

**ABA SECTION OF DISPUTE RESOLUTION**

**TASK FORCE ON CREDENTIALING**

**DISCUSSION DRAFT**

**REPORT ON MEDIATOR CREDENTIALING AND QUALITY ASSURANCE**

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**TASK FORCE MEMBERS**

**Judy Filner, Chair.**

**Charles Pou, Peter Maida, David Hoffman, Diane Kenty, Ina Leonard, Leila Taaffe, Howard Bellman.**

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## I. RECOMMENDATIONS

### A. Introduction

The Task Force on Mediator Credentialing was established for three primary purposes: to inform the Section about past and current dispute resolution professional credentialing practices and policies; to consider the direction the field is moving related to credentialing and to make recommendations to the Section for policy and action; and to assure networking with professional membership organizations and others engaged in credentialing policy and program development to keep the Section informed. For all of the initial work the Task Force has undertaken, our focus has been on mediator credentialing. We began our work in November, 2001. Following is an overview of the attached report, the recommendations of the Task Force, proposed action steps, and the basis of our recommendations.

### B. Overview of the Report

These Recommendations are included in the lengthy Report that follows, providing an overview of past and current dispute resolution professional credentialing practices, and an overview of generic professional credentialing practices. The Recommendations are founded on the Task Force's conclusion that credentialing for mediators should reflect a strong commitment to quality practice and provide the methodology for how to achieve quality practice. The Report defines quality assurance and credentialing and includes definitions/descriptions of major types of credentialing such as certification and accreditation.

### C. Recommendations and Next Steps

*Adopt a policy statement to support the field in developing quality mediation practice and mediator credentialing.*

*Adopt a policy statement supporting mediator competency and growth (quality assurance) ~~over paper credentials~~. This policy should include the statement that any recommendations of the SODR Council, whether certification or licensing for individual mediators, or accreditation for mediator preparation programs, will contain standards for mediation programs, grievance procedures for individual mediators who are not accepted for receiving a credential, and recommended grievance procedures for the public to complain about an individual mediator or mediation program.*

*Adopt a policy statement that in supporting the field in developing quality mediation practice, the ABA Section of Dispute Resolution actions will be in accord with principles that preserve the integrity and diversity of the practice of mediation (eg., participant backgrounds, subject matter, mediators, practice, and professional background).*

*Direct the Task Force on Mediator Credentialing to explore in 2003 and to report back to the Council an implementation plan to:*

- *Develop model standards for mediator preparation programs.*
- *Outline one or more model systems of mediator credentialing to recommend to states or to the field, focusing initially on the accreditation of mediator preparation programs, (e.g., trainers, university programs, mediation centers, mediation programs).*

*Direct the Task Force to use a consultative process with other mediator organizations [for example, the model used by ABA/AAA/SPIDR to develop and adopt Model Standards of Conduct for Mediators] and representatives of other ABA Sections.*

Next Steps:

1. The Task Force on Mediator Credentialing will research and propose to the Section Council, no later than March, 2004, Model Standards for Mediator Preparation Programs, and recommendations for appropriate processes for mediator credentialing, focusing initially on mediator preparation programs.
2. Continue to explore answers to the questions we (the field) don't have answers to. For example, consider who will use a credentialing system if one is built, and how to explore how any credentialing system would be implemented. Consider how to encourage state efforts to achieve credentialing and quality assurance, and whether and how states might participate in or benefit from an accrediting system (or a model accrediting system for states to adopt).
3. Publish the Report of the ABA Task Force on Mediator Credentialing on the SODR Website and publish ABA Policy, next steps, further activities of the Task Force, etc. Copy the report to all SODR members, and as many program administrators, judges, etc., as possible. This will promote a broader awareness in the field of what quality is and how quality and credentialing are related to each other.
4. The Task Force will continue its working using a consultative process with other mediator organizations [for example, the model used by ABA/AAA/SPIDR to develop and adopt Model Standards of Conduct for Mediators] and representatives of other ABA Sections.

#### D. BASIS FOR RECOMMENDATIONS

The Task Force has concluded that it will be most productive to focus on mediator preparation programs for the following reasons:

- Mediator preparation programs have a vested interest in quality assurance
- Allows greater flexibility (recognizes different types of practice all within a common definition of mediation, allows for flexibility of style, context, program goals),
- Is a less expensive approach to mediator credentialing,
- Is more likely to be adopted because more consistent with a philosophy that supports mediator development and improvement,
- Is more likely to be adopted by state and federal courts and agencies because it is compatible with programs and policies they already have,
- Can provide a credential while not requiring all mediation practice to be the same,
- Will reflect a philosophy or policy that credentials are part of a larger picture of quality assurance for the field; develop and promulgate what credentialing and quality assurance are (and are not),
- Credentialing/quality assurance should be considered an iterative process,
- Individual mediator preparation programs are more accessible to existing mediators who may be required by mediation programs to provide proof of approval by an accredited mediator preparation program,
- More likely to be accepted by other organizations of the field because is sufficiently flexible (each mediator preparation program submits to the accrediting body how it will meet the standards and requirements of the accrediting body) to meet a variety of program philosophies and goals.

The scope and depth of mediation practice has grown dramatically over the last twenty years. The number of individuals who call themselves mediators or who call what they do mediation is not measured, but is believed by the Task Force to be perhaps in the tens of thousands. The numbers of programs that provide mediation services is estimated by the Task Force to be in the thousands. Court mediation or ADR programs, Federal and State agency mediation programs, national programs that are run privately or supported by a federal government agency, community mediation centers, university mediation programs, and even internet mediation programs prepare mediators, refer cases to them, or provide mediators for agency-related disputes. None of these is regulated by a state license. Only a handful are regulated by a certification limited to the program. Even fewer are regulated by an accreditation of training programs method.

And yet, mediators want credentials, as evidenced by the number of mediators who use what we call a substitute credential, showing on their resumes the number of rosters they are listed on, or the types of cases they have experience in. At the same time, credentialing for mediators should reflect a strong commitment to quality practice and provide the methodology for achieving quality practice. It should not simply provide a pro forma paper credential. While the former SPIDR

developed two Commission reports on mediator quality assurance, we believe the time has come to guidance into policy and action.

Professional credentialing is typically thought of as licensing, certification and accreditation. The Task Force believes that credentialing is a part of quality assurance, and that the primary goal of a credentialing program is to support the assurance of quality practice. The Task Force has looked for a model that will do more than simply create a hurdle for mediators to leap over in order to have the status that permits them to practice. We believe that a more practical approach to start with is to develop a mechanism to accredit mediator preparation programs, either through a national system, or state by state.

**The Task Force has recommended a thorough investigation of an accreditation system, encompassing mediator preparation programs (any program that prepares mediators, including university programs, training programs, mediation centers, and mediation provider programs that train their own mediators), from which graduates get a certificate. All private individual practice and mediation rosters could add their additional requirements and approve mediators who meet both. In any of the work of setting standards for mediators, the Task Force and the Section should not be constrained by fears of lack of scientific evidence to support standards or credentials, or definitions. In other professions, definition and description of quality practice is achieved through expertise of acknowledge excellent practitioners in the field.**

Following are the essential components of what any credentialing/quality assurance program should contain:

- Defining quality mediation
- Recommending goals for mediation programs
- Establishing and improving standards of practice for mediators and mediation programs
- Training curriculum and requirements for mediator growth
- Continuing education
- Mentoring
- Ethics
- Providing recommendations for enforcing standards
- Providing grievance procedures
- Standards for mediator preparation
- Developing system(s) to measure or predict competence defining, and for some, measurement of mediator competency
- Defining quality mediation
- Recommending goals for mediation programs

The criteria and means of assessing competency are used for credentialing typically incorporate some or all of the following methods:

- Degrees/education
- Training requirements
- Mentoring or supervision
- Continuing education or training
- Amount of experience, i.e., number of cases
- Performance tests or live or taped demonstrations
- User evaluations
- Complaint procedures
- References
- Interviews
- Program evaluation criteria

**The Task Force recommends proceeding with a consultative process because the issue of mediator credentialing remains controversial, and will likely receive more support if SODR invites other national membership organizations and representatives of other ABA Sections “to the table” to discuss the issue. Further, the issue is complex, not only involving the difficulties of defining mediation, goals of mediation, goals of mediation programs, and fundamental knowledge, skills and abilities a mediator should have, but also involving the dual political realities of the vast numbers and types of mediation programs across the US. The SODR Council can bring the field together (as much as possible) to further explore, draft, and implement a mediator credentialing and quality assurance initiative nationally (or for adoption by each state).**

**Questions for Continuing Discussion.** We also suggest considering the resources that proposed steps will require, including who should be invited, future role of the Task Force, composition of a future Commission or Task Force, outside advice from credentialing experts, finances, and ABA SODR staff needs.

In exploring accreditation of mediator preparation programs, the Task Force will address how a governing body, whether national or statewide might adopt other components of quality assurance, and perhaps even further credentialing, e.g., certification of individual mediators. As part of planning for mediator preparation program accreditation, the Task Force must consider how individuals might use and might mis-use a credential that comes from the accredited program.

Any approach to mediator quality assurance and credentialing must address experienced/advanced practitioners as well as new entrants into the field.

An accreditation approach (of mediator preparation programs) to mediator quality assurance and credentialing must consider how it incorporates programs and institutional providers that do not train or otherwise prepare mediators for practice.

If university or college based, a mediator preparation program must also consider how it relates to the accrediting board for its college and its state board of education. Thus, any plans for accrediting mediator preparation programs must take this into account.

Any credentialing program recommendations will address the issue of what body is going to do the credentialing.

## II. SUMMARY OF PRELIMINARY FINDINGS

**Overview.** Typically, most professions think about quality assurance (QA) in terms of credentialing, which tends to involve licensing, certification, or “substitute” credentials (like educational degrees or professional background). For better or worse, mediation quality assurance efforts have not moved as far toward credentialing as most professions.

Many knowledgeable people still favor market-based approaches and balk at the idea that we know enough to measure or predict quality performance. However, recent developments in our field indicate that credentialing<sup>1</sup> mediators in the name of promoting quality and protecting consumers is clearly a growth industry. Numerous quality assurance efforts in scores of mediation programs, private associations, federal and state jurisdictions have been completed or are underway.

**QA Typology.** QA systems include some combination of “hurdles” and “maintenance” that could be plotted on a conceptual grid, with two axes:

- A vertical axis representing the height of the "hurdles" that mediators must clear at the outset to engage in practice, and
- A horizontal axis showing the amount of "maintenance" or development aid required to broaden their awareness and enhance skills over time.

The great bulk of QA efforts to date have set relatively undemanding “hurdles” that typically require minimal training (20 to 40 hours), and perhaps some actual mediation experience (3 to 7 cases, often involving co-mediation or supervised mediation). Apart from community mediation programs, required “maintenance” has tended toward some commitment to take some periodic continuing education and adhere to basic ethical standards, with little or no active oversight.

**Goals for mediator QA.** Interviews by one Task Force member, Charles Pou, suggest that credentialing and other quality-related activities seek a variety of goals and have been implemented with varying degrees of rigor. Interviewees point out that many credentialing programs are structured so as to allow people with minimal training and experience to mediate; many criticize this approach as indicating that “mediation is easy.” A leader whose efforts led one state mediator organization to develop a credentials system described his intent as "creating something that would neither provoke resistance nor be ignored." An academic observer has asked: "Do we 'just want to do something that will make us feel good?'" or "do we instead want to take the next step toward making empirically based, defensible decisions that will stand up to close scrutiny from courts or others?"

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<sup>1</sup> In our field, “credentialing” means different things to different people. Increasingly, the term is employed to include actions beyond setting a standard, or “hurdle,” for applicants wishing to obtain a formal designation of approval to practice our profession. Mediators often use their training, continuing education, roster listings or credential to practice another profession as their designation of competence as mediators.

**Defining quality mediation.** Numerous people interviewed by Charlie Pou have expressed a strong belief that definitions of "mediator quality" will vary depending on a particular program's goals. Indeed, some thought that initially defining "mediation" is critical to discussing quality intelligently, and that efforts to define and measure quality mediation must recognize and address these variations. Add to this that it is common in other fields for recognized leaders in the field to define the practice and the qualities that comprise competency in the profession.

**Who sets the hurdles, and decides?** The sites of mediation quality assurance programs and decision-making vary. They include individual judges, central or local court administrators, state supreme courts, advisory groups authorized by courts, executive agency roster administrators, other official entities, and private mediator rosters and private mediator associations. These activities may be centralized, with a single entity setting standards and accepting applications. In other settings, they may be decentralized, by either (1) having a central entity set policy guidance with local administrators filling in the gaps or (2) fixing separate standards for different programs or kinds of mediation activity.

Within any entity, the individual gatekeepers may also vary, ranging from "blue ribbon panels" to groups of mediators to administrative or clerical personnel. In some of these, a tendency toward routinization of these decisions has driven them down to lower-level personnel than was initially envisioned.

**Maintenance activities: Continuing education, mentoring, enforcing standards.** A recurrent theme in interviews was the importance of training, mentoring, and continuing education. While the literature on mentoring and continuing education for mediators is sparse, actual practice is rich, especially among community mediation programs, and may offer the oversight committee useful lessons. [A recent article on NAFCM's website by Melissa Broderick, Ben Carroll, and Barbara Hurt, entitled Quality Assurance and Qualifications](#), discusses community mediation programs' activities in this area, and includes a "quality assurance statement" that briefly addresses screening and recruitment, basic training, evaluation of training participants, apprenticeship, co-mediation, continuing education, and trainer responsibilities.

Many people expressed a view that key elements of a QA system will involve user feedback and a complaint handling procedure, but relatively little attention appears to have been paid to specifics. In particular, grievance and enforcement processes may raise confidentiality challenges. Several emphasized that complaint processes should attempt to employ mediative, ombuds, or other interest-based approaches – at least at the first stage – in lieu of formal hearings. For now, outside of Florida at least, it appears that relatively little attention has been focused on the mechanics of grievance and ethics adherence processes.

A recent trend appears to place greater focus on accrediting mediator training programs, occasionally combined with putting some duties on trainers to advise trainees of their strengths and weaknesses or provide mentoring or other continuing feedback. Examples of this trend can be found in New York, Oklahoma, Texas, and Massachusetts.

**Multiple paths to competence.** Quality mediators come from a variety of backgrounds, and many good ones have learned on the job or developed skills in ways other than standard training. Some interviewees point out that any approach to quality assurance that is exclusive, as opposed to inclusive, runs a risk of eliminating some potentially excellent mediators. Also, because of this (as well as political reasons), some observers see benefit in providing diverse options for reaching credentialed mediator status, perhaps “grandparenting” those who already serve as mediators, and/or affording consumers (judges, lawyers, program administrators, or parties) a way to look outside the list of "credentialed" mediators for particular cases.

**Processes for developing quality standards and systems.** Development efforts have ranged from having judges, legislators, or others hand down standards based on their individual opinions or research to consulting with key interest groups to collaborative activity in developing standards that promotes dialogue (e.g., outreach, focus groups, questionnaires, public meetings, circulation of drafts) in an effort to be inclusive. Occasional jurisdictions have sought (with limited success) to reach full consensus among representatives of affected interests. The New York State DR Association’s current credentialing effort has sought to achieve wide awareness, input, and buy-in through a consensus-based process; they are just beginning to develop actual proposals.

**Educational and political concerns.** QA and credentialing processes are not established or operated in a vacuum. The nature and success of such activities will depend on numerous outside factors. Several interviewees stated that: (1) it will be critical to educate users of mediation services about what to look for in a DR process and in a mediator, as well as the potential benefits of various styles of mediation; (2) while difficult, it may be valuable to try to bridge the gap that often exists between attorney-mediators, who sometimes are more "evaluative," and other mediators, especially those with more facilitative or transformative approaches; and (3) in many jurisdictions, the higher one goes in bureaucratic or political systems, the harder it gets for mediators' or similar professionals' views to affect policy decisions.

**Feedback, grievance, and ethics enforcement methods.** Many people expressed a view that key elements of a QA system will involve user feedback and a complaint handling procedure, but relatively little attention appears to have been paid to specifics. In particular, grievance and enforcement processes may raise unique confidentiality challenges. Several commenters emphasized that complaint processes should attempt to employ mediative, ombuds, or other interest-based approaches -- at least at the first stage -- in lieu of formal hearings. For now, outside

of Florida at least, it appears that relatively little attention has been focused on the mechanics of grievance and ethics processes.

### III. DEFINING MEDIATOR COMPETENCE

#### A. *Perspectives and Controversies*

Section II above sets forth many of the issues to be discussed and decided as mediators explore and seek to identify the characteristics of quality practice. Among these issues, defining mediation, establishing the characteristics of quality mediation and how to develop system(s) to measure or predict competence, are among the most difficult. This debate, and the implications for mediator credentialing will be explored here.

1. Definitions of mediation. A fundamental debate in the field concerns the definition of mediation. Defining mediation is at the core of developing a mediator credentialing and quality assurance program. Following are definitions adopted by major national organizations and some sample state court program definitions. These definitions illustrate differences, but may also underscore fundamental similarities that will encourage consensus in the development of a credentialing and quality assurance program.

#### Model Standards of Conduct for Mediators (AAA, ABA, SPIDR):

“Mediation is a process in which an impartial third party – a mediator – facilitates the resolution of a dispute by promoting voluntary agreement (or “self-determination”) by the parties to the dispute. A mediator facilitates communications, promotes understanding, focuses the parties on their interests, and seeks creative problem solving to enable the parties to reach their own agreement.”

#### Uniform Mediation Act:

“‘Mediation’ means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.”

#### Georgia (courts):

“Mediation is a process in which a neutral facilitates settlement discussions between parties. The neutral has no authority to make a decision or impose a settlement upon the parties. The neutral attempts to focus the attention of the parties upon their needs and interests rather than upon rights and positions. Although in court-annexed or court-referred mediation programs the parties may be ordered to attend a mediation session, any settlement is entirely voluntary. In the absence of settlement the parties lose none of their rights to a jury trial.”

Virginia (courts):

“Mediation is a voluntary and confidential way to resolve disputes without giving the decision-making power to someone else (like a judge). It involves sitting down with the other side in the dispute and a third-party who is neutral and impartial (the mediator). The mediator helps the parties identify the important issues in the dispute and decide how they can resolve it themselves. The mediator doesn’t tell them what to do, or make a judgment about who’s right and who’s wrong. Control over the outcome of the case stays with the parties.”

National Association for Community Mediation:

“Mediation is a process of dispute resolution in which one or more impartial third parties intervenes in a conflict or dispute with the consent of the participants and assists them in negotiating a consensual and informed agreement. In mediation, the decision-making authority rests with the participants themselves. Recognizing participant needs, cultural differences, and variations in style, the mediation process allows participants to define and clarify issues, reduce obstacles to communication, explore possible solutions, and, when desired, reach a mutually satisfactory agreement. Mediation presents the opportunity to express differences and improve relations and mutual understanding, whether or not an agreement is reached.”

2. Defining mediator skills and other attributes. Mediators' skills and other attributes can be crucial to a quality outcome. Depending on the setting, the neutral's background and role can vary substantially. In some controversies, the amount of training and or substantive knowledge related to the dispute may be minimal. In others, parties may demand a highly skilled professional with years of experience or even subject matter expertise.

The nature and diversity of roles that mediators are asked to play present complications. Many of the characteristics that make mediation useful -- its privacy, flexibility, and an atmosphere that encourages openness -- can give rise to abuse by mediocre or unethical neutrals, especially where vulnerable parties are involved. Moreover, strong differences of opinion exist within the dispute resolution community itself as to what constitutes quality results, how to define quality practice by neutrals, and how best to assess whether practitioners have the required skills.

Competence is the term often used to describe the ability to use dispute resolution skills and knowledge effectively to assist disputants in prevention, management or resolution of their disputes in a particular setting or context. Research is beginning to reveal the kinds of knowledge, skills, abilities, and other attributes ("KSAOs") that are important to effective performance as a

neutral, and how those aptitudes are best acquired. Studies that have been conducted suggest that these qualities are derived from a mix of sources: innate personal characteristics, education and training, and experience. Margaret Shaw's Selection, Training and Qualification of Neutrals is a valuable, if slightly dated, exploration of much of this research. (Further readings on some possible approaches to ensuring quality mediation include Chapter 11 of Cole, McEwen, and Rogers, Mediation: Law, Policy & Practice ("Regulating for Quality, Fairness, Effectiveness, and Access") and Dobbins, The Debate Over Mediator Qualifications.)

While there is no single, clear consensus on the knowledge, skills, abilities, and other attributes (sometimes called "KSAOs") needed to perform as a mediator, one of the most generally accepted descriptions of a mediator's tasks comes from the Hewlett-NIDR Test Design Project which summarizes them as follows:

- Gathering background information
- Facilitating communication
- Communicating information to others
- Analyzing information
- Facilitating agreement
- Managing cases
- Helping document any agreement by the parties

The difficulty comes in determining the best way to assess a neutral's ability to perform these tasks competently.

The Test Design Project sought, with some limited success, to provide DR programs with reliable and economical tools for selecting mediators. The result of this project -- Performance-Based Assessment: A Methodology for Use in Selecting, Training and Evaluating Mediators -- contains useful general measures of competence, or KSAOs, for mediators. It also offers a methodology for making performance-based assessments of mediators' likelihood of future successes. TDP set forth the following qualities as those "likely to be needed most to perform the most common and essential tasks of a mediator":

- **Investigation** - Effectiveness in identifying and seeking out pertinent information
- **Empathy** - Conspicuous awareness and consideration of the needs of others.
- **Impartiality** - Effectively maintaining a neutral stance between the parties and avoiding undisclosed conflicts of interest or bias.
- **Generating options** - Pursuit of collaborative solutions and generation of ideas and proposals consistent with case facts and workable for opposing parties.

- **Generating agreements** - Effectiveness in moving parties toward finality and in "closing" agreement.
- **Managing the interaction** - Effectiveness in developing strategy, managing the process, and coping with conflicts between clients and representatives.
- **Substantive knowledge** - Adequate competence in the issues and type of dispute to facilitate communication, help parties develop options, and alert parties to relevant legal information.

Many mediators have offered general endorsement of this list and the assessment scales that accompany it, while others (especially some who espouse a transformative theory) have criticized them to varying degrees as tending to reflect a "labor" model that assumes an active, deal-seeking mediator or failing to acknowledge that the relevant KSAO's will vary depending upon a particular program or party goals.

A few researchers, like Margaret Herrman of the University of Georgia's Mediator Skills Project, believe that programs need to go further than did TDP, especially those contemplating establishment of credentialing systems that could exclude some applicants and thus give rise to litigation in which they might need to justify their methodology. They are seeking to analyze the jobs mediators in various settings perform. They hope to reach a more sophisticated understanding of roles mediators perform, how good ones undertake them, and how to test for ability. So far, this work has produced few written results, though that should begin to change soon. (Herrman, Hollett, Eaker, Gale, and Foster, 2002 "Supporting Accountability in the Field of Mediation"; and Herrman, Hollett, Gale, and Foster, 2001 "Defining Mediator Knowledge and Skills.")

A number of programs (e.g., in several Massachusetts courts) have employed the TDP KSAO's in selecting trainees for new mediator cadres. Some programs (e.g., the San Diego Mediation Center's certification program evaluation procedures, Pennsylvania's Special Education Mediation Program, and Minnesota Mediation Center for family mediators) have adapted these KSAO's while seeking to reflect more closely their own practices, or to improve assessment methods. For instance, the Minnesota Mediation Center developed scales that drew on the TDP list and discussions with family mediators; rather than using them as hurdles, the Center then employed these scales in giving feedback to junior mediators who wanted eventually to "graduate" to the roster of paid family mediators.

Some entities have made other efforts to link measures of competence to context. For example, the Competencies for Environmental and Public Policy Mediators prepared by a committee of SPIDR's Environmental/Public Disputes Sector, sets forth several different tasks and skills involved in organizing and mediating complex, multi-party conflicts.

3. Developing system(s) to measure or predict competence

One cannot discuss the perspectives and controversies related to defining mediator competence without also discussing systems for determining the competence in the context of the practice. Additionally, one cannot discuss mediator competence without addressing the fact that each mediation program has a unique set of issues related to how it functions and therefore how it might think about mediator quality assurance. We will address these here. However, the Task Force believes that issues of program policies related to mediator quality assurance are fundamentally the same across all programs and sectors of practice.

In some jurisdictions, standards related to competence and the selection of mediators have been adopted or are under consideration to protect consumers and the integrity of dispute resolution processes. A typical argument in favor of standards for mediator competency is that it is the profession's obligation to insure quality and competence for users of mediation services. Some argue that the quality of mediation is not a problem, that it is a waste of time and effort to fix something that isn't broken (Paul G. Garrity, *Certification: What's the Point?* 40-APR B. B.J. 8, 8 (1996)). Others argue that the marketplace has worked well in labor mediation and in community mediation programs. (David A. Hoffman, *Certifying ADR Providers*, 40-APR B. B.J. 9, 9 (1996)). As the mediation field attracts more practitioners, it is more likely that the unqualified will hang out a shingle and cause harm. (see Robert Dingwall, *Does Caveat Emptor Alone Help Potential Users of Mediation?* Negotiation Journal, Oct. 1993, at 331). Dingwall's article asserts that in a mass market where mediators work as generalists in a number of different fields, consumers will find it difficult to distinguish between mediators and difficult to spread the news of an incompetent mediator. This change will lead to a "classic situation of market failure."

Further argument asserts that consumers have not registered significant complaint or claims of damages resulting from unqualified mediators (see Jay Folberg, *Certification of Mediators in California: An Introduction*, 30 U.S.F.L. Rev. 609, 609 (1996)). In fact, the argument points out, studies of consumer satisfaction with mediation services show a high rate of satisfaction, especially compared to similar studies of satisfaction with the litigation system (see Robert C. Barrett, *Mediator Certification: Should California Enact Legislation?* 30 U.S.F.L. Rev. 617, 627 (1996)). The response has been multifold: a) The lack of consumer complaints may not be an indication of mediator quality. Rather it may be that the available grievance procedures are inadequate. (example is Florida: Sharon Press, *Institutionalization: Savior or Saboteur of Mediation?* 24 Fla. St.U.L. Rev., 903, 913 (1997)); b) Many disputants using mediation services may not be in a position to evaluate whether their services were adequate. Many parties are unfamiliar with the mediation process and

unaware of their rights. They lack the education and knowledge possessed by users of the litigation process. Although the principles of neutrality, informed consent, and autonomy may be familiar to the mediation community, disputants who are unlucky or unsophisticated enough to hire an unqualified mediator may enter into poor quality agreements, or otherwise make decisions that are not in their best interests; c) Consumers may have been harmed by unqualified mediators without being aware of the harm; d) Since agreements rely on disputant autonomy, and, theoretically, a mediator does not impose a solution on the parties, agreement will always reflect the parties' wishes. This view reflects a naïve understanding of the mediator's power to shape the agreement. Although a mediator cannot impose an outcome, s/he can still do substantial harm by disclosing information or allowing tensions to escalate; and e) Unrepresented parties may not realize that the mediation agreement is binding. Finally, a passionately asserted argument is that developing a system of quality assurance that includes credentialing will limit diversity of available mediators and the mediation field will be limited in its growth and development.

**B. *Approaches to Assuring Competence in Mediation***

In part in response to the argument that standards related to competence and the selection of mediators are needed to protect consumers and the integrity of dispute resolution processes, several professional membership organizations and others have developed policies, principles, or qualification standards regarding who can serve in various settings.

In 1989, the Society of Professionals in Dispute Resolution (SPIDR) Commission on Qualifications was formed to investigate and report on basic principles that could be used to influence policy for setting qualifications for mediators, arbitrators and other dispute resolution professionals. In its 1989 Report, the Commission put forth three fundamental recommendations:

- That no single entity (but rather a variety of organizations) should establish qualifications for neutrals;
- That the greater the degree of choice the parties have over the dispute resolution process, program or neutral, the less mandatory the qualification requirements should be; and
- The qualifications criteria should be based on performance, rather than paper credentials.

Another effort by the Center for Dispute Settlement and Institute for Judicial Administration at New York University produced the National Standards for Court-Connected Mediation Programs, which reached conclusions similar to those of the first SPIDR Commission report.

In 1995, a second SPIDR Commission on Qualifications developed a report that made recommendations to policy makers, practitioners, program administrators, trainers, ADR associations, and consumers about their roles and responsibilities in ensuring competence and quality in dispute resolution practice. It provides a framework for determining which approaches to use, and is a useful resource for thinking about how to address quality assurance issues.

The 1995 SPIDR Qualifications report, Ensuring Competence and Quality in Dispute Resolution Practice, states that assuring competence is a key to quality and is a shared responsibility of programs, practitioners, parties, and dispute resolution organizations. It offers helpful advice and a framework for policymakers, organizations, and others to use in determining the approach to take in the context within which they work. The report recommends that all stakeholders be consulted in formulating standards of competence and qualifications. It sets forth this framework for analyzing how to achieve quality, using the following questions to help organize deliberation:

1. **What is the context?** The context of the dispute resolution service needs to be examined and understood, because that determines what should be considered competent practice in a specific situation.
2. **Who is responsible for ensuring competence?** Stakeholders -- including practitioners, consumers, program administrators, and others -- have roles and responsibilities in assuring quality. Practitioners can gain skills and knowledge and work within their area of competence. Consumers can familiarize themselves with the basics they'll need to make an informed choice and participate in the evaluation of the services rendered. Programs and associations can solicit views in developing guidelines on competent practice.
3. **What do practitioners and programs do?** It is important to examine the core tasks performed in any dispute resolution practice or program.
4. **What does it mean to be competent?** The core skills that have been identified through studies and research, apply here, but may merit adapting for context.
5. **How do practitioners and programs become competent?** The multiple paths to becoming a competent practitioner need to be recognized. Practice involves some combination of natural aptitude, skills, knowledge, and other attributes developed through education, training, and experience.
6. **How is competence assessed?** No one method of assessment should be relied on because it may lead to emphasis of one measure of competence at the expense of other valuable measures. And assessing competence should be a shared responsibility among the various stakeholders.
7. **How should assessment tools be used to assure quality?** Quality assurance tools should be used to support the goals of the dispute resolution program and be consistent with the practice context where they are to be applied. Formal and informal credentialing promote competence of practitioners. The more formal the credentialing process, the greater the

number of considerations that should accompany its implementation, including operating costs and how to handle decertification. Programs can also assure competence through training, supervision, monitoring, and the use of informal assessment tools.

While the framework is expressed in a linear way, it has been adapted to different situations and contexts. Several members of the second SPIDR Commission developed a draft Guide for Implementing the Seven Steps to Understanding and Ensuring Competent Dispute Resolution Practice (never published), which sets forth issues to consider in undertaking such a process. Sidebars in this paper describe briefly how several entities used the "seven-step framework" to organize their review and development of qualifications policies.

#### **IV. GENERIC APPROACHES TO ASSURING COMPETENCE**

Licensing

Rosters

Accreditation and certification

Other approaches to promoting mediator competence

People seeking mediators and those referring cases to mediators want to know what makes the mediator competent to receive a case, and what recourse the clients have if the mediator does something wrong. Credentialing can be viewed as a form of vouching for the competency of an individual to perform a profession or an occupation. While very little formal credentialing exists in the field of mediation, the attempts to define the practice, set standards, delineate preparation or qualifying requirements, and police the performance of mediators are occurring and go hand in hand with any discussion about credentials.

##### Credentialing in General

Credentialing doesn't guarantee competency. Many mediators believe that credentialing doesn't even assure quality. However, looking at other professional organizations the governing principle is that while not guaranteeing or perhaps even assuring quality, credentialing supports and encourages quality. "Most credentialing mechanisms ... do not guarantee quality or outcomes. Each of the credentialing methods can help improve quality and identify higher levels of performance, but one should not assume that an accredited organization or a certified individual possesses a performance guarantee." (Hamm, Michael M., *The Fundamentals of Accreditation*, ASAE: Washington, D.C. 1997, page 4).

Credentialing can mean that according to a set of performance and ethical standards, a person has the required background, e.g., education, training, experience, to do the job. The credentialing organization sets standards of practice including ethics; specific education requirements, experience, and/or training required to quality, measurement of conformity to standards (e.g., performance evaluation), continuing

education, oversight of consumer complaints, ethics review, and other requirements. For example: The National Council for the Accreditation of Teacher Education (NCATE) sets standards for colleges and universities that prepare teachers for licensing. The standards include design of professional education, candidate criteria and outcomes for graduates from a professional education program, faculty requirements, governance and accountability. Another teacher credentialing organization is the National Board for Professional Teaching Standards. Their mission is to establish standards for what accomplished teachers should know and be able to do, to develop and operate a national, voluntary system to assess and certify teachers who meet these standards, and to advance related education reforms for the purpose of improving student learning in American schools.

A credential can be defined as “a letter or certificate given to a person to show that he has a right to confidence or to the exercise of a certain position or authority.” (Webster’s New Twentieth Century Dictionary, Unabridged, Second Edition, 1971). Thus, although the dictionary definition is consistent with the notion of “vouching” for a person’s competency, based on the requirements of the program or organization that provides the credential, it is also consistent with a very vague notion of credentialing that we have seen many mediators use. Perhaps because credentialing in the field of mediation is controversial, people and programs that want credentialing are simply using their own definitions of a credential. These include substitute credentials, such as a law degree or other advanced degree, or unregulated credentials such as a listing on a mediation roster that has irrelevant or minimum requirements.

Again, with a view across many professions, we can discuss credentialing in three categories: regulated, degree-based, and substitute. Regulated credentials include licensing, accreditation and certification. Within these, keep in mind who is vouching for (not guaranteeing) an individual’s competency, what gives them the authority to vouch, what are they saying the individual is competent to do, and what do they require of the individual to say he’s competent?

#### Regulated Credentials: State or Other Government Agency Regulation

A license is a credential issued by a government. It arises out of the government’s constitutional obligation to protect the public welfare. State Boards that oversee the licensing process often partner with, arise out of or work in cooperation with professional associations or institutions of higher learning that prepare the individual who has to obtain a license. A license is the government entity’s permission to an individual to perform the occupation or profession he seeks to perform. One cannot hold oneself out as an authorized practitioner of a profession or occupation without it. It also is a statement to the public that the person meets certain qualifications to do the work.

#### Regulated Credentials: Self-Regulation or Voluntary Regulation

Certification is a form of self-regulation. Generally it refers to the voluntary achievement of a set of standards set by the private sector, often a professional association or independent board. "Certification is a ... form of self regulation that usually implies the development of standards. It generally involves the measurement of conformity with them by individuals in various professions and occupations." (Hamm, Michael M., *The Fundamentals of Accreditation*, ASAE: Washington, D.C. 1997, page 4). It generally means the public can believe in the competency of the individual who is certified.

Recognition through certification provides individuals with credentials, usually represented by a title or designation. Certification is a process by which a non-government agency or association grants professional recognition to an individual who has met certain predetermined qualifications specified by that agency or association. (From NCATE)

While licensing is the state's exercise of its constitutional mandate to protect the public welfare, certification, privately and often through professional associations, has, broadly, joint goals to promote the general welfare and to promote the business interests of their members. These distinctions are recognized in Internal Revenue Service (IRS) classifications of charitable organizations and trade associations. A 501 (c) (3) entity is a charitable or social welfare organization, operating to promote the general welfare, while a 501 (c) (6) is a trade association that promotes the welfare of the business and industrial community. Because of IRS interpretations, certification organizations are most often incorporated as 501 (c) (6) corporations. See *The Licensure and Certification Mission: Legal, Social and Political Foundations*, Schoon, C.G., Smith, I.L., eds, 2000, Professional Examination Service: New York)

According to Michael Hamm (p. 23), "One could argue that a primary function of any national professional or trade organization is to define the field and identify the essence, core values, and quality indicators that someone outside the field would search for to identify the quality performer. ... Any association that has not examined this role or service may be overlooking an important opportunity to serve the membership and establish itself in a leadership role." It is this argument that forms the basis for the thousands of professions and occupations that include a formal certification program as a requirement for their members to hold themselves out as competent in the field.

The Project Management Institute describes the purpose and goal of its certification program as "the development, maintenance, evaluation, promotion, and administration of a rigorous, examination-based, professional certification program of the highest caliber." In addition to establishing standards of practice, the Project Management Institute provides seminars and educational programs for its members and has a "Guide to the Project Management Body of Knowledge." This does not appear to be an exam study guide. Rather it is a general informational reference about the profession and to promote quality in the profession.

Accreditation is “a standard-setting and conformity assessment process developed for organizations, institutions, and fields of interest focusing on areas other than the measurement of competence by individuals.” NCATE sets standards as follows: (1) encourages excellence in schools of education as they change the way they operate to incorporate the latest knowledge and best practice; (2) provides a common set of professional standards for preparation of teachers and other school specialists, and thus holds teacher preparation programs accountable for meeting these standards; (3) promotes the need for resources necessary to provide superior teacher preparation; (4) assures the public and prospective teachers that institutions have met external standards set by professionals in the field and that the evaluation which takes place is objective and impartial. (From NCATE)

### Degree-Related Credentials

This credential refers to an advanced degree or university certificate after an advanced degree. These include Masters and Ph.D. programs and certificate programs, usually from accredited programs. Degree-Related Credentials

Certificate programs are accredited programs in the same fields of study. Often, they are a prerequisite to a license, or certification by a private entity representing the specific profession or occupation. Other times they are only recognized by the university programs and colleges that have issued them. In either case, the college or university issuing the certificate may be required to have their certificate program approved by their accreditation body and/or the state department of education.

### Substitute Credentials

We refer to a degree or credential in an unrelated field, such as law, psychology, human resources management, etc., as a substitute credential. We also include in this category substitute credentials such as a training certificate.

Rosters and Registries: These are lists. Rosters purport to set standards (or at least have requirements to get on the list) and to vouch that the individual on the list meets the standards. Registries more often are lists of individuals who attest to having done what they say they have done (e.g., had a certain training, mediated a certain number of cases...) and the organization maintaining the list vouches for the fact that the individuals have done what they say they have done.

## **V. MEDIATOR QUALITY ASSURANCE INITIATIVES**

The quality of the mediator is the heart of any mediation or mediation program. It is likely that the underlying goal or purpose of program requirements for mediators is to provide some level of comfort and assurance to both the program and consumers as to the qualifications of those mediators working within the program context. Few programs have complaint procedures, some, but not all use mediator evaluations post-mediation. Poor mediator performance can account for lack of participation in a

mediation program. Only a handful of programs use certification as their model for credentialing mediators. No state or national membership organization calls their designation of competency “certification.” There are many, many state, agency, statewide membership organization and national membership organization rules regarding mediator standards, liability, ethics, and other requirements for practice. A useful resource that includes information on certification and credentialing is Legislation and Court Rules re Mediator Qualifications, developed by Maria Mone, Director of the Ohio Commission on Dispute Resolution and Conflict Management. The document offers an extensive summary of state rules regarding standards, liability, ethics, and other rules relating to mediators.

Ways to credential mediators are being developed in literally thousands of different programs:

- Professional association membership categories
- National sector-specific program rosters
- State court programs certification (and accreditation)
- State court program registries and rosters
- Federal court program rosters
- The national family mediator certification program in Canada
- State mediator association experiments with certification
- Private and governmental agency rosters

**A. *The credentialing landscape today***

Regulated Credentials: State or Other Government Agency Regulation

**Licensing.** There is no “licensing” of mediators in any jurisdiction in the United States. This may be because current knowledge about the qualifications needed to ensure effective DR practice are still being developed. The second (1995) SPIDR Commission on Qualifications thought licensure inappropriate because it risks establishing arbitrary standards in a field that is rapidly changing.

And, while certification is most often used in the context of private associations vouching for the competency of professionals (see below), there are government agency certification requirements in some contexts. Therefore, it is not surprising that a handful of state court mediation programs have “certification” requirements for mediators (Florida, Virginia and Tennessee “certify” their mediators. In some courts, the court mediators are on a “registry.” In some states, such as Alabama and Colorado, mediators must meet a variety of requirements to receive court cases, but the programs have not given them any “credentialed” status. One state court program, Massachusetts, is developing a hybrid of a certification program, that relies heavily on the accreditation of the preparation programs for mediators.

Regulated Credentials: Self-Regulation or Voluntary Regulation

**Certification.** Recognition through certification, usually by professional organizations, courts, or other bodies, indicates that an individual has met certain specified qualifications standards. Some programs have adopted approaches that rely less on entry standards than on targeting needed improvements in mediator skills or developing "informed consumers." A handful of programs use certification, but no state or national membership organization calls their designation of competency "certification" (although a few are working toward this). The Texas Association of Mediators (CP, is this the right name?) is developing a statewide credentialing program for mediators. This will be the equivalent of a certification program. As we have stated, there is little in the field of mediation that corresponds to the regulation of other professions and occupations, even if "self-regulation." It is also important to note that there is a wide variety of state, agency, statewide membership organization and national membership organization rules regarding mediator standards, liability, ethics, and other requirements for practice. See Legislation and Court Rules re Mediator Qualifications, developed by Maria Mone (CP, attach?) This document offers an extensive summary of state rules regarding standards, liability, ethics, and other rules relating to mediators. One might also consult Mediation: Law, Policy & Practice, 2d Ed by Cole, McEwen and Rogers, West Group 2001.

Perhaps the most recent overview of the development of ADR programs in state courts can be found in the Introduction to *Court-Annexed Mediation: Critical Perspectives on Selected State and Federal Programs*.<sup>2</sup> This compendium provides an analysis of state and federal court ADR programs. Co-editor Edward Bergman captures the history of two decades of evolution of mediation programs in state courts when he states "Court-annexed mediation, in a bewildering array of forms, is now part of the landscape in both our state and federal systems."<sup>3</sup> Court-annexed mediation (and other ADR options) also appears in a bewildering array of numbers. In the United States there are more than 16,000 state general jurisdiction and appeals courts, 94 federal district courts, 10 federal appeals courts. Elizabeth Plapinger's Preface to "*Critical Perspectives*" summarizes the known data in 1998 asserting that "(n)early every state court system offers some form of mediation, over 30 states have arbitration and mediation programs for civil cases, and statewide ADR commissions or offices are operating in almost half the states."<sup>4</sup> The numbers of state court-annexed programs probably can be counted in the hundreds, if not thousands, since almost every state has numerous and different mediation and ADR programs in its state courts. Whatever the actual numbers, the conclusion is inescapable that the numbers and types of court-annexed mediation and ADR programs is staggering. We agree with Bickerman and Bergman that court administrators and policy makers have no clear direction as they seek to improve, expand or develop new programs. All courts consider the policy, practice and design

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<sup>2</sup> Bergman, E.J. and Bickerman, J.G., eds., *Court-Annexed Mediation: Critical Perspectives on Selected State and Federal Programs*, The American Bar Association, Pike & Fischer, Inc., Bethesda, MD:1998. (hereinafter referred to as "*Critical Perspectives*."

<sup>3</sup> Id at v.

<sup>4</sup> Id at i.

implications of mandatory or voluntary referrals, exceptions, opt-in and opt-out provisions, matching cases to ADR processes, scope of ADR processes available, timing of referral, qualifications of mediators and other neutrals, training, continuing education, program costs, program standards (confidentiality, case evaluation, role of judges), definition of mediation, mediator performance and regulation, consumer satisfaction and other evaluation standards. These courts have certainly been helped by the work of the National Institute for Dispute Resolution (NIDR, no longer in existence), the Center for Public Resources (CPR),<sup>5</sup> and the National Center for State Courts new web site ([www.ncsc.dni.us](http://www.ncsc.dni.us)).

**Accreditation.** At least two state court programs (Massachusetts and Oklahoma) use approval of trainers and training programs as their primary means of obtaining qualified mediators. In Texas, the state association for mediator credentialing is looking at a similar model. These may be viewed as accreditation-like systems. In essence, each of these programs includes standards for approval of trainers or training organizations; guidance for evaluation and mentoring; a statement of qualities and responsibilities for trainers, evaluators and mentors; and a mediator skills checklist. The programs has requirements for training (including orientation to the judicial system), observation (generally, at least one role-play observed by a qualified evaluator, plus observation and discussion of one case), experience, and performance assessment of mediators wanting to do court work.

There is one final type of credential that we include here as a voluntary or self-regulated credential, although it is far less recognized and less formal than either licensing or certification. This is the professional membership association “practitioner” category that sets standards and has requirements that set it apart from general membership. This category informs the public that the person who holds the membership designation (Practitioner member for the Academy of Family Mediators, for example) has a credential that attests to performance capabilities. The Association for Conflict Resolution (ACR) is currently developing the “practitioner” membership category. We should keep in mind, however, that although a few state courts required the AFM practitioner member category to receive case referrals, there has not been broad adoption by states or state courts of this method of credentialing.

### Degree-Related Credentials

Many universities now have Masters and Ph.D. programs in conflict studies, conflict resolution or dispute resolution. Certificate programs are accredited programs in the same fields of study. The issue in the context of this report is, what do these degrees provide a credential for? Except for recognition by university programs and colleges, it is possible that these degrees are not viewed as a significant credential in the

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<sup>5</sup> See, for example, *Court ADR: Elements of Program Design*, by Elizabeth Plapinger, Esq. And Margaret Shaw, Esq. (1992) CPR is located at 366 Madison Avenue, New York, New York 10017. [www.cpradr.org](http://www.cpradr.org)

workplace. (For a list of degree-granting programs see the following website prepared by Professor Bill Warters at Wayne State University: [www.campus-adr.org](http://www.campus-adr.org).)

### Substitute Credentials

Training certificates, certificate programs that generally supplement an individual's career, and advanced degrees either in conflict resolution or another field are treated by mediators and mediation programs as credentials, and are, in fact, credentials in the broadest definition of the term. Mediators often describe themselves as certified in mediation after attending a 40-hour training and receiving a certificate of attendance. But these substitute credentials do not carry many if any of the essentials that the public might need to rely on someone's ability or authority to hold themselves out as a qualified mediator. (see Chris Honeyman's *The Incredible Disappearing Profession*, published in *CONSENSUS*, the newsletter of the MIT-Harvard Public Disputes Program, January, 1999).

Substitute credentials, such as law or mental health degrees are appealing because the general public thinks the mediators are authorized by someone to do what they say they can do, and that they (the public) have some recourse against the professional should s/he do something wrong. If a judge creates a roster of mediators from among lawyers, isn't it because the judge believes that by having control over the lawyers in the practice of law, s/he has control over them in the practice of mediation? Yet, if mediation is not the practice of law, how does a judge have control over a lawyer to whom s/he refers a case, even if the lawyer practices law in that jurisdiction?

Rosters and Registries Perhaps the single most important form of credentialing for mediators today, albeit a substitute credential, is to be listed on a Roster or Registry. Rosters and Registries have become commonplace as a means of "vouching" for mediators. These are lists. Rosters purport to set standards. Neutrals who are listed because they meet criteria established by a program or agency for interested parties or administrators to use in identifying a service provider. We all know that the requirements for and faith the public can put in these lists varies hugely across all sectors of practice. Many mediation programs are developing their own quality and assessment methods. Most of these efforts result in rosters or registries. The numbers of rosters and registries may easily be counted in the thousands. In the United States there are more than 16,000 state general jurisdiction and appeals courts, 94 federal district courts, 10 federal appeals courts, over 150 federal agencies developing mediation programs for EEO cases, 400-500 mediation centers, campus mediation programs, statewide dispute resolution organizations, statewide "offices of dispute resolution," numerous national program rosters (e.g, AAA, the U.S. Institute for Environmental Conflict Resolution, Jams-Endispute, FMCS) and countless state agencies that have in place or will be adopting mediation programs for their disputes.

These criteria may be highly restrictive, or may require very little to be listed. The Federal Deposit Insurance Corporation made an early effort at creating a roster and developed moderately restrictive selection criteria for mediators.

The U.S. Institute for Environmental Conflict Resolution, now maintains The National Roster of Environmental Dispute Resolution and Consensus Building Professionals. Deborah Laufer's Recommended ADR Links list has a section of links to other selected rosters of neutrals. Charles Pou's Issues in Establishing an EPA-Sponsored Roster for Neutrals' Services in Environmental Cases explores creating and running an effective roster of neutrals, including qualifications for listing neutrals, assessing their performance, making panel assignments, and handling complaints. The Key Bridge Foundation is developing a web site at CRInfo that will provide information about rosters and best roster practices to the field.

Listing on a roster is a credential for that roster or program. Mediators use their listings on rosters as a statement to others that they are competent to practice their profession, thus using the listing as a substitute credential. Certainly with this large number of mediation programs in place, any approach to credentialing and quality assurance must take into account how to meet the needs of, or attract the interest of, multiple contexts and settings of mediation practice.

**See Appendix C. SUMMARY CHART OF SELECTED JURISDICTIONS**

***B. What's happening now [Please note that the following summary will be up-dated prior to a release of the final report. The Task Force welcomes updates.]***

**Overview.** While mediators and researchers have strived over the past 15 years or so to define “what mediators do” and to better understand “how to do it well,” ADR programs, roster administrators, and parties seeking neutrals have had to deal with day-to-day choices. As Judy Filner states in a recent article in the Fall, 2001 Issue of Dispute Resolution Magazine, devoted to the subject of mediator credentialing, “ways to quality mediators are being developed in literally thousands of different programs.” These range from professional organizations creating memberships categories to judges, court administrators, and agencies establishing rosters or other means of “vouching for” their mediators. This section describes some of the more interesting or innovative among these activities.

**ACR/AFM.** A pre-merger credentialing effort by AFM yielded primarily a description of the substantive knowledge desirable for family mediators. The newly-created ACR (formerly SPIDR, AFM, and CRENet) has commenced an Advanced Practitioner Work Group, that is exploring development of a class of "Advanced Practitioner" members. If adopted, each ACR section (e.g., environmental/public policy, commercial, labor-management, community) that is interested will likely undertake the designation. While initially intended to serve only as a membership category (rather than a "credential" that would involve monitoring and policing), the work group

will also explore whether and how this category can eventually serve as a recognized credential in the DR field. Each interested ACR section would be expected to identify (1) needed practice competencies (as the Environmental/Public Policy Section has already done) and (2) what would be measured and how (probably not performance-based) when applications are sought.

The work group's draft report was presented to the Board in April 2001 for guidance and feedback. The group will continue to seek input from ACR sections on the draft and the process and report with recommendations.

**Texas.** Two different quality assurance initiatives are noteworthy.

An advisory committee to the Supreme Court has submitted a proposal for creating a registry of state court mediators (attorneys and non-attorneys). The Supreme Court has not acted on the report, which contained recommendations concerning minimum qualifications for mediators, a recommendation for a Commission on Training, and Rules of Ethics for Mediators.

Advisory committee members gathered extensive data on other jurisdictions' approaches during their deliberations. Committee co-chair Bruce Stratton, who permitted Charlie Pou to review the Committee's materials, saw Tennessee and Georgia as states with approaches to credentialing that they found most helpful (see below).

The advisory committee did not make a recommendation on "credentialing" for a variety of reasons, but it did recommend minimum qualifications for court mediators. (The committee stated that the minimum qualifications for mediators is not "credentialing" or "certification," but rather an effort to focus attention on continuing education and training. Likewise, it said, the Commission on Training is a focus on the quality of training.) In addition to the required training courses, the committee proposed requiring continuing education for court mediators. The committee recommends having judges select from the list of mediators possessing minimum qualifications, while allowing a judge to go outside the list if s/he provides a written explanation for doing so.

A second Texas initiative, the Texas Mediator Credentialing Association, has recently been incorporated as a 501(c)(3) entity to serve as a voluntary credentialer for mediators and mediation trainers in all fields. The Association's 15-member board has begun meeting, and includes representatives from Texas' major mediator and trainer groups, the bar, consumers, education institutions, and the judiciary. The Board expects to set credentialing and training standards, as well as a grievance process. It has established committees (credentialing standards, web page design, grievance process, application format and process, funding, marketing). Among the issues that TMCA is considering are instituting a "tiered" approach with basic and additional advanced or specialized levels of credentialing, assessing fees and other resources to support establishing an administrative structure for TMCA, and

establishing an effective grievance process that respects all participants' confidentiality concerns.

**Maryland.** Maryland. The Maryland Mediation and Conflict Resolution Organization and three Maryland practitioner groups are seeking to develop a quality assurance system for mediators in Maryland. To help develop this plan, these groups [MACRO, which is located in the Maryland court system; the Maryland Association of Community Mediation Centers; Maryland Council for Dispute Resolution; and the Maryland Chapter of ACR] have created a representative Oversight Committee that is working collaboratively with stakeholders around the state. As part of their collaborative process, they have retained a consultant (Charles Pou, Task Force member and principal creator of this report) to report on QA developments and innovative approaches elsewhere, develop options for Maryland, and facilitate a consensus among Oversight Committee members. A preliminary report was discussed in the fall of 2001.

**New York.** Several sets of quality assurance activities are worth mentioning.

The New York Courts ADR Office does not certify mediators, but for several years has had standards and requirements for mediators and mediation trainers, mostly in connection with community mediation centers that receive courts funds; these centers provide extensive mediation services to many courts in the state. Court ADR Office personnel say that they are giving thought to reassessing their mediator training program requirements, since many community programs now offer training that goes considerably beyond the existing requirements. As part of its training oversight process, this Office reviews training agendas, manuals, and materials from those seeking accreditation of their training?, offers informal feedback, and observes trainings; they say they are considering hiring two employees to undertake to offer "train-the-trainers" sessions periodically.

A subcommittee of a court advisory committee, led by Lela Love, has begun to develop recommendations for another set of standards that courts could use in developing rosters or selecting individual mediators not affiliated with a community mediation center. These will likely be fairly undemanding (e.g., 40 hours of training), but will differentiate between various styles and processes. Court ADR administrators do not expect these recommendations to be put forward formally for a while, and will seek first to work informally with local courts to obtain their understanding and acceptance.

Finally, the NY State DR Association's Certification Committee is starting to develop a broad mediator certification process. It began a highly interactive process by holding interviews and focus groups on the issue with hundreds of stakeholders; some materials related to the focus groups and their results (including a history of mediation certification, a focus group participant letter, and focus group results regarding education, training, experience, and evaluation criteria) are set forth on NYSdra's web site (<http://www.nysdra.org/who.html>). Committee Chair Kenn

Handin said that NYSDRA was impressed with the Idaho and Washington mediator associations' work (see below). Drafting has just begun, and NYSDRA officials are uncertain whether the new system will be administered locally or centrally.

**Family Mediation Canada.** FMC went through a multi-year collaborative process that resulted in a fairly strict set of credentialing standards for all family mediators there. This national certification program for family mediators requires completion of an initial 13-page application that documents completion of at least 80 hours of basic training and an added 100 hours of related education and training, as well as letters of reference and insurance. Applicants then receive a Candidate's Manual to guide them through an assessment process, including preparation of a videotaped skills demonstration, a self-evaluation, and a 4-hour "invigilated" written exam on substantive issues. Preparation workshops are offered to potential candidates. (See FMC Application Form; Steps in the Certification Process; and Practice, and Certification and Training Standards.)

**Massachusetts.** Massachusetts has had criteria for court mediators for several years, but a court advisory committee studying credentialing has produced some controversy and, recently, consensus proposals for significant change. The longstanding guidelines have included standards for approval of training organizations; guidance for evaluation and mentoring; a statement of qualities and responsibilities for trainers, evaluators, and mentors; and a mediator skills checklist. The recent advisory committee proposal would establish (among other things) general requirements for training (including orientation to the judicial system), observation (generally, one role-play observed by a qualified evaluator, plus observation and discussion of one case), experience, and performance assessment of mediators wanting to do court work. Some controversy over grandparenting those with no training has arisen, and, during the advisory committee's discussions, a group of Massachusetts attorneys retained a legislative lobbyist to put forward their concerns. The court is scheduled to consider the advisory committee report.

**Colorado.** Five major entities involved with mediation in Colorado formed a steering committee in the mid-1990s to develop a consensus on credentialing mediators. Several years of work, with lengthy discussions of the definition of mediation and principles for handling qualifications, produced a product that would have had a newly-formed oversight group administer a certification program. Two constituencies, including the bar, then declined to endorse this product. The early stages of this history are described in Ortner and Shields, A Report on the Development of Qualifications and Standards of Conduct for ADR Professionals, The Colorado Lawyer (October 1997).

**Idaho/Washington/Virginia/Florida/Tennessee/Georgia.** Georgia's approach is a fairly typical court-administered one, though slightly less bureaucratic than Florida or Virginia. Its Supreme Court has issued rules, with quality being managed largely by individual courts. Neutrals wishing to work on court cases must register with the Court's Office of DR, and are then monitored by that Office and the GA Commission

on DR (the court's ADR policy-making arm). Requirements for registration include training, education, and references (Appendix B, Sup. Ct. ADR Rules) -- as well as being "of good moral character." Registered neutrals are deemed qualified to serve in any court in the state, though individual courts may add more stringent requirements and select the neutrals who will serve their programs. A Commission on Ethics hears complaints of neutrals' violations; only one formal complaint has received treatment so far, and only one formal opinion has been issued.

The mediation associations in Idaho and Washington have recently adopted credentialing processes for members wishing to achieve something greater than "general member" status. At present, these credentials have not been recognized or adopted by court entities, though in both states obtaining such recognition is a goal of the associations. Washington's approach employs a slightly "higher" set of hurdles (e.g., more training hours), but both involve a fairly simple examination of paper submissions describing or substantiating skills training, case practice (including memoranda of agreement), additional experience or study, and letters of recommendation. Applicants who are found to fall short can receive a statement of deficiencies and usually negotiate a plan to obtain mentoring or demonstrate additional needed competencies.

**U.S. Navy.** The Navy's workplace mediation program relies almost entirely on several dozen employee-mediators who, after being nominated by their "commands," have received training and mentoring before being certified to mediate Navy workplace cases part-time. The Navy's four-step process seeks to assure competence, and involves a basic 20-hour mediation course, a supplemental 20-hour course emphasizing role-plays, a screening based on observation of how the trainee handles a 1 1/2 hour role-play, and three co-mediations and extended debriefs with experienced contractor-mediators or internal mentors. After completing these steps, a Navy mediator can apply for certification. The Navy has developed several instruments to aid this program (e.g., observer's checklist, co-mediator evaluation form), and provide occasional refresher sessions. The program's director anticipates developing a recertification process, based on the notion that approval is not "for life."

**U.S. Postal Service.** USPS trained a number of trainers to offer several thousand experienced mediators a two-day session on using a transformative approach to USPS workplace mediation. Rather than evaluating trainees at that point, USPS then required those wishing to obtain paid referrals to submit to observation in an initial pro bono case. USPS also sought to train its mediation program administrators to assess neutrals on an ongoing basis, and provided listed mediators an opportunity to participate in periodic "mini-conferences" to discuss real-world problems and research findings. This approach has resulted in USPS paring its mediator list considerably, based largely on observations. Program managers expressed the view that QA is a continuing process, rather than a one-time assessment, and emphasized the importance of defining quality in connection with a program's goals rather than generically.

**NAFCM/Community Programs.** NAFCM's ongoing quality assurance initiative is expected to produce a non-prescriptive assessment tool that will help community mediation centers focus on improving general management for non-profits, case administration, and training, development, nurturing, and handling of volunteers. For each of these areas, the document will likely address practical service delivery considerations for centers and set forth some potentially useful approaches to dealing with them. Consonant with most community programs' emphasis on some regimen of basic and advanced training, mentoring, co-mediation, observation, and continuing education -- as opposed to credentialing individual mediators, which NAFCM officials describe as inherently exclusive -- the initiative is expected to describe aspirational standards, pose questions to consider regarding how to reach these goals, and offer examples of how some centers have dealt with these issues. A final version by early 2002. A recent article on NAFCM's website by Melissa Broderick, Ben Carroll, and Barbara Hurt, entitled Quality Assurance and Qualifications, discusses community mediation programs' QA activities, and includes a "quality assurance statement" that briefly addresses screening and recruitment, basic training, evaluation of training participants, apprenticeship, co-mediation, continuing education, and trainer responsibilities.

**Federal Deposit Insurance Corporation (FDIC).** In the early 1990s, the FDIC sought the advice of a "Blue Ribbon Panel" of experts to develop a set of criteria for private mediators wishing to be listed on the agency's nationwide roster of neutrals who could be used to resolve agency cases. In brief, the experience-based criteria were total hours spent as a neutral, number of cases, diversity of substance and process, dollar amount involved, multi-party experience, and complexity of cases. The panel considered and rejected several factors, including education, training, prior certification, and professional association memberships.

**Federal Mediation and Conciliation Service.** FMCS "believes it is in the public interest to establish standards of training, ethics, and practice for our profession." (See FMCS credentialing, Federal Register notice, in Documents Attachment.) As the demand for mediation has grown, FMCS has established a roster of private sector neutrals to augment its full time staff occasionally in the delivery of labor, employment, multi-party, and commercial mediation services. FMCS "holds its internal roster of neutrals to the same high standards of training, continuing education, ethics and accountability as its professional staff." FMCS has decided that mediator effectiveness would be greatly enhanced and the professionalism of our field raised through a comprehensive credentialing effort, which began a year ago. It has contracted with the University of Arkansas at Little Rock to research standards for mediator qualifications and prepare proposals for the operation of the FMCS credentialing process. A team headed by Dr. Angela Laird Brenton, Dean of the College of Professional Studies, will issue a report to FMCS in 2002.

### **C. OTHER QUALITY ASSURANCE "MODELS" – SELECTED CURRENT SYSTEMS**

Credentialing is not the only way to promote quality practice by neutrals. Numerous methods of assessing mediator competence are available to be used in complementary combinations -- though it is difficult to say where "credentialing" stops and other means begin. Most people interviewed suggest that exclusive reliance on only one method -- for example training, interviews, references, observation, or performance testing -- is likely to measure certain elements of competence while neglecting others.

These less formal approaches to promoting mediator competence generally involve a combination of several of the following:

- Standards for training programs
- Mentoring or supervision
- Continuing education and training
- Amount of experience (e.g., number of cases and/or hours)
- Performance tests or live or taped demonstrations
- Monitoring and user evaluations
- Complaint procedures/panels
- References
- Interviews
- Market approaches

**Standards for Training Programs.** Some standards-setters choose to certify or accredit trainers, address the content of the training program that should be offered to mediators, or discuss trainers' broader (or longer-term) responsibilities. As one knowledgeable person has written, "Training standards should be reviewed with the goal of making trainers more accountable for 'graduating' or recommending incompetent students." Ansley Barton, "Who Goes There? New Questions at the Gate," 1 *The Conflict Resolution Practitioner* 43 (2001). This viewpoint appears to represent a growing trend, reflecting observers' belief that quality training -- especially combined with effective mentoring -- can make a substantial difference and that trainers should bear an obligation to mentor their students (or at least offer feedback that discourages substandard trainees from moving forward).

Several entities have adopted standards for approving mediator training programs, such as the Academy of Family Mediators. The Florida and Georgia state courts actually require all mediators registered for court and domestic relations cases to be trained by in-state training programs they have approved. The Florida Supreme Court Committee on Mediation and Arbitration Training provides the Supreme Court with recommendations relating to all aspects of mediation training including the development of mediation training program standards, mentorship requirements, continuing education requirements, and certification of mediation and arbitration programs. (See Florida's 2000 Training Standards, and Georgia's Training Approval Guidelines.) I have been told that Kansas had, at one time, a sophisticated set of training requirements, but have not yet tracked them down.

In 1993 a group of Texas mediation trainers conducted a series of discussions to examine possible standards for the basic 40-hour mediation training in Texas, leading to a document describing standards agreed upon by the trainers, the areas in which trainers agreed that standards would not be appropriate, and areas in which the trainers have not reached consensus. See Texas Mediation Trainer Roundtable Standards, Documents Attachment.)

The Ohio Commission on Dispute Resolution and Conflict Management has prepared a useful [Consumer Guide for Selecting a Trainer](#).

**Mentoring or supervision.** Many community mediation programs, and some others, like the Massachusetts Office of Dispute Resolution's environmental mediation program, carefully assess a neutral's performance and provide appropriate follow-up to assure quality. Programs may use this method in connection with a credentialing process, or they may employ mentoring alone because it allows them to avoid developing a credentialing process and possible attendant controversies and uncertainties over its effectiveness. Their approach generally involves co-mediation or some form of apprenticeship, with experienced neutrals observing or leading new or problematic ones in actual sessions. They also may provide targeted follow-on training or mentoring, and occasionally offer telephone advice for neutrals with specific concerns.

**Continuing education or training.** Many community, agency-based, and court programs hold periodic seminars, in-services, "mediator master classes," conferences, or other training sessions with their neutrals (or, in some cases, those with special needs) concerning skills enhancement, new developments in the field, or handling commonly experienced problems. . The Texas advisory committee proposals, for example, would require that court mediators get a minimum of 10 hours of approved continuing education annually on mediation or mediation-related issues, with at least 2 hours on mediation ethics and 4 hours on mediation practice skills enhancement.

**Amount of experience.** Numerous programs and rosters permit any neutral to practice provided he or she has "logged" a certain minimum number of cases or hours in mediation. This is sometimes referred to as the amount of actual "flying time".(See the [FDIC and USIECR roster requirements](#) as examples; the latter requires over 200 hours in environmental or public policy settings, a requirement that is considerably higher than most.)

**Performance tests or demonstrations.** Many neutrals believe qualifications are best measured through performance tests, such as participating in mock mediation sessions in which candidates have a chance to demonstrate their ability. SPIDR's Commission on Qualifications, for example, recommended that "where standards are set they should be performance-based." While efforts have been made to develop these kinds of competency tests, few large-scale programs have had the time and resources for wide performance-based testing. (See the Test Design Project's

Performance-Based Assessment: A Methodology, for Use in Selecting, Training and Evaluating Mediator.) A few court and community mediation programs have undertaken this approach is selecting candidates for training. For example, the Massachusetts Office of Dispute Resolution has a panel of more than 65 private-sector neutrals who were chosen based on a performance-based selection and training process.

**Monitoring and user evaluations.** ADR programs may also wish to systematically monitor neutrals' performance to identify situations involving quality concerns. Some programs, like MODR's and the CPR roster, rely extensively on feedback from users as a tool to assess their neutrals. A similar approach used by some programs involves removing those neutrals who are never selected by parties. Another common method is using post-mediation questionnaires or evaluations from the attorneys and/or parties in each case to ascertain whether they found mediation helpful, and whether the mediator maintained neutrality, understood the issues, stimulated creative solutions, helped them reach agreement, and whether they would use the mediator again.

**Complaint procedures/panels.** Establishing complaint procedures or a complaint "hotline" for parties is a method some programs employ to promote quality. A few programs, such as MODR, then follow up with targeted mentoring or training when parties' assessments indicate troublesome patterns of behavior by certain neutrals. Some people expressed a view that complaint processes should be available both to customers of mediation services and to mediators wanting a say concerning negative assessments of their performance.

Some jurisdictions employ more formal procedures for assuring that neutrals perform adequately. The Florida Supreme Court, for example, created advisory panels to field written requests from mediators on ethics questions and party grievances. The typical sanction in Florida has tended toward requiring further training or imposing restrictions on certain types of practice (e.g., no more family cases). A very few mediators have been suspended. In practice, however, agency programs have seldom found it necessary to employ such formal procedures.

A few entities and observers have suggested employing mediative, or ombuds, methods to handle consumer complaints. Related issues include "who should review complaints" and what degree of confidentiality should be afforded to complaints, complaint-handling, and decisions of reviewers.

**References.** A few programs (e.g., Idaho and Washington) have required neutrals to provide references or lists of clients from prior cases.

**Interviews.** A few programs -- such as the D.C. Superior Court's Multi-Door Courthouse and some agencies' collateral duty mediator programs -- employ interviews as part of their mediator selection process, or get reports from the neutrals

themselves and use them as a tool in assessing their understanding and performance.

**Market approaches.** Some programs take a "free market" approach. Supporters of this method fear that licensing or certification may be restrictive and rob ADR of valuable perspectives and approaches. They believe a market approach will ensure that only the best mediators continue to practice. This philosophy recognizes that a "market" solution requires consumers to be well-informed, so that they are better able to assess the kind of assistance they need and to evaluate the performance of the practitioner and program. Several state entities employing this method have devised consumer guides on selecting a neutral. See, for example, the Alaska Judicial Council's Consumer Guide to Selecting a Mediator and the Ohio Commission on Dispute Resolution and Conflict Management's Consumer Guide: What You Need to Know When Selecting a Mediator.

## VI. POLICY AND PRACTICAL ISSUES IN CREDENTIALING MEDIATORS

**Overview.** As described above, typically, most professions think about quality assurance (QA) in terms of credentialing, e.g., licensing, certification, accreditation, or "substitute" credentials (like degrees or professional background). Credentialing is one method of attempting to assure competence. There is no licensing for mediators, and a handful of state court and one mediation center have certification programs. For better or worse, mediation quality assurance programs have not moved as far toward credentialing as most professions.

Most credentialing approaches involve some combination of requirements for training and experience -- occasionally with some academic degree or apprenticeship or mentoring. A number of professional groups have developed standards for "credentialing" mediators or other neutrals - i.e., vouching for the individual's competency to perform. See Judy Filner's Certification Issues Outline for AFM's Voluntary Mediator Certification Project (May 2000. Summarizes credentialing options and most of the key research and activity relating to credentialing mediators.)

There are several possible ways to think about "prototypes" of QA approaches, and the potential and actual strengths and weaknesses of each. The chart in Appendix C (which prints best on 11"x14" paper) summarizes (in an extremely simplified fashion) the approaches to mediator quality by a 15 key states, courts, and other entities.

One way to categorize these approaches might look at the following generic credentialing to the activities:

- Private voluntary paper standards for individuals (e.g., TMCA, WA, ID, NYSDRA)
- Public mandatory paper standards for individuals (e.g., TX Sup. Ct., FL courts, VA courts, U.S. IECR roster)

- Mediator mentoring and development approaches (e.g., SD Comm. Mediation Ctr.)
- Private or Public Performance-based approaches
- National Accreditation (of mediator preparation programs, including training)
- National Certification Program (e.g., Family Mediation Canada)
- Hybrids

Several other ways exist to think systematically about QA “systems.’ For instance, some suggest “sorting’ by location of case managers, standards setters, or source of cases; they say that his approach allows one to focus on “real world” developments in the field. They would use categories like:

- Court program credentialing and rosters
- Agency programs credentialing and rosters
- Community programs QA
- Private practitioner groups or private provider organizations credentialing
- Individual private practitioners self- credentialing

Another useful way to categorize quality assurance (QA) systems employs a grid displaying the height of “hurdles’ that mediators must meet at the outset to engage in practice and the amount of “maintenance’ or development aid provide them later on. The quadrants of such a grid look like this:

High hurdle/Low maintenance	High hurdle/High maintenance
Low hurdle/Low maintenance	Low hurdle/High maintenance

A program with a "high hurdle" (e.g., Family Mediation Canada, which requires several hundred hours of training, or the US Institute for Environmental Conflict Resolution’s roster, which calls for 200 hours of environmental experience) would require many hours of training, experience, and/or observation to obtain a "credential." A “low hurdle” program would typically demand only 20-40 hours of training, and, perhaps, a few mediations or co-mediations.

A program that takes a "high maintenance" approach (e.g., many community mediation programs) recognizes that initial training or substantive knowledge is not generally determinative of a mediator’s abilities or long-term potential. Such a program may require little to become a mediator but would typically mandate that mediators either receive considerable "nurturing" or handle a large number of cases annually so as to broaden their awareness and enhance skills over time. This nurturing could include co-mediation, follow-on training, in-services, and coaching. A “low maintenance” program would impose a few mandates on a mediator once s/he has been credentialed – in the case of many court programs, as little as 6-8 hours of continuing education each year.

QA systems generally include some combination of “hurdles” and “maintenance.” Any given combination would well produce differing impacts on key outcomes, including:

- The credibility and professionalism of the dispute resolution field
- The dispute resolution field's diversity
- Effective enforcement of ethics, consumer protection, and quality standards
- Mediators' knowledge, self-awareness and skills in facilitating communication and promoting appropriate resolutions
- Mediators' responsiveness to the goals of various DR programs and individual clients' needs
- Mediators' substantive expertise about the cases they handle
- The quality assurance process's perceived fairness, acceptability, and workability

Of course, factors in addition to any particular combination of "hurdles" and "maintenance" will also have a significant impact on how mediation practice ultimately develops. These include:

- The extent to which the QA system is administered in a flexible manner -- e.g., following a single set of requirements or, instead, a generalized standard that is particularized for various areas of practice or even program-by-program
- Whether a QA system is run in a centralized or decentralized manner -- e.g., is there a central QA decision maker or, instead, a delegation of authority?
- What entity (or entities) makes and enforces decisions regarding mediator quality, including credentialing -- e.g., state agency, mediator groups, the bar, courts
- The methodological basis for any QA system -- for instance, the quality of nurturing activities, or what criteria are used in setting hurdles and assessing abilities (observation, performance assessment, paper credentials, written tests, degrees, or other approaches)
- The extent to which provider organizations or potential users of mediation services employ, or pay heed to, the standard or approach that is established - - i.e., will Court X, Agency Y, or Roster Z view the system's requirements as important in, or at least relevant to, listing or selecting neutrals?
- Regional or other variations in access to training and other assistance
- The scope and nature of education to help consumers understand mediation, mediator styles and aptitudes, what to look for in typical settings, and how to select
- Other economic incentives and professional factors affecting parties, mediators, courts, other DR provider organizations, and quality assurers -- e.g., practical availability of mentoring services, limited revenue or personnel resources, relative costs and benefits to mediators of obtaining credentials

Notwithstanding these factors, selecting any one of the various combinations of "hurdles" and "maintenance" is likely to have some predictable implications for the future of mediation in a jurisdiction. Briefly described, they might be:

- *No hurdle/no maintenance programs* (free market). A market-based system could be seen as very close to “no hurdle/no maintenance,” with any interested practitioner empowered to hang out a shingle with marginal, or even no, training, mentoring, continuing development, or oversight. This no-barriers approach could afford maximum diversity, a large mediator population, and minimum bureaucracy, but minimal consumer protection, ethics enforcement, and credibility. It could also allow undue emphasis on substantive expertise or professional background. Skills would depend entirely upon individual mediators’ inherent abilities and willingness to seek to improve them. Educating consumers and providing them accurate, useful information would assume critical importance in promoting informed selection and responsible, quality mediation. [might want to distinguish between how this system works in strictly private practice where cases are referred through practitioners own network, and roster practice where cases are referred through a program]
- *High hurdle/high maintenance programs* (e.g., *Family Mediation Canada*). This highly professionalized system could yield great credibility, high mediator skill levels, and effective enforcement, but would likely require a significant bureaucracy. It could lead to substantial contention, with its high hurdles, and, unless some grandfathering provision were adopted, could run afoul of geographic variations, professional rivalries, and uncertain political acceptability. It probably would reduce diversity within the mediation field, unless specific outreach efforts were undertaken. While this system might enhance mediators’ substantive knowledge (if acceptance criteria were written to include such knowledge), it could also reduce responsiveness to individual clients’ or programs’ needs by promoting particular styles or leading to a bureaucratized approach to QA.
- *High hurdle/low maintenance programs* (e.g., U.S. IECR). With a somewhat smaller bureaucracy than the prior system, this approach could yield substantial credibility, good mediator skill levels (depending on the criteria selected), and effective enforcement. However, it would also reduce attention to the value of mediators’ continuing improvement of process skills and systematic attention to “reflective practice.” And, by emphasizing high initial barriers to entry, it could produce disagreements over credentialing decisions, give rise to antitrust or other litigation, and negatively affect collegiality among mediators.
- *Low hurdle/low maintenance programs* (e.g., most state court mediation programs, Washington and Idaho Mediation Association credentialing). This approach would likely yield considerable diversity, a sizeable numbers of mediators, and greatly variable mediator skills levels, with little in the way of bureaucracy or support structures for mediators. It would establish some QA and ethics enforcement system that could be easily administered and would likely produce few disagreements over credentialing, but that could also allow undue emphasis on “contacts” and substantive expertise. This approach

would reduce attention to the value of mediators' continuing improvement of process skills and systematic attention to "reflective practice." It would afford users limited quality assurance and the dispute resolution field fairly marginal credibility, unless combined with considerable attention to providing users with accurate information on mediators and educating them as to the value of being an informed consumer and the limits of this approach for securing quality practice.

- *Low hurdle/high maintenance programs* (e.g., most community programs, U.S. Navy workplace program). This approach could yield high mediator skills levels and effective enforcement, but would likely require some bureaucracy or structure for providing a support system for mediators. It would require some long-term commitment to, and by, each mediator and thus could raise practicality concerns (especially for solo practitioners) if embodied in a statewide system. It would likely produce fewer disagreements over credentialing than a high hurdle system, and could produce a somewhat greater sense of collegiality among mediators. If a truly effective support structure were established that targeted and addressed individual mediators' developmental needs, this approach could provide substantial credibility for the dispute resolution field, especially if combined with consumer education explicating the limits of "hurdles" as quality indicators.

***Criteria for credentialing?*** The criteria and means of assessing performance that are used for credentialing and rosters typically incorporate some or all of the following methods:

- Degrees/education
- Training requirements
- Mentoring or supervision
- Continuing education or training
- Amount of experience, i.e., number of cases
- Performance tests or live or taped demonstrations
- User evaluations
- Complaint procedures
- References
- Interviews

Most of these systems tend to be at the "minimalist" end of the spectrum, most often requiring little more than some training (typically 20-40 hours), some experience and/or supervised practice (3-10 cases), and modest continuing education. Occasional programs, such as the Family Mediation Canada and the U.S. Institute for Environmental Conflict Resolution, have raised the bar considerably beyond these typical requirements.

***Who should credential?*** Some state mediator organizations serve as gatekeepers to credentials, whether designated a membership (or special status) in an association

or a credential to be cited. (e.g., Idaho, Washington) Several non-governmental groups have thought it highly beneficial to obtain some imprimatur from the state legislature or Supreme Court to give their decisions added luster and credibility. While most credentialing appears to occur at a central location, some observers have suggested that a more localized approach (e.g., at the regional or judicial district level) may have advantages, while acknowledging that the latter can introduce issues involving reviewer/assessor consistency and fairness.

State Supreme Courts, or affiliated entities, have served as the credentialing body for court-referred cases in several states (e.g., Florida, Virginia, Georgia), though occasionally this notion has caused worries among non-lawyers (Texas) and among those with concerns about having competitors judge their potential competitors' qualifications. Several people expressed doubt over locating credentialers within a state bureaucracy, which may prefer to focus on paper credentials to ease their task. Similarly, some jurisdictions have tended to avoid governmental credentialing, in part from concern over possibly heightened openness, judicial review, and procedural requirements. Colorado contemplated using a state agency, though this proved some hindrance to implementation when a "sunrise" process, required to justify the need for regulation, turned up scant evidence of substantial problems stemming from incompetent neutrals.

***What role should paper, performance, or other methods play in credentialing?***

Virtually no one interviewed believed that paper credentials or written testing can adequately measure mediator competence or potential, and many expressed strong views that observation of performance is the only valid means. They believed mediation requires skills that can only be demonstrated in actual practice or effective simulations, and fear trainers would "teach to" any written test. Most would limit written testing to the substantive knowledge needed to handle specified types of cases; a few, such as Peggy Herrman, see somewhat greater potential for written tests; she sees them as possibly useful in combination with performance-based skills testing. Family Mediation Canada uses a written examination for the family law substantive knowledge required for certification.

***How long should credentials last?*** A few programs take note of the fact that mediators' capacity to perform can change over time, often through no fault of their own. So far, none seem to have called for "re-credentialing," but some -- especially in community contexts -- emphasize the value of continuing education, maintaining a caseload over time, getting periodic observation and feedback, or other informal approaches to assuring continued competence.

***Grandparenting mediators.*** Some jurisdictions have sought to accommodate the fact that mediators have taken many routes into the field, with some effective ones having had little training, mentoring, or observation. A few have employed "grandparenting" (formerly grandfathering), or other credentialing approaches that recognize that there may be several paths to competence and acknowledge the

value of actual experience, in assessing applicants who might otherwise lack specified training or other attributes.

***Processes for developing credentialing systems.*** The most cogent advice is in the report of SPIDR's Second Commission on Qualifications, summarized above. Several observers cautioned that efforts to address credentialing are often highly contentious, and thought Maryland's committee might be somewhat optimistic in anticipating one year to be adequate time. A very recent Mediation Quarterly article by Linda Neilson and Peggy English, based in large part on Family Mediation Canada's multi-year effort, discusses "The Role of Interest-Based Facilitation in Designing Accreditation Standards: The Canadian Experience."

Feedback has been split as to whether the development process should seek actual "consensus" (i.e., agreement) among stakeholders or be a "collaborative" one committed to maximum feasible involvement. Several efforts at true consensus appear to have floundered, including an Oregon Mediator Competency Work Group that met over a dozen times with limited results and the aforementioned Colorado one that produced an initial consensus that two constituencies then declined to endorse. According to some reports, both groups spent inordinate time seeking to address the scope of their efforts and define "mediation." One Colorado participant suggested that a lesson from that process is to assure that representatives continually keep their constituents briefed as options are explored and tentative decisions reached. The New York State DR Association's current credentialing effort has sought to achieve wide awareness, input, and buy-in through a consensus-based process that has involved extensive outreach, numerous focus groups, and group drafting exercises; they are just beginning to develop actual proposals.

Several observers have advised making a concerted effort to include mediation consumers' views in the process of developing a QA system, pointing out that lawyers, judges, and parties often define quality differently than do mediators. These people noted, for example, research by Roselle Wissler indicating that more parties viewed the mediation process as fair (and thought the mediator understood their views) when the mediator expressed some views on the merits of the case (though not necessarily the appropriate outcome). Some recommended establishing a broad-based advisory committee to reach out to customers, much as has been done with the Texas Mediator Credentialing Association, and thought that such a committee, if it included representatives with credibility and authority, could enhance long-term implementation of a credentialing or quality assurance system.

**Accreditation.** As mentioned in an earlier section of this Report, at least two state court programs (Massachusetts and Oklahoma) use approval of trainers and training programs as their primary means of obtaining qualified mediators. In Texas, the state association for mediator credentialing is looking at a similar model. While accreditation is at the heart of most licensing requirements (e.g., a collaboration between the professional preparation program and the state licensing board), little has been discussed or experimented with in mediation. We believe that these

requirements for mediator preparation may be viewed as precursors to accreditation programs, and may serve as the most flexible model at our disposal to improve the quality of mediation practice.

## **VII. ASSURING QUALITY IN DISPUTE RESOLUTION PROVIDER ORGANIZATIONS**

Recently, observers have also begun to focus attention on quality issues relating to the ADR programs that perform tasks in providing ADR services. In addition to assessing practitioner competence, these programs may conduct screening, provide training, assign cases, and mentor and monitor neutrals, as well as provide intake and follow-up. These observers have found that provider organizations have responsibilities to provide fair, impartial, and quality processes.

The CPR-Georgetown Commission on Ethics, for instance, recently proposed Principles for ADR Provider Organizations. These principles recognize the central role of the ADR provider organization in the delivery of fair, impartial, and quality ADR services. According to the Commission, an ADR Provider Organization includes any entity or individual holding itself out as being able to (1) provide prospective users with conflict management services directly, or (2) provide prospective users with conflict management services indirectly through the management or administration of such services-including referral, clearinghouse, roster creation, brokering or similar activities. "Conflict management services" include activity as a neutral third party assisting disputants to clarify or resolve their conflicts, as well as provision of consulting, design, training, or other services intended to enable a user to better employ neutrals or enhance the capacity to resolve conflicts more effectively.

Several core principles guide this effort:

- It is timely and important to establish standards of responsible practice in this rapidly growing field to provide guidance to ADR provider organizations and to inform consumers, policy makers, and the public generally.
- The most effective architecture for maximizing the fairness, impartiality, and quality of dispute resolution services is the meaningful disclosure of key information.
- Consumers of dispute resolution services are entitled to sufficient information about ADR provider organizations and their neutrals to make well-informed decisions about their dispute resolution options.
- ADR provider organizations should foster and meet the expectations of consumers, policy makers, and the public generally for fair, impartial, and quality dispute resolution services and processes to ensure that best practices will be highlighted in the development of the field.

The CPR-Georgetown Commission on Ethics recommended several possible approaches to addressing the numerous issues of quality, selection, administration, access, oversight, and design that converge when public and private entities provide

ADR services. It recognized that, as dispute resolution activity becomes increasingly institutionalized, the need will grow for those who administer ADR programs to ensure that their efforts are effective and their activities viewed as fair and appropriate. The Commission recognized that provider organizations' efforts should include some self-assessment drawn from the following:

**Obtaining consumer input/review of complaints.** Some programs, like the D.C. Superior Court's Multi-Door Courthouse, seek parties' or lawyers' feedback as to the manner in which they have administered a case, in addition to their assessment of the neutral's performance.

**Self-assessment/performance audits.** Occasionally, programs have either retained a consultant, or undertaken themselves, to evaluate their administration efforts.

**Peer review.** This could include seeking review and input from administrators of other ADR programs or from ADR experts who can provide an unbiased look at the program's operation.

Finally, provider organizations can help themselves by doing more to share information and experiences among themselves, think through matters of effective systems design and evaluation, and focus explicit attention on "best practices" much as mediator groups have begun to do. NAFCM's current effort to develop an assessment tool for community mediation programs, discussed above, is one example of how providers are beginning to address this aspect of quality assurance.

## VIII. APPENDICES

**APPENDIX A: BIBLIOGRAPHY – SELECTED RESOURCES ON CREDENTIALING AND QUALITY ASSURANCE** [Please note: This bibliography is presented in three parts. It will be edited and presented in a single format in the Task Force Final Report.]

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<http://www.ajc.state.ak.us/Reports/mediatorframe.htm>

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**Center for Dispute Settlement & Institute for Judicial Administration**, Republished by CAADRS (Center for Analysis of Alternative Dispute Resolution Systems). *Includes model standards for court-connected mediation programs to guide and inform courts interested in initiating, expanding or improving mediation programs to which they refer cases (1993).*  
<http://www.caadrs.org/studies/nationstd.htm>

**Charles Pou**, Issues in Establishing an EPA-Sponsored Roster for Neutrals' Services in Environmental Cases (1997). *This Interim report to the U.S. Environmental Protection Agency explores issues in creating and running an effective roster of neutrals (including qualifications for listing neutrals, assessing their performance, panel assignments, and complaint handling).*

**CPR-Georgetown Commission on Ethics**, Principles for ADR Provider Organizations (2001).

*These principles advise ADR provider organizations on the delivery of fair, impartial, and quality ADR services. Includes a taxonomy suggesting the breadth and diversity of DR provider organizations.*

(June 2000 draft for comment: <http://www.cpradr.org/screen2b.htm> )

**Deborah Laufer**, "Recommended ADR Links" Extensive list of links compiled by Laufer and the Federal ADR network. *Contains, among other things, links to selected rosters of neutrals.*

Download pdf version: <http://www.adr.af.mil/general/RecommendedADRLinks.doc>, or contact Deborah at [deborah.laufer@erols.com](mailto:deborah.laufer@erols.com)

**FDIC**, Report of the FDIC/RTC Qualifications Panel (1992). *One federal agency's effort to develop selection criteria for mediators.*

**Key Bridge Foundation**, An Introduction to Mediator Credentialing (2000). *Contains basic data on mediator credentialing, its background, and issues involved.*

[http://www.keybridge.org/med\\_info/credentialing.htm](http://www.keybridge.org/med_info/credentialing.htm).

**Margaret L. Shaw**, Selection, Training, and Qualification of Neutrals (State Justice Institute, Sept. 1993). *A very useful report summarizing lessons learned from research on critical skills for effective neutrals and how they are best acquired.*

**Rogers, N., and Craig McEwen**, Mediation: Law, Policy, Practice. In "Regulating for Quality, Fairness, Effectiveness, and Access" (Chapter 11). Clark Boardman (publisher). *Discusses some possible approaches to seeking quality, effective, fair mediation.*

**Ohio Commission on Dispute Resolution and Conflict Management**, "Nationwide Survey of Mediator Qualification Statutes and Court Rules," (2001). *Extensive summary and compilation of state laws and rules regarding qualifications, liability, ethics, and other standards relating to mediators.* Compiled by Maria Mone, OCDR Director. <http://www.state.oh.us/cdr/>

**Ohio Commission on Dispute Resolution and Conflict Management**, Consumer Guide for Selecting a Trainer, <http://www.state.oh.us/cdr/brochures/cgtrainer.htm>

**Ohio Commission on Dispute Resolution and Conflict Management**, Consumer Guide: What You Need to Know When Selecting a Mediator, <http://www.state.oh.us/cdr/brochures/cgmediator.htm>

**SPIDR Commission on Qualifications**, Qualifying Neutrals: The Basic Principles (1989). *A report addressing skills necessary for competent performance as a neutral,*

*and basic principles that should influence policy for setting qualifications for mediators, arbitrators and other DR professionals.*

**SPIDR Environmental/Public Disputes Sector Committee**, Environmental/Public Policy Sector--Competencies for Mediators of Complex Public Disputes (1992). *An overview developed by the Environmental/Public Disputes Sector that addresses what qualifies people to serve as a mediator in environmental and complex public disputes.*

**SPIDR Second Commission on Qualifications**, Ensuring Competence and Quality in Dispute Resolution Practice (1995). *Report that sets forth several questions for consideration by policy makers, practitioners, program administrators, and consumers interested in competent practice.*

**SPIDR Second Commission on Qualifications**, A Guide for Implementing the Seven Steps to Understanding and Ensuring Competent Dispute Resolution Practice (Draft 1997).

**National Institute for Dispute Resolution (NIDR)**, Test Design Project, Performance-Based Assessment Methodology for Use in Selecting, Training and Evaluating Mediators (1995). *Consensus-based report setting forth general KSAOs for mediators and offering a conceptual framework and methodology for using performance-based methods for assessing candidate mediators' likely success.*  
<http://www.convenor.com/madison/performa.htm>

**Dobbins, W. L.** The Debate Over Mediator Qualifications: Can They Satisfy the Growing Need to Measure Competence without Barring Entry into the Market?, Florida Journal of Law and Public Policy 7 (94-95). *Overview of some approaches to quality and their potential consequences.*

**Ohio State University College of Law, and the Supreme Court of Ohio Office of Dispute Resolution**--Planning Mediation Programs: (2000). *Chapter Six, "Staffing the Mediation Program" (pp. 6-9 through 6-17) includes quality assurance*  
[http://www.sconet.state.oh.us/dispute\\_resolution/deskbook/ch06.pdf](http://www.sconet.state.oh.us/dispute_resolution/deskbook/ch06.pdf).

## **BIBLIOGRAPHY, PART 2.**

**Reference Type:** Report

**Record Number:** 18

**Author:** Academy of Family Mediators

**Title:** Application for offering AFM-approved training

**City:** Lexington, MA

**Institution:** AFM

**Abstract:** Includes: Letter to Training Applicant requesting four copies each of trainers' vitae, completed application (including a separate strategy sheet for each of the 15 Identified

REPORT ON MEDIATOR CREDENTIALING AND QUALITY ASSURANCE

Outcomes, per the enclosed General Guidelines, program agenda and daily schedule, Student Manual and other handouts, role plays, 30-minute video-or audio-cassette, twenty (20) completed evaluation forms, \$400 non-refundable application fee.

**Reference Type:** Report

**Record Number:** 17

**Author:** Academy of Family Mediators

**Year:** 1997

**Title:** Training Requirements

**City:** Lexington, MA

**Institution:** AFM

**Date:** January 1, 1997

**Abstract:** Sections Include: General Members; Practitioner Member Initial Requirement; Practitioner Member Continuing Education Requirements

**Reference Type:** Report

**Record Number:** 16

**Author:** Academy of Family Mediators

**Year:** 1998

**Title:** Standards of Practice for Family and Divorce Mediation

**City:** Lexington, MA

**Institution:** AFM

**Date:** 1998

**Abstract:** Sections include:

I. Preamble; II. Initiating the Process; III. Procedures; IV. Impartiality and Neutrality; V. Costs and Fees; VI. Confidentiality and Exchange of Information; VII. Self-Determination VIII. Professional Advice; IX. Parties' Ability to Negotiate; X. Conducting Mediation XI. Training and Education; XII. Advertising; XIV. Advancement of Mediation Protocol: Use of the Academy Name or Membership Designation including Prohibited Conduct; Permitted Uses, Violations.

**Reference Type:** Electronic Source

**Record Number:** 7

**Author:** AICPA

**Year:** 1999

**Title:** Executive Summary of the Center for Excellence in Financial Management

**Publisher:** American Institute of Certified Public Accountants

**Volume:** 1999

**Reference Type:** Report

**Record Number:** 11

**Author:** American Arbitration Association; American Bar Association; Society of Professionals in Dispute Resolution

**Year:** 1995

**Title:** Model Standards of Conduct for Mediators

**City:** New York and Washington, D.C

**Institution:** authors

**Date:** 1995

**Abstract:** "The Model Standards of Conduct for Mediators were prepared from 1992 through 1994 by a joint committee composed of two delegates from the American Arbitration Association, John D. Feerick, Chair, and David Botwinik, two from the American Bar Association, James Alfini and Nancy Rogers, and two from the Society of Professionals in Dispute Resolution, Susan Dearborn and Lemoine Pierce.

The Model Standards have been approved by the American Arbitration Association, the Litigation Section and the Dispute Resolution Section of the American Bar Association, and the Society of Professionals in Dispute Resolution." [from the preface]

Sections include:

I. Self-Determination: A Mediator Shall Recognize that mediation is Based on the Principle of Self-Determination by the Parties.

II. Impartiality: A mediator Shall Conduct the Mediation in an Impartial Manner.

III. Conflicts of Interest: A Mediator Shall Disclose all Actual and Potential conflicts of Interest Reasonably Known to the Mediator. After Disclosure, the Mediator Shall Decline to Mediate unless all Parties Choose to Retain the Mediator. The Need to Protect Against Conflict of Interest also Governs conduct that Occurs During and After the mediation.

IV. Competence: A Mediator Shall Mediate Only When the Mediator Has the Necessary Qualifications to Satisfy the Reasonable Expectations of the Parties.

V. Confidentiality: a Mediator Shall Maintain the Reasonable Expectations of the Parties with Regard to Confidentiality

VI. Quality of the Process: A Mediator Shall conduct the Mediation Fairly, Diligently, and In a Manner Consistent with the Principle of Self-Determination by the Parties.

VII. Advertising and Solicitation: A Mediator Shall be Truthful in Advertising and Solicitation for Mediation.

VIII. Fees: A Mediator Shall Fully Disclose and Explain the Basis of Compensation, Fees and Charges to the Parties.

IX. Obligations to the Mediation Process: Mediators Have a Duty to Improve the Practice of Mediation.

**Reference Type:** Journal Article

**Record Number:** 5

**Author:** Gentry, Deborah B.

**Year:** 1994

**Title:** The Certification Movement: Past, Present, and Future

**Journal:** Mediation Quarterly

**Volume:** 11

**Issue:** 3

**Pages:** 285-291

**Abstract:** From Article: "Mediator certification has been the focal point of much discussion and activity during the last decade. A comprehensive summary of key events in the certification movement, particularly recent ones, is provided in this article. Significant contributions made by various mediation-related organizations and bodies are identified as well. "

**Reference Type:** Journal Article

**Record Number:** 9

**Author:** Gentry, Deborah B.

**Year:** 1994

**Title:** Mediator Attitudes and Preferences Concerning Mediator Certification

**Journal:** Mediation Quarterly

**Volume:** 11

**Issue:** 4

**Pages:** 353-359

**Abstract:** This article describes the design, execution, and results of a 1992 survey of AFM members (provisional-practitioners and practitioners) seeking their attitudes about and recommendations for certification programming. **Noteworthy findings** included the following: 1) there was a high rate (54%) of return of the surveys suggesting to the author considerable interest in the issues of mediator certification; 2) more than half of the respondents were already certified by at least one other professional organization or certifying entity and perceived the advantages of certification to outweigh the disadvantages. Most respondents projected a positive attitude toward certification programs for family and divorce mediators and a majority of respondents indicated that they would "pretty" or "quite" likely seek and maintain mediator certification. 3) respondents who had been practicing mediation for a comparatively longtime supported the notion that certification programs would promote continued professional growth by the certified person.

The respondents also identified certain **disadvantages** to mediator certification that designers of future certification programs should address. These were concerns that obtaining and maintaining certification may be overly time consuming and costly and that satisfactory levels of test validity and reliability may be hard to achieve. Even though critics of mediator certification have suggested that such program would be self-serving or elitist in nature, very few respondents identified this as a potential disadvantage. The author suggests that certification program designers should weigh carefully limiting access to the process as well as limiting the number of persons who can receive certification status. The author also notes that to many family and divorce mediators, certification appears inevitable since judicial, legislative, organizational and public demand for it has steadily risen. She recommends that as development of certification proceeds, steps must be taken to ensure the reliability and validity of the procedures and that once in place, the resulting program should be periodically evaluated and refined. She notes that while impossible to please everyone, careful planning, development, implementation and evaluation of certification processes should maximize acceptance among many audiences.

**Reference Type:** Journal Article

**Record Number:** 2

**Author:** Honeyman, Christopher

**Year:** 1990

**Title:** On Evaluating Mediators

**Journal:** Negotiation Journal

**Pages:** 23-36

**Abstract:** Outlines seven parameters of effectiveness at three levels - 1=least effective and 3=most effective.

**Investigation:** Effectiveness in identifying and seeking out relevant information pertinent to the case.

**Empathy:** Conspicuous awareness and consideration of the needs of others.

**Inventiveness and problem solving:** Pursuit of collaborative solutions, and generation of ideas and proposals consistent with case facts and workable for opposing parties. (Some programs and individual mediators believe that substantive ideas and proposals should only emanate from the parties. But creative results may be, in anything, more difficult to achieve

under these conditions. Those working with this restriction may therefore wish to consider rewriting this scale to focus on the mediator's skill at *creating an environment* within which the parties can create the substantive proposals needed, rather than rejecting this element entirely.)

**Persuasion and presentation skills:** Effectiveness of verbal expression, gesture, and "body language" (e.g., eye contact) in communicating with parties. (With persuasion, again, there is a sharp difference of opinion between programs operating in different areas as to what degree or kind of activity is desirable. Some programs may wish to rephrase this scale in terms of the mediator's ability to create an environment conducive to the parties' attempts to alter each other's and their own preconceived opinions. )

**Distraction:** Effectiveness at reducing tensions at appropriate times by temporarily diverting parties' attention.

**Managing in the Interaction:** Effectiveness in developing strategy, managing the process, coping with conflicts between clients and professional representatives.

**Substantive knowledge:** Expertise in the issues and type of dispute. (It is not established that substantive knowledge is an essential part of a mediator's background....)

**Reference Type:** Journal Article

**Record Number:** 3

**Author:** Honoroff, Brad; Matz, David; O'Connor, David

**Year:** 1990

**Title:** Putting Mediation Skills to the Test

**Journal:** Negotiation Journal

**Pages:** 37-46

**Abstract:** This is an article about the authors use of Chris Honeyman's model in evaluating mediators. In general, they approve of the use of an observation model rather than relying on interviews and a resume.

**Reference Type:** Journal Article

**Record Number:** 20

**Author:** Jim Melamed, Editor

**Year:** 1991

**Title:** Consultation of Dispute Resolution Organizations

**Journal:** AFM: Mediation News

**Volume:** 10

**Issue:** 8

**Pages:** 2

**Reference Type:** Journal Article

**Record Number:** 15

**Author:** Keilitz, Susan

**Year:** 1997

**Title:** Court-Connected ADR: New Qualifications Guidelines Say Quality Buck Stops at the Court

**Journal:** Dispute Resolution Magazine

**Issue:** Spring 1997

**Pages:** 3

**Reference Type:** Journal Article

**Record Number:** 6

**Author:** Keilitz, Susan

**Year:** 1997

**Title:** Court-Connected ADR: New Qualifications Guidelines Say Quality Buck Stops at the Court

**Journal:** Dispute Resolution Magazine, Published by the ABA Section of Dispute Resolution

**Volume:** 3

**Issue:** 3

**Pages:** 7-9

**Abstract:** This article reports on a set of recommendations for qualifying practitioners in court-connected dispute resolution programs that were to be published in 1997 by SPIDR. The recommendations were the work of the Commission on Qualifications for Court-Connected Dispute Resolution Programs, a committee established by SPIDR in cooperation with the National Center for State Courts with support from the State Justice Institute. The guidelines "are intended to assist courts in developing meaningful, achievable and fair qualification standards for dispute resolution practitioners." Key concepts: 1) the formulation of standards of competence and qualifications should be undertaken through consultation with all stakeholders; 2) qualifications criteria should be based primarily on performance; and 3) multiple paths to competence should be recognized.

**Reference Type:** Journal Article

**Record Number:** 19

**Author:** McKnight, Marilyn; Melamed, Jim

**Year:** 1990

**Title:** Certification Work Begins

**Journal:** AFM: Mediation News

**Volume:** 9

**Issue:** 4

**Pages:** 2

**Reference Type:** Journal Article

**Record Number:** 21

**Author:** Melamed, Jim

**Year:** 1992

**Title:** Consultation of Dispute Resolution Organizations Begins

**Journal:** AFM: Mediation News

**Volume:** 19

**Issue:** 4

**Pages:** 4

**Reference Type:** Report

**Record Number:** 1

**Author:** Nielson, Linda C. , LL.B.,Ph.D.; English, Peggy, M.Ed.; Standards & Certification Committee, Family Mediation Canada

**Year:** 1996

**Title:** Practice, Certification and Training Standards

**City:** Winnipeg, Manitoba

**Institution:** Family Mediation Canada (FMC)

**Date:** October 26, 1996

**Type:** Committee Report

**Abstract:** Table of Contents: Definitions; Practice Guidelines for Competent Family Mediators; The Tasks of a Competent Family Mediator; Knowledge, Skills, Ability and Other Attributes Required for Competent Performance of the Above Tasks; Training of Competent Family Mediators; The FMC Family Mediator Certification Process; Grandparenting; Decertification; Protocol for Establishing and Maintaining Certifying Administrators(s) and Certifying Assessor(s); National Standards for Mediation Training Programs; Standards for Trainers; Obligations of FMC endorsed Mediation Training Programs to Beginning Students; Structure of FMC endorsed Mediation Training Programs; Content of FMC Endorsed Mediation Training Programs; FMC Training Program Endorsement Administrator; FMC Family Mediation Training Program Endorsement Process; Appeals; Prohibition.

**Notes:** Endorsed and Passed By: Board of Directors and Membership at the Annual General Meeting of Family Mediation Canada , Winnipeg, Manitoba.

**Reference Type:** Report

**Record Number:** 14

**Author:** Society for Professionals in Dispute Resolution

**Year:** 1998

**Title:** Guidelines for Voluntary Mediation Programs Instituted by Agencies Charges with Enforcing Workplace Rights

**City:** Washington, DC

**Institution:** SPIDR

**Date:** April 21, 1998

**Type:** Letter and report to colleagues

**Abstract:** Sections include: Preface, Introduction, Core Principles, Essential Elements, Recommended Elements, Committee Members, Statement on Statutory Rights

**Reference Type:** Report

**Record Number:** 13

**Author:** Society of Professionals in Dispute Resolution

**Title:** Principles and Policies to Guide State courts in the Selection, Training, Qualification and Evaluation of Neutrals

**City:** Washington, DC

**Institution:** SPIDR

**Type:** Grant Announcement

**Abstract:** Announces receiving a grant in Cooperation with the National Center for State Courts from the State Justice Institute to develop and publish principles and policies guiding state courts in the selection, training, qualification and evaluation of neutrals. No date given. Downloaded from SPIDR website on 11/22/99.

**Reference Type:** Report

**Record Number:** 12

**Author:** Society of Professionals in Dispute Resolution

**Year:** 1986

**Title:** Ethical Standards of Professional Responsibility

**City:** Washington, DC

**Institution:** SPIDR

**Abstract:** "The purpose of this document is to promote among SPIDR Members and Associates ethical conduct and a high level of competency, including honesty, integrity, impartiality and the exercise of good judgment in their dispute resolution efforts. It is hoped that this document also will help to (1) define the profession of dispute resolution, (2) educate the public, and (3) inform users of dispute resolution services." Sections include the following:

Application of Standards; Scope; General Responsibilities; Responsibilities to the Parties: Impartiality, Informed Consent, Confidentiality, Conflict of Interest, Promptness, The Settlement and its Consequences; Unrepresented Interests; Use of Multiple Procedures; Background and Qualifications; Disclosure of Fees; Support of the Profession; Responsibilities of Neutrals Working on the Same Case; Advertising and Solicitation.

**Reference Type:** Journal Article

**Record Number:** 10

**Author:** Taylor, Alison

**Year:** 1994

**Title:** The Four Foundations of Family Mediation: Implications for Training and Certification

**Journal:** Mediation Quarterly

**Volume:** 12

**Issue:** 1

**Pages:** 77-88

**Abstract:** In this article the author advocates for a high standard of certification for family mediation practice by outlining four "pillars" of knowledge necessary in her opinion for family mediators. She says, "The field of family mediation, also, has foundations that cannot be conveyed in any short-term training process but instead require extensive study and skill development."

**The four foundation areas named are these:**

"- Mediation, conflict resolution, and negotiation processes

-Legal and financial knowledge and processes

-Adult, child, and family development (historical, normal, and assessment)

-Helping professional skills (communications, interviewing, referral, case management, collaboration with other professionals, and strategic case planning)" (p. 81)

She says that as a profession, we need to "be cross-training ourselves, without having to take multiple master's degrees, as some mediators have done." "Presenting that we can know, for example, child development, family law, communication techniques, and assessment of individuals in forty to sixty hours belies our development of disciplines that require years of study in order to meet their views of sufficiency in knowledge and skill." "yet out of the voiced concern of the Society of Professionals in Dispute Resolution for equity, parity, inclusion, and other noble concepts and the belief that no one entity, discipline, or education curriculum should become the exclusive path ..., we have tried to set the standards for inclusion at such a low level as to deny the depth of the foundation." (p. 82)

**She says that a "real" profession has three main characteristics:** a body of knowledge in which all members are educated, a recognized way of transmitting this body of knowledge, and a way of evaluating practitioners of the profession.

**Her recommendations for professional development are these:**

1) Define Core Knowledge and Skills - she advocates that this be done by those in the field not by legislators or others outside the field.

- 2) Create Comprehensive Training and Experience - she recommends working with universities and exiting programs to create coursework in all four foundational areas.
- 3) Upgrade Our Own Knowledge and Skills - she suggests that AFM compile a list of recommended books that the majority of mediators have found helpful in the four major topic areas; also videotapes for continuing education
- 4) Create a National Standard for Family Mediators.

**The certification process should include competency, experience, and adequate knowledge:**

- 1) stop thinking of training by the hour, but rather require documentation of adequate (graduate-level) coursework in all four areas;
- 2) applicants should also submit videotape for review by AFM-approved consultants to be evaluated on predetermined objective criteria.

**Current practitioners** might be given two years to complete adequate courses to meet the new standards by taking courses or discussing the required reading list with approved consultants.

**Future AFM mediators** would only have member or certified mediator standing; members would be mentored by those certified and the membership committee would be the final arbitrator of completeness of requirements. Experience under supervision would be required in order to practice - eligibility to apply for certification would require documentation of 10 cases or 100 hours of direct client contact. Both public and private mediators should be required to meet certification requirements in order to practice.

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13. *Interaction*, Winter 1996, Volume 8, no. 4
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**APPENDIX B: INTERVIEWS CONDUCTED IN DEVELOPING THIS REPORT**

Jim Alfini -- Northern Illinois University Law School

Linda Baron, Chris Coletta – NAFCM

Howard Bellman -- Madison, WI

Lisa Bingham -- Univ. of Indiana School of Public Administration

Ramona Buck -- MACRO

Lorig Charkoudian – Community Mediation Program, Baltimore, MD

Chris Carlson – Policy Consensus Initiative

Mark Collins -- ADR Coordinator, NYS Court System

Chris Carlson – Policy Consensus Initiative

Cris Currie, Greg Abel -- WA Mediation Association

Dorothy Della Noce -- Institute for the Study of Conflict Transformation\*

Donald Gifford – University of Maryland Law School

Aimee Gourlay -- Minnesota Center for DR

Cindy Hallberlin -- (formerly) USPS REDRESS program

Gary Hattal -- FMCS

Margaret Herrman -- Univ. of Georgia

Lisa Hicks, Kenn Handin -- NYSDRA

Chris Honeyman -- Hewlett Theory-to-Practice, Test Design Project

Susan Jeghelian -- MA Office of DR

Bob Jones -- SPIDR Second Commission on Qualifications and ACR Senior Professionals initiative

Dan Joyce -- Cleveland Mediation Center

Susan M. Kalil – Circuit Court for Montgomery County

Kim Kovach -- Univ. of Texas Law School

Martin Kranitz – National Institute for Conflict Resolution

Pam Madrieata -- Idaho Mediation Association

Steve Marsh -- Dallas, TX

Bernie Mayer -- CDR, Boulder, CO

Martha McClellan -- FDIC

Joe McDade – U.S. Air Force ADR program, ADR Specialist

Michael McWilliams, Baltimore, MD

Carrie Menkel-Meadow -- Georgetown Law School

Christina S. Merchant -- Arlington, VA

Ellery M. “Rick” Miller – University of Baltimore

Patricia Miller – National Institute for Conflict Resolution

Maria Mone – Ohio DR Commission

Hon. James T. Murray – Office of Administrative Hearings, Hunt Valley, MD

Mike Niemeyer -- OR Attorney General's Office

Pamela Ortiz – Administrative Office of the Courts, Annapolis, MD

Sharon Press -- FL DR Center

Eileen Pruett – Ohio Supreme Court

Richard Reuben -- Univ. of Missouri Law School

Robert J. Rhudy – Maryland Legal Services Corporation

Julia Roig -- U.S. Office of Special Counsel, ADR Specialist

Mary Ryan -- U.S. Navy ADR program, ADR Specialist

Cindy Savage -- ADR Coordinator, CO Judicial Branch ADR Program

Carl Schneider -- Silver Spring, MD

Margaret Shaw -- NYC

Bruce Stratton, Suzanne Duvall, Bud Silverburg -- Texas Supreme Court ADR  
Advisory Committee

Sid Stahl, Jan Summer -- Texas Mediator Credentialing Association

Donna Stienstra -- Federal Judicial Center

Anne Turner – Circuit Court for Worcester County

Hon. Melanie A. Vaughn – Baltimore, MD

Nancy Welsh -- Dickinson College of Law

Roger Wolf -- Univ. of Maryland Law School

**APPENDIX C: CHART SUMMARIZING SELECTED JURISDICTIONS' CREDENTIALING/QA APPROACHES**

Jurisdiction	Who credentials mediators	Appl. Appeals Process	Training required for mediators	Pre-qualification process	Mediation experience required	Observation of candidate/ performance-based assessment	Continuing education
FL cts	Sup. Ct.	✓	✓		✓		✓
MA cts	Sup. Ct. Standing Comm. rules & guidance, implemented by court programs	✓	✓ (including court orientation to judicial system)			✓ (generally, role-play observed by qualified evaluator; observation and discussion of one case)	✓
NC cts	State DR Comm'n		✓		✓ (except for attorneys mediating civil cases)		✓
NY cts	Ct. system		✓				✓
TX cts	9-member Mediation Comm'n appointed by Sup. Ct.	✓					✓
TN cts	Sup. Ct.	✓	✓				
VA cts	Sup. Ct.	✓	✓	Bachelor's degree	✓	✓	✓
TX Med. Cred. Assn.	Assn. of mediators, trainers, users; 15-member board		✓		✓		✓
Family Med'n - Canada	FMC certifying admins.	Arbitral panel	✓	Paper application & supervised practicum		✓	✓
ID Med'n Assn.	Mediator ass'n	✓	✓		✓	One letter of recommendation	✓
NYS DR Ass'n	Mediator ass'n	✓	✓		✓		✓
WA Med'n Assn.	Mediator ass'n	✓	✓		✓	One letter of recommendation	✓

REPORT ON MEDIATOR CREDENTIALING AND QUALITY ASSURANCE

San Diego Med'n Center	Med'n center		✓	✓ Introductory training required		✓	✓
KY Med'n Center	Med'n center	✓	✓	✓	✓	✓	✓
NC Med'n Centers	Med'n network of NC		✓	✓ Volunteer mediator status required	✓	✓	✓
U.S.Inst. for Env'tl. CR	Federal agency roster manager		✓		✓ 200 environmental hours minimum		
U.S. Navy	Federal agency program manager		✓		✓	✓	

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Mentoring activities or observ'n by candidate	Feedback opportunities	Ethics requirement	Grievance or user complaint process	Accreditation standards or duties for training programs	Grandparenting	Process to develop cred. system	Notes or Comments
✓		✓	✓	✓	Initially, no longer	Consultative	Reqmts vary with courts and cases
✓ (Generally, one-case minimum each for (1) observing and (2) mentoring)		✓	✓	✓	Some controversy over grandparenting those with no training	Near-consensus of Ct. Standing Comm. on DR, then notice-and-comment	Under consideration by Supreme Judicial Court; reqmts vary depending on procedure involved
Observation		✓	✓	✓	✓ (This may change)	Consultative	
				✓		Consultative	Administered through med'n centers
		✓	Regional grievance committees	To be developed by proposed Comm'n on Training	✓	Collaborative approach by broad-based Advisory Comm.	Reflects Advisory Committee proposal now under Sup. Ct. consideration
		✓	✓	✓	✓	Consultative	
✓	Informal	✓	✓	✓	✓	Consultative	Reqmts vary with courts and cases
		✓	Being developed	Being developed		Consensus among mediators, trainers, users	Very tentative – currently being developed; would cover all mediation state
		✓	Multi-stage: informal review; panel; appeal to arb'n			Collaborative, broad input	
Mentoring option for some rejected applicants			✓			Consultative	
✓	✓	✓	✓			Consensus, broad input	Currently being developed - tentative
Mentoring option for some rejected applicants						Consultative	
✓	✓						

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✓	✓	✓		✓		Consultative	
✓	✓	✓		?	?		
		✓				Consensus of diverse workgroup	Roster of experienced environmental neutrals
✓	✓	✓					In-house employee mediators

**APPENDIX D. CREDENTIALING RESOURCES and EXPERTS TO CONSULT WITH:**

- National Organization for Competency Assurance (NOCA). This is the national organization of organizations that have certification.
- William Harris, Ph.D., MBA, Executive Director, Association of Test Publishers
- Sylvan Prometric Professional Licensure and Certification. [www.sylvanprometric.com](http://www.sylvanprometric.com); 1-800-309-1434
- Jim Hogan, Ph.D., Director of Standards and Assessment, National Skill Standards B
- Philip Kearney, Ph.D., National Board for Professional Teaching Standards. For skills based assessment. NBCTS. Offices: 300 River Place, suite 3600, Detroit, MI 48207: 313-259-0830; 1730 Rhode Island Avenue, N.W., Washington, D.C. 20036. 202-463-3980.
- National Certification Commission/National Certification Association; Richard C. Jaffeson, Executive Director; PO box 15282, Chevy Chase, MD 20825; [certusa@usa.net](mailto:certusa@usa.net); fax 301-588-1212. Association members. Provides information on cost-effective approaches to develop and improve certification programs.
- Credentialing Services, Inc. P.O. Box 1502, Galesburg, IL 61402-1502; 309-343-1202  
Offers assistance in the development of a credentialing program, or in implementation.
- Hamm, Michael M., *The Fundamentals of Accreditation*, ASAE: Washington, D.C. 1997.  
Part I: An Overview of Accreditation: Past, Present, and Future
- Mediation Quarterly, *Establishing Standards for Performance and Evaluation*, John Allen Lemmon, Editor. Number 19, Spring 1988. Jossey-Bass: S.F.
- Certification Program Development Guide, National Certification Commission, Richard C. Jaffeson, AICP, ACA, Executive Director, 1994.
- Project Management Institute. Headquarters: 4 Campus Boulevard, Newtown Square, PA 19073. 610-356-4600 [Project Manager Competence and Competencies, by Frederick Ayer and William Duncan – director of standards 781-861-0124]
- Professional Examination Service, 475 Riverside Drive, NY, NY 10115-0089, 212-367-4200; [www.proexam.org](http://www.proexam.org) (“The Licensure and Certification Mission: Legal, Social, and Political Foundations”)