

THE CENTER FOR MEDIATION IN LAW

New York • Columbia University Station • Box 250-555 • New York, New York 10025 • (212) 501-4044
California • 34 Forrest Street • Mill Valley, California 94941 • (415) 383-1300

To: Participants in OCA Mediation Training for Collaborative Professionals
From: Jack Himmelstein and Katherine Miller
Re: Readings in Advance of the Program
Date: February 22, 2008

We are glad that you will be joining us at the Mediation Training. In preparation for the program, we have enclosed some readings that may be helpful by way of background.

While the enclosed are not "required," we think your learning at the program will be enhanced by your reading them in advance. Enclosed please find:

- 1) A short description of the Center's Understanding-Based Model of Mediation.
- 2) Excerpts from Friedman and Himmelstein, A Guide to Divorce Mediation.
- 3) An article entitled Collaborative Law and Mediation by Barry Berkman, a New York lawyer, collaborative lawyer and mediator who works closely with the Center.

We look forward to meeting you and working with you.

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The Understanding-Based Approach to Mediation

Understanding-based mediation developed out of a desire to support persons in conflict with one another to work through their conflict together. Many forms of conflict resolution place the responsibility and authority for resolving the conflict in the hands of the professional. In the judicial system, of course, the ultimate power is with the judge who resolves a dispute by deciding who is right and who is wrong under the law. In the pre-trial negotiation of legal conflicts, the manner that most legal disputes are resolved, it is the lawyers who usually have primary responsibility for shaping the outcome, subject to their clients' approval.

Mediation is thought to be different. And while the ultimate authority to accept or reject any resolution is in fact with the parties, mediation approaches often place great power, explicitly or implicitly, in the hands of the mediator who shuttles back and forth between the disputing parties in the effort to assess the situation and broker a deal.

For us, we view the challenge facing people in conflict is how they can assume the responsibility for resolving their conflict together. Taking on that challenge is important for individuals and organizations in conflict in part because the results reached by their working through the conflict are much more fulfilling and the path taken much more rewarding. But we are also motivated by the larger challenge facing humanity to learn ways to work together to resolve the deep conflicts we face in today's increasingly interconnected world. The aspiration to search those ways has motivated us to explore a different approach embodied in what we have come to term the Understanding-based approach to mediation.

In this approach to resolving conflict, the mediator seeks to work directly and simultaneously together with the parties throughout the mediation in the effort to support their finding their resolution to their conflict. Stated most simply, we seek to support the parties in making knowing and informed choices together. We wish to do that in a way that is respectful of the parties and also fosters respect by them for themselves and for each other.

In developing this approach, we do not feel so much that we are inventing something new, but rather uncovering what is innately there in the ways that many people in conflict have often dealt with one another and, more often, have wished to be able to do so. This is an essential point, because many today would say that parties to conflict lack the desire and the ability to go through conflict together, but for us it is that perception that frequently poses the greatest obstacle.

We believe the impulse to work through conflict together is there and a natural part of the human condition. It may be nascent, buried or blocked; and it certainly receives little support in our society. But it is very much there, waiting to be tapped and given room for expression. And the same is true for the capacity of those in conflict to work through their conflict together. It may be undeveloped, but it is often readily available to those who are motivated and given the support and structure that will allow it expression. This approach to mediation seeks to tap that impulse and give expression to that capacity.