

The Mediator as an Evaluator: An Analysis of Evaluation as a Method for the Lawyer's Reform to Mediation

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Abstract : The role of a lawyer as a mediator is to be impartial in assisting parties to arrive at a decision. This decision should be made in a voluntary and mutually acceptable manner where the mediator encourages the parties to communicate, identify their interests, assess risks and consider settlement options. One of the key components to mediation is impartiality where mediators are to have a duty to remain impartial throughout the course of mediation and uphold an "objective" demeanor with both parties. The question is whether a mediator should take on evaluative role while encouraging the parties to come to a decision. This means that the mediator would not only encourage dialogue and responses between the parties but also assess and provide an opinion on the matter. This paper submits the argument that the role of a mediator should not be one of evaluation as this does not encourage the dialogue, process or desired outcomes associated with mediation.

Keywords : evaluation, lawyer, mediation, reform

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