

# **Summary of ABA Task Force on Mediation Quality Results**

## **History**

In January, 2006 the American Bar Association Section of Dispute Resolution formed a task force to address issues of quality in mediation. The task force followed efforts by the Section of Dispute Resolution and other organizations to evaluate the feasibility of a national mediation credential. After determining that a national credentialing program was not feasible for the current mediation marketplace, the Section of Dispute Resolution formed the “Task Force on Improving Mediation Quality” to investigate factors that define high quality mediation practice.

## **Task Force Membership and Approach**

The seventeen Task Force members appointed by the officers of the Section of Dispute Resolution represent a diverse range of geographic locations, mediation perspectives, and practice areas (see Appendix A for a list of Task Force members). Task Force members include lawyers and non-lawyer mediators, lawyers who represent clients in mediation, academics, and administrators of court-connected mediation programs. Recognizing that the mediation field is broad and complex, the Task Force narrowed its focus to mediation quality in private practice civil cases (including commercial, tort, employment, construction, and other kinds of disputes that are typically litigated in civil cases, but not domestic, family law, or community disputes) where the parties are usually represented by counsel in mediation. The Task Force decided to take this approach in the belief that this focus would inform it about quality issues in a narrow, reasonably well-developed area of mediation practice, provide recommendations for improving mediation practice in that context, and perhaps suggest improvements for other areas of mediation practice that could be the focus of additional later efforts by the ABA or other groups.

The Task Force reviewed existing policy documents, reports, and research on mediation quality (see Appendix C). The Task Force determined that it could significantly contribute to a better understanding of mediation quality by embarking on an extensive effort to learn how users of mediation services felt about quality, while recognizing that user views are not necessarily conclusive. In order to gain an understanding of user views about mediation—at least in the context of private practice civil cases with represented parties (but not domestic, family law or community disputes)—the Task Force pursued several avenues of investigation.

## **Methodology**

The Task Force organized a series of ten focus group discussions in nine cities across the United States and Canada: Atlanta, Chicago, Denver, Houston, Miami, New York, San Francisco, Toronto, and Washington D.C. (two meetings were held in Washington).

For each set of focus groups the Task Force worked with local groups to develop an invitation list. The participants included outside counsel, in-house counsel, and non-

attorneys (such as insurance industry managers, risk managers, and human resource managers) whose responsibilities include working for parties in mediation. In later focus group sessions, the Task Force also included small groups of experienced civil mediators, who were asked a slightly different set of questions. In addition to the focus group discussions, the Task Force collected more than 100 responses to questionnaires from mediation users and mediators, and conducted telephone interviews with thirteen individuals who have been parties in mediation.

This report summarizes the data gathered from the focus groups, questionnaires, and interviewees. The Task Force's findings, observations, and recommendations are discussed in the following sections. Detailed summaries of the data can be found in Appendices D and E.

### **Findings and Observations**

Focus group participants, questionnaire respondents, and parties who were interviewed consistently identified the same four issues as important to mediation quality:

- Preparation for mediation by the mediator, parties, and counsel
- Case-by-case customization of the mediation process
- “Analytical” assistance from the mediator
- “Persistence” by the mediator

While the issues identified may not surprise many, we believe they are significant because mediation users consistently identified them as areas where steps could be taken to improve mediation quality. The report will discuss in depth these factors and provide observations, analysis, recommendations, and next steps. We emphasize here, as we do throughout this report, that our conclusions relate only to the arena of private practice civil cases where parties are represented by counsel. We offer no opinion whatsoever about the meaning, if any, of these conclusions for other kinds of mediation.

### **Report and Recommendations**

The Task Force's findings and observations lead to a number of recommendations, some of which will be carried out by the Task Force and some by other groups, on ways in which mediation practice can be improved:

- Create comprehensive mediation user guides including a video for parties and their attorneys.
- Consider whether to conduct research similar to the Task Force's research focused on other mediation contexts, such as family mediation, and consider how, if at all, the observations and conclusions of the Task Force concerning preparation, customization, analytical techniques, and persistence might be relevant to those other practice contexts.

- Develop recommendations for how mediation training programs can be responsive to user concerns related to preparation, customization, analytical assistance, and persistence.
- Examine how to use mediator analytical techniques in civil cases in which parties are represented by counsel, consistent with high quality mediation.
- Promote local group discussions with mediation users, similar to those held by the Task Force, conducted by state and local Bar Associations and others.
- Develop brief practical application pamphlets for mediation users (lawyers and parties) and for mediators based upon the Task Force's research efforts, experience, and expertise. The pamphlets will highlight what mediation users or mediators should consider with regard to preparation, customization, analytical assistance, and persistence in order to have high quality mediation.