

“US Immigration and Mediation” by Adam Edward Rothwell, Esq.

Immigration and immigrant communities provide special challenges in relation to US Court proceedings. Immigrants often lack the legal status required to fully participate in US Court proceedings, and immigrants who otherwise are able to participate in court proceedings may be weary or even fearful of doing so. Immigrants may not trust the US Court system. Their country of origin may have unfair legal proceedings, and the US Court system itself may seem overly-complicated. Additionally, for immigrants with firsthand experience of removal proceedings, their personal experiences with the US Court system may be limited to negative, adversarial or even rather traumatic interactions. For these and other reasons, mediation led by qualified professional provides an excellent option to address legal issues and challenges impacting members of immigrant communities.

While legal mediation led by qualified professionals remains a formal process, participants in successful legal mediation often report the experience to be much less adversarial or stressful than actual court proceedings. And even in legal areas where potential recourse is limited, immigrants often remain wary of traditional, formal court proceedings. This may limit their ability to fully explain their position, more or less receive a favorable decision, in court. However, the impartiality of mediation combined with mediation being led by a qualified mediator (rather than a judge/jury) as well as its occurrence outside of a traditional courtroom all work together to potentially create a much less stressful environment that is relatively conducive to reaching a successful agreement.

That being said, mediation among immigrants and immigrant communities requires unique expertise, appreciation and awareness. Often a language barrier exists, which requires the mediator to either be fluent in any relevant foreign language or to contract with a qualified translator. In certain cases, both parties to the mediation may be native speakers of different foreign languages, in which case the mediator must be fluent in all relevant languages or utilize the services of multiple translators. Either way the mediator needs to ensure all parties understand all information. At the same time, the mediator must ensure the mediation session moves forward without unnecessary delay. Otherwise the mediation session will risk slowing down to the point where reaching a timely consensus is no longer possible.

Along with foreign language issues, the mediator needs to have high awareness of and experience in successfully providing assistance on behalf of immigrant communities. Culturally specific opinions and actions may play primary roles in the events that led toward the need for mediation and/or the ability to reach a successful agreement through mediation. Also immigrant communities and immigrants, especially those wary of traditional court systems, are still likely to have concerns with legal mediation, which is itself a formal process that may be completely unfamiliar to the participants. Beyond a doubt the participants to the mediation session must fully trust the impartiality and abilities of the mediator. This trust is usually only available in these circumstances if the participants believe the mediator appreciates their cultural background, heritage and sensibilities prior to the start of mediation.

There are many areas where immigrants and immigrant communities may benefit from professional legal mediation. Contract issues, land-lord tenant issues, personal injury matters, employment issues and family law matters are all areas where mediation provides the opportunity to provide substantial benefits to immigrants. Over the past several years mediation among immigrant communities has expanded as a means to reach consensus within immigrant communities. Additionally use of mediation will only grow as US Immigration increases, court proceedings become increasingly delayed/perceived as adversarial and more immigrants become aware of mediation.

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