



Elimination of Bias in Zoom Mediations

Accommodating Parties and Counsel with Hearing Disability

US District Court . Central District of California . ADR Program . Mediation Practice Group Meeting

Phyllis W. Cheng . January 14, 2021

Art by Paddy Ladd, Overcome with Colors, 11x14 inches, oil on stretched canvas (2012)

Mediator Roles

- ❖ Independent contractor or volunteer
- ❖ Business establishment

Art by Nancy Rourke, First Time Meet, 20x16 inches, oil on canvas (2018)



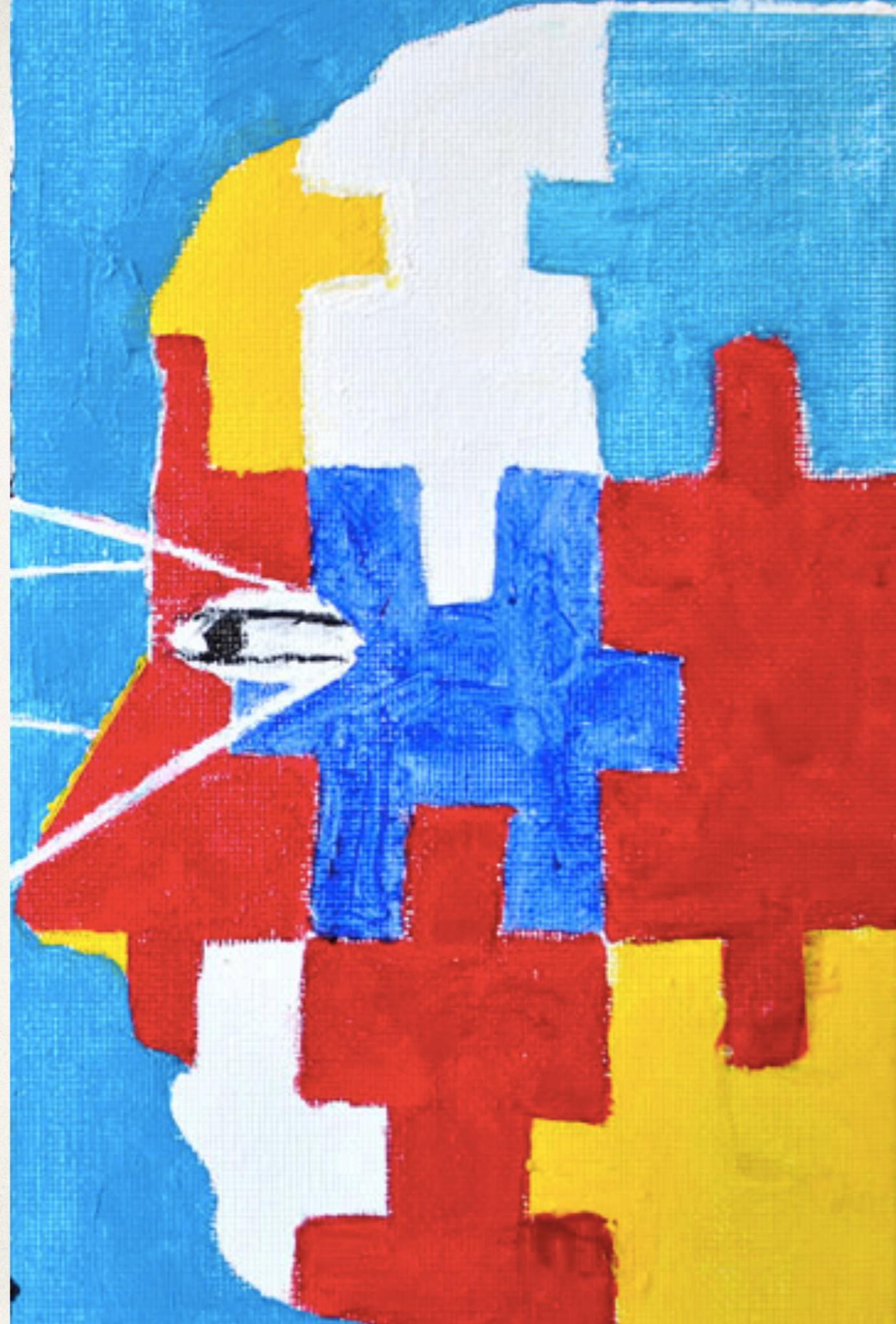
703 x 950

Mediator as Business Establishment

The California Unruh Civil Rights Act (Cal. Civ. Code §§ 51-52) provides protection from discrimination by all business establishments (i.e., law and mediation offices) in California, including, but not limited to:

- ❖ Hotels and motels
- ❖ Non-profit organizations that have a business purpose or are a public accommodation
- ❖ Restaurants
- ❖ Theaters
- ❖ Hospitals
- ❖ Barber and beauty shops
- ❖ Housing accommodations
- ❖ Public agencies (including courts)
- ❖ Retail establishments

Art by Nancy Rourke, How Much Do I Understand, 11x14 inches, oil on canvas (2013)



Unruh Act Protected Categories

Prohibits discrimination on the basis of:

- ❖ Sex
- ❖ Race
- ❖ Color
- ❖ Religion
- ❖ Ancestry
- ❖ National origin
- ❖ Disability (also protected under the federal Americans with Disabilities Act (ADA) (42 U.S.C. 12101 *et seq.*))
- ❖ Medical condition
- ❖ Genetic information
- ❖ Marital status
- ❖ Sexual orientation
- ❖ All arbitrary and intentional discrimination

Art by Nancy Rourke, How Much Do I Understand, 11x14 inches, oil on canvas (2013)



Unruh Act Remedies

- ❖ Statutory damages
- ❖ Out-of-pocket expenses
- ❖ Cease and desist orders (ADA also)
- ❖ Damages for emotional distress
- ❖ Punitive damages
- ❖ Attorney's fees (ADA also) and costs
- ❖ Court-ordered damages may include a maximum of three times the actual damages

Art by Nancy Rourke, Sign Internationally, 8x10 inches, oil on canvas (2013)





Case Study

Zoom Mediation Involving Deaf Plaintiff and Hearing Disabled Attorney

Art by Nancy Rourke, Just A Minute, 20x30 inches, oil on canvas

The Facts

Action by deaf homeowner alleging that her homeowners' association (HOA) refused to reasonably accommodate her with an American Sign Language (ASL) interpreter at two board meetings. Instead HOA told homeowner that she would have to pay for and bring her own interpreter. Homeowner alleged HOA engaged in disability discrimination under the Fair Housing Amendments Act, Fair Employment and Housing Act, and Unruh Civil Rights Act. HOA alleged its board had engaged in the interactive process by promising to speak slowly at the meeting, and alleged it was not required to provide an ASL interpreter at its board meetings.

Art by Nancy Rourke, Deaf Entertainers, 8x10 inches, oil on canvas (2010)



Reasonable Accommodation Request for Mediation

- ❖ American Sign Language (ASL) interpreter for deaf plaintiff (\$418 and up half day)
- ❖ Communication Access Realtime Transcription (CART) reporter for hearing disabled counsel (\$735 full day and 9 cents per minute for live streaming)



Resources at the Central District

- ❖ ADR Program
- ❖ Administrative Staff Interpreters
- ❖ Electronic Court Recorders

Art by Nancy Rourke, Are We Much Different? 8x10 inches, oil on canvas
(2010)



The Interactive Process

- ❖ Zoom caption and chat as alternative
- ❖ Phone relay service as alternative
- ❖ ASL interpreter as reasonable accommodation
- ❖ CART reporter as reasonable accommodation

Art by Nancy Rourke, Audism v. 4, 8x10 inches, oil on canvas (2010)



Zoom Mediation with Reasonable Accommodations

Mediation Confidentiality Agreements

- ❖ Counsel
- ❖ Parties
- ❖ ASL Translator
- ❖ CART Reporter
- ❖ Court Administrators Shadowing

Art by Nancy Rourke, Deafmute 8x10 inches, oil on canvas (2010)



Zoom Mediation with Reasonable Accommodations

Breakout Rooms and Participants

❖ Plaintiff's Room:

- At all times: plaintiff, counsel, ASL reporter, CART reporter
- When plaintiff not in private caucus: mediator, shadowing court administrators

❖ Defense Room:

- At all times: defendant and counsel
- When defense not in private caucus: mediator

❖ Court Administrators' Room:

- When not in plaintiff's room: court administrators
- Mediator: when not in defense room, or when dropping off or picking up court administrator to and from plaintiff's room

Art by Nancy Rourke, CODA Talk, 11x14 inches, oil on canvas (2011)





Post-Mediation Debriefing

Leave breakout rooms open for post-mediation debriefing

Art by Nancy Rourke, Understanding Deaf Culture, 30x40 inches, oil on canvas (2010)



The Result: Case Settled

Injunctive relief of policy changes and training, plus monetary settlement

Art by Nancy Rourke, Unity of Deafhood, 8x10inches, oil on canvas (2010)