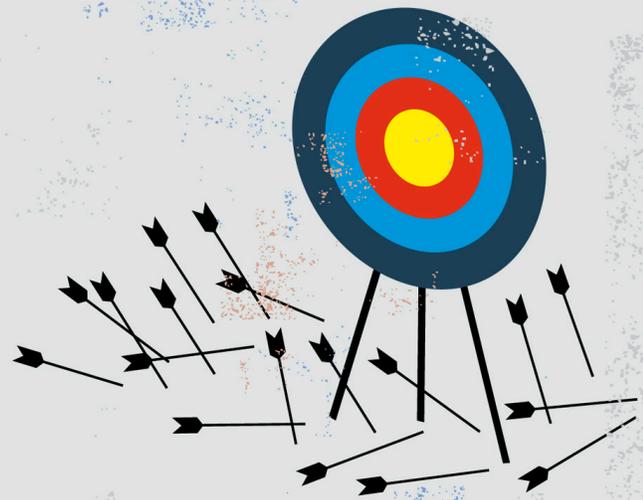


A Missed Opportunity and an Opportunity We Don't Want to Miss

Why Now is the Time for the Mediation Community to Embrace Voluntary Mediator Certification



On October 4, 2017, the Los Angeles County Superior Court (LASC) issued a request for proposals (RFP) for civil mediation services. The RFP offers mediation providers the opportunity to help settle LASC cases in an effort to address LASC's growing calendar overload. However, the RFP controversially excludes non-attorney mediators and attorney mediators with less than ten years of California Bar membership. This effectively disqualifies a significant number of mediators, many of whom have been successfully settling LASC cases for years. Moreover, these restrictions have no basis in research on mediation success, which shows little difference in settlement rates between attorney and non-attorney mediators.¹

LASC's RFP is a wake-up call for the mediation community. The RFP is evidence that if we fail to establish our own mediator qualifications, others will do it for us. And too often, they will do it in a way that is inconsistent with our shared values and the values of the mediation profession.

The RFP confirms the fears that have long existed in mediation circles. For example, in 2006 the San Diego-based National Conflict Resolution Center (NCRC) wrote:

The critical need for [a discussion on mediator qualifications] among those who practice is accentuated by the legitimate fear that if we don't decide these things for ourselves (in the spirit of mediation, the empowering process that requires accountability and responsibility on the part of our clients), someone else will. We cannot afford another 'surrogate' profession to set the standards and inform the consumers. ... We believe that mediators should be the ones to establish mediator standards and enforce the guidelines that are essential to practice.²

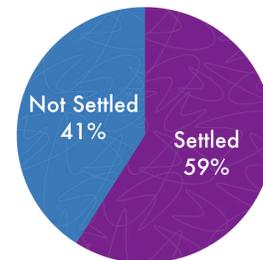
Fortunately, SCMA has not been idle. For several years, SCMA has investigated mediator credentialing through an ad hoc committee. The committee spent over five years listening to the community, evaluating research on the issue, and debating options. In its final report in 2013, the committee wrote:

Whether the practice of mediation should be regulated or credentialed in any way 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 regulation or certification, as there has been no public outcry for it. ... On the other

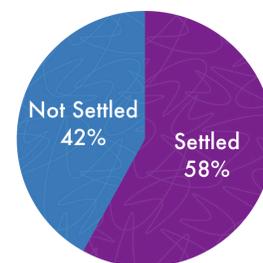
¹ See James P. Lingl, "Relative Effectiveness of Mediators and Attorney-Mediators in a Court Annexed Mediation Program," available at <http://www.mediate.com/articles/LinglJ1.cfm>.

² National Conflict Resolution Center, "A Call for a National Dialogue on the Establishment of Training Standards for Mediators," p. 2 (2006), available at <https://www.acranualconference.org/uploads/2/7/0/2/27027704/dinkinmediationtrainingstandards.pdf>.

Attorney Mediators



Non-Attorney Mediators



Source: James P. Lingl, "Relative Effectiveness of Mediators and Attorney-Mediators in a Court Annexed Mediation Program," available at <http://www.mediate.com/articles/LinglJ1.cfm>.

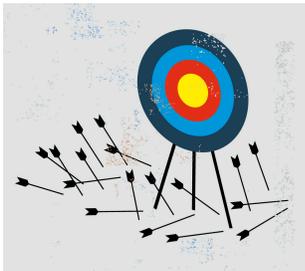
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hand, many mediators desire a credential that would be of benefit to themselves and the public. ... These mediators favor some sort of credentialing out of interest in promoting and supporting the highest standards for our field and, for some, out of fear that unless we mediators regulate or certify ourselves, someone else will do it for us.³

The committee concluded that a system of voluntary mediator certification would benefit both the public and the profession.

The committee's efforts have led to the formation of a sister organization—the Mediator Certification Consortium of California (MC3)—that is creating a voluntary mediator certification that we hope will become the gold standard for the mediation profession. MC3 certification qualifies mediators based upon their mediation background, relevant education, and demonstrated skills. It requires:

1. 80 hours of mediator education and training;
2. Performance criteria that includes prior mediation experience;
3. Live scan (fingerprinting) to ensure that inappropriate persons are not credentialed;
4. Criteria that require certified mediators to complete continuing education;
5. Commitment by mediators to both the ABA/AAA/ACR Model Standards of Conduct for Mediators and the California Rules of Court; and
6. A quality assurance process that will track complaints and, when necessary, discipline certified mediators.



MC3 certification will require that non-attorney mediators take a nuts-and-bolts course on litigation terminology, processes, rules, and procedures, similar to the prior requirement of LASC's ADR panel. It will also require participating mediators to take the course on mediation ethics contained in the California Rules of Court as it is currently administered by the Administrative Office of the Courts.

LASC's RFP is a missed opportunity. But it is also a chance for us to come together as mediators and create something better for our courts and our communities, and ultimately, for our profession. And that is an opportunity that we don't want to miss.

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³ Report of the SCMA Ad Hoc Committee on Mediator Regulation and Certification, available at <https://www.scmmediation.org/for-the-public/mediator-certification-program/>.