

---

**ACR TASK FORCE ON MEDIATOR CERTIFICATION**  
REPORT AND RECOMMENDATIONS TO THE BOARD OF DIRECTORS  
MARCH 31, 2004

---

**Executive Summary**

The Board of Directors of the Association for Conflict Resolution (ACR) authorized the creation of a Task Force on Mediator Certification in November, 2002. The purpose of the Task Force was to design a national certification program. The President of ACR subsequently appointed the members of the Task Force, and the Task Force convened three times in 2003.

After considering a variety of options, the Task Force recommends that ACR establish a Mediator Certification Program with the following elements:

- Presentation of a “portfolio” of years of experience and training;
- Successful completion of a written knowledge assessment;
- Periodic re-certification;
- A process for requesting a waiver of some of the requirements in exceptional or extraordinary circumstances;
- Potential de-certification for violation of ethical and professional standards;
- Appeals of decisions at various stages in the certifying process.

The Mediator Certification Program is designed to be purely voluntary and open both to members and non-members of ACR. Mediators who want to be certified will submit a comprehensive application that outlines the necessary training and experience, along with letters of reference and disclosure statements. Only upon favorable review of this “portfolio” will an applicant be permitted to complete a written test (or possibly an oral version). The certification will be active for a period of three years, after which a mediator may apply for re-certification. Mediators may petition for a waiver of some of the requirements for certification or re-certification in exceptional or extraordinary circumstances. The burden will be on the applicant to show good cause for a waiver. A certified mediator may be de-certified for ethical or professional violations. An appeals process will be available at the stages of initial certification, re-certification or de-certification.

The Mediator Certification Program is envisioned to be self-financing. Applicants will be charged a fee for certification (or perhaps separate fees for filing the application and for taking the test) and for re-certification.

Initially, assuming that ACR would create the Mediator Certification Program, the certifying entity would be related to ACR. The Task Force recommends that ACR establish a separate but related entity to administer the Mediator Certification Program as soon as proves feasible. Later, when practicable, the entity to certify mediators should become an independent entity with an independent governance structure.

## **A. Introduction to Proposed Mediator Certification Program**

### Historical Background

In December of 2002, Nancy Peace, then President of ACR, appointed a Task Force to study and recommend an appropriate process for the certification of mediators. The members of the Task Force are: Steve Erickson and Marvin Johnson, Co-Chairs, Peter Adler, Robert Benjamin, Rita Callahan, John W. (Jack) Cooley, Dan DeStephen, Diane E. Kenty, and Andrew Thomas. David Hart, CEO, and Nancy Peace, Past President, serve *ex officio*. (See brief biographical information in Appendix A.)

In 2003, the Task Force met in Washington D.C. in January, April and December. The Task Force presented an initial report to the ACR Board of Directors in June, 2003.

As part of developing a design for the Mediator Certification Program, the Task Force released its initial report at the June, 2003 Leadership Council meeting of ACR Chapter and Section leaders. ACR also posted the initial report on its Web site for public comments from July through November, 2003, and many individuals posted or sent comments and suggestions. To obtain feedback from interested organizations, ACR's CEO sent letters to several groups, including the American Bar Association Section of Dispute Resolution (ABA-DRS), the National Association of Community Mediation (NAFCM), the Association of Family and Conciliation Courts (AFCC), the Federal Mediation and Conciliation Service (FMCS), and the Maryland Council for Dispute Resolution. Comments were received from several groups and were reviewed and incorporated as appropriate into this report. Moreover, at its Annual Conference in Orlando, Florida in October, 2003, ACR held a workshop devoted to the prior report and to the work of the Task Force. Many valuable comments and suggestions about certification were received at that session.

In conjunction with its work, the members of the Task Force reviewed a body of literature concerning credentialing of mediators and of other professionals. These included publications of two of ACR's founding organizations, the Society of Professionals of Dispute Resolution (SPIDR) and the Academy of Family Mediators (AFM). The Task Force also reviewed other documents related to mediator certification programs currently in existence, such as the certification programs of Family Mediation Canada and several state groups. In addition, the Task Force revisited various existing statements of standards of conduct for mediators and other related material. (See selected bibliography in Appendix B.)

The Task Force discussed whether a certification process should be designed for other ADR neutrals, such as arbitrators, facilitators, or conflict managers. It was decided to focus on a certification process for mediators. Task Force members agreed that certification should and likely will be developed or expanded for other neutrals in the future.

### Core Values and Principles for Certification Efforts

The Task Force has identified the following as the core set of values that must be reflected in any mediator certification process to be established:

1. Self determination by the parties
2. Impartiality of the mediator
3. Disclosure of conflicts of interest
4. Competence of the mediator
5. Confidentiality of the mediation process
6. Ensuring the quality of the process
7. Appropriate advertising and solicitation
8. Charging appropriate fees
9. Obligation to improve the mediation process
10. Ability to manage diversity in the mediation process

These core values are drawn from the Model Standards of Conduct for Mediators created jointly by the Society of Professionals in Dispute Resolution, the American Arbitration Association and the American Bar Association in 1994.

The Task Force has also identified a set of guiding principles for creating the certification process. The certification process must be:

1. Easy to understand
2. Accessible to a broad range of practitioners
3. Should reflect core skills
4. Consistent with ACR values
5. Designed to allow for diversity of practice and people
6. Designed to validate members' knowledge and experience
7. Focused on those areas of practice where uniformity is required
8. Transparent to those seeking certification
9. Voluntary

### Definition of Mediation

Any certification effort must be founded on a clear definition of the process that it intends to approve. The Task Force recommends that any certification process established by ACR, or in which ACR participates, should be based on a definition of mediation drawn substantially from that adopted by the National Association for Community Mediation. For purposes of certifying practitioners of mediation, the mediation process is defined as follows:

**Mediation is a process of dispute resolution in which one or more impartial third parties intervenes in a conflict or dispute with the consent of the participants and assists them without coercion or the appearance of coercion. In mediation, the decision-making authority rests with the participants themselves and strongly values the parties' exercise of their self determination. Recognizing participants' needs, cultural differences, and variations in style, the mediation process allows participants to define and clarify issues, reduce obstacles to communication, explore possible solutions, and, when desired, reach a mutually satisfactory agreement. Mediation presents the opportunity to express differences and improve relationships and mutual understanding, whether or not an agreement is reached.**

In the proposed Mediator Certification Program, the written examination would be rooted in this definition of mediation. At the same time, the examination should reflect the importance of an understanding of the full spectrum of mediation models and styles of practice. The Task Force concluded that a national certification effort should not be limited to those who practice a particular model of mediation. The Task Force agreed that a skilled mediator should be knowledgeable about different approaches and schools of thought, even if he or she works primarily in one. In other words, certification should be open to mediators with a broad range of approaches and philosophies. The Task Force recognized that some applicants may not be certified if they do not embrace the core values of mediation and the definition stated above. By adopting this articulation, the Task Force adopts and supports ACR's standard definition of mediation. The Task Force has agreed, however, that adoption of this definition should not be construed as an endorsement of only one model of mediation to the exclusion of all others, nor should the definition be used narrowly as a "litmus test" for the granting of certification.

### Performance-Based Assessment

One of the most difficult issues that confronted the Task Force was whether to include a performance-based component as part of certification. This was also the subject of many comments received in the public comment period. For example, the Task Force considered the possibility of requiring personal or videotaped observation of applicants conducting mediation sessions. Task Force members discussed many questions about this method of assessment: Is it reliable? Is it valid? Is it practical? Does it open the door to subjectivity? Ultimately, the Task Force concluded that inclusion of a performance-based component of observable mediation skills is not desirable at this stage of development of the mediation field. The Task Force also concluded (albeit without benefit of an actual business plan) that performance-based assessment would demand greater human and financial resources than are likely to be available at the outset.

Thus, the Task Force reached a consensus that, at least at the beginning, the proposed design of the Mediator Certification Program would consist of a portfolio review (an applicant's presentation of evidence of mediation experience and training) and a knowledge assessment (an applicant's demonstration of knowledge of mediation through a written or oral examination). In the view of Task Force members, at this stage of development of the mediation field, it would be a significant leap forward to establish a commonly-accepted threshold for a mediator's knowledge of conflict resolution and related topics, as well as a baseline for experience in conducting actual mediation. More extensive techniques for assessing mediation skills, and more advanced levels of certification for additional mediation experience, will be welcome in the future.

### Relation to ACR Membership Categories

Task Force members discussed where a certification process would "fit" into the existing membership categories of ACR. In designing the proposed model of a Mediator Certification Program, the Task Force agreed that a mediator need not be a member of ACR to apply for certification, even if ACR or an ACR-related entity were to be the certifying body at the outset. Allowing mediators who are not members of ACR to apply for certification affords the greatest opportunity for credibility and widespread acceptance of the certification as a practice credential in the growing field of mediation.

The Task Force also agreed that certification could ultimately be linked to certain membership categories or designations within ACR Sections. Certification is conceived to be at a “low intermediate” level for mediators who have attained a substantial foundation of training, knowledge and experience. The Task Force encourages other subgroups within ACR, including Sections and Chapters, to consider the requirement of basic mediator certification as they develop other designations such as “Advanced Practitioner” or in compiling geographic or subject-matter referral lists.

#### Self-Sustaining Program

It is the intention of the Task Force that the Mediator Certification Program be financially self-supporting. In order to achieve that objective, it is envisioned that applicants will be assessed a fee for certification. The charge may be imposed in two parts: an initial charge for the review of the “portfolio” of training and experience, and, for those who pass through that stage successfully, a second charge for the written knowledge assessment. Fees would also be imposed at the time of re-certification. As noted, the Task Force agreed that the Mediator Certification Program should be administered by an entity separate from the ACR, though the Task Force recognized that start-up costs and other practical considerations may dictate that the Certifying Entity may initially be related to ACR and may require financial resources of ACR..

#### Efforts of Other ADR Organizations

As the Task Force convened, other national ADR groups had already begun to consider the increasing demands for quality of practice and credentialing of practitioners. For example, the American Bar Association’s Section on Dispute Resolution had established a task force specifically to develop a credential for mediators to establish their qualifications and to guide consumers in selecting providers of mediation services. The National Association for Community Mediation had embarked on a quality assurance project that focused on initiatives to be taken by community mediation programs. In the last two to three years, efforts by these groups, ACR and others appeared to spring from some common concerns and aspirations: elevating the importance of quality in mediation practice, emphasizing the need for adequate training and background in the mediation process and distinguishing mediation from other professional disciplines (and precluding regulation by any other existing profession). At the same time, the various organizational efforts may have had some disparate origins and intentions as well.

At the beginning stages of its work, the Task Force concentrated on its charge to design a conceptual model for a national mediator certification program. Later, discussions included not only the “what” and the “why” but the “how.” Not wanting to speak for other groups, and in light of different paths chosen by others, the Task Force continued to carry out its task of recommending a plan of action for ACR. Simultaneously, the ABA Credentialing Task Force focused on proposals for accreditation of mediator training programs, and NAFCM focused on initiatives within community programs for its own cadre of mediators.

It is hoped that other groups may endorse the design of the proposed Mediator Certification Program. Further, the Task Force recognizes that opportunities may arise for ACR to work with

other groups in refining and/or implementing certification for mediators on a national scale. The recommendations of the Task Force are not intended to prescribe an exclusive undertaking by ACR, nor do they in any way preclude the expansion of the certification effort beyond ACR. The Task Force recognizes that a certification program must be embraced by, and representative of, the wider mediation field if it is to become truly national in scope and widely accepted both by mediators and the public as a valuable credential.

If opportunities arise, the Task Force recommends that ACR consider how best to work with partners in advancing the goal of a recognized, respected certification program for mediators. The Task Force urges that ACR maintain a broad vision regarding certification that reflects the full spectrum of ACR's membership and ACR's commitment to diversity of practice and practitioners in the mediation field.

## **B. Preamble to Mediator Certification Program**

The following Preamble is presented as an introduction to a description of the proposed Mediator Certification Program. It seeks to set forth more fully ACR's philosophy and rationale for establishing and fostering certification for mediators.

In the last twenty-five years, the practice of mediation, facilitation and numerous other variations of third-party involvement in negotiating issues and disputes has increasingly become a part of the cultural and legal landscape throughout the world. In this relatively short period of time, "meditative" processes have become formalized and institutionalized. Moreover, different schools and styles of mediation practice (i.e., facilitative, law-centered, transformative, evaluative, managerial, etc.) have found acceptance in different settings, in different areas of application, and for different purposes.

Today, the range extends from personal injury, employment, land use, family and family and divorce disputes—deep in the shadow of legal court action—to a spectrum of issues that individuals, groups, organizations or communities may want or need to address, independently or prior to or after formal legal process. Throughout United States, Canada, Australia, the United Kingdom, New Zealand and many other countries, mediation has been incorporated as part of administrative and regulatory process. Finally, arbitration, a related but nonetheless distinct mode of dispute management in which a third party renders a binding or advisory determination in a dispute, has been available for even longer and is a common contractual or legal requirement.

Many states and jurisdictions have begun to set standards and requirements for mediators and arbitrators, although none have adopted formal licensure. At present, the regulation of ADR practice most often relies on forms of certification or rostering. While there is a good measure of overlap, there is little overall uniformity or coherence in the various practice codes, which hampers the development of the field. After nearly a quarter of a century, bringing a greater degree of coherence to the field is necessary to foster the continuing development of a vital and distinct conflict management profession.

ACR is the only organization of dispute management practitioners that expressly invites and reflects members from all countries around the world, every context of dispute management practice and every profession. Thus, ACR is uniquely situated to undertake the difficult but necessary work of developing a coherent and uniform process of voluntary certification for practitioners that is not dependent on a formal professional degree but is centered on mediation fundamentals.

### Purpose

A *voluntary* certification process can offer at least four important benefits.

First, the process would allow for a more uniform verification of a basic level of training, experience and study by practitioners. At present, multiple mediation programs across numerous states are establishing separate requirements, and there is no accepted procedure for granting recognition or comity to the validity of foreign programs. This often necessitates redundant training and results in substantial administrative costs to programs and practitioners. The proliferation of mediation programs and rosters, each with separate qualifying requirements that are not compatible, discourages the participation of skilled practitioners who might move from one state to another or wish to gain experience in different contexts or settings. A national (and international) mediator certification program will achieve an economy of resources and lessen the competition that is now growing between conflict resolution programs—a level of competition that can undermine a mediation community.

Second, a mediator certification process would begin to establish a more solid foundation of competency and professionalism. Certification would provide practitioners with a symbol of their personal and professional commitment to a disciplined course of study, scrutiny by their peers, and adherence to the higher principles of professional practice. They have been willing to subject themselves to a rigorous process of review by a credible and recognized national organization.

Third, completion of the certification process could offer consumers another valid criterion by which to gauge the qualifications of conflict management practitioners in the marketplace. While carefully avoiding the projection that certification is a warranty of competency, it remains a useful factor to be considered in choosing a mediator.

Fourth, a certification process would allow ACR members to influence the future development and direction of the field. Emphasizing the core principles of party self-determination, impartiality and diversity in its broadest sense, the certification process would encourage a practice of mediation that is respectful of the parties' self-determination. The certification process would include individuals regardless of their profession of origin.

### Guiding Principles, Concerns and Caveats.

ACR is deeply mindful of the many valid concerns that have been raised by practitioners over the years, many of which address the reluctance to enact a voluntary certification process. The proposed Mediator Certification Program makes every effort to minimize those risks directly

both by establishing guiding principles and in providing checks and balances in the program operation. Those underpinning concerns are as follows:

- The certification process is intended to encourage professionalism and the professional development of conflict management practice. It is not meant to “professionalize” the field, but rather to add a degree of quality control assurance to the field.

There is no intention to use, confuse or substitute educational degrees, whether basic, professional or advanced, with certification.

- The certification process is designed with heightened attention and respect for all manner of diversity in the broadest sense.

Diversity includes, but is not limited to, differences of race, gender, ethnicity, cultural background, religious affiliation, socioeconomic status, sexual orientation, disability, and language.

- The certification process is intentionally designed to accommodate different approaches to practice, provided that the approaches respect self-determination of the parties and other core principles of mediation practice.

The robust and vital discussion in the field between proponents of different styles of practice should not be affected or impeded by the certification process. There is an express intention to focus on generic standards of practice in North America and elsewhere that are bedrock to different styles and schools of thought.

- The certification process should intrude as little as possible on the creative practice style choices of individual practitioners and the different schools and styles of mediation practice that embrace the parties’ self-determination and other core principles of mediation practice.

The purpose of a voluntary certification process should not be confused with discussions about “best practices.” Rather than seek to establish that a given practitioner knows the “right way” to approach a given situation or circumstance, it will make clear that he or she understands that the parties’ self-determination is a fundamental mediation principle, is aware of the most salient available techniques and is sufficiently well versed in the dynamics of the conflict and other relevant factors that might impinge on the dispute and ought be considered in its management.. Elements of best practices will serve as the foundation for the written knowledge assessment. The test design process should draw upon other organizations’ best work to identify best practices.

Admittedly, the mediation process and attendant conflict resolution concepts that lie at the heart of the proposed Mediator Certification Program are Western and, indeed, North American in orientation. Though the certification offered will be open to practitioners around the world, it will be based on current North American notions of mediation.

- The certification process is not intended to undermine or be a substitute for further training and requirements that the various ACR Sections might establish in their respective substantive contexts.

Specifically, this certification process is a foundation upon which the various Sections might establish qualifications for “Advanced Practitioner” membership.

- The certification process is designed to be cost-effective and not unnecessarily bureaucratic.

The certification process should be useful and available to any person who wishes to enhance his or her professional qualifications, whether or not the individual is a member of ACR. This will increase the likelihood of general acceptance throughout the field. The process is designed to be efficient without compromising the level of rigor necessary to be adapted as a standard for conflict management professionals.

Training, knowledge, and experience are strong indicators of competency. Voluntary certification is important not only for what it does, but also for what it symbolizes. By participating in a voluntary certification process, a practitioner states his or her willingness to take the necessary steps to prepare adequately to provide effective support for people who choose to pursue the negotiation and management of issues or conflicts. It reflects a practitioner’s unbridled commitment to the ultimate principle of mediation, facilitation and conflict management practice: that people are capable of making substantially informed and consensual decisions in matters that directly affect their lives, if given the opportunity. The Mediator Certification Program set forth herein wholeheartedly supports that commitment.

### **C. “Portfolio” Requirements of Certification Applicants**

The Task Force agreed that training and experience are the two primary components of the “portfolio” that an applicant must present in seeking certification. The experience base must necessarily be active experience as a mediator in a mediation process. The Task Force does not recommend that the application attempt to distinguish among particular types or philosophies of mediation in assessing that mediation experience. The most important feature is that it be actual practice as a mediator.

1. Training or Coursework. First, an applicant must be able to document the completion of at least 100 total hours of training or academic coursework in conflict resolution. Of these 100 hours, 80 hours must consist of training in mediation process skills. The 20 additional hours above those required in mediation process skills may fall in subject matters related to any of the areas of the areas to be covered in the knowledge assessment. Hours spent as a trainer or teacher of programs/courses related to the knowledge categories can be counted as part of the 20 hours.

2. Mediation Experience. Second, an applicant must be able to document at least 100 total hours of mediation or active co-mediation within the last five (5) years, or 500 hours of

mediation or active co-mediation over a lifetime of practice. Observation of mediation sessions does not constitute mediation experience and will not count towards these hours.

3. Letters of Reference. As part of a “portfolio,” an applicant for certification must submit three (3) letters of reference from individuals who are familiar with the applicant’s mediation work.

4. Disclosures. Applicants must also disclose criminal convictions or professional disciplinary actions. The Certifying Entity may refuse to certify an applicant who has been convicted of a criminal offense or been disciplined by a professional organization on ethical grounds, unless the applicant can demonstrate that the conviction or disciplinary matter is not relevant to professional and ethical issues associated with the practice of mediation. Failure to disclose complete and accurate information could constitute grounds for de-certification once the errors or omissions are discovered.

#### **D. Description of Written Exam: Knowledge Areas to be Tested**

The Task Force recommends that ACR should contract with a consultant to work with the Task Force members or some other group of ACR members to develop the written knowledge assessment. The test would be administered through the Certifying Entity created specifically to handle the Mediator Certification Program (possibly ACR or a related entity at the outset). Prior to any “official” testing, the written examination will have to be designed and fully tested before the Mediator Certification Program can be launched.

The Task Force does not envision that a test preparation course would be offered by ACR or a related entity to potential applicants for certification. Rather, the Task Force believes that applicants should be able to rely on previous education and training or be able to self-study to take the test.

The test may be conducted online, or applicants may be requested to take the examination in a written or oral version at a specific location and time. The Certifying Entity will necessarily fulfill its responsibilities to offer disability access and accommodations. Depending on the ultimate examination design, it may or may not be a closed or open book examination. It is envisioned that the examination will be a multiple-choice type to facilitate and accelerate the task of grading.

At present, the Task Force foresees that the test will be created and offered in English, though mediators in many countries may wish to apply for certification and take the test. A U.S. or Canada residency requirement is not recommended. It is hoped that the Certifying Entity will possess the capability to offer the written test (as well as an oral version) in other languages in the future.

The Task Force has identified the basic array of subject areas that would be included in the written knowledge assessment for the Mediator Certification Program. Using the list of attributes developed by Family Mediation Canada as a starting point, the Task Force recommends testing eleven knowledge areas. The topics to be tested are as follows (in no order of priority):

- Communication

- Conflict Theory
- Content Management and Resources
- Cultural Diversity
- Ethics
- History of Mediation
- Models, Strategies and Styles
- Negotiation
- Process Structure
- Role of Third Party
- Systems and Group Dynamics

Examples of more specific sub-issues within each subject matter area include the following:

Communication: message construction—appropriate choice of words to convey intended meaning; styles of communication; effective listening; supportive/defensive communication; effective feedback; asking good questions; identity issues; meta-communication (nonverbal); perception; barriers to effective communication; stereotyping; reframing and clarifying; managing emotions; how to connect with people; learning styles; theories of communication; pacing; reason and emotion; communication channels; empathy

Conflict Theory: distributive and integrative; constructive and destructive conflict (e.g., Deutsch); conflict and culture (e.g., Roth); escalation and de-escalation; theory and philosophy of conflict; social justice; religious/moral traditions; spectrum of conflict management processes; equity theory

Content Management and Resources: impact of content; identifying and finding resources; managing content resources in the process; awareness of legal issues, financial/tax issues, counseling/therapy issues, trade and business issues, “custody” issues, health care/medical issues and scientific issues; supporting participants with disabilities or special needs; mediator as “advocate”

Cultural Diversity: meaning and use of language; negotiation rituals; use of interpreters; customs; understanding culture in varying contexts, including neighborhoods, organizations, ethnic groups, religions, etc. (when primary and when secondary); assumptions and stereotyping; high context and low context cultures (e.g., Edward Hall); respecting, removing, or ignoring cultural barriers; the impact of cultural diversity on conflict situations and the mediation process; accessibility and accommodation; equity and diversity; the influence of “isms” (e.g., sexism, racism, heterosexism) on individuals and the mediation process

Ethics: awareness of codes and standards of practice; informed consent; self-determination; conflicts of interest; UP of other professions; confidentiality, competence; quality of process; advertising and marketing; fees; obligation to the field; diversity; duty to best interest of child; normative vs. process standards (fairness); duty to report (to court or reporting abuse, fraud or criminal/violent behavior; duty” to report malpractice; awareness of conflicting ethical and professional codes; when to withdraw; grievance process; substantive competency

History of Mediation: community mediation; history of labor origins; Community Relations Service; Pound Conference; prison programs; history of major organizations; other cultures—impact and influences; classical literature within the field

Models, Strategies and Styles: principles; assumptions; values; commonalities; outcomes; transformative; law-based; facilitative; evaluative; business; advice and information; goals; directive-ness; cultural models; cyber; assessing risks and advantages of models; matching models to contexts and parties

Negotiation: theories of negotiation; negotiation styles; tactics and strategies; elements of cooperative negotiation; timing; interests and positions; bargaining ranges; BATNAs; walk-aways; mutual gains; positional bargaining; generating and testing options; brainstorming; issue formulation; drafting agreements; decision making; 3<sup>rd</sup> party roles; persuasion/influencing; power and power imbalances; caucus and other techniques; multiple parties; multiple or limited issues; use of experts; risk analysis; transaction costs; ground rules; creative thinking; problem-solving; problem recognition/issue formulation; negotiation planning and coaching; visual display of information; dirty tricks; deception; managing impasses

Process Structure: limited/multiple parties and issues; convening; gaining commitment to the process; information gathering; issue formulation; negotiation format; confirming understanding; caucuses; negotiation process; resolving impasses; agreements to mediate; rules of mediation; agenda-setting; termination of mediation; managing the presence of 3<sup>rd</sup> parties; process pacing and timing

Role of Third Party (your role when you walk into the room): neutrality; impartiality; mediation vs. other conflict resolution processes; who is the client; mediation as a formal role vs. informal mediation processes and techniques within other contexts or roles

Systems and Group Dynamics: systems theory; impact of third party; coalitions and alliances; boundaries; roles; group think; trans-generational patterns (tradition); precedent; subsystems; norms; change dynamics

## **E. Re-Certification Process**

After discussing possible standards and procedures for re-certification, the Task Force recommends that the initial certification be valid for a period of three years. To be re-certified, a mediator must:

1. Submit re-certification statements (or a re-certification “application”); and
2. Have completed 30 hours of Continuing Education Units (CEUs) over the previous three-year period of certification. CEUs will be recognized for a broad spectrum of training, presentations, continuing education courses, and conference workshops.

An applicant who has documented 500 lifetime hours of practice at the initial certification would not be required to document any additional practice hours for re-certification. An applicant who does not document 500 practice hours for the initial certification must document at least 50 additional practice hours for each re-certification until a total of 500 lifetime hours is reached. Once a mediator

has reached 500 lifetime hours of practice, no additional practice hours will be required for re-certification.

## **F. De-Certification Process**

The Task Force recommends that the Mediator Certification Program include a component of de-certification. Any certified mediator who is found by the Certifying Entity's Ethics Review Committee to have violated ACR's ethical standards, or other applicable standards of ethical conduct, may be de-certified. If the certified mediator is a member of ACR, that mediator may also have his or her ACR membership terminated, as determined by ACR policy.

The sequence of steps of a de-certification process has not yet been developed, but it is likely that those steps would include thorough review by the Certifying Entity's Ethics Review Committee (i.e., persons designated to conduct such a review on behalf of the Certifying Entity), due process to permit a response by the mediator, and a deliberative decision. The de-certification process will include a mediation step and/or possibly an arbitral proceeding.

The ACR Ethics Committee might be one source of referrals for potential certification, as might other organizational committees devoted to ethical or professional violations. Individual consumers of mediation services could also petition for the de-certification of a certified mediator

## **G. Relationship of Mediator Certification Program to ACR Ethics Review Process**

The procedures of the Mediator Certification Program will be distinct from ACR's Ethics Committee Review Process for complaints from consumers or other practitioners about alleged ethical violations of ACR members. The two processes may intersect, however, if the ACR Ethics Committee's Review Process yields grounds for de-certification of a certified mediator.

At present, all complaints about ACR members related to practice issues are referred to ACR's Ethics Committee. It is presumed that the Ethics Committee would continue to review complaints regarding ACR members who are not certified mediators. A separate reviewing group affiliated with the Certifying Entity will be established in conjunction with the Mediator Certification Program to review complaints about certified mediators.

The Task Force recommends that in implementing the Mediator Certification Program, the standards regarding good character and fitness used by other certifying organizations should be reviewed.

## **H. Relationship of Certification to ACR's Advanced Practitioner Membership**

Prior to the merger of AFM, CREnet, and SPIDR, AFM had a membership designation of "Practitioner" for which one could qualify by taking a specified number of AFM-approved trainings, conducting a prescribed number of mediations that were then reviewed by Practitioner peers, and completing several hours of supervision. The merger plan for the three organizations provided that

the rechristened “Advanced Practitioner” designation, available to ACR Family Section members, be expanded so that ACR members in other specialties could attain this designation also. An ACR Task Force on Advanced Practitioner Membership was created to recommend a framework for the development of the Advanced Practitioner Member category for other Sections. That group has suggested that the Mediator Certification Program should be a prerequisite to becoming an Advanced Practitioner Member. That is, they assume that the initial certification of mediators will set a relatively low bar, and that each Section may establish its own criteria for Advanced Practitioner Membership status by setting forth additional or more substantial requirements.

The Task Force leaves the direct or indirect linkage between certification and certain ACR membership categories if any, to be determined by the ACR Board of Directors.

## **I. Sequence of Steps in the Mediator Certification Process**

The Task Force recommends that the application process should be as streamlined and efficient as possible. For example, the procedures for application and notice should be computerized so as to minimize the amount of paid-staff time required. Because the Mediator Certification Program is envisioned as a basic, or entry level, rite of passage into the mediation profession, the Task Force anticipated that, at the outset, there would be a high volume of applications by ACR members and non-members who already have or have exceeded the minimum experience and training requirements. This initial onslaught of applications would predictably taper off after the first year or two of the operation of the Mediator Certification Program.

The recommended steps for an applicant to apply for and acquire certification are as follows:

1. Complete and submit an application (electronic or by mail) to the Certifying Entity (or ACR, if it should serve that purpose initially). The application would contain the information, declarations and references needed for the portfolio review. A non-refundable application fee would be required to accompany the application to cover the costs of the application process.
2. The Certifying Entity would notify the applicant when it had all received the necessary information so that the portfolio review could begin.
3. A staff member of the Certifying Entity would review the applicant’s complete portfolio and determine whether the minimum portfolio requirements had been met.
4. The Certifying Entity would send notice to the applicant advising of the results of the portfolio review.
  - a. Approved applicants would receive notice of their passing the portfolio review aspect of the certification process and would be advised of the procedures for taking the written examination. Applicants could request an oral examination in lieu of a written examination.

b. Applicants not approved would be allowed a specified time to appeal or to resubmit an application and portfolio that would satisfy minimum portfolio requirements.

5. Approved applicants would complete the written (or oral) examination. The Certifying Entity would ensure that disability access obligations are met and reasonable accommodations offered.

6. The Certifying Entity would review the completed examinations to identify any grading errors and to determine whether the results are above or below the pre-established pass/fail point. Applicants receiving a failing grade would be allowed a specified time frame to submit an appeal. (The proposed appeal process is described below in this Report.)

7. The Certifying Entity certifies applicants who satisfy all prerequisites.

## **J. Appeals of Denial of Certification or Re-Certification (and of De-Certification)**

From its review of professional certification materials, the Task Force learned that nearly all certification programs have an established appeal process for applicants. The appeal process allows an applicant the opportunity to question or challenge procedural inconsistencies and the substantive aspects of the certification process. A successful approach to an appeal process envisions a system that is fair, logical, and consistently applied to each applicant.

In most certification appeal systems, there may be several different levels of appeals that could be classified as either informal or formal. The majority of appeals are, in most cases, effectively addressed at the informal stage of the appeal process. Often, an applicant's questions or challenges are resolved when the Certifying Entity provides additional information about what transpired or by giving an applicant the opportunity to present comments to the national office. On the other hand, when staff responses are delayed or inadequate, applicants may seek fairness or justice by proceeding to the more formal appeal process, and perhaps to litigation ultimately.

The typical appeal response hierarchies for informal and formal appeals are:

### A. Informal Appeals

1. Administrative Program Staff
2. Executive Director of Certifying Entity

### B. Formal Appeals

1. Executive Director of Certifying Entity (if no prior informal appeal)
2. Certification Appeals Committee

A suggested outline of a possible appeal system is described below. It is based in part on the appeals process in use by Family Mediation Canada, and it integrates aspects of the appeal response hierarchies described above. The proposed appeal process is skeletal and will be fleshed out at a later time.

It is imperative that any appeal process be confidential and administered so as to accord adequate measures of fairness and justice to all who participate in it. The appeal process outlined below is based on the assumption that the applicant must exhaust an informal appeal before proceeding to the formal appeal process.

It is contemplated that an appeal could be initiated after any of the following events: (1) a review of the applicant's portfolio of training and experience in the application; (2) failure of the written examination; (3) an unsuccessful periodic re-certification process; or (4) an adverse decision in a de-certification process.

### Suggested Informal Appeal Process

1. An applicant may initiate an informal appeal from any adverse decision in the original application, re-application processes or de-certification processes. An applicant who appeals a decision is called an "appellant."

2. An applicant may initiate an informal appeal by submitting to the Certifying Entity's Administrator ("Administrator") a written notice and a brief accompanying statement describing the basis for the informal appeal. The appellant must submit the appeal notice within 30 days of an adverse decision. On written request of the appellant, the Administrator may extend the time for submitting the appeal notice by an additional 30 days.

3. The Administrator (or designee) may then contact the appellant to answer any questions that the appellant may have regarding the certification or appeal processes and to see whether the appellant's appeal can be resolved without further resort to the appeal process.

4. If the Administrator and the appellant are able to resolve the appeal informally, the appeal is deemed settled, and the appellant signs a statement to that effect. The Administrator may adjust the appellant's records to allow the appellant additional time to resubmit his or her portfolio in the reapplication process or to prepare for a reexamination.

5. If the Administrator and the appellant are unable to resolve the appeal within 30 days of receipt of written notice and brief statement, the Executive Director of the Certifying Entity shall be promptly notified of that fact. The Executive Director may attempt to resolve the matter informally as he or she deems appropriate. If the Executive Director is successful, he or she sends the matter back to the Administrator with instructions to the Administrator to follow the procedures described in paragraph 4, above.

### Suggested Formal Appeal Process

1. If the Executive Director does not wish to attempt an informal settlement of the appeal, or if he or she is unsuccessful in reaching an informal settlement, the Executive Director sends the matter back to the Administrator with instructions to give written notice to the appellant of his or her formal appeal rights.

2. The appellant must submit a written notice requesting a formal appeal within 30 days of the date of the written notice from the Administrator advising the appellant of his or her formal

appeal rights. The Administrator has discretion to extend the time for filing the formal appeal notice for an additional 30 days. The notice requesting a formal appeal must be accompanied by a statement describing the basis for the appeal. This basis may be modified as a result of information obtained in the informal appeal process.

3. If the appellant does not submit a notice requesting a formal appeal (with an accompanying statement) within the specified time limit, as extended by the Administrator, the appeal will be deemed settled by default.
4. If the appellant submits a timely notice requesting a formal appeal, within 30 days of receipt of a complete request for formal appeal (including the accompanying statement), the Chairperson of the Certifying Entity's Certification Appeals Committee will appoint a panel of three certified, experienced mediators from a pool of panel members designated as the Certification Appeals Committee by the Certifying Entity's Board of Directors to serve as members of the appellate panel. The three appellate panel members so appointed will not have any personal, professional or pecuniary conflict of interest with the appellant. The appellant will have a right to challenge for cause any appellant panel member appointed to hear his or her appeal. The Chairperson of the Certification Appeals Committee may appoint an additional certified mediator to be on call if the appellant wishes to pursue a confidential mediated resolution during the proceedings.
5. As soon as practicable, but no later than 60 days following appointment of the appellate panel, the appellate panel will hear the evidence presented by the appellant. The Administrator or designee may respond to the evidence and present his or her own evidence. Appellant and the Certifying Entity will be entitled to legal counsel or other representation at this hearing. The hearing will be in the nature of an arbitration proceeding. Rules of evidence will not be strictly enforced.
6. After hearing all of the evidence, the panel will render its decision in writing within 10 days of the conclusion of the hearing. Its decision will be the final determination of the appellant's appeal.
7. After a minimum of 90 days following the issuance of a decision in an unsuccessful appeal of the denial of certification or re-certification, an appellant may re-apply to the Certifying Entity for certification or re-certification.

## **K. Recommendations and Initial Implementation Steps**

The Task Force recommends that:

1. The ACR Board of Directors approve the model of the Mediator Certification Program described in this report.
2. ACR make certification a strategic priority of the ACR Board of Directors and the Development Committee for 2004.

3. ACR identify and engage the appropriate consultant(s) to work with ACR on continuing to develop the Mediator Certification Program, including the following tasks: to conduct market research to determine the feasibility of the Mediator Certification Program; to prepare a business plan for the Mediator Certification Program; to create the written knowledge test; and to refine the application process.
4. The President of ACR appoint a small steering committee or task force to spearhead the implementation of the Mediator Certification Program, to prepare an overall strategic plan for certification and to work with the consultant(s) on the next stages of making the Mediator Certification Program operational.
5. ACR secure the resources necessary to pursue the creation of the Mediation Certification Program.
6. ACR continue to explore possible collaboration with other organizations and stakeholders in the establishment of the Mediator Certification Program, with the President and CEO serving as ACR's key contacts.
7. ACR undertake regular communication with its membership to ascertain the membership's preferences concerning certification, to elicit suggestions and feedback in response to ACR's ongoing efforts and to report progress in establishing the Mediator Certification Program.

## **L. Conclusion**

This report completes the charge to the ACR Task Force on Mediation Certification. The Task Force wishes to express its gratitude to ACR for the opportunity to serve ACR and its membership.

## **Appendix A: Short Biographies of Task Force Members**

### **Stephen Erickson, J.D., Co-Chair**

Erickson Mediation Institute

*Minneapolis, Minnesota*

Mr. Erickson has worked full time as a mediator since 1980. A 1974 graduate of the University of Minnesota Law School, Mr. Erickson was one of the founding members of the Academy of Family Mediators (AFM, one of ACR's founding organizations) and served as its second president. He mediates in the areas of divorce, employment and large group conflicts. His most recent book is *The Practitioner's Guide to Mediation: A Client Centered Approach*, published by John Wiley and Sons, 2001. Mr. Erickson is a member of the ACR Board of Directors.

### **Marvin E. Johnson, J.D., Co-Chair**

Executive Director, Center for Alternative Dispute Resolution

*Crofton, Maryland*

Marvin Johnson is a nationally recognized mediator, arbitrator, and trainer with over 27 years of dispute resolution experience. He serves on the JAMS panel of resolution experts and is the Founder and Executive Director of the Center for Alternative Dispute Resolution. Mr. Johnson received his J.D. from Catholic University. He holds a B.S. in Business Administration from Kent State University and an M.S. in Industrial Relations from the University of Wisconsin. Mr. Johnson has worked for the Department of Labor, the Federal Labor Relations Authority, the Federal Mediation and Conciliation Service, the National Treasury Employees Union, the National Football League Players' Association, the National Academy of Conciliators, and was Professor of Labor Relations, Law, and Dispute Resolution at Bowie State University. The President of the United States, the Governor of Maryland and the Chief Judge of the Maryland Court of Appeals have recognized Mr. Johnson's dispute resolution expertise by appointing him to the Federal Service Impasses Panel, Maryland State Labor Relations Board and the Maryland Alternative Dispute Resolution Commission (now the Maryland Mediation and Conflict Resolution Office), respectively. Mr. Johnson has co-authored several articles, including "Racial Profiling in America: The Problem and the Challenge" (Fall 2003), "Adjusting to Changing Priorities" (2002), and "Emotionally Intelligent Mediation: Four Key Competencies" (2001). He is a member of the ACR Board of Directors.

### **Peter S. Adler, Ph.D.**

Director, Center for Science and Public Policy, Keystone Center

*Keystone, Colorado*

Peter S. Adler, Ph.D. is Director of the Center for Science and Public Policy at the Keystone Center in Keystone, Colorado. He has served in executive positions with the Hawaii Justice Foundation (1992-2001), the Hawaii Supreme Court's Center for Alternative Dispute Resolution (1985-1992), the Neighborhood Justice Center (1979-1985), and he is a former Peace Corps Volunteer and Outward Bound instructor. His specialty is multi-party negotiation and problem solving, and he writes, trains, and teaches in the areas of mediation and conflict management. He served as President of the Society of Professionals in Dispute Resolution (SPIDR), one of ACR's founding organizations.

**Robert D. Benjamin, J.D., M.S.W.**  
Mediation & Conflict Management Services  
*Portland, Oregon*

Mr. Benjamin practices mediation in all dispute contexts, including business, employment, family and divorce, and presents negotiation and mediation programs nationally and internationally. He is an Adjunct Assistant Professor at Washington University's George Warren Brown School of Social Work, and Adjunct Professor of Mediation in the Conflict Resolution Program at Indiana State University. He is former president of the Academy of Family Mediators (AFM), one of ACR's founding organizations.

**Rita Callahan, M.S.**  
Working It Out  
*Atlanta, Georgia*

Ms. Callahan is a mediator, trainer, coach, consultant, facilitator and speaker and has consulted with companies including USDA, American Express, CNN, BP-Amoco, Justice Center of Atlanta, IBM, Prudential, MCI, Regions Bank, GlaxoWellcome and Novartis for the last 15 years. She provides mediation, facilitation and conflict resolution training for companies and government agencies, coaches mediators and managers throughout the United States, and is a requested speaker. She is Co-Founder and President of ACR's Georgia Chapter, Co-Chairs ACR's Workplace Section and has a master's degree in Decision Science.

**John (Jack) W. Cooley, J.D.**  
Judicial Dispute Resolution, Inc.  
*Evanston, Illinois*

John W. (Jack) Cooley is a former United States Magistrate, Assistant United States Attorney, Senior Staff Attorney for the United States Court of Appeals for the Seventh Circuit, and a litigation partner in a Chicago law firm. He is the current Chair of the Mediation Committee of the ABA Section of Dispute Resolution. He is a Fellow of the American Bar Foundation, the International Academy of Mediators, and the Chartered Institute of Arbitrators, London, England. In private practice in the Chicago area, he is a founding member of Judicial Dispute Resolution, Inc., ("JDR"). He has served as a Special Master for federal judges and as an arbitrator and mediator in a wide variety of complex, multi-million dollar commercial disputes, both domestic and international. He is an Adjunct Professor at Northwestern University School of Law where he teaches a course on negotiation and mediation and has published four books on Alternative Dispute Resolution. He is a graduate of the United States Military Academy at West Point and of the University of Notre Dame Law School, receiving a year of his legal training in international and comparative law at the School's Centre for Legal Studies in London, England.

**Dan DeStephen, Ph.D.**  
Director, Center for Teaching and Learning, Wright State University  
*Dayton, Ohio*

Mr. DeStephen is Professor of Communications and Director of the Center for Teaching and Learning at Wright State University in Dayton, Ohio. He is also a trainer and practitioner in the areas of workplace mediation and interest-based bargaining. Mr. DeStephen served as Treasurer on ACR's Founding Board of Directors, and currently Co-Chairs ACR's 2004 Annual Conference Program Committee.

**Diane Kenty, M.Div., J.D.**

Director, Office of Court ADR, Maine Administrative Office of the Courts  
*West Bath, Maine*

Ms. Kenty, a member of ACR's Board of Directors, served as the President of ACR's New England Chapter from 2000–2002 and has been a member of the Chapter Task Force since 1999. Formerly a member of ACR's Ethics Committee, she is also former co-chair of ACR's Court ADR Section. She currently serves as Vice President of the Maine Association of Dispute Resolution Professionals (MADRP) and co-chairs MADRP's Practice Quality Committee. Diane is Director of the Office of Court ADR for the state courts of Maine. A graduate of Oberlin College, Union Theological Seminary and Georgetown University Law Center, she previously practiced law in Boston

**Nancy E. Peace, M.A.**

Mediator/Arbitrator  
*Newburyport, Massachusetts*

Ms. Peace is an experienced mediator, labor arbitrator and trainer. She teaches in the Program on Negotiation at Harvard Law School and is a member of the National Academy of Arbitrators, the American Arbitration Association, the Industrial Relations Research Association, as well as an associate member of the American Bar Association. Ms. Peace holds a B.A. from Ohio Wesleyan University, an M.A. from the University of Michigan and a DLS from Columbia University. She is a Past President of ACR.

**Andrew Thomas, M.P.A.**

Director, Center for Dispute Resolution  
*Rochester, New York*

Mr. Thomas has been instrumental in the development of mediation in upstate New York and the expansion of conflict resolution to a variety of settings, including public elementary and high schools. He serves on the Board of Directors of the Institute for the Study of Conflict Transformation and is also one of its Associates. He is also a former Chair of the National Association for Community Mediation. His training activities include training for the United States Postal Service in its REDRESS mediation program.

**David A. Hart, M.A. (Ex-officio member of the Task Force)**

Chief Executive Officer, Association for Conflict Resolution  
*Washington, D.C.*

David A. Hart is Chief Executive Officer of the Association for Conflict Resolution. Prior to accepting the CEO position, David served as director of the Americans with Disabilities Act (ADA) Mediation Program at the Key Bridge Foundation in Washington, D.C. He holds a bachelor's degree

in Peace and Conflict Resolution Studies from Oberlin College and a master's degree in Political Science from Syracuse University's Maxwell School. While at Syracuse, he earned Certificates of Achievement from the Program on the Analysis and Resolution of Conflict (PARC), and the Institute on Creative Conflict Management.

## **Appendix B: Selected Bibliography**

Academy of Family Mediators. *Volunteer Mediator Certification Project—Report to the William and Flora Hewlett Foundation: Year Two*. May, 2000.

American Bar Association Section of Dispute Resolution. *Dispute Resolution Magazine*. Fall 2001.

—. *Task Force on Credentialing: Discussion Draft—Report on Mediator Credentialing and Quality Assurance*. October 2002.

Association for Conflict Resolution. *Report of the Task Force on the Unauthorized Practice of Law: Draft 2002*. ACR 2002.

Broderick, Melissa, and Ben Carroll, eds. *Community Mediation Center Self Assessment Manual*. Washington, D.C.: National Association for Community Mediation, 2002.

Cooley, John. *Shifting Paradigms: The Unauthorized Practice of Law Or the Authorized Practice of ADR?*, August-October 2000, Online, <http://www.mediate.com/pfriendly.cfm?id=481>, 1/9/03 15:02.

Family Mediation Canada. *Family Mediator Certification Program*, Online, <http://www.fmc.ca/?p=Professionals/Certification-QandA.htm>, 2003.

Filner, Judith. *Certification Issues Outline—Voluntary Mediator Certification Project*. Academy of Family Mediators. May, 2000.

—. *Memorandum to Colleagues, Academy of Family Mediators' Voluntary Mediator Certification Program*. March 8, 2000.

Hamm, Michael S. *The Fundamentals of Accreditation*. United States: American TechniGraphix. 1997.

Honeyman, Christopher, and Charles Pou, Jr. *Finding and Hiring Quality Neutrals: What Every Government Official Needs to Know*, 1996. Online <http://www.covenor.com/madison/fh.htm>. 1/9/03, 16:32.

Institute for the Study of Conflict Transformation, Inc. at Hofstra University School of Law. *Session One: Mediator Quality Assurance: Trends in the Field*. 2002.

—. *Session Three: Think Together With Us: Toward Internationally Theory-Based Instruments and Approaches*. 2002.

Knapp, Lenora G., and Joan E. Knapp. *The Business of Certification: A Comprehensive Guide to Developing a Successful Program*. Washington, D.C.: American Society of Association Executives, 2002.

—. *The Business of Certification Toolkit*. Washington, D.C.: American Society of Association Executives, 2002.

Knapp, Lenora G., and Michael Gallery. "Certification Appeal: Consider all the Angles Before

Developing a Certification Program.” *Association Management*. November 2003: 28–34.

National Association for Community Mediation, *Quality Assurance Initiative*, Online, <http://www.nafcm.org/pg9.cfm>, 2003.

National Commission for Certifying Agencies. *Standards for the Accreditation of Certification Programs*. 2003.

National Institute for Dispute Resolution. *Performance-Based Assessment: A Methodology, for use in selecting, training and evaluating mediators*. 1995.

Pou, Charles Jr. *Mediator Quality Assurance: A Report to The Maryland Mediator Quality Assurance Oversight Committee*. Charles Pou, Jr. Dispute Resolution Services. February 2002.

—. *Mediator Quality Assurance: Final Report to The Maryland Mediator Quality Assurance Oversight Committee*. Charles Pou, Jr. Dispute Resolution Services. June 2003.

Society of Professionals in Dispute Resolution. *Ensuring Competence and Quality in Dispute Resolution Practice: Report No. 2 of the SPIDR Commission on Qualifications*. April 1995.

—. *Qualifying Neutrals: The Basic Principles— Report of the SPIDR Commission on Qualifications*. April 1989.

—. *Competencies for Mediators of Complex Public Disputes*. January 1992.

—. *Qualifying Dispute Resolution Practitioners: Guidelines for Court-Connected Programs*. 1996.

—. *Designing Integrated Conflict Management Systems: Guidelines for Practitioners and Decision Makers in Organizations*. 2001.

—. *Second Report From Participatory Dialogues Regarding Cultural Diversity in Alternative Dispute Resolution*. SPIDR Annual Conference 1996 and 1997.