

Mediator Ethics: Roles and Functions

By Diana Mercer and Tara Fass, copyright 2005
Peace Talks Mediation Services
8055 W. Manchester Ave., Suite 201
Playa del Rey CA 90293
(310) 301-2100
www.peace-talks.com

Tara Fass, LMFT, is a therapist-mediator. Before joining Peace Talks, she was a custody mediator and evaluator with the Los Angeles Superior Court. Diana Mercer, Attorney-Mediator, is the founder of Peace Talks Mediation Services in Los Angeles (www.peace-talks.com) and the co-author of *Your Divorce Advisor: A Lawyer and a Psychologist Guide You Through the Legal and Emotional Landscape of Divorce*, (Fireside 2001). Both authors wish to thank therapist Judith Roth Goldman, Ph.D., for her influence and input into the thinking behind this article.

Mediator Ethics: Roles and Functions

In any given case, a professional has one role but may have multiple functions. Many mediation professionals offer multiple services in keeping with their non-mediation education and training: arbitration, litigation, expert opinions, custody evaluations and therapy to name a few. Keeping your services within the role for which you've been hired in any particular case is key to staying out of ethical trouble.

The first step is to define the difference between your Role and your Function.

Role: The professional's role is the position for which he or she has been hired. Some examples: a professional might be a mediator, therapist for adult or child, therapist-coach, collaborative law therapist-coach, evaluator, collateral contact therapist in an evaluation, litigation attorney, mediation support attorney, collaborative attorney, business valuation expert.

Trouble starts when roles begin to blur within a single case. A therapist-mediator cannot also be a treating therapist for one of the parties or the couple. A lawyer-mediator cannot also be one party's individual attorney. A business valuation expert cannot also give tax strategies and advice. Although some mediators practice an evaluative style, they cannot act as arbitrators or ultimate decision-makers. Although many of us are hired for different roles in different cases, each of us has **only one role for each case**.



8055 W. Manchester Ave., Suite 201
 Playa del Rey, California 90293
 310-301-2100 Fax:310-301-2102
 Email: diana1159@aol.com
 www.peace-talks.com

Diana Mercer, Esq
 Attorney Mediator
Tara Fass, LMFT
 Therapist-Mediator
 Lic. #MFT 35078

Function: Although the professional has been hired for a discrete **role**: his or her position or task in a case (therapist-mediator, litigation attorney), he or she may also be able to use different skills from his or her professional background and have different **functions**, which are necessary or helpful to the client(s) within that one case, *consistent with his or her role in that case.*

What functions you will be comfortable providing within any given role are discretionary within the ethical boundaries of your underlying profession. The examples we've provided below are guidelines only, and are not necessarily where you'd set your individual boundaries with respect to functions you'd fulfill within any given role.

Example:

Therapist-mediator: Role is mediator.

Appropriate functions for therapist-mediator **Inappropriate functions**

Taking a detailed family history for the purpose of understanding the family's developmental lifecycle.

Treating the family or any individual member of it.

Identifying interpersonal dynamics in the couple's interactions that contribute to the couple's conflict

Exploring the couple's dynamic for the purpose of marital reconciliation

Identifying the consequences of the above as it affects the children in the family system

Treating the children

Translating the parties' individual and collective experiences of the conflict by putting words to feelings.

Interpreting the meaning of such experiences to a generalized context beyond the issue at hand.

Attorney-mediator: Role is mediator

Appropriate functions for attorney-mediator **Inappropriate functions**

Providing both clients with copies of statutes on a given issue

Giving legal advice to one party

making settlement suggestions

insisting on a settlement option



8055 W. Manchester Ave., Suite 201
Playa del Rey, California 90293
310-301-2100 Fax:310-301-2102
Email: diana1159@aol.com
www.peace-talks.com

Diana Mercer, Esq
Attorney Mediator

Tara Fass, LMFT
Therapist-Mediator
Lic. #MFT 35078

pointing out where differences of opinion
might exist

endorsing one option
without acknowledgment
others exist

referring both parties to several attorneys
if mediation breaks down, and stepping
down from case

representing one party
if mediation breaks down

Permissible functions are completely dependent on the role for which the professional was hired. You'll note that the "inappropriate functions" in this example are inappropriate for an attorney-mediator, but that many of them would be appropriate if the attorney was hired as a litigation attorney or advocate. Likewise, the "inappropriate functions" for the therapist-mediator would be appropriate for an individual's, couple's and/or child's therapist, depending on how the parties originally contracted for treatment with that therapist.

When you're hired for a case, be sure and define your individual role in that case, and base your functions on those which are appropriate for your role. For client requests that fall outside of your role, be prepared with solid referrals to appropriate professionals so that your role is never blurred. You'll preserve the nature of the professionalism of your role, you'll stay out of ethical trouble and you'll also provide better service for your client.