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Necessary improvement of the brazilian autocompositive system: proposals for changes in the training of conciliators and mediators

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Abstract: This article aims to expose reflections on the autocompositional system in Brazil. Its objective is to formulate a proposal for remodeling the syllabus of the Training and Training Course for Conciliators and Mediators, because a well-structured training for the professional, which also introduces general notions about

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the mental universe of the human being, can guarantee self-composing sessions in a more complete way. Using the deductive method, based on descriptive research, it is concluded that such reformulation needs to be carried out, as a way of giving effectiveness to the Brazilian autocompositional system.

Keywords: Autocompositional system. Reformulation. Effectiveness. Empowerment.

1. Introduction

The reformulation of the procedural system in Brazil should start from the proposed change in the Course for Formation and Qualification of Conciliators and Mediators, with the purpose of awakening and developing in the professional conciliator/mediator a look that seeks to observe beyond what is apparent in the way of acting communicate and behave of individuals.

The presence of unconscious psychic aspects in the formation and resolution of conflicts, as well as the understanding that there is a strong tendency to transfer and interpret one's own contents as belonging to the other, reveal great tangles while these mechanisms are unknown by the conciliator/mediator, making it a better training of these dialogue facilitators is necessary, which is expected to be achieved by encouraging more complete training.

Based on these reflections, this paper aims to present a complementary suggestion to the Formation and Training Course for Conciliators and Mediators. Mainly in view of the understanding that knowledge about the emotional universe guarantees greater control over the reactive responses, that may appear during conducting a conciliation/mediation session, acquiring a better condition to identify any uncomfortable feelings, avoid overload and, essentially, allow a truly impartial performance.

2. Training of conciliators and mediators in the current brazilian autocompositive system

It is essential to think about training that values the integral preparation of the professional conciliator/mediator, including with regard to their psychological preparation, since they will face very delicate situations that are being experienced by the parties. If the conciliator/mediator is not well trained or does not have the necessary knowledge of its scope, limits and unconscious situations that may emerge during the sessions, its attitudes may even cause a deterioration in the quality of the existing relationship between those involved.

A well-structured training for conciliators/mediators, which introduces general notions about the mental universe of human beings and presents a didactic way of understanding psychic functioning, enables conciliation/mediation sessions in a more complete way. This understanding allows the professional to learn to deal better with the frustrations that occur during the sessions, making them more patient and understandable.

It should be noted that the themes apply to both conciliators and mediators, considering the differentiation between professionals brought about by article 165, paragraphs 2 and 3, of CPC/15, given the fact that the issues addressed here are intended to propose an important complement in the training of the professional who works in the sessions, regardless of whether or not their performance is more active, with regard to proposed solutions to disputes, or whether or not there was a previous bond between the parties⁶.

⁶ Lei nº 13.105, de março de 2015. *Código de Processo Civil*. Available in: <https://www2.senado.leg.br/bdsf/handle/id/507525>. Access: April 19, 2022.

Such an explanation is justified by the fact that Brazilian civil procedural law presents the figure of the conciliator as a third party who acts as a negotiator, also without a decision-making function, but quite interactive, using self-composition techniques, in the search for composition between those involved in the conflict, through an agreement, through proposals and counter-proposals that are brought up during the session, especially in situations where there was no previous bond between the participants.

The mediator, on the other hand, appears as a third party who also acts using self-composition techniques and his theoretical knowledge to stimulate creative dialogue between those involved in the controversy, in order to rescue the respectful relationship, considering the existence of a previous bond between the parties. In mediation, the intention of transforming the conflict is usually more present, so that it can be deconstructed, going beyond its mere punctual resolution, with its final purpose.

Considering these premises, it is possible to verify that any person, older and capable, has the potential to develop the essential skills to act as a conciliator/mediator. It is essential, however, to obtain a good understanding of the institutes, in addition to participating in an appropriate Training and Qualification Course for Conciliators and Mediators, which is why it was concerned to present a complement to the training requirements already listed by the CNJ in the Resolution 125/10 and the Mediation Law.

This is because the Mediation Law and the Brazilian Code of Civil Procedure propose a policy to expand self-composition practices, encouraging conciliation and mediation, whether in a judicial or extrajudicial manner, through the awareness of the parties, judges, lawyers, public defenders, members of the Public Ministry, among others.⁷

Currently, for a person to act as a conciliator/mediator within the scope of the Judiciary, he/she must meet the Curriculum Guidelines presented in Annex I of Resolution 125/10 of the CNJ, as well as comply with the requirements set forth in Law of Mediation, edited on June 26, 2015, under nº 13.140, which brings in its provisions the requirements for the performance of the judicial mediator to be possible. Subsection III dealt with the subject in articles 11 to 13:

Art. 11. A capable person who has graduated at least two years ago from a higher education course at an institution recognized by the Ministry of Education and who has obtained training at a mediator training school or institution recognized by the National School of Training and Improvement of Magistrates - ENFAM or by the courts, observing the minimum requirements established by the National Council of Justice together with the Ministry of Justice.⁸

In addition, article 167, paragraph 1, of CPC/15, provides that the conciliator or mediator may request registration in the National Register, in the Register of the Court of Justice or the Federal Regional Court, provided that the minimum qualification requirement is met, by taking a course at a duly accredited entity, in

⁷ BEZERRA JÚNIOR, J. A. "O Direito e os Meios Consensuais de Resolução de Conflitos: o nexo entre a formação discente e a atuação profissional", *Novos Estudos Jurídicos*, v. 27, n.º 1 (2022), pp. 110-126. Available in: <https://periodicos.univali.br/index.php/nej/article/view/16413>. Access: August 26, 2022.

⁸ Lei nº 13.105, de março de 2015. *Código de Processo Civil*. Available in: <https://www2.senado.leg.br/bdsf/handle/id/507525>. Access: April 19, 2022.

accordance with the curriculum parameter defined by the National Council of Justice in partnership with the Ministry of Justice.⁹

Thus, the interested party is required to have civil capacity, training in a higher education course, at least two years ago, in an entity duly recognized by the Ministry of Education, in addition to training in a body for training conciliators/mediators, who meet the conditions defined by the CNJ together with the Ministry of Justice.

However, article 9 of the Mediation Law allows, extrajudicially, mediation to be carried out by any person who has civil capacity, confidence of the interested parties and who considers himself in a position to preside over the session, without any requirement as to the due qualification by entity duly recognized by the CNJ.¹⁰

It should be noted that the requirements laid down in art. 11, cited above, are certainly imposed with the aim of guaranteeing operational efficiency, organizing and standardizing the services provided through mediation sessions, which should also be extended to conciliation sessions. It is indispensable that everyone who identifies with the exercise of mediation/conciliation undergo a complete Training and Capacity Building, which will certainly only bring positive instruments that will enable a good performance.

There is thus a great incentive to train new conciliators/mediators and consensual forms of conflict resolution, in order to make the parties involved aware that, with the help of a dialogue facilitator (whether conciliator or mediator), they will be able to solve many of their problems, even easing the overload situation of the Brazilian procedural system.¹¹

Despite the fact that the self-compositional institutes, for a long time were linked to the unbureaucratized and informal practice, it is certain that the institution of regulations for mediation and conciliation has been constant in Brazil, with a view to the better applicability of these consensual mechanisms, being it is extremely important that there is an awareness of the relevance of training, although the certainty remains that mediated dialogues will continue to exist outside the law.

Article 12, paragraph 3, of CNJ Resolution No. 125/2010 establishes that the courses aimed at qualification, training and improvement of professional conciliators/mediators must meet the curricular guidelines presented by the CNJ in Annex I, being necessary, without fail, to be complemented by a supervised internship of 60 (sixty) hours.¹²

Annex I of the aforementioned Resolution presents a very important list of minimum topics that need to be studied, reflected on and improved so that the conciliator/mediator can have a good basis to chair the sessions. The programmatic content is composed of subjects that deal with the origin of the consensual means of solving conflicts of interest, as well as the presentation of the main Brazilian

⁹ Lei nº 13.105, de março de 2015. *Código de Processo Civil*. Available in: <https://www2.senado.leg.br/bdsf/handle/id/507525>. Access: April 19, 2022.

¹⁰ Lei nº 13.140, de 26 de junho de 2015. *Lei de Mediação*. Deals with mediation among individuals as a means of resolving disputes and on the self-composition of conflicts within the scope of public administration; amends Law No. 9,469, of July 10, 1997, and Decree No. 70,235, of March 6, 1972; and revokes § 2 of art. 6 of Law No. 9,469, of July 10, 1997.

¹¹ VITORELLI, E.; BORTOLAI, L. H. "(In) devido processo: precedentes e tecnologia em um sistema judiciário sobrecarregado", *Novos Estudos Jurídicos*, v.26, n.º 1 (2022), pp. 375-405. Available in: <https://periodicos.univali.br/index.php/nej/article/view/17590>. Access: August 26, 2022.

¹² *Resolução nº 125, de 29 de novembro de 2010. Conselho Nacional de Justiça*. Deals with the National Judiciary Policy for the adequate treatment of conflicts of interest within the scope of the Judiciary and other measures. Text compiled from the wording provided by Amendment No. 01/2013, Amendment No. 02/2016 and Resolution No. 290/2019. Available in: https://atos.cnj.jus.br/files/resolucao_comp_125_29112010_19082019150021.pdf. Access: December 30, 2021.

legislation, namely, Resolution 125/2010 of the CNJ, the Code of Civil Procedure edited in 2015 and the Mediation Law, which came into effect in 2015.

The material also works on the principle of access to justice, the change in mentality and the relevance of the quality of care provided by dialogue facilitators (conciliators and mediators). Trainees are presented with the structures of the CNJ, NUPEMEC and CEJUSC. They also have contact with the way conciliation or mediation sessions are designated, in accordance with CPC/15, as well as matters related to training and remuneration are dealt with.

The theme of the culture of peace and the national and international panorama of conflict resolution methods are also explored. As well as possible alternative resolution procedures, such as negotiation, arbitration, the judicial process, hybrid processes, in addition to the own mediation and conciliation. Justifying itself due to the globalization scenario that has changed paradigms and stimulated the creation of new understandings and concepts, striving for agility, tranquility and necessary certainties for the effectiveness of the delivery of the judicial.¹³

The Theory of Communication is approached together with the conceptual premises of self-composition, as well as the definition of the Modern Theory of Conflict. More in-depth classes on consensual mechanisms for conflict resolution - negotiation, conciliation and mediation - are taught, including basic and intermediate techniques that exist to assist in the positive outcome of sessions and methods of formalizing agreements.

The training also presents the different areas of use of conciliation and mediation, such as consumer, work, family, criminal, social security, school, environmental, health, condominium, business, etc. different spheres of knowledge that support such practices.

Finally, an attempt is made to study the role of procedural subjects, namely, conciliators/mediators, magistrates, lawyers, members of the Public Ministry and the Public Defender's Office, the parties, attorneys, among others, being presented, in addition to moreover, the Code of Ethics for trainees, extremely relevant content to ensure integrity and quality performance.

The Escola Paulista da Magistratura - EPM, an entity duly qualified to provide Training Courses for Conciliators and Mediators, has included in its list of subjects addressed the "Oficina de Pais e Filhos", with a view to the humanization of Family Justice. It should be noted, however, that there is a list of entities qualified to provide the Training Course in the State of São Paulo and that the EPM was used, in this work, only as an example.

The "Parents and Children Workshop" is a very important topic to be studied by professionals in training. As it is a preventive, educational and multidisciplinary program aimed at families going through the restructuring phase, motivated by the breakup of the marital bond, whose objective is to help those involved to deal with the difficulties inherent to this stage of life, avoiding greater traumas, especially for younger children.¹⁴

As a novelty, Escola Paulista da Magistratura - EPM included subjects related to self-knowledge, systemic posture and orders for help in its course program. This initiative demonstrates the concern to provide training that will enable the future conciliator/mediator to improve their ability to deal with the conflicts presented by the parties.¹⁵

¹³ BONA, C. D.; CARDOZO, J. F.; PILAU SOBRINHO, L. L. "Direito Transnacional e o Estado: novas formas de solução de conflitos (público e privado) ante as novas perspectivas para o direito", *Novos Estudos Jurídicos*, v. 26, n.º 3 (2022), pp. 875-893. Available in: <https://periodicos.univali.br/index.php/nej/article/view/18330> . Access: August 26, 2022.

¹⁴ Tribunal de Justiça de São Paulo. EPM – Escola Paulista da Magistratura. *EPM realizará novo curso de formação de mediadores e conciliadores*. 27 ago. 2019. Available in: <https://epm.tjsp.jus.br/Noticias/Noticia/58623>. Access: December 30, 2021.

¹⁵ Tribunal de Justiça de São Paulo. EPM – Escola Paulista da Magistratura. *EPM realizará novo curso de formação de mediadores e conciliadores*. 27 ago. 2019. Available in: <https://epm.tjsp.jus.br/Noticias/Noticia/58623>. Access: December 30, 2021, p. 39.

Self-knowledge guarantees the facilitator of the dialogue extremely important instruments for interacting and dealing with himself and with the others involved in the session, in a neutral, impartial and empathetic way. Likewise, the inclusion of systemic content enables the introduction of relevant and complementary methods, which effectively contribute to the resolution of controversies.

Notions linked to the systemic posture add more knowledge to the conciliator/mediator in order to facilitate the identification of the reasons why there was an imbalance that caused a certain conflict between the parties. It is, therefore, another means that seeks to help the understanding of the existing tangles that may negatively influence the relationship of those involved in a given problem.

In this way, considering the importance of the integral formation of future conciliators/mediators, the Formation and Qualification Course should be recognized as a necessary requirement for anyone interested in becoming a facilitator of dialogue or, even, who has an approximation with self-composition institutes, and not only serve as a requirement for those who claim to exercise their functions within the scope of the Judiciary, in accordance with the provisions of Article 11 of the Mediation Law.

Another essential circumstance to be analyzed concerns the performance of conciliators. Despite Annex I of CNJ Resolution 125/10 presenting the Curricular Guidelines required for the basic training of both conciliators and mediators, as well as the complementary training proposal also covering these two professionals, it has been requested, when opening vacancies for the actions in the CEJUSCs of the State of São Paulo, that only the mediator has trained for at least two years in a higher education course at an institution recognized by the Ministry of Education.

The condition established for mediators is extremely valid, however, it should also be extended to conciliators, mainly because they have a very participatory and interactive attitude during the sessions, and may even "[...] suggest solutions to the dispute, being prohibited the use of any type of constraint or intimidation for the parties to reconcile", according to § 2 of art. 165 of CPC/15.¹⁶

It should also be noted that the Chambers of Conciliation and Mediation existing in Brazil have sought to present professionals with excellent CVs, demonstrating their concern in carrying out additional training, in order to enable a better quality service to those interested in participating in the consensual procedure.

However, it appears that professionals are still not aware of the need to carry out studies aimed at understanding the mental universe, in order to develop a biopsychosocial vision, with its meaning of understanding the human being as a whole, mainly because they work in an environment in which you work directly with people, regardless of the chosen line of action (business, family, consumer, restorative, labor, etc.).

It should be noted that, just as an example, some academic and professional data will be presented below regarding certain mediators working in Chambers of Mediation, Conciliation and Arbitration installed in Brazil, which were also chosen at random, only with in order to show that. Although the working professionals have a vast and relevant technical curriculum, there is no interest in contemplating studies about the functioning of mental life, which would help in conducting the sessions more completely.

Mediator Nathalia Mazzone's curriculum was taken from the platform of CAMARB – Câmara de Mediação e Arbitragem Empresarial Brasil (Business Mediation and Arbitration Chamber Brazil), established in 1998, which manages conflicts, including those between Public Administration, through arbitration, business mediation and dispute board (destined for to the prevention or resolution of conflicts arising from contractual performance):

¹⁶ Lei nº 13.105, de março de 2015. *Código de Processo Civil*. Available in: <https://www2.senado.leg.br/bdsf/handle/id/507525>. Access: April 19, 2022.

NATHALIA MAZZONETTO

Graduated in Law from PUC/SP (2004), specialized in Civil Procedure and Arbitration at Università degli Studi di Milano (2005 - Milan / Italy) and in Intellectual Property at Università Commerciale Luigi Bocconi (2005 - Milan / Italy) and at College of Law at GV - GVLaw/SP (2006). She has a master's degree (2012) and a doctorate from USP (2016), with her line of research on both fronts in arbitration (third parties and arbitrability of Intellectual Property disputes). He did a master's degree at USP with the support of FAPESP. Studied Applied Digital Law at FGVLaw (2018). He participated in numerous and renowned training and training courses in Mediation, in Brazil, Argentina and the USA, promoted by institutions such as INTA, CPR, ICFML, Harvard Law School, ABPI, IMAB and others. (CAMARB, 2020).

Likewise, it was decided to demonstrate, just as a random example, the curriculum of a mediator working at CAMES – Câmara de Mediação e Arbitragem Especializada, which promotes the resolution of property, financial and contractual disputes extrajudicially, with the use of mediation, arbitration and dispute board:

MARCELO GIRADE CORRÊA

Advanced Mediator, certified by the Institute for Certification and Training of Lusophone Mediators – ICFML, Judicial Mediator since 2002, Professor, Lecturer, Managing Partner of M9GC – Conflict Resolution Training, Instructor in Negotiation, Mediation, Conciliation and Advocacy in Mediation before several State Courts and Labor in Brazil, as well as institutions such as CNJ, TCU, AGU and ENAM. Graduated in History. Postgraduate degree in Social Psychology from the State University of Saint Petersburg – Russia and in Judicial Administration from FGV. Founding member of ICFML Brazil. Coordinator of the Graduate Program in Conflict Mediation and Arbitration at the Center for Legal Studies at College Unyleya. Member of the Advisory Board of the National School of Mediation and Conciliation of the Ministry of Justice, member of the Brazilian Institute of Collaborative Practices and member of the Advocacy in Mediation and Technical Training of Mediators and Law Operators subgroups at IMI-Hub Brasil. Member of GEMEP – Private Business Mediation Study Group of the Brazilian Arbitration Committee and of the Scientific Commission of the 2017 International Congress on Business Mediation, organized by GEMEP. Author of articles and co-author of works in the area of conflict resolution, such as the CNJ Judicial Mediation Manual and the Conflict Resolution Manual for Company Representatives of the National School of Mediation and Conciliation.¹⁷

To finalize the illustrative list of some mediators working in Brazilian private chambers, the curriculum of a mediator who works at CBMA – Centro Brasileiro de Mediação e Arbitragem, established in 2002, with the Associação Comercial do Rio de Janeiro as its founders, will be mentioned. ACRJ, the National Federation of Private

¹⁷ CAMES. *Câmara de Mediação e Arbitragem Especializada*. Available in: <https://www.camesbrasil.com.br/mediacao/>. Access: April 22, 2022.

Insurance and Capitalization Companies - FENASEG and the Federation of Industries of the State of Rio de Janeiro - FIRJAN:

ALEXANDRE PALERMO SIMOES

Lawyer, Mediator, Negotiator, Facilitator and Teacher. Founding partner of Ragazzo, Simões, Lazzareschi e Montoro Advogados (1990). Certified Mediator by De Família (2011), Mediaras (Buenos Aires, 2011), Advanced Mediator by ICMFL (São Paulo, 2015), by ALGI Mediação (2016) and Certification (Advanced Mediator - Level III) by IMI - International Mediation Institute, in progress. Graduated from the Faculty of Law of USP (1987) and Postgraduate from the same University, in Commercial Law (1989). Participated in the continuing education course "The English Legal System" at the University of Cambridge (1988); He studied Negotiation Techniques from the "Scotwork Negotiating Skills" (2009) and obtained an "Advanced Negotiation" certificate from the University of California-Berkley (2010). Teaches "Negotiation Techniques" and "Negotiation and Communication Strategies" for postgraduate students at FIAP (Faculty of Informatics and Administration in São Paulo); lectures on "Business Mediation" at the Postgraduate Course (LLM in Business Law) at CEU-IICS (Center for Extension in Law of the International Institute of Social Sciences), and on "Business Mediation," "Negotiation" and "Arbitration" at Advance Câmara, at Pretel Mediações Condominiais and at Centro Mediar e Conciliar. He is a member of the CBar – Brazilian Arbitration Committee (acts as co-coordinator of the Study Group on Private Business Mediation - GEMEP); member of the Mediation Council of the Center for Mediation and Arbitration of the Brazil-Canada Chamber of Commerce (CAM-CCBC) and is an Associate of AASP and IASP.¹⁸

It is observed that both the Judiciary Power and the Private Chambers of Mediation and Conciliation tend to pay attention to the need to present a multidisciplinary field of action, composed of jurists, administrators, psychologists, among others. It happens that, even in the face of the possibility of the parties opting for a conciliator/mediator with a background in Psychology. Or even choosing such a professional to assist as co-conciliator or mediator, what is defended is the importance that everyone who attends a Training Course for Conciliators and Mediators have in the programmatic content, including general notions about the psychic universe.

In this way, it is verified the indispensability of being studied in the Formation and Qualification Course for Conciliators and Mediators, especially after the class destined to the conflicts and their theories, as will be exposed in the sequence, the themes that stimulate the understanding of the dynamics and the functioning of the human mind, ensuring a more complete training for future professionals.

3. A complementary proposal for the training of conciliators and mediators

¹⁸ CBMA. *Centro Brasileiro de Mediação e Arbitragem*. Available in: <http://www.cbma.com.br/index.php?t=pagina&a=arbitros&tip=2>. Access: April 22, 2022.

It is understood that more complete training, qualification and improvement is essential for professionals who will apply self-composition means, because there is already an ingrained culture among Brazilians in the sense of delegating the resolution of their problems to the State-judge.

Faced with this scenario, it is essential that conciliators and mediators be able to disseminate a cultural change. In the sense of disseminating that, interlocutions based on healthy dialogue are the best alternatives to resolve countless conflicts inherent to life in society, in order to avoid the emotional exhaustion that occurred with the processing of the judicial process and with the length of time.

In addition, professionals need to be aware of the importance of the Education and Training Course, in order to acquire sufficient knowledge, so that they can be qualified to chair conciliation and mediation sessions efficiently. Complement which is why it is argued that this training would be extremely relevant in its programmatic content, taking advantage of the interdisciplinary approach between Law and Psychoanalysis.

Starting from these premises, for a complementary training, the Course of Formation and Qualification of Conciliators and Mediators would remain divided into two stages. Consistent in the theoretical phase, with the inclusion of general notions regarding the mental universe of the human being, transposing the load hours for 60 (sixty) hours, instead of the forty hours indicated by the Curricular Guidelines of the CNJ, with the permanence of the practical module, corresponding to the supervised internship of 60 (sixty) hours. Totaling the minimum workload of training and qualification in 120 (one hundred and twenty) hours, and not just one hundred hours, as is currently the case.

Thus, the following themes would be developed in the syllabus contained in the Curriculum Guidelines presented by Resolution nº 125/10 of the National Council of Justice:

- a) Historical overview of consensual conflict resolution methods. Brazilian legislation. Law of Special Courts. CNJ Resolution No. 125/2010. Code of Civil Procedure. Mediation Law;
- b) The National Judiciary Policy for the adequate treatment of conflicts. Access to justice. Cultural change. Structuring - CNJ, NUPEMEC and CEJUSCs. The conciliation and mediation hearing at CPC/15;
- c) Culture of peace and conflict resolution methods, with an approach to the national and international scenario. Autocomposition and heterocomposition. Dispute resolution procedures, such as negotiation, conciliation, mediation, arbitration, court proceedings and hybrid processes;
- d) Communication Theory/Game Theory. Communication axioms. Verbal and non-verbal communication. Active listening. Communication in interaction guidelines and in the study of human interrelationships: sociological and psychological aspects;
- e) Modern Conflict Theory. Concept and structure. Objective and subjective aspects. Training of conciliators and mediators. Quality of care;
- f) The relevance of interdisciplinarity between Law and Psychoanalysis. The importance of understanding the emotional universe for the application of self-composition mechanisms. Sigmund Freud and the contributions of the psychoanalytic method. The emergence of Psychoanalysis;
- g) Mental processes according to psychoanalysis. Topographic theory of the psychic apparatus. The structural model of personality and the second topic of the psychic apparatus. Ego defense mechanisms and possible situations experienced in conciliation/mediation sessions. Personality theory and childhood sexuality. Stages of personality development. The psychodynamics of the mind: transferences and countertransferences. Self-compositional mechanisms and Psychoanalysis in practical cases: the mental universe and its unconscious processes;
- h) Self-awareness on the part of the conciliator/mediator. Knowing a little more about psychic development. A holistic view. Empathy as a fundamental element for mediation. Remuneration of the conciliator/mediator;

- i) Negotiation. Concept. Integration and distribution of value in negotiations. Basic negotiation techniques (bargaining positions; separating people from problems; focusing on interests; developing win-win options; objective criteria; best alternative to negotiated agreements). Intermediate negotiation techniques (strategies for establishing rapport; turning opponents into partners; effective communication; non-violent communication);
- j) Conciliation. Concept and philosophy. Judicial and extrajudicial conciliation. Conciliation in CPC/15. Techniques (recontextualization, identification of implicit proposals, caressing, active listening, mirroring, production of option, packaging of questions and interests of the parties, reality testing, etc.). Completion of reconciliation. Formalization of the agreement. Essential data of the conciliation term (qualification of the parties, identification number, nature of the conflict, etc.). Drafting of the agreement. Minimum requirements and feasibility. Referrals and statistics. Stages (session planning, presentation or opening, clarification or investigation of the parties' proposals, creation of options, choice of option, drawing up of the agreement);
- l) Mediation. Concept and philosophy. Judicial and extrajudicial, prior and incidental mediation; Steps – Pre-mediation and Mediation itself (reception, initial statement by the parties, planning, clarification of hidden interests and negotiation of the agreement). Techniques or tools (comediation, recontextualization, identification of implicit proposals, formulation of questions, active listening, production of option, packaging of questions and interests of the parties, reality test or reflection, among others);
- m) Areas of use for conciliation/mediation. Business, family, civil, consumerist, labor, social security, criminal, restorative justice, among others. Involvement with other areas of knowledge;
- n) Interdisciplinarity of mediation. Concepts from the different areas of knowledge that support the practice: Sociology, Psychology, Anthropology and Law. Workshop and Parents and Children;
- o) The role of the conciliator/mediator and their relationship with those involved (or agents) in conciliation and mediation. Operators of the law (the magistrate, the prosecutor, the lawyer, the public defender, etc.). Techniques to encourage lawyers to act efficiently in conciliation/mediation. Overcoming difficulties: situations of imbalance, emotional imbalance, drunkenness, disrespect;
- p) Ethics of conciliators and mediators. The third facilitator: functions, posture, attributions, performance limits. Code of Ethics – CNJ Resolution 125/2010 (attached).

The Theoretical Module is also composed of didactic material made available as handouts, introductory works (manuals, books, articles, texts, etc.). However, it would also serve as a contribution to the new model of Formation and Training Course, the inclusion of suggestions that present some films, videos and songs that would help the future professional to associate and think about the situations that may be experienced during his/her performance as a conciliator /mediator, which would encourage him to reflect on emotional dynamics in a playful way.

As a proposal, therefore, here are some films: "O Clube da Felicidade e da Sorte", which portrays some family conflicts, from one generation to another; "Se Eu Fosse Você", for addressing the existing difficulties in the face of differences between the sexes; "The Sharing", because it explores the situation of loss, division and misunderstandings; "Primo Basílio", for showing situations of love and marital betrayal.

One can also indicate "O Quatrilho", for announcing facts experienced before the end of a marriage; "A Partida" (The Departure), for enabling an analysis of death, life and the consequences of the absence of one of the parents; "Um Crime de Mestre", for presenting a situation of crime of passion, in the face of non-acceptance of betrayal; "Vizinhos", for revealing passages of disagreements between nearby

residents; "Relatos Selvagens", for addressing cases of violence, revenge and traffic fights.

Thinking about relevant videos that can be easily extracted from the YouTube platform, "Who do you want to have dinner with" is suggested, as it allows reflections on empathy and new perspectives; "The Art of Optimism", which portrays situations experienced in old age, such as loneliness, patience, losses; "Patch Adms - Love is contagious", for addressing contact with emotions and the importance of active listening.

With regard to the indication of songs, which would also collaborate with the reflections in a playful way, we can mention "Ciranda da Bailarina", by Chico Buarque, from which themes such as awareness, imperfections, idealization can be thought of; "Primavera", by Tim Maia, which allows associations with issues related to reconciliation and divorce.

Complementing the list of songs is "Não Enche", by Caetano Veloso, which portrays the Negative Theory of Conflict and its possible effects on the rupture of the affective bond; "Do Fundo do Meu Coração", by Adriana Calcanhotto, which addresses decision-making and stages of grief in separations; "Food", by Titãs, through which themes related to heritage and consumerism can be worked on.

There is no doubt; therefore, that the conciliator/mediator needs to awaken great confidence in the parties, so that they feel that the professional has sufficient qualifications, skills and knowledge to allow the satisfactory performance of his work. Likewise, it is important that the professional be seen as a person with emotional balance, capable of really helping those involved in resolving the conflicts experienced.

Therefore, the understanding of the emotional universe, through the concepts of Psychoanalysis developed by Sigmund Freud, encompassing relevant considerations regarding psychic determinism, psychoanalytic instances such as consciousness, pre-consciousness and unconsciousness, in addition to the *id*, *ego* and *superego*, would help a lot in the training of conciliators/mediators.

Also based on these complementary contents, the conciliator/mediator would acquire conditions to think broadly about the situations that arise, that is, manifest contents and latent contents, considering that the manifests refer to what is being treated explicitly, while the latent ones are those that are present, between the lines, due to their origin being little conscious or unconscious.

By acquiring notions about the existence of ego defense mechanisms, the conciliator/mediator will reach a greater understanding about the possible interference of protective forms of mental balance. Which will enable more efficient ways of managing their behavior; their reactive emotional responses, as well as how it will manage to acquire better management conditions with the situations presented by the parties.

Initial knowledge about the stages of development of the human being's personality, as well as the possibilities of more elaborate or complicated processes, will provide a holistic view, stimulating more empathetic and professional postures in the handling of each conciliation and mediation session.

The contents related to possible transferences and countertransferences, cornerstones of Psychoanalysis, contribute to the understanding of the reasons why some conciliation/mediation sessions are carried out with good performance, while others take place in a tumultuous way.

This material presented, and recreational topics such as films, videos and music, would certainly enable a more complete training of the conciliator/mediator. In addition, it is up to the future professional to understand the importance of self-knowledge and stick to this topic with a view to enabling better performance, as well as understanding how empathetic work brings positive results, as will be clarified below.

4. Conciliator and mediator's self-knowledge

Still thinking about the most complete formation of the conciliator/mediator, in order to develop a quality work it is necessary that he obtain a theoretical, methodological and technical background, accompanied by a certain knowledge about himself, through self-reflection. Thus, it will have enough content to understand and face the issues presented in the sessions it presides over.

Self-reflection provides a better understanding of the path of life, in addition to providing tools for the conciliator/mediator to identify and discriminate between what belongs to him and what belongs to the other, allowing him to proceed in a truly impartial manner.¹⁹

Possessing some knowledge of the psychic world is a central point for the conciliator/mediator to begin to recognize and assume their anguish, their fears, their determinations, their feelings, only then will they be able to act with empathy, willingness and humility, so as not to put in the share your inner difficulties. From this movement, it will be possible to notice relevant changes in the way of approaching high-stress situations, as well as a more mature, self-responsible, less defensive and more adaptive daily behavior.

It is important to emphasize that it was necessary for Sigmund Freud to follow a trajectory marked by observation, listening and reflection so that he could present to science concepts of great relevance such as the unconscious, transference, resistance, slips of the tongue, among many others, thus highlighting , the method of Psychoanalysis discussed here.

For that, Freud starts to look inside himself, carrying out a kind of analytical listening through the interpretation of his own dreams, which allowed him to enter into the complexity of the unconscious, to understand its functioning.²⁰

In this respect, it is essential that self-knowledge be based, including, on the dream content, considering that, through this procedure, the understanding of very relevant situations that are part of the psychic life of each analyzing person will be made possible.

Dealing with what he called self-observation, Sigmund Freud portrays the importance of the existence of a concentrated attention, being relevant that a position of rest is assumed and, mainly, that the criticism regarding the thoughts that come to be expressly declined, and the behavior must therefore be entirely impartial.²¹ (

These observations pointed out by Freud have already shown themselves to be a paradigm shift in science presented until then, since Freud himself is involved in the process of forming his theory, starting from self-analysis. Through it, together with clinical cases, he proves the strength of mental life and its unconscious processes that interfere in people's daily lives.

Self-knowledge and knowledge about mental organization are relevant tools for interaction and dealing with oneself and the other. Therefore, it is important to understand the functioning of the human mind, which is based on a complex interaction between biological, psychological and social elements.

¹⁹ MARUCCO, N. C. A "Análise do Analista: análise didática, reanálise e autoanálise", *Jornal de Psicanálise*, v. 41. n. 74 (jun. 2008), pp. 187-196. Available in: http://pepsic.bvsalud.org/scielo.php?script=sci_abstract&pid=S0103-58352008000100013&lng=pt&nrm=iso. Access: January 26, 2022, p. 192.

²⁰ TOREZAN, Z. C. F.; AGUIAR, F. "O Sujeito da Psicanálise: particularidades na contemporaneidade", *Revista Mal-Estar e Subjetividade*, vol. 11, n. 2 (2011). Available in: http://pepsic.bvsalud.org/scielo.php?script=sci_arttext&pid=S1518-61482011000200004. Access: December 28, 2021.

²¹ FREUD, S. *O método de interpretação dos sonhos: a análise de uma amostra onírica*. Tradução do alemão de Renato Zwick. Revisão técnica de Tania Rivera. Ensaio biobibliográfico de Paulo Endo e Edson Sousa, L&PM POCKET, Porto Alegre, 2013. Available in: <https://drive.google.com/file/d/1Ay2M-g-kDX7DVJHo6OMOVf9TaB6tCRqS/view>. Access: October 13, 2022.

Three phenomena must be considered when evaluating the psychological state and human behavior. The first is that behavior or emotional state vary greatly with age. The second is that psychological development does not proceed uniformly and, finally, the third refers to the culture in which each person is inserted, with its peculiarities.

For the conciliator/mediator to ensure a good self-composition procedure, it is essential that he acquire, at least, notions about mental life. Other topics will be presented below, with the aim of demonstrating to the conciliator/mediator how much the emotional aspects, often unconscious, influence every human being from the beginning of life, which proves the complexity involved in psychic development.

5. Knowing a little more about psychism development

The child, when he arrives in the world, necessarily needs care and affection, finding himself in an environment in which the parents will bring psychic inheritances, including from other generations, both positive and negative. In this sense, Flávio Fortes D'Andrea clarifies that "since conception, the individual is already a unique being, whose characteristics came from factors inherited from parents"²².

From birth, therefore, the human being develops within a group, usually the family group, which becomes the basis of his constitution as a subject. In this sense, Correa elucidates, "the family group is the privileged space of unconscious generational psychic transmission that underlies the construction of subjectivity."²³

Under these conditions, the family group necessarily contributes to the process of internalization and socialization, and over the years, other groups begin to interact, such as recreational, educational, professional groups, providing important references of identity, belonging and affection.

Thus, the individual must be thought of as a meeting place of multiple and complex determinations, be they family, cultural, historical, social, which causes his constitution to occur from his relationships with others who preceded him, taking into account the intergenerationality and transgenerationality, as well as the integrations and incorporations resulting from its development.

Intergenerationality refers to the mental inheritance of the child's parents, with their experiences, causing them to be transmitted in some way. Thus, the passage from one generation to another leads to modifications of what was disseminated, creating links that are processed within the psyche of each individual.²⁴

Still in this context, parents also bring the legacies they received from their ancestors, called transgenerational, which, likewise, contribute to the transmission of content to the child. Therefore, they can be re-edited in the parents and, from then on, in their children, in a combination that involves at least three previous generations of the family, in a continuous game of mutual rejections, perverse, prohibitive, psychotic contents, as well as values, expectations, ambitions, etc.²⁵

As an example, cases of recurrent suicides in the same family can be cited, which may be related to genetic predispositions that condition aggressive and impulsive personalities, the occurrence of mental illness or even psychological factors, and affect several generations, such as what can happen to Getúlio Vargas, his son Manuel Antônio Vargas and his grandson Getúlio Vargas Neto.²⁶

²² D'ANDREA, F. F. *Desenvolvimento da personalidade: enfoque psicodinâmico*. Bertrand Brasil, 19. ed., Rio de Janeiro, 2012, p. 31.

²³ CORREA, O. B. R. *O legado familiar: a tecelagem grupal da transmissão psíquica*. Contracapa Livraria, Rio de Janeiro, 2000, p. 13.

²⁴ BENGHOZI, P.; et al. *Os avatares da transmissão psíquica geracional*. Olga B. Ruiz Correa (org.). Escuta, São Paulo, 2000.

²⁵ ZIMERMAN, D. *Vocabulário Contemporâneo de Psicanálise*. Artmed, Porto Alegre, 2001, p. 418.

²⁶ BOTEGA, N. Suicídio e Hereditariedade. Sent December 2018. *YouTube*. 4min08s. Available in: https://www.youtube.com/watch?v=hfM_U-l0qo0. Access: March 23, 2022.

Transgenerationality concerns the fact that "each of the child's parents maintains the internalization of their respective original families, with the corresponding values, stereotypes and conflicts". In addition, it should be noted that the unresolved demands of the child's parents with their respective parents they can be restored in children, occasions in which, in the extreme cases, situations can remain unchanged for successive generations.²⁷

All human beings, therefore, are being molded from these legacies, from the expectations of the parents, from the social, economic, cultural context in which they are inserted, from the education and from the transmitted values. The very conditions of pregnancy, the biopsychic balance of the mother, the circumstances of childbirth, and all these factors can contribute to a favorable predisposition or not to development

Transmission processes result in connections with and between different intrapsychic and intersubjective levels intermediated by groups and other psychic formations, ensuring modifications that allow for a differentiation between what is transmitted, inherited and later assimilated.²⁸

In this way, it is possible to verify that there is a family legacy to be metabolized, managed and transformed, since the configuration of the phenomena responsible for the mental evolution of each individual also interacts with the genealogical psychic transmission and with the unconscious cultural foundations.

It should also be noted that demonstrations of affection help the baby and child to develop in a healthy way. The safer and more loved she feels, the better the mechanisms that lead to autonomy, independence and emotional security will be developed. School, friends, the way the family deals with everyday problems and situations, all contribute to the emotional development of human beings.

Everyone is born with the potential to succeed. However, babies and children who experience emotional neglect in their early years have greater difficulties forming healthy bonds with other people, and may later develop relationship problems, becoming overly dependent on other people or socially isolated.²⁹

It is necessary, from the beginning, that the baby and the child feel the love and company of those around them. Feeling loved provides a special sensation of warmth, affection and security, which enables the construction of a healthy self-esteem. On the contrary, they will develop a high probability of having little autonomy, presenting difficulties, including being alone.

Self-perception based on aroused feelings such as tenderness, anger, taking sides, in addition to observing the parties, helps the conciliator/mediator to build an expanded idea about the situation manifested in the session. A person's healthy development is a contributing factor in all interactions they experience.

In this way, this knowledge transmitted to the conciliator/mediator helps in their understanding of how complex the constitution of human beings is. This contributes to a more comprehensive view of the situations in each audience that will be faced, based on a neutral position during its performance.

It is remarkable, therefore, the importance of self-knowledge on the part of the conciliator/mediator, seeking to understand the content that he carries from the moment he arrived in the world, with the awareness that this content, if not well identified, can even interfere with the your way of acting or making decisions.

By dealing with their personal issues and their own desires, through an internal reflection, the immense universe of the unknown opens up, which must be probed,

²⁷ ZIMERMAN, D. *Vocabulário Contemporâneo de Psicanálise*. Artmed, Porto Alegre, 2001, p. 418.

²⁸ BENGHOZI, P.; et al. *Os avatares da transmissão psíquica geracional*. Olga B. Ruiz Correa (org.). Escuta, São Paulo, 2000.

²⁹ NUNES, P. *Compreendendo o Universo Psíquico*. Lecture promoted by the Judicial Center for Conflict Resolution and Citizenship of the Comarca de Marília - CEJUSC, in partnership with the University of Marília - UNIMAR (17 out. 2018)

explored and, at the same time, understood, welcomed and tolerated, considering that repressed complex and painful situations can often surface.

This initiative makes the conciliator/mediator develop self-confidence, that is, an inner security that will allow greater freedom and clarity to deal with eventual problems, difficulties, failures, losses, embarrassments. By achieving this tolerance, in the face of life's inevitable situations, you will be able to manage traumas, gaining skill and autonomy in your sessions.

The problem is that many people, given the education received or the demands imposed by social interaction, choose to oppress certain contents that were already retracted. However, for self-reflection to be valid there must be a review, understanding and interpretation of an entire experience, including childhood memories, thus awakening to a holistic view.

In his research, Sigmund Freud also emphasizes the importance of reflecting on the diseases that manifest themselves in the human body, not least because, in many cases, they are intertwined with feelings, which tend to generate aggressive physical manifestations, hampering the ability of infected cells to resist.³⁰

The psychological imbalance of the human being can be the cause of several illnesses, especially if we consider unresolved internal issues, unsurpassed traumas and stress, since there is a mutual relationship between psychic phenomena and bodily situations, also known as somatic ones.

6. Empathy as a fundamental element for conciliation/mediation

Empathy can be considered a fundamental element for the success of conciliation/mediation sessions, since its distinctive quality is the ability to promote connection between those involved, at the time when it adopts the attitude of removing everything that may give rise to prejudgments or preconceptions about the other, promoting a more interactive understanding.³¹

It is worth understanding how difficult it is to express your deepest feelings and needs. However, there is a break in this pattern when there is empathy, for the simple fact that the person feels welcomed in their emotions, which contributes to clarity in understanding. Therefore, it is imperative that egocentrism be removed, directing attention exclusively to the other.³²

In every performance, the conciliator/mediator needs to act empathetically, awaken trust in the parties, establish contact, and transform the environment that, at first, can be seen as hostile, into a welcoming space. For this to happen, it is necessary to listen carefully, ask questions, demonstrate understanding and tolerance for the issues addressed, as well as pay attention to the words, to the speech used in the sessions.

In this way, the good performance of conciliation/mediation sessions is also linked to the communicative ability of the conciliator/mediator, as he seeks to reach, through dialogue, the needs of the parties involved in the conflict, as well as his ability to translate, in a non-aggressive manner, the claims deduced. With his speech, the conciliator/mediator should favor communication, encouraging a joint effort to find the most effective solution for all involved.

³⁰ FREUD, S. *Um Caso de Histeria, Três Ensaios Sobre Sexualidade e Outros Trabalhos*. Vol. VII (1901-1905). Imago Editora Ltda, Rio de Janeiro, 1972.

³¹ DUGACSEK, J. V. "A Vulnerabilidade e a Empatia como Elementos Essenciais para uma Comunicação Efetiva e seu Papel no Contexto de Mediação", *Revista Mediação & Justiça*. n. 1 (jan./jul. 2018), pp. 84-105. Available in: https://scholar.google.com.br/scholar?hl=pt-BR&as_sdt=0%2C5&q=media%C3%A7%C3%A3o+e+empatia&btnG=. Access: February 2, 2022.

³² VASCONCELOS, K. N. "Mediação Humanista: A Mediação como Caminho e o Caminho da Mediação", *Revista Internacional Consinter de Direito*, Ano II – Número II. 1º Sem. 2016. Available in: <https://revistaconsinter.com/revistas/ano-ii-volume-ii/parte-3-aspectos-relevantes-no-futuro-do-direito/mediacao-humanista-a-mediacao-como-caminho-e-o-caminho-da-mediacao/>. Access, February 3, 2022.

In addition to being careful with the use of words, all conciliators/mediators must pay attention to social prejudices, principles and values, and it is extremely necessary to prevent them from arising during the session, avoiding, for this, the judgment of acts, behaviors and thoughts presented by the parties, from the point of view of right or wrong.

Attitudes must be based on sincere impartiality, repelling unreasonable reactions, through empathy, considering the origin of the Greek term "empathia", which means "passion or state of emotion", constituted by EN - "in" plus PHATOS - "emotion, feeling", which brings the idea of being inside the feeling of the other.³³

It is necessary to make yourself available to understand the other, distancing yourself from a supposed pre-existing knowledge, by imagining that you already know what the other thinks and what is the ideal way to act in the face of the presented situation, as William Ury clarifies:

As I have observed in my mediation work, we often listen to others from our frame of reference, judging what they say from our point of view. Imbued with an attitude of genuine respect, we can practice the art of listening to others from their frame of reference, their point of view. We must listen not only to the words, but also to the unexpressed thoughts and feelings. We need to apprehend the content of what is being said, but also consider the human being who expresses it.³⁴

In this context, the conciliator/mediator learns to initiate and maintain a differentiated communication, seeking to understand in depth the ideas and feelings of the other person, paying attention to the meaning that the reported experience has for him, allowing him to reaffirm himself in the another the important feeling of welcome and understanding.³⁵

The choice to act with empathy causes an exchange to emerge between the conciliator/mediator and the party, in the most diverse sensorial dimensions, either through silence or, as Vasconcelos clarifies, through "words, gestures, attitudes, looks, tone of voice, body positions, physical tension and distension, synchrony of attitudes, breathing rhythm, etc."³⁶

It should be noted that in Germany, the term empathy found references in a process called *Einfühlung*, which is related to the potential that artistic works have to generate feelings of admiration and uniqueness in their spectators. In 1909, the first translation of the German term into English was carried out, resulting in the word empathy, referring to the "ability to know the conscience and feelings of other people, through a process of internal imitation".³⁷

By behaving empathetically, the conciliator/mediator develops a distinct process, through which he starts to enable the real understanding of the other, which makes

³³ EMPATIA. *Origem da Palavra*. 26 jan. 2011. Available in: <https://origemdapalavra.com.br>palavras>empatia>. Access: December 26, 2022.

³⁴ URY, W. *Como chegar ao sim com você mesmo*. Sextante, Rio de Janeiro, 2015, p. 71.

³⁵ NUNES, P. *Compreendendo o Universo Psíquico*. Lecture promoted by the Judicial Center for Conflict Resolution and Citizenship of the Comarca de Marília - CEJUSC, in partnership with the University of Marília - UNIMAR (17 out. 2018).

³⁶ VASCONCELOS, K. N. "Mediação Humanista: A Mediação como Caminho e o Caminho da Mediação", *Revista Internacional Consinter de Direito*, Ano II - Número II. 1º Sem. 2016. Available in: <https://revistaconsinter.com/revistas/ano-ii-volume-ii/parte-3-aspectos-relevantes-no-futuro-do-direito/mediacao-humanista-a-mediacao-como-caminho-e-o-caminho-da-mediacao/>. Access, February 3, 2022.

³⁷ SAMPAIO, L. R.; *et al.* "Estudos sobre a dimensionalidade da empatia: tradução e adaptação do Interpersonal Reactivity Index (IRI)", *Psico*. v. 42, n. 1 (jan./mar. 2011), pp. 68. Available in: https://scholar.google.com.br/scholar?hl=pt-BR&as_sdt=0%2C5&q=empatia&btnG=. Access: January 29, 2022.

it possible to understand the demands as equally relevant, since the tendency is to carry out an evaluation of the situation presented, approaching more of a value judgment than a possibility of effective reception and understanding.

When a party begins his report in the session, it is common for the conciliator/mediator to have thoughts such as: "I already know where this is going", "it is not right", "it does not fit", "it does not make sense", among countless others. Rarely is there a true openness to understanding what it means, for that particular person, everything that is externalizing.

Acting empathetically is not an easy attitude; it requires a lot of patience and training, as it implies a necessary change in behavior, bearing in mind the need to fully penetrate the entire frame of reference presented. However, from this movement, one discovers, above all, the positive value triggered in the individual who feels understood.³⁸

As Vasconcelos clarifies, "listening, giving attention, welcoming without judging is not a technique, but an experience, a continuous learning process". Listening and looking must always be attentive, showing respect for the individuality of others, their message, their need for understanding, which contributes to a new perception of conflict and the dissemination of a true culture of peace.³⁹

In the quest to overcome the established conflict, it is imperative that the ability to recognize and respect otherness be awakened, paying attention to the fact that those involved are subjects of rights, whose expressions of will and feelings are shown to be opposite in that particular circumstance. Once this relationship is established, feelings are validated, making the search for a solution that includes both parties less difficult.

It is also extremely important that the conciliator/mediator has a clear understanding that people act, think, react, believe and feel in different ways. This clarity prevents feelings of frustration, misunderstanding or judgment from arising, as it is common for people to have a certain resistance to accepting different attitudes in relation to the way the other faces certain problems and situations.

The greater the possibility of developing feelings of acceptance and appreciation, the better the conduct of conciliation/mediation sessions. Those involved need to be seen as people of value, regardless of their condition, their emotions or their behavior.

This welcome should prevail even if the conciliator/mediator is faced with contradictory or resistant attitudes on the part of those involved, so it will be possible to emerge a relationship of affection and security in the professional, elements of paramount importance to guarantee a successful session.

The greater the proximity to the needs and feelings instilled in the words externalized by the parties, the better the perception they have that their interests are being met, which generates a sense of security and confidence. Otherwise, once the connection is lost, the vitality of the procedure is lost.⁴⁰

In this context, it is important for the conciliator/mediator to act with empathy, even in the face of negative manifestations brought by the parties, so that the attitude is not understood as something personal, which usually leads to feelings of anger and hurt, making dissolution difficult of the conflict situation.

In the same way, empathy should even be used to interrupt an exposition in which there is a lack of awareness regarding feelings, precision and request, because by acting in this way the conciliator/mediator will help the party to connect with the interests for behind the externalized words.

³⁸ ROGERS, C. R. *Tornar-se Pessoa*. Martins Fontes, 5. ed., São Paulo, 1997.

³⁹ VASCONCELOS, K. N. "Mediação Humanista: A Mediação como Caminho e o Caminho da Mediação", *Revista Internacional Consinter de Direito*, Ano II – Número II. 1º Sem. 2016. Available in: <https://revistaconsinter.com/revistas/ano-ii-volume-ii/parte-3-aspectos-relevantes-no-futuro-do-direito/mediacao-humanista-a-mediacao-como-caminho-e-o-caminho-da-mediacao/>. Access, February 3, 2022.

⁴⁰ ROSENBERG, M. B. *Comunicação Não-Violenta: técnicas para aprimorar relacionamentos pessoais e profissionais*. Ágora, São Paulo, 2006.

Therefore, in order to empathy becomes true, it is essential that the conciliator/mediator develops the ability to relate and understand what is happening inside the other person, collaborating to defuse complex situations. Which allows pain, suffering and anguish to be alleviated and that a healthy dialogue is established, which makes it possible to find a mutually satisfactory solution for those involved.

7. Final considerations

The need for mediators/conciliators to have a more complete training was demonstrated, in order to provide an effectively empathetic and impartial performance. Several professionals restrict themselves only to the knowledge passed on by the Training Course. Which can be added to the existing setback regarding remuneration, considering that in several locations the provision of services is still done on a voluntary basis, which makes it difficult to demand for better preparation for the exercise of activities.

Understanding the emotional universe, the transference and projective dynamics that may arise during conciliation/mediation sessions, whether with regard to the parties or between them and the conciliator/mediator, enriches the vision of these peacemaking instruments, allowing the expansion of its technical improvement, since the professional's performance would be based on new paradigms, which allow perceptive and behavioral changes.

Considering the role of the conciliator/mediator, that is to preside over the hearings in order to provide the parties with the necessary conditions to reach a better resolution for the experienced problem. Analyzing the psychic extension involved in the conflicting situations that arise in the conciliation/mediation sessions will bring you better conditions to contribute to the positive outcome of the sessions.

It was possible to verify, with the study, that both the Judiciary and the Private Chambers of Mediation and Conciliation usually pay attention to the need to present a multidisciplinary field of action, composed of jurists, administrators, psychologists, among others. It happens that, even in the face of the possibility of the parties opting for a conciliator/mediator with training in Psychology. Alternatively, even choosing such a professional to assist as co-conciliator or mediator. What is defended is the importance of everyone who attends a Course in Training and Qualification for Conciliators and Mediators to have contact, including with general notions about the psychic universe, a contact that would bring better conditions even for society, which includes procedural agents and the entire sphere of the Judiciary.

A more complete formation of procedural subjects, with emphasis on conciliators and mediators, allows reflections that value the integral preparation of the professional. Including manifestations about the importance of also having a psychological preparation, since they will be faced with countless difficult situations experienced by the parties on a daily basis, which requires complete preparation, as, on the contrary, it may even cause a deterioration in the quality of the existing relationship between the mediators.

The research concludes, therefore, due to the need for a complement to the Formation and Training Course for Conciliators and Mediators, and it is still essential that there be an effective social awareness under the necessary transposition, especially on the part of the procedural subjects, who should also to dedicate himself to expanding his knowledge, with studies about the dynamics of the mental life of the human being.

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