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## **California Senior Legal Hotline's Mediation Department – Q&A**

### **(1) How long has the CA SLH Mediation Department been in existence?**

The SLH Mediation Department began taking referrals in February of 2005. A blueprint idea for telephonic mediation created by SLH Managing Attorney David Mandel was put into play by SLH Staff Attorney Sean Rashkis in the fall of 2004. Mr. Rashkis built the program by coordinating trainers, recruiting law students, drafting necessary forms, etc.

### **(2) How many referrals has the CA SLH Mediation Department handled since Feb. 2005?**

We have received close to 200 referrals since the program began last year. We currently average about 13 referrals a month.

### **(3) Of these referrals, how many were resolved?**

Of those referrals, about 40 were resolved. With the program still in its infancy stage, the model of mediation was recently switched to transformative mediation. This new style recognizes that timing is of the essence in resolving conflicts. The goal is to get parties on the phone together to discuss their concerns as soon as possible. With this new model, the number of referrals resolved is expected to rise.

### **(4) Where do referrals come from?**

All referrals come from within SLH. If an advocate feels that a caller can benefit from engaging in mediation with a second party, a referral is made to the mediation department. Mr. Rashkis takes the referral and schedules a mediator.

Notice of the program was sent to all local senior legal services programs around the state, inviting them to refer clients specifically for mediation. There has not been any significant response so far. But even if this occurs, as a matter of policy, SLH has decided that callers should first speak to an advocate for advice before internal referral to the mediation department.

### **(5) What types of cases are referred for mediation?**

There is no set list of cases that we look to refer for mediation. We mediate landlord/tenant issues such as three-day pay-or-quit, eviction, maintenance issues, consumer issues, neighbor disputes, family concerns and many others.

### **(6) How does the mediation process work?**

When a referral goes to the mediation department and a mediator assigned to the case, the senior is informed when to expect a call from the mediator. Mr. Rashkis sends out a letter to the second party, notifying him or her that the senior called regarding the conflict, explaining what SLH is and what the SLH Mediation Department is. The second party is informed when the mediator will attempt to make contact. The second party is also encouraged to contact Mr. Rashkis directly beforehand with any questions or if the scheduled time is not convenient.

In the initial phone conversation, the mediator explains his or her role as a mediator, the mediation process, and finds out what is going on from both parties' perspectives. If both parties

agree, a conference call mediation is set up. For more complex cases, the mediator may schedule additional one-on-one phone calls first.

For the mediation, a conference call feature is used for the two parties and the mediator to be on the phone at the same time. There is no pressure to put an agreement in writing. If the dispute involves money, it is offered and encouraged. If an agreement is put in writing, the mediator drafts the document and sends it to both parties for review. If any changes are needed, this can be communicated by phone. Once the agreement is finalized, each party signs his or her respective agreement and sends a copy back to SLH. From there, one copy is kept on record and one is sent to the opposite party so each party has an agreement with the other party's signature on it.

**(7) What is transformative mediation?**

Transformative mediation involves **empowerment** and **recognition**.

**Empowerment** – involves the mediator supporting one party's communication to another party on how a situation has effected him or her and what can be done to resolve it.

**Recognition** – when a party experiences empathy for the conflict and the other party's perception of that conflict.

Transformative mediation recognizes that nobody enjoys being in conflict. With conflict comes a feeling of inadequacy. **Empowerment** moves people from a position of weakness to a position of strength, while **recognition** moves people from self-absorption to collaboration and understanding. The parties control the process and the mediator holds the parties accountable for their actions.

**(8) What is the benefit of using the telephone for a mediation?**

For our senior clients, many of whom are isolated socially, economically, or geographically, the ability to resolve a conflict by a conference call is a comforting option. Seniors have the option to resolve the dispute where they choose. The stress of having to drive to a neutral site or mediation facility is eliminated.

**(9) What lessons have been learned from this experience?**

While the use of the phone is very convenient and can allow for efficient resolution, sending correspondence through the mail can grind the process to a halt. When we began the project, mediation agreement and confidentiality forms, along with a waiver for second parties, used to be sent out before any referral moved forward. But this process caused mediations to take weeks to get going because either the senior party or second party would often not return the forms in a timely manner. As a result, the longer the referral dragged out, the more likely one or both parties would lose interest in the process or belief that mediation could be a benefit.

We decided to focus on getting the parties on the phone with one another more quickly. That meant doing away with agreement/confidentiality and waiver forms. The recent results are very positive.

**(10) Without a waiver form, how does a second party know his or her mediator is truly unbiased and not an advocate for the senior?**

The initial letter to the second party now includes a boldfaced sentence, informing her or him that the mediator does not serve as an advocate for the senior. The second party is also made aware during the first phone conversation with the mediator and has the opportunity to ask any questions.

**(11) Can you tell us some success stories?**

Sure. Here are a few:

a. A senior called regarding a reverse mortgage she took out on her home, giving the proceeds to one of her grandsons. The grandson was supposed to use the money to build on her property and improve her home. Some of the money was meant to help the grandson pay off some debt he owed. He began working on it, but stopped and informed her he would no longer do any work. The two had not talked with one another for months.

Both parties agreed to mediate. During the mediation, the grandson made it clear that he was not comfortable that one of his aunts (one of senior's children) came out of nowhere and was demanding to know her interest in the property. The grandson was under the impression he would do the work on the house, with no charge for his services, in return for the house being left to him. He was concerned that the aunt would want to sell the property, while he wanted to keep it within the family.

The grandson explained he walked away from the job after he was told he would not get an interest in the home. He also said the aunt was making threats to report him to the state contractor's licensing board.

The senior was not aware of all this and felt badly. She expressed an interest in working on communication with her grandson. She also asserted her right to have the reverse mortgage paid back. An agreement was reached where the grandson would pay back \$35,000 with a 7 percent interest rate. The agreement also said both parties would get together on a regular basis to work on communication. This agreement was drafted and signed by both parties.

b. A senior owed an attorney fees for working on a conservatorship case. The senior believed she was overcharged by the attorney. With the assistance of a SLH volunteer mediator, the attorney and senior met and agreed to an amount that the senior could pay and the attorney would accept for work done. This agreement was drafted and signed by both parties.

c. A hospitalized senior, represented by her son, was facing three-day notice to pay-or-quit. The son was almost a month late with the rent payment. Mediation was set up between the son and landlord. The landlord agreed to not file a three-day notice in exchange for a due date to pay the late rent. The mediation offered the landlord an opportunity to inform the son that he does not want to evict the son and is sensitive to the senior's health concerns.

**(12) Can I contact your office with further questions regarding this program?**

Sure. Any time.

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