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Bilingual mediation: More than words

Bilingual mediators who speak both the language and culture of non-English-speaking parties can build trust, reduce misunderstandings, streamline proceedings, and save time and money in legal disputes where interpreters alone often fall short.

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When individuals seek relief through the legal system – talking with lawyers, filling out forms, answering questions – the process can be both frightening and overwhelming. Imagine how much more frightening it can be for parties who don't speak or understand English.

In the courtroom and in other forums, they must rely on interpreters to translate what they say and what they hear. In court, the interpreters are certified to provide translation services, and they do an outstanding job helping parties communicate with each other. But the process isn't perfect.

Trials involving interpreters can take twice as long as those without. A literal translation of words might completely miss the mark, leaving parties confused or misled. Cultural references, subtle nuances, and street slang typically don't lend themselves to direct translation.

In mediation, language interpretation can be even more challenging. Unlike court trials, for which interpreters must be certified, no certification or other qualification is required in mediation. Anybody – a friend, a relative, a co-worker – can serve as an interpreter; there is no assurance that translations are correct.

With a heightened need for trust between parties and their mediator, introducing a translator into the process can result in just the opposite: greater distance and mistrust be-



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tween parties and mediator. This is why a bilingual mediator – in all types of legal cases – can be an absolute game-changer.

Rapport, connection

Imagine a non-English-speaking worker who claims her employer short-changed her overtime pay. She believes that her coworkers – all of whom speak English – were properly paid and that she was singled out because of her culture and ethnicity. She speaks with her attorney through an interpreter and waits for his words to be translated for her. The interpreter also translates between the worker and the mediator, another person of authority she doesn't know or trust.

For a plaintiff who is understandably emotional, aggrieved or angry, it's frustrating to play a game of telephone as her words pass through several layers before they are understood and processed. By the time they've made the rounds, her original words have lost both their urgency and their pathos.

The key to settling cases in mediation is more than merely communicating; it is building trust between participants and the mediator. Imagine that instead of interposing an interpreter into the process, the mediator herself speaks and understands the plaintiff's language. She immediately knows what the plaintiff is saying and can likely sense what isn't being said. She can build

a level of rapport with the plaintiff not possible for those who don't speak the language. She can react with empathy in real time to a plaintiff who recounts perceived abuse, harassment, helplessness or despair.

Yes, a qualified interpreter can communicate the words being spoken between parties and their mediator, but this is not the same as building trust. Sometimes the extra interpretive layer actually builds a wall between them.

Idioms, nuances

Parties often need to vent in their native language, and they will use idioms to convey additional meaning and context. But grasping those nuances is tricky. An interpreter who

translates idioms word-for-word may be accurate, but their translation could be meaningless, even producing a good laugh.

Different Mexican states have not just different idioms and accents, but different cultural nuances. A mediator with this level of expertise can understand the party's primary language and build trust in ways not available through an interpreter. Knowing the meaning and intent of an idiom can make all the difference in a particular case.

"Por si las moscas," literally translated, means "for if the flies." It is really intended to mean "just in case." In one mediation, this idiom was important for an employee who claimed that he recorded a crucial conversation with the defendant "just in case." In another mediation, a supervisor had told the disabled employee "ponte las pilas" – literally, "put your batteries on." He really meant "get you act together."

When parties in these cases realize that the mediator understands their idioms, they breathe a sigh of relief; their demeanor changes from worried to relaxed. One plaintiff, after the mediator nailed a translation, exclaimed, "precisamente, mil gracias" or "precisely, 1000 thanks."

Cultural understanding

Having lived in Mexico, we all understand that interpretation is not just about the language but also about the culture. How money changes hands, how elders are treated, how social roles define expectations – this and so much more can be learned not from books but from living in the society and observing the way people interact. An interpreter may have excellent knowledge of words but completely lack this other important element of the language.

We know that when a party in mediation uses a pejorative term to refer to their opponent's indigenous heritage, it can have racist overtones. Sadly, even south of the border, people may look down on those with darker skin. A mediator who relies on an interpreter to translate words will have no clue about how offensive they might be – nor will counsel, unless they happen to understand these cultural checkpoints. Mutual appreciation of a shared culture helps parties and mediators connect on an emotional level.

Mediators (like the authors) who grew up speaking both English and Spanish learned from an early age to be ambassadors between two cultures. They learned to meld American ideas and culture with Mexican history, traditions and customs. These experiences can provide an additional bridge between the sides in a legal dispute.

Risks

There are many benefits to fostering communication between a party and a mediator, but using a bilingual mediator as interpreter requires attorney buy-in. The attorney might rightly ask, Why is it good for me? My case? My client?

In one recent case, when the plaintiffs' attorney saw how easily her clients were able to speak with the mediator, she not only gave her blessing to using the mediator as an interpreter, she also trusted the mediator to translate her clients' comments for her.

But attorneys might feel disadvantaged by the language divide. Should they let the mediator serve as translator between themselves and the client? Should they be able to trust the mediator's translations?

It may be important for the attorney to have an interpreter present. That interpreter can help the attorney advise the client better and can also translate for the attorney when the mediator talks to the

client. It could be someone from the attorney's firm, or it could be an independent interpreter whose cost would need to be factored into the mediation equation.

Comfort

When the mediator speaks the client's language, both the client and the attorney can relax. The client is relieved to know that someone understands them; they are much more comfortable with the mediation process. They feel heard in a way not possible with a mediator who does not speak their native language.

The attorney can also take comfort from seeing tension lowered and rapport built with the mediator. The entire process now becomes more efficient because they can actually focus on the case.

Savings

A bilingual mediator can spare parties not just stress and frustration, but also significant time and money. Without the need for an interpreter to provide ongoing translations, the entire process moves much more quickly.

A bilingual mediator can not only engage in dialog with the parties, she can also provide independent review of documents and texts written in the client's language. Her understanding of both the language and the culture means that less will get lost in translation.

Finally, when the cost and coordination of yet another professional are removed from the mix, the final cost of the mediation will be far lower. A bilingual mediator can make the entire process less expensive and more efficient.

Conclusion

In a recent case, a non-English-speaking party alleged elder abuse against a family member. That party needed to vent, and they needed to vent directly to someone who would understand exactly what they were saying. It was a messy case, but it finally settled with a mediator's proposal after the vents were heard and acknowledged.

Family, probate, employment, business, real estate – just about every type of case can be better resolved when a bilingual mediator engages directly with non-English-speaking parties. Whether the client speaks Spanish, Farsi, Mandarin or another language, unique cultural and idiomatic nuances are critical to the dialog.

A mediator who is fluent in both the language and the culture can smooth the path toward resolution. They can understand and respond in real time, removing a layer of translation that easily doubles the length of the mediation. Cultural and emotional intelligence helps build trust, reduce tension, and lower mediation costs.

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