

## SCMA AD HOC COMMITTEE ON VOLUNTARY MEDIATOR CERTIFICATION REPORT AND FAQ

The State of California does not regulate or certify mediators. California, like every other state in the Union, has no state requirements for the private practice of mediation. In fact, in California, anyone can hang out a shingle and call themselves a mediator with no training at all. Whether this state of affairs is acceptable has long been a contentious topic within the ADR community, which has yet to reach consensus on the issue. On the one hand, many practitioners see no compelling need for credentialing, as there has been no public outcry for it. They see the advantages to keeping the field open as to mediators' styles and backgrounds. On the other hand, many mediators desire a credential that would be of benefit to themselves and the public. They are unhappy that persons with minimal or no training can hold themselves out as mediators, in some cases giving parties who attend mediations an unfavorable view of the field. These mediators favor some sort of credentialing out of interest in promoting and supporting the highest standards for our field and, for some, out of fear that unless we mediators regulate or certify ourselves, someone else will do it for us.

### SCMA Ad Hoc Committee Study of Mediator Regulation and Certification

In 2012, the Bay Area Lawyers for Individual Freedom proposed that the Conference of California Bar Associations recommend legislation that would, in part, require the Judicial Council of California to adopt minimum qualifications and standards of conduct for mediators, require the State Bar of California to certify and regulate mediators, and require the State Bar Court to be responsible for discipline of mediators. (See Proposed Resolution [SR-05-01-2012](#).) Although this proposal did not gain traction, it again focused attention on the often discussed topic of mediator regulation and certification.

To understand this issue in depth, the SCMA appointed an Ad Hoc Committee on Mediator Regulation and Certification. In January 2013 it started meeting every three weeks through the year. We informed ourselves about existing research and programs in this area and looked at an abundance of literature containing arguments both for and against credentialing. While not an exhaustive list, the materials we considered included:

- the extensive reports done by task forces for the American Bar Association Section of Dispute Resolution (ABA) and the Association for Conflict Resolution (ACR) on the topic;
- credentialing programs in other states;
- federal and state statutes that authorize mediation;
- existing credentialing programs in California; and
- the many and varied local opportunities for mediation training.

Very early on we delved into the complex issue of whether mediation is a profession, and found that there is broad disagreement on the topic but that mediation, at this point, lacks the required formal educational degree, ethics codes, and regulatory schemes normally associated with formalized professions.

Throughout, the Committee had an overriding concern that any credentialing structure we came up with - should we come up with one - had to take into account the broad diversity of the field, the different styles of and theories regarding mediation, the fact that mediators come to the practice from different careers of origin, the fact that mediation takes place in a wide variety of settings and institutions, and the fact that some mediators are paid while some

are volunteers.

The Committee ultimately concluded that the widely varied backgrounds of mediators and the absence of a uniform certification may make it difficult for users of mediation to assess the qualifications of a mediator. The Committee found that: a) barriers to entry into the mediation field are non-existent or very low, and, as stated above, anyone can self-identify as a mediator and begin practicing privately without meeting any training requirement at all; b) any organization can offer mediation training or certificates with no generally accepted standards concerning the length or content of the curriculum; and c) the public may not know how to choose among mediators offering services. The Committee also found, however, that mediation is a unique method of conflict resolution and requires specialized training no matter what the background of the potential mediator. Based on these considerations, the Committee concluded that a voluntary certification program is the most currently feasible way to address the interests of the various groups and their concerns.

The Committee therefore recommended that SCMA initiate a voluntary mediation certification program that would certify mediators who demonstrate sufficient knowledge and skills, including an understanding of mediator ethics, and agree to abide by an ethics code. While the Committee reached consensus on general parameters for the certification program, the Committee believes the mediation community and the public would be best served by seeking input from other key organizations, including mediation trainers and providers, to determine the exact specifications for this program. The Committee therefore also recommended that the voluntary certification program be implemented by a Consortium of these key organizations and that the Consortium be the governing body of the certification process. Consortium members will agree to support the standards set by the Consortium and act as a reviewing organization to ensure that the standards of the program are maintained. The organizations, including SCMA, that agree to participate in implementing a new certification program in California will begin the process of organically growing the Consortium. That group will need to assess the projected demand for the certification program, determine a budget for administering the program based on the fees or dues that would have to be collected from certified members, finalize the procedures and requirements for certification, and determine how the consortium itself is to be organized and governed.

In the fall of 2013 the SCMA Board accepted the Committee's recommendations and instructed it to continue with the formation of the Consortium.

### Formation of the Consortium

As a first step to forming the Consortium, the Committee began 2014 with disseminating its Report and recommendations to the broader mediation community, including mediation training and provider organizations, and organizations statewide that serve the mediation community. During the spring, the Committee was joined by representatives from mediation training and provider organizations stretching geographically from Santa Ana to Ventura, with an additional organization in Santa Rosa. Those representatives and Committee members subdivided the ongoing work in developing the Consortium into four different Task Forces: 1) Business Plan; 2) Legal; 3) Outreach; and 4) Qualifications. Each task force is led by a member of the Committee. The full Committee and all organizational representatives also meet periodically to review, discuss, and integrate the work of the four Task Forces.

## FREQUENTLY ASKED QUESTIONS

### **Is it really true that mediators in California are not credentialed or regulated?**

Yes. "Credentialing" is a general term to include the many ways of establishing mediator qualifications, including certification and licensure. In California there is no state or universally accepted agency that credentials mediators and no uniform criteria for regulation or certification.

### **What is the difference between regulation and certification?**

"Regulation" is done by the state and is often accompanied by licensing.

"Certification" is voluntary, conferred by some type of organization rather than the state. Certification recognizes the attainment of standards that have been established by the certifying organization.

### **Some mediators describe themselves as "certified mediators." What does that mean?**

Generally this means that they attended a training and received a certificate of attendance. Those organizations that train mediators using the standards set forth in the Dispute Resolution Programs Act often indicate on the certificate that the participants have met those standards.

### **What is the proposed mediator certification initiative?**

The initiative seeks to establish a Consortium of mediation training and provider organizations that would offer certification to mediators on a voluntary basis. The Consortium would establish training and experience requirements for certification and review mediators' applications to determine whether the applicant has satisfied the requirements, in which case certification would be granted. Consortium members would agree to support the standards set by the requirements below and act as a reviewing organization to ensure that the standards of the program are maintained.

### **What the reason/purpose for voluntary mediator certification?**

The Committee work is intended primarily to raise practice standards in the field of mediation in California and utilize the existing AAA/ABA/ACR Model Standards of Conduct as its governing code. It is also intended to help mediators demonstrate that they have satisfied these standards and to help mediation consumers identify qualified mediators.

### **Is this the first step toward mediator regulation?**

The proposed voluntary certification program is not intended as a first step toward government regulation. In fact, by establishing and adhering to higher practice standards mediators may demonstrate that government regulation is not necessary. The Committee has been guided by the ABA report, which stated in part: "Credentialing should provide information about prospective mediators and/or a signal of quality, and organizations should be able to require members of their panels to satisfy requirements. Credentialing should not, however, operate as a de facto licensing system that bars non-credentialed persons from practicing as mediators generally."

**Will non-certified mediators still be able to practice?**

The answer is unequivocally yes. The ABA Report noted the importance of self-determination for disputants in mediation, allowing disputants the choice of selecting a non-certified mediator. Since the Consortium is not a licensing or regulatory body, non-certified mediators will continue to be able to practice as California law allows.

**Who will make and enforce the rules for certification?**

The certification program will be implemented and administered by a group of associations that have joined together as a Consortium. The Consortium will determine the requirements and procedures for certification.

**What will be required for certification?**

The requirements to achieve the certified mediator (CM) credential will be established by the Consortium. However, the Committee has recommended that an applicant must meet requirements in three different areas: education; performance; and professional activity. These requirements would be represented on the application for the CM through a series of point allocations, with a total of 200 points required - 110 from education, 50 from performance, and 40 from professional activity. While the classroom and practical training are designed to ensure consistency in standards of knowledge for certification, the point system is also designed to accommodate and include the wide variety of professional expertise, academic training, and practical mediation experience that people bring to the practice of mediation and to recognize the value of the diversity of experience and expertise. The Committee recommendation would also require that a CM pass an objective test.

**Will there be a fee for becoming certified?**

Yes, but the governing body will be a non-profit organization and the fees charged are planned to be reasonable and reflect the cost of implementing the certification system.

**Why would a mediator want to become certified?**

A mediator would want to become certified to demonstrate his or her attainment of a higher level of training and experience for mediators.

**How will a mediator maintain certification?**

The requirements to maintain certification will be determined by the Consortium. The Committee has recommended that each CM must document Continuing Professional Development over a three year period in areas deemed acceptable to the Consortium.

**Will there be a process for quality assurance, grievances or even de-certification?**

Yes. The ABA Report noted that any credentialing system should "provide an accessible, transparent system to register complaints against credentialed mediators. . . promptly and fairly investigate complaints and, if appropriate, de-credential a mediator who fails to comply with standards." The proposed Consortium framework will provide users of mediation services a place to process issues they may have with the services provided by a certified mediator, in a manner that is respectful of the mediator and consistent with mediation confidentiality.