

SUMMARY OF CONSULTANT'S REPORT ON MEDIATOR QUALITY ASSURANCE TO MACRO AND THE MARYLAND MEDIATOR QUALITY ASSURANCE OVERSIGHT COMMITTEE

THE ISSUE

- Mediators are asked to play complicated, diverse roles that may involve -- depending on the program, the parties, or the specific case -- efforts to "transform," to "facilitate," to "evaluate," or to perform a combination of these (and perhaps other) activities.
- Strong differences exist within the dispute resolution ("DR") community and among mediators' clients as to how to define and promote quality practice, and how to assess who has the attributes crucial to a quality outcome.

NATIONAL RESEARCH

- The Mediator Quality Assurance report -- by Charles Pou, a mediator and consultant in Washington, DC -- seeks to map ways in which the DR field has sought to define and assure mediator competence in theory and in practice.
- The report explores the landscape of activity relating to mediator competence, briefly summarizing research, policy advice, and available resources as to (1) the kinds of knowledge, skills, abilities, and other attributes ("KSAOs") that have been deemed important to effective performance and (2) how those attributes are best acquired.
- It also explores how legislatures, courts, agencies, professional groups, and others in various jurisdictions have employed credentialing and other approaches to try to promote mediator quality.
- Based on program reviews, literature, and interviews with about 80 experienced administrators, practitioners, and academics, the report explores some practical issues and options that quality assurance ("QA") efforts may raise, including:
 - The range of approaches to mediator quality assurance and credentialing now being employed (e.g., performance-based testing, paper credentials, free market)
 - Who is credentialing, or otherwise managing, mediators
 - How requirements are being imposed (e.g., certification, licensing, roster listings, association membership requirements)
 - What we have learned about mediators' behavior, clients' needs, and the political realities involved in addressing mediator quality assurance

- Challenges for the field (and for policy makers in Maryland) -- defining quality; who decides who is qualified; the roles of substantive knowledge, training, continuing education, mentoring activities, and other factors; feedback, grievance, and ethics enforcement methods; and processes for developing acceptable QA systems and standards.

WHAT WAS FOUND

- Even as mediators and researchers have labored over the past decade or so to define “what mediators do” and better understand “who does it well, and how,” thousands of programs and parties seeking neutrals have had to make day-to-day choices. These include disputants, their lawyers, judges, court administrators, government agencies, and others establishing rosters or means of “vouching for” the competence and reliability of their mediators.
- While ADR’s growth has led some to argue for competency standards to protect consumers and promote integrity, many still prefer consumer education and market approaches; they doubt that we know enough to predict quality or understand the full ramifications of credentialing.

HURDLES AND MAINTENANCE

- The attached chart summarizes some of the more interesting or innovative “vouching” strategies, which generally include some combination of “hurdles” (i.e., standards mediators must meet to begin to practice) and “nurturing” or “maintenance” (i.e., activities to enhance skills over time). Obviously, where a program lies on this “QA grid,” and the manner in which it implements its choices, have implications for its credibility, as well as for the professionalism, ethics, and diversity of the field; the report seeks to summarize the strengths, weaknesses, and consequences of each generic combination of hurdles and maintenance.
- While occasional “high hurdle” programs (e.g., Family Mediation Canada) require many hours of training, experience, and/or observation, most authorities have set fairly undemanding QA standards that do not involve licensing -- typically expecting minimal training (20 to 40 hours) and some mediation experience (seldom more than a few cases) of applicants.
- “High maintenance” programs offer mediators nurturing based on co-mediation, follow-on training, coaching, filming sessions, in-service discussions, and opportunities for reflection and improvement. Outside community programs, “maintenance” requirements have generally been modest, with little oversight -- tending toward some commitment to periodic continuing education and adherence to generalized ethical standards.

WHO ADMINISTERS THE PROGRAM

- The sites of quality assurance programs and decision making vary; they include individual judges, court administrators, state supreme courts, advisory groups authorized by courts, executive agency and other roster administrators, other official

entities, and private mediator associations. These activities may be centralized, with a single entity setting standards and accepting applications, but are often decentralized.

CONTINUING EDUCATION

- A recurrent theme in interviews was the importance of continuing development – e.g., training, mentoring, and continuing education. There was less agreement as to what kind and how much, but considerable support for a framework that would encourage, or even require, regular exposure to other mediators, styles, and experiences to promote a broader awareness and “reflective practice.”
- Many people saw feedback and complaint handling procedures as key elements of a QA system, but relatively little attention appears to have been paid to specifics so far. In particular, grievance and enforcement processes may raise confidentiality and fairness challenges.
- A recent trend appears to call for placing greater focus on accrediting mediator training programs and putting some duties on trainers to advise trainees of their strengths and weaknesses or provide mentoring or continuing feedback.

OTHER OBSERVATIONS

- Finally, the report recognizes that QA activities do not occur in a vacuum, and discusses some political, professional, and other aspects, including these:
 - In many ways, the process an entity employs to arrive at a QA system can be as important as the ultimate substantive choices made. Not surprisingly, inclusion works better than exclusivity. On the other hand, efforts to achieve a broad consensus of all stakeholders have been marked by limited success.
 - An obvious key for successful QA systems – albeit easier to identify than to achieve -- is the extent to which provider organizations or users of mediation employ, or at least heed, standards that are established; i.e., will Judge X, Attorney Y, or Roster Manager Z view these requirements as important in, or at least relevant to, his/her listing or selection decisions?
 - Good mediators come from a variety of backgrounds, and many have developed skills through means other than “approved” training. Any effort to address quality that is exclusive, as opposed to inclusive, risks reducing diversity and eliminating potentially excellent mediators.
 - It may be valuable for QA system developers to try to bridge the gap that is often perceived to exist between attorney-mediators and other mediators.
 - QA system developers should try involving users of mediation services, as well as mediator provider organizations, to the extent possible.
 - Whatever QA strategy is adopted, educating users of mediation services about what to look for in a DR process and in a mediator, as well as the limits of “hurdles” or any other credentialing approach, will be important.