AFRICAN-STYLE MEDIATION AND WESTERN-STYLE DIVORCE AND FAMILY MEDIATION: REFLECTIONS FOR THE SOUTH AFRICAN CONTEXT

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SUMMARY

Both Western-styled mediation and African-styled mediation are practised in South Africa. Each of these models is applied in specific social contexts. In this article a brief explanation of what is meant by the term divorce and family mediation is provided. Thereafter the principles and processes of both Western-styled divorce and family mediation and African-styled group mediation are explored. Attention is given to the roles of mediators in both of these models as well as the ubuntu-styled values found in African group mediation. In Africa, there is a tradition of family neighbourhood negotiation facilitated by elders and an attitude of togetherness in the spirit of humanhood. Both of these show a commitment to the community concerned and a comprehensive view of life. In Africa conflicts are viewed as non-isolated events and are viewed in their social contexts. Not only are consequences for the disputing parties taken into account but also consequences for others in their families. These methods can be found in present-day methods, which are either used independently of imported Western structures or used alternatively to such structures.

In this article the concept of mediation circles, as currently found in Western-styled mediation are also covered. Additionally, the provisions of the *Children's Act* 38 of 2005 referring to mediation as well as the provisions of the *Child Justice Act* 75 of 2008 and family group conferencing in the realm of restorative justice in South Africa are critiqued. It is suggested that divorce and family mediation can learn from the principles of restorative justice applied during family group conferencing as well as from African-styled group mediation.

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