mediation if the parties are looking for a legally binding mediated settlement. However, if the parties are looking for ways to deal with their dysfunctional communication regime and related conflicts without the need to enter into a legally binding settlement agreement, the parties may need a family therapist instead. As a professional mediator, I would love to see the growth of mediation practice but refusing mediation on the part of the potential users should not be taken as not having the sincerity to move on positively.**
- 3.**

8. Parties are entitled to think that they can handle their disputes although others may hold a different view. It is not up to us to tell them what to do or what not to do because by doing so, we have fallen into the trap of imposing our values on the parties and that will adversely affect the professional credibility of us and that of our profession.

I hope you find the above useful.

One of the most valuable life lessons in mediation for the mediators is how to be non-judgemental. I would like to end this letter with a quote from a Chinese book, *Stories Old and New*, published in 1620 – “Even an upright official has difficulty in resolving family troubles”. I consider myself not having the competence to be an upright official and thus always remind myself to remember the quote when I handle family mediation cases. We must use our best endeavours to do away the judgemental mode or otherwise, we shall face the same difficulty of an upright official.

As the Hong Kong SAR government is easing its Covid border control measures, I welcome you as well as all overseas and Mainland mediators to come to Hong Kong, which is a city with gourmet food, beautiful walking trails and endless business opportunities for entrepreneurs and professionals.

Wishing you well and a successful mediation career!

Yours sincerely,

TK Iu

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