

**FINAL REPORT
OF THE OREGON MEDIATOR
COMPETENCY WORK GROUP**

convened by
The Oregon Dispute Resolution Commission
and
The Oregon Mediation Association

July 15, 1998

Authors: Alice Phalan and Lisa Burk
Editing: Jacqueline Abel and Terry Amsler

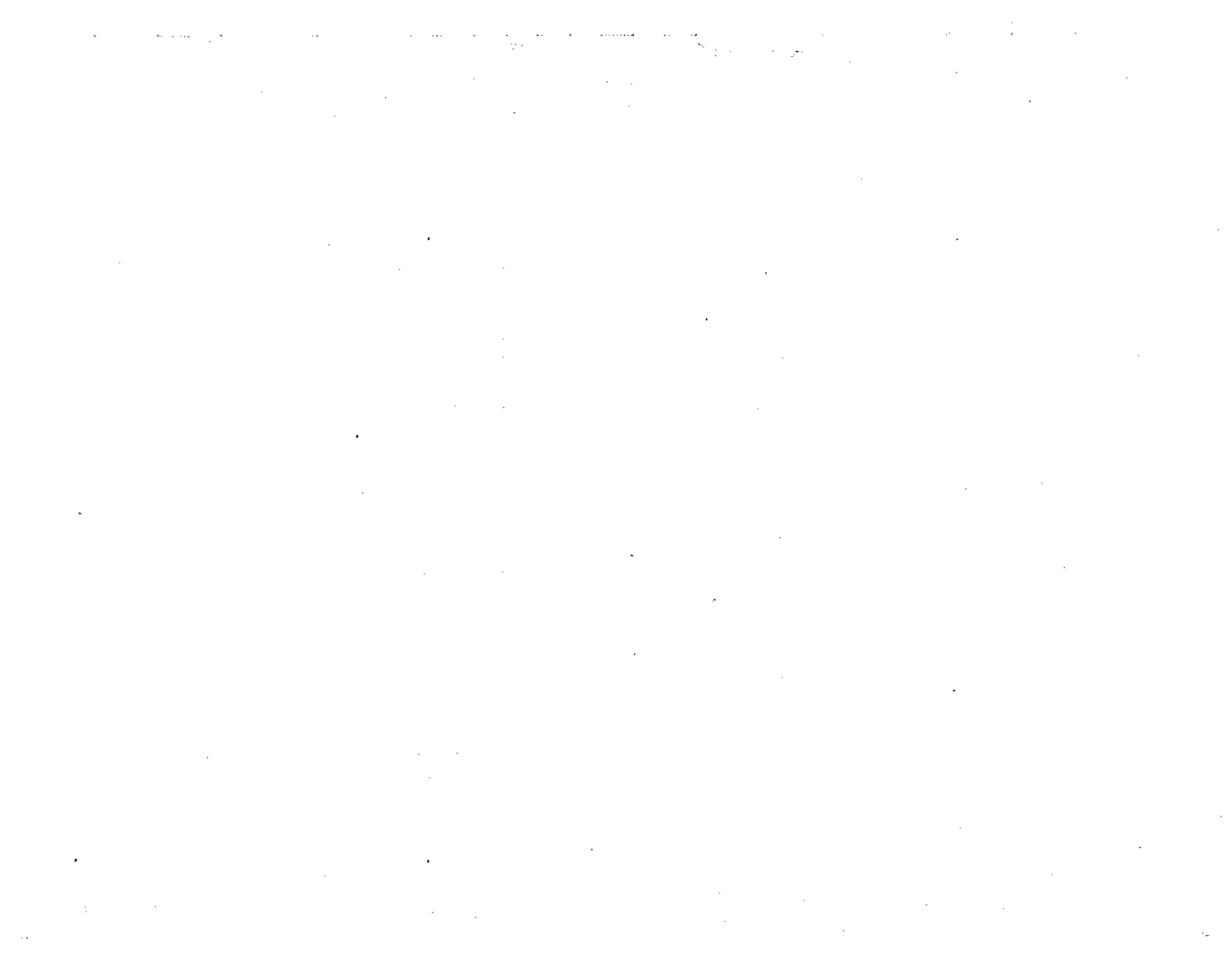


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Executive Summary

This Report summarizes the work of the **Oregon Mediator Competency Work Group** ("Work Group"). Because of their mutual interest in competency issues, the Oregon Dispute Resolution Commission and the Oregon Mediation Association jointly convened the Work Group in February, 1995. Its mission was *"To encourage a collaborative process based on consensus principles that will: identify stakeholders; design and then implement a statewide dialogue by which the stakeholders can communicate their thoughts and ideas on qualifications and competencies of mediators in the state of Oregon; and recommend a course of action to ensure competency of mediators."*

The **Oregon Dispute Resolution Commission** ("Commission") was established by the Legislature, in 1989, to support the beneficial and effective use of conciliation, negotiation, mediation, and other collaborative problem solving processes. The Commission is charged with the statutory mandate of developing qualifications, rules and standards for individuals and programs providing dispute resolution services with state funds. These include community dispute resolution centers, court-annexed domestic relations and civil court mediators, and the court system. The Commission has an interest in ensuring mediator competency and "best practices" in the field.

The **Oregon Mediation Association** ("OMA") is Oregon's only statewide organization for mediators and supporters of mediation. It was established in 1986 for the purposes of: promoting and popularizing mediation in Oregon; providing training, support and continuing education to mediators and supporters of mediation; establishing ethical standards for Oregon mediators and mechanisms to review and respond to ethical complaints and grievances; aiding in the development of legislation supportive of mediation; working with other organizations to further the growth of mediation in Oregon; developing programs to help insure that Oregon mediators are well qualified. In 1988, OMA developed its own "Standards of Practice" to which each of its over 340 members agree to adhere.

The two sponsoring organizations, along with numerous other participant organizations and individuals, devoted many hours of thoughtful work to this effort and met sixteen times between March, 1995, and January, 1997. This Report's purpose is to acquaint a broad spectrum of interested practitioners, policy makers, mediation consumers and others with the substance of the Work Group's deliberations. It provides a description of the process utilized, who was involved, recommendations of the Work Group for insuring mediator competency and suggestions as to how the recommendations may be implemented. There are specific recommendation made for the Oregon Mediation Association and the Oregon Dispute Resolution Commission.

Findings and Recommendations

The Work Group devoted considerable time to addressing various policy options for ensuring competency. Following deliberations, it was agreed that three options should receive continuing attention. These are:

- Certificate of Training Completion
- Certificate of Competence
- Public Education

While there was difficulty in reaching agreement on which competencies should apply to all areas of practice, the Work Group also agreed that the following questions should be considered in any discussion of mediator competency:

- Are we considering qualifications, competencies or guidelines?
- Is mediation broadly or narrowly defined?
- Are we considering private and/or public - and paid or unpaid - mediators?
- How are distinctions of party control over mediation selection and mediation process relevant to competency issues?
- What types of mediations are being addressed?

Another significant recommendation of the work group suggests that a process be established for collecting, reporting, and responding to complaints concerning mediators and mediation training.

Drafting Process for this Report

As agreed upon previously by the Work Group, the first drafting of this report was initially reviewed by those who attended either the December 13, 1996 or the January 8, 1997 Work Group meetings. Some changes were made after that review, and a revised version, dated April 7, 1998, was widely disseminated to mediators and other interested individuals, and feedback was requested from anyone who received it. Some written comments were received in response. A meeting of the Work Group was held May 15, 1998, in Salem, to assess this feedback and consider any future actions of the Work Group. At that meeting the Work Group finalized this report on May 15, 1998, and submitted it to the Oregon Mediation Association and the Oregon Dispute Resolution Commission.

In order to give Oregonians guidance on mediator competency, the Work Group requested that these organizations (ODRC and OMA) review the report, formulate their responses and articulate specific decisions related to the Report's Recommendations and Findings. The Work Group recommended that these organizations assure wide dissemination of their responses and decisions to the broader mediation community.

The Work Group, having completed its charge, disbanded.

I. Overview and Background of the Oregon Mediator Competency Work Group

In early 1995, the Oregon Mediation Association and the Oregon Dispute Resolution Commission prepared for and convened the Oregon Mediator Competency Work Group. In February of 1995, OMA's President and the Commission's Chair sent out an invitation to participate in the Work Group, and the first meeting was held on March 10, 1995. The invitation was broadly distributed to practitioner organizations, trainers, university programs, court services and others involved in mediation. Invitations to organizations were directed to chairs of those organizations. Staffing for the Work Group was shared between OMA and the Commission.

The following Mission statement was agreed to by the Work Group:

To encourage a collaborative process based on consensus principles that will: identify stakeholders; design and then implement a statewide dialogue by which the stakeholders can communicate their thoughts and ideas on qualifications and competencies of mediators in the state of Oregon; and recommend a course of action to ensure competency of mediators.

The charge that the Work Group agreed to take on was to:

1. *Investigate best practices in Oregon and other jurisdictions. Included in this investigation is a thorough review of literature in the area.*
2. *Design and implement a statewide consensus-building process concerning qualifications and competencies of mediators.*
3. *Produce a summary report for the convening organizations and other stakeholders which includes at least the following information:*
 - *a description of the process utilized,*
 - *who was involved,*
 - *the recommendations for ensuring mediator competency, and*
 - *suggestions as to how the recommendations may be implemented.*

The Work Group's members were affiliated with a number of national and state mediation organizations, including:

Association of Oregon Domestic Relations Court Services
Oregon State Bar's ADR Section
Northwest SPIDR Chapter
Academy of Family Mediators
National Association for Community Mediation
Oregon State Court Administrator's Office
Oregon Task Force on Family Law
Oregon Mediation Association
Oregon Dispute Resolution Commission
Representatives of Oregon Community Dispute Resolution Centers

Additionally, participants represent various sectors of mediation practice including family, commercial, labor, court-connected, public policy, school, community, and work place, as well as mediation trainers.

The specific individuals attending meetings of the Work Group changed over the course of the meetings held between March 10, 1995 and January 8, 1997. A list of participants who attended meetings is attached at the end of this report as *Attachment 1*. This list is not definitive and only those who attended the December 13, 1996, or January 8, 1997, meetings received this report.

Discussions about mediator qualifications and competencies took place in many forums, both locally and nationally. In April, 1995, after two years of deliberations, the Society for Professionals in Dispute Resolution (SPIDR) published a major report entitled *Ensuring Competence and Quality in Dispute Resolution Practice*. This report is the product of the SPIDR Commission on Qualifications, a group of practitioners, academics and policy makers established to study current qualification issues.

Ensuring Competence and Quality in Dispute Resolution Practice “responds to the growing need on the part of policy makers, government organizations and others to specify qualifications that ensure skillful, honorable and effective dispute resolution. It does so by balancing the need to set standards with a recognition that, because of the broad range of contexts in which dispute resolution occurs, defining a single set of standards could potentially limit and stifle the very skills, creativity and strengths that make this diverse field so valuable and rewarding.” (quoted from page 1 of SPIDR’s report).

In addition, the SPIDR report recommends that state and local organizations seek collaborative ways to address qualifications and competencies of mediators, ensuring that all interested stakeholders have a voice in the discussions.

II. The Oregon Mediator Competency Work Group Process

The Work Group met regularly from March, 1995 through December, 1996. There were two facilitators, provided by OMA and the Commission for all meetings. Decisions were reached through a consensus process.

The foundational work carried out by SPIDR (discussed in the section above) was a key area of study by the Work Group. At their first meeting, guest presenter Margaret Shaw offered a national perspective on issues of mediator competency. Ms. Shaw, a member of the SPIDR Commission on Qualifications, has written extensively on mediator qualifications and standards in the public and private sectors.

At the first few meetings, the Work Group reviewed the “Seven Steps Framework” approach from *Ensuring Competence and Quality in Dispute Resolution Practices*. A chart summarizing SPIDR’s seven steps appears as (*Attachment 2*) at the end of this report.

The Work Group developed a number of their own work products to capture group work, processes and agreements. For example, five definitions of Mediation were developed by group

process at the April 7, 1995, meeting which were subsequently revised to become three definitions at the next meeting. Those definitions are:

- Mediation is a process in which an impartial person helps parties in conflict to communicate and to make voluntary (informed) choices in an effort to resolve their dispute (differences). [National Standards for Court-Connected Mediation Program].
- Mediation means a confidential process in which an impartial mediator assists two or more parties, and those directly affected by the process, in reaching a mutually acceptable resolution or understanding of issues which may be in a dispute. This includes all communications between the mediator and/or the mediator's agent(s) and any party or parties to the process, until such a time as the issues are resolved or the process is terminated by the parties. This definition may change in certain types of cases or disputes.
- Mediation is a process in which an impartial third party - a mediator - facilitates the resolution of a dispute by promoting voluntary agreement (or "self-determination") by the parties to the dispute. A mediator facilitates communications, promotes understanding, focuses the parties on their interests, and seeks creative problem solving to enable the parties to reach their own agreement. [Developed by the American Arbitration Association, the American Bar Association, and the Society of Professionals in Dispute Resolution.]

A number of other process and substantive issues were dealt with during the eighteen months when the Work Group met regularly. The identified related documents all appear as attachments to this report.

- At the May 9, 1995 meeting of Work Group organizational protocols were established regarding meeting participation, decision making, responsibilities of members of the group and of facilitators, and ground rules (*see Attachment 3*).
- Also at the May 9, 1995 meeting, four small groups were used to elicit hidden agendas about hopes and fears for the work that lay ahead. That was memorialized as the chart that is (*Attachment 4*).
- The Work Group Road Map, created and revised during the process by the facilitators, is a two-page flow chart that outlined goals, outcomes and tasks for the Work Group. (*Attachment 5*).
- Six areas of specific mediation practice were identified, and Work Group participants from those areas worked on defining mediation within their particular practice area. Definitions of Practice Areas which resulted from this work appear as (*Attachment 6*).
- A discussion guide with questions for focus groups was developed to assist local focus groups with their discussions. This document (*Attachment 7*) was used in some small focus groups that met outside the Work Group meetings.

- A key piece of the Work Group's efforts resulted in the development of two matrices that were the subject of discussion and refinement at several meetings. The *Core Competencies Chart* began at the fourth or fifth meeting and evolved throughout the process from specific practice area competencies to a general set of competencies that apply to all mediators (see *Attachment 8*).
- *Practice Area Core Values and Outcomes* resulted from discussions in practice specific small groups and represent competencies that relate to specific areas of mediation practice (see *Attachment 9*).

III. How Other Professions and Organizations Evaluate Competency

On March 8, 1996, the Work Group heard presenters from organizations which have instituted competency-evaluation programs. The panelists represented the Sign Language Interpreting Program and the Appraiser Certification and Licensure Board; the Oregon Mediation Association provided information about the Addiction Counselor Certification Board of Oregon, the Association of Marriage and Family Therapists and the Idaho Mediation Association. The panelists spoke about the history of their programs, how each aspect of certification was developed, the type of testing done, the education and experience requirements, their provisions for complaints and grievances and decertification. Written materials from the Appraiser Certification Board and the Idaho Mediation Association are included as *Attachments 10 and 11*.

The Work Group identified issues raised by the presentations which seemed relevant to its discussions of mediator competency. Among the main issues identified were:

- Is the point of developing standards to: a) "Protect the public" b) Assure quality c) Limit the number of practitioners in that particular profession?
- Certification costs money
- Certifying that training has been completed does not necessarily ensure competence
- Sanctions, as well as protection, come with regulation

Common themes emerging from the discussion of these issues included:

- Both education and experience are needed
- Ethics has a role
- A program of continuing education is valuable
- Monitoring and supervision of providers is seen as unavoidable

IV. Five Options for Ensuring Competency

After extensive discussion of its work to date, the Work Group formed subcommittees to address five options for ensuring competency. The umbrella question that guided the discussion of these options was "How can we balance the legitimate need for inclusivity with the legitimate need for professionalism?" The following are five the options/subcommittees the group chose to develop further:

1. Certificate of Training Completion
2. Certificate of Competence
1. Licensure

4. Education of the Consumer (public education)
5. Doing nothing further at this time

The Work Group also asked each subcommittee to address how its assigned options would deal with these issues:

- Educating and training mediators
- Providing supervised experience for new mediators
- Ethical matters
- Continuing education of practitioners
- A monitoring process

The following summaries are not comprehensive, but they present some of the key issues and give a sense of the dialogue which took place. Many of the advantages and disadvantages were identified in brainstorming sessions during which no effort was made to arrive at consensus. They reflect the opinions of different people and may be contradictory.

1. Certificate of Training Completion

A certificate of training completion certifies that a person has completed training in accordance with the standards established by the trainer, but does not confirm that a level of competence has been achieved. The certifying entity, whether it is a private or public body, is responsible for establishing the competencies or adopting standards. Consumers may use the certification to help determine the qualifications of a practitioner.

Possible Advantages:

- A. Available to most mediators.
- B. Measurable through evidence of class work and experience hours.
- C. Could be administered with a relative amount of ease.
- D. Reasonable cost.
- E. Feasible — it would be possible to achieve within the current climate in Oregon.
- F. Better than no certification at all.
- G. Promotes public/program/mediator safety.
- H. Recognizes professionalism.
- I. Self-regulated vs. regulated by an outside body.
- J. Increases public awareness.

Possible Disadvantages:

- A. The ease with which this can be obtained will level the playing field. There is only one level of certification and experienced and novice mediators will all be listed under the same title.
- B. Provides no way to determine the quality of a mediator's work (except for trainer evaluation). Proves only that the individual took the training and has performed the required supervised mediations.
- C. The public might misinterpret the value of the certification.
- D. The cost (time and/or money) might be too high for volunteer mediators.

- E. The “art” of mediation can’t be evaluated.
- F. Liability for certifier.
- G. Loss of diversity.

2. Certificate of Competence

A certificate of mediator competence indicates that a person has demonstrated the possession of mediation skills and knowledge, as well as the ability to use the skills and knowledge effectively. Additionally, such a certificate may also verify other attributes, including the relevant training and experience necessary to assist in the prevention, management of resolution of disputes.

The certifying entity, whether private or public, is responsible for establishing competencies or adopting standards. Consumers may use the certification to help them determine the qualifications of the practitioner.

Possible Advantages:

- A. Protects consumers.
- B. Provides some protection for mediators.
- C. Provides process for quality control.
- D. Provides assurance of skill, not just “seat time” in training.
- E. Offers professional recognition.
- F. Increases public awareness that the service is available.
- G. Creates self-regulation within the field vs. regulation by another body.

Possible Disadvantages:

- A. Cost: time, money, administration.
- B. Difficult to evaluate the art of mediation.
- C. Who would do the evaluating?
- D. Reaching agreement on competency standards is difficult.
- E. Risk exists that an outside body might influence the standards.
- F. Liability for the certifier.

3. Licensure

Licensure is a method of ensuring qualifications and providing accountability for professional practices. A license is issued to a service provider by a government entity which sets competency standards and establishes requirements for proving that the standards have been met. The public is protected by the reasonable expectation that anyone licensed to practice has provided evidence of possessing knowledge and skill in that area. The public also has legal recourse if the practitioner does not meet that expectation. The practitioner is protected by knowing that all professionals in the field have completed the same requirements. Those who have not completed those requirements cannot legally practice in the field. Nurses, dentists, occupational therapists, lawyers and veterinarians are a few examples of professions that require licenses.

Possible Advantages:

- A. Clarifies the profession.
- B. Protects the public and the partner.
- C. Lends credibility to the field.

Possible Disadvantages:

- A. May limit flexibility and creativity of the field.
- B. Does not ensure competent services.
- C. High cost makes the field more exclusive.
- D. Could protect incompetent mediators.
- E. Could create an influx of actions against mediators.
- F. Would exclude those who entered the field in non-traditional ways.
- G. The field may still be too young to effectively carry out this option.

4. Public Education

A system of public education about mediation is qualitatively different from the other options. The purpose is to ensure that the public receives quality mediation services and provide recourse if the quality is questionable. Rather than establish a regulatory body to protect the public, public education allows self-protection by the users of mediation services. This system seeks to encourage the exercise of personal responsibility based on appropriate information. Through the use of this information, consumers of mediation services become competent to make informed choices and challenge inappropriate practices. This approach requires wide dissemination of information as well as the establishment of some system to handle consumer complaints.

Possible Advantages:

- A. Consumers control the regulation.
- B. More information about mediation would be available.
- C. Would raise public consciousness about mediation.
- D. Would increase the number of choices available to mediators.
- E. Is consistent with the empowering philosophy of mediation.
- F. Offers low-cost option.
- G. Information specific to areas of practice could be provided.
- H. Associated costs would be easier to budget for.

Possible Disadvantages:

- A. Very large task to educate "the public."
- B. Cost could be high.
- C. Mediators may not like it.

- D. Difficult to ensure consistency of form and content.
- E. Could be a waste of time and money if the public is not receptive.
- F. Target audience not defined.
- G. Unclear what information public needs to make informed decisions.

5. "Do Nothing" Option

The option of taking no further action on the issues of competency standards at this point was also considered. For the Work Group this would mean stopping further exploration into these issues and letting the market and other entities determine the direction of the field.

Possible Advantages:

- A. Professional mediators could develop their own standards and become a self-regulating profession.
- B. Professional organizations might place more emphasis on consumer education.

Possible Disadvantages:

- A. Unrealistic option because some requirements are already in place.
- B. Another entity — courts, mental health department, legislature — is likely to make decisions about mediation which might be highly restrictive or unrealistic.

After considering the five options, the group agreed that *the* "licensing" and the "do-nothing" options did not require additional discussion at this time. It was agreed that licensing should only be considered after further refinements of certification have been developed.

Doing nothing was not considered to be a practical since the ODRC, OMA and the courts are already engaged in numerous efforts.

It was agreed that the remaining three options should be part of the information that the Work Group included in outreach efforts to the larger mediation community. A number of such outreach efforts took place, primarily in the fall of 1996. For a summary of those efforts, see the *Appendix* at the end of this report.

V. Key Questions for Future Work in the Area of Competency

During the eighteen months of meetings, the Work Group's members learned that there are many styles and models of mediation, and that those working in different sectors of the field often had differing conceptions of what comprises good mediation practice. There was also recognition that an effective discussion of competency should ideally be preceded by dialogues within sectors on these matters. While there was difficulty in reaching agreement on which competencies should apply to all areas of practice, the Work Group did agree that the following questions should be considered by any individual, group or organization establishing competency standards for mediators.

1. Are we recommending qualifications, competencies or guidelines ?
 - a) Qualifications are the **minimum** traits, abilities, education, skills, experience, training and other preparation a person must possess to be considered able to practice in a profession. Whether a provider possesses these qualifications is typically decided by someone other than that person.
 - b) Competence refers to the skills, knowledge and other attributes which provide a quality of service that should be maintained to be considered “best practice.” Competence is demonstrated by the provider, but may be evaluated by another individual or body. An example would be the ability to successfully exercise skills commonly associated with dispute resolution providers such as impartiality, analytical thinking and ethical practice.
 - c) Both qualifications and competencies can be set forth as guidelines, standards of practice or aspirational goals. Guidelines are suggestions to practitioners. Standards of practice are rules specifying appropriate applications of dispute resolution skills in specific circumstances, meant to guide qualified dispute resolution providers. Aspirational goals are targets at which practitioners are invited to aim.

2. Is mediation broadly or narrowly defined?
 - a) An example of a broad definition is: “Mediation is a process in which an impartial person helps parties in conflict to communicate and to make voluntary (informed) choices in an effort to resolve their dispute (differences).” (National Standards for Court-Connected Mediation Programs) This definition could include shuttle diplomacy, over-the-phone case development or table time with a mediator.
 - b) An example of a narrow definition of mediation is: “Mediation is a voluntary process in which two parties sit down face-to-face with an impartial third party with the goal of resolving their differences.” This definition rules out court-mandated mediation, non-face-to-face dispute resolution and any mediation that does not focus on achieving a resolution.

3. In addition to the broad/narrow distinction, is it important to consider whether mediators? are:
 - a) Private mediators? (In business for themselves.)
 - b) Public mediators? (Work with organizations that receive public funding.)
 - c) Paid mediators? (Charge fees for the services they provide.)
 - d) Unpaid mediators? (Volunteers in community mediation programs.)

4. The following distinctions refer to the amount of control the parties have over the mediation. Is it:
 - a) Voluntary for the parties to be there? (Parties have freely chosen mediation as a way to resolve their dispute.)
 - b) A presumptive situation?
 - c) A mandatory requirement for the parties?
 - d) Were the parties given a choice of mediator or assigned one?
 - e) Given a choice of mediators?

f) Assigned a mediator?

Do these distinctions matter in examining the issue of mediator competency?

5. What type of mediation situation are you dealing with? Should all types of mediations be included?
 - a) Court-connected programs (such as some domestic relations mediations)
 - b) Community Dispute Resolution Centers
 - c) Private parties and private mediator
6. Should there be a higher standard of competency in situations where the parties have limited or no choice of mediator?
7. If people have a negative mediation experience because they lack guidelines to help them select a mediator who is well-matched to their dispute, will they be less likely to choose mediation as an option in the future?
8. Do we want to ensure that quality services are provided throughout the profession or just in certain areas?

VI. Recommendations to the Oregon Dispute Resolution Commission

On December 13, 1996, and January 8, 1997, the Work Group met and agreed to recommend that the Oregon Dispute Resolution Commission, in consultation with other interest groups, do the following three things:

- Design and implement a process for confidentially collecting and reporting complaints about mediators and mediation training.
- Design and implement a process for handling concerns and complaints from the public regarding mediators or mediator training. This process should include the option for voluntary mediation of the dispute. It should educate all parties and inform users about what, if any, remedies are available.
- Explore whether to issue guidelines or standards of practice regarding professional ethics and address whether there should be penalties for ethical violations.

The Work Group believes that these recommendations are well suited to the current roles and responsibilities of the Commission. These recommendations were presented to the Commission in January, 1997.

VII. Recommendations to the Oregon Mediation Association

The Work Group also agreed to make a recommendation to OMA at the December 13, 1996 and January 8, 1997, meetings. The Work Group recommended that OMA initiate, with other partners, an effort to explore funding for continued work involving the issue of mediator competency. They acknowledged that adequate funding, and not just volunteer effort, is

essential. Funding is also necessary for outreach efforts to other mediators, and to possibly extend these outreach efforts to consumers of dispute resolution services. The Work Group also recommended that the Commission support this effort.

VIII. Work Group Draft Report and Final Meeting

The Work Group strongly believed that the widest review and dissemination of this Report is essential. Therefore, a draft version of this report was circulated to members of the Work Group for peer review. Then on April 7, a revised version was widely disseminated to mediators and other interested individuals, and feedback was requested from anyone who received it. Some written comments were received in response.

A meeting of the Work Group was held May 15, 1998, in Salem, to assess this feedback and consider any future actions of the Work Group. Written feedback, received from six individuals, was considered. Some revisions to the Draft Report were agreed to by those attending that meeting and they have been incorporated into this report. The Work Group also agreed that this was their final meeting and agreed to submit it to the Oregon Mediation Association and the Oregon Dispute Resolution Commission

In order to give Oregonians guidance on mediator competency, the Work Group requested that these organizations review the report, formulate their responses and articulate specific decisions related to the Report's Recommendations and Executive Summary Findings. The Work Group recommended that these organizations assure wide dissemination of their responses and decisions to the broader mediation community. The Work Group, having completed its charge, disbanded.

The remainder of this report includes an Appendix of the Work Group's outreach efforts, which took place primarily during the fall of 1996. Following the Appendix are 12 attachments, which are the major work products of the Work Group's process. With the above text, they summarize the work of the Oregon Mediator Competency Work Group.

IX. Appendix: Outreach During the Work Group's Process

During the fall of 1996, members of the Work Group undertook outreach efforts aimed at getting feedback from the broader mediation community. The following factors guided this outreach:

- That efforts be coordinated, inclusive and cumulative.
- Continuing dialogue on the issues surrounding mediator competency was desired.
- Wide dissemination of information about the Work Group's mission was seen as vital.
- The Work Group hoped that the mediation community would eventually reach some form of consensus around the issue of competency.
- Strong belief in self-determination and choice for mediators suggested that outreach is critical in order to be as inclusive as possible.

Reports about, and discussion of, outreach efforts took place at the Work Group's December 13, 1996, meeting.

Oregon State Bar Alternative Dispute Resolution Section

The Work Group was provided a brief history of the OSB - ADR Section's involvement in the mediator competency discussions. A letter was sent to the 353 members of the section asking for their feedback on the topic; no written comments were received. The Section held a CLE (Continuing Legal Education) session on Mediator Competency on November 15, 1996. About twenty people attended. A summary of comments from the group's discussion is included below:

1. Should there be a process for ensuring competency?

Let market place determine unless the court appoints the mediator. Mandatory programs should always have an open door to preserve some element of the voluntary. This includes being able to select one's own mediator. Re: "ensuring competency of mediators": competencies should be referred to as "guidelines." This would imply detuning the requirement language.

The competency guidelines may be aspirational goals for new mediators, but the group was not supportive of the language "core competency".

2. What next steps should be recommended?

Instead of creating standards, establish an ombudsman-type position responsible for checking programs for integrity. Couple that with a person who reviews programs (or a peer review panel) to resolve disputes involving practitioners.

3. Other issues included:

- Current standards and rules for mediator qualifications have no enforcement mechanism. Are they, then, harmful, illusory promises?
- ODRC should be given authority to evaluate and should then begin collecting and documenting problems/complaints. This would put it in a position to determine what changes really need to be made.
- Require that ADR agreements include language such as: "if you have a complaint or concern regarding mediation services rendered, call or write ODRC."
- Establish a complaint process followed by a dispute resolution process for those complaints.

- Let the mediators in practice join whichever organizations they want and get those organizations to accept complaints. When necessary, an ODRC ombudsman could resolve those disputes.

Support public education about mediation (with the “competency” language omitted).

OMA Conference Workshop on Mediator Competencies

OMA devoted a day long workshop track to this topic which took place at their Annual Conference on November 9, 1996. The goal was to involve additional people in the continuing dialogue about mediator competency. A group of about 30 persons represented experienced and new mediators from various practice areas participated in this outreach effort. The majority of the participants were from the northwestern part of Oregon.

The conference room was set up with enlarged, laminated wall charts of the competency matrix that had been developed by the Work Group. Throughout the session, participants were asked to provide comments about the content and language of the process-related and underlying competencies. Small groups were formed to address specific charts that drew the strongest responses (as determined by a sticker/color code system). Comments were posted directly on the wall charts and attached papers.

It was clear from this session that there are many people interested in, and concerned about, the process of developing standards for mediators. The wide range of people in the room was presented with a tremendous amount of information in a short time. Members of the group reacted all along the spectrum from accepting the competency matrix with amendments to throwing the whole chart out and taking a completely different approach. There was no shortage of opinions on the subject, indicating that there are many voices which must be included in the process of developing standards for mediators in Oregon.

Attachment 12 includes a more detailed overview of this day and a summary of a survey distributed to the participants. These materials were prepared by one of the participants at the OMA outreach effort, Jessica Glenn.

Association of Oregon Domestic Relations Court Services

This group met to discuss the matrices. They noted that no national or state family mediation organization is currently using a competency-based system. A memo from the Association was distributed to the Work Group in which they “ suggest that the Mediator Competency Work Group recommend that the current Oregon Administrative Rules; Division 30, be adjusted upward to reflect the national trend of higher minimum standards and that the current method of certificate of completion of training, experience, supervision with continuing education requirements be continued.”

OMA Domestic Relations Interest Group

It was reported from this group that they generally support the Work Group's progress to date. They agreed that the OARs for domestic relations mediators need to be improved and anticipates working with the Association of Oregon Domestic Relations Court Services on this. Both domestic relations groups agreed there are some elements missing from the domestic relations section of the competency matrix developed by the Work Group.

Labor Management Colleagues

A representative of this group stated there were some elements missing from the labor management practice section of the matrix. The labor management mediators did not meet as a group to discuss the Work Group's draft material.

Public Policy Mediator Caucus

It was reported that some individuals from this caucus have raised a concern that the matrix appears to establish a preference for one style of mediation.

Attachment 1

Workgroup

Last Name	First Name	Group	Primary	Alternat	Rev D	Rec'	Organization Name	Address	City	Stat	Postal	Work Phone	Fax Number
Abel	Jacqueline	Oregon Dispute Resolutio					Oregon Dispute Resolution Co	3707 NE 16th Ave	Portland	OR	97212-	(503) 460-2566	(503) 282-6433
Atkins	Joe	Mediation Cert. Brd			Yes	Yes		1050 Crater Lake Ave, Ste G	Medford	OR	97504-	(503) 776-9166	
Bailey	Clarice	School Mediation	Yes		Yes	Yes		520 NW Davis, Ste 310	Portland	OR	97209-	(503) 223-7411	(503) 223-7490
Barkin	Tom	State Admin. Agencies	Yes		Yes	Yes	Public Utilities Commission	550 Capitol Street, NE	Salem	OR	97310-	(503) 378-6681	(503) 378-6163
Belskey	Michael	SOSC	Yes		Yes	Yes	Southern Oregon State College	Psychology Department	Ashland	OR	97520-	(541) 488-5676	
Birke	Richard	Unlversity Program	Yes - co		Yes	Yes	Willamette Law School	245 Winter St. SE	Salem	OR	97301-	(503) 370-6046	(503) 370-6375
Bishop	Donna	Judicial Department					Judicial Department	1162 Court St, Room 580	Salem	OR	97310-	(503) 986-5939	(503) 986-5503
Boatner	Jlm	Trial Court Admin.	Yes		Yes	Yes	Linn Co. Courthouse	P.O. Box 1749	Albany	OR	97321-	(541) 967-3602	(541) 928-8725
Brown	Nancy	State Agencies	Yes		Yes	Yes	Employment Relations Brd.	528 Cottage St. NE	Salem	OR	97310-	(503) 378-6471	(503) 373-0021
Browning	Greg	Military Dept.	Yes		Yes	Yes	Oregon Military Dept.	P.O. Box 14350	Salem	OR	97309-	(503) 945-3841	(503) 945-3962
Bryen	Gloria	OMA Staff	Yes				Oregon Mediation Association	P.O. Box 2952	Portland	OR	97208-	(503) 294-1017	(503) 644-8990
Buckmaster	Sharon	Work Place Mediator	Yes		Yes	Yes	SOTA Consulting	10810 SW Creightonwood	Portland	OR	97219-	(503) 246-2182	(503) 246-2182
Burk	Lisa	Facilitator	Yes				Communication Works	2817 NE 12th	Portland	OR	97212-	(503) 288-0782	(503) 335-8576
Campbell	Hon. Nancy	District Court Judge	Yes		Yes	Yes	Washington Co. District Judge	Washington Co. Courthouse	Hillsboro	OR	97124-	(503) 640-3443	
Cavender	Mike	Risk	Yes		Yes	Yes	Risk Control Services	P.O. Box 580	Brownsville	OR	97327-	(503) 924-9571	(503) 924-9571
Clark	Laurie	Volunteer		Yes	Yes	Yes		42271 SE Coalman Road	Sandy	OR	97055-	(503) 668-6362	
Coady	Larry	OSB-ADR		Yes	Yes	Yes	Private Attorney	722 SW Second Ave. Ste. 310	Portland	OR	97204-	(503) 227-7357	(503) 223-5821
Coddington	Betsy	NAME	Yes		Yes	Yes	VORP of Multnomah Co.	1401 NE 68th Ave.	Portland	OR	97213-	(503) 248-3460	(503) 248-3218
Cook	Laurie	DAS					DAS Budget Analyst	155 Cottage	Salem	OR	97310-	(503) 373-1996	(503) 373-7643
Cox	Lynne	U of O Law School, Med					U of O Law School Med Clinic	1221 University of Oregon	Eugene	OR	97403-	(541) 346-3890	(541) 346-1564
Dale	Sheila	Multi-Cultural Mediators	Yes		Yes	Yes	Private Attorney	4th & State / PO Box 120	Hood River	OR	97031-	(503) 386-6597	
Dearborn	Susan	Pacific Med Institute					Pacific Mediation Institute	12505 Bellevue-Redmond Rd #2	Bellevue	WA	98005-	(206) 324-4945	(206) 451-7940
Dixon	Pat	Task Force on Family La	Yes		Yes	Yes	Family Mediator	2695 12th Place SE	Salem	OR	97302-	(503) 363-8075	(503) 391-5348
Dubkin-Lee	Shelley	Community DR Programs	Stevens	Yes	Yes	Yes	Benton Co. Comm. Med. & DR	551 NW Monroe	Corvallis	OR	97330-	(541) 757-8677	(541) 754-1643
Edmonds	Darrell	Public Policy	Yes		Yes	Yes	Quality ADR Services	8627 104th St. E.	Puyallup	WA	98373-	(206) 848-5214	(206) 841-8593
Engiles	Anita	Oregon Mediation Associ	Yes		Yes	Yes		931 W. 12th	Eugene	OR	97402-	(503) 343-4815	
Forester	J. Richard	Mediator Competency					Dispute Resolution Services	1211 SW 5th 30th Floor	Portland	OR	97212-	(503) 241-0570	(503) 241-0914
Forst	Mary	Trainers		Yes	Yes	Yes	Confluence Northwest	342 Union Station 800 NW 6th	Portland	OR	97209-	(503) 243-2663	(503) 243-3683
Fox	Carrie	Public Policy Mediator						3414 NE Clackamas	Portland	OR	97323-	(503) 288-8804	
Fox	Ken	Hamline University					Hamline University	Box 38	St Paul	MN	55104-	(612) 641-2411	(612) 641-2435
Frangle	Sandra			Yes	Yes	Yes		835 Saginaw Drive, SE	Salem	OR	97302-	(503) 581-7322	(503) 581-1861
Gibson	Jacquie	Mediator Competency		Yes	Yes	Yes	U of O	1228 University of Oregon	Eugene	OR	97403-	(541) 346-0617	
Hagger	Sherriann	Multi-Cultural Mediation	Yes		Yes	Yes	American Friends Services	2249 E. Burnside	Portland	OR		(503) 230-9427	
Hallmark	R. Elaine	Public Policy Mediator		Yes	Yes	Yes	Confluence Northwest	1220 SW Morrison, Tenth Floor	Portland	OR	97205-	(503) 243-2493	(503) 243-3683
Hallmark	Barbara	Nat'l Assoc Community	Yes		Yes	Yes		2224 NE 25th	Portland	OR	97212-	(503) 288-8057	
Hammer	Susan	OSB-ADR		Yes	Yes	Yes	Stole Rives	900 SW 5th	Portland	OR	97204-	(503) 294-9209	(503) 220-2480
Hanamura	Steve	Multi-Cultural Mediation			Yes	Yes	Hanamura Consulting	1923 NE Broadway, Ste. LL	Portland	OR	97232-	(503) 288-8670	(503) 288-8682
Hannan	Karen	Commercial	Yes		Yes	Yes	Better Business Burear	333 SW Fifth	Portland	OR	97204-	(503) 228-3721	(503) 226-8200
Hassen	Megan	Mediator Competency					Marlon County Courthouse	PO Box 12869	Salem	OR	97309-	(503) 588-7988	
Hatzenbeler	Mary	SPIDR	Yes		Yes	Yes	Hatzenbeler & Associates	316 E Fourth Plain Blvd	Vancouver	WA	98663-	(360) 695-6188	(360) 737-7686
Howard	Joan	Courts			Yes	Yes	Linn Benton Courts	P.O. Box 1749	Albany	OR	97321-	(541) 967-3952	
Howe - III	William	Mediator Competency						1875 Skyland Dr	Lake Osw	OR	97034-		
Hunrick	Karl	OMA President	Yes		Yes	Yes	Neutrals.	2000 NE 42nd Ave Ste. #113	Portland	OR	97213-	(503) 234-3294	(503) 233-5169

ATTACHMENT 1

Last Name	First Name	Group	Primary	Alternat	Rev D	Rec'	Organization Name	Address	City	Stat	Postal	Work Phone	Fax Number
Imperali	Sam	OSB-ADR	Yes		Yes	Yes	Institute for Conflict Managemen	208 SW First, Suite 360	Portland	OR	97204-	(503) 224-9014	(503) 224-0789
Jarrett	Saun Dee	Police Crisis Chaplain			Yes	Yes	Little Chapel of Chimes Mortuar	430 N. Killingsworth	Portland	OR	97214-	(503) 283-1976	(503) 283-1979
Leo	Victor	Mult-Cultural Medlation			Yes	Yes	SOAR	0245 SW Bancroft, Ste. B	Portland	OR	97201-		(503) 284-6445
Mangin	Rene'-Marc	SPIDR NW	Yes		Yes	Yes	NCA, Inc.	1547 NE 51st Avenue	Portland	OR	97213-	(503) 331-1415	
McIsaac	Hugh	Assoc. of Family Concll.	Yes		Yes	Yes	Multnomah Co. Family Services	1021 SW 4th, Room 350	Portland	OR	97204-	(503) 248-3189	(503) 248-3232
McVicker	Carolyn	Public Policy Mediator					McVicker & Associates	2710 NE 28th Avenue	Portland	OR	97212-	(503) 288-8804	(503) 288-8804
Melamed	Jim		Yes		Yes	Yes	The Mediation Center	440 East Broadway, Suite 340	Eugene	OR	97401-	(503) 345-1456	
Minard	Julien	Neighborhood Mediation	Yes		Yes	Yes		3624 SE Carlton	Portland	OR	97202-	(503) 823-3152	(503) 823-3150
Neilson	Louise	Process Consultant	Yes		Yes	Yes		14109 SE Falroaks Ave.	Milwaukie	OR	97267-	(503) 786-9069	(503) 786-0549
Niemeyer	Mike	Mediator Competency					Department of Justice	1162 Court St NE	Salem	OR	97310-	(503) 378-4620	(503) 378-3784
Niemeyer	Mike	Department of Justice					Department of Justice	1162 Court St NE	Salem	OR	97310-	(503) 378-4620	(503) 378-3784
Paris	Emmanuel	ODRC Commissioner	Yes		Yes	Yes	Neighborhood Mediation Center	4815 NE 7th Ave.	Portland	OR	97211-	(503) 823-3152	(503) 823-3150
Phalan	Alice	Facilitator					OR Dispute Resolution Comm.	1174 Chemeketa St. NE	Salem	OR	97310-	(503) 378-2877	(503) 373-0794
Porter	Janis Sue	Commerical	Yes		Yes	Yes	US Arbitration/Mediation	1000 SW Broadway #1710	Portland	OR	97205-	(503) 223-2671	
Scher	Linda	OMA		Yes	Yes	Yes	Johnston & Root, P.C.	1500 SW First Ave., Suite 630	Portland	OR	97201-	(503) 226-7986	(503) 223-0743
Silverberg	Donna	Public Policy Coordinator	Yes				Office of Natural Resources	255 Capitol St NE	Salem	OR	97310-	(503) 378-2877	(503) 373-0794
Silnick	Stan	Oregon Mediation Asso.	Yes		Yes	Yes	Clackamas Co. DR Center	P.O. Box 215	Marylhurst	OR	97036-	(503) 635-9130	(503) 635-8946
Slezak	Ingrld	Task Force on Family La	Yes		Yes	Yes	Mediation Services	1020 SW Taylor Street, Suite 84	Portland	OR	97205-	(503) 248-0938	(503) 248-0943
Smith	Pam	Assoc. Court Connected	Yes		Yes	Yes	Multnomah Co. Family Services	1021 SW 4th, Room 350	Portland	OR	97204-	(503) 248-3189	(503) 248-3232
Smith	Martha	College Mediation- WOS	Yes		Yes	Yes	WOSC	345 Monmouth Ave.	Monmouth	OR	97361-	(503) 838-8250	(503) 838-8474
Smith	Susan	Commission	Yes		Yes	Yes	Willamette University	245 Winter St. SE	Salem	OR	97301-	(503) 370-6493	(503) 370-6375
Stern	Tom	Volunteer	Yes		Yes	Yes	Marion Co. Neighbor-to-Neighb	1645 Liberty, SE	Salem	OR	97302-	(503) 585-0651	
Stevens	Jane	Community DR Programs	Yes	SD-Lee	Yes	Yes	VORP/Mediation of Linn Co.	P.O. Box 861	Albany	OR	97321-	(541) 928-5323	(541) 967-1029
Stewart	Shannon	Courts			Yes	Yes	Multnomah Co. Courts	1021 SW Fourth Ave.	Portland	OR	97204-	(503) 248-3318	
Taylor	Alison	Academy Fam. Mediators	Yes		Yes	Yes	Clackamas Family Courts	704 Main St. Ste. 200	Oregon Cit	OR	97045-	(503) 655-8415	(503) 650-3584
Taylor	Bill	Judiciary	Yes				Legislative Council	S-101 State Capitol	Salem	OR	97310-	(503) 986-1694	(503) 986-1243
Townsend	Suzanne	State Agencies	Yes		Yes	Yes	Dept. of Justice	1163 Court St. NE	Salem	OR	97310-	(503) 378-6060	(503) 986-5880
Welmer	Connie	Labor Mediators	Yes		Yes	Yes	FMCS	1220 SW 3rd Ave. #1630	Portland	OR	97204-	(503) 326-2176	(503) 326-5031
Willet	Al	Assoc. Court Connected	Yes		Yes	Yes	Yamhill Co. Mediators	11235 NE Red Hills Road	Dundee	OR	97115-	(503) 538-4476	
Zinkln	Mary	Trainers	Yes		Yes	Yes		3276 SE Sherman	Portland	OR	97214-	(503) 236-3149	

Attachment 2

The Seven Steps to Understanding and Ensuring Competent Dispute Resolution Practice

	Step 1	Step 2	Step 3
	What is the Context?	Who is Responsible for Ensuring Competence?	What do the Practitioners and Programs do?
<div style="border: 1px solid black; padding: 5px;"> <p>The Commission has prepared an "implementation guide" for using the Seven Steps Framework and a detailed "sourcebook on qualifications" containing resource materials. These are available from the International SPIDR Office in Washington, DC at 202/783-7277.</p> </div>	<p>A practice appropriate in one context may be inappropriate in another. A careful examination of context clarifies the values and goals for all participants.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Clarify values and goals for programs/practitioners: Variations can include: <ul style="list-style-type: none"> - court efficiency - social order - social justice - participatory decision-making - direct democracy - utilitarian - restoration of relationships - maximization of joint gains - fair process - fair and stable outcomes <input type="checkbox"/> Review nature of disputes <input type="checkbox"/> Review available DR processes <ul style="list-style-type: none"> - Negotiation, mediation, adjudication <input type="checkbox"/> Review structure of DR services: <ul style="list-style-type: none"> - mandatory - voluntary - practitioner - program - volunteer - paid - government - private - party choice of practitioner <input type="checkbox"/> Consider cultural issues: <ul style="list-style-type: none"> - Broadly defined - Implications for qualifications - Risks in setting standards <input type="checkbox"/> How do you define success in this context? 	<p>Ensuring competence and quality is a shared responsibility.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Define roles/responsibilities for: <ul style="list-style-type: none"> - practitioners - program administrators - policymakers - trainers - parties - other professionals <input type="checkbox"/> Who is responsible for competence in your practice or program? 	<p>Before defining what competent means or who is competent in a practice context, you must ask competent to do what?</p> <ul style="list-style-type: none"> <input type="checkbox"/> Review practitioner tasks: <ul style="list-style-type: none"> - procedural assistance - substantive assistance - relationship-building assistance - third-party decision-making assistance <input type="checkbox"/> Review program tasks: <ul style="list-style-type: none"> - In providing services - In assessing practitioner competency <ul style="list-style-type: none"> • solicit applications with defined requirements • screen applicants • train practitioners • select practitioners • assign cases refer parties • monitor practitioners performance • evaluate performance • retrain or disqualify practitioners <input type="checkbox"/> What are your tasks?

SPIDR Commission on Qualifications Report 2

Step 4	Step 5	Step 6	Step 7
What Does it Mean to be Competent?	How do Practitioners and Programs Become Competent?	How Is Competence Assessed?	How Should Assessment Tools be Used to Assure Quality?
<p>Competence is the acquisition of skill and knowledge, the ability to use that skill and knowledge effectively, and the presence of other attributes that enable a program or practitioner to assist others in the resolution of disputes.</p> <p>There are core skills, knowledge and other attributes that apply across contexts and processes. However, different elements may be required in different contexts.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Elements of competence for practitioners: <ul style="list-style-type: none"> - core competence - elements of competence relevant to the context, for example: <ul style="list-style-type: none"> • sector • process • special circumstances • jurisdiction • subject expertise <input type="checkbox"/> Elements of competence for programs <ul style="list-style-type: none"> - to carry out mission - to carry out responsibility for competent practitioners <input type="checkbox"/> What kinds of competence do you need? 	<p>There are multiple paths to competence.</p> <p>Competent practitioners should have an appropriate combination of the following:</p> <ul style="list-style-type: none"> <input type="checkbox"/> training <input type="checkbox"/> skills-based education <input type="checkbox"/> supervision <input type="checkbox"/> apprenticeship <input type="checkbox"/> internship <input type="checkbox"/> substance experience <input type="checkbox"/> process experience <input type="checkbox"/> life experience <p>What combination do you/will you use?</p>	<p>The duty to assess competence is a shared responsibility. Assessment should take place at different points in time and using a combination of methods.</p> <p>Methods of assessing practitioner competence:</p> <ul style="list-style-type: none"> <input type="checkbox"/> continuing education <input type="checkbox"/> training and self-assessment <input type="checkbox"/> peer review <input type="checkbox"/> live or taped observation <input type="checkbox"/> caseload <input type="checkbox"/> settlement rates (use cautiously) <input type="checkbox"/> written tests <input type="checkbox"/> performance tests <input type="checkbox"/> user evaluations <input type="checkbox"/> complaints <input type="checkbox"/> references <input type="checkbox"/> de-briefings <input type="checkbox"/> interviews <p>Methods of assessing program competence:</p> <ul style="list-style-type: none"> <input type="checkbox"/> consumer input <input type="checkbox"/> complaints <input type="checkbox"/> self-assessment by staff <input type="checkbox"/> troubleshooting <input type="checkbox"/> regular audits <input type="checkbox"/> visiting committee peer review <p>What assessment tools do you/will you use?</p>	<p>Determine how to use these tools to assess whether programs and practitioners are delivering quality services, and whether to use the tools formally or informally.</p> <p>Uses of assessment tools for practitioners:</p> <ul style="list-style-type: none"> <input type="checkbox"/> establish rosters <input type="checkbox"/> membership criteria <input type="checkbox"/> identify areas for improvement/ retraining <input type="checkbox"/> refer/assign cases <input type="checkbox"/> selection for cases <p>Uses of assessment tools for programs:</p> <ul style="list-style-type: none"> <input type="checkbox"/> funding <input type="checkbox"/> improve services <input type="checkbox"/> improve use of practitioners <input type="checkbox"/> revise regulations/ standards <input type="checkbox"/> document achievement of goals <p>Certification and decertification:</p> <ul style="list-style-type: none"> <input type="checkbox"/> forms and levels of certification <input type="checkbox"/> rationale for certification <input type="checkbox"/> when is formal certification needed? <input type="checkbox"/> how to certify? <input type="checkbox"/> who should certify? <p>How do you/will you use assessment tools?</p>

Attachment 3

Organizational Protocols

Mission

The Mission of the Mediator Competency Work Group is to develop a plan of action regarding the competency of mediators.

Meeting Participation

1. All meetings are open to the public and the media.
2. Primary participants are the individuals, including the alternates, committed to regular meeting participation. Secondary participants are the individuals receiving meeting agendas, reviewing drafts of documents, as well as other interested parties in focus and constituency groups.
3. Primary participants will serve as a liaison to their groups or organizations and share their perspectives, if applicable.
4. The Work Group will consider at end of each meeting whether to allow additional primary participants at future meetings.

Decision Making

1. The Work Group will operate by consensus using the straw poll method.
2. The Work Group will mark off decision points requiring input from constituent groups and secondary participants and establish a process and timeframe which allow opportunity for input.
3. The Work Group commits to providing meaningful consideration to secondary participant perspectives and will seek out forums for secondary participants issues and interests.
4. The Work Group will address communication/decision making of any subgroups designated by the Work Group when appropriate.

Responsibilities of Members of the Group

1. The Work Group members are committed to insuring diversity, in the fullest sense.
2. Each participant commits to regular participation in the Work Group.
3. Work Group members are encouraged to seek out ways to keep their constituent groups informed of the discussions.
4. If a participant can not attend a meeting, he/she agrees to fully brief and be fully briefed by alternate.
5. The Work Group will not "go back in time" to catch up a person who has missed a meeting.
6. Each participant is responsible for communicating to the facilitators any planned absences

Responsibilities of the Facilitators

1. The facilitators will provide the Work Group with written information and the meeting summary two weeks in advance of the meeting.
2. The primary tasks of the facilitators are to guide the group in their discussions, including managing the agenda, helping the group stay on task, and assisting the members in developing consensus. Facilitators will work with participants to develop work products for meeting discussions.
3. The facilitators shall not express their views on the content of the discussions.

Ground Rules

Members of the Work Group shall seek to participate constructively in the meetings:

1. Speak again only after everyone who desires to has spoken.
2. Participants shall assist each other and the facilitator in staying focused on the current agenda topic. Participants signal their interest in making a process comment.
3. One person speaks at a time.
4. Participants will indicate interest in speaking by raising hands.
5. Participants responsible for their own participation, monitoring own "air time."
6. Meetings start on time and end on time.

Approved May 9, 1995

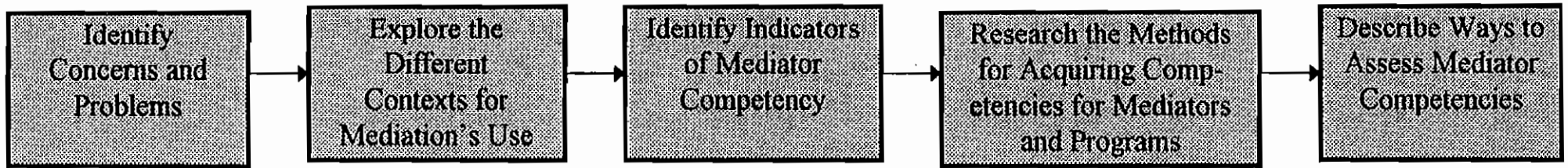
Attachment 4

WHAT ARE OUR HOPES AND FEARS FOR THE WORK THAT LIES AHEAD?

<i>HOPES</i>	<i>FEARS</i>
<p>Group 1</p> <ul style="list-style-type: none"> -Some way to measure the effectiveness of the program -Generate weeding criteria for people who are clearly not mediators -The process would not be damaged by people not following the mediation process -Profession recognized, income producing -Statewide consistency so that different jurisdictions don't arbitrarily set their own standards -Educate employers and consumers to make broader impact -Program effectiveness measurable 	<ul style="list-style-type: none"> -This process will be a waste of time -So inclusive that anyone can say, "I'm a mediator." -How the competency /qualifications process might exclude people on the front end learning curve -People are going to get excluded- I'll get excluded -We may do a lot of work and find the project ignored -We may do a lot of work and not produce to merit our time and energy
<p>Group 2</p> <ul style="list-style-type: none"> -Integrate collaborative problem solving into society -Weed out people based on standards of competency, not degrees -Help programs select competent mediators -Common understanding of what mediation is -Mediation more legitimized as a profession 	<ul style="list-style-type: none"> -Two tiered system; eg., community programs vs. lawyers -End of like an exclusive regulatory system -Will end up setting qualifications and certification, not competencies -Standards won't account for differences in style
<p>Group 3</p> <ul style="list-style-type: none"> -Competency directly related to a successful process that will increase consumer satisfaction -Standards need to be set for practice to provide protection of the consumer -Options/grievance -Get to a nugget of competencies -Assist mediators and consumers in assessing levels of competencies -Different approaches to mediation could be honored/acknowledged -Respecting cultural perspective -Attainability 	<ul style="list-style-type: none"> -Too restrictive; eg. in Florida only lawyers can do family mediation -People with money and power will set license requirements -Could exclude other areas of practice -Could value background and education over experience -Competency/qualifications could become attached to an institutional process, which has "isms" -Different styles could be considered a deficit -Difference=inferiority
<p>Group 4</p> <ul style="list-style-type: none"> -Not lose sight of aspirational competencies -Broad enough standard to evaluate -Move to qualifications -Minimum standards high enough -Volunteer work not trivialized -Access to quality training -Process to deal with people not meeting the standard -Mediation not seen as a profession without standards or requirements 	<ul style="list-style-type: none"> -List of requirement that will be reduced to a paper chase, paper system without teeth -Paper credentials do not equal skill -Exclusive concerning finances or access -Too generalized or watered down to be meaningful - "Grandparenting" fear -Not respecting style differences -Focusing on the minimal resulting in loss of aspiration for greatest competency -Not possible to operate

Attachment 5

Road Map for Mediator Competency Work Group



OUTCOME:
Agreement on a Statement of Purpose

OUTCOME:
Creation of a Big Picture for the Mediation in Oregon

OUTCOME:
Understanding of what Mediators and Program do

OUTCOME:
Identification of Multiple Paths to Competency

OUTCOME:
Understanding the Inter-relationship of Competency and Assessment

ATTACHMENT 5

TASKS

- Survey participants
- Contact interested state and local organizations/parties for expectations and concerns
- Seek out national/other organization perspectives

TASKS

- Clarify values and goals of programs and practitioners
- Identify cultural influences/requirements/mandates in practice
- Identify values and goals in common and conflict among the practice areas

TASKS

- Describe actions mediators engaged in during:
 - assessment
 - procedural assistance
 - substantive assistance
 - relationship building
 - third party decision making
- Work with general and specific areas of practice
- Research and incorporate results/reports from national/other states organizations

TASKS

- Survey mediators to identify the formal and informal methods used to acquire needed skills and knowledge
- Describe the methods including prerequisites and other responsibilities

TASKS

- Identify different assessment methods
- Identify how values and goals affect use of an assessment method
- Explore advantages and disadvantages of different methods

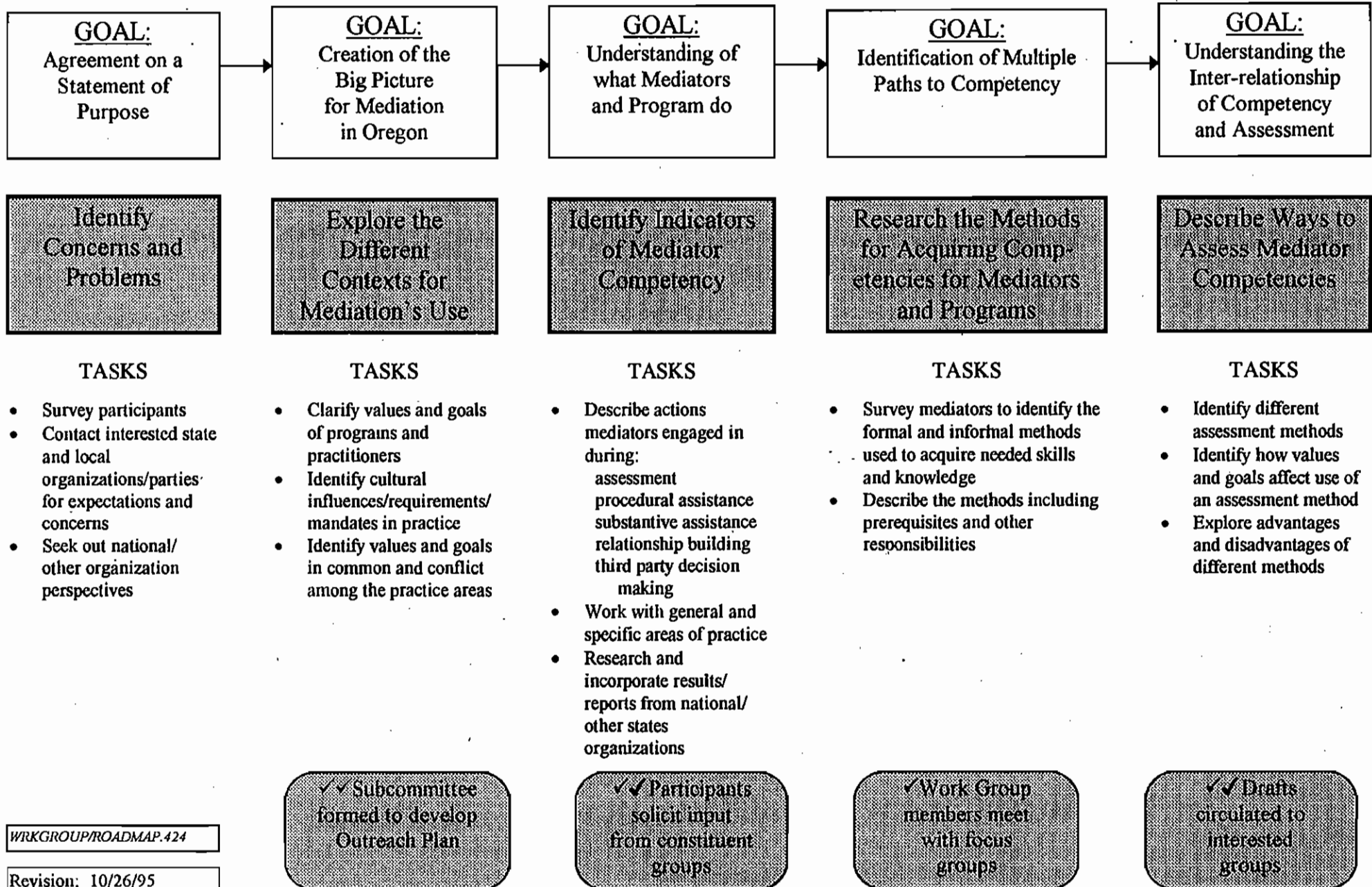
Road Map for Mediator Competency Work Group

April - May 1995

June - January

February

March - 1996



Attachment 6

Practice Area Definitions

The Work Group charged the practice areas with defining mediation within the context of their individual practice areas. Each practice area was asked to consider the following questions while defining mediation:

- Who are typical parties and what are common issues that arise in mediation?
- Does it pertain to a certain setting or source?
- Is mediation voluntary or mandated?
- How do parties get to mediation?
- Is the process or outcome subject to a ratification process?
- Who pays for the mediation? How is the mediator selected, and what is the degree of choice in the selection of the mediator?
- Is the mediator role evaluative or facilitative?

Each practice area met at least once with representatives of the practice area. The draft definitions were reviewed at the March 8, 1996 meeting. The drafts of practice area definitions are reprinted below. Each group welcomes your comments and feedback. Please contact the following practice area liaisons:

Community:	Emmanuel Paris (503) 823-3152
Criminal:	Betsy Coddington (503) 248-3480
Civil/Commercial:	Sam Imperati (503) 224-9017
Family:	Alison Taylor (503) 655-8415
Public Policy:	Darrell Edmonds (208) 848-5214
Workplace:	Sharon Buckmaster (503) 246-218

Definition of Workplace Practice Area

For the task of developing a definition of a specific practice area, we note several elements that are important in framing our response. First, we want to emphasize that in this specific area of mediation, people come to the work from a number of different disciplines. This may result in utilization of different techniques; however, we appear to be consistent in our belief that the goal of the work is to assist functional people struggling with acute interpersonal conflict to work together effectively.

Secondly, we are cognizant of the overlap of workplace mediation with work that traditionally may have fallen in such domains as Organization Development or Counseling. Third, we are aware that this area of work poses some interesting issues with respect to legal implications and various constraints and liabilities that impact the work. We have attempted to delineate these comments further in the attachment.

Responding to the questions as they were posed:

1.a. Typical parties:

- co-workers
- supervisor/subordinate

- peers (e.g., two managers)
- applicant and/ potential employer
- two or more parties in the workplace
- work teams / dept. representatives
- Other possibilities include non-employees (like contract workers) who have an ongoing business relationship and where the issues are interpersonal. Also, what about customers or vendors/suppliers as parties? Does this fall in workplace or commercial mediation?

1.b. Common Issues:

- performance
- conduct
- harassment
- discrimination
- unsatisfactory working relationship
- perception of abusive behavior
- power imbalances
- non-selection roles and responsibilities

2. Setting or Source: Arises out of the workplace setting.

3. Voluntary or Mandated? Mostly voluntary. Because there are elements of power and coercion which operate in virtually all workplaces, we recognize that mediation may not feel voluntary despite our best efforts.

4. Getting There: Typically parties come from inside the workplace and are likely to be referred by managers, EAP counselors, Legal, union, HR staff, or EEO staff. In some cases, the parties themselves have the to seek mediation at their own discretion.

5. Ratification: Mostly not. If the agreement is reached by representatives of larger constituencies, they may need to bring recommendations or proposals to these groups for review.

6. Payment and Selection: Generally, the employer pays the fees, although if a union is involved, they may share in the cost. In a few situations where there is a conflict resolution system in place, the employee shares a portion of the cost. Managers generally select the mediator but, in the final analysis, the mediator must be acceptable to both parties. Often the employer identifies one or more potential candidates.

7. Degree of Choice: See above.

8. Mediator Role: Generally facilitative. We hold the value that where mediation occurs between people who will have an ongoing relationship, the mediation process should assist the parties in mending the relationship so that they can work together more effectively in the future.

OSB ADR Section Definition of Legal\Civil Mediation Practice Area

1. Typical Parties:
Common Issues: Individuals and varying business entities and groups
Legal and factual disputes involving rights and obligations
2. Setting or Referral Source: Court, court-connected, contractual private dispute resolution, pre-filing "in the shadow of the law", public and non-profit organizations, e.g., BBB, VORP.
3. Voluntary or mandatory Both, also presumptive mediation.
4. How parties get to mediation: Voluntarily or mandated by court/agency rules, statutes, or contract.
5. Outcome Subject to Ratification: Sometimes, e.g., Workers' Compensation, Domestic Relations, Criminal.
6. Who Pays:
How is Mediator Selected: Combination of parties, court/agency, pro bono. Personal knowledge, referrals, court/agency list, general reputation, advertising, provider organizations.
7. Parties Degree of Choice: From none to full.
8. Mediator's Role: The entire "Evaluative" --"Facilitative" Continuum: varies by mediators and parties' desires. The stereotype: On the "Evaluative" half of the continuum.

Definition of Family Mediation Practice Area

The practice of family mediation is defined as mediation which is taking place between members of families (which are defined as those related by blood, marriage, consanguinity, or by mutual consent and acting as social units for themselves and/or children) about disputes in which they are involved with each other and/or other members of their family, or in which members of a family are in dispute with other parties outside the family about issues regarding the legal r interests, behavior or well-being of members of their family.

It can include partner/partner, spouse/spouse, couple/couple, parent/parent, parent/child, and adult child / grandparent disputes, which can range over topics such as communication, parenting, intimacy, rules, roles and expectations, finances, anger and abuse, values, and legal rights and responsibilities of the disputants.

Family mediation can contain any dispute listed as domestic relations concerns, including but not limited to all items in the Oregon Revised Statutes, Title 11, Chapters 108,107,108,109, and 110. This can include any issue regarding marriage, dissolution,

annulment, separation, court-connected mediation and conciliation, husband and wife relationship, property rights of married people, family violence, premarital agreements, rights and responsibilities and parents and children, and financial support.

Such issues as filiation and paternity, adoption, child support, spousal support, divorce, restraining orders, marital property distribution, parenting issues, custody and visitation, grandparent rights, step-parent concerns, guardianship, executorship, unmarried couples, premarital agreements, and other items may be handled by a family mediator. Family mediation may also include many items listed under the law as juvenile and family-related concerns, such as but not limited to: status offenses, curfew, education issues, emancipation medical treatment and other issues regarding the social and legal needs of children and parents.

Family mediation is offered in a variety of settings, and is sometimes mandatory, sometimes voluntary. It may be separately, voluntarily contracted and paid for by the parties to the dispute, or fees for services may be imbedded in money paid to the court, or it may be provided in the public or private sector at cost, or subsidized by some other funding source. It may be part of court jurisdiction's civil mediation local rule, and can be provided as a diversion program for certain types of legal cases.

Because families are complex, and because family mediators often must deal with issues involving complex concerns about child abuse, spousal and elder abuse, harassment, domestic violence, drug and alcohol use and abuse, mental and emotional conditions, legal rights and responsibilities, and normal developmental cycles for both adults and children, family mediators must have sufficient background in all these topics to be effective in their work.

Definition of Public Policy Mediation Practice Area

This practice area uses mediation to resolve a perceived need for a new or different public policy, frequently "in the shadow" of a complex and long-term public decision-making process such as legislation, litigation or regulatory action. There are often a broad array of stakeholders in these processes, including a public agency and affected community and interest group constituents.

Mediated outcomes in this practice area often affect broader constituencies than are formally represented in the process itself.

Public policy mediations are mostly voluntary processes, though they may also be mandated. They are frequently requested by public agencies or officials, but there are many possible convening entities. Public policy mediators, who are either formally or informally selected by convening parties, are responsible for assuring involvement by a comprehensive array of perceived stakeholders.

Public policy mediations are often publicly funded, and private sector contribution is common. Public policy mediators may adopt a variety of professional styles, depending upon the needs of participating stakeholders. Mediated outcomes frequently must be

implemented by and external process, such as a political or administrative ratification or other action.

Definition of Community Mediation Practice Area

Community Mediation is a voluntary problem-solving process, facilitated by third party neutral(s), for members of the community experiencing conflict. Community mediation is characterized by, and/ or committed to:

- Use of trained community volunteers as the primary provider of mediation services - volunteers are not required to have academic or professional credentials.
- Operates within a private non-profit and public agency, with a governing/advisory board.
- Provides direct access to the public through self-referral, and strives to reduce barriers to service including physical, linguistic, cultural, programmatic, and economic barriers.
- Provides services to clients regardless of their ability to pay.
- Initiates, facilitates and educates for collaborative community relationships to effect positive systemic change.
- Engages in public awareness and educational activities about the values and practices of mediation.
- Provides a forum for dispute resolution at the earliest stage of conflict.
- Provides an alternative to the judicial system at any stage of a conflict.

(adapted from the National Association for Community Mediation)

Criminal Mediation is a form of community mediation for victims of crime and the perpetrators of that crime which provides opportunity for reconciliation/restitution.

Youth and Family Mediation is a form of community mediation for adolescents and parents/guardians to come together to define the conflict, identify source(s) of conflict, deepen understanding of each other, and to enhance/create more effective relationships.

Attachment 7

Discussion Guide Questions for the Mediator Competency Focus Groups

The Mediator Competency Work Group is interested in gathering information from practitioners and users of mediation services about the competency of mediators.

Members of the Work Group are meeting with focus groups in September and October, 1995. Hopefully each group will include participants from diverse background, i.e., consumers, volunteers, representatives from cultural communities, and different professional interests.

Focus Groups are encouraged to consider these questions:

1. How would you describe a competent mediator?
2. Are there skills, knowledge, experience, and attributes you expect a competent mediator to possess?
3. What are some ways that practitioners, programs, policymakers, dispute resolution associations, and users can seek to insure competency of mediators?

Attachment 8

CORE COMPETENCIES FOR MEDIATORS

October 1, 1996

Preface: The following matrix describes core competencies for mediators, as identified by nine (9) work groups of mediation practitioners, representing the following practice areas:

- Commercial/Civil
- Community
- Labor/Management
- Criminal
- Domestic Relations
- Workplace
- Public Policy
- Mediation Trainers
- Youth & Family

As used here, "core competency" refers to the skills, knowledge, experience and other attributes necessary to successfully accomplish each of the tasks listed, all of which are necessary to the mediation process. We acknowledge inherent tension between certain values mediators strive to embody in their work. How that tension is resolved varies from context to context and depends upon the appropriate exercise of judgment by the mediator. This exercise of judgment is a key thread running through the mediator's practice.

The matrix has been divided into three parts. The first, *Process-Specific Competencies*, describes those foundational competencies all work groups believe must be reflected throughout the mediation process. The second, *Underlying Competencies*, describes those competencies that all work groups believe come in to play at distinct stages of the mediation process. The third, *Practice-Specific Competencies*, describes those competencies identified as necessary for mediation within specific practice areas but which may not be necessary for all practice areas.

Finally, although not separately listed under the *Experience* column of the table, we note here our strong belief that observing and participating in role-plays or actual supervised mediation sessions provides an essential experiential component to developing each of the competencies described below.

PROCESS-RELATED COMPETENCIES

TASK:

Perform case assessment/ development, describe mediation process and distinguish from other processes.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
see "underlying competencies"	see "underlying competencies"	see "underlying competencies"	see "underlying competencies"

TASK:

Create and maintain a safe environment with ground rules.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
<ul style="list-style-type: none"> • Attend to emotions (e.g. anger, grief, sadness) • Read non-verbal signals • Recognize, acknowledge & bridge cultural needs & styles • Demonstrate active listening skills • Model non-judgmental awareness and attention 	<ul style="list-style-type: none"> • Theory of conflict • Theory of anger • Theory of non-verbal communication • Stages of grief • Systems theory • Theory of change 	Formal or informal training/education/practice	<ul style="list-style-type: none"> • Warmth, patience, humor; hopefulness • Comfort with conflict expression

TASK:

Help parties negotiate and gain agreement as to how the mediation process will work, including crafting and managing "rules of engagement."

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
Ability to manage and assist parties with different negotiation styles and techniques	Understanding of forms, styles and techniques of negotiation (e.g. integrative and distributive justice; interest-based negotiation; competing vs. collaborating)		

TASK:

Probing and gathering information.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
Gather, sort, organize, synthesize and evaluate information	<ul style="list-style-type: none">• Ability to understand what information is essential, helpful, unnecessary and/or intrusive• Understand the “vocabulary” of the dispute		Sufficient intelligence to achieve task

TASK:

Help parties identify underlying interests.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
<ul style="list-style-type: none">• Define interests, rights, positions through use of open-end questioning and brainstorming• Ability to assist parties in distinguishing between more and less important issues• Ability to assist parties in detecting and addressing hidden issues	<ul style="list-style-type: none">• Group dynamics• Relational dynamics• Clear understanding of the difference between positions and interests		<ul style="list-style-type: none">• Willingness to hear other perspectives• Comfort with diversity• Empathetic• Ability to discern energetic dynamics, i.e. “read the parties”

TASK:

Assist parties in generating options.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
<ul style="list-style-type: none"> • Ask questions that elicit ideas • Facilitate productive brainstorming, i.e., encouraging all parties to participate in generating options without evaluation • Examine and frame options to fit specific interests of disputants • Encourage parties to take individual responsibility for realistically dealing with issues • Use techniques of reality testing to test options for workability 	<ul style="list-style-type: none"> • Strategies for generating options • Creative processes • Problem-solving theories • Creativity theory 		<ul style="list-style-type: none"> • Ability to suspend judgment • Ability to think in alternative ways

TASK:

Assist parties in evaluating options.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
Ability to perform a "reality check" with the parties			<ul style="list-style-type: none"> • Ability to separate own opinions from those of parties • Trust in the parties and the process

TASK:

Facilitate understanding and/or agreement.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
<ul style="list-style-type: none">• Identify points of agreement• Clarify agreement• Ability to perform “word smithing”	Knowledge of what makes agreements enforceable and durable		Clarity and precision

TASK:

Facilitate closure.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
<ul style="list-style-type: none">• Foster empathy• Provide a definite conclusion to the session that conveys necessary information regarding compliance and follow-up• Ensure parties know what is expected of them in relation to each other and what will happen next• Provide a clear summary of progress and of agreement or lack thereof			

UNDERLYING COMPETENCIES

TASK:

Recognize and acknowledge the mediator's own assumptions and limitations, and evaluate their impact on the mediation process (maintain neutrality/impartiality); display emotional stability, maturity and sensitivity.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
<ul style="list-style-type: none"> • Ability to separate self from process Ability to be intentional about how mediator judgments are expressed within the process • Ability to remain calm and level-headed in stressful and emotional situations • Ability to recognize a variety of emotions and respond accordingly 	<ul style="list-style-type: none"> • Self-awareness of bias, limits and abilities with subject matter, skill level • Knowledge of psychological theory (e.g. victim/rescuer/persecutor triangle) 	<p>Guided introspective (e.g. therapy) or educational process where person is required to perform these tasks, skills or gain this knowledge</p>	<ul style="list-style-type: none"> • Subordination of self-interest (reputation, financial, ego) • Humility and honesty • Self-confidence • Does not confuse self with others • Intuitive • Sense of humor • Ability to deal well with ambiguity and tolerate confrontation • Patience

TASK:

Understand different conflict resolution concepts, recognize common negotiation dynamics, and various philosophical approaches to mediation.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
<ul style="list-style-type: none"> • Assess how philosophical approaches affect mediation practices: role of mediator, measure of success, techniques, goals, outcomes, structure. • Define, understand and explain appropriate dispute resolution practices including negotiation, mediation and arbitration. 			<ul style="list-style-type: none"> • Ability to explain different approaches to conflict and conflict resolution • Understand how mediation is an extension of negotiation and how it involves empowerment of participants

TASK:

Create, select, adapt and articulate the mediation process.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
<p>Ability to recognize style and cultural influences, context of the dispute, estimate the scope, intensity & contentiousness of a case, and then identify the appropriate mediation process:</p> <ul style="list-style-type: none"> • Ask questions to determine whether mediation service is justified or appropriate • Ask questions to determine appropriate departures from usual practice for a given situation • Identify the stages & components of the mediation conference • Frame issues in neutral language • Develop a strategic framework for discussing the issues in a dispute • Understand & demonstrate the role of the mediator in structuring the mediation process • Ability to adjust process and guide clients toward productive interaction and resolution • Display evidence of pre-planning in room set-up, focus on future behavior, and ability to move process 	<p>Knowledge of mediation process options:</p> <ul style="list-style-type: none"> • Case Assessment • Pre-Interviews • Shuttle Diplomacy • Face to Face Sessions • Individual Sessions <p>Understand the role of a representative and/or advocate in the mediation process</p>	<p>Observe and participate in role plays and/or actual mediations that present different cultural, stylistic and contextual elements</p>	<p>Perceptiveness and insight into others' points of view</p>

TASK:

Work effectively with diversity issues.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
<ul style="list-style-type: none">• Recognize personal biases, prejudices and styles which are the product of one's background and personal experiences• Identify cultural, racial, ethnic, age, gender, religious and disability issues which may arise in mediation and demonstrate ability to deal appropriately with such issues• Demonstrate how these issues may affect the parties approach to conflict, negotiation style and their ability or willingness to engage in mediation• Identify techniques for mediating cases where there is a language barrier or when a translator participates in the mediation session• Demonstration of relationship building skills, cultural competency, empathy, overall rapport between mediator and parties, and comfort with process• Ability to project an air of confidence that contributes to a reduction of tension and a sense of balanced perspective on the issue(s)	<ul style="list-style-type: none">• Information about generalized characteristics of culture specific groups of people• Knowledge of power balancing, theories of dominance and submission• Understanding of difference between competition and collaboration• Formal/informal organizational, industry and system protocols and norms• The implications of gender in mediation, particularly in terms of power imbalances, family dynamics, disputant negotiating styles and powers, and mediator behaviors		

TASK:

Mediating in the "shadow of the law."

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
<ul style="list-style-type: none"> • Ability to identify substantial legal issues in general and in particular to the facts of the case being mediated • Understand and demonstrate how mediation confidentiality works 	<ul style="list-style-type: none"> • ORS Chapter 36 • All mediation OARs (e.g. OAR 718) • Context-specific content information • Awareness of resources and how to access them • Familiarity with the statutes, cases and administrative rules relating to mediation with particular attention to confidentiality 		

TASK:

Build and maintain a trusting/respectful relationship.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
<ul style="list-style-type: none"> • Relationship building skills • Demonstrated cultural competency skills • Ability to demonstrate empathy 	Information about generalized characteristics of groups		<ul style="list-style-type: none"> • Compassion • Trustworthiness • Integrity • Comfort with diversity

TASK:

Balance power between parties as needed or as agreed so that the parties can negotiate effectively.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
Ability to recognize manipulative strategies and power imbalances among mediation participants	Knowledge of: <ul style="list-style-type: none"> • Power balancing • Theories of domination/submission • Difference between competition and collaboration 	Role play and/or actual experience negotiating with power differences	Ability to separate personal values/judgment from those of parties

TASK:

Facilitate communication.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
<p>Demonstrate skill in:</p> <ul style="list-style-type: none">• the essential elements for effective listening & responding• the essential elements for effective note-taking• the essential elements for effective questioning• the essential techniques for gathering information• appropriate non-verbal communication• the appropriate format for recording the understanding of the parties, including use of the appropriate language for persons, dates & financial sums• the ability to identify alternatives and explain in a realistic and balanced fashion• identifying legalese & jargon which inhibit the communication process between parties• probing conflict to “open the can of worms”• asking neutral, open-ended questions to elicit information	Knowledge about how people differ in making decisions, process information and communicate		Humor, warmth and non-judgmental attitude

TASK:

Facilitate shared thinking process.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
<ul style="list-style-type: none"> • Summarize/paraphrase disputants' statements • Establish atmosphere in which anger and tension are expressed constructively • Focus the discussion on issues (i.e. not the personalities or emotions), and the future • Convey respect and neutrality to the parties • Ability to use immediacy skills that help the participants look at what is happening in the session which may be causing an impasse in the mediation process • Display empathy and understanding without personal partiality or bias 	<ul style="list-style-type: none"> • Collaborative theory and process • Decision-making processes (e.g. associative and linear thinking) 		

TASK:

Facilitate understanding of dispute in broader context.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
Ability to learn and understand complex subject matter			

TASK:

Facilitate human behavioral interactions and behavioral change.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
<ul style="list-style-type: none"> • Ability to analyze behavior maintaining a conflict and facilitate new learning and behavior change • Ability to manage interaction in mediation and assist parties seeking to negotiate behavioral agreements 	<p>Basic understanding of human behavior, human learning, group dynamics, behavior change and feelings associated with conflict and change</p>		<p>Perceptiveness and insight into others</p>

TASK:

Standards of conduct and ethics for mediators.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
<ul style="list-style-type: none"> • Identify potential ethical dilemmas in mediation • Identify and demonstrate the appropriate course of action when confronted with an ethical dilemma • Ability to incorporate the parties rights to self-determination into the mediation session • Identify when the mediator may be perceived as having a conflict of interest and when disclosure of potential mediator conflict of interest is necessary 	<ul style="list-style-type: none"> • Understand the OARs on mediation conduct, and SPIDR, AAA, ABA Code • Understand the mediator's responsibility to the courts 		<p>Integrity</p>

TASK:

Continuing education for mediators.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
<ul style="list-style-type: none">• Ability to conduct a mediator self-assessment• Listening and incorporating feedback from parties and others• Identifying areas for skill improvement, and attending to these areas	Knowledge of learning, training and other development opportunities		

Attachment 9

ADDITIONAL PRACTICE AREA-SPECIFIC COMPETENCIES

Commercial and Civil

TASK : N/A

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
<ul style="list-style-type: none"> • Identify when and how to use outside experts effectively or how to assist the parties in determining appropriate community resources • Identify situations in which the mediators should suggest that the parties contact independent legal counsel, postpone or cancel mediation, or refer the parties to other resources • Identify appropriate courses of action when confronted with abuse during the mediation session • Ability to manage the dynamics created by the presence of attorneys at the mediation • Ability to ask questions best answered by the attorneys and questions best answered by the client 	<ul style="list-style-type: none"> • Demonstrate awareness of the Americans with Disabilities Act requirements and strategies for handling situations when faced with disability issues or special needs • Understand the statutory and rule constraints of confidentiality and be able to identify the exclusions • Understand the role of litigants' attorney in the mediation process and the potential for conflicts • Understand attorney-client relationship within the context of mediation • Understand the need to establish credibility with attorneys and parties • Understand the use of private session with attorneys 		<ul style="list-style-type: none"> • Understand the impact on the mediation process on identification of outstanding discovery issues and options for proceeding • Understand Public Records Law • Identify and be sensitive to issues of attorney fees, fee shifting statutes, and contingency fee arrangements

Community

TASK : N/A

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
	Minimum 30 hours of basic community mediation skill training consistent with ODRC guidelines	Supervised apprenticeship consisting of a minimum of 2 supervised community mediations	

Criminal

TASK : N/A

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
	<ul style="list-style-type: none">• Basic knowledge of justice system, legal reporting and disclosure requirements• Eight hours of victim/ offender (criminal) mediation training (may be included in basic training)• Understand dynamics/psychology of "victimization"	Four criminal case apprenticeships (2 observations and 2 supervised mediations)	

Domestic Relations

TASK :

Case Assessment: identify potential domestic violence/safety issues.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
Ability to recognize indicators of violence/abuse	Ability to make clinical assessment of normal and abnormal behavior		

TASK :

Determine status of relationship.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
Helping clients explore choices			

TASK :

Educate parties on issues related to process.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
	<ul style="list-style-type: none"> • Domestic relations legal system and evaluation processes • Psychological issues pertaining to divorce and family • Conflict styles in families • Child development issues • Divorce theory 		

TASK :

Post-mediation: follow-up consultation with attorneys/others; follow-up evaluation / consultation.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
Ability to convey respect for attorneys, to validate their side	Sense of the legal system		

Labor-Management

TASK :

Assessment/underlying issues

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
	<ul style="list-style-type: none">• Realities of organizational chart• Organizational structure• Organization and industry norms; HR policies and procedures• Political and economic realities in community and industry	<ul style="list-style-type: none">• Prior work experience, over time, involving consequences• Experience in industry environment that included decision-making around interpersonal and employment issues, both internally and with 3rd parties (such as vendors)	

Workplace

TASK:

Assessment stage.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
	<ul style="list-style-type: none"> • Knowledge of how organizations function and are constructed • Basic knowledge of how people behave in systems • Basic familiarity with employment law • Understanding of the political and economic realities in the workplace community and industry 	Experience in the work environment that included responsibility for decision-making, interpersonal and employment issues	

TASK:

Procedural tasks.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
		Experience facilitating large and small groups	

TASK:

Substantive stage.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
	Knowledge of the substantive area to be mediated.	Experience in the particular type of work environment	

Public Policy

TASK:

Educate the public and government about the mediation process.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
	Knowledge of organizational structures and power relationships	Experience providing public educating	

TASK:

Assess stakeholders involved in the dispute.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
<ul style="list-style-type: none">• Ability to identify if all stakeholders are involved in the process• Assess the parties'/ participants' interests/ willingness/authority to participate in mediation• Ability to uncover hidden agendas	Political awareness/sensitivity		Diplomacy

Public Policy (continued)

TASK:

Case development and resource assessment.

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
<ul style="list-style-type: none">• Assess the necessary resources (funding, time personal, etc.) needed to mediate• Determine funding sources (eligibility for grant funds, private funds, etc.)• Get agreement to go forward, whether to use a mediator / facilitator• Assist parties in selecting a mediator ; match the case to the appropriate professional• Evaluate resource demands against getting the job done• Identify the issues and get consensus on the issues to be mediated	<ul style="list-style-type: none">• Knowledge of proposal-building• Knowledge of community resources and options	<ul style="list-style-type: none">• Previous work on contractual basis• Previous experience in writing and assessing proposals.	

Youth & Family

TASK: N/A

SKILL	KNOWLEDGE	EXPERIENCE	OTHER ATTRIBUTES
<ul style="list-style-type: none"> • Ability to recognize indicators of violence and abuse • Ability to recognize substance abuse as a primary issue . 	<ul style="list-style-type: none"> • 20 hours of specialized youth and family mediation training in addition to the standard 30 hour community mediation training • Dynamics of family development, including adolescent and adult/parent development • Clinical assessment of normal and abnormal behavior 	<ul style="list-style-type: none"> • Work with a minimum of five families in a supervised mediation setting • One year of experience working with high risk families in the community • Demonstrated experience working with diverse age cultures 	<ul style="list-style-type: none"> • Sensitivity to diverse family systems and family culture issues • An acceptance and belief in a mediation model that uses adults <u>and</u> teens as co-mediators

Attachment 10

APPRAISER CERTIFICATION AND LICENSURE BOARD

21 Labor and Industries Building
 350 Winter Street NE
 Salem, Oregon 97310
 Telephone (503) 373-1505
 Fax (503) 378-6576
 TDD (503) 378-4100



DEPARTMENT OF
 CONSUMER AND
 BUSINESS SERVICES

APPRAISER CERTIFICATION & LICENSURE BOARD



The 1991 Oregon Legislative Assembly created the Appraiser Certification & Licensure Board (ACLB) to implement Oregon revised Statute (ORS) Chapter 674 and Title XI of the Federal Financial Institutions Reform, Recovery and Enforcement Act (FFIRREA) of 1989, in Oregon. It represents the broad public interest while it implements its functions to license, certify, supervise and discipline appraisers in Oregon. The ACLB is under the Department of Consumer & Business Services.

The Appraiser Certification & Licensure Board is a regulatory agency created to provide adequate safeguards to ensure that the appraisal regulatory function is insulated from the influence of any industry or organization whose members have a direct or indirect financial interest in the outcome of the Board's decisions. The regulatory functions of the Board are independent of other realty regulatory agencies.

The Board is responsible for ensuring that all real estate appraisal activities conducted in Oregon are in compliance with state and federal laws, for assuring the availability of state certified and state licensed appraisers, for providing temporary registration for out-of-state appraisers for federally-related transactions, for collecting and remitting annual federal registry fees to the Federal Appraisal Subcommittee, for establishing and developing appraisal education and experience standards, for ensuring that all appraisals are performed in writing and in accordance with the Uniform Standards of Professional Appraisal Practice, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

The Board has ten members, nine are appointed by the Governor: four state certified appraisers, one state licensed appraiser, two banker members, two public members, and the director (or designee) of the Department of Consumer & Business Services, who is a non-voting member. The Board has four (4) staff positions.

The APPRAISER CERTIFICATION AND LICENSURE BOARD was created by direction of both the Federal and State authority:

Federal

Under Title XI the Federal Government establishes the Real Estate Appraisal Reform Amendments.

TITLE XI REAL ESTATE APPRAISAL REFORM AMENDMENTS

SEC. 1101 PURPOSE.

The purpose of this title is to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

SEC. 1102 ESTABLISHMENT OF APPRAISAL SUBCOMMITTEE OF THE FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL.

The Federal Financial institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended by adding at the end thereof the following new section:

*SEC. 1101. ESTABLISHMENT OF APPRAISAL SUBCOMMITTEE.

"There shall be within the Council a subcommittee to be known as the 'Appraisal Subcommittee', which shall consist of the designees of the heads of the Federal financial institutions regulatory agencies. Each such designee shall be a person who has demonstrated knowledge and competence concerning the appraisal profession."

SEC. 1103. FUNCTIONS OF APPRAISAL SUBCOMMITTEE.

(a) In General.- The Appraisal Subcommittee shall

(1) monitor the requirements established by States for the certification and licensing of individuals who are qualified to perform appraisal in connection with federally related transactions, including a code of professional responsibility;

(2) monitor the requirements established by the Federal financial institutions regulatory agencies and the Resolution Trust Corporation with respect to-

(A) appraisal standards for federally related transactions under their jurisdiction, and

(B) determinations as to which federally related transactions under their jurisdiction require the services of a State certified appraiser and which require the services of a State licensed appraiser;

(3) maintain a national registry of State certified and licensed appraisers who are eligible to perform appraisals in federally related transactions; and

(4) transmit an annual report to the Congress not later than January 31 of each year which describes the manner in which each function assigned to the Appraisal Subcommittee has been carried out during the preceding year.

(b) Monitoring and Reviewing Foundation.-The Appraisal Subcommittee shall monitor and review the practices, procedures, activities, and organizational structure of the Appraisal Foundation.

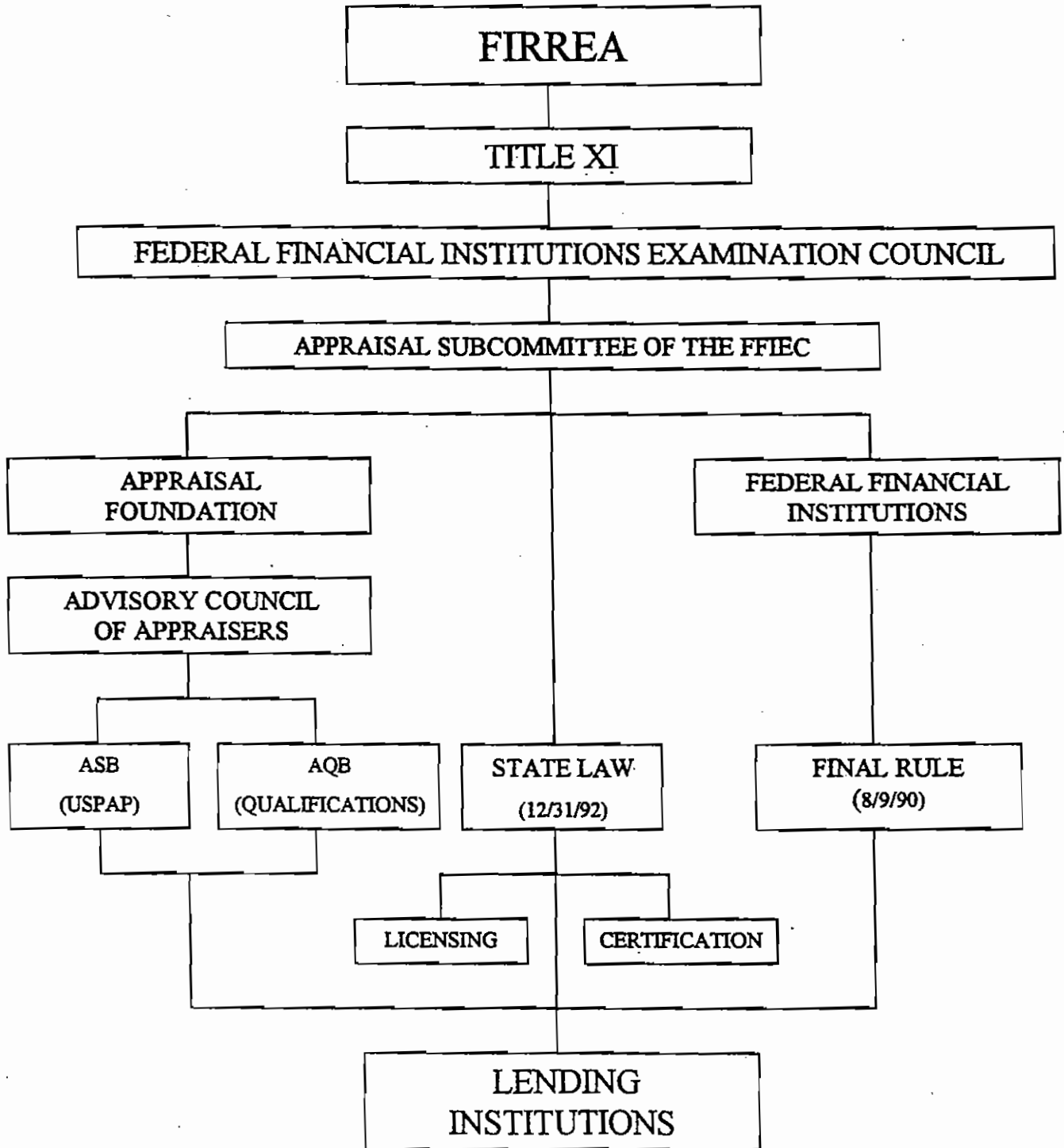
State

The 1991 Oregon Legislative Assembly created the Appraiser Certification and Licensure Board to implement Chapter 5, Oregon Laws 1991 and Title XI of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Public law 101-73) in Oregon. It is a regulatory agency which represents the broad public interest while it implements its regulatory functions in Oregon. It was created in the Office of the Secretary of State "to provide adequate safeguards to ensure that the appraisal regulatory functions is insulated from the influence of any industry or organization whose members have a direct or indirect financial interest in the outcome of the Board's decisions.

The Appraiser Certification and licensure Board regulates all real estate appraisal activity in Oregon; licenses, certifies, supervises, and disciplines appraisers in Oregon; develops and establishes appraisal education and experience standards; and ensures that all real estate appraisal activities are in compliance with state and federal guidelines and standards.

* now under the Oregon Department of Consumer and Business Services

1 INTRODUCTION TO THE REGULATIONS



THE PLAYERS AND THEIR RESPONSIBILITIES

The new appraisal regulation involves new players as well as some participants that are well-known in the industry.

The Appraisal Subcommittee (of the Federal Financial Institutions Examination Council)- A new committee created by Title XI. It monitors all activities related to the implementation of Title XI receives fees paid by appraisers to the states and maintains a list of licensed and certified appraisers.

The Appraisal Foundation - A private association of real estate appraiser professional organizations. The Appraisal Foundation develops appraisal standards which the regulatory agencies must use as minimum standards for federally related transactions, and it develops qualification criteria for certified appraisers.¹

The Individual States - Each state must adopt appraiser certification and licensing standards and procedures, including procedures for revocation of licenses.

The Federal Financial Institutions Regulatory Agencies - These agencies must promulgate regulations that establish minimum appraisal standards for transactions within each agency's jurisdiction and that identify which federally real estate transactions require appraisals performed by certified appraisers as opposed to licensed appraisers. The agencies are:

The Federal Reserve Board (FRB) is the regulatory agency for the federal reserve member banks. It has indirect control over financial institutions that use the services of the member banks. Proposed rule was issued in 55 FR 5808 on 2/16/90, and the final rule was published in 55 FR 27762 on 7/5/90.

The Office of the Comptroller of the Currency (OCC) is the agency that controls the conduct of nationally chartered commercial banks. Proposed final rule was issued in 55 FR 5808 on 2/16/90, and the final rule was published in 55 FR 34684 on 9/24/91.

The Office of Thrift Supervision (OTS) is responsible for regulating the thrift institutions. The Proposed rule was issued in 55 FR 5464 on 2/15/90, and the final rule was published in 55 FR 34532 on 8/23/90.

The National Credit Union Administration (NCUA) is the regulatory agency responsible for credit unions. The proposed rule was issued in 55 FR 5614 on 2/16/90, and the final rule was published in 55 FR 30199 on 7/25/90.

The Resolution Trust Corporation (RTC) is responsible for the management of insolvent lending institutions and their assets. The proposed rule was issued in 55 FR 6383 on 2/22/90, and the final rule was published in 55 FR 34219.

¹ Recently the structure of the Appraisal Foundation has been modified to include several related industries and the membership is unlimited.

THE EVOLUTION OF APPRAISAL REGULATION

November 1983 and August 1984

The Commerce, Consumer and Monetary Affairs Subcommittee of the Committee on Government Operations (the "Barnard Subcommittee") held oversight hearings concerning the failures of United American Bank of Knoxville, Tennessee, and Empire Savings and Loan of Mesquite, Texas. The Subcommittee found significant appraisal problems related to the failures of these two institutions. In the hearing's report for UAB, the Subcommittee recommended that the FDIC conduct special training seminars for examiners and senior supervisory officials to detect appraisal fraud. In the hearing's report for Empire, the Subcommittee urged the FHLBB to take civil action against real estate appraisers who provide faulty appraisal reports.

October 30, 1985

The OCC issues EC-234/BC-208, Guidelines for Troubled Real Estate Loans, alerting examiners and bankers to the importance of analyzing the appraisals supporting commercial real estate loans in troubled real estate markets. The Examining Circular identified indicators of troubled real estate loans and discussed the appraisal practices and policies expected of banks. Finally, it provided guidelines for classifying real estate loans based on recent appraisals and review factors.

December 11-12, 1985

The Barnard Subcommittee held hearings on the Impact of Faulty and Fraudulent Real Estate Appraisals on Federally Insured Financial Instituting and Related Agencies of the Federal Government. The hearings were primarily concerned with discovering the extent of appraisal abuses and how much they contributed to losses associated with real estate financing activities of government agencies, federally insured lenders and private mortgage insurers. Concerns focused on four case studies which indicated that inaccurate appraisals contributed to the losses experienced by financial institutions.

September 25, 1986

The Committee on Government Operation issued its report entitled Impact of Appraisal Problems on Real Estate Lending, Mortgage Insurance and Investment in the Secondary Market. The report stated that faulty and fraudulent appraisals had become an increasingly serious problem and put the blame on appraisers, lenders, and federal regulatory agencies. The report concluded that "for meaningful changes to occur, a broad array of corrective measures will have to be developed and instituted by Federal regulatory authorities, the appraisal industry, and real estate finance and investment interest." HR 99-891

November 20, 1987

Congressman Barnard introduced H.R. 3675, the Real Estate Appraisal Reform Act - the precursor of Title XI. The OCC consistently opposed the legislation, stating that OCC had not found appraisals to be a significant problem or a major factor in bank failures.

December 21, 1987

OCC issues Banking Circular 225. BC-225 which included the Guidelines for Real Estate Appraisal Policies and Review Procedures was issued jointly by the OCC, Federal Reserve Board and the FDIC. This document was the major policy statement on appraisal requirements for real estate lending by commercial banks.

February 1990

In accordance with the requirements of Title XI, the financial institutions regulatory agencies published proposed appraisal rules: OCC 55 FR 5808 (2/16/90); Federal Reserve Board (FRB) 55 FR 4810 (2/9/90); Federal Deposit Insurance Corporation (FDIC) 55 FR 6266 (2/22/90); Office of Thrift Supervision (OTS) 55 FR 5464 (2/15/90); National Credit Union Administration (NCUA) 55 FR 5614 (2/16/90); and Resolution Trust Corporation (RTC) 55 FR 6383 (2/22/90).

August 1990

In accordance with Title XI, the financial institutions regulatory agencies published final appraisal regulations: OCC 55 FR 34684 (8/24/90); FRB 55 FR 27762 (7/5/90); FDIC 55 FR 33879 (8/20/90); OTS 55 FR 34532 (8/23/90); NCUA 55 FR 30199 (7/25/90); and RTC 55 FR 34219.

December 31, 1991

The OCC, FRB, FDIC, OTS, NCUA and RTC jointly published excerpts from the Uniform Standards of Professional Appraisal Practice as appendices to their respective appraisal rules.

April 26, 1991

The Appraisal Subcommittee of the Federal Financial Institutions Examination Council (ASC) issued a press release announcing that the deadline for the use of licensed and certified appraisers had been extended from July 1, 1991, to December 31, 1991.

September 5, 1991

The OCC issued banking bulletin BB-91-36, a notice of proposed rule making. The OCC proposed to make three changes to 12 CFR Part 34, Subpart C (Real Estate Appraisals). The proposed changes were:

- (i) Increase the de minimis amount from \$50,000 to \$100,000;
- (ii) Permit OCC-regulated institutions to use appraisals prepared for loans guaranteed by an agency of the federal government if the appraisals conform to regulations or other written requirements of the federal guaranty agency. The new paragraph would add wording that would exempt from the appraisal requirement any transaction involving a loan insured or guaranteed by an agency of the federal government if that loan is supported by a current appraisal that meets the standards of the federal agency providing the insurance or guarantee; and
- (iii) Add a definition of "real estate" and "real property" to clarify that the appraisal regulation does not apply to mineral interests or crops.

This proposed change in the rule appeared at page 42546 of the Federal Register, Vol. 56, No. 167, dated August 28, 1991.

April 9, 1992

The proposed changes of September 5, 1991, were issued in final form. The de minimis was raised to \$100,000 by all of the agencies except the credit unions. The definition of real estate was clarified. Appraisals completed on approved forms under the control of federally agencies, FNMA, and FHLBC were partially exempted from the rule.

**APPRAISER CERTIFICATION
AND LICENSURE BOARD
STAFF**

Linda Riddell
Administrator

Kathy Stuttaford
Application/Licensure Specialist

Cyndie Standley
Auditor/Investigator

Roger Hanthorn
Office Specialist

Examination Dates for 1996

Once approved for an examination, candidates are notified in writing how to contact the testing center directly and schedule their own exams. Testing centers are located in: Beaverton, Eugene, Hillsboro, Lake Oswego and Medford.

Applications, course provider listings and qualifying education course listings are available upon request.

**OREGON APPRAISER CERTIFICATION
AND LICENSURE BOARD**



**Licensing & Certification
Information**

This brochure is designed to provide information regarding Oregon's requirements for State Licensed Appraisers, State Certified Appraisers and Appraiser Assistants, and how to request additional information about licensure and certification in Oregon.

This brochure is available at no charge. You may request additional copies of this brochure by calling the Appraiser Certification and Licensure Board at the number listed below.

**Oregon Appraiser Certification
and Licensure Board**

Department of Consumer & Business Services
350 Winter St. NE., Room 21
Salem, Oregon 97310
(503) 373-1505
Fax: (503) 378-6576
TDD: (503) 378-4100

**OREGON APPRAISER CERTIFICATION
AND LICENSURE BOARD MEMBERS**

William M. Miller
Board Chair
(Appraiser Member)

Joan M. Crew
(Banker Member)

Deborah Lincoln
Deputy Director, DCBS

Ellen C. Bachman
(Banker Member)

Nancy B. Gabert
(Appraiser Member)

David J. Lau
(Appraiser Member)

Roxanne R. Gillespie
Board Vice Chair
(Appraiser Member)

Roger Hansen
(Public Member)

Gerald L. Curtis
(Appraiser Member)

Linda C. Crouse
(Public Member)

The Appraiser Certification and Licensure Board (ACLB) was created by the 1991 Oregon Legislative Assembly to implement Chapter 674, Oregon Laws 1991 and Title XI of the Federal Finance Institutions Reform, Recovery and Enforcement Act of 1989 (Public Law 101-73) in Oregon. The Board: regulates all real estate appraisal activity in Oregon; licenses, certifies, supervises and disciplines appraisers in Oregon; develops and establishes appraisal education and experience standards; and ensures that all real estate appraisal activities are in compliance with state and federal guideline and standards. It is a regulatory agency which represents the broad public interest while it implements its regulatory functions in Oregon. It was created to provide adequate safeguards to ensure that the appraisal regulatory function is insulated from the influence of any industry or organization whose members have a direct or indirect financial interest in the outcome of the Board's decisions.

Oregon Appraiser Certification and Licensure Board

SUMMARY OF REQUIREMENTS

Category	Education	Experience	Examination	Fees	Comments
STATE CERTIFIED GENERAL APPRAISER	Not less than 165 classroom hours of <i>* specific *</i> courses in real estate appraisal, including 15 hours of Uniform Standards of Professional Appraisal Practice (USPAP). Must include 90 hours of <i>* specific *</i> courses in subjects other than non-complex real estate appraisal.	At least 2,000 cumulative hours of acceptable appraisal experience, including at least 1,000 hours of appraisal experience in non-residential appraising, and at least two (2) calendar years (24 months) of appraisal experience.	AQB approved state certified appraiser examination. (LEVEL "C") Examination fee is \$75.	\$75 application \$450 Certificate \$50 Federal Registry \$575 TOTAL	MUST meet requirements and ALL education requirements (including USPAP) prior to sitting for the exam. Appraisers are required to renew every two years.
STATE CERTIFIED RESIDENTIAL APPRAISER	Not less than 120 classroom hours of <i>* specific *</i> courses in real estate appraisal, including 15 hours of Uniform Standards of Professional Appraisal Practice (USPAP).	At least 2,000 cumulative hours of acceptable appraisal experience, and at least two (2) calendar years (24 months) of appraisal experience.	AQB approved state certified residential appraiser examination. (LEVEL "B") Examination fee is \$75.	\$75 application \$450 Certificate \$50 Federal Registry \$575 TOTAL	MUST meet experience requirements and ALL education requirements (including USPAP) prior to sitting for the exam. Appraisers are required to renew every two years.
STATE LICENSED APPRAISER	Not less than 105 classroom hours of <i>* specific *</i> courses in real estate appraisal, including 15 hours of Uniform Standards of Professional Appraisal Practice (USPAP).	At least 2,000 hours of acceptable appraisal experience. There is no time limit as to when experience may be obtained.	AQB approved state licensed appraiser examination. (LEVEL "A") Examination fee is \$75.	\$75 application \$450 Certificate \$50 Federal Registry \$575 TOTAL	MUST meet experience requirement and ALL education requirements (including USPAP) prior to sitting for the exam. Appraisers are required to renew every two years.
APPRAISER ASSISTANT	Must complete 75 classroom hours of appraisal education, including 15 hours of Uniform Standards of Professional Appraisal Practice (USPAP) <i>prior</i> to registering with the ACLB.	Must be registered with ACLB <i>prior</i> to assisting in the preparation of appraisal reports. The Appraiser Assistant MUST work under the direct supervision of a state licensed or state certified appraiser.	None	\$75 Registration \$75 Registration Renewal (Annual)	Appraiser Assistants MAY NOT sign or issue an appraisal report. Appraiser Assistants are required to renew annually.

dated 9/15/95

Prepared by Linda Riddell/Kathy Stuttaford

See OAR 161-20-110(2) for the listing of specific courses required for each category of licensure or certification.

WHAT HAPPENS WHEN SOMEONE FILES A COMPLAINT AGAINST ME?

1. A complaint is filed with the ACLB. Anyone may file a complaint.
2. The appraisal report is reviewed for jurisdiction and validity.
3. The ACLB opens a case file and investigation or the complaint is dismissed.
4. If the case is dismissed, a copy of the dismissed complaint and ACLB correspondence to the complainant is sent to the appraiser. If a case file is opened, a copy of the complaint and request for a written response to complaint is sent to appraiser.
5. If deemed necessary, the appraisal report is assigned to members of the Appraisal Review & Advisory Committee (ARAC) for a USPAP compliance review (name of appraiser and client are not disclosed to reviewer). Assignments are made to reviewers with experience and qualifications specific to the type of property and geographic area of the subject.
6. Investigative data is also gathered by the ACLB staff.
7. The appraiser's response to the complaint, reviews from ARAC, and investigative data gathered by ACLB staff is reviewed and evaluated by the ACLB Administrator.
8. A warning letter or notice of proposed disciplinary action is issued against the appraiser which includes findings of fact, conclusions of law, and proposed sanctions if violations occurred. If there were no violations, a letter stating the findings is sent to the appraiser and complainant and the case is closed.
9. The notice of proposed disciplinary action is reviewed by the Attorney General.
10. The notice of proposed action is issued to the appraiser and copied to the complainant. The appraiser is given options to agree to the ACLB's findings and accept the sanctions, appeal and request a contested case hearing, or settle by stipulating to facts agreeable to the ACLB and the appraiser. The appraiser must respond in writing to the charges in notice within twenty-one (21) days.
11. A prehearing conference is scheduled with the appraiser, the appraisers legal counsel (optional), the ACLB Administrator, and the Assistant Attorney General/ACLB legal counsel to review charges, proposed sanctions, and discuss possible settlement.
12. Contested case hearing is conducted in accordance with Attorney General Administrative Law, by an impartial decision maker/hearings officer. The hearings officer hears testimony, admits exhibits into record, documents findings of fact.
13. Hearings officer submits written report of findings of fact, conclusions of law and recommended course of action to the appraiser and the ACLB. The ACLB/Board consists of 5 appraisers, 2 bankers, and 2 public members.
14. The appraiser has an opportunity to submit written comment to the findings, conclusions of law and recommendations of the hearings officer. This response will be reviewed and considered by the full Board in conjunction with the hearings officer's report in an executive session with legal counsel at their quarterly meeting.
15. Final action is issued by the ACLB.
16. The appraiser may appeal for a judicial review.

Attachment 11

IDAHO MEDIATION ASSOCIATION

CERTIFICATION OF PROFESSIONAL MEDIATORS

Certification is based on current and continuing membership in IMA. Continuing education in the amount of twenty hours every two years is required to maintain professional mediator status. The continuing education requirement commences when a person becomes certified. Certification for professional status requires a minimum of 40 hours of core mediator skills and knowledge training, 20 hours of mediation case practice, and 60 hours of additional experience or study.

FORTY HOURS OF CORE MEDIATOR SKILLS AND KNOWLEDGE TRAINING

Thirty percent or more of training must be devoted to the practice of mediation skills via learning exercises or role-play simulations of mediated disputes. The training must include all of the following seven competencies:

1. Information gathering;
2. Role of the mediator;
3. Interpersonal communications;
4. Problem-solving;
5. Controlling the mediation process;
6. Ethics and values; and
7. Professional concerns.

Documentation necessary:

1. Certificates of completion issued by the individual or organization that conducted the training, or if offered through a college or university, a transcript with the appropriate courses, workshops, or continuing education credits indicated;
2. Number of hours of training completed; and
3. Identification of how all seven competencies listed above have been acquired. (Course outlines, syllabus, or similar documentation is acceptable.)

(See IMA Professional Mediator Skills and Knowledge for examples of specific competencies appropriate for each area.)

TWENTY HOURS OF MEDIATION CASE PRACTICE

The case practice experience must include mediation, co-mediation, or observations of mediated disputes.

Documentation necessary:

1. A brief description of the form of case practice experience;
2. Approximate number of hours involved in each type of case practice and the total number of hours of case practice;
3. A list of persons or organizations who may have co-mediated or observed the applicant's case practice; and
4. Three neutralized memoranda of agreement or simulated memoranda consistent with the types of cases the applicant has mediated or observed.

SIXTY HOURS OF ADDITIONAL EXPERIENCE OR STUDY

Additional experience or study demonstrating knowledge in your areas of expertise must be documented.

Documentation necessary:

1. Name and address of sponsoring organization;
2. Title of the education activity;
3. Instructor(s) names(s) and title(s);
4. Date(s) and location(s);
5. Method of presentation;
6. Advertised to what audience;
7. Admission restrictions, if any;
8. Total hours of instruction;
9. A brochure, syllabus or written document describing the training;
10. Certificates of completion issued by the individual or organization that conducted the training or, if offered through a college or university, a document indicating final grade or transcript with the appropriate courses, workshops or continuing education credits indicated; and
11. Brief statement of how the study is relevant to the applicant's mediation practice.

APPLICATION PROCESS

Submit the appropriate fee along with two copies of the application with supporting documentation to: IMA, P.O. Box 2504, Boise, ID 83701. The application must include a section that is signed by the applicant stating accuracy of content. Photocopies are acceptable for all supporting documentation. Upon receipt of the application fee, the evaluation of the application begins.

The application is matched against a standardized check-off sheet by a neutral party to measure applicant's training, case practice, and additional experience or study. The check-off sheet also includes room for an explanation of why the applicant may not meet the standards in each category. Through a numbering process, applicant anonymity is maintained throughout the application review to insure that standards are applied fairly and consistently.

If the application meets all the standards, the applicant is issued a notice of approval followed by a certificate. If the application is denied, the applicant is notified with an explanation and is encouraged to reapply when IMA standards have been met. The applicant may appeal denial of an application. Upon appeal, the application is again rendered anonymous and passed on to the Appeals Panel.

APPEAL PROCESS

An IMA Appeals Panel is a volunteer panel of three members in good standing appointed by the Practice and Standards Committee. More than one Appeals Panel may operate concurrently on separate appeals. The Appeals Panel reviews all appealed applications. An Appeals Panel reviews an application and takes one of the following actions:

1. Recommends approval;
2. Denies an appeal; or
3. Recommends institution of a mentoring process.

MENTORING PROCESS

The Appeals Panel may contact the applicant and offer to mentor him/her. The deficiencies in the application are explained, and a mutually satisfactory plan is negotiated between the Appeals Panel and the applicant that will enable the applicant to demonstrate or obtain additional competencies in order to meet IMA standards. The Appeals Panel will provide guidance to the applicant, and the application process will be suspended. After determining that a plan has been successfully completed, the Appeals Panel will approve the application.

Attachment 12

**SUMMARY OF
NEXT STEPS SURVEY
COMPETENCY TRACK @ 1996 OMA CONFERENCE
(N = 13 Responses)**

0 No	3 Not Really	7 Probably	10 Yes
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1. Do you think something needs to be done beyond today to ensure competency?

0 = 0 responses

3 = 1 response

7 = 5 responses

10 = 6 responses

2. If so, how do you think this work should go forward?

- Larger cross-disciplinary inclusion
- No, need to stop this effort. Do not publish this report. Send report stating that we did not come to any conclusions. We can look at this work in the future when we determine what the real need is. Or go back and look at principles and values.
- Work group should integrate new information and distribute to interested organizations.
- Move to a conclusion
- Funding to continue the process
- State agencies promote certification standards
- The current model/process is a good one, but it needs new blood.
- A report stating competencies are a concern, but haven't been decided. The competencies are too all encompassing, it cannot happen!
- Certify trainers and let trainers certify competency based on course content, experience and observable behavior. Let public be enforcers except for ethical violations.
- Need to address who we are doing this for. If to protect the profession and the public, is there really a need?
- Number 7 in the straw poll (2 responses)

3a. How will you be included/represented?

- Direct participation (4 responses)
- Look at SPIDR process. Do Step 1 - define context - choose only the context where there is a need to protect the public. Convene a process to address that particular area.
- By OMA
- Staying in touch with Lynne & Anita
- By ODRC

3b. What are you willing to do?

- Call me @ 282-7678 (Leah)
- Give more input
- Work with OMA & the legal community to get a dialogue going regarding principles and values
- Participate in the Eugene area
- Become an OMA member
- Volunteer some time (Gayle Landt @ 485-5762)
- Provide input to the group making decisions

4a. Who should do this work?

- Anyone with an interest (2 responses)
- OMA, OSB, ODRC and Courts should jointly sponsor informational workshops. Get inf. from other states regarding malpractice issues.
- Mediators (2 responses)
- OMA
- Original workgroup (4 responses) (2 of the 4 said "OMA & ODRC")
- Original workgroup plus new volunteers
- Mediators within practice areas

4b.

Original Workgroup Continues Work

0 = 1 response

3 = 4 responses

7 = 5 responses

10 = 1 response

Hybrid of Old and New Group Continues Work

0 = 0 response
3 = 1 response
7 = 6 responses
10 = 3 responses

Totally New Group Continues Work

0 = 1 response
3 = 7 responses
7 = 1 response
10 = 0 responses

4c. If the new people are involved, how should they be selected?

- Not sure
- Solicited/invitations (3 responses)
- Request by old members
- Can we simply volunteer? (Leah)
- Interest and willingness (2 responses)
- Need to design the process first; you can't just have people coming and going, but you could use a public participation process
- However you did it initially

5.

If the existing workgroup continues to meet, will you support their decisions and actions?

0 = 1 response
3 = 3 responses
7 = 5 responses
10 = 2 responses

Are you willing to delegate your role to them?

0 = 1 response
3 = 3 responses
7 = 3 responses
10 = 2 responses

6. If the answer is an unqualified yes to the above, what do you need to support the actions of that group or some other group?

- Represent small communities
- It was presented in a rigid way, the process needs to be flexible
- I am not convinced there is a need to define competency
- Decisions should "evolve" vs. being "set in legislative stone"
- Need information as to progress (2 responses)
- Local process to give input to the workgroup
- I have to be satisfied that your decisions will promote good mediation and discourage poor mediation
- Withdraw the competency report. Have a dialogue (OMA should foster this on-going dialogue) about what the need really is, then focus on the specific need.
- Work to get Courts and ODRC to work together
- Public education: To sell or to serve?????

V. STRAW POLL

POINT OF INFORMATION: This poll was taken at the end of the session in a rather hurried fashion. Options were being added during the polling.

- CERTIFY COMPETENCY ONLY 0
- CERTIFICATE OF TRAINING COMPLETION ONLY 0
- LICENSURE 2
- PUBLIC EDUCATION ONLY 3
- STATUS QUO 4
- CERTIFICATE OF TRAINING & PUBLIC EDUCATION 5
- CERTIFY COMPETENCY & PUBLIC EDUCATION 11
- TRAINING, CERTIFY COMPETENCY, & PUBLIC EDUCATION 16
- OMA, ODRC, & OTHERS FUND THIS DIALOUGE TO ALLOW IT TO CONTINUE AND BECOME MORE INCLUSIVE (POSSIBLE FUNDING SOURCE—LEGISLATURE)
DIALOUGE SHOULD:
 - BE APPROPRIATELY FUNDED
 - BE INCLUSIVE OF ALL STAKEHOLDERS (CONSUMERS, COURTS, POLICE, PRACTITIONERS, ETC)
 - BE STATEWIDE
 - BE PRACTICE-WIDE
 - DESIGNED BY A PUBLIC POLICY MEDIATOR 19

**COMPETENCY TRACK—OMA CONFERENCE
NOVEMBER 9, 1996**

OVERVIEW

I. PROCESS RELATED COMPETENCIES

- A. Individual Input Directly on the Matrices (Stickers/Grease Pencil/Attached Comments)
 - 1. Concerns about Language
 - 2. Concerns about Content
- B. Small Group Discussion
 - 2. Establishing Safe Environment/Ground Rules
(Charts #2, #6, #7-#9)
 - 2. Probing and Gathering Information/Identifying Interests
(Charts #4, #5)
 - 3. Rules of Engagement
(Charts #1, #3)

Comment: All charts were included in group discussions.

II. UNDERLYING COMPETENCIES

- B. Individual Input Directly on the Matrices (Stickers/Grease Pencils/Attached Comments)
- C. Small Group Discussion
 - 1. Diversity
(Chart #4)
 - 2. Mediating in the "Shadow of the Law"
(Chart #5)
 - 3. Underlying Issues
(General Discussion)
 - 4. Facilitating Shared Thinking Process
(Chart #9)

Comment: There was not enough time to include all of the charts in the discussions.

**III. SMALL GROUP DISCUSSION OF POSSIBLE APPROACHES FOR
ESTABLISHING STANDARDS OF PRACTICE FOR MEDIATORS**

- C. Public Education
- D. Certificate of Training
- E. Credentialing
- F. Other Ideas

IV. OVERALL CONCERNS

V. STRAW POLL

VI. FEEDBACK FORMS

I. PROCESS RELATED COMPETENCIES

A. Individual Input on Matrices

For comments generated during this exercise, please refer to the stickers, comments, and sheets attached to the charts. The typed comments are a compilation of the post-it notes that people wrote comments on and stuck on the charts throughout the day. For the most part, concerns about the wording of a particular section were marked directly on the charts. The attached comments deal mainly with content issues.

B. Small Group Discussion

2. Establishing a Safe Environment/Ground Rules

(For comments please see Charts #2, #6, #7-#9)

2. Probing and Gathering Information/Identifying Interests

(These comments are taken from flip charts generated in the discussions. For more comments please see Charts #4 & #5)

CHART 4

Overall concerns:

1) This task description needs to be reworded. This section does not connect to the parties. It is their information. It is their conflict. Are we gathering information together or is the mediator gathering information for the mediator? The parties should pick information that is important to them.

2) The categories needlessly and incorrectly and in a troublesome fashion label the qualities and the means of accomplishing the task.

- Under knowledge add:
 - Theory of active listening
 - Split the first bullet: Who makes the assumption about information?
 - What is too much information?
 - What is not enough information?
 - What does the word “vocabulary” mean (under knowledge)?
 - Other attributes
 - Ability to set limits & boundaries
 - Ability to interview in a non-interrogating manner

CHART 5

- Under knowledge category add:
 - Power dynamics
 - Understanding how emotions impact conflict and how emotions are expressed or not expressed

- Under other attributes: How much value to give to the emotional piece of the dispute?
- Finally, there was a brief discussion that not all mediations should be "power balanced." Power balancing can have long term repercussions for the parties. (i.e. in a couple that have an established relationship, the process of redefining this balance in a mediation could have a negative impact on their relationship outside the mediation)

3. Rules of engagement

(These comments are taken from flip charts generated in the discussions. For more comments please see Charts #1 & #3)

- There was a concern about the matrix and how it measures competencies
- On Chart #3, pull out additions. Need to understand diversity background knowledge
- On Chart #1, state support for case development

II. UNDERLYING COMPETENCIES

A. Individual Input on Matrices

For comments generated during this exercise, please refer to the stickers, comments, and sheets attached to the charts. The typed comments are a compilation of the post-it notes that people wrote comments on and stuck on the charts throughout the day. For the most part, concerns about the wording of a particular section were marked directly on the charts. The attached comments deal mainly with content issues.

B. Small Group Discussion

1. Diversity (Also see comments on Chart #4)

- Overall too broad and too demanding. Description should be more specific to certain mediation situations
- Need to know when you are not qualified to deal with these parties and these issues
- Need to recognize when your own biases may block or create barriers— applies to mediator and to parties
- Know how to recognize contraindications to mediation (see above). Know what you don't know.
- Awareness of personality differences and communication styles.
- Specific tools & techniques should be understood & included under skills (i.e. Myers-Briggs). How do we apply these tools in doing mediation?
- Test generalizations with/for individuals about culture
- Overall testing of ambiguity of what's going on
- All skills and knowledge need to be made more specific
- Mediator needs to understand when diversity or the "unspoken conflict" is an issue in the conflict

- The ability to identify the diversity and how it might affect the mediation
- Ability to identify how the parties view their diversity and how they think about their diversity will affect the conflict
- Ability to identify your assumptions about the parties and the assumptions of the parties about you

2. Mediating in the “Shadow of the Law”

- How do you find out how much law you need to know?
- Does the mediator need to know the parameters of the law? City code?
- What are the expectations of the party in regards to the mediators knowledge of the law?
- What does the mediator do when the parties reach an agreement that is in breach of the law?
- Is it the mediator’s role to mediate a solution or to mediate a solution that is legal?
- In land use cases—how familiar does the mediator have to be with the laws and the Land Use Board of Appeals (LUBA)?
- If the case is in the shadow of the legal process—what skills does the mediator need? Such as familiarity with the timeline in the process?
- What are the parties’ expectations of a durable agreement?
- Mediator liability

3. Underlying Issues: This group arose because people were interested in having a more general discussion about this process

- What is the intent of this process?
- What are the needs (and there are needs) for the protection of the public?
- Why can’t each area of practice establish their own competencies/qualifications?
- Are the competencies that are common to the areas of practice listed in the report the core competencies for ALL mediators?
- Why not use professional organizations (OMA?) to evaluate mediators? Could use ethical standards only—(Real Estate might be a possible field to look at to see how they deal with these issues)
- Why define the skills?
- Why is there the fear that the legislature (or ODRC, ABA) is going to define these skills for us? Wouldn’t ODRC have a role in this?
- Do ANY of these skills define a competent mediator in all cases? Many of them are value laden
- Is there a preference to use mediation over other means of dispute resolution?
- It is OK to be unsettled/OK to have standards that aren’t perfect
- Aspirational vs. Regulatory/discipline standards
- Who is the audience for this report on competencies?

- What to do with the report of the task group? Do not put in the report on competencies as it is
- What next steps should be taken?
- Needs to be more representation from small communities
- Needs to be more time to dialogue on this
- How can we protect the public in other ways? (Ombudsperson to take complaints, Informal resolution of complaints)
- ODRC should be overseeing and not "be in bed with OMA"

4. Facilitating Shared Thinking Process
(Please see comments on Chart #9)

III. SMALL GROUP DISCUSSIONS OF POSSIBLE APPROACHES TO ESTABLISHING STANDARDS OF PRACTICE FOR MEDIATORS

A. Public Education

Unfortunately only one person showed up, and remained in this group (the other two people who showed up chose to go to another group). I was the one person who stayed. The two facilitators and I discussed possible reasons why there was no one else in the group.

Back in the large group, it was clear that people thought that public education was good and necessary. As can be seen on the Straw Poll, most people felt that it should be combined with another approach (training, credentialing). People said they did not chose this group, because it had been framed as "if you favor public education as the only means of ensuring mediator competency—go to this group." So basically, there was a misunderstanding of what the group would discuss. The large group did, however, enthusiastically support me when I said I was considering doing a public education campaign in Portland about mediation for my Master's degree project.

B. CERTIFICATE OF TRAINING

From what I can tell, this group can up with four options around training:

1. Require a certain amount of seat time with and approved curriculum
2. Trainers could pass or fail participants by assessing accountable learning
3. A "neutral" outside agency would determine if training was adequate by having participants complete an internship
4. Certify both the curriculum and the trainer

They then indicated that a certificate of training should include:

1. Approved curriculum
2. Experience
3. Demonstrated skill
4. A report card for the trainee

- They felt that competency standards were too close to licensure
- They felt that trainers should have to be approved and then the trainers could approve students to be mediators
- There is a need to create training standards specific to contexts (family, criminal, etc.), programs, age, forums
- Training also needs to be age specific
- People who want to enter the field need to know how to select an appropriate training—thus public education is needed to inform potential mediators of their options

C. COMPETENCY

The goals of the group were as follows:

- To have competency demonstrated
- To protect mediators
- To help mediators recognize their limitations, skills, and confidence
- To avoid false advertising
- To allow for peer review
- To provide a consumer resource
- To avoid petrifying or caging the field too soon
- To honor/acknowledge diverse approaches
- To allow for continuous evolution of the field of mediation

The concerns of the group were as follows:

- How would establishing standards of competency affect programs which are already in place and which have a structured supervision?
- The credentialing process needs to be structured and public so that people know what they are adhering to
- Who decides the standards?
- Who is liable?
- Standardization may be limiting
- How do we ensure that the process is geographically appropriate? (i.e. no one from eastern Oregon was in the workshop)
- Who are we keeping out?
- How would grandfathering work?
- An effort should be made to investigate other groups
- There should be continuing education, written skills test, mentorships, and observation/assessment of skills—but they weren't sure how

D. OTHER IDEAS

This group divided their discussion into their interests and their ideas on how to achieve these interests.

Briefly their interests were:

- Continuing this dialogue with more stakeholders involved
- Protect the public
- Promote the use of mediation
- Protect mediators
- Ensure good mediation
- Professionalization
- Allow for client expectations and feedback
- Finish this credentialing process quickly to avoid having someone else do it for us
- Establish competency through education and experience
- Identify the audience
- Maintain flexibility to evolve and be inclusive
- Civic responsibility and education
- Transcending binary logic (right/wrong thinking)

Their ideas on how to achieve these things were:

- To develop a capacity for registering complaints (i.e. a Better Mediation Bureau using the Better Business Bureau model)
- Certificate of training and competency in practice areas
- Do nothing
- Full licensure
- Distinguish between training and degree programs
- Funding for continued discussion via legislature and grants
- OMA\ODRC\Judiciary\OSB need to meet about legislation, to assess needs, and address problems

IV. OVERALL CONCERNS

An effort was made to keep the wording of these comments as close as possible to the original wording of the participants.

- This comment applies to all the tasks 1-9 (Process-related). Must separate “competency” to do mediation from 1) how to become competent and 2) how to judge or determine whether someone is competent in the skill. Must create a better context for what kind of mediation we’re talking about.
- How can attributes (on charts) be measured as “taught” requirements?
- Concern about defining knowledge components (on charts). Also capacity to know whether they exist in an individual. This pretty much affects all tasks.
- A problem with EXPERIENCE and OTHER ATTRIBUTES column. Either one or both are often blank. Could they be absorbed with the rest or omitted?
- In all of these competencies the knowledge category should include a familiarity with Rogerian theory—particularly with regard to his 5 steps for significant learning outlined in On Becoming a Person.
- Clarify why we care about diversity. Remember the generalizations are tentative hypotheses and need to be tested. Check out ambiguities.
- As a mediator, you need the ability to identify your assumptions about the parties and the assumptions of the parties about you
- How much (or little) do mediators let emotions play into the mediation process in general?
- Not all mediations should be “power balanced.” Power balancing can have long term repercussions for the parties. (i.e. in a couple that have an established relationship, the process of redefining this balance in a mediation could have a negative impact on their relationship outside the mediation)