

A Little Help From Mediation

Before coming to the U.S., I did not imagine that a company could successfully offer mediation as its main service. I didn't know there was such a thing as a professional mediator, and that someone could dedicate their life to resolving conflicts and make a living from it. After coming to the U.S. and participating in the JAMS Foundation's Weinstein International Fellowship program, I've changed my mind. During my time as a JAMS Weinstein Fellow, I realized that mediation is not just a good idea; it is serious and hard work. It requires capable, skilled professionals with a full-time commitment to dispute resolution.

In Ecuador, I served as the deputy director of the Arbitration and Mediation Center for Quito's Chamber of Commerce — the largest such organization in the nation. I had both academic and practical training as a mediator, and authored a book on dispute resolution under Ecuadorian law. As a Weinstein Fellow, however, I was able to broaden my arsenal of negotiation techniques to include best practices from long-time professional practitioners in the U.S.

Perhaps the one major outcome of my time as a Weinstein Fellow is the creation of the Ecuador Project, which will be funded by the JAMS Foundation and run by Mediators Beyond Borders. I am volunteering a significant amount of time to this project, which will help develop ADR in Ecuador as a professional service.

Mediation in Ecuador has traditionally been considered a pro bono activity. Almost every mediation center is economically dependent on a nonprofit institution and lack of funding leads to inactivity. The field has relied on international funding for any attempt of development and once funding runs out, its fruits disappear.

Under this vision, mediation is offered at no cost or for a nominal fee. For example, one of the most important commercial ADR centers in Ecuador used to charge \$30 for administrative fees and \$3.50 for the mediator's hourly rate. This approach implied that the Center was paying to provide the service. Since it needed to become self-sustainable, mediation was reconceived from a pro-bono activity to a charged service. Even though the administrative fees increased only to \$100 and the mediator's hourly rate to no more than \$25, many of the service customers objected "about the 300% increase". The new costs became revolutionary for the market. Other community mediation

centers, including the court annexed program, offer mediation for free.

With such low rates, it is really difficult for any professional to commit to mediation. The few mediators in Ecuador are usually young attorneys who have a full-time job at a law

firm and the mediator usually meets the parties during the conference. The settlement hovers around the 30 percent rate. Regrettably this model has regarded mediation in Ecuador as a second order dispute resolution mechanism, and its ineffectiveness has prevented the mechanism to "take off."

A wide range of Ecuadorian ADR leaders have expressed their commitment and are enthusiastically involved in the mentioned MBB's Ecuador Project. Since they represent public agencies, the private sector, universities and nonprofit organizations, the wide impact the project promises will lead to lasting results in the Ecuadorian practice of mediation.

After a first assessment trip, the project has developed into three main prongs. The first consists of an online virtual resource, which

intends to resurrect prior efforts to generate a network among mediators, and more importantly to create a space for the free exchange of information among Ecuadorian and American professional mediators.

After some progress on this "virtual" introduction, the second prong of the project envisions a symposium that will provide continued education to professionals, and to communicate mediation as an important tool for the courts and the community. The symposium, which will be replicated in Quito, Guayaquil and Cuenca, plans to count on the participation of the Ecuadorian courts, for which we are actively working with the Ministry of Justice in Ecuador. Finally the third prong has an outreach component, in which we will work for the development of peer mediation (unknown in Ecuador) or the training of justices of peace (a legal figure not put in practice yet).

Hopefully, at its conclusion, Ecuadorian professionals will realize that a commitment to the field does not necessarily lead to extreme poverty, and the judges, the courts and the communities will deposit their trust on mediation as an adequate mechanism for conflict resolution.

Today I am convinced that if mediation is developed in Ecuador, we need the highest quality of professionals committed fulltime. It is time to professionalize mediation in Ecuador. With the support and commitment from the JAMS Foundation and Mediators Beyond Borders, I'm working to accomplish this mission.

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firm and can devote only limited time to mediation. Then, the process usually consists of a one- to two-hour meeting once a week. These meetings can extend for several months in really complex cases. Of course with this limited commitment, nobody arranges a pre-conference call, there are no mediation