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# **Qualifying Dispute Resolution Practitioners:**

## ***Guidelines for Court-Connected Programs***

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The points of view expressed are those of the author(s) and do not necessarily represent the official position or policies of the Society of Professionals in Dispute Resolution, the National Center for State Courts or the State Justice Institute. The Working Group expresses its sincere appreciation to Susan Keilitz, Mary Kay D. LeFevour, and Paco Martinez-Alvarez.

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## Executive Summary

Since the early 1980s, the use of dispute resolution in state and federal judicial systems has steadily grown and diversified. As the 1990s close, this trend appears to be accelerating. A key issue to emerge along the way is the quality of justice provided in court-connected dispute resolution programs. Among the stakeholders in the justice system, a consensus holds that the competency of the dispute resolution practitioner is a significant component of the quality of dispute resolution. As the marketplace for dispute resolution services continues to expand, the need increases for courts to ensure the quality and competence of practitioners participating in court-connected dispute resolution programs.

In 1996, the Society of Professionals in Dispute Resolution (SPIDR), in cooperation with the National Center for State Courts and supported by a grant from the State Justice Institute, established the Commission on Qualifications for Court-Connected Dispute Resolution Programs (Commission). The Commission is composed of experts who represent those who are concerned about the quality of dispute resolution in the courts—judges, court managers, dispute resolution program administrators, practitioners, and researchers. The Commission's charge was to recommend guidelines to assist courts in developing meaningful, achievable, and fair standards for qualifying, selecting, training, and evaluating dispute resolution practitioners.

The Commission's guidelines for court-connected dispute resolution programs build on the work of the SPIDR Commission on Qualifications (SPIDR Commission). Since 1987, the SPIDR Commission has been examining issues related to qualifications of dispute resolution practitioners. These endeavors have produced two reports, *Qualifying Neutrals: the Basic Principles*, published in 1989, and *Ensuring Competence and Quality in Dispute Resolution Practice*, published in 1995. The principles articulated in these publications form the foundation of the *Guidelines for Court-Connected Programs*:

- The formulation of standards of competence and qualifications should be undertaken through consultation with all stakeholders—consumers, practitioners, judges, court managers, program designers and administrators, educators, and researchers;
- Standards should be subjected to continuing review and revision as needed;
- Multiple paths to competence should be recognized, including natural aptitude as well as skills, knowledge, and other attributes acquired through training, education, and experience;
- Assessment of qualifications is a responsibility to be shared among practitioners and programs, and should entail multiple methods;
- Consumers should have broad access to dispute resolution services;
- Diversity among practitioners promotes greater access to appropriate services.

*Ensuring Competence and Quality in Dispute Resolution Practice*, the SPIDR Commission's second report, recommends a seven step framework for achieving competence and quality in dispute resolution practice:

1. What is the context in which dispute resolution takes place?
2. Who is responsible for ensuring competence?
3. What do the practitioners and programs do?
4. What does it mean to be competent?
5. How do practitioners and programs become competent?

6. How is competence assessed?
7. How should assessment tools be used to assure quality?

The *Guidelines for Court-Connected Programs* distill these questions in a simplified framework of recommendations for preferred practice in four areas: (1) the courts' responsibilities for ensuring competency and quality in dispute resolution, (2) establishing and maintaining competency standards, (3) establishing and maintaining training standards, and (4) assuring program quality. These recommendations provide commentary on related issues and reference pertinent materials developed in established programs and by professional dispute resolution organizations.

## **Scope of the Guidelines for Court-Connected Programs**

The *Guidelines for Court-Connected Programs* apply to court-connected dispute resolution services when a court (1) maintains a roster of dispute resolution practitioners or providers or (2) refers cases to a dispute resolution practitioner or provider, on a voluntary or mandatory basis, including any service operated or funded by the court, any service or program provided by an organization, and services provided by an individual. To "refer" means to provide a party with specific information about one or more dispute resolution practitioners or providers, to order a party to choose a dispute resolution practitioner or provider, or to order or direct a party to a particular dispute resolution service provider, whether the provider is an individual, a program, or an organization providing dispute resolution services. To "refer" does not include any of the following actions: (1) encouraging the parties or the attorneys to consider alternatives to traditional litigation, (2) taking any step such as granting a continuance to enable the parties to explore or secure dispute resolution services in the private marketplace, or (3) any pretrial conference or case management event conducted by or under the direct supervision of a judge.

## **Recommendations**

### **1. The courts' responsibilities for ensuring competency and quality in dispute resolution**

Recommendation 1.1: Courts are responsible for assuring the quality of the dispute resolution process when they make referrals to a process, practitioner, or provider; provide specific information on a practitioner or provider, or maintain a list of practitioners or providers.

Recommendation 1.2: The scope of the court's responsibility for ensuring the competence of practitioners increases as the extent to which parties may choose a practitioner decreases.

Recommendation 1.3: Courts should ensure wide access to services, encourage the availability of an array of services to meet the differing needs of various types of parties, and promote innovation and experimentation in the types of services available.

Recommendation 1.4: Courts should establish a dispute resolution referral system if they refer parties to dispute resolution services.

Recommendation 1.5: Courts should use procedures for making referrals that: (1) create equal opportunity for qualified practitioners to be eligible to receive court referrals, (2) rotate referrals among qualified practitioners, (3) require competitive bidding for exclusive arrangements between courts and particular providers, and (4) refer parties to particular practitioners only in exceptional circumstances in which the special needs of the parties warrant such a referral. When the court makes a referral to a specific provider not selected by the parties, the referral should be accompanied by a written statement explaining the

exceptional circumstances that warrant such action. The parties should have the opportunity to override a court referral to a specified practitioner by selecting their own practitioner within a specified period of time.

## **2. The courts' responsibilities for establishing and maintaining competency standards**

Recommendation 2.1: Courts should (1) adopt or create standards for ensuring the competency of practitioners and providers and (2) implement a plan for maintaining these standards.

Recommendation 2.2: Courts should ensure that qualification requirements do not systematically exclude dispute resolution practitioners from any racial, ethnic, or cultural groups.

Recommendation 2.3: Courts should ensure that practitioners of particular dispute resolution processes have mastery of the specific set of skills and knowledge needed to conduct that process.

Recommendation 2.4: Courts should not rely solely on academic degrees or professional licenses in a specific discipline to determine the competency of practitioners.

Recommendation 2.5: Courts should not rely solely on performance on written tests to determine the competency of practitioners.

Recommendation 2.6: Courts should determine whether specific substantive knowledge should be required of the practitioner in certain types of disputes.

Recommendation 2.7: The minimum criteria courts should require for a practitioner to be included on a roster that the court maintains, uses, or approves are: (1) a demonstration that the practitioner has attained the court adopted competency standards and (2) the practitioner's consent to participate in the process the court adopts to monitor the quality of the programs.

Recommendation 2.8: Courts should periodically re-evaluate the competency of dispute resolution practitioners.

Recommendation 2.9: Courts should not use settlement rates as the sole factor to determine whether dispute resolution practitioners are retained.

Recommendation 2.10: Courts should ensure that practitioners participate in continuing education to maintain currency in their field of practice.

## **3. The courts' responsibilities for establishing and maintaining training standards**

Recommendation 3.1: Courts should specify the content of the training curriculum, the methods of training used, and qualifications of trainers.

Recommendation 3.2: Courts should establish and adopt criteria for court approval of dispute resolution training programs and a process for demonstrating compliance with those criteria.

Recommendation 3.3: Courts should require "satisfactory completion" of the requisite hours of training in the dispute resolution process. Training providers should assess participant performance.

Recommendation 3.4: Courts should encourage practitioners to participate in an experiential learning setting, such as an internship, apprenticeship, or mentorship. Experiential learning should be required for mediators.

Recommendation 3.5: Courts should not accept prior professional experience as a substitute for training in dispute resolution.

Recommendation 3.6: Courts should not accept prior training in a dispute resolution process as adequate to meet the court's training requirement unless the court determines that the prior training is substantially equivalent to that which is required by the court for the same process.

Recommendation 3.7: Courts should ensure that a practitioner approved for a dispute resolution process in another jurisdiction is eligible for reciprocal approval only if the qualification standards in the other jurisdiction are substantially equivalent to those applicable in the jurisdiction to which the practitioner has applied.

#### **4. The courts' responsibilities for assuring program quality**

Recommendation 4.1: Court-connected programs should clearly identify the person or entity responsible for the oversight and evaluation of court-connected dispute resolution programs and practitioners.

Recommendation 4.2: Courts should periodically review the operation of court-connected dispute resolution services and make adjustments in their policies and procedures to ensure that established goals are being met.

Recommendation 4.3: Courts should require that practitioners or programs conduct periodic surveys of participants in the dispute resolution processes. The consumer survey results should be analyzed and shared among the court, practitioners, and programs.

Recommendation 4.4: Courts should require practitioners to adhere to an ethics code and to be subject to a grievance process.

Recommendation 4.5: Courts should consider the potential civil liability of practitioners and providers in the design of dispute resolution programs. The issue of civil liability may be addressed through ethical standards, specialized training, malpractice insurance and development of qualified immunity for neutrals in court-connected programs.

# **Qualifying Dispute Resolution Practitioners:**

## ***Guidelines for Court-Connected Programs***

### **I. Introduction**

Since the early 1980s, the use of dispute resolution in state and federal judicial systems has steadily grown and diversified. As the 1990s close, this trend appears to be accelerating. A key issue to emerge along the way is the quality of justice provided in court-connected dispute resolution programs. Among the stakeholders in the justice system, a consensus holds that the competency of the dispute resolution practitioner is a significant component of the quality of dispute resolution. As the marketplace for dispute resolution services continues to expand, the need increases for courts to ensure the quality and competence of practitioners participating in court-connected dispute resolution programs.

Over the past decade, courts and dispute resolution professionals have been engaged in efforts to implement qualification standards that are meaningful, achievable, and fair. In 1996, the Society of Professionals in Dispute Resolution (SPIDR), in cooperation with the National Center for State Courts and supported by a grant from the State Justice Institute, established the Commission on Qualifications for Court-Connected Dispute Resolution Programs (Commission) to assist these endeavors. The Commission is composed of experts who represent those who are concerned about the quality of dispute resolution in the courts—judges, court managers, dispute resolution program administrators, practitioners, and researchers. The Commission's charge was to develop guidelines for qualifying selecting, training, and evaluating practitioners in court-connected programs.

The field of dispute resolution has developed rapidly with few unifying themes. The Commission therefore saw the need to promote greater consistency and coherence in dispute resolution principles and policies. To achieve this goal, as well as economy of time and resources, the Commission chose to build on the previous work of the SPIDR Commission on Qualifications (SPIDR Commission). Since 1987, the SPIDR Commission has been examining issues related to qualifications of dispute resolution practitioners. These endeavors have produced two reports, *Qualifying Neutrals: The Basic Principles* in 1989 and *Ensuring Competence and Quality in Dispute Resolution Practice* in 1995.

*Qualifying Neutrals: The Basic Principles* sets out three specific recommendations:

- No single entity (rather, a variety of organizations) should establish qualifications for dispute resolution practitioners;
- The greater the degree of choice the parties have over the dispute resolution process, program, or practitioner, the less mandatory the qualification requirements should be;
- Qualifications criteria should be based on performance and place less importance on paper credentials.

*Ensuring Competence and Quality in Dispute Resolution Practice* elaborates the principles of the SPIDR Commission's first report to address the growing diversity of dispute resolution environments, purposes, and practices. The second report recommends a seven step framework for achieving competence and quality in dispute resolution practice:

1. What is the context in which dispute resolution takes place?
2. Who is responsible for ensuring competence?
3. What do the practitioners and programs do?
4. What does it mean to be competent?
5. How do practitioners and programs become competent?
6. How is competence assessed?
7. How should assessment tools be used to assure quality?

This framework is based primarily on the following principles:

- Consumers should have broad access to dispute resolution services;
- A variety of organizations should be responsible for establishing the qualifications for dispute resolution practitioners;
- The greater the degree of choice the parties have over the dispute resolution process, program, and practitioner, the less mandatory the qualification requirements should be;
- Qualifications criteria should be based primarily on performance, rather than paper credentials;
- The formulation of qualifications and standards of competence should be undertaken through consultation with consumers, practitioners, judges, court managers, program designers and administrators, educators, and researchers;
- Multiple paths to competence should be recognized, including natural aptitude as well as skills, knowledge, and other attributes acquired through training, education, and experience;
- Assessment of qualifications is a responsibility to be shared among practitioners and programs and should entail multiple methods;
- Standards should be subjected to continuing review and revision as needed;
- Diversity among practitioners promotes greater access to appropriate services.

The principles articulated in the two SPIDR Commission Reports promote wide access to and variety in dispute resolution services. This emphasis is particularly significant for court-connected programs, which serve the public and must preserve the basic democratic principles of access to and equal justice under the law. The Commission on Qualifications for Court-Connected Dispute Resolution Programs has adapted these principles and the seven step framework for achieving competence and quality in dispute resolution practice to provide practical guidance and recommendations for court-connected programs.

The quality of a particular dispute resolution process depends largely on the appropriateness of the process for the matter in dispute, the activities that occur in the process, and the

knowledge and skill of the practitioners. It is crucial that the court, the parties, and the practitioners have a common understanding of both the purpose of the process and what it should entail. The *Guidelines* can be applied to a number of processes employed in court-connected dispute resolution, including mediation, arbitration, case evaluation, summary jury trial, and mini-trial. Explanations of these and other dispute resolution terms as they are used in the *Guidelines* are provided in the appendices to the *Guidelines*.

SPIDR Commission on Qualifications  
reports may be obtained from SPIDR:

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## **II. Applying the Seven Step Framework to Court-Connected Programs**

The seven step framework for ensuring quality and competence in dispute resolution practice developed by the SPIDR Commission contemplates that practitioner qualifications should reflect the goals of the dispute resolution program and, therefore, their development should be fundamental to the program's design. The framework poses a series of questions to guide the establishment of qualification requirements for dispute resolution practitioners. The Commission on Qualifications for Court-Connected Dispute Resolution Programs has adapted the framework to address questions that judges, court managers, and dispute resolution program administrators should consider in planning court and dispute resolution programs and in program management, design, evaluation, and modification. The *Guidelines* are intended to be applicable in the various contexts in which court-connected dispute resolution takes place, the diversity of administrative structures, and the different stages of development of court-connected programs.

The seven step framework for ensuring quality and competence in court-connected dispute resolution practice asks the following questions:

1. What is the context of the court-connected dispute resolution process?
2. What is the responsibility of courts to ensure competence?
3. What do court-connected practitioners and programs do?
4. How do the courts determine who is competent?
5. How do courts guide practitioners to achieve competency?
6. How is competence assessed?
7. How should courts establish and maintain rosters of qualified practitioners and programs?

### **Step 1: What is the Context?**

Before a court determines competency and quality, it should assess the context in which dispute resolution will occur. In court-connected dispute resolution programs, this assessment considers the following factors:

- the goals of the program and the values it is expected to promote
- the types of disputes that the program will address (e.g., civil, family, juvenile, small claims, appellate)



- the availability of practitioners with competency in the dispute resolution processes
- the level of court involvement in program operations and administration
- the degree of party choice in program participation and in selection of the practitioner
- the cultural issues as they relate to the parties, the matters in dispute, the process for resolution, and the practitioner.

**Program goals and values.** Examples of program goals and values include increased access to justice, low cost dispute resolution processes, and reduced dispute resolution demands for judicial resources. Program goals and values are linked to or affect other contextual considerations. Priorities must be determined when goals or values conflict. For example, day of trial mediation in small claims cases can reduce the demands for judicial time and provide a resolution to the

#### **Program Goals & Values**

- ✓ increased access to justice
- ✓ low cost dispute resolution processes
- ✓ availability of the most appropriate process for a given dispute
- ✓ cultural appropriateness of the dispute resolution process
- ✓ self-determination of the parties
- ✓ efficiency
- ✓ reduced demands for judicial resources

dispute that is more appropriate for the parties who may have a relationship they would like or need to continue. However, day of trial mediation is a dispute resolution option that is most efficiently provided by practitioners who are court employees, volunteers, or individuals hired to mediate cases on designated days on an as-needed basis. The court can serve a greater number of people in less time if the court assigns the mediators to the cases as the parties appear for the court's calendar. In this situation, the value of party choice is limited to promote the values of efficiently providing an appropriate process to a wide range of litigants at a lower cost.

**Types of disputes.** Court-connected dispute resolution programs may encompass the gamut of case types for which the court has jurisdiction. In addition to general civil cases such as personal injury and contracts, these case types might include small claims, custody, visitation, divorce, paternity, dependency, juvenile offender, minor criminal, probate and appellate cases. Although some basic competencies may be essential for any type of dispute, the various types of disputes require different competencies. Likewise, particular dispute resolution processes may be more or less appropriate for particular types of disputes. The court has a responsibility to design a program in which the dispute resolution processes are suited for the types of disputes the programs target. (For an in-depth coverage, see Sander & Goldberg, "Fitting the Forum to the Fuss," 10 *Negotiation Journal* 49 (Jan. 1994)).

**Availability of competent practitioners.** The broader the scope of the dispute resolution program (i.e., the greater the number of case types eligible for the program or types of processes used) the greater will be the demand for practitioners with a variety of competencies. The court should resist the temptation to use a dispute resolution process that is inexpensive or readily available in virtually every case even though the process may not be well suited for all cases. Therefore, the court should not include a particular case type or process in its dispute resolution program unless there are a sufficient number of practitioners who have the required competencies or are likely to obtain them in a brief time period. The court can gauge the availability of competent practitioners by announcing its intent to refer cases to a particular process and inviting practitioners to indicate their interest and experience in providing the service.

**Level of court involvement in program operations and administration.** The administrative relationships of courts to dispute resolution vary along a continuum. This continuum reflects the

degree to which the court is involved in the delivery of and referral to dispute resolution services. The more directly involved the court is, the higher the level of court responsibility for ensuring both practitioner competence and access to the process. As the relationship becomes more remote, the level of responsibility declines. A number of dispute resolution programs with varying relationships to the court may be operating simultaneously in a particular state or jurisdiction.

***Degree of party choice in program participation and in selection of the practitioner.*** Greater party choice generally is favored to promote the value of self determination that commonly is associated with dispute resolution alternatives to adjudication. However, as noted above, limiting party choice in some circumstances may promote other important values, such as efficiency. Narrowing party choice when public dollars support the provision of services may allow greater access to the service for those who cannot afford dispute resolution on the open market as well as those who lack the knowledge and experience to make an informed choice. Limiting the ability of a party to choose an individual practitioner may also further the values of inclusiveness of providers, assurance of practitioner standards and ethics, greater observation and co-mediation learning opportunities, sliding scale fee possibilities, and evaluation of practitioner performance. The court's level of responsibility for ensuring competence grows as the degree of choice the parties have in selecting the dispute resolution practitioner narrows.

#### **Administrative Relationships of Court to the Dispute Resolution Process**

*Court employees administer the program; one or more court employees are the practitioners*

*Court employees administer the program; the program contracts with individual practitioners and provider organizations (public funds compensate practitioners)*

*Court employees administer the program; the program refers parties to individual practitioners/provider organizations (no public funds compensate practitioners)*

*Persons who are not court employees administer the program with oversight by and connection to the court; the program refers parties to or contracts with individual practitioners/provider organizations (public funds compensate practitioners)*

*The court maintains a roster(s) of individual practitioners/provider organizations*

*The court refers parties to individual practitioners/provider organizations, but does not maintain a roster*

*The court refers parties generally with incentives (e.g., priority trial dates and pre-trial conferences), but does not maintain a roster*

*The court provides general information, but does not maintain a roster*

*The court makes no referrals to any dispute resolution process and does not maintain a roster*

***Cultural issues.*** An essential aspect of quality in dispute resolution is open access to processes that are appropriate for the dispute and for the parties. Court-connected programs should be designed to assure that services are accessible to all potential parties, regardless of their race, ethnicity, income, age, disability, or other characteristic that might set them apart from the dominant culture. Dispute resolution practitioners should be representative of all backgrounds represented within the community's population, and multi-cultural and bias awareness training should be required of all practitioners. The court should consider undertaking appropriate projects to promote multi-culturalism, such as providing brochures and other program information in languages spoken in the community other than English.

## **Step 2: What is the Responsibility of the Court for Ensuring Competence?**

Ensuring competence is a shared responsibility among judges, court managers, practitioners, program administrators, consumers, researchers, and others. In court-connected dispute resolution programs, the courts ultimately are responsible for the quality of justice rendered in disputes brought before them. This responsibility extends beyond the traditional adjudicatory function of courts to non-traditional dispute resolution processes that occur under the administration, supervision, or encouragement of the court. This assumption is fundamental to establishing any qualification requirements for dispute resolution practitioners. Once the court

determines its relationship to the dispute resolution process(es) and the degree of party choice in selecting a program and practitioner, the court has an obligation to establish a basic standard of responsibility.

### **Step 3: What Do Court-Connected Practitioners and Programs Do?**

Before the court sets standards of competence and quality, it should assess what the activities and expectations of practitioners and programs are. In other words, what should practitioners and programs be competent to do? The context in which dispute resolution takes place is a major factor in this assessment. As the SPIDR Commission points out, there is a core set of activities that all practitioners and programs should perform. These activities include maintaining proper records, communicating with the parties and the court, and reporting to the court whether the dispute resolution process occurred and whether the parties reached an agreement in the process. On the other hand, certain activities pertain only in particular contexts. For example, relationship building might be a goal of a mediator, whereas an arbitrator would not be concerned with this function. Family mediators should be expected to assess party relationships for the presence of domestic abuse, while mediators of landlord/tenant disputes might not conduct such an assessment.

In establishing performance criteria, policy makers and managers of court-connected programs should have uniform expectations about the activities that practitioners and programs will perform. The criteria should be the same for all organizations and agencies, whether they are profit or non-profit, or the court itself.

#### **Practitioner Responsibilities**

Depending on the type of dispute and the dispute resolution process being employed, the activities that practitioners might be expected to perform may vary. Some activities are common to all dispute resolution processes. These generic activities include:

- Providing procedural assistance and direction to the parties
- Observing court rules, procedures, and state laws
- Practicing in accordance with ethical standards
- Practicing in accordance with practice standards.

In addition to these generic activities, practitioners engaged in a facilitative process (mediation) may also be responsible for the following activities:

- Facilitating understanding of the issues underlying the dispute
- Building or improving relationships among the parties.

For practitioners engaged in a formal evaluative process (examples from various jurisdictions include early neutral evaluation, child custody evaluation, conciliation, and moderated settlement conferences), the following activities may be required:

- Providing substantive assistance to the parties to help them formulate options and overcome hurdles to agreement
- Providing the parties with an assessment of the likely outcome of the dispute if it continues through to judgment.

For practitioners engaged in adjudicative processes (arbitration in its many forms), the practitioner is responsible for:

- Providing a constructive decision to resolve the dispute; this decision is non-binding in most court-connected uses of arbitration, although the parties generally are free to agree to binding arbitration.

### **Program Responsibilities**

Two major areas of responsibility are assessing practitioner competency and providing dispute resolution services. Assessing practitioner competency might entail the following program activities:

- Defining qualifications for practitioners that reflect the diverse needs of the public
- Ensuring that practitioner qualifications provide a fair opportunity for service
- Soliciting applications for practitioners
- Screening applicants
- Selecting practitioners from applicants
- Training practitioners
- Certifying training providers
- Monitoring training provider performance
- Retaining and disqualifying training providers
- Monitoring practitioner performance
- Evaluating practitioner performance
- Retaining and disqualifying practitioners.

Providing service might include the following program activities:

- Providing a roster of competent practitioners
- Providing notices of case referral
- Screening cases for appropriate services
- Assigning cases to practitioners
- Setting dates for dispute resolution sessions
- Monitoring adherence to meeting schedules
- Monitoring adherence to report filing deadlines
- Maintaining payroll/payment of fees.

### **Step 4: How does the court establish standards of competency?**

Two of the principles underlying the *Guidelines* are that (1) courts should formulate standards of competence and qualifications through consultation with consumers, practitioners, program designers and administrators, educators, and researchers, and (2) qualifications criteria should be based on performance and place less importance on paper credentials. In addition, in setting standards of competency courts should specify the skills and subject matter knowledge that are required as well as the standards of practice that dispute resolution practitioners should achieve.

### **Step 5: How do courts guide practitioners to achieve competency?**

A key tenet of these guidelines is that dispute resolution practitioners may follow multiple paths to competence. Although a specific academic or practice background should not serve as a prerequisite for achieving competence, training in the specific dispute resolution process is essential for achieving minimal competency. The scope of the court's responsibility for ensuring competence extends to establishing criteria for appropriate dispute resolution training and monitoring the ability of training providers to meet those criteria.

## **Step 6: How is competence assessed?**

There are multiple purposes for assessing practitioner competency, including qualifying practitioners for court approved rosters, improving practitioner performance and ensuring that those on the roster remain qualified. The evaluation of practitioner competency should occur both upon entry into the practice and periodically during service. The evaluation process should entail multiple methodologies, including consumer surveys, observations, and continuing education. Courts should consider reciprocating assessment standards with other jurisdictions that have comparable standards.

## **Step 7: How should courts use assessment information to establish and maintain the availability of qualified practitioners?**

These guidelines apply to a broad conceptualization of the term “roster,” which is defined as a list of practitioners who have met basic standards for a particular form of dispute resolution (such as mediation, arbitration, case evaluation) and specialty areas (such as small claims, family, juvenile, and complex civil cases). The specific qualifications for inclusion on the roster are based on the competencies defined by the court (see Recommendations 2.1-2.10) and the completion of required training (see Recommendations 3.1-3.7). The *Guidelines* apply to court employees, individual practitioners with whom the court contracts to provide dispute resolution services, practitioners in programs with which the court contracts to provide dispute resolution services, and individual practitioners on a roster maintained by the court and offered to litigants for their private use. (See box for suggested considerations regarding state and local models for maintaining rosters of practitioners.)

There are several methods for using the roster to assign or refer cases, including rotation systems, matching individual practitioners to the needs of the case, and total “free market” choice. Each of these methods has implications for party choice and the integrity of the dispute resolution program. These implications include the diversity of the practitioners who obtain work through the roster; the frequency and regularity of assignments or selection, which affects the amount of experience and skill development that can be attained; the potential for appearances of impropriety; and the range of costs for dispute resolution services, which affects access to the process.

The roster should contain information in a consistent format for all practitioners and providers. This information should include at a minimum: the practitioner or provider organization name; telephone number (phone and fax); address (postal and electronic mail); and areas of competency (dispute resolution processes and subject matter). (A sample roster form may be found in the appendix.)

## **Considerations for Maintaining Rosters of Practitioners and Provider Organizations**

### **✓Benefits of administering at the state level:**

*centralizes sources of information, so may be more convenient for parties*  
*removes duplication of effort across the state, so may be cost effective for the court and the parties*  
*promotes consistent standards across state*  
*reduces potential for local bias*

### **✓Drawbacks of administering at the state level:**

*may create conflicts if state court administration is decentralized*  
*may require new state bureaucracy, so expense may be greater*  
*may require legislative action to provide funds for state administration*  
*may not address local needs*

### **✓Benefits of local administration:**

*can be tailored to local needs*  
*may provide greater oversight and potential for accountability*  
*may be maintained more easily*  
*can institute innovations more readily*

### **✓Drawbacks of local administration:**

*may create conflicts if state courts have strong centralized administration*  
*may encourage cronyism*  
*may provide too few practitioners*  
*may duplicate efforts if practitioners work in more than one jurisdiction*  
*may suffer from scarce or insufficient resources*  
*may result in inconsistent standards across jurisdictions*

### **✓Benefits of shared state and local administration**

*encourages collaboration, cooperation, and sharing of resources at many levels*  
*reduces need for new state bureaucracy*  
*can maintain consistent standards across the state while encouraging experimentation*

### **✓Drawbacks of shared state and local administration**

*may promote competition among local and state administrators*  
*may be slow in responding to change*  
*may result in inefficient or inappropriate allocation of public funds*

### **✓Benefits of state collaboration with regional provider organizations**

*provides greater oversight without a bureaucracy*  
*provides monitoring of compliance with standards of practice/ethics code*  
*provides statewide access at lower cost*  
*promotes diversity among practitioners*  
*can be tailored to local needs*

### **✓Drawbacks of state collaboration with regional provider organizations**

*requires legislative action*  
*requires some public funds*  
*may be difficult to achieve collaboration in programming between public (courts) and private sector*

### III. Recommendations

*Qualifying Dispute Resolution Practitioners: Guidelines for Court-Connected Programs* is designed for judges, court managers, and dispute resolution program administrators to use in planning court and dispute resolution programs, and in program management, design, evaluation, and modification. The *Guidelines* are intended to be a tool that can be adapted to meet the individual needs of both state and local jurisdictions.

Because the courts employ a variety of models to provide or make available dispute resolution services, the *Guidelines* apply generally to court-connected dispute resolution services. They do not propound, for example, explicit standards of practice, a particular code of ethics, or specific methods of maintaining rosters of practitioners. Instead, the *Guidelines* set out recommendations for preferred practice in four areas: (1) the courts' responsibilities for ensuring competency and quality in dispute resolution, (2) establishing and maintaining competency standards, (3) establishing and maintaining training standards, and (4) assuring program quality. These recommendations provide commentary on related issues and reference pertinent materials developed in established programs and by professional dispute resolution organizations.

#### **The courts' responsibilities for assuring competence and quality in dispute resolution**

**Recommendation 1.1: Courts are responsible for assuring the quality of the dispute resolution process when they make referrals to a process, practitioner, or provider; provide specific information on a practitioner or provider, or maintain a list of practitioners or providers.**

The court has ultimate responsibility for qualifying practitioners in systems where parties are ordered or referred to dispute resolution processes. All information the court provides about dispute resolution practitioners and providers must be accurate and complete. Courts also have an on-going duty to ensure the availability of competent practitioners or provider organizations, even when only one person practices in the jurisdiction. The competencies established by the court will be the same whether the court provides dispute resolution services through court employees, directly administers the use of practitioners who are not court employees, or relies on a provider organization to manage dispute resolution services and practitioners.

**Recommendation 1.2: The scope of the court's responsibility for ensuring the competence of practitioners increases as the extent to which parties may choose a practitioner decreases.**

The second major dimension of the court's level of responsibility for ensuring competence is the degree of choice the parties have in the selection of the dispute resolution practitioner. Providing parties the opportunity to choose the dispute resolution practitioner for their case generally is the model that best promotes self determination of the resolution for litigants. However, limiting party choice may be the only feasible way to equitably provide dispute resolution services in some circumstances. When the court's dispute resolution program narrows party choice, it concomitantly raises its level of responsibility for ensuring the quality of the dispute resolution service. (Another significant dimension of court responsibility is the degree to which parties may choose to engage in a dispute resolution process. It is clear that mandated participation demands greater court responsibility. However, the relative benefits and drawbacks of mandatory and voluntary referral to a dispute resolution process involve policy decisions that are beyond the scope of these guidelines.)

**Recommendation 1.3: Courts should ensure wide access to services, encourage the availability of an array of services to meet the differing needs of various types of parties, and promote innovation and experimentation in the types of services available.**

Court-connected dispute resolution services must be readily accessible to all potential parties, regardless of their income, race, ethnicity, age, disability, or other distinguishable characteristic. Moreover, the types of dispute resolution services offered should be appropriate for the dispute and for the parties. Courts therefore should consider the needs of the parties and the burdens, financial and otherwise, that referral to dispute resolution may impose. Achieving open access requires not only fair and uncomplicated referral procedures and opportunities for low cost services, but also dispute resolution approaches that account for cultural and individual differences. Multi-cultural and bias awareness training therefore should be required of all practitioners. The court also should consider experimenting with dispute resolution techniques that might better suit the needs or reflect the experiences of parties from the various economic, racial, ethnic and other groups in the community served by the court.

**Recommendation 1.4: Courts should establish a dispute resolution referral system if they refer parties to dispute resolution services.**

Referral systems are an effective method to ensure fairness when the court orders or refers parties to a dispute resolution process. The referral system could include referral to a provider organization that maintains a roster of practitioners or a system in which the court maintains a roster of practitioners and/or provider organizations.

A referral system should promote the use of dispute resolution services that are suited to the types of disputes before the court. An effective approach may be to implement a system for screening cases to determine if a dispute resolution service is appropriate, and, if so, what process is best suited for the case. The use or promotion of a dispute resolution service that is inexpensive and readily available in all or most cases is inappropriate without a consideration of the nature of the dispute and the needs of the parties.

A court should not order parties to a binding dispute resolution process without the agreement of all parties to participate in that process. When the court refers parties to a process in which they may participate voluntarily, the court should advise the parties that they are not required to reach an agreement in that process or settle their dispute.

**Recommendation 1.5: Courts should use procedures for making referrals that: (1) create equal opportunity for qualified practitioners to be eligible to receive court referrals, (2) rotate referrals among qualified practitioners, (3) require competitive bidding for exclusive arrangements between courts and particular providers, and (4) refer parties to particular practitioners only in exceptional circumstances in which the special needs of the parties warrant such a referral. When the court makes a referral to a specific provider not selected by the parties, the referral should be accompanied by a written statement explaining the exceptional circumstances that warrant such action. The parties should have the opportunity to override a court referral to a specified practitioner by selecting their own practitioner within a specified period of time.**

In implementing fair procedures regarding referral, paramount consideration should be given to party choice of practitioner. When parties are unable to agree on the practitioner, courts should follow the practices described in the recommendation. Qualified court employees and volunteers should be eligible for referrals in appropriate circumstances. In the event that there are a limited number of practitioners available (i.e., in rural communities), a deviation from the procedures may be necessary. In addition, certain types of cases may require specialized or



unique experience. For instance, highly technical intellectual property matters may be arbitrated by a specialized group of practitioners. The competitive bidding requirement or an equivalent procedure should be used whenever the court enters into an arrangement in which a particular practitioner or program is designated to receive a specific portion or all of the court's referrals regardless of whether public funds are expended to compensate practitioners. This approach is based upon the fact that any exclusive arrangement with a particular practitioner or program confers a special benefit on that provider, and that courts should employ a fair process in which all qualified practitioners have an opportunity to compete for such a franchise.

## **The courts' responsibilities for establishing and maintaining competency standards**

### **Recommendation 2.1: Courts should (1) adopt or create standards for ensuring the competency of practitioners and providers and (2) implement a plan for maintaining these standards.**

The court or program plan to implement standards of competency should address the following questions: (1) How is competency achieved? (2) How is competency assessed? (3) How should courts use assessment information to establish and maintain the availability of qualified practitioners? Courts can benefit from the guidance provided in standards and qualifications developed at local, state, and national levels by courts, statewide offices, commissions, and professional organizations. An example of standards and qualifications is contained in the appendix to these guidelines.

### **Recommendation 2.2: A court should ensure that qualification requirements do not systematically exclude dispute resolution practitioners from any racial, ethnic, or cultural groups.**

Dispute resolution practitioners should be representative of all people within the community's population. Just as referral processes must be fair, qualification requirements should not function to exclude individuals from racial, ethnic, or cultural groups. Accessibility to dispute resolution services includes the concept that the parties can fully participate in the process. An obvious requisite for full participation is the ability of the parties and the practitioner to communicate completely among themselves. Another important dimension to participation is the degree to which the parties feel free to express themselves. In some circumstances, the parties' comfort with the process will be enhanced by a practitioner whose racial, ethnic, or cultural background is the same as the background of the parties. Qualification requirements that appear to be neutral may, in fact, systematically exclude or severely limit the availability of practitioners from some segments of the population.

### **Recommendation 2.3: Courts should ensure that practitioners of particular dispute resolution processes have mastery of the specific set of skills and knowledge needed to conduct that process.**

Competency includes knowledge about the dispute resolution process to be conducted, general dispute resolution skills, specific skills required for particular processes, adherence to standards of ethics and professional conduct, and knowledge of the court system. Depending on the issues in dispute, knowledge of the subject matter may also be required.

Practitioners should be knowledgeable about and adhere to a code of ethics and/or standards of conduct. Standards of conduct and codes of ethics often address similar issues and may be included among provisions or rules governing qualifications or dispute resolution practice. For example, Massachusetts includes ethical standards in its rules on dispute resolution (Proposed Uniform Rules on Dispute Resolution, Rule 9. Ethical). Likewise, Florida includes standards of

professional conduct in its rules for mediators (Florida Rules for Certified and Court-Appointed Mediators may be found in the appendix.)

Issues commonly addressed in codes of ethics and standards of conduct include impartiality, informed consent, conflict of interest, confidentiality, disclosure of fees, advertising, and withdrawal from the dispute resolution process. Courts should consider the differences among types of dispute resolution processes when adopting standards of conduct and codes of ethics. For example, Florida has established separate standards of conduct for mediation and for arbitration. Some standards, such as impartiality and disclosure of conflicts of interest, apply to both processes, while other standards are specific to one or the other process (Florida Rules for Certified and Court-Appointed Mediators; Florida Rules for Court-Appointed Arbitrators may be found in the appendix.)

Practitioners in court-connected dispute resolution programs also should have knowledge about the structure and case processing procedures of the court system from which cases are referred. While practitioners need not have expertise in civil procedure, they should understand that procedures exist and how these procedures relate to dispute resolution practice. For example, practitioners should know the content and meaning of any laws or court rules applicable to dispute resolution in the jurisdiction. They also should understand their obligations under any laws or rules governing dispute resolution practice, including reporting requirements, confidentiality of the process and outcome, and policies related to domestic violence and dispute resolution.

**Recommendation 2.4: Courts should not rely solely on academic degrees or professional licenses in a specific discipline to determine the competency of practitioners.**

Relying solely on an academic degree, professional license, or other single credential is not an appropriate method of determining competency. Generally these credentials are in a field other than dispute resolution and are not indicative of knowledge or skills as a neutral in a specific disputing process.

The court may identify specific degrees or professional licenses as necessary minimum credentials, along with other measures of competency, in particular situations. However, the court should take great care in exploring whether a specific credential is actually an appropriate threshold measure and whether others with different degrees or licenses could be equally as competent as practitioners. To exclude such groups would unnecessarily restrict party choice and would misinform the public as to the background necessary to work as a practitioner in a particular process. For example, if courts require bar admission, among other factors, as one measure of competency in divorce mediation, large groups of competent divorce mediators with other professional backgrounds would be excluded. A more appropriate threshold for divorce mediators would be bar admission, a post-graduate degree in a mental health, social service, or social science field, or certification to practice psycho-therapy, in addition to other criteria of competency.

In some types of cases, no particular degrees or professional credentials are necessary, such as in small claims and uncomplicated landlord-tenant disputes. In a few types of cases, the courts may appropriately restrict the minimum credential to one specific field. For example, arbitrators in large civil cases could appropriately be restricted to attorneys with experience in those types of cases.

Under any circumstance in which the court establishes degrees or licenses as a minimum credential, the court must provide a process to enable individuals who do not possess that credential to demonstrate that they have substantially the equivalent knowledge and skills in the disputing process that the court has determined is acquired by attaining that degree or license.

**Recommendation 2.5: Courts should not rely solely on performance on written tests to determine the competency of practitioners.**

Written tests are not necessarily appropriate for assessing the dispute resolution skills of practitioners. Written tests can be appropriately used for assessing knowledge of the disputing process, the specific subject matter of the dispute, the court system, and standards of ethics and conduct. Assessing the competency of an arbitrator may involve greater use of written tests than for a mediator, because arbitration relies more on knowledge or specific procedures, whereas the mediation process is highly dependent on the mediator's interpersonal skills.

**Recommendation 2.6: Courts should determine whether specific substantive knowledge should be required of the practitioner in certain types of disputes.**

Disputes that fall under this limitation may include appellate cases, intellectual property cases, and complex cases based on factors such as the amount in controversy, the subject matter of the dispute, and the number of parties. Courts may require specific academic or other experience that reflect the specific knowledge needed. In disputes related to children, such as custody and visitation, knowledge of child development reasonably may be required to ensure that settlement agreements are consistent with the best interests of the child. A specific academic degree may not be a sufficient surrogate for the knowledge required, however. For example, knowledge of child development can be acquired through course work in a number of academic fields. Documentation of completion of the relevant course work might be a better measure of competence than a specific academic degree. Substantive knowledge also includes knowledge of specific provisions of the law and court rules and policy that may be applicable generally or only in specific types of cases. Examples of legal knowledge that may be required include limitations on the court jurisdiction, the law of privileges, and special limitations or provisions relating to attorney fees and damages in certain types of cases.

**Recommendation 2.7: The minimum criteria courts should require for a practitioner to be included on a roster that the court maintains, uses, or approves are: (1) demonstration that the practitioner has attained the court-adopted competency standards and (2) the practitioner's consent to participate in the process the court adopts to monitor the quality of the programs.**

In addition to these minimum criteria, courts should consider requiring practitioners to participate in pro bono activities, including providing specified levels of pro bono dispute resolution services, charging fees on a sliding scale, and/or assisting new practitioners. (See, for example, the Standards of Professional Conduct included in the Florida Rules for Certified and Court-Appointed Mediators, in the appendix.)

**Recommendation 2.8: Courts should periodically re-evaluate the competency of dispute resolution practitioners.**

Practitioners who are competent in one area of dispute resolution may not be competent in other areas that the court-connected program institutes after a practitioner qualifies initially. By instituting a periodic evaluation system, the court can assess whether practitioners are performing adequately. Any evaluation system should not rely on a single criterion, such as

settlement rates, to measure competency. Factors that the courts might consider, include ratings by the parties of the practitioner's skills and their satisfaction with the process, the practitioner's ability to narrow the issues in dispute, settlement rates, and ratings by peer evaluators. In considering party satisfaction, courts should use evaluation methods that distinguish dissatisfaction with the practitioner's performance from dissatisfaction with the referral process or other factors that are not related to the practitioner's competence.

**Recommendation 2.9: Courts should not use settlement rates as the sole factor to determine whether dispute resolution practitioners are retained.**

Either unusually high or low settlement rates may indicate the need to monitor a dispute resolution practitioner's performance. While consistently low settlement rates may indicate inferior dispute resolution skills, extremely high settlement rates often indicate that the practitioner exerts a high degree of coercion. Reliance on settlement rates to evaluate performance also discounts other factors that might influence settlement, such as undertaking a higher number of complex cases or cases involving parties in well entrenched positions. Although the use of an easily observed and recorded outcome measure such as settlement rates requires few administrative resources, other more probative measures are more helpful in determining the overall quality of dispute resolution and how practitioners can improve their performance.

**Recommendation 2.10: Courts should ensure that practitioners participate in continuing education to maintain currency in their field of practice.**

Courts should establish a standard requiring practitioners to attend a minimum number of hours of continuing education every year or every two years. Courts have a responsibility to ensure that the content of continuing education programs is designed both to achieve the goal of continued competency in that particular dispute resolution process and to improve skills of the individual practitioner. Continuing education requirements should be linked to goals for improving dispute resolution practice. For example, consistent weaknesses in practitioner performance might indicate specific problems in the dispute resolution program that continuing education for all practitioners would be required to receive. Individual practitioners may need more specific and individualized continuing education to address deficiencies revealed in assessments, such as exit surveys or observations.

## **The courts' responsibilities for establishing and maintaining training standards**

**Recommendation 3.1: Courts should specify the content of the training curriculum, the methods of training used, and qualifications of trainers.**

The subject matter and learning objectives for dispute resolution training should be linked to achieving the competencies the court identifies in Step 4. Many jurisdictions and professional organizations have considered subject matter and learning objectives for dispute resolution training. (See, for example, Texas Mediation Trainer Roundtable Standards in the appendix. Contact the Florida Dispute Resolution Center and the Academy of Family Mediators for more information.)

Training may be achieved through independent training programs sponsored by national, state and local dispute resolution organizations, court-provided workshops or training, and academic course work. All methods of training need to be suitable for achieving competence within a particular process. Any training without an experiential component would not alone provide sufficient training to ensure competency.

The reliance on training as a method of achieving competency has evolved differently for various dispute resolution processes. Currently, mediation is the process with the heaviest reliance on training, particularly at the entry level. This may be due partly to mediation requiring a level of interpersonal communication skills not required of more rule or procedure based processes, such as arbitration. Therefore, mediation training must include a significant skill-based component through experiential exercises, such as role-plays. For this reason, mediation training is typically longer than training in other dispute resolution processes. Many states or courts have adopted minimum levels of mediation training, for example, 20-30 hours for small claims; 40-60 hours for complex civil cases; 40-60 hours for divorce, custody and visitation disputes, 40-60 hours for dependency cases; and 30-40 hours for criminal cases.

Where the court utilizes volunteers or court employees as dispute resolution practitioners, the court should provide the training appropriate for the dispute resolution process. If the court decides to change the responsibilities of current staff to include dispute resolution practice, the court should ensure that the staff receive appropriate training and other opportunities to become competent for the relevant dispute resolution process. When the court requires that court employees meet new standards of competency to perform jobs they previously were qualified to perform, the court may have an obligation under collective bargaining agreements or other provisions of law to provide training at no cost to the employees.

Evaluation programs depend on the substantive knowledge of the practitioners providing the evaluation. Key to the success of these programs is that their evaluations be credible to the parties receiving the evaluation. Although many evaluators are attorneys, a law degree may not be necessary to achieve credibility. For example, a certified public accountant may be as well or better suited than an attorney to analyze and evaluate financial matters. Custody evaluation is one of the most commonly used evaluation processes in court-connected dispute resolutions programs. For practitioners who conduct custody evaluations, education and experience in the mental health or social service professions may be more appropriate credentials than bar admission.

Practitioners of evaluative processes have traditionally not received additional training. Training in dispute resolution ethics and knowledge of the court system should be encouraged, however. In some courts, evaluators have been given mediation training because their evaluations can provide the foundation for settlement discussions.

Typically arbitrators and conciliators have been attorneys who have practiced in the particular substantive area at least five years. Some court systems require arbitrators to participate in an orientation or brief training on arbitration procedures. In some jurisdictions, specialists from other disciplines are arbitrators in certain cases. For example, there is a growing use of mental health professionals with specific expertise in high conflict divorcing families and child development as arbitrators in custody and visitation disputes. Other approaches to resolving high conflict family disputes include the use of special masters and parenting coordinators. The practitioners in these processes initially play a mediative role, but if parents cannot reach an agreement, the practitioner becomes an evaluator.

**Recommendation 3.2: Courts should establish and adopt criteria for court approval of dispute resolution training programs and a process for demonstrating compliance with those criteria.**

Criteria for court approval of dispute resolution training programs should include both the training program's compliance with subject matter and learning objective requirements set by the

court, as well as the program's use of multiple pedagogical methods. Courts can find guidance for establishing approval criteria from states and professional organizations that have been through this process. (Contact the Florida Dispute Resolution Center and the Academy of Family Mediators for more information.)

**Recommendation 3.3: Courts should require “satisfactory completion” of the requisite hours of training in the dispute resolution process. Training providers should assess participant performance.**

The purpose of assessment in the initial training process is to identify entry level practitioners needs for further training in specific skills and to recommend that training to the practitioner. Dispute resolution trainers should be encouraged to use some evaluative measures for satisfactory completion. “Satisfactory completion” should include not only attendance at training sessions, but also completion of all required activities. Methods for assessing competency in training might include self-assessment by the trainee and individual evaluation conferences completed by the trainer after observation of the trainee in one or more mock mediation sessions. The emerging field of dispute resolution training has yet to establish clear criteria for competent performance in training. Therefore, the court should not require trainers at this point to assign a passing or failing rating to each trainee. Indeed, a trainee might not achieve competency during entry level training, but could fairly readily acquire it later. A “failure” in training could exclude from practice many individuals who would become competent after further training, particularly in an experiential learning setting.

Practitioners who completed training that was comparable or equivalent to the court's current training requirements before the requirements became effective should be considered to have satisfied the requirement. Current practitioners should satisfy the qualification requirements within 30 months. To be considered “current,” practitioners should have been in active practice for two or more years, or have completed a specified number of cases or number of hours in practice, or have been approved previously by the court to perform dispute resolution services.

Courts also should specify the maximum length of time that can elapse between training and practice. For example, Florida has proposed a two-year limit on the time that training remains valid without practice experience. If this two-year limit is adopted, Florida would require a refresher training course after two years.

Courts should be aware that academic programs in dispute resolution do not necessarily include skill based training. However, training does exist in many academic settings. Courts therefore should require a demonstration that training in an academic program is skill based.

**Recommendation 3.4: Courts should encourage practitioners of all dispute resolution processes to participate in an experiential learning setting, such as an internship, apprenticeship, or mentorship. Experiential learning should be required for mediators.**

Newly trained dispute resolution practitioners should be supervised in some type of experiential learning with experienced practitioners. These learning settings might include co-mediation or participation on a panel of arbitrators. Courts should specify what amount of dispute resolution practice qualifies an individual to be an “experienced practitioner.” A suggested standard of experience is service as the lead practitioner in a minimum of 10 completed cases. Until the practice of experiential learning becomes more sanctioned as the norm, practitioners may be assumed to be competent mentors by virtue of having the requisite experience and meeting the competency requirements for practitioners. As experiential learning becomes more institutionalized, courts may consider establishing specific competency requirements for mentors.

In jurisdictions with established dispute resolution programs, the court should require observations and/or co-mediation of actual dispute resolution processes accompanied by a debriefing session with the mentor providing the experiential learning. Established programs should have developed a sufficient number of practitioners to provide adequate access to experienced practitioners for mentoring relationships. Courts should require experienced practitioners to participate in mentoring programs or to allow co-mediations or observations of their practice.

Jurisdictions with newly established dispute resolution programs may not have an adequate number of experienced practitioners for mentorships. In these jurisdictions, training programs should increase the emphasis on observation of dispute resolution processes and role plays during classroom training and as soon as practical require observation and/or co-mediation of actual dispute resolution processes. If actual observations or co-mediations are not feasible, classroom training should include more time and opportunity for role play and observations.

**Recommendation 3.5: Courts should not accept prior professional experience as a substitute for training in dispute resolution.**

For arbitration and other evaluative processes, prior experience as a decision-maker may reduce the number dispute resolution process training hours needed to qualify for dispute resolution practice, but some level of education in the dispute resolution process should be required. For mediation practice, prior experience as a judge, attorney, custody evaluator, arbitrator, counselor, or other professional involved in assisting individuals with problems or disputes does not reduce the amount of training in mediation necessary to become a qualified practitioner. Prior training in substantive issues such as the impact of divorce on children and child development need not be repeated if the training in these issues is substantially equivalent to the court's requirements. In the rare circumstances when prior professional experience may substitute substantially for training in dispute resolution, training in ethical issues and standards of practice should remain a requirement.

**Recommendation 3.6: Courts should not accept prior training in a dispute resolution process as adequate to meet the court's training requirement unless the court determines that the prior training is substantially equivalent to that which is required by the court for the same process.**

This recommendation applies to any basic, advanced or specialized training in the dispute resolution process that court requires. To be adequate, any prior training must include a component addressing ethical issues in dispute resolution. The court also should not accept a series of unrelated short workshops, seminars, or conference sessions to meet basic training requirements. The court should place on the practitioner the burden to provide curricula or a detailed written summary of the training program for which the practitioner seeks approval. The court should take the responsibility, however, to define and provide examples of what constitutes "substantial equivalence." This information should be readily available to all individuals applying to practice in the jurisdiction.

**Recommendation 3.7: Courts should ensure that a practitioner approved for a dispute resolution process in another jurisdiction is eligible for reciprocal approval only if the qualification standards in the other jurisdiction are substantially equivalent to those applicable in the jurisdiction to which the practitioner has applied.**

Reciprocity refers to the practice by which a practitioner is approved by the courts in one jurisdiction to practice in another jurisdiction. Courts may consider entering into reciprocal agreements with courts in other jurisdictions to recognize each other's qualification standards when those standards are substantially equivalent. All other applications for approval based on prior training or experience are governed by Recommendations 3.5 and 3.6.

### **The courts' responsibilities for assessing program quality**

**Recommendation 4.1: Court-connected programs should clearly identify the person or entity responsible for the oversight and evaluation of court-connected dispute resolution programs and practitioners.**

In designing dispute resolution programs, courts should make sure that resources are adequate to support the program plan or design. Resources should be sufficient to account for both direct costs (e.g., practitioner fees, staff salaries, training provided by the court, facilities, supplies) and indirect costs (e.g., court security, time spent administering and coordinating with practitioners and provider organizations). Courts should not undertake programs with expectations that the most favorable conditions for program success will prevail. It is far better for the court and for the consumers to institute a limited but well supported program. As the program and resources for it stabilize, the court can expand the scope of the program.

**Recommendation 4.2: Courts should periodically review the operation of court-connected dispute resolution services and make adjustments in their policies and procedures to ensure that established goals are being met.**

Ensuring the quality of court-connected dispute resolution services requires obtaining meaningful information about how well those services are meeting the needs of consumers as well as the needs of the court. For example, are litigants and attorneys satisfied with the dispute resolution services in which they participate? Do they believe that dispute resolution services are fair? Is dispute resolution accessible to all litigants, or are particular types of litigants and cases routinely excluded? Are cases moving through the court more quickly? Are fewer cases going to trial or using judicial time for other matters such as discovery disputes?

Courts need answers to these and other questions to ascertain whether dispute resolution services are on track and which aspects of them need improvement. To obtain the answers to these questions, courts should gather information routinely and consistently. By building evaluation into the court's overall case management system, the court can most efficiently obtain and analyze the information they need for effective decision-making about policies and practices.

The best time to establish a mechanism for monitoring and evaluating the quality of dispute resolution services is during the program design stage. This approach ensures that the evaluation system is relevant to the court's goals for the dispute

The National Center for State Courts has developed a guide for monitoring and evaluating court-connected dispute resolution programs. Through the experiences of a hypothetical court, the guide provides step-by-step instructions for establishing and using an evaluation system, including worksheets and sample evaluation forms that can be adapted to the needs of individual jurisdictions. To obtain the evaluation guide, contact the National Center for State Courts.



resolution services. It is never too late, however, to institute an evaluation system. A significant body of literature on the evaluation of dispute resolution has developed over the past two decades. (See, “Performance Based Assessment: A Methodology for Use in Selecting, Training, Evaluating Mediators,” 1995, available through NIDR.) In addition, a recently published evaluation guide for court based dispute resolution programs provides assistance to courts in establishing and using performance monitoring and evaluation systems.

**Recommendation 4.3: Courts should require that practitioners or programs conduct or participate in periodic surveys of participants in the dispute resolution processes. The consumer survey results should be analyzed and shared among the court, practitioners, and programs.**

Consumer surveys are a common method for assessing practitioner performance. Participants to be surveyed include the parties, their attorneys, and practitioners. Participant surveys should include questions aimed at measuring perceptions of fairness, impartiality, ability to participate meaningfully, and pressure to settle. Many survey instruments have been developed by researchers and by administrators of state and federal court dispute resolution programs.

**Recommendation 4.4: Courts should require practitioners to adhere to an ethics code and to be subject to a grievance process.**

A court should include in its rules governing dispute resolution services, an ethics code or standards of practice for practitioners. (Commentary for Recommendation 2.3 describes the issues that ethics codes and standards of practice should address.) Inherent in the requirement that practitioners follow the jurisdiction’s prescribed code of ethics or standards of practice is the responsibility to sanction practitioners for failure to follow the ethics code or standards. A grievance process ensures accountability of practitioners and provides due process for practitioners against whom complaints for violations are lodged. A grievance process also is a means to sanction behavior that is harmful to parties but that might otherwise go unaddressed if practitioners are immune from liability in the civil justice system. Although the sanctioning power of a grievance process generally does not extend to awarding monetary damages, practitioners who are found to have violated the code of ethics or standards of practice may be barred from future practice with the intent of preventing harm to other consumers. Courts may obtain guidance for developing a grievance process from the models developed by Florida and Virginia (in the appendix) and from the considerations presented here.

**Recommendation 4.5: Courts should consider the potential civil liability of practitioners and providers in the design of dispute resolution programs. The issue of civil liability may be addressed through ethical standards, specialized training, malpractice insurance and development of qualified immunity for neutrals in court-connected programs.**

Courts must balance the need to protect consumers from unethical behavior and poor practice with the need to shield practitioners from the complaints of parties who merely are disappointed with the result of the dispute resolution process. Laws and rules governing the liability of practitioners for acts committed within the scope of providing dispute resolution services vary among jurisdictions. Various states provide statutory immunity for some dispute resolution practitioners (e.g., California, Florida, and Texas), while in other jurisdictions case law has established absolute immunity from damages for tasks performed within the scope of services as a court-appointed mediator (the District of Columbia) (*Wagshal v. Foster*, 28 F.3d 1249 (D.C. Cir. 1994), cert. denied, 115 S. Ct. 1314 (1995)). Furthermore, the scope of immunity may vary for practitioners of different dispute resolution processes (e.g., mediators and arbitrators).

A comprehensive discussion of practitioner liability is beyond the scope of these guidelines. However, it is important that courts be aware of and consider ways to address liability issues. For example, the establishment of a code of ethics carries with it the potential creation of civil liability for failure to follow the code. Liability should be a required topic in dispute resolution training. Courts also may consider requiring practitioners to carry professional malpractice insurance. They should be aware, however, that requiring insurance of volunteer neutrals may limit the availability of volunteers and discourage those without the means to purchase insurance. Courts therefore may consider providing liability coverage for volunteers. Courts may obtain further guidance on the issues of practitioner liability and immunity from the literature (e.g., Rogers and McEwen, *Mediation Law, Policy & Practice*, Clark Boardman Callaghan (1995), and Trachte-Huber and Huber, *Alternative Dispute Resolution: Strategies for Law and Business*, Anderson Publishing (1995)).

#### **Considerations for Developing Grievance Procedures and a Sanction Process**

*The grievance and sanctioning process should be governed by an independent authority composed primarily of practitioners with representation from the bench and bar.*

*The sanctioning authority should have legal counsel.*

*The grievance process should entail an initial investigation to establish probable cause that the alleged misconduct or malpractice occurred.*

*Findings on probable cause should determine whether the practitioner may remain on the roster pending further investigation.*

*A practitioner should be sanctioned or suspended only after the sanctioning authority has found that misconduct or malpractice occurred.*

*Information about the grievance procedures and sanctioning process should be provided to all practitioners on the roster, judges, and consumers.*

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## Appendix A.

### Explanation of Terms

**Arbitration.** In arbitration, a neutral third person (or panel), not a judge, hears both sides of a case during an informal hearing and then decides who wins and who loses. The parties often have legal representation. In binding arbitration (agreed to by all parties), an arbitrator will issue an award that is binding on the parties. Even if the award reflects a clearly erroneous interpretation of the law or facts, no appeal of the award is allowed—unless serious misconduct by an arbitrator is proven. Baseball arbitration is a form of binding arbitration wherein each party proposes an award. The arbitrator is required to choose one side's proposal and can make no changes or modification to the proposal chosen. This style of arbitration is designed to encourage reasonable proposals. In non-binding arbitration (often mandatory), parties have a right to appeal within a specified time. If no appeal is filed, an arbitrator's award becomes binding. If an appeal is filed, and a new trial is held, penalties may be assessed against the appealing party if that party does not improve on the arbitrator's original decision.

**Court-Connected Dispute Resolution Services.** Dispute resolution services are considered court-connected when a court (1) maintains a roster of dispute resolution practitioners or providers; (2) refers cases to a dispute resolution practitioner or provider, whether on a voluntary or mandatory basis; or (3) operates or funds a dispute resolution service or program provided by an organization or an individual. To "refer" means to provide a party with specific information about one or more dispute resolution practitioners or providers, to order a party to choose a dispute resolution practitioner or provider, or to order or direct a party to a particular dispute resolution service provider, whether the provider is an individual, a program, or an organization providing dispute resolution processes. "To refer" does not include: (1) encouraging the parties or the attorneys to consider alternatives to traditional litigation, (2) taking any step such as granting a continuance to enable the parties to explore or secure dispute resolution services in the private marketplace, or (3) any pretrial conference or case management event conducted by or under the direct supervision of a judge.

**Dispute Resolution Service.** Dispute resolution service means any process in which an impartial third party is engaged to assist in the process of settling a case or otherwise disposing of a case without a trial including arbitration, mediation, case evaluation, early neutral evaluation, conciliation, moderated settlement conferences, hybrids of these processes such as med/arb and arb/med, mini-trial, summary jury trial, other combinations of these processes, and any comparable process determined by the appropriate administrative authority for the jurisdiction to be subject to the rules applicable to court-connected dispute resolution services.

**Early Neutral Evaluation.** Early neutral evaluation involves presentations by both parties before a neutral third person, who then renders an opinion about the case—the strengths and weaknesses of parties respective positions, the potential verdict regarding liability, and a possible range of damages. A neutral is chosen by the parties. The parties, together with the neutral, set rules as to how presentations are to be made. The purpose of the evaluation is informational, to help parties reach a settlement. If parties do not settle, they are free to go to trial or to attempt other methods of dispute resolution.

**Mediation.** In mediation a neutral third person helps parties find a resolution to a dispute. A mediator controls the process and the parties control the outcome—a mediator cannot impose a decision on the parties. A mediator, the parties, and attorneys (if the parties wish) usually meet face-to-face. "Shuttle" mediation is a variation in which the mediator meets with each party separately. The term "mandatory" mediation generally means that the parties must attend an orientation about mediation or a very limited number of sessions to attempt an agreement.

**Mini-Trial.** The mini-trial consists of abbreviated presentations by attorneys made directly to parties. The purpose of the presentations is to allow parties to assess the strengths and weaknesses of both sides of the case and to help them decide whether to settle, proceed to another dispute resolution process, or proceed to trial.

**Practitioner.** A practitioner is an individual engaged as an impartial third party to provide dispute resolution services and includes, but is not limited to, a mediator, an arbitrator, a case evaluator, a facilitator, and a conciliator. A practitioner also may be a person: (1) who is employed, designated or appointed by the court whether for compensation or as a volunteer, or (2) who administers or operates a dispute resolution service regardless of whether he or she also provides such service.

**Programs/Provider Organizations.** Programs and provider organizations are entities through which dispute resolution services are made available to disputing parties. A program may be a unit of the court or it may be an organization that provides dispute resolution services in cases referred by the court. Programs/provider organizations can be non-profit or operate for profit. Non-profit programs are characterized by principles that further the public interest, such as providing dispute resolution services to all segments of society as well as providing educational and outreach services. Non-profits are maintained through grants, contracts, public funds, donations, membership, and sliding scale or nominal fees. Community and regional based mediation centers are examples of non-profit providers. For-profit providers offer dispute resolution services for a fee. Those fees support the program and provide a profit to the owners or corporation. These businesses can be local, regional, or national in scope.

**Rosters.** Rosters are lists or panels of practitioners who have met basic standards for a particular form of dispute resolution (such as mediation, arbitration, case evaluation) and specialty areas (such as small claims, family, juvenile, and complex civil cases). Rosters can be maintained by a court directly or by a provider organization.

**State Offices of Dispute Resolution:** State offices can be found in the judicial or executive branch of government, in universities or commissions, and in other non-profit entities. They usually are supported all or in part by public funds and serve a public purpose. Some provide dispute resolution services directly through state employees, other cooperate with and/or fund non-profit community connected providers. State offices can offer programs/services to courts, government, and private entities. State offices can establish or recommend qualifications and policies relating to dispute resolution practitioners. They also can administer commissions, committees, and councils involved in the review, establishment, and expansion of state services, rules, training, and other activities related to dispute resolution policies and practice.

**Summary Jury Trial.** The summary jury trial is an abbreviated presentation of a case by attorneys to a mock jury, which then issues a verdict. The verdict is for information purposes only, to help parties evaluate the case. In one form of the summary jury trial, a jury is chosen from the jury pool of the trial court and jurors are told after the verdict is rendered that the verdict was advisory.

**Training.** Training is a structured educational program designed to impart knowledge, skills, and abilities to render a trainee proficient at a particular level. Training programs are designed and delivered by practitioner(s) knowledgeable about the dispute resolution approach and skilled in training processes. Academic and other course work in dispute resolution constitute training if they include skill-based exercises, particularly in mediation.

## Appendix B.

### Contacts for Court Related Dispute Resolution

#### **ACADEMY OF FAMILY MEDIATORS**

Erika Gray, Executive Director  
4 Military Drive  
Lexington, MA 02173  
(617)674-2663  
(617)674-2690 (FAX)

#### **ALABAMA CENTER FOR DISPUTE RESOLUTION**

Judy Keegan, Administrator  
415 Dexter Avenue  
P.O. Box 671  
Montgomery, AL 36101

#### **AMERICAN BAR ASSOCIATION**

Dispute Resolution Section  
740 15th Street, N.W.  
Washington, D.C. 20005-1009  
(202)662-1680

#### **ASSOCIATION OF FAMILY AND CONCILIATION COURTS**

Ann Milne, Executive Director  
329 West Wilson Street  
Madison, WI 53703-3612  
(608)251-4001

#### **ARIZONA DISPUTE RESOLUTION ALTERNATIVES OFFICE**

Joan Tobin, Coordinator  
Superior Court of Arizona  
201 West Jefferson  
Phoenix, AZ 85003-2205

#### **CALIFORNIA DISPUTE RESOLUTION OFFICE**

Albert Balingit, Coordinator  
400 R Street, Suite 3090  
Sacramento, CA 95814-6200

#### **CPR INSTITUTE FOR DISPUTE RESOLUTION**

366 Madison Ave., 14th Fl.  
New York, NY 10017  
(212)949-6490

#### **COLORADO OFFICE OF DISPUTE RESOLUTION**

Colorado Judicial Department  
1301 Pennsylvania Street, Suite 300  
Denver, CO 80203  
(303)837-3667

#### **CONFLICT RESOLUTION EDUCATION NETWORK AT NIDR**

1726 M Street, NW  
Suite 500  
Washington DC 20036-4502  
(202)466-4764  
(202)466-4769 Fax

#### **FLORIDA DISPUTE RESOLUTION CENTER**

Sharon Press, Director  
Supreme Court Building  
Tallahassee, FL 32399-1905  
(850)921-2910  
(850)488-0156 (FAX)

#### **GEORGIA OFFICE OF DISPUTE RESOLUTION**

Ansley Boyd Barton, Director  
244 Washington Street, Rm. 572  
Atlanta, GA 30334  
(404)651-9362

#### **HAWAII CENTER FOR ALTERNATIVE DISPUTE RESOLUTION**

Elizabeth Kent, Director  
Office of the Administrative  
Director of the Courts  
The Judiciary - State of Hawaii  
P.O. Box 2560  
Honolulu, HI 96804  
(808)548-3080

#### **MASSACHUSETTS OFFICE OF DISPUTE RESOLUTION FOR THE COMMONWEALTH OF MASSACHUSETTS**

Fredie Kaye, Director  
Saltonstall Building, 14th Fl.  
100 Cambridge St.  
Boston, MA 02202  
(617)727-2224

#### **MASSACHUSETTS SUPREME JUDICIAL COURT**

Barbara Diamond, Esq.  
Counsel for Policy and Development  
New Courthouse, Pemberton Square  
Boston, MA 02108  
(617) 557-1156

#### **NATIONAL ASSOCIATION FOR COMMUNITY MEDIATION**

Larry Ray, Executive Director  
1726 M Street # 500  
Washington, DC 20036-4502  
(202)467-6226

#### **NATIONAL CENTER FOR STATE COURTS**

300 Newport Avenue  
Williamsburg, VA 23187-8798  
(757)253-2000

#### **NATIONAL CONFERENCE ON PEACEMAKING AND CONFLICT RESOLUTION**

Linda Barron, Executive Director  
George Mason University  
4400 University Drive  
Fairfax, VA 22030  
(703)993-2440

**NATIONAL INSTITUTE FOR DISPUTE RESOLUTION (NIDR)**

Marge Baker, President  
1726 M Street, N.W., Suite 500  
Washington, D.C. 20036  
(202)466-4764

**NEBRASKA OFFICE OF DISPUTE RESOLUTION**

Kathleen Severns, Director  
Supreme Court of Nebraska  
P.O. Box 98910  
Lincoln, NE 68509-8910  
(402)471-3730

**NEW JERSEY OFFICE OF DISPUTE SETTLEMENT**

Department of the Public Advocate  
CN 850  
Trenton, NJ 08625  
(609)292-1773

**NORTH CAROLINA DISPUTE RESOLUTION COMMISSION**

Leslie Ratliff, Executive Secretary  
P.O. Box 2448  
Raleigh, NC 27602  
(919)773-2904  
(919)662-4310 Fax

**OHIO OFFICE OF DISPUTE RESOLUTION**

C. Eileen Pruett  
Supreme Court of Ohio  
30 East Broad Street  
Columbus, OH 43266-0419  
(614)752-4700  
(614)752-8736 Fax

**OREGON JUDICIAL DEPARTMENT**

Alice Phalan, ADR Advisor  
1163 State Street  
Salem, OR 97310-5935  
(503)986-5935  
(503)986-5503 Fax

**SOCIETY OF PROFESSIONALS IN DISPUTE RESOLUTION (SPIDR)**

815 15th Street, N.W.  
Suite 530  
Washington, D.C. 20005  
(202)783-7277

**STATE JUSTICE INSTITUTE**

1650 King Street, Suite 600  
Alexandria, VA 22314  
(703)684-6100

**VIRGINIA OFFICE OF DISPUTE RESOLUTION SERVICES**

Geetha Ravindra, Director  
Supreme Court of Virginia  
100 North Ninth Street, 3rd Floor  
Richmond, VA 23219  
(804)786-6455  
(804)786-4542

# Appendix C.1

## Oregon Roster Form

**FORMS**  
(Mediator Application)

**COURT MEDIATOR APPLICATION FORM FOR DOMESTIC RELATIONS MEDIATOR PANEL**  
(Attach additional sheets if needed.)

(If the applicant is placed on the panel of mediators, this completed form will be on file for public inspection.)

- 1 Name \_\_\_\_\_
- 2 Business name \_\_\_\_\_
- 3 Office Address \_\_\_\_\_  
\_\_\_\_\_
- 4 Office Phone Number ( ) \_\_\_\_\_
- 5 Facsimile number ( ) \_\_\_\_\_
- 6 Description of formal education (Institutions, degrees, dates) \_\_\_\_\_  
\_\_\_\_\_
- 7 Description of mediation training, including dates, trainers' names, evidence of completion, and training outline(s) \_\_\_\_\_  
\_\_\_\_\_
- 8 Describe any training you have had in alcohol and drug abuse \_\_\_\_\_  
\_\_\_\_\_
- 9 Describe any training you have had in domestic violence and child abuse \_\_\_\_\_  
\_\_\_\_\_
- 10 Description of mediation experience \_\_\_\_\_  
\_\_\_\_\_
- 11 In how many live domestic relations cases involving children have you observed mediations or participated as a mediator? \_\_\_\_\_
- 12 For how many hours have you observed mediations or participated as a mediator in domestic relations cases? \_\_\_\_\_
- 13 Relevant organizations with which you are affiliated \_\_\_\_\_  
\_\_\_\_\_
- 14 Description of other relevant experience \_\_\_\_\_  
\_\_\_\_\_
- 15 Describe how you establish your fees \_\_\_\_\_  
\_\_\_\_\_
- 16 I certify that I subscribe to the Standards of Mediator Conduct in OAR 718-40-100.

\_\_\_\_\_  
Mediator's signature

\_\_\_\_\_  
Date



## Appendix C.2

# Florida Rules for Certified and Court-Appointed Mediators, Parts I & II

### PART I. Mediator Qualifications

#### Rule 10.010 General Qualifications

- (a) County Court Mediators. For certification a mediator of county court matters must be certified as a circuit court or family mediator or:
  - (1) complete a minimum of 20 hours in a training program certified by the supreme court;
  - (2) observe a minimum of 4 county court mediation conferences conducted by a court-certified mediator and conduct 4 county court mediation conferences under the supervision and observation of a court-certified mediator; and
  - (3) be of good moral character.
- (b) Family Mediators. For certification a mediator of family and dissolution of marriage issues must:
  - (1) complete a minimum of 40 hours in a family mediation training program certified by the supreme court;
  - (2) have a master's degree or doctorate in social work, mental health, or behavioral or social sciences; be a physician certified to practice adult or child psychiatry; or be an attorney or a certified public accountant licensed to practice in any United States jurisdiction; and have at least 4 years practical experience in one of the aforementioned fields or have 8 years family mediation experience with a minimum of 10 mediations per year;
  - (3) observe 2 family mediations conducted by a certified family mediator and conduct 2 family mediations under the supervision and observation of a certified family mediator; and
  - (4) be of good moral character.
- (c) Circuit Court Mediators. For certification a mediator of circuit court matters, other than family matters, must:
  - (1) complete a minimum of 40 hours in a circuit court mediation training program certified by the supreme court;
  - (2) be a member in good standing of The Florida Bar with at least 5 years of Florida practice and be an active member of The Florida Bar within 1 year of application for certification; or be a retired trial judge from any United States jurisdiction who was a member in good standing of the bar in the state in which the judge presided for at least 5 years immediately preceding the year certification is sought;
  - (3) observe 2 circuit court mediations conducted by a certified circuit mediator and conduct 2 circuit mediations under the supervision and observation of a certified circuit court mediator; and
  - (4) be of good moral character.
- (d) Dependency Mediators. For certification a mediator of dependency matters, as defined in 8.290(a), Florida Rules for Juvenile Procedure, must:
  - (1) complete a minimum of 40 hours in a dependency mediation training program certified by the supreme court; and
  - (2) have a master's degree or doctorate in social work, mental health, behavioral sciences or social sciences; or be a physician licensed to practice adult or child psychiatry or pediatrics; or be an attorney licensed to practice in any United States jurisdiction; and
  - (3) have 4 years experience in family and/or dependency issues or be a licensed mental health professional with at least 4 years practical experience or be a supreme court certified family or circuit mediator with a minimum of 20 mediations; and
  - (4) observe four dependency mediations conducted by a certified dependency mediator and conduct two dependency mediations under the supervision and observation of a certified dependency mediator; and
  - (5) be of good moral character.
- (e) Special Conditions. Mediators who have been duly certified as circuit court or family mediators before July 1, 1990, shall be deemed qualified as circuit court or family mediators pursuant to these rules. Mediators who have mediated a minimum of six dependency cases prior to July 1, 1997, shall be granted temporary certification and may continue to mediate dependency matters for no more than one year from the time that a training program pursuant to subsection (d)(1) is certified by the supreme court. Such mediators shall be deemed qualified to apply for certification as dependency mediators upon successful completion of the requirements of subsections (d)(1) and (d)(5) of this rule.

## **Part II. Standards of Professional Conduct**

### **Rule 10.020 Preamble**

- (a) **Scope; Purpose.** These rules are intended to instill and promote public confidence in the mediation process and to be a guide to mediator conduct. As with other forms of dispute resolution, mediation must be built on public understanding and confidence. Persons serving as mediators are responsible to the parties, the public, and the courts to conduct themselves in a manner which will merit that confidence. These rules apply to all mediators who are certified or participate in court-sponsored mediation and are a guide to mediator conduct in discharging their professional responsibilities in the mediation of circuit civil and family and county court cases in the State of Florida.
- (b) **Mediation Defined.** Mediation is a process whereby a neutral third party acts to encourage and facilitate the resolution of a dispute without prescribing what it should be. It is an informal and non-adversarial process with the objective of helping the disputing parties reach a mutually acceptable agreement.
- (c) **Mediator's Role.** In mediation, decision-making authority rests with the parties. The role of the mediator includes but is not limited to assisting the parties in identifying issues, reducing obstacles to communication, maximizing the exploration of alternatives, and helping the parties reach voluntary agreements.
- (d) **General Principles.** Mediation is based on principles of communication, negotiation, facilitation, and problem-solving that emphasize:
  - (1) the needs and interests of the participants;
  - (2) fairness;
  - (3) procedural flexibility;
  - (4) privacy and confidentiality;
  - (5) full disclosure; and
  - (6) self determination.

Statutory Reference: Section 44.1011, Fla. Stat.

### **Rule 10.030 General Standards and Qualifications**

- (a) **General.** Integrity, impartiality, and professional competence are essential qualifications of any mediator. Mediators shall adhere to the highest standards of integrity, impartiality, and professional competence in rendering their professional service.
  - (1) A mediator shall not accept any engagement, perform any service, or undertake any act which would compromise the mediator's integrity.
  - (2) A mediator shall maintain professional competence in mediation skills including, but not limited to:
    - (A) staying informed of and abiding by all statutes, rules, and administrative orders relevant to the practice of court-ordered mediation;
    - (B) if certified, continuing to meet the requirements of these rules; and
    - (C) regularly engaging in educational activities promoting professional growth.
  - (3) A mediator shall decline appointment, withdraw, or request technical assistance when the mediator decides that a case is beyond the mediator's competence.
- (b) **Concurrent Standards.** Nothing herein shall replace, eliminate, or render inapplicable relevant ethical standards, not in conflict with these rules, which may be imposed upon any mediator by virtue of the mediator's professional calling.

### **Rule 10.040 Responsibilities to Courts**

A mediator shall be candid, accurate, and fully responsive to a court concerning the mediator's qualifications, availability, and all other pertinent matters. A mediator shall observe all administrative policies, local rules of court, applicable procedural rules, and statutes. A mediator is responsible to the judiciary for the propriety of the mediator's activities and must observe judicial standards of fidelity and diligence. A mediator shall refrain from any activity which has the appearance of improperly influencing a court to secure placement on a roster or appointment to a case, including gifts or other inducements to court personnel.

### **Rule 10.050 The Mediation Process**

- (a) **Orientation Session.** On commencement of the mediation session, a mediator shall inform all parties that the process is consensual in nature, that the mediator is an impartial facilitator, and that the mediator may not impose or force any settlement on the parties.
- (b) **Appropriateness of Mediation.** The mediator shall assist the parties in evaluating the benefits, risks, and costs of mediation and alternative methods of problem solving available to them. A mediator shall not unnecessarily or inappropriately prolong a mediation session if it becomes apparent that the case is unsuitable for mediation or if one or more of the parties is unwilling or unable to participate in the mediation process in a meaningful manner.
- (c) **Avoidance of Delays.** A mediator shall plan a work schedule so that present and future commitments will be fulfilled in a timely manner. A mediator shall refrain from accepting appointments when it becomes apparent that completion of the mediation assignments accepted cannot be done in a timely fashion. A mediator shall perform the mediation services in a timely and expeditious fashion, avoiding delays wherever possible.

#### **Rule 10.060 Self-Determination**

- (a) **Parties' Right to Decide.** A mediator shall assist the parties in reaching an informed and voluntary settlement. Decisions are to be made voluntarily by the parties themselves.
- (b) **Prohibition of Mediator Coercion.** A mediator shall not coerce or unfairly influence a party into a settlement agreement and shall not make substantive decisions for any party to a mediation process.
- (c) **Prohibition of Misrepresentation.** A mediator shall not intentionally or knowingly misrepresent material facts or circumstances in the course of conducting a mediation.
- (d) **A Balanced Process.** A mediator shall promote a balanced process and shall encourage the parties to conduct the mediation deliberations in a non-adversarial manner.
- (e) **Responsibility to Nonparticipating Parties.** A mediator shall promote consideration of the interests of persons affected by actual or potential agreements who are not represented at the bargaining table.
- (f) **Mutual Respect.** A mediator shall promote mutual respect among the parties throughout the mediation process.

#### **Committee Notes**

While a mediator has no duty to specifically advise a party as to the legal ramifications or consequences of a proposed agreement, there is a duty for the mediator to advise the parties of the importance of understanding such matters and giving them the opportunity to seek such advice if they desire.

#### **Rule 10.070 Impartiality**

- (a) **Impartiality.** A mediator shall be impartial and advise all parties of any circumstances bearing on possible bias, prejudice, or impartiality. Impartiality means freedom from favoritism or bias in word, action, and appearance. Impartiality implies a commitment to aid all parties, as opposed to an individual party, in moving toward an agreement.
  - (1) A mediator shall maintain impartiality while raising questions for the parties to consider as to the reality, fairness, equity, and feasibility of proposed options for settlement.
  - (2) A mediator shall withdraw from mediation if the mediator believes the mediator can no longer be impartial.
  - (3) A mediator shall not give or accept a gift, request, favor, loan, or any other item of value to or from a party, attorney, or any other person involved in and arising from any mediation process.
- (b) **Conflicts of Interest and Relationships; Required Disclosures; Prohibitions.**
  - (1) A mediator must disclose any current, past, or possible future representation or consulting relationship with any party or attorney involved in the mediation. Disclosure must also be made of any pertinent pecuniary interest. All such disclosures shall be made as soon as practical after the mediator becomes aware of the interest or the relationship.
  - (2) A mediator must disclose to the parties or to the court involved any close personal relationship or other circumstance, in addition to those specifically mentioned earlier in this rule, which might reasonably raise a question as to the mediator's impartiality. All such disclosures shall be made as soon as practical after the mediator becomes aware of the interest or the relationship.
  - (3) The burden of disclosure rests on the mediator. After appropriate disclosure, the mediator may serve if both parties so desire. If the mediator believes or perceives that there is a clear conflict of interest, he or she should withdraw, irrespective of the expressed desires of the parties.
  - (4) A mediator shall not provide counselling or therapy to either party during the mediation process, nor shall a mediator who is a lawyer represent either party in any matter during the mediation.
  - (5) A mediator shall not use the mediation process to solicit, encourage, or otherwise incur future professional services with either party.

#### **Committee Notes**

The duty to disclose potential conflicts includes the fact of membership on a board of directors, full-time or part-time service as a representative or advocate, consultation work for a fee, current stock or bond ownership (other than mutual fund shares or appropriate trust arrangements), or any other pertinent form of managerial, financial or immediate family interest of the party involved. A mediator who is a member of a law firm is obliged to disclose any representational relationship the member firm may have had with the parties.

Mediators establish personal relationships with many representatives, attorneys, mediators, and other members of various professional associations. There should be no attempt to be secretive about such friendships or acquaintances, but disclosure is not necessary unless some feature of a particular relationship might reasonably appear to impair impartiality.

#### **Rule 10.080 Confidentiality**

- (a) **Required.** A mediator shall preserve and maintain the confidentiality of all mediation proceedings except where required by law to disclose information.
- (b) **When Disclosure Permitted.** A mediator shall keep confidential from the other parties any information obtained in individual caucuses unless the party to the caucus permits disclosure.
- (c) **Records.** A mediator shall maintain confidentiality in the storage and disposal of records and shall render anonymous all identifying information when materials are used for research, training, or statistical compilations.

Statutory References:

Sec. 44.102(3), Fla. Stat.

Secs. 90.501-.510, Fla. Stat.

### **Rule 10.090 Professional Advice**

- (a) Generally. A mediator shall not provide information the mediator is not qualified by training or experience to provide.
- (b) Independent Legal Advice. When a mediator believes a party does not understand or appreciate how an agreement may adversely affect legal rights or obligations, the mediator shall advise the participants to seek independent legal counsel.
- (c) When Party Absent. If one of the parties is unable to participate in a mediation process for psychological or physical reasons, a mediator should postpone or cancel mediation until such time as all parties are able and willing to resume. Mediators may refer the parties to appropriate resources if necessary.
- (d) Personal Opinion. While a mediator may point out possible outcomes of the case, under no circumstances may a mediator offer a personal or professional opinion as to how the court in which the case has been filed will resolve the dispute.

### **Committee Notes**

Mediators who are attorneys should note Florida Bar Committee on Professional Ethics, formal opinion 86-8 at 1239, which states that the lawyer-mediator should "explain the risks of proceeding without independent counsel and advise the parties to consult counsel during the course of the mediation and before signing any settlement agreement that he might prepare for them."

### **Rule 10.100 Fees and Expenses**

- (a) General Requirements. A mediator occupies a position of trust with respect to the parties and the courts. In charging for services and expenses, the mediator must be governed by the same high standards of honor and integrity that apply to all other phases of the mediator's work. A mediator must endeavor to keep total charges for services and expenses reasonable and consistent with the nature of the case. If fees are charged, a mediator shall give a written explanation of the fees and related costs, including time and manner of payment, to the parties prior to the mediation. The explanation shall include:
  - (1) the basis for and amount of charges, if any, for:
    - (A) mediation sessions;
    - (B) preparation for sessions;
    - (C) travel time;
    - (D) postponement or cancellation of mediation sessions by the parties and the circumstances under which such charges will normally be assessed or waived;
    - (E) preparation of the parties' written mediation agreement; and
    - (F) all other items billed by the mediator; and
  - (2) the parties' pro rata share of mediation fees and costs if previously determined by the court or agreed to by the parties.
- (b) Records. A mediator shall maintain adequate records to support charges for services and expenses and shall make an accounting to the parties or to the court upon request.
- (c) Referrals. No commissions, rebates, or similar remuneration shall be given or received by a mediator for referral of clients for mediation or related services.
- (d) Contingent Fees. A mediator shall not charge a contingent fee or base a fee in any manner on the outcome of the process.
- (e) Principles. A mediator should be guided by the following general principles:
  - (1) Time charges for a mediation session should not be in excess of actual time spent or allocated for the session.
  - (2) Time charges for preparation should not be in excess of actual time spent.
  - (3) Charges for expenses should be for expenses normally incurred and reimbursable in mediation cases and should not exceed actual expenses.
  - (4) When time or expenses involve 2 or more sets of parties on the same day or trip, such time and expense charges should be prorated appropriately.
  - (5) A mediator may specify in advance a minimum charge for a mediation session without violating this rule.
  - (6) When a mediator is contacted directly by the parties for mediation services, the mediator has a professional responsibility to respond to questions regarding fees by providing a copy of the basis for charges for fees and expenses.

### **Rule 10.110 Concluding Mediation**

- (a) With Agreement.
  - (1) Full Agreement. The mediator shall cause the terms of any agreement reached to be memorialized appropriately and discuss with the participants the process for formalization and implementation of the agreement.
  - (2) Partial Agreement. When the participants reach a partial agreement, the mediator shall discuss the procedures available to resolve the remaining issues.
  - (3) Integrity of the Agreement. The mediator shall not knowingly assist the parties in reaching an agreement which for reasons such as fraud, duress, overreaching, the absence of bargaining ability, or unconscionability would be unenforceable.

- (b) Without Agreement.
  - (1) Termination by Participants. The mediator shall not require a participant's further presence at a mediation conference when it is clear the participant desires to withdraw.
  - (2) Termination by Mediator. If the mediator believes that the participants are unable or unwilling to participate meaningfully in the process or that an agreement is unlikely, the mediator shall suspend or terminate the mediation. The mediator should not prolong unproductive discussions that would result in emotional and monetary costs to the participants. The mediator shall not continue to provide mediation services where there is a complete absence of bargaining ability.

### Committee Notes

Florida Rule of Civil Procedure 1.730(b) requires that any agreement reached be reduced to writing. Mediators have an obligation to insure this rule is complied with, but are not themselves required to write the agreement.

### Rule 10.120 Training and Education

- (a) Training. A mediator is obligated to acquire knowledge and training in the mediation process, including an understanding of appropriate professional ethics, standards, and responsibilities. Upon request, a mediator is required to disclose the extent and nature of the mediator's training and experience.
- (b) Continuing Education. It is important that mediators continue their professional education throughout the period of their active service. A mediator shall be personally responsible for ongoing professional growth, including participation in such continuing education as may be required by law.
- (c) New Mediator Training. An experienced mediator should cooperate in the training of new mediators, including serving as a mentor.

### Rule 10.130 Advertising

All advertising by a mediator must represent honestly the services to be rendered. No claims of specific results or promises which imply favoritism to one side should be made for the purpose of obtaining business. A mediator shall make only accurate statements about the mediation process, its costs and benefits, and the mediator's qualifications.

### Rule 10.140 Relationships with Other Professionals

- (a) The Responsibility of the Mediator Toward Other Mediators.
  - (1) Relationship with Other Mediators. A mediator should not mediate any dispute that is being mediated by another mediator without first endeavoring to consult with the person or persons conducting such mediation.
  - (2) Co-Mediation. In those situations where more than 1 mediator is participating in a particular case, each mediator has a responsibility to keep the others informed of developments essential to a cooperative effort. The wishes of the parties supersede the interests of the mediators.
- (b) Relationship with Other Professionals.
  - (1) Cooperation. A mediator should respect the relationship between mediation and other professional disciplines including law, accounting, mental health, and the social services and should promote cooperation between mediators and other professionals.
  - (2) Prohibited Agreements. A mediator shall not participate in offering or making a partnership or employment agreement that restricts the rights of a mediator to practice after termination of the relationship, except an agreement concerning benefits upon retirement.

### Rule 10.150 Advancement of Mediation

- (a) Pro Bono Service. Mediators have a professional responsibility to provide competent services to persons seeking their assistance, including those unable to pay for such services. As a means of meeting the needs of the financially disadvantaged, a mediator should provide mediation services pro bono or at a reduced rate of compensation whenever appropriate.
- (b) Support of Mediation. A mediator should support the advancement of mediation by encouraging and participating in research, evaluation, or other forms of professional development and public education.

## **Appendix C.3**

### **Florida Rules for Court-Appointed Arbitrators**

#### **PART I Arbitrator Qualifications**

##### **Rule 11.010 Qualification.**

Arbitrators shall be members of The Florida Bar, except where otherwise agreed by the parties. The chief arbitrator shall have been a member of The Florida Bar for at least five years. Individuals who are not members of The Florida Bar may serve as arbitrators only on an arbitration panel and then only upon the written agreement of all parties.

##### **Rule 11.020 Training.**

All arbitrators, except as noted below, shall attend 4 hours of training in a program approved by the Supreme Court of Florida. This rule shall not preclude the parties from agreeing to use the services of an arbitrator who has not completed the required training. Any former Florida trial judge who has not completed the training shall be exempt from the training requirements upon submission of documentation of such experience to the chief judge. The supreme court or chief justice may grant a waiver of the training requirement to any group possessing special qualifications which obviate the necessity of such training.

#### **PART II Standards of Professional Conduct**

##### **Rule 11.030 Preamble**

- (a) **Scope; Purpose.** These rules are intended to instill and promote public confidence in arbitration conducted pursuant to Chapter 44, Florida Statutes, and to be a guide to arbitrator conduct. As with other forms of dispute resolution, arbitration must be built on public understanding and confidence. Persons serving as arbitrator are responsible to the parties, the public, and the courts to conduct themselves in a manner which will merit that confidence. These rules apply to all arbitrators who participate in arbitration conducted pursuant to Chapter 44 and are a guide to arbitrator conduct in discharging their professional responsibilities in the arbitration of cases in the State of Florida.
- (b) **Arbitration Defined.** Pursuant to chapter 44, Florida Statutes, arbitration is a process whereby a neutral third person or panel considers the facts and arguments presented by the parties and renders a decision which may be binding or nonbinding.

##### **Rule 11.040 General Standards and Qualifications**

- (a) **Integrity, Impartiality, and Competence.** Integrity, impartiality, and professional competence are essential qualifications of any arbitrator. An arbitrator is in a relation of trust to the parties and shall adhere to the highest standards of integrity, impartiality, and professional competence in rendering professional service.
  - (1) An arbitrator shall not accept any engagement, perform any service, or undertake any act which would compromise the arbitrator's integrity.
  - (2) An arbitrator shall maintain professional competence in arbitration skills including, but not limited to:
    - (A) staying informed of and abiding by all statutes, rules, and administrative orders relevant to the practice of arbitration conducted pursuant to Chapter 44, Florida Statutes; and
    - (B) regularly engaging in educational activities promoting professional growth.
  - (3) An arbitrator shall decline appointment, withdraw, or request technical assistance when the arbitrator decides that a case is beyond the arbitrator's competence.
- (b) **Concurrent Standards.** Nothing herein shall replace, eliminate, or render inapplicable relevant ethical standards, not in conflict with these rules, which may be imposed upon any arbitrator by virtue of the arbitrator's professional calling.
- (c) **Continuing Obligations.** The ethical obligations begin upon acceptance of the appointment and continue throughout all stages of the proceeding. In addition, whenever specifically set forth in these rules, certain ethical obligations begin as soon as a person is requested to serve as an arbitrator, and certain ethical obligations continue even after the decision in the case has been given to the parties.

##### **Rule 11.050 Responsibilities to the Courts**

An arbitrator shall be candid, accurate, and fully responsive to a court concerning the arbitrator's qualifications, availability, and all other pertinent matters. An arbitrator shall observe all administrative policies, local rules of court, applicable procedural rules, and statutes. An arbitrator is responsible to the judiciary for the propriety of the arbitrator's activities and must observe judicial standards of fidelity and diligence. An arbitrator shall refrain from any activity which has the appearance of improperly influencing a court to secure placement on a roster or appointment to a case, including gifts or other inducements to court personnel.

### **Rule 11.060 The Arbitration Process**

- (a) **Avoidance of Delays.** An arbitrator shall plan a work schedule so that present and future commitments will be fulfilled in a timely manner. An arbitrator shall refrain from accepting appointments when it becomes apparent that completion of the arbitration assignments accepted cannot be completed in a timely fashion. An arbitrator shall perform the arbitrator's services in a timely and expeditious fashion, avoiding delays whenever possible.
- (b) **Conduct of Proceedings.**
  - (1) An arbitrator shall conduct the proceedings evenhandedly and treat all parties with equality and fairness at all stages of the proceedings.
  - (2) An arbitrator must afford a hearing which provides both parties the opportunity to present their respective positions pursuant to the arbitration rules.
  - (3) An arbitrator should be patient and courteous to the parties, to their lawyers, and to the witnesses and should encourage similar conduct by all participants in the proceedings.
- (c) **Decision-Making.**
  - (1) An arbitrator should, after careful deliberation, decide all issues submitted for determination. An arbitrator should decide no other issues.
  - (2) An arbitrator should not delegate the duty to decide to any other person.
  - (3) If all parties agree upon a settlement of the issues in dispute and request an arbitrator to embody that agreement in an award, an arbitrator may do so, but is not required to do so unless satisfied with the propriety of the terms of the settlement. Whenever an arbitrator embodies a settlement by the parties in an award, the arbitrator should state in the award that it is based on an agreement of the parties.
- (d) **The Award.** The award should be definite, certain, and as concise as possible.

### **Rule 11.070 Ex Parte Communication.**

- (a) **General.** Arbitrators communicating with the parties should avoid impropriety or the appearance of impropriety.
- (b) **When Permissible.** Arbitrators should not discuss a case with any party in the absence of each other party, except in the following circumstances:
  - (1) Discussions may be held with a party concerning such matters as setting the time and place of hearings or making other arrangements for the conduct of the proceedings. However, the arbitrator should promptly inform each other party of the discussion and should not make any final determination concerning the matter discussed before giving each absent party an opportunity to express its views.
  - (2) If a party fails to be present at a hearing after having been given due notice, the arbitrator may discuss the case with any party who is present.
  - (3) If all parties request or consent that such discussion take place.
- (c) **Written Communications.** Whenever an arbitrator communicates in writing with one party, the arbitrator should at the same time send a copy of the communication to each other party. Whenever an arbitrator receives any written communication concerning the case from one party which has not already been sent to each other party, the arbitrator should do so.

### **Rule 11.080 Impartiality**

- (a) **Impartiality.** An arbitrator shall be impartial and advise all parties of any circumstances bearing on possible bias, prejudice, or impartiality. Impartiality means freedom from favoritism or bias in word, action, and appearance.
  - (1) Arbitrators should conduct themselves in a way that is fair to all parties and should not be swayed by outside pressure, public clamor, fear of criticism, or self-interest.
  - (2) An arbitrator shall withdraw from an arbitration if the arbitrator believes the arbitrator can no longer be impartial.
  - (3) An arbitrator shall not give or accept a gift, request, favor, loan, or other item of value to or from a party, attorney, or any other person involved in and arising from any arbitration process.
  - (4) After accepting appointment, and for a reasonable period of time after the decision of the case, an arbitrator should avoid entering into family, business, or personal relationships which could affect impartiality or give the appearance of partiality, bias, or influence.
- (b) **Conflicts of Interest and Relationships; Required Disclosures; Prohibitions**
  - (1) An arbitrator must disclose any current, past, or possible future representation or consulting relationship with any party or attorney involved in the arbitration. Disclosure must also be made of any pertinent pecuniary interest. All such disclosures shall be made as soon as practical after the arbitrator becomes aware of the interest or relationship.
  - (2) An arbitrator must disclose to the parties or to the court involved any close personal relationship or other circumstance, in addition to those specifically mentioned earlier in this rule, which might reasonably raise a question as to the arbitrator's impartiality. All such disclosures shall be made as soon as practical after the arbitrator becomes aware of the interest or relationship.
  - (3) The burden of disclosure rests on the arbitrator. After disclosure, the arbitrator may serve if both parties so desire. If the arbitrator believes or perceives that there is a clear conflict of interest, the arbitrator should withdraw, irrespective of the expressed desire of the parties.
  - (4) An arbitrator shall not use the arbitration process to solicit, encourage, or otherwise incur future professional services with either party.

## Committee Notes

The duty to disclose potential conflicts includes the fact of membership on a board of directors, full-time or part-time service as a representative or advocate, consultation work for a fee, current stock or bond ownership (other than mutual fund shares or appropriate trust arrangements), or any other pertinent form of managerial, financial or immediate family interest of the party involved. An arbitrator who is a member of a law firm is obliged to disclose any representational relationship the member firm may have had with the parties.

Arbitrators establish personal relationships with many representatives, attorneys, arbitrators, other members of various professional associations. There should be no attempt to be secretive about such friendships or acquaintances, but disclosure is not necessary unless some feature of a particular relationship might reasonably appear to impair impartiality.

### **Rule 11.090 Relationship With Other Professionals**

When there is more than one arbitrator, the arbitrators should afford each other the full opportunity to participate in all aspects of the proceedings.

### **Rule 11.100 Fees and Expenses**

An arbitrator occupies a position of trust with respect to the parties and the courts. In charging for services and expenses, the arbitrator must be governed by the same high standard of honor and integrity which applies to all other phases of the arbitrator's work. An arbitrator must keep total charges for services and expenses reasonable and consistent with the nature of the case or within statutory payment limitations.

### **Rule 11.110 Training and Education**

- (a) **Training.** An arbitrator is obligated to acquire knowledge and training in the arbitration process, including an understanding of appropriate professional ethics, standards, and responsibilities. Upon request, an arbitrator is required to disclose the extent and nature of the arbitrator's training and experience.
- (b) **Continuing Education.** It is important that arbitrators continue their professional education throughout the period of their active service. An arbitrator shall be personally responsible for ongoing professional growth, including participation in such continuing education as may be required by law.
- (c) **New Arbitrator Training.** An experienced arbitrator should cooperate in the training of new arbitrators.

### **Rule 11.120 Advertising**

All advertising by an arbitrator must represent honestly the services to be rendered. No claims of specific results or promises which imply favoritism to one side should be made for the purpose of obtaining business. An arbitrator shall make only accurate statements about the arbitration process, its costs and benefits, and the arbitrator's qualifications.

## **PART III Discipline**

### **Rule 11.130 Chief Judge Responsibility**

Arbitrators shall serve at the pleasure of the chief judge, who shall be responsible for enforcing the rules of conduct for arbitrators appointed pursuant to chapter 44, Florida Statutes.

## Committee Notes

The Florida Supreme Court Standing Committee on Mediator and Arbitrator Rules believes that arbitrator discipline, unlike mediator discipline, should be administered by the chief judge rather than by a board appointed for that purpose. The primary reason for this distinction is that there is presently no statewide arbitrator certification process. Rather, arbitrators are made eligible by placement on a list by the chief judge. See Florida Rule of Civil Procedure 1.810(a). It was the feeling of the committee that a method of removal consistent with that of appointment, that is, discretion of the chief judge, would also be appropriate. The rules make the chief judge responsible for enforcing the rules of conduct for arbitrators appointed pursuant to chapter 44, Florida Statutes.

The committee reserves the right to reconsider the effectiveness of this method of discipline after observing operation for a period of time. If this method of removal proves to be ineffective, a board to conduct discipline may need to be appointed. It should, however, be noted that a similar system for the removal of quasi-judicial officers exists in relation to masters, Florida Rule of Civil Procedure 1.490(a), child support enforcement officers, Florida Rule of Civil Procedure 1.491(c), and traffic magistrates, Florida Rule of Traffic Court 6.630(c).

Appeals from decisions of the chief judge shall be taken in the same manner as any other matter appealed from the chief judge.



# Appendix C.4

## Texas Mediation Trainer Roundtable Annotated Standards for the 40-Hour Basic Mediator Training

### TRAINING CONTENT: TOPICS

The seven minimum areas of information which should be covered in a basic 40-hour training program are:

**1. History of Mediation.** Rationale: Because mediation has evolved over time and continues to evolve today, trainees need an understanding of the historical perspective.

**2. Overview of ADR Legislation in Texas.** Rationale: Trainees should be introduced to the key aspects of legislation that have relevance to the practice of mediation so that they may comply with relevant legal requirements.

**3. Conflict Resolution Theory.** Rationale: This information should help trainees differentiate between mediation and other forms of dispute resolution.

Topics:

- Definition, types of, and responses to conflict
- Dispute resolution continuum
- Win/win collaborative problem solving

**4. Mediation Theory and Practice.** Rationale: Trainees need a theoretical grounding to understand the process fully. Trainees should understand a full range of mediation models in order to serve the parties most effectively.

Topics:

- Definition of mediation and characteristics of mediators
- Theory of Mediation
- Benefits of mediation process
- Differences in the roles: judges, mediators, and arbitrators
- Range of styles, types of mediators and mediations

**5. Mediation Process and Techniques.** Rationale: Trainees should have a conceptual framework for conducting the session. In addition, trainees must learn key techniques to assist in managing participation, structuring the session, and establishing a cooperative problem-solving environment.

Topics:

#### Mediation Process

- Preliminary arrangements
- Opening and structuring the mediation session
- Introduction/orientation of disputants/attorneys
- Gathering and exchanging information (venting/opening statements)
- Issue and problem clarification
- Generating options
- Bargaining and negotiation
- Agreement writing/enforceability
- Closure

#### Techniques

- Trust building
- Restating and clarifying
- Keeping on track, following agenda, managing process
- Focusing on interests vs. positions
- Building on partial agreements
- Caucusing
- Reality testing

- Working with third parties
- Managing difficult people or strong emotions

**6. Self Awareness of Trainee.** Rationale: Trainees should understand personal characteristics or biases that might influence their ability to perform effectively as a mediator.

Topics:

- Diversity/cultural awareness (personal biases)
- Language differences
- Conflict style
- How the trainee responds to conflict

**7. Ethics.** Rationale: Trainees should understand ethical principles with which to make informed choices which support the effectiveness and credibility of the mediation process.

Topics:

- Conflict of interest/appearance of impropriety
- Neutrality/impartiality
- Confidentiality
- Sample of Standards recommended by Dispute Resolution professional organizations
- Staying in the role of mediator
- Domestic violence, substance abuse, child abuse & neglect, screening, reporting and legal issues
- Power imbalances
- Liability
- Misuse of process
- Protecting the process

## TRAINING CONTENT: COMMUNICATION SKILLS

Trainees should have an opportunity to learn selected written and oral communication skills in order to foster understanding and trust, elicit relevant information and accurately track and record key areas of agreement.

Skills

1. Listening
2. Note taking
3. Questioning
4. Nonverbal communication (i.e., eye contact, body language)
5. Restating and clarifying
6. Use of neutral language
7. Drafting the agreement

## TRAINING METHODOLOGY

Training methods should be designed to help trainees learn, integrate, and apply the knowledge and skills covered in course materials. A variety of training methods is essential in order to maintain attention levels and to address differences in learning styles.

1. Programs must include a variety of training methods. The following are essential to all training programs:

- lecture
- group discussion
- mediation simulations
- role plays

Trainers are also encouraged to include:

- readings
- written exercises
- video tapes
- participation in actual mediations

2. Trainees must be given an opportunity to participate in at least three role plays as a mediator and two role plays as a disputant under the supervision of a trainer or training assistant.
3. Trainees must have an opportunity to observe at least one simulated or actual mediation.
4. A minimum of 50% of training hours shall be spent in participatory activities. Participatory activities shall be defined as supervised, structured activities that require interaction among two or more people, which relates to training.

## **TRAINING ADMINISTRATION**

Mediation training should be organized in a way that guarantees that trainees receive individualized attention and feedback on their skills. This is important if trainees are to leave with a realistic understanding of their abilities. The training should be administered in a way that encourages completion of the entire course and documents only the actual hours attended.

Finally, trainers should be responsive to the needs of trainees.

1. It is important that trainees get individual feedback from experienced mediators/trainers on their performance in training practice sessions. Generally, it is recommended that the trainer/trainee ratio be 1:6 for role plays (there may be some circumstances such as multi-party disputes which require larger role play groups).
2. Trainers will observe role plays and provide feedback.
3. Attendance should be mandatory.
4. Trainers will solicit evaluation comments from trainees.
5. Trainers will provide written documentation attesting to trainees' attendance at the training.
6. Trainers should indicate in training materials whether their program meets specific published standards of a professional organization.

[Note: Roundtable Members also identified areas which they decided not to make recommendations on. The document in its entirety may be obtained from E. Wendy Trachte-Huber, Executive Director, A.A. White Dispute Resolution Institute at the University of Houston. Tel. (713) 743-4933; see, Working Group Appendix for address. Florida has a detailed "Mediation Training Standards and Procedures" which may be obtained from the Florida Dispute Resolution Center. See "Contacts" for address.]

# Appendix C.5

## Virginia Complaint Procedures

### Virginia Complaint Procedures for Mediators Certified to Receive Court-Referred Cases March, 1997

1. Scope and Purpose
  - a. These rules apply to all proceedings involving complaints against certified mediators. The purpose of these procedures is to provide a means of enforcing the Standards of Ethics and Professional Responsibility for Certified Mediators and the Guidelines for the Training and Certification of Court-Referred Mediators.
  - b. The matter which is the subject of the complaint must be concluded before the complaint will be considered.
  - c. If the complaint involves a procedure which is a combination of mediation with another dispute resolution process, the scope of review under these procedures is limited to the mediation portion of the proceeding.
2. Definitions
  - a. Panel - Mediator Complaint Panel composed of two members of the Dispute Resolution Services Advisory Council (who are not members of the Mediator Review Committee) and the Director of the Department of Dispute Resolution Services
  - b. Review Committee - Mediator Review Committee composed of three members of the Dispute Resolution Services Advisory Council (who are not members of the Mediator Complaint Panel) and two certified providers of mediation services
  - c. Director - Director of the Department of Dispute Resolution Services
  - d. Executive Secretary - Executive Secretary of the Supreme Court of Virginia
  - e. Advisory Council - Dispute Resolution Services Advisory Council
3. Mediator Complaint Panel:
  - a. A Mediator Complaint Panel shall be constituted to review complaints when they are received in the Department of Dispute Resolution Services and to determine whether the allegations would, if true, constitute a violation of the Standards of Ethics and Professional Responsibility for Certified Mediators or the Guidelines for the Training and Certification of Court-Referred Mediators.
  - b. The Panel shall be appointed to two-year staggered terms by the Executive Secretary of the Supreme Court of Virginia.
  - c. The Director shall convene meetings or conference calls as appropriate.
  - d. The Director and one other member of the Panel will constitute a quorum and will be a sufficient number to take action where necessary.
  - e. Where a conflict of interest arises for a member of the Panel (including the Director), the Executive Secretary shall appoint a member of the Advisory Council to replace the member for purposes of acting on that complaint. Where the Director has been excused from participation, the three members of the Panel shall select a Chair for purposes of convening conference calls or meetings, and any two members of the Panel shall constitute a quorum.
3. Mediator Review Committee:
  - a. A Mediator Review Committee (the Review Committee) shall be constituted to review and address complaints referred to it by the Mediator Complaint Panel regarding the performance of mediators certified to receive court-referred cases, in accordance with the Guidelines for the Training and Certification of Court-Referred Mediators (the Guidelines) and the Standards of Ethics and Professional Responsibility for Certified Mediators (the Standards).
  - b. The Review Committee will be appointed to two-year staggered terms by the Executive Secretary of the Supreme Court of Virginia. The Director of the Department of Dispute Resolution Services of the Office of the Executive Secretary of the Supreme Court of Virginia (the Director) will provide staff support for the Review Committee.
  - c. Each time the Review Committee is called together to respond to a complaint, it will select a Chair to handle the convening of meetings or conference calls and to run the informal proceeding, if one is held.
  - d. Four members of the Review Committee will constitute a quorum and a simple majority of those present will be sufficient to take action.
  - e. Where a conflict of interest arises for a member of the Review Committee, the Executive Secretary of the Supreme Court of Virginia shall appoint another member of the Advisory Council or another certified provider of mediation services, as appropriate, to replace the member for purposes of acting on that complaint.
4. Initiation of a Complaint:
  - a. An informal complaint may come to the Director by telephone call, by letter, or as a comment on an evaluation form (OES Form ADR-1002). Each complainant will be provided with an opportunity to make a formal complaint by filling out a Mediation Complaint Form (OES Form ADR-1004), and will receive a copy of these Procedures. No action will be taken by the Review Committee unless a formal complaint is made.
  - b. A complaint may be made by anyone with personal knowledge of the actions or behaviors at issue.
  - c. The mediator will be notified of the complaint and will receive a copy of OES Form ADR-1004 upon receipt.

5. Review of Complaints:
  - a. When a formal complaint is made, it will be reviewed by the Panel to determine whether, if the allegations were true, they would indicate that the mediator had failed to meet the Standards or the Guidelines. The Panel shall meet, either personally or by telephone conference call, within 30 days to determine whether the complaint is sufficient on its face.
  - b. If the complaint would not constitute a violation of the Standards or the Guidelines, even if the allegations were found to be true, the Review Committee will not be notified, the complaint will be dismissed, and no formal action will be initiated. The complainant and the mediator will be contacted in writing by the Director and notified of the decision. If a complaint falls within this category, but indicates that there is a need for intervention or training, the letter notifying the mediator of the decision not to take formal action on the complaint may also suggest appropriate training or mentorship. An individual consultation with a mentor mediator selected from a list maintained by the Review Committee may be offered as a means of assisting the mediator in improving performance.
  - c. If the complaint would, if true, constitute a violation, a letter indicating the nature of the Panel's concerns will be sent to the mediator in question with a copy to the complainant. The mediator will have 20 days to respond to the Panel's letter with a copy of the response sent to the complainant and the Panel. After reviewing the mediator's response, the Panel may dismiss the complaint. A copy of the dismissal shall be sent to the complainant and the mediator.
6. Investigation of the Complaint:
  - a. If no response is received from the mediator or if the response does not address adequately the concerns of the Panel, the Director, serving as the investigative arm of the panel, shall investigate the facts leading up to the complaint. An investigation by the Director will consist of a review of any documents that may exist and one or more telephone calls and/or meetings at which each party will be invited to describe the facts leading up to making the complaint.
  - b. A co-mediator, another party to the original mediation, or any other appropriate individual may be asked to provide information to the Director, but the Director has no authority to require that such information be provided.
  - c. Upon completion of the investigation, the Director shall share the information gathered with the Panel. At that point, the Panel may determine that a facilitated meeting to allow the complainant and the mediator an opportunity to meet and discuss the issues in the complaint would be appropriate. If such facilitated meeting is appropriate and the complainant and mediator agree to meet, such meeting will be scheduled by the Director at the Office of the Executive Secretary of the Supreme Court of Virginia, or such other location as the parties may select.
  - d. If a facilitated meeting is not appropriate, if either party chooses not to participate in such a meeting, or if the meeting does not result in a satisfactory resolution of the matter, the Panel shall forward the results of the investigation to the Review Committee.
  - e. The Review Committee shall study the Panel's list of concerns, the mediator's response to those concerns, if any, and the results of the investigation. The Review Committee shall then conduct an informal proceeding within 60 days after referral from the Director. The parties shall have the opportunity to present witnesses, documents and other information that would be supportive of their position and helpful to the Review Committee in making its decision. Each party has the right to be represented by counsel at this proceeding, but the focus of the proceeding will be on dialogue with the parties themselves.
7. Outcome of the Investigation:
  - a. The Review Committee shall issue a written decision within 15 days after the close of the hearing, in which it shall inform the complainant and the mediator, of its conclusion that the matter has been investigated and concluded without formal action.
  - b. If action of some kind is warranted, the Review Committee may impose a range of sanctions on the mediator, including, but not limited to:
    - i. sending a formal letter identifying the corrective action necessary;
    - ii. notifying the dispute resolution center, court service unit, or other entity with whom the mediator is affiliated of the complaint and its result;
    - iii. requiring one or more consultations or co-mediations with a "mentor" selected from the list maintained by the Review Committee;
    - iv. requiring some form of group or individual training; or,
    - v. decertifying the mediator.
8. Dismissal/Right to Request Reconsideration:
  - a. If a complaint is dismissed, at any point in the process, the complainant may request review by the Executive Secretary of the information gathered to that point. The Executive Secretary may uphold dismissal of the complaint or reopen the complaint and send it to the appropriate next stage of the process.
  - b. If it is the Executive Secretary's decision to return the previously-dismissed complaint to the process after the Review Committee has conducted an informal proceeding, the Review Committee shall reconsider its decision, allowing additional evidence to be presented should the parties desire to do so. Following this reconsideration, the decision of the Review Committee shall be final.
  - c. In accordance with the Guidelines, if the complaint is found to have merit, notice of any formal action taken by the Review Committee shall be by letter, stating the grounds for the action, and shall make reference to the right of the mediator to request reconsideration and/or an opportunity to be heard by making a written request to the Executive Secretary within 30 days of receiving notification of the action taken. Within 15 days of reconsideration and, if requested, a hearing, the Executive Secretary shall render a decision on the propriety of the action taken.
  - d. The decision of the Executive Secretary in these matters is final.

9. Confidentiality and Records Retention:

- a. A formal complaint and its disposition by the Review Committee shall not be confidential. However, any other information disclosed during the Review Committee's investigation shall be confidential in accordance with Secs. 01-586.9 and .10 of the Code of Virginia, as amended.
- b. Following the conclusion of the investigation, any records of a complaint which did not result in formal action by the Review Committee shall be maintained until the next opportunity for the mediator to be considered for recertification. Where formal disciplinary action has been taken, the records will be maintained indefinitely.

10. Application for Certification Following Removal:

- a. A mediator removed for cause from the list of certified mediators may reapply for certification after two years from the date of the final decision on removal.
- b. Should such application be denied, the mediator may reapply at six month intervals, consistent with the Guidelines.

## Appendix D.

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**Honorable Peter W. Agnes, Jr.** is a judge of the Massachusetts Trial Court in the District Court Department where he has served for the past seven years. In 1993, he assisted in the preparation of the "Policy Statement on Dispute Resolution Alternatives" which was adopted by the Massachusetts Supreme Judicial Court as the first policy statement on the use of ADR in the Massachusetts courts. In 1994, Judge Agnes was appointed as the first chair of the Supreme Court's Standing Committee on Dispute Resolution and continues to serve in that capacity. In 1996, under Judge Agnes' leadership, the Committee published its major report, *Dispute Resolution in the Courts: A Plan to Promote Access, Choice and Integrity in Court-Connected Dispute Resolution*.

**Honorable Robert Benham** is Chief Justice of the Georgia Supreme Court. A cum laude graduate of Tuskegee University, he received his J.D. from the University of Georgia and his Master of Laws degree from the University of Virginia. He served as a judge on the Georgia Court of Appeals for six years until his appointment to the Georgia Supreme Court. Chief Justice Benham serves as Chief Justice Rehnquist's Appointee to the Federal-State Jurisdiction Committee. The Society of Professionals in Dispute Resolution has chosen him to serve as National Chair of the Study Committee for Qualifying Dispute Resolution Practitioners: Guidelines for Court-Connected Programs. Chief Justice Benham serves in numerous local, state, and national professional organizations, and on the boards of many civic, fraternal, business, and religious organizations. His court is listed by the American Bar Association Journal as one of the most progressive Supreme Courts in the nation. He is listed in the *Informer* magazine and *Trend* magazine as an outstanding leader in Georgia, and the *Atlanta Constitution* lists him as an outstanding leader in the southeast. *Ebony* magazine lists Chief Justice Benham as one of the 100 Most Influential Black Americans in America.

**Dr. Linda Girdner** is Director of Research at the ABA Center on Children and the Law in Washington, D.C. Dr. Girdner is a former member of the Board of Directors of the Academy of Family Mediators, developed one of the first graduate programs in family mediation in the country, and has published and presented on family mediation for over 18 years. She currently is working on curricula relating to domestic violence and custody mediation, a project funded by the State Justice Institute. Since Oregon has been selected as the pilot state for the training, in October 1997, Dr. Girdner will provide the training to Oregon judges and court-connected mediators.

**Susan Keilitz** is a Senior Research Associate at the National Center for State Courts where she has studied court-connected alternative dispute resolution, problems in civil litigation, domestic violence and other issues relating to families and the courts. She has conducted several projects related to dispute resolution, including studies of court-annexed arbitration and family mediation, a national symposium on court-connected dispute resolution research, and a model evaluation guide for court-based dispute resolution programs. She is a member of the Commission on Qualifications for Court-Connected Dispute Resolution Programs and primary drafter of *Qualifying Dispute Resolution Practitioners: Guidelines for Court-Connected Programs*.

**Michael Lewis** is a mediator, teacher, trainer and consultant in dispute systems design. President of ADR Associates based in Washington, D.C., Mr. Lewis has a national mediation practice, ranging from disputes between individuals to complex disputes involving public policy. An adjunct professor of law at Georgetown University Law Center where he teaches mediation and negotiation, Mr. Lewis also teaches a mediation workshop in Harvard Law School's Program of Instruction for Lawyers. Mr. Lewis has trained mediators for settings as diverse as a community dispute center and the U.S. Court of Appeals for the District of Columbia Circuit. He has served as a Special Master for the U.S. District Court for the Western District of Washington, and currently serves as a court-appointed Monitor and Special Master for the Superior Court of the District of Columbia.

**Honorable Aaron Ment**, Superior Court Judge and Chief Court Administrator of the Connecticut Judicial Branch, received his B.A. from the University of Connecticut in 1958 and his L.L.B. from the Boston University School of Law in 1959. He was engaged in the private practice of law from 1961 until his appointment to the bench in 1976. He has served as a member of the Bridgeport Board of Aldermen, aide and counsel to the Speaker of the House of Representatives of the Connecticut General Assembly, and chief legislative liaison and counsel to Governor Ella T. Grasso. He became a judge of the Court of Common Pleas in 1976 and joined the Superior Court two years later. During his judicial career, Judge Ment served as chief administrative judge of the criminal division of the Superior Court and as Deputy Chief Court Administrator. Upon his appointment as Chief Court Administrator in 1984, he became responsible for the daily administrative operations of the Connecticut judicial system, a branch of state government which today employs approximately 2,500 people and has an annual operating budget of approximately \$195 million. Since becoming Chief Court Administrator, Judge Ment has addressed judicial and legal organizations throughout the country on such issues as alternative sanctions, alternative dispute resolution programs, judicial performance evaluations, and court unification. He is past-president of the Conference of State Court Administrators, and a former member of the Board of Directors and former vice-chair of the National Center for State Courts. He also serves on numerous boards and commissions, including the Governor's Law Enforcement Council, the State-Federal Judicial Council of Connecticut, the Committee on Liaison with State Courts, and the Commission on Children.



**Frederick (Fritz) K. Ohlrich** is Court Administrator/Clerk of the Los Angeles Municipal Court. He also served the Court as the Assistant Court Administrator of the Los Angeles Municipal Court from 1983 to his appointment in March 1995. Mr. Ohlrich's extensive background in court administration also includes the positions of Assistant Executive Officer of the Administratively Unified Courts of Los Angeles County (1993-1994); Court Administrator of the Newhall Judicial District (1976-1983); and Assistant Executive Officer of the Ventura Municipal Court (1974-1976). Mr. Ohlrich began his government service in the Ventura County Sheriff's Department in 1965. When he achieved the rank of Sergeant before leaving the Sheriff's Department in 1974. The Court Administrator/Clerk, on behalf of the Court, is responsible for the administrative supervision and control of all non-judicial activities of the Court. The duties of the Court Administrator/Clerk of Court are prescribed and regulated by statutes and rules of Court. The Los Angeles Judicial District has 89 judges, 25 commissioners and over 1100 staff positions. It operates from ten separate municipal court buildings located throughout the city, housing from three to 28 bench officers. In addition, there are two ticket payment facilities. It is the largest court of its kind in the nation.

**Alice Phalan** is the ADR Advisor to the Oregon Judicial Department, having served as Executive Director of the Oregon Dispute Resolution Commission since its inception in 1990. Ms. Phalan is an Adjunct Professor at Atkinson School of Management at Willamette University. Additionally, she has taught at the University of Massachusetts - Boston, and Hamline University Law School, St. Paul, Minnesota. From 1989-1991, Ms. Phalan served as the Community Justice Dispute Resolution Consultant to the National Institute for Dispute Resolution, facilitating a task force on community dispute resolution and preparing the Insights and Guidance from Two Decades of Practice, a manual distributed nationally to court systems, government agencies, foundations, and local programs to assist with standards and guidelines for operating, funding and evaluating community dispute resolution programs. In the early 1980s, Ms. Phalan started one of the first rural community dispute resolution centers in North Carolina. She pioneered the development of school conflict management programs. Ms. Phalan has served, or currently serves, on a number of national and state dispute resolution boards.

**Sharon Press** is Director of the Dispute Resolution Center, a joint program of the Florida Supreme Court and Florida State Law School. She serves as a adjunct professor at Florida State University Law School, founded the Society of Professionals in Dispute Resolution Court-ADR Sector and is on the SPIDR Board of Directors. As a Florida Supreme Court certified mediator, Ms. Press mediates community, county and family disputes, arbitrates for the Better Business Bureau, and regularly conducts mediation and arbitration training. She received her law degree from George Washington Law Center and is admitted to practice in New York.

**Kathleen Severens** is Director of the Nebraska Office of Dispute Resolution, a program of the Nebraska State Supreme Court. She serves on the Center for Public Resources Working Group on Ethics for attorney mediators, co-chairs the American Bar Associations' Dispute Resolution Committee on Community Based Programs, chairs the Nebraska State Bar Associations' Alternative Dispute Resolution Committee. Ms. Severens wrote the Nebraska Basic Mediation Manual, co-authored the Nebraska Family Mediation Manual and trains extensively. She is an adjunct faculty member at Creighton Law School.

**E. Wendy Trachte-Huber** is the Director of the A.A. White Dispute Resolution Institute at the University of Houston College of Business Administration. She is Executive Professor in the College of Business Administration. Ms. Trachte-Huber has trained or consulted for numerous organizations including Rice University, and City of Houston. She has mediated nearly 500 cases on both a volunteer and professional basis, handling a wide range of cases including higher education, transaction and employment disputes. Additionally Ms. Trachte-Huber provides dispute resolution system design to governmental and educational institutions. She is the immediate past co-chair of the ADR Section of the State Bar of Texas and current president of the Texas Association of Mediators. Her most recent publication is *Alternative Dispute Resolution: Strategies for Law and Business* with Stephen Huber.

**Sonya A. Worthem** is a Senior Probation Officer and has been the Director of the Mediation Program at DeKalb County Juvenile Court in Dacula, Georgia, since October 1994, and been employed with the court since 1974. She became certified as a General and Probate Mediator in 1992, receiving her training from the Justice Center of Atlanta. She has a B.S. degree in Criminal Justice from Georgia State University in Atlanta, has extensive training and investigative techniques, office of leadership training, and communications skills. She has done volunteer work with various agencies over the past thirty years and is presently a Lieutenant Junior Grade with the U.S. Naval Sea Cadet Corps in charge of recruiting. Her continuous involvement with the public has enhanced her ability to communicate well with people and also use her mediation skills in the volunteer arena.