

## TRANSFERENCE IN MEDIATION

Mediation & Arbitration Section

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**Y**our case is set for mediation. You and your client appear at the appointed hour, pleasantries are exchanged, and the parties present respectful opening statements. But after the mediator moves the group into private sessions, your client announces that he is unwilling to continue with mediation.

You and the mediator are befuddled — neither of you has seen nor heard anything that might be interpreted as offensive. After some intense questioning, your client blurts out that he believes opposing counsel is a “bad person,” and that he is not going to allow “someone like that” to dictate his future. What is going on here?

Among numerous possible explanations, you should consider whether transference is behind this sudden change in attitude. Transference is an unconscious defense mechanism whereby feelings and attitudes originally associated with important people and events in one’s earlier life are attributed to others in current interpersonal situations. When we first encounter a person who reminds us of someone else, we may infer, unconsciously, that this person is indeed like a “significant other” (whether a lover, friend, relative, or other influential person).

Transference is a form of Freudian psychological projection; however, it is also a type of organizing activity — our subconscious mind uses transference to assimilate interpersonal relationships into the thematic structures of our personal subjective world. Transference allows us to process new information quickly, but often inaccurately.

When faced with such “irrational” behavior, the mediator and counsel might consider the transference dynamic and whether it is blocking a participant’s full participation in the mediation. Perhaps the client was reminded of a significant person when he confronted opposing counsel.

Of course, the justice system does not recognize the concept of transference. Lawyers are trained that each case is to be evaluated on the facts and applicable legal guidelines. In our example, it would be tempting to tell the client that he needs to focus on the matter at hand. We can also envision another scenario in which precious time is spent exploring — in agonizing detail — the client’s childhood experiences in an effort to unearth an explanation for the client’s reversal.

We suggest a more balanced approach that acknowledges the



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client’s negative feelings or attitudes but also seeks to move beyond these feelings and attitudes as soon as possible. In other words, do not ignore or belittle the psychological issues, but do not dwell on them, either. The mediator does not have to “solve” these problems for the participant, but she can ask the participant how she might

help him overcome the obstacle.

There are innumerable psychological factors, such as transference, that can influence the outcome of a mediation session. Rather than declare an impasse when we are faced with an “irrational” participant, or browbeat that participant back into the negotiations, we believe mediators and counsel should

seek empathetic understanding of that person’s feelings and attitudes if they are to confront (and resolve) the real issues in the dispute.



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