

2017 OMA Conference Opening Plenary Modern Family: Ethics, Practices, & Hot Topics



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Presenters



Sam Imperati, JD

- BA Humanities, Santa Clara
- JD, UC Davis King Hall
- Mediator, facilitator, trainer, teacher, author, lawyer, pro tem judge, arbitrator, and Stand-Up Comedy Winner!
- Passionate about fairness, transparency, respect, & helping solve problems
- 2006 through 2017: Best Lawyers in America – ADR



Devin Howington, PhD

- PhD in Social Psychology,
- MS Conflict Resolution, U of O
- Interested in how situational influences affect accurate communication and how accuracy affects outcomes
- Trained Mediator: Custody and Small Claims
- Experienced teacher: research methods, statistics, and social psychology

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Provocative Prodding Du Jour!

- 1) Are we currently a:
 - a) Profession or
 - b) Trade Association?
- 2) Should we become a profession?
- 3) Where do we want to go from here on competency?
 - a) Status Quo
 - b) Certification
 - c) Licensing
- 4) Do our Standards of Practice allow us to promote substantive Social Justice in our roles as mediators?
- 5) Do our Standards of Practice allow us to promote procedural Access to Justice in our roles as mediators?
- 6) Should we update our Standards of Practice to broaden our role definition?



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1) “Profession” or “Trade Association?”

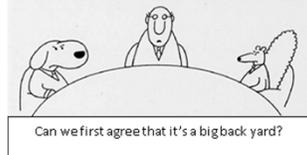
Elements That Define a Profession	Are We a Profession?
“Science” Predominates Over “Art”	No, but Emerging
Degree Required	No
Training	Some
Subject Matter-Specific Knowledge	Not Required
Licensure/Certification by the State	No
Peer Review	Some
“Professional” Associations	Yes
Mandatory Code of Ethics	No
Recourse through Malpractice Ins.	In Some Cases
Continuing Education for License	Not Required
Recognition by Other Institutions and Authorities (Federal, State, Private)	Yes
Recognized Legal Privilege	Yes
Personal Confidence of the Client	Yes
Broad Public Confidence	No

Adapted: “Characteristics of a Profession.” National Association for Workforce Development Professionals. www.nawdp.org

2) Our Standards of Practice

All in the Modern Family: *The Intersection of Public Participation, Public Policy, Facilitation, Mediation & Organizational Development.*

Thanks to: Mike Dahlstrom, Brian B. Egan, MSOD, CPF, and Carol Turner, CPF



<p>MEDIATION</p> <p>– OMA – Core Standards</p> <p>http://www.omediate.org/pg61.cfm</p>	<p>FACILITATION</p> <p>– IAF – Code of Ethics</p> <p>www.iaf-world.org</p>	<p>PUBLIC PARTICIPATION</p> <p>– IAP2 – Code of Ethics</p> <p>http://www.iap2.org/?8</p>	<p>ORGANIZATION DEVELOPMENT</p> <p>– ODN/ODI/ISOD – Ethical Guidelines</p> <p>http://www.theodinstitute.org/od-library/code_of_ethics.htm</p>
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A. Preambles (Code elements grouped differently for comparison purposes. Text edited for brevity.)

Core Standards – OMA –	Code of Ethics – IAF –	Code of Ethics – IAP2 –	Ethical Guides – ODN/ODI/ISOD –
<p>Preamble (1) guide mediators (2) inform participants (3) promote confidence in mediation ...</p> <p>Not “best practices,” “standard of care.”</p> <p>Oregon Lawyers: RPC 2.4. A lawyer serving as a mediator: • Inform and obtain the parties' consent to lawyer's role as mediator • Recommend each party seek independent legal advice before executing the documents.</p>	<p>Preamble Impartial role</p> <p>We act as process guides making known the values and ethical principles that guide our actions</p> <p>They provide a framework and are not intended to dictate conduct for particular situations</p>	<p>Preamble • Guide the actions • Hold ourselves accountable for these principles. • Define the expectations and aspirations of the public participation process</p>	<p>Preamble • To increase professional and ethical consciousness • To guide O. D. professionals • To help profession itself function at the fullness of its potential</p>



B. Definitions

Core Standards – OMA –	Code of Ethics – IAF –	Code of Ethics – IAP2 –	Ethical Guidelines – ODN/ODI/ISOD –
<p>Mediation: Process in which neutral 3rd party facilitates 2 or more parties <u>to a controversy</u> in reaching a resolution</p> <p>“Collaborative dispute resolution process”. Does not include meetings, outside of a collaborative rulemaking, in which a facilitator is used solely to lead an orderly meeting, manage an agenda, or assist the group in accomplishing tasks ...</p>	<p>Fill an impartial role <u>in helping groups become more effective.</u> process guides</p> <p>Facilitation: is the use of a third party who is impartial toward the issues being discussed. procedural assistance promote effective decision-making</p> <p>No decision making power</p>	<p>Any process that involves the public <u>in problem-solving or decision-making and uses public input to make better decisions</u></p> <p>We define stakeholders as any individual, group of individuals, organizations, or political entity with a stake in the outcome of a decision</p>	<p>Organization Development is very difficult to define Practitioners of “O.D.” range from the extremes of stopwatch-wielding efficiency experts to mantra-chanting spiritualists. The vast majority lie close to the center</p> 

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C. Participants Involved

Core Standards – OMA –	Code of Ethics – IAF –	Code of Ethics – IAP2 –	Ethical Guides – ODN/ODI/ISOD –
<p>“Clients” – Not Defined</p> <p>“Party” = “. . . a person, state agency or other public body . . . has a direct interest in the controversy that is subject of the mediation.”</p>	<p>“Clients”</p> <p><u>The groups we facilitate and those who contract with us</u> on their behalf</p>	<p>“Clients” – Not Defined</p> <p>“Stakeholders”</p> <p>Any individual, group of individuals, organizations, or political entity</p>	<p>“Clients”</p> <p>Those who contract with OD professionals</p>



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D. Self-Determination, Autonomy & Role

Core Standards – OMA –	Code of Ethics – IAF –	Code of Ethics – IAP2 –	Ethical Guides – ODN/ODI/ISOD –
<p>I. Self Determination</p> <p>Make individual decisions regarding what process to use <u>and</u> whether and on what terms to resolve the dispute</p> <p>II. Informed Consent</p> <p>Make participants aware importance of consulting with other professionals</p>	<p>3. Group Autonomy</p> <p>We respect the culture, rights, and autonomy of the group</p> <p>We seek the group's conscious agreement to the process</p>	<p>2. Role of Practitioner</p> <p>We will enhance the public's participation in the decision-making process and assist the decision-makers in being responsive to the public's concerns and suggestions</p> 	<p>I. Responsibility to Self</p> <p>A. Act with integrity; C. Recognize my personal needs and desires and, when they conflict with other responsibilities, seek all-win resolutions of those conflicts</p>

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E. Conflicts of Interest

Core Standards – OMA –	Code of Ethics – IAF –	Code of Ethics – IAP2 –	Ethical Guides – ODN/ODI/ISOD –
<p>III. Impartial Regard</p> <p>Conducting mediations fairly, diligently, even-handedly, no personal avoid actual, potential, or perceived conflicts of interest arising from a mediator's involvement with the subject matter of the controversy or the participants</p>	<p>6. Stewardship of Process</p> <p>Impartiality toward content</p> <p>We bring knowledge and expertise concerning the group interaction process. We are vigilant to minimize our influence</p>	<p>8. Advocacy</p> <p>Advocate for the public participation process and will not advocate for the interest, party, or project outcome</p>	<p>III. Responsibilities</p> <p>Serve the long-term well-being, interests, and development of the Client system and all its stakeholders, even when the work being done has a short-term focus</p>



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F. Competency

Core Standards – OMA –	Code of Ethics – IAF –	Code of Ethics – IAP2 –	Ethical Guides – ODN/ODI/ISOD –
<p>V. Process and Substantive Competence</p> <p>Mediate only when offer desired approach and possess level of substantive knowledge, skills, and abilities sufficient to satisfy the reasonable expectations</p> <p>Mediators should strive to satisfy the reasonable process expectations of the participants</p>	<p>1. Client Service</p> <p>Ensure competent to handle the intervention</p> <p>We avoid using processes, methods, or tools with which we are insufficiently skilled, or which are poorly matched to the needs of the group</p>	<p>No Provision</p> 	<p>II. Responsibility for Professional Development and Competence</p> <p>Maintain a professional level of competence within the limits of my competence, culture, and experience only with consultation from people native to or knowledgeable about those specific cultures</p>

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G. Training, Certification, and Continuing Education

Core Standards – OMA –	Code of Ethics – IAF –	Code of Ethics – IAP2 –	Ethical Guides – ODN/ODI/ISOD –
<p>Training Required</p> <ul style="list-style-type: none"> • Community. UofO • Court. Chief Justice Order No. 05-028 • Public policy. PSU Oregon Consensus <p>Necessary skills and substantive training, appropriate to his/her area of practice ...</p> <p>OMA Guidelines For Private Practitioner http://www.omediate.org/docs/Model%20Guidelines%20Amended%2012-15-10.pdf</p> <p>OMA Cert. History: http://www.ornmediation.org/what-is-mediation/guidelines-for-mediators/history-of-mediation-in-oregon/</p>	<p>8. Prof. Develop.</p> <p>We are responsible for continuous improvement of our facilitation skills and knowledge</p>		<p>II. Prof/Dev & Comp</p> <p>B. Strive to achieve and maintain a professional level of competence</p>

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J. Practice

Core Standards – OMA –	Code of Ethics – IAF –	Code of Ethics – IAP2 –	Ethical Guides – ODN/ODI/ISOD –
<p>X. Mediation Practice</p> <p>Mediators should foster diversity in the field ...</p> <p>Voluntary Mediation Process For Resolving Disputes With OMA Mediators, Approved December 11, 2006.</p>			<p>IV. Responsibility to the Profession</p> <p>Contribute to continuing professional development ...</p> <p>Promote the sharing of O.D. knowledge and skill</p>

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3) Promoting “Social Justice” and “Access to Justice”



- **Social Justice** = Justice in terms of the distribution of wealth, opportunities, and privileges within a society.
- **Access to Justice** = The ability of people to seek and obtain a remedy through formal or informal institutions of justice ...
- Access to justice is more than improving an individual's access to courts or guaranteeing legal representation.
- There is no access to justice where citizens (especially marginalized groups) fear the system; where it is financially inaccessible; where individuals have no lawyers; where they have no knowledge of rights; or where justice system is weak.
- Access to justice involves normative legal protection, legal awareness, legal aid and counsel, adjudication, enforcement, and civil society oversight.

• https://www.americanbar.org/content/dam/aba/images/dispute_resolution/publications/A2J_%20white_paper.pdf

• <https://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/access-justice>

**All those in favor of Social Justice / Access to Justice say, Aye ...
Opposed say, Nay!**

Issue: Can we promote it under our current Ethics/Standards of Practice?

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Audience Survey

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Idle Musings of an “Interesting” Man

- A) Robust research
- B) Targeted cross-disciplinary collaboration
- C) Codification of our learning into standards that clearly guide us and users
- D) Focused exploration on how our “profession” should evolve
- E) Promote Access to Justice

See:

https://www.americanbar.org/content/dam/aba/administrative/dispute_resolution/med_techniques_tf_report.authcheckdam.pdf

and

<http://www.mediate.com/articles/ImperatiFutur e.cfm>



THANK YOU

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