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3rd **AMA** Conference

Neutrality in Mediation – A Myth or Reality?

The Role of Values in Mediation

District Judge Ong Chin Rhu

NEUTRALITY AND IMPARTIALITY IN MEDIATION

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Neutrality and Impartiality in Mediation

- Neutrality in terms of relationship with the parties
- Absence of bias for any one party
- “Procedural fairness” and being even-handed in conducting mediation process

THE CLASH BETWEEN NEUTRALITY AND VALUES

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Clash between Neutrality and Values

- Values are one of the primary causes of conflict. (Moore's Circle of Conflict)
 - Terminal or life defining values
 - Day-to-day values
- Neutrality is exceedingly difficult to observe in the face of a clash of values between parties.
- Mediator's predisposition towards either party may affect strategic decisions made in conducting the mediation process.

EXAMINING THE MEDIATOR'S REACTIONS TO PARTIES' CLASHING VALUES: A CASE STUDY

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The Case of Aspire Social Services

- Non-profit organisation providing counselling and social assistance for families embroiled in divorce.
- 10 head counsellors.
- Each head counsellor leads several members.
- Harry, a head counsellor, devoted father to his two young children.
- Paul, a counsellor, young father, met Harry 5 years ago, and grew to respect him as his leader and mentor.

The Case of Aspire Social Services

- Paul saw Harry and Bessie, another counsellor, being physically intimate on several occasions. Paul confided with the organisation's Vice Chairperson.
- Harry maintains that Bessie is his and his wife's ex-classmate, and their relationship is nothing more than a platonic one.
- Private meeting between Harry, the Vice Chairperson and one other member of the Executive Committee, but no conclusion was arrived at.
- Harry commenced legal action against Paul for defamation.

Dealing with the mediator's thoughts prior to the mediation

- It is not uncommon to have unconscious mediator bias due to the mediator's assumptions.
- Importance of developing keen awareness of thoughts and emotions, as they occur, in order to maintain external and functional neutrality.
- Ways to develop mediator self-awareness:
 - Individual reflection before the mediation
 - Discussing dispute with fellow mediator
 - Co-mediation
 - Reflective mediation practice groups

Dealing with the parties' clash in values

The case of Aspire Social Services (continued)

- Paul's lawyer informed the mediators that Paul has seen Harry and Bessie kissing at a café and had taken a photograph at that time. The photograph was shown.
- Harry protested his innocence and stressed that he wanted Paul to stop bringing this up to the leadership.
- Paul shared with the mediators that he was genuinely concerned that a prominent and well-respected family counsellor was guilty of misconduct and should not continue to be in leadership.

Dealing with the parties' clash in values

- How should dissonance between the mediator's and the parties' values be resolved?
- There may come a point when a serious conflict of interests arises.
- Crucial for the mediator to develop self-awareness, in order to continue to effectively facilitate the negotiation.