

# SCISSORS CUT PAPER: A "GUILDHALL" HELPS MARYLAND'S MEDIATORS SHARPEN THEIR SKILLS

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*Growing use of mediation and other alternative means of dispute resolution has led many courts and ADR programs to develop "mediator credentialing" and other approaches that seek to ensure quality mediation. A variety of practical and political difficulties have led these entities to take very diverse, and sometimes debatable, paths to quality assurance (QA). Recently, Maryland's judiciary sponsored a three-year project that led to an innovative QA system for Maryland mediators. The new Maryland Program for Mediator Excellence deemphasizes "pass-fail" barriers, as well as paper-based certification based on legal expertise and other substitute credentials; instead, this system seeks to promote and reward mediators who wish to develop their practice skills. This article offers an overview of Maryland's new QA system; compares it to approaches that have been taken elsewhere; and commends it to courts and other mediation users as a vehicle for improving mediation practice and for serving as a trustworthy indicator of skilled performance.*

## THE TENUOUS RELATIONSHIP BETWEEN CREDENTIALING AND "REAL-WORLD" QUALITY

**Theory, Practice, and Politics of Mediator Quality Assurance.** Mediation practice in the United States has grown substantially over the last two decades, as has the number of people offering to serve as mediators. As Roger Wolf (2001:3) has written, "Mediation is no longer struggling for acceptability. It is increasingly the process of choice in resolving many community disputes, an integral part of circuit court civil and domestic dockets and in district court cases, and used by businesses, government, and schools to resolve personnel, contract, and classroom issues." However, as he continues, "there are minimal standards, little quality assurance, and many variations of 'mediation' that are used by the practitioners in each of these forums."

This situation has led many to argue that competency standards are needed to protect consumers and promote the integrity of mediation processes. All agree that mediators' skills and other attributes can be crucial in helping parties resolve their differences. Moreover, nearly all agree that measuring competence cannot be done based on paper credentials alone. However, the nature and diversity of roles that mediators are asked to play present complications—depending on the program, the parties, the subject, or the specific case, these rules may include efforts to "transform," to "facilitate," to "evaluate," or to perform a combination. These have engendered disagreements as to 1) the kinds of knowledge, skills, abilities, and other attributes (KSAOs) that are important to effective performance as a neutral and 2) how those aptitudes are best acquired. (On issues in seeking to ensure quality mediation, see

Cole et al., 2003; Dobbins, 1995; National Alternative Dispute Resolution Advisory Council of Australia, 2000; Shaw, 1994; Waldman, 1996; and Sigurdson, 2002.)

Typically, most professions think about promoting quality in terms of credentialing, which tends to involve licensing, certification, or “substitute” credentials like degrees or professional background. For better or worse, activities addressing mediation quality have not moved as far toward credentialing. Moreover, many professional groups and jurisdictions have focused rather narrowly on mediator-certification standards based on written submissions or professional background, even though mediation programs and organizations have engaged in a variety of effective activities to promote quality.

While one group sees increased credentialing as vital, other observers believe certification as currently practiced does little to ensure quality and has led many consumers of mediation services to seek the wrong skills. The former group fears that the field’s failure to develop nationwide credentialing methods will lead to arbitrary, improvident systems of qualification imposed by courts or others. Many of the latter group prefer laissez-faire approaches and balk at the idea that the field knows enough to measure or predict quality performance, or they fear that imposing standards will harm innovation and creativity. A few even deride certification, at least as currently practiced, as permitting many incompetent people with a certificate to trumpet their at-best marginal “qualifications” to unsuspecting consumers.

For professional, personal, and financial reasons, the idea of credentialing mediators has produced angst. Some mediators who have had market success deride credentialing as a means by which “have nots” seek to gain unmerited credibility with consumers who, until now, have not seen fit to employ them. Conversely, many community mediators and other “lay mediators” (a most unfortunate term coined by an attorney) fear that credentialing may become a wedge by which the “attorney-mediator” relegates them to second-class status or even monopolizes access to many desirable cases.

The Society of Professionals in Dispute Resolution (SPIDR) formed a Commission on Qualifications, whose 1989 report put forth three fundamental principles that could be used to influence policy for setting qualifications for mediators: 1) No single entity (but rather a variety of organizations) should establish qualifications for neutrals. 2) The greater the degree of choice the parties have over the dispute resolution process, program, or neutral, the less mandatory the qualification requirements should be. 3) The qualifications criteria should be based on performance, rather than paper credentials (SPIDR, 1989).

More recent studies have suggested that the qualities of a good mediator are derived from a mix of sources: innate personal characteristics, education and training, and experience (Shaw, 1994). While there is no clear consensus on the specific skills a mediator needs, one of the most generally accepted descriptions of a mediator’s tasks comes from the Test Design Project (TDP), which brought together a group of internationally prominent scholars in the dispute resolution field in “a formative effort to

design better selection, training and evaluation tools for the emerging mediation 'industry'" (Hewlett Test Design Project, 1995). This independent group supported by the Hewlett Foundation sought to follow up on the SPIDR commission's endorsement of performance-based qualifications assessment to provide tools for undertaking such testing. The TDP summarized the descriptions of a mediator's tasks as gathering background information, facilitating communication, communicating information to others, analyzing information, facilitating agreement, managing cases, and helping document any agreement by the parties.

Difficulty arises in determining the best way to assess a neutral's ability to perform. At the Federal Mediation and Conciliation Service and in several states, including California, Colorado, and Oregon, efforts to develop statutory or other criteria have generated considerable thought and activity but have not produced agreement on results. As already noted, many mediators and experts believe qualifications are best measured through performance tests, such as participating in mock mediation sessions in which candidates have a chance to demonstrate their ability. While direct observation may be an excellent measure for evaluating what occurs during a mediation proceeding, inter-rater reliability and other practical concerns arise. Moreover, while occasional programs have used these kinds of performance-based testing widely, few have had the time, resources, or interest to do so, with a result that "beyond a few programs which insist on high standards and are willing to pay the costs for themselves, we have failed, so far, to provide the performance-based mechanisms by which skilled mediators can demonstrate to all comers that they have the key elements of effective performance. We have thus discouraged consumers and the public from valuing those elements highly" (Honeyman, 1999). Instead, many mediators with diverse skill levels seek to demonstrate competence by citing their forty hours of mediation training, continuing education, easily obtained roster listings, court "certifications," or credentials to practice another profession (Pou, 2004a).

**QA Approaches Undertaken to Date.** Two professional groups have been active in this area lately. The ABA Section of Dispute Resolution established a Task Force on Credentialing in 2001. Its goals were to inform the section about past and current dispute-resolution professional-credentialing practices and policies; to consider the direction the field is moving related to credentialing and to make recommendations to the Section for policy and action; and to encourage networking with professional membership organizations and others engaged in credentialing policy and program development. The ABA task force discussed past and current mediator-credentialing practices, analyzed the relation of credentialing to quality practice, and put forth some recommendations on policy actions. These recommendations were approved by the section's council in early 2003. They included a statement favoring a policy to support mediator competency and growth over paper credentials and called for development of model standards for mediator-preparation programs. In 2004 the Association for Conflict Resolution (ACR) Mediator's Certification Task Force, concluding that the field has developed to the point of needing certification

that documents and acknowledges that a mediator has completed a minimum level of training and experience, recommended a national certification process (ACR, 2004). The task force's final report and recommendations to the ACR Board of Directors have drawn considerable attention, as well as criticism by some ACR members.

A recent development is that ACR and the ABA Section of Dispute Resolution are working together to assess whether to create an independent entity that may provide a voluntary certification process. A combined group is now seeking to consult with mediators and other organizations that have considered credentialing issues and has sponsored a feasibility survey by an expert on certification. These initiatives have stimulated renewed attention to credentialing, as evidenced by a recent issue of *Dispute Resolution* magazine (spring 2005) containing four articles on professionalism in mediation (e.g., McEwen, 2005; Cole, 2005).

While mediation experts and researchers have tried over the past fifteen years or so to define "what mediators do" and better understand "how to do it well," ADR program administrators, judges, and parties seeking neutrals have had to deal with day-to-day choices. Professional, political, and local factors—as well as practical difficulties and divisions as to how to define and promote "good" mediation—have led some entities, including a number of courts, to take questionable paths to promoting quality mediation. Often their solutions downplay important potential benefits of mediation while focusing almost exclusively on ease of administration, docket management, and efficiency. This minimizes or ignores other important goals that good mediators often seek to accomplish. As Chris Moore (Moore, 2003) and other dispute resolution experts have pointed out, participants in any negotiation, mediation, or other dispute resolution process have three interdependent needs. *Procedurally*, participants need to believe that a process is fair—that it affords them a chance to "have their say" and is neither biased nor prejudiced. *Emotionally*, participants need to feel satisfied about their participation in the process—they should feel that they personally (and not necessarily just their lawyers) have been listened to, acknowledged, respected, and validated. And participants must be satisfied concerning the *substantive* outcomes regarding the issues that are the subject of the dispute.

Many thoughtful neutrals and judges believe that dealing with just one or two sides of this "satisfaction triangle" likely will not produce sustainable, equitable outcomes. Honeyman set forth the most prevalent quality assurance (QA) approaches and described some of their shortcomings in meeting these three goals. As he put it:

More and more, we can expect the heavily-trumpeted legal and "substantive knowledge" skills to be used to fill the gap. The logical result makes mediation an adjunct function within each of several occupations which are really about something else. At the same time, on the professional side of the field, we are in effect helping to promote in the marketplace mediators whose key skills overlap the core skillset of mediation only to a degree, at the expense of those whose balance of skills is closest to mediation itself.

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Over a period of time, we should logically expect this to lower the public’s reasonable expectations of what mediation should be able to accomplish (Honeyman, 1999).

It is also important to recognize that the quality of dispute resolution services that users ultimately receive will depend on factors having little to do with the skills or knowledge of the individual neutral involved. Program administrators’ intake, assignment, and other actions greatly affect the long-term credibility and viability of ADR methods, as well as disputing parties’ satisfaction with the quality of their ADR services. Operations of mediation programs have stimulated little objective scrutiny or systematic commentary, but considerable speculation and sub rosa grumbling; however, knowledgeable professionals have recently begun to address quality issues relating to the administration of ADR programs.

### THE PROCESS: MARYLAND’S MEDIATOR QUALITY ASSURANCE COMMITTEE AND ITS WORK

The recent Maryland project is premised on the idea that QA processes, which emphasize *assisting* mediators to improve, rather than those “assuring” competence pursuant to professional degrees or easily measurable criteria, are likely to produce clear advantages for courts, clients, and other mediation users. The architects of Maryland’s new system felt that, whatever the ease-of-administration, psychological, or other merits of current prevailing approaches—i.e., those that certify some as “competent” mediators and exclude others—the risks inherent in such methods, including exclusivity, overvaluation of marginal skills, and reduced innovation, diversity, and collegiality, outweigh the advantages.

They preferred a system that will, by using performance-based approaches and user feedback (among other things), encourage and support mediators wishing to continually sharpen their skills and deal with developmental needs systematically—either instead of or in addition to currently popular approaches that place primary emphasis on professional background or paper credentials. Such an approach presents practical challenges, but if effectively carried out, could advance mediators’ overall competence and enhance the profession’s credibility and effectiveness over time (see Pou, 2004b).

***The MQA Committee’s Mission: Achieving Consensus on Credentialing.*** While Maryland is not the first jurisdiction to seek to ensure high-quality, ethical mediation practice, its emphasis on collaboration, consensus, and an integrated approach to “quality assistance” (as opposed to “assurance”) make Maryland’s experience singular and potentially instructive. The new system’s development was sponsored by the Maryland Mediation and Conflict Resolution Office (MACRO), the state dispute resolution office created by Chief Judge Robert M. Bell of the Maryland Court of Appeals to promote and support the appropriate use of conflict resolution around the state.

The discord on mediator QA reflected in the national dialogue also prevailed in Maryland at the project's outset. Strong divisions existed among practitioners, users, and experts as to how to define, measure, and promote quality practice. Having reviewed practitioner-certification programs in other states, and having listened to concerns over creating what many feared might be cumbersome regulatory systems and exclusionary practices, the Maryland ADR Commission, whose initial work led to the creation of MACRO, chose not to create a practitioner-certification program. Instead, its successor, MACRO, decided to try to achieve a broad consensus on how to develop a sensible, acceptable QA system to meet the needs of both the practitioner community and the public that uses mediation services. To accomplish this, MACRO created a Mediator Quality Assurance Committee (the MQA Committee, or the Committee) with representatives from four major Maryland mediator practitioner groups. The MQA Committee's members explicitly committed themselves to a structured data-gathering process and extensive outreach to provide interested persons real chances to affect the ultimate outcome. They also agreed to seek full consensus among all members of the Committee on an ultimate QA plan that takes into account as many views and reactions as possible. (See MACRO, 2004, for the Maryland QA process, its results, and members' reasons for their decisions.)

***Seeing the Big Picture: Gathering and Analyzing Data.*** The MQA Committee's members selected and hired a consultant to carry out research on good practices and critical issues and to guide their work. The Committee and its consultant—the author of this article—worked together to design a plan to gather helpful information and prepare a report that mapped how the field has sought to define and ensure competent practice by mediators, both in theory and in practice.

During 2001 and 2002, the consultant interviewed over one hundred experienced academics, administrators, and practitioners from around the country. (See Pou, 2004b: 354-55.) He also reviewed numerous court, community, government agency, and private mediation programs (in Maryland and elsewhere), and conducted an extensive review of literature relating to mediator quality, ethics, and education. His report to the Committee (Pou, 2003b) sought to summarize what has been done to define, measure, and promote mediator competency, to explore the landscape of credentialing and other activities relating to competent practice, and to discuss some key policy, ethical, and practical issues. The report and an accompanying chart also summarized recent developments in mediator QA, and offered information as to how approximately twenty representative programs, in Maryland and in other jurisdictions, have sought to maintain quality. The report identified many variables and widely divergent strategies that have been employed. These included who credential mediators, training and experience required, mandated observation or performance-based assessment, continuing education requirements, tiered credentials, mentoring structure for inexperienced mediators or applicants, feedback or continuing discussion opportunities, ethics requirements, grievance or complaint processes, accredita-

tion standards or duties for training programs, attention to education of the public, and grandfathering procedures.

According to the consultant’s report, different jurisdictions and ADR programs have taken very diverse paths to promote quality practice. Besides credentialing or certification, many methods of assessing and nurturing quality practice have been used in complementary combinations. Most people interviewed suggested that exclusive reliance on any one method—for example, testing, training, interviews, references, or observation—is likely to measure or promote certain elements of competence while neglecting other significant ones.

Experienced mediators and administrators who were interviewed emphasized repeatedly the importance of training, mentoring, and continuing education. In contrast with the extensive attention to credentialing standards, there is only sparse literature on these less formal approaches to promoting mediator competence, such as accreditation or other standards for training programs; mentoring, supervision, or other support; performance-based tests or live or taped demonstrations; monitoring and user evaluations; continuing education and training; ethics education; complaint procedures/panels; references; interviews; and market approaches. Actual practice, however, is rich, especially among community mediation programs, and offers useful lessons.

To help the MQA Committee consider QA systematically, the consultant’s report employed a two-dimensional grid displaying: 1) the height of “hurdles” a mediator must meet at the outset to engage in practice and 2) the amount of “maintenance,” or continuing educational activities and other support, expected over the long term (see Pou, 2004b:324-26).

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

In this framework, a program with a “high hurdle” might require considerable training, experience, or observation for listing. “Low-hurdle” programs may demand only limited training and mediation or co-mediation experience. “High-maintenance” programs may require little to become a mediator but would typically call for mediators to enhance their awareness and skills over time via co-mediation, follow-on training, in-services, coaching, or handling of a large number of cases. “Low-maintenance” programs impose few mandates on a mediator who has received a credential.

The consultant’s report sought to describe how employing any particular one of these varying approaches—along with a fifth category, free market “no hurdle/no maintenance”—will likely produce differing results. Selecting any given combination would likely produce differing results. *No-hurdle/no-maintenance programs*, for example, the free market, might yield maximum diversity, a large mediator popula-



tion, and minimum bureaucracy. However, it could also offer minimal consumer protection, ethics enforcement, and credibility; possible undue emphasis on substantive expertise or background; and widely divergent skill levels dependent on individual mediators' inherent abilities and desire to improve.

*High-hurdle/high-maintenance programs*, like that of Family Mediation Canada, might produce a highly professionalized system that could yield great credibility, high levels of mediator skills, and effective enforcement, and might enhance mediators' substantive knowledge—if acceptance criteria were written to include such knowledge. However, they could require a significant bureaucracy, lead to substantial contention, reduce diversity within the mediation field, and reduce responsiveness to individual clients' or programs' needs by promoting particular styles or leading to a bureaucratized approach. *High-hurdle/low-maintenance programs*, such as the U.S. Institute for Environmental Conflict Resolution roster, could provide effective enforcement and substantial credibility and result in high levels of mediator skills—depending on the criteria selected. However, they may require some bureaucracy, reduce attention to the value of mediators' continuing improvement of process skills and systematic attention to “reflective practice,” produce disagreements or even litigation over credentialing decisions, and negatively affect collegiality among mediators.

*Low-hurdle/low-maintenance programs*, such as most court-based mediation programs, would likely yield considerable diversity and a sizable number of mediators, need little bureaucracy, be easily administered, and result in few disagreements over credentialing. On the other hand, they might provide limited quality assurance and marginal credibility, little or no support structures for mediators and greatly variable skills levels, reduced attention to the value of mediators' continuing improvement of skills and systematic attention to “reflective practice,” and undue emphasis on “contacts” or substantive expertise. *Low-hurdle/high-maintenance programs*, such as many community mediation programs, could yield high levels of mediator skills and effective enforcement and produce few disagreements over credentialing and a greater sense of collegiality; if a support structure were established that targeted mediators' developmental needs, they could lend substantial credibility for the dispute resolution field. However, they would likely need some bureaucracy for a support system for mediators, would require some long-term commitment to (and by) mediators, could raise practicality concerns if embodied in a statewide system, and would require consumer education explicating how to select mediators.

Of course, other factors also have a significant impact on how mediation practice ultimately develops. These include the extent to which the QA system is administered flexibly; what entity makes and enforces decisions regarding quality; the extent to which provider organizations or potential users of mediation services pay heed to the approach that is established; regional or other variations in access to assistance; the nature of education to help consumers understand what to look for; and economic incentives and professional factors affecting mediators, parties, courts, other dispute resolution provider organizations, and others (e.g., practical availability).



ty of mentoring services, available resources, and relative costs and benefits to mediators of obtaining particular credentials).

The consultant’s report identified occasional “high-hurdle” programs (e.g., Family Mediation Canada) that require many hours of training, experience, and/or observation, but found that most courts and other authorities appear to have set unexacting standards—typically expecting twenty to forty hours of training and some mediation experience (seldom more than a few cases). Apart from some community programs, “maintenance” requirements have tended to be modest, with fairly minimal oversight—tending toward some commitment to periodic continuing education and adherence to generalized ethical standards.

Based on its consultant’s inquiry and extensive discussions, the MQA Committee reached several conclusions. One was that basic mediation training is vital for effective mediation practice. Another was that substantive knowledge, while often viewed as critical by judges and some attorneys and in fact necessary in some settings, is not generally determinative of a mediator’s abilities or long-term potential. As to credentialing, the committee concluded that most credentialing systems have involved some combination of training and experience requirements, occasionally with apprenticeship or mentoring; while these systems may provide some generalized assurance of minimal skills, they can also send a message that “mediation is easy” and can lead to complacency among some who have attained credentials. Furthermore, it was concluded that “hurdles,” while occasionally useful, often prove exclusionary, and that they fail to accomplish many of the important goals that can be promoted by advanced mediation training, ethics education, feedback, self-assessment, apprenticeship, co-mediation, continuing education, and grievance processes. For these reasons, the MQA Committee preferred a system for Maryland mediators that provides encouragement, incentives, and a support structure to work collaboratively to target developmental needs, improve, and enhance credibility.

**Obtaining Broad Acceptance: Involving Stakeholders in Designing the New Program.** After educating itself and before beginning to sketch out a proposal, the MQA Committee sought to reach out systematically to mediators and other affected interests in Maryland for additional perspectives and input. It sponsored over a dozen sessions for various mediator groups, the ADR section of the bar, judges, program administrators, and individual consumers of mediation services. As Chief Judge Robert Bell explained in invitation letters to participants in these forums, “There are a wide range of possibilities under consideration—from expanded training requirements to continuing in-service opportunities, mentoring, certification and complaint procedures—and we need to hear from as many people as possible on what options might work best in each region of the state.” At the conclusion of these outreach activities, hundreds of people had provided feedback that the committee studied and used to begin designing a proposed statewide plan.

Once the MQA Committee’s initial round of outreach activities concluded, members studied and discussed the feedback and began to flesh out a proposed

statewide design. It involved a voluntary system to promote mediation quality in the state that, instead of reliance on certification or direct regulation, drew substantially upon a “guildhall” model. This notion emphasizes the value of a framework that encourages, or even requires, regular exposure to other mediators, models, and experiences. (See Coletta and DiDomenico, 2000, who suggest that with mediators, as with most craftsmen, some of the most effective learning comes in the “guildhall” with other craftsmen—which can be something of a challenge for solo mediators in “low-maintenance” programs.) The input received in this second round of outreach tended to ratify the conclusions upon which the Committee’s tentative concept was premised, suggesting that the great bulk of stakeholders around the state saw considerable benefit in the approach outlined. In fact, the Committee found no reason to make any changes in the proposed concept when it met and reviewed the results of these sessions.

There were a number of recurring themes that MQA Committee members heard and sought to take into account. One was that the definition of “quality mediation” may not be the same in every context. Another was that voluntary means of promoting quality mediation in Maryland are preferable to mandatory credentialing. Still another theme was that to promote or predict quality service, a mediator’s commitment to long-term improvement and education (“quality assistance,” “life-long learning”) is at least as important as paper credentials or other “hurdles.” Moreover, hurdles should be modest; incentives and encouragements that offer a middle way between mandatory certification and wholly voluntary approaches. The committee also heard that all mediators have something to learn about good mediation, and benefit from exposure to a variety of sources. Further, it was suggested that performance-based assessment should have a place in mediator QA, but probably as much as a means of pinpointing possible shortcomings for follow-up attention as in a “pass-fail” way. In addition, another theme was that good mediators come from a variety of backgrounds. Many of the best ones are not lawyers, or have developed skills through means other than “approved” training. A quality effort that is exclusive, as opposed to inclusive, risks eliminating potentially excellent mediators, reducing diversity, and keeping parties from achieving outcomes that offer them maximum substantive, psychological, and procedural satisfaction.

## THE PRODUCT: A MARYLAND PROGRAM FOR MEDIATOR EXCELLENCE

### *The MPME “Guildhall” Concept: Overview and Underlying Assumptions.*

The new system put forward by the MQA Committee—the “Maryland Program for Mediator Excellence” (MPME)—pursues a “quality assistance” strategy. This is more than a laissez-faire “free market” with no constraints, but avoids the “certainty” of rigid regulation or prescriptive edicts as to “who can mediate.” MPME seeks to promote and reward mediators’ earnest, and it is hoped even enthusiastic, commitment to ongoing education and improvement. The MPME approach shuns regulatory systems and exclusionary practices and seeks to build in customers’ experiences and views.

Obtaining admission into the MPME at the basic level will not pose difficulties for most mediators, even though MPME’s basic criteria do not depart dramatically from paper-based “certification” standards now required in most courts and other programs. Mediators can enter the program by completing a basic mediation-training course; signing a commitment to seek continual self-improvement as a practicing mediator, to follow the Maryland Mediator Ethics Standards, and to participate in the Maryland Mediation Ethics Program’s process for resolving client complaints; agreeing to take five to ten hours annually of continuing education, broadly defined; agreeing to provide evaluation forms to their clients upon completion of mediation cases; agreeing to provide some compilation or report of these forms to the MPME oversight committee to assist in describing, improving, and promoting the field; and agreeing to participate in MPME’s grievance process. While all other activities would be voluntary, the MPME concept is based on the notion that meeting these entry standards is just the beginning. As envisioned, the program’s key elements are a commitment to continuing self-improvement; different options/paths for skill building, such as mentoring, case-study groups, or performance-based assessment; the development of standards for mediation trainings; an ethics component, including a statewide code of ethics; and mechanisms to obtain consumer feedback and to respond to complaints.

The MPME thus deemphasizes “pass-fail” barriers and marginally relevant criteria in favor of a system that strongly supports mediators wishing to engage in a variety of developmental activities that enhance their skills and self-awareness over time. Rather than focusing on a “seal-of-approval” process, which would certify some mediators and deny participation to others, the MQA decided to create a system that would actually serve mediators across the state by offering them regular opportunities to improve their mediation practice. Mediators’ participation in the MPME would be documented and available to the public. Rather than trying to license mediators, the program would integrate several nonregulatory means for enhancing Maryland mediators’ skills and their ability to fulfill clients’ needs.

The MQA Committee that developed MPME anticipates that after the system is put into effect, mediators will participate enthusiastically. The committee also expects that courts, provider organizations, and other users of mediation in Maryland will come to recognize the value of the MPME—both as a vehicle for meaningful growth and as a trustworthy indicator of skilled performance.

## CREATING THE “GUILDHALL” IN MARYLAND: AN ACTION PLAN TO PROMOTE QUALITY

**Implementation Structure.** A new Mediator Excellence Council (MEC)—representing practitioners as well as the various mediator venues (courts, community, government, etc.)—has begun implementing MPME and overseeing the resource, logistics, geographical, and other components of the system. MEC is chaired by Toby Treem of the Center for Dispute Resolution at the University of Maryland School of Law. MEC’s fifteen volunteer members include representatives from seven task

groups (see below); professional organizations, such as the Maryland Association of Community Mediation Centers, Maryland Bar Association's Dispute Resolution Section, Maryland Council for Dispute Resolution, and the Maryland Chapter of ACR; and MACRO. (The group is seeking to add a knowledgeable representative of mediation users.) MACRO staffs and supports the MEC's meetings and other activities. A kickoff date in fall 2005 has been set for MPME, at which time regional meetings and other activities will publicize the new system; however, the entire program will not be launched simultaneously.

Each of the MPME task groups is now working in one of a number of areas: certification, consumers, definitions, ethics, evaluation, grievance, mentoring, and training. As we will see in the next section, the groups have been active. MACRO, thanks in part to a grant from the William and Flora Hewlett Foundation, has provided strong staff assistance to ensure that the MPME system is collaborative, is fully integrated, and maintains momentum, and MACRO's new five-year plan has made the success of the MPME one of the organization's top priorities (Wohl, 2005).

In addition, a new Maryland online directory of ADR practitioners—a collaborative effort by the Center for Dispute Resolution at the University of Maryland School of Law, MACRO, and the Maryland Legal Assistance Network—will be an integral part of the MPME system, allowing mediators to document their accomplishments and potential clients to obtain information and make more-informed mediator choices. This directory is an online “yellow pages” for Maryland ADR practitioners. It is not itself a membership or certification organization, but requires that, in order to be listed, applicants describe their background, training, and experience in some detail. With the online directory, users can search for mediators by geographic region or by mediator specialty or geographic area.

**Current QA Activities Under the Maryland Program.** The *Certification Task Group* is proposing a voluntary, performance-based certification program as one way for mediators who wish to improve and move beyond the basic level of MPME membership. The Certification Task Group's effort has involved examining and drawing upon existing MPME performance-testing programs and a careful assessment of a project recently performed for court mediators in Anne Arundel County by MCDR, a nonprofit organization devoted to the personal and professional growth of dispute resolution practitioners in Maryland that engages in what is apparently the only voluntary performance-based certification program in the country for practicing mediators (see Waldman, 2001). In this program, MCDR evaluates candidate skills like orienting parties to mediation, gathering information, creating empathy, managing the process, creating and writing agreements, and obtaining closure.

The new MPME mediator-certification program likely will be structured similarly to the Anne Arundel project. That project includes, in sequence, a pre-assessment training; the assessment itself, with feedback to mediators from role players and the assessors; transmittal to candidates of written feedback and a videotape of the mediation; an opportunity for the mediator to discuss the videotaped performance

with one of the assessors; a second training focusing on those areas that seem to need the most attention, based on the assessments; and a second assessment to see if the scores had improved. Overall, Anne Arundel mediators' scores improved as a result of this process. The philosophy for this component of the program, as with the entire MPME, is that all mediators can improve, regardless of years or experience.

The *Consumers Task Group* has developed and is testing a draft mediation brochure for the benefit of consumers in diverse venues, both those who know mediation and those who do not. This "market research" will help the Consumer Task Group to refine the brochure and distribute it widely to target audiences. The brochure is designed to be generic enough to be used by private practitioners and organizations/businesses.

The *Definitions Task Group* has distributed and analyzed the results of a survey of Maryland mediators to better understand the various strategies being employed, what strategies (if any) are common to all mediators, and whether there are any detectable broad groupings. This task force's work stems from a view that a major "challenge" relating to all areas of mediator quality involves definitions, as there is little or no agreement within the field about definitions of mediation—even within "approaches," which are often labeled simplistically (e.g., "transformative," "facilitative," or "evaluative"). If definitions vary, as many believe, then how one defines "mediation" may determine what is scored when a mediation is observed for performance-based evaluation; described in a consumer brochure and told to consumers as to what to consider and expect; and focused on in mentoring and deciding how mentors are matched, and may also determine what ethics requirements and prohibitions should apply in different settings and what can one complain about in a grievance process.

The Definitions Task Group, rather than starting by trying to craft definitions for mediation or specific mediator approaches itself, decided to ask what Maryland mediators do via a survey with over seventy questions and "let the data do the talking." The analysis found several "clusters" of mediator strategies. The Definitions Task Group is summarizing these approaches, with an eye toward informing other task groups' educational, ethics, and other activities. The group's data-collection effort is ongoing, after which the members will seek to decide "what the data are telling us."

The *Ethics Task Group* has put forward an action plan based on the idea that 1) ethical mediation is linked closely to quality practice, and 2) ethics should receive systematic attention in MPME members' basic and advanced training. The group's action plan calls for:

- Developing and presenting a prototype, four-hour basic ethics training at no cost to all MPME members.
- Offering, and requiring all MPME members to take, a basic mediator-ethics course and continuing ethics education thereafter.
- Developing a peer hotline, an online ethics corner, and periodic ethics-roundtable discussions to enhance members' awareness of ethics issues and provide "real-time" support for mediators facing dilemmas.

- Selecting a code of ethics that MPME members will be expected to abide by (probably the revision to the Joint Standards of Conduct now being circulated by ACR, the ABA Section of Dispute Resolution, and the American Arbitration Association).
- Creating a mediator pledge that all MPME members would subscribe to and distribute to their clients at the outset of a case.

The Ethics Task Group initially offered a workshop on innovative design and delivery of mediation-ethics training. The workshop, led by Mary Thompson, an expert on basic and advanced mediation-ethics education from Texas, employed presentations and exercises to 1) explore engaging, effective activities for teaching mediation ethics and 2) allow approximately twenty experienced trainers and key MPME members to discuss implementing MPME's ethics code and ethics-education components. Elsewhere, Thompson has counseled that handling ethical dilemmas requires mediator competency in at least four very different areas: self-awareness, knowledge of professional standards, analysis and decision making, and performing in the moment. (Thompson, 2004; see also Bush, 1994, for discussions of effective approaches to educating and assisting mediators to meet their ethical obligations.) The workshop focused on these four "ethical competencies." It also afforded the task group numerous new perspectives on the best way to move forward to raise practitioner awareness and provide "real-time" support for mediators.

The effectiveness of the MPME grievance system, in tandem with the MPME ethics-education component, will likely have a significant impact on MPME's ultimate acceptance and use. In many jurisdictions, courts have tended to restrict mediation opportunities to attorney-mediators on the theory that "non-lawyer" mediators who misbehave would not be subject to the bar's grievance process. If systems like MPME begin to afford meaningful relief for complaints about their members, this rationale for artificially limiting "who can mediate" will diminish. Thus, MPME's *Grievance Task Group* has developed a procedure for addressing complaints. Some MEC members have suggested revisions to simplify the detailed procedure being proposed, and an ombuds-based system is under development for investigating and handling complaints as informally and collaboratively as possible. The ombuds might be supported by regional practitioners and practitioners of different types of practice. A mediation component also would be integrated to mediate disputes. The task group seeks to take a restorative rather than punitive approach when addressing complaints against mediators.

A possible—and potentially valuable—aspect of a new mediator-grievance process is removing the review of grievances against attorney-mediators from attorney-grievance procedures, where the tribunals may not be as familiar with mediation practices and might hold the mediator to attorney standards and not mediator standards. So, not only does this process provide an outlet for non-mediator-attorney grievances, but also an appropriate venue for attorney-mediator grievances.

The *Mentoring Task Group* has commenced an ambitious pilot initiative that will, if successful, be expanded. The initiative enlisted mentors (qualified volunteers who are seasoned mediators) and learning partners (volunteers who seek improvement of technical skills and are willing to engage in structured learning and performance-based assessment) to participate in a training program. They have since worked with the trainer, Juliana Birkhoff, to develop and finalize mentoring contracts. Mediations under the mentoring program began in early 2005, with learning partners taking progressively increased levels of control of the three mentored mediations in which they are involved.

Goals of the pilot mentoring program include exploring whether formal mentoring relationships improve the quality of mediator practice and assessing the effectiveness of the screening-and-selection process, the training program for mentors, the goal-setting process, the mentoring relationship, and the final mentor/learning-partner assessment. If the task group finds that the pilot program does improve mediator quality, it will seek to institutionalize the program and disseminate its practices throughout Maryland's various mediation practice communities. The program may need to be modified based on the needs of different groups of mediators. The different types of mentoring programs are expected to be phased into the larger MPME.

The *Training Task Group* is seeking to provide basic and advanced effective standards for quality training and trainers' skills. Four core topics have been identified: Trainer Standards and Standards for Training Programs; Curriculum and Content; Training Participation, Practice and Certificates; and Grievance Process/Feedback Process for Trainers. Initial identification of both 1) minimum requirements and 2) ideal recommendations for a basic forty-hour mediation course is underway, with an expectation that training programs wishing to qualify their trainees for MPME membership will subscribe to them. Requirements for class size, use of role-playing exercises, number of trainers, and requirements for coaches and trainers have been agreed upon. The Training Task Group continues to discuss evaluation processes for trainings, ways to employ various teaching mechanisms, and ethics, communication, and conflict-theory components, and impact of varying definitions, philosophies, and ADR models on specific training activities. The group also hopes to hold a "training for trainers" on adult-learning techniques in the context of mediation training. Currently the task group is obtaining feedback and seeking consensus on their proposals from the state's training community.

## CONCLUSIONS AND CAVEATS

No single QA strategy fits the needs of all programs or mediators. Different models have their strengths and weaknesses. Systematic observation and evaluation of mediator performance and continuing learning may be resource intensive and can pose logistical and consistency difficulties. On the other hand, "paper-based certification" programs are easier to operate, but tend to provide only a generalized assurance of minimal skills; such programs are inclined to impose unchallenging hurdles



that seldom ensure consistent quality and often engender unwarranted complacency among those who have attained credentials. And finally, a “low-hurdle/low-maintenance approach,” when implemented by an able administrator who works closely with her mediators, may sometimes produce superior results. But it may yield processes that rely on “headbanging” and “horsetrading” at the expense of parties’ thoughtful exploration of a range of possible solutions.

That said, reliance on paper-based certification, a single test, a research-based questionnaire, or credentials that employ primarily background or experience probably will not succeed in identifying good mediators or predicting quality results. In particular, given the field’s diversity, no nationwide system established by any single entity is likely to prove practicable. While an ABA-sponsored Credentialing Task Force’s recommendation to develop a model for accrediting mediator-preparation programs was endorsed by the Council of the ABA Section of Dispute Resolution, it does not call for uniform credentialing standards for individual mediators. Along the same lines, recent articles by McEwen (2005) and Cole (2005) advocate focusing less on certification and more on “designing a strategy for strengthening communities of practice among mediators as the best hope for building both professionalism and quality” (McEwen, 2005:6).

A “low-hurdle/high-maintenance” approach (Pou, 2003b:15-17) may yield the most consistent results in promoting the skills that lie at the heart of mediation practice. This approach currently is much more typical of community mediation programs than of court- or agency-based ones. As Hedeén (2004:117) notes, “[C]ommunity mediators are among the most trained dispute resolvers nationwide. Even a casual review of the training requirements set forth by state legislatures, courts, and centers demonstrates that community mediators’ basic training, apprenticeship, and continuing education and mentorship total more hours of training than is provided to almost any other group of mediators.”

The new MPME’s structure reflects a conclusion that “hurdles” (i.e., certification) have some limited utility (and may offer some psychological assurance to certain judges or parties), but often prove exclusionary and focus on criteria largely irrelevant to a high-quality mediation process. MPME instead promotes QA goals via “a self-improvement path for the duration” (Buck, 2005), with systematic attention to advanced mediation training, ethics education, apprenticeship, co-mediation, continuing education, feedback, performance-based skills testing, self-assessment, and grievance processes. This QA system posits that a mediator’s commitment to long-term improvement and education is at least as important to promoting quality as credentials that may be more readily measurable but less relevant to actual performance. (See Pou, 2003a.) Thus, Maryland provides encouragement, incentives, and a support structure for mediators to work collaboratively, target developmental needs, and enhance their skill level and credibility over time.

There are many other recommendations in the MQA Committee’s final report (MACRO, 2004). Among them were that 1) in many ways, the process to create and implement a QA system can be as important as the substantive choices made, and

building a broad sense of ownership in the outcome through an inclusive process is crucial to long-term success; 2) the clear interest and involvement of Judge Bell, as a "champion with clout," was important to the Committee's ability to obtain attention, credibility, and results; 3) a key for a successful QA system will be the extent to which provider organizations or users of mediation employ, or at least heed, standards that are established, so that a judge, attorney, or roster manager will view these requirements as important in, or at least relevant to, listing or selection decisions; and 4) ongoing user-education activities and related interaction that explore what to look for in an ADR process and in a neutral, as well as the limits of "hurdles," certification, or any other credentialing approach, will be important.

The pre-implementation insights gained from the MQA Committee's outreach to the state's courts and dispute resolution communities, the widespread statewide acceptance of the MPME model, and Maryland mediators' enthusiastic efforts to put the new system into operation bespeak both the value of a collaborative development method and the merits of the resulting system. As the members of that committee concluded:

If mediators and those who employ their services come to value a MPME "credential," then Maryland can offer the rest of the nation a compelling model—one that (1) in terms of its substance, places it in the forefront of enlightened efforts to explore and advance the use of ADR and (2) in terms of its development process and decision making, highlights Maryland's commitment (in the words of Chief Judge Bell of Maryland's Court of Appeals) to turning a "culture of conflict" into a "culture of conflict resolution" (Maryland Mediation and Conflict Resolution Office, 2004).

To be sure, this "guildhall" concept (Coletta and DiDomenico, 2000) and performance-based methods raise logistical, resource, and incentive issues. Nonetheless, they offer promise of being especially valuable. Mediators and mediation-program managers—as well as the judges, attorneys, and others who employ their services—should embrace a skills-sharpening approach like Maryland's. This will more likely obtain quality results—i.e., the procedural, psychological, and substantive satisfaction of the parties in interest—than by continuing to view mediation skills as easily acquired or merely adjunct to other expertise. Trends in the field that promote and reward mediators wishing to improve their skills and self-awareness, and deemphasize paper barriers and substitute credentials, ought to receive close attention from courts, professional groups, and policymakers. **jsj**

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