REPORT OF THE TASK FORCE ON DIVERSITY IN ALTERNATIVE DISPUTE RESOLUTION

ACTION PROPOSALS FOR CRAFTING AN EFFECTIVE ALTERNATIVE DISPUTE RESOLUTION SYSTEM THAT ADDRESSES ISSUES OF DIVERSITY

Task Force convened by the Equal Access Initiative and the Alternative Dispute Resolution Section of the State Bar of Michigan

DECEMBER 2009 - MARCH 2011

THANKS AND ACKNOWLEDGMENTS

The Task Force extends its heartiest thanks and appreciation to:

The presenters on Day One and others submitting material who readily accepted the invitation to open our imaginations to vision an alternate dispute system responsive to the needs of all Michigan citizens;

The Steering Committee, who has had the tenacity and patience to dialogue and problem-solve on issues where words often fail us;

The State Court Administrative Office for the work attendant to hosting Task Force meetings;

The Grand Rapids Bar Association for readily understanding a project on access to justice and offering space for the facilitators' planning meetings;

The State Bar of Michigan Equal Access Initiative and the Council of the ADR Section of the State Bar for their imagination, commitment, and collaborative spirits; and

The State Bar Staff for, as always, accomplishing much under pressure and generating support and enthusiasm for this project among volunteer leaders over the last two years.

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ALTERNATIVE DISPUTE RESOLUTION SECTION

March 3, 2011

Dear Readers of the Diversity in ADR Report:

The Alternative Dispute Resolution (ADR) Section of the State Bar of Michigan is proud to be a co-convener of the Diversity in ADR Task Force. This project provided a unique opportunity for a broad array of voices on the issues of both ADR and Diversity to come together, educate and learn from each other, and envision a world where diverse populations of people can access a diverse spectrum of ADR processes provided by a diverse group of professionals and organizations to resolve disputes and engage in conflicts constructively.

The ADR Section extends its appreciation to the members of the Steering Committee for their leadership throughout this project. We commend the Steering Committee for its decisions to ensure an inclusive process by inviting individuals with expertise in both public and private ADR systems and by inviting individuals with expertise in diversity issues involving race, ethnicity, gender, disabilities, sexual identity, poverty and more.

The ADR Section congratulates and thanks the co-facilitators of the Task Force, Antoinette R. Raheem and Dale Ann Iverson, for designing a process that remained true to principles of ADR and Diversity. The ADR Section also wishes to thank the members of the Diversity in ADR Task Force for giving so generously of their time, insight, creativity, and thoughtfulness.

This report contains valuable information about both ADR and Diversity; it contains details of the process used to engage the Task Force members; and it contains the work product of the Task Force (in the aggregate and in small groups) throughout the process. We offer this report for the broadest dissemination possible not only for its substantive outcomes but also for its insights in designing a process that engages and draws out the creativity of people of diverse viewpoints. This report is also unique in that its contents have not been pre-vetted or censored in any way by this co-convener. In this way, the ADR Section honors the intent of and work of the Task Force to give voice to views and ideas of a large, inclusive group of individuals who are both experienced in and passionate about issues of diversity and ADR.

The sessions of the Diversity in ADR Task Force have concluded. The greatest tribute that can be paid to the Task Force members, however, would be for readers of this report to take the ideas that germinated in this Task Force and grow them into programs and projects that further these ideas. No one organization can be or should be responsible to develop these ideas. Rather, any and all organizations that have a stake in the future of the access to and use of ADR processes within the broadest array of diverse populations should use this report as a source for ways to make that future a reality.

The ADR Section will use the ideas in this report to inform its efforts and projects to expand the knowledge and use of ADR. Additionally, the ADR Section welcomes opportunities to work collaboratively with public or private

groups to further access to and use of ADR by diverse populations of individuals and organizations. Contact the leadership of the ADR Section with collaboration proposals by e-mailing Antoinette R. Raheem at arrlaw@sbcglobal.net. We would like to work with you.

Sincerely,

Donna J Craig

Donna J Craig
ADR Section Chair, 2010-2011

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FOREWORD

Our society is full of conflict—it is one way we learn and grow. There are business and neighborhood disputes, wars, scams, crimes, educational issues, employment disagreements, family feuds, political schisms, healthcare-related disputes and more. Yet many cannot afford the long, drawn-out court battles traditionally used to address these conflicts. Meanwhile our society is becoming increasingly diverse[1] with the growth of ethnic communities within the country, influxes of people with diverse backgrounds from outside the country, the aging of the baby boomer generation, and the increased openness of sexual orientation and non-traditional lifestyles.

This combination of increased conflict and diversity has coincided in recent years with decreased funding for traditional legal conflict resolution processes. This means that unless an accessible, affordable, efficient mechanism for conflict resolution that appeals to the diverse communities in our society is made available, many conflicts will go unresolved or be resolved in undesirable ways. This Task Force was convened with the hope and belief that alternative dispute resolution[2] ("ADR") at its best can provide accessible, efficient and effective mechanisms for conflict resolution that also address the unique needs of diverse communities.

In the spirit of energized and creative problem-solving, the Task Force and its Work Groups have generated an exciting and promising roster of Action Proposals. The unedited proposals are attached as Appendix A. The report also synopsizes the Task Force's Action Proposals throughout the report. These proposals urge communication, education, outreach, and greater access for and between ADR providers and ADR end users[3] from all segments of society. The Task Force members also identified public and private stakeholders who might be a starting point to assess, support and/or implement these action proposals in order to craft an alternative dispute system in our state that will effectively address issues of diversity.

This report is a call for action. For real improvement in our ADR system in Michigan, many Task Force members and the convening organizations look forward to working with various stakeholders throughout the state to explore next steps and see where these proposals can and should become reality—or where they may engender even better ideas.

For many seeking to improve the quality and effectiveness of ADR in Michigan, input from a full range of stakeholders in the ADR system has often been lacking. This Task Force worked mightily to provide that input from community activists, private and community ADR providers, African-Americans, whites, Latinos, the Gay/Lesbian/Bisexual/Transgender community, Southeast, Western and Northern Michigan, government employees, academicians, physically challenged individuals, court personnel, business persons and many more. Given that input, we hope the information contained in this report will be carefully considered in future efforts made in this state to create a more effective and diverse ADR system.

The Task Force on Diversity in ADR

1 As used herein "diversity" means inclusion of peoples of varied races, physical and mental challenges, religions, ages, cultures, economic groups, sexual preferences, national origins and genders. However, this definition is not intended to limit the application of the proposals in this report.

2 As used in the work of the Task Force, "ADR" refers to the variety of dispute resolution processes parties to a conflict may use. For some disputes, these may be an alternative to adjudication in court. The ADR processes most commonly used in Michigan include arbitration, case evaluation, and mediation.

3 ADR end users include but are not limited to lawyers and law firms, individuals, community organizations, businesses, religious groups, educational institutions, health care facilities and providers, political organizations, advocacy groups and more.

FRAMEWORK FOR THE TASK FORCE WORK: FROM VISION TO ACTION

1. CONVENING THE TASK FORCE

THE VISION

Between 2007 and 2009, some of the interests of two groups from the State Bar of Michigan converged – the Equal Access Initiative and the Alternative Dispute Resolution Section. The Equal Access Initiative develops policies and programs to address bias and benefit underserved populations in the justice system. Among other things, the Alternative Dispute Resolution (ADR) Section is committed to improving access to ADR and improving the quality of ADR in Michigan. In 2009, these two groups collaborated to convene the Task Force on Diversity in ADR (Task Force).

THE STEERING COMMITTEE

Initially, a Steering Committee was convened to determine the initial questions that the Task Force would be asked to consider, to design the Task Force's process, and to develop the list of stakeholders for inclusion on the Task Force. The Steering Committee was comprised of a small group identified by the conveners to represent the conveners and the broad community affected by this issue. It also included two facilitators chosen by the two convening organizations.

THE TASK FORCE

To identify Task Force participants, the Steering Committee considered the breadth of the dispute system in Michigan and worked to identify the primary stakeholder groups. While this project was initially conceived among lawyers, the Steering Committee was intentionally comprised in part of people outside the arena of court-connected ADR. The Steering Committee identified these major areas from which to draw Task Force participants:

- Government agencies
- Courts
- ADR Provider organizations
- Private ADR Practitioners and Specialized ADR Services and Programs
- Advocacy and Other Community Groups (including business)
- Legal Service Providers
- Professional Associations in ADR
- Academia and Training Providers

The Task Force was comprised of over almost 50 members, including 11 Steering Committee members. They were associated with over 38 organizations. Task Force members were invited to speak from their individual perspectives. The intention was to get as much input as possible without constraining any member to offer only those ideas and points of view upon which they could gain consent from their organization(s).

THE FACILITATORS

The role of the facilitators was to organize and focus discussions. It was intended that the Task Force facilitators remain neutral throughout this process, although both are actively involved in the ADR field in Michigan, in the convening organizations, and with some stakeholder organizations.

TASK FORCE VALUES

Underlying the Task Force process were several key values:

First, the Task Force should include a significant cross-section of the parties with a stake in the outcome of its work;

Second, Task Force members should begin their work with some understanding of each other's diverse backgrounds and perspectives as they relate to the Task Force work;

Third, the Task Force should be encouraged to brainstorm creative and innovative Action Proposals in response to the overarching question posed to the Task Force; and

Fourth, the convening organizations should work as diligently as possible to disseminate the Task Force Action Proposals to stakeholders in the hopes of generating partnerships and collaborations among Task Force participants, their organizations, and others to evaluate and implement some or all of these Action Proposals and to respond to other data generated by the Task Force.

TASK FORCE MEETINGS

Participants were asked to meet for three days over several months. In the first meeting, Task Force members were asked to develop a joint picture of our world, values and histories as they related to the Task Force questions, below. At the second work session, Task Force members focused on current trends relating to the Task Force questions, what is being done now to address those, and Task Force members' "hoped for future".

Finally, at the third work session in March 2010 Task Force members worked to generate Action Proposals, with some attention also paid to identifying individuals and organizations in the state and elsewhere who might be among the initial resources to guide, support or implement the actions.

2. THE TASK FORCE QUESTION

The Steering Committee presented this OVERARCHING question to the Task Force:

> *"What would an ADR system look like that effectively addresses issues of diversity?"*

The Steering Committee anticipated that considering answers to the following sub-questions would help answer that query:

A. What can and should be done to provide equal access to ADR processes?

B. What can and should be done to broaden professional opportunities in ADR for members of under-represented groups?

C. What can and should be done to improve the effectiveness of conflict resolution processes and providers in responding to the diverse conflict resolution needs of the state's citizens, including cultural competence?

These sub-questions were suggested tools to help the Task Force manage their work and not questions they were specifically tasked to answer.

3. THE TASK FORCE ANSWERS

A. THEMES FOR ACTION

In developing proposals for action, the Task Force worked in groups that ranged in size from 3 to 9 individuals from a cross-section of stakeholder groups (the "Work Groups"). These six Work Groups were not asked to reach consensus across or within Work Groups, but to brainstorm proposals for action. Thus, each action proposal below came from one of the six Work Groups that comprised the Task Force.

There are four broad themes reflected in the Action Proposals made by the Work Groups. These broad themes for action are:

I. Better understand and consider cultures, languages and other factors among potential ADR end users so that diverse end users may gain optimal access to and benefit from ADR.

3. THE TASK FORCE ANSWERS (CONT.)

II. Support individuals from diverse communities in becoming successful ADR providers so the ADR provider pool will be reflective of a wider spectrum of end users.

III. Increase the cultural competence of all ADR providers so that the needs of all ADR end users may be better met.

IV. Increase community knowledge of, access to and receptivity to ADR, while ensuring that the ADR provided is tailored to the needs of all end users.

B. TASK FORCE ACTION PROPOSALS: EXECUTIVE SUMMARY

Set forth in the table below is an Executive Summary of the Action Proposals developed by the Task Force. Following this, at (C) below, is a fuller description of the Task Force proposals, including description of the context from which each proposal emerged, and other information related to each Proposal and generated from the Work Groups.

B. TASK FORCE ACTION PROPOSALS: EXECUTIVE SUMMARY

Action Proposal Themes	Potential Resources for initiation, implementation, and oversight	Report page
I. Better understand and consider cultures, languages and other factors among potential Alternative Dispute Resolution (ADR Section) End Users so that diverse End Users may gain optimal access to and benefit from ADR.		
a. Identify cultural differences of diverse End Users that should be better understood to improve ADR processes.	Academia, government and unions	20
b. Reach out to End Users for help in more effective communication with diverse End Users.	Law schools, courts, bar associations, and ethnic centers	20
c. Create a tool to identify the diverse conflict resolution techniques of diverse End Users.	Religious leaders, social workers and community elders	20
d. Assess values important to diverse communities' conflict resolution process.	Professional social scientists	21
II. Support individuals from diverse communities in becoming successful ADR providers so the ADR provider pool will better reflect a wider spectrum of End Users.		
a. Promote diversity among approved ADR trainers, ADR trainees and training material.	Private trainers, foundations, and community groups	22
b. Develop assessment tool to help End Users identify and select available and knowledgeable ADR providers from diverse communities.	State Court Administrative Office (SCAO), Judicial Crossroads Task Force and relevant stakeholders	22
c. Develop an objective rotational system for court appointment of mediators.	ADR Providers, SCAO and End Users	22

B. TASK FORCE ACTION PROPOSALS: EXECUTIVE SUMMARY

Action Proposal Themes	Potential Resources for initiation, implementation, and oversight	Report page
d. Institute and promote a mentoring system for new ADR professionals.	State Bar of Michigan (SBM)/ADR Section, Community Dispute Resolution Programs (CDRPs) , law schools and ADR Providers	22
e. Encourage the State Bar of Michigan to accept pro bono ADR services as fulfilling the pro bono obligation of its members.	SBM/ADR Section, community groups, social workers	23
III. Increase the cultural competence of all ADR providers so that the diverse needs of ADR End Users are better met.		
a. With regard to training: 1) supplement basic ADR training with training to enhance cultural competence; 2) verify that diversity training has been taken by every court-appointed mediator; and 3) create an electronic resource list of those trainers and/or trainees of enhanced training.	Association for Conflict Resolution (ACR), American Arbitration Association (AAA), Institute for Continuing Legal Education (ICLE), Family Mediation Council (FMC), Masters in Alternative Dispute Resolution Program (MADR), CDRPs and law schools	24
b. Assess the current system of ADR training to determine the degree to which cultural competence is incorporated.	MI Department of Education, Michigan Supreme Court, SCAO, and Dispute Resolution Education Resources (DRER)	24
c. Develop a universal framework for cultural competence and increase the number of culturally competent and diverse trainers.	MI Department of Education, Michigan Supreme Court, DRER and SCAO	24
d. Develop Code of Conduct for ADR Providers that sets ethical standards addressing cultural competence and bias.	MI Department of Education, Michigan Supreme Court, DRER and SCAO	24

B. TASK FORCE ACTION PROPOSALS: EXECUTIVE SUMMARY

Action Proposal Themes	Potential Resources for initiation, implementation, and oversight	Report page
e. Educate ADR Providers on the "business case" for developing their own cultural and other competencies.	SBM/ADR Section, CDRPs, SCAO and ADR Providers	25
IV. Increase community knowledge of, access to and receptivity to ADR, while ensuring that the ADR provided is tailored to the needs of all End Users.		
a. Provide ADR services closer to the points of conflict within the community.	CDRPs, ADR Providers, and academicians	26
b. Decentralize access to ADR by outreach and promotion to community groups through websites, governmental organizations, education, expansion of pro bono ADR services, exploration of non-traditional funding, early ADR for cases under $25,000, ADR on line and allowing non-prejudicial extensions in court cases so parties can pursue ADR.	Senior citizens' groups, courts, bar associations, community ethnic centers, educators, therapists, community elders, and the media	26
c. Embed ADR in state government service contracts with for-profit and not-for profit service providers.	Government agencies, legislature, Attorney General	26
d. Educate and empower diverse communities through education on the value of ADR.	Social workers, religious centers, courts and media	28
e. Reach out to community leaders for guidance in development of a culturally respectful dispute resolution process.	Community organizations, houses of worship and CDRPs	28
f. Create a website for diversity and conflict resolution which includes educational resources on diversity, community needs and assessment tools, and self-evaluation tools.	ACR, AAA, PREMi, FMC, SBM/ADR Section, MADR, Law schools, and governmental agencies	28

B. TASK FORCE ACTION PROPOSALS: EXECUTIVE SUMMARY

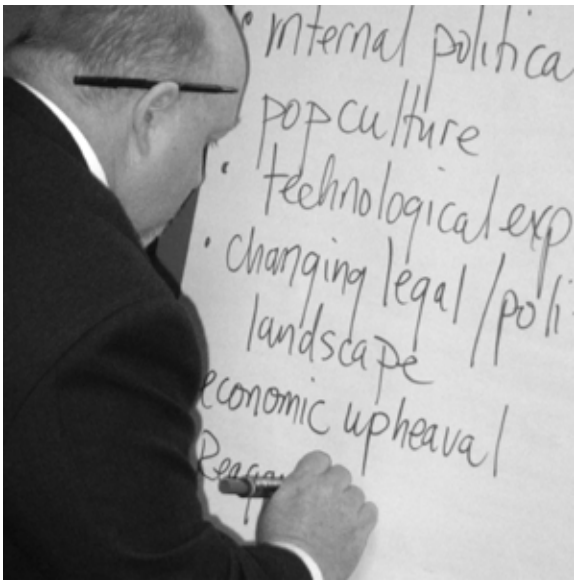
Action Proposal Themes	Potential Resources for initiation, implementation, and oversight	Report page
g. Develop a Pilot ADR Project by identifying a potential ADR End User community of diverse citizenry and develop a trial program to implement some or all of the above Action Proposals.	End users, school boards, law schools, bar associations and government	28

3. THE TASK FORCE'S ANSWERS (CONT.)

C. TASK FORCE ACTION PROPOSALS: A CLOSER LOOK

Set forth below are the Action Proposals, with extensive information supplied by the Work Groups related to possible implementation. This information includes:

- Some comments from the facilitators about the context from which each proposal emerged;
- Suggestions by the Task Force Work Group that drafted the proposal for:
  - who (including individuals and entities) might be able to assist in implementing each Action Proposal;
  - who might be a resource or support for each Action Proposal;
  - who should be informed of each Action Proposal; and
- Suggestions from Task Force Work Groups about:
  - how each Action Proposal should be prioritized;
  - the time line that should be applied to each Action Proposal;
  - and other factors relevant to implementation of each Action Proposal.



ACTION PROPOSALS

THEME 1

Better understand and consider cultures, languages and other factors among potential ADR End Users so that more diverse End Users may gain optimal access to and benefit from ADR.

A. ACTION PROPOSAL

Develop a methodology to identify cultures, subcultures and other differences that need to be better understood and addressed in order for the ADR community to better serve a wider spectrum of End Users.

COMMENT:
The concern expressed by the Work Group was that differences among potential ADR End Users and ADR Providers may impede End User access to quality ADR.

B. ACTION PROPOSAL

Identify language barriers between ADR End Users and ADR Providers and reach out to groups that represent non-English speaking End Users and/or End Users for whom English is not their primary language and/or End Users who otherwise communicate differently from mainstream ADR Providers.

COMMENT
Outreach contemplated by this proposal would better inform diverse communities about ADR and improve communication within ADR processes. Examples of organizations that might be included in this outreach include Arab-American Anti-Discrimination Committee (ADC), Latin Americans for Social and Economic Development (LASED), National Association for the Advancement of Colored People (NAACP) and Arab Community Center for and Economic Social Services (ACCESS).

C. ACTION PROPOSAL

Create an assessment tool to determine the diverse conflict resolution techniques and factors of diverse communities.

COMMENT

Diverse communities may approach conflict resolution in ways that vary from mainstream ADR assumptions about how End Users resolve conflict. For example one community may approach conflict as a very private matter while another may prefer to include many family, elders or religious leaders in the resolution process. This tool should identify those varied approaches.

D. ACTION PROPOSAL

Develop a structure/template/matrix for assessing the values and principles that are important to a community in defining its conflict resolution processes.

COMMENT

This proposal anticipates that a professional would be retained to design the template, that one or more organization(s) willing to fund the project be sought and that financial support be solicited from the Bar and conflict resolution providers as well. This template is intended to take the information gathered through methods such as those proposed above and make the information usable and useful to ADR Providers.

POTENTIAL RESOURCES FOR THEME 1 PROPOSALS

For proposals under Theme I, End Users have responsibility for determining the best way to carry out these proposals. Other potential resources suggested by the Work Groups include academia, governmental agencies, unions, training institutions, community organizations, religious institutions, bar associations, social scientists, courts, senior centers, social workers, ethnic centers, therapists, community elders, etc. Broad-based marketing (i.e. television and radio) would be utilized for some or all of these projects. The information gathered through implementation of these proposals should be distributed to ADR Providers.

ACTION PROPOSALS

THEME 2

Support individuals from diverse communities in becoming successful ADR providers so the ADR provider pool will better reflect a wider spectrum of End Users.

A. ACTION PROPOSAL

Promote diversity in the ranks of approved ADR trainers and require that all ADR trainers in turn promote diversity among ADR trainees and in training material.

COMMENT

This proposal is intended to increase the likelihood that all End User communities are represented in the ADR provider pool. The Work Group suggested this be presented to the Supreme Court through SCAO and to other organizations such as the Judicial Crossroads Task Force of the State Bar. The suggested implementation date was 2011.

B. ACTION PROPOSAL

Develop an assessment tool to assist attorneys, private ADR provider groups (such as the American Arbitration Association "AAA" or PREMi), CDRPs and End Users to better identify and select available and knowledgeable ADR providers in order to address underutilization of ADR providers from diverse communities.

COMMENT

Underlying this proposal was the Work Group's assessment that ADR Providers from diverse communities must be trained and utilized in order to have the desired impact. This was deemed a high priority by the Work Group. Resources for this proposal might be volunteers, foundations and grants. An electronic media packet may be a possible tool for publicizing this proposal.

C. ACTION PROPOSAL

Develop an objective rotational system for court appointment of mediators.

COMMENT

This proposal is intended to use court appointments to serve as an entry point from which more new and diverse mediators may be selected. The priority level assigned to this proposal by the Work Group that developed it was "not high".

D. ACTION PROPOSAL

Institute a mentoring system for new mediators—with incentives to mentors and mentees to encourage maximum participation.

COMMENT

This proposal recognizes that ongoing support for mediators from diverse communities is desirable.

E. ACTION PROPOSAL

Encourage the State Bar of Michigan to accept pro bono ADR services as fulfilling the 30-hour pro bono obligation of all SBM members.

COMMENT

This proposal would support ADR providers from diverse communities who are also lawyers by supporting their work to provide ADR services to low-income parties.

POTENTIAL RESOURCES FOR THEME 2 PROPOSALS

Assistance with the projects under Theme II might come from the ADR office of the Supreme Court Administrative Office (SCAO) because of its unique role in approving court-approved trainers, training, training material and court ADR plans. Courts would also be involved to the extent they would need to approve inclusion of these proposals in their ADR plans. Support could also come from private trainers, bar and other legal organizations (particularly the ADR Section of the state Bar), foundations and individuals in human services, community organizations, religious institutions, educators, attorneys, businesses, cultural groups, law schools, courts, senior centers, social workers, ethnic centers, therapists, community elders, Community Dispute Resolution Programs (CDRPs), Institute for Continuing Legal Education (ICLE), ADR providers, businesses and End Users etc. Broad-based marketing (i.e. television and radio) may be utilized for portions of these proposals.

ACTION PROPOSALS

THEME 3

Increase the cultural competence of all ADR providers so that the needs of all ADR End Users may be better met.

A. ACTION PROPOSAL

Develop these tools for ADR providers: 1)basic ADR training supplemented with training to enhance cultural competence and self-awareness, 2)verification that diversity training has been taken by every applicant to be approved for court-appointed mediations, and 3) an electronic resource list of those trainers and/or trainees of this enhanced training.

COMMENT

This proposal is intended to improve skills among all ADR providers in providing quality ADR services in a diverse society. The Work Group designated this as a Top Priority.

B. ACTION PROPOSAL

Assess the current system of conflict resolution education or training at all levels (including but not limited to court-approved trainings) to determine the degree to which culturally defined resolution processes and recognition of, sensitivity to, accommodation for and competence regarding cultural differences is incorporated.

C. ACTION PROPOSAL

Develop an appropriate universal framework for what cultural competence is and increase the number of culturally competent and diverse trainers.

COMMENT

This proposal was based on the premise that if ADR training is to have greater emphasis on cultural competence and diversity, more trainers must be prepared to provide that enhanced training.

D. ACTION PROPOSAL

Develop a Code of Conduct for all conflict resolution providers that sets ethical standards addressing cultural competence and bias.

COMMENT

For a model or prototype, the Work Group suggested review of the Medical Code of Conduct related to cultural competency and/or bias. The State Bar's Michigan Pledge to Achieve Diversity and Inclusion may also be relevant.

E. ACTION PROPOSAL

Educate ADR providers on the "business case" for developing their own cultural competency, along with other competencies, to increase their business as an ADR Provider (the "needs-based approach").

POTENTIAL RESOURCES FOR THEME 3 PROPOSALS

Resources to evaluate and implement action proposals under Theme III could include SCAO's Michigan Judicial Institute (MJI) and Judicial Information Systems (JIS), organizations such as Association for Conflict Resolution (ACR), CDRPs, American Arbitration Association (AAA), ICLE, Family Mediation Council (FMC), State Bar of Michigan (SBM), local bars, the Masters in Alternative Dispute Resolution (MADR) program and law schools, Dispute Resolution Education Resources, Inc. (DRER) and the Michigan Department of Education. Support could also be sought from courts, governmental agencies, cultural communities throughout the state, private ADR provider groups, individual ADR Providers and End Users.

ACTION PROPOSALS

THEME 4

Increase community knowledge of, access to and receptivity to ADR, while ensuring that the ADR provided is tailored to the needs of all End Users.

A. ACTION PROPOSAL

Provide ADR services closer to the points of conflict within the community, thereby permeating the fabric of the community.

COMMENT

To promote this project, the Work Group proposed coordination of this project with efforts to place ADR clauses in government contracts (infra), that money be raised (e.g. grants), and public relations efforts be developed to promote ADR in target communities. The Work Group suggested that potential sites within diverse communities be identified, that ADR providers be solicited to provide services specifically to those sites and that the solicited sites be used to provide ADR. A final suggestion was that pilot projects in various geographic points throughout Michigan be created in 2011 and implemented in 2012. Following evaluation and appropriate adjustments, the project could then be institutionalized throughout the state.

B. ACTION PROPOSAL

Decentralize access to conflict resolution services via outreach to community groups, websites, involvement of governmental organizations in the promotion of ADR, education, expansion of ADR services, promotion and support of pro bono ADR work, exploration of non-traditional funding for mediation, early ADR for cases under $25,000, ADR on-line and allowing non-prejudicial extensions to parties to allow them time to pursue ADR.

COMMENT

This proposal was intended to increase community access to ADR services. The Work Group also suggested that broad-based marketing through radio and television be utilized to implement this plan.

C. ACTION PROPOSAL

Embed ADR in State government service contracts with for-profit and not-for profit service providers, to both increase the reach of ADR and to provide conflict resolution resources to support the services to be delivered.

COMMENT

This proposal identified state service contracts as a vehicle for permeating communities with ADR. The Work Group recommended that this proposal be implemented to increase access to ADR, while neither increasing nor decreasing access to courts. The manner in which the contracts require vendors to offer ADR services to service recipients should be flexible and appropriate to the service rendered.

To support implementation of this plan, the Work Group proposed drafting model ADR language for different types of contract, the development of a business and service case for this plan, a coalition to build support, and a target agency or activity to initiate implementation of the plan.

D. ACTION PROPOSAL

Educate and empower diverse communities on the value of ADR.

COMMENT

This Action Proposal was given moderate priority. The Work Group determined that the primary implementation cost would be the donation of volunteer time.

E. ACTION PROPOSAL

Develop a culturally sensitive and respectful dispute resolution process, acceptable to the community in which it is to be provided, through a structured outreach to community leaders and incorporation of a process awareness complimentary to the opinions of the community.

COMMENT

Underlying this proposal is recognition that, for diverse communities to be truly receptive to ADR, it will take more than education of communities as to what ADR is and how it can benefit them. The communities must be able to trust that the ADR offered will truly meet their needs in ways consistent with their values.

F. ACTION PROPOSAL

Create a website for diversity and conflict resolution which includes: a) educational resources on diversity, b) community needs and assessment tools, and c) self-evaluation tools.

COMMENT

The proposal would empower ADR Providers to learn about the needs of diverse communities while simultaneously educating the communities about the best uses of ADR.

G. ACTION PROPOSAL

Institute a Pilot ADR Project by identifying a potential ADR End User community of diverse citizenry and developing a program to implement some or all of the above recommendations on a trial basis.

COMMENT

This proposal was intended to garner support for and assure the best methodology for implementation of the Action Proposals above. This proposal was given high priority by the Work Group. It should be an ongoing initiative with most costs met by volunteer efforts.

POTENTIAL RESOURCES FOR THEME 4 PROPOSALS

Resources to implement action proposals under Theme IV could include educational institutions, libraries, shopping centers, houses of worship and other non-governmental sites where people in target communities gather for goods or services. This project may be supported by CDRPs and other ADR Providers, the legal services community and foundations, bar associations, courts, senior centers, social workers, community ethnic centers, therapists, community elders, etc. Broad-based marketing, (i.e. television and radio) would also be helpful. Advice and resources could also be solicited from organizations that already utilize ADR institutionally. Support may also be sought from the governor, state attorney general, the Secretary of State, Department of Management and Budget, Chambers of Commerce, trade associations, service vendors, constituent or niche groups, businesses, End Users, volunteers and cultural groups. Other resources may include SCAO's Michigan Judicial Institute (MJI) and Judicial Information Systems (JIS), Association for Conflict Resolution (ACR), AAA, ICLE, Family Mediation Council (FMC), the Masters in Alternative Dispute Resolution (MADR) program, law schools, courts, governmental agencies and cultural communities throughout the state.

CONCLUSION

In order to create an ADR system in Michigan which truly is effective in addressing issues of diversity, much work is needed. This report builds on efforts already underway, but it is also a beginning. Its value today lies in the creativity and innovation of the proposals from diverse stakeholders. In the long-term, the value of this effort will be measured by commitment and action to create an ADR system in Michigan that effectively addresses issues of diversity. This is our goal, and our challenge.

The Task Force on Diversity in ADR

APPENDIX A: RAW DATA FROM WORK GROUPS

ONE: **RECOMMENDATION**	TWO: **TENTATIVE "RASI" ANALYSIS**	THREE: **PRIORITIES AND TIME CONSIDERATIONS**
Describe your RECOMMENDATION and, if you have time, also describe tasks that might be taken to accomplish this recommendation.	Identify groups, stakeholder(s), and others: a. who would likely have RESPONSIBILITY by virtue of their interest, position, resources, or other for achieving this recommendation; b. with AUTHORITY to implement; c. who can SUPPORT the recommendation (e.g. with volunteers, staff, money), e.g. law schools, bar organizations, government; and d. who needs to be INFORMed of the recommendation.	Share your thoughts about how this recommendation should be prioritized, time needed to complete, important windows, and coordination with related efforts.

ONE: **RECOMMENDATION**	TWO: **TENTATIVE "RASI" ANALYSIS**	THREE: **PRIORITIES AND TIME CONSIDERATIONS**
1. Address training by diversifying approved trainers and requiring that trainers diversify their class. Trainers are asked to be ambassadors to their interest groups, communities, etc.	a. Supreme Court/SCAO – approves court-annexed CDRP trainers and materials and educates/certifies trainer and court ADR plans (modify materials and applications) b. courts to include this within their ADR Plan c. private training – other governmental training to incorporate diversity in trainers/materials also. d. bar and legal organizations support these efforts with outreach and money e. foundation support f. human service community workers (including churches) can provide resources, trainers and trainees. Do not limit scope of recruits and support	RED Work Group i. present concept to Supreme Court to SCAO and to others including Judicial Crossroads, etc. Request implementation in training year 2011 ii. seek support for rule/ concept from stakeholders iii. ask for $$ 2011

ONE: **RECOMMENDATION**	TWO: **TENTATIVE "RASI" ANALYSIS**	THREE: **PRIORITIES AND TIME CONSIDERATIONS**
2. Embed ADR in state government service contracts with profit and not-for-profit service providers to both increase the reach of ADR and provide resources for the services to be delivered. Access to ADR not plus/minus denial of access to courts. How the contract requires that the vendor offers ADR to service recipients should be flexible and appropriate to service.	RED Work Group – a. government agencies that contract (government attorneys to be influenced) b. policy makers (legislature) who fund c. can get advice/resources from organizations that utilize ADR institutionally d. state executive (Governor/Attorney General/SOS and DMB) e. ADR providers f. Chamber of Commerce and trade associations (e.g. Michigan Manufacturers Association) g. Foundations h. Service vendors	RED Work Group – i. draft model ADR language for different contract types (look to expertise) ii. develop a business and service case for this iii. coalition building to support iv. target/pilot one agency or activity
3. Develop a methodology to identify cultures and subcultures so that ADR may better serve them all	a. End users. Use diverse potential/actual users to evaluate programs/processes as with Washtenaw to identify gap. b. Academy (universities/training institutions, research), Health Care, and government/unions resource for existing knowledge. c. seek additional inputs on who/what/when/where/why through RFP like process that addresses the dynamic demographics of America. d. current ADR providers e. churches	RED Work Group i. inventory existing information ii. evaluate information iii. formulate methodology and methodologies iv. test with pilots v. recommend

ONE: **RECOMMENDATION**	TWO: **TENTATIVE "RASI" ANALYSIS**	THREE: **PRIORITIES AND TIME CONSIDERATIONS**
4. Provide ADR contacts/ services closer to the points of conflict within the community. Thereby, ADR would permeate the fabric of the community.	a. law schools, colleges, shopping centers, houses of worship, other non-governmental sites where people gather for goods or services could be ADR hot spots b. governmental entities such as libraries, police stations c. CDRPs and other ADR providers d. legal services community e. foundations f. academy to provide data	RED Work Group i. coordinate with efforts to place ADR clauses in government contracts and to obtain $$ and PR efforts ii. prioritize potential sites within community with diverse end-users a major concern iii. solicit ADR providers to provide site-based services iv. solicit sites to be used v. create geographic pilots in 2010/11 for 2012 vi. seek grants vii. implement in 2012 and evaluate and institutionalize
5. Education for providers: - basic training needs to be enhanced - goal of training to enhance cultural competence and self-awareness - there should be a section in the proposed state mediator application process to include diversity training - create a resource list (electronic)	a. SCAO – - JIS - MJI b. other groups – ACR, CDRP, AAA, ICLE, FMC-MI, State Bar, local bars, higher education (MADR, law schools) c. courts d. private providers e. government agencies f. diverse groups	Green Work Group #1 priority

ONE: **RECOMMENDATION**	TWO: **TENTATIVE "RASI" ANALYSIS**	THREE: **PRIORITIES AND TIME CONSIDERATIONS**
6. Increase the number of culturally competent and diverse trainers. Create an understanding framework for cultural competence – what is it.	- SCAO – Circuit courts/bars. Etc. For case evaluators – Government agencies – See list for (5), above	Green Work Group #2 priority
7. Create an assessment tool to determine the diverse conflict resolution citizens. Distribute results to ADR providers.	See (5) above	Green Work Group #3 priority
8. Outreach to all citizens and organizations irrespective of cultural diversity to increase awareness and use of conflict resolution services	See (5) above	Green Work Group #4 priority
9. Create a website for diversity and conflict resolution: (a) with educational resources in diversity/CR; (b) community needs and assessment tools; and (c) self-evaluation tools	SCAO and everyone listed at (5) above	Green Work Group #5 priority
10. Code of Conduct for arbitrators, case evaluators, mediators (ALL CR providers) to include cultural diversity/ ethics/bias recognition	Compare to medical code of conduct in cultural competency and everyone listed at (5) above	Green Work Group #6 priority

ONE: **RECOMMENDATION**	TWO: **TENTATIVE "RASI" ANALYSIS**	THREE: **PRIORITIES AND TIME CONSIDERATIONS**
11. Develop a structure/ template/matrix for assessing the values and principles that are important to a community in defining its conflict resolution processes: - Cultural components; - Conflicts resolution components; - Prioritization	R. $ instrument designer A. an organization willing to "fund" S. CR professionals and bar foundation ($) I. -	Purple Work Group Serves another recommendation so should come before or contemporaneous to recommendation #12
12. Develop a structure and process awareness for outreach to individual communities (culturally diverse) that is respectful and complimentary to the opinion leaders of the community: - To develop culturally sensitive dispute resolution processes acceptable to that community	R. Community Dispute Resolution Centers (CDRPs), ADR Section, Action, CR professionals A. Board of Directors of CDRPs, SCAO S. institutions within the community I. -	Purple Work Group Should come after recommendation #11 – must do #12 first
13. Develop an assessment mechanism to evaluate the "systems" identified in recommendations #14 and #15, the template/matrix, etc.	R. instrument designer	Purple Work Group Needs to be done before Recommendations #14 and #15

ONE: **RECOMMENDATION**	TWO: **TENTATIVE "RASI" ANALYSIS**	THREE: **PRIORITIES AND TIME CONSIDERATIONS**
14. Examine the current system for approval of court-approved trainings to assess the level of recognition/ accommodation of cultural competence, cultural sensitivity, and culturally defined conflict resolution processes: - using available pilot projects (i.e. Dearborn)as tests	R. SCAO (or its designee) A. Supreme Court S. CDRP – local "cultural" community – training community – provider community	Purple Work Group Could be done right now and has test vehicles available or soon to be available For "S", need to do recommendation #13 first
15. Examine the current system of conflict resolution education (at all levels) to assess level of incorporation of cultural sensitivity and cultural competence and culturally defined conflict resolution processes	R. individual universities or departments (education, conflict resolution, A. Michigan Dept of Education –authority within an individual university or school S. DRER – providers of school conflict resolution education – professional educator and administrator organizations	Purple Work Group
16. Developing and educating practitioners on the business case for cultural competency among other competencies for selecting ADR providers – needs-based approach	R. ADR providers, i.e. AAA, CDRPs, etc. State Bar Supreme Court – VanEpps ADR Section Law Schools A. practitioners, businesses, cultural groups and end-users S. law schools, schools, ADR providers, courts – VanEpps, State Bar, ADR Section I. cultural communities, practitioners, end-users	Blue Work Group #1 priority On-going continuing education along with recommendation #17 and #21 – coincide with each other Anticipated costs: volunteers, foundations, grants

ONE: **RECOMMENDATION**	TWO: **TENTATIVE "RASI" ANALYSIS**	THREE: **PRIORITIES AND TIME CONSIDERATIONS**
17. Provide practitioners with an assessment tool that will assist in selecting the ADR providers	R. Ps, etc., State Bar, Supreme Court – VanEpps, ADR Section, law schools A. practitioners, businesses, cultural groups, end-users S. law schools, schools, ADR providers, Supreme Court, State Bar, ADR Section I. cultural communities, practitioners, end-users	Blue Work Group #2 priority Electronic media packets for ? – Along with #16 and #21 – coincide with each other Anticipated costs: volunteers, foundations, grants
18. Developing practicum/ mentoring system for new mediators – with incentives	R. CDRPs, ICLE, State Bar, Supreme Court – VanEpps, law schools A. practitioners, businesses, end-users S. law schools, ADR providers, Supreme Court, State Bar, ADR Section I. cultural communities, practitioners, end-users	Blue Work Group #3 priority In the middle of the chart –along with #2 and #21 Anticipated costs: volunteers
19. Educating and empowering diverse communities on the value of ADR	R. CDRPs, State Bar, community groups, constituent groups (niche groups), law schools A. practitioners, businesses, end-users, cultural groups S. law schools, ADR providers, courts, State Bar, ADR Section, government I. cultural communities, practitioners, end-users	Blue Work Group #4 priority But not high on the chart – along with #18 and #21 Anticipated costs: volunteers

ONE: **RECOMMENDATION**	TWO: **TENTATIVE "RASI" ANALYSIS**	THREE: **PRIORITIES AND TIME CONSIDERATIONS**
20. Developing an objective rotational system for appointing mediators – only for court-appointed mediators (for newer mediators; entry point for getting selected)	R. practitioners and end-users making recommendations to the courts A. courts, legislature, end-users, practitioners S. ADR providers, Supreme Court, courts, State Bar, ADR Section, government I. cultural communities, practitioners, end-users	Blue Work Group #5 priority Not high on the chart – along with #19 and #21 – coincide with each other
21. Identify a potential end-user and develop a program to implement some of these recommendations	R. ADR providers to promote; law schools to promote; State Bar and ADR Section to promote A. end-users S. ADR providers, courts, State Bar, ADR Section, government, law schools, affinity bars I. cultural communities, schools, practitioners, end-users, volunteers, school boards	Blue Work Group HIGH priority that accompanies recommendations #16-20 On-going initiative Anticipated costs: volunteers
22. Identify different language barriers – reach out different bar groups, cultural community groups (ADC, LASED, NAACP, Access)	Everyone (educators, law schools, bar associations, courts, senior centers, community ethnic centers), religious centers, social workers, therapists, community elders (ethnic background) Broad-based marketing (radio and television communication)	Black Work Group

ONE: **RECOMMENDATION**	TWO: **TENTATIVE "RASI" ANALYSIS**	THREE: **PRIORITIES AND TIME CONSIDERATIONS**
23. Community education on ADR (at gatekeeper level) providing all information necessary to educate ADR process – to all consumers – a. Educating ADR providers	Everyone (educators, law schools, bar associations, courts, senior centers, community ethnic centers), religious centers, social workers, therapists, community elders (ethnic background) Broad-based marketing (radio and television communication)	Black Work Group
24. De-centralize access to services (taking ADR to local community organizations), reaching out to different community ethnic groups (via websites, government organizations): - Education - Expand and decentralize access to services - Recommend and promote pro bono work - Explore and promote non-traditional funding for mediation - Early ADR for cases under $25,000 - Virtual ADR – on-line ADR internet - Allow parties to elect an extension to use ADR (still preserving rights)	Everyone (educators, law schools, bar associations, courts, senior centers, community ethnic centers), religious centers, social workers, therapists, community elders (ethnic background Broad-based marketing (radio and television communication)	Black Work Group

ONE: **RECOMMENDATION**	TWO: **TENTATIVE "RASI" ANALYSIS**	THREE: **PRIORITIES AND TIME CONSIDERATIONS**
25. State bar accept ADR service as contributing to 30-hour pro bono requirement – recognize and recommend ADR as part of pro bono	Everyone (educators, law schools, bar associations, courts, senior centers, community ethnic centers), religious centers, social workers, therapists, community elders (ethnic background Broad-based marketing (radio and television communication	Black Work Group

APPENDIX B: PRESENTER MATERIALS FROM FIRST TASK FORCE MEETING

(To be made available online and on request)

APPENDIX C: RESOURCE MATERIALS FROM FIRST TASK FORCE MEETING

(To be made available online and on request)

REPORT PRESENTED & UNDERWRITTEN BY

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TASK FORCE ON DIVERSITY IN ALTERNATIVE DISPUTE RESOLUTION

Crafting an Effective Alternative Dispute Resolution System that Addresses Issues of Diversity

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PRESENTER MATERIALS

December 9, 2009

TASK FORCE ON DIVERSITY IN
ALTERNATIVE DISPUTE RESOLUTION

PRESENTER BIOGRAPHICAL INFORMATION

LORRAINE H. WEBER
Director of Access and Fairness, Office of Chief Justice
Marilyn Kelly, Michigan Supreme Court

In 1987, Lorraine left her position as Referee of the Juvenile Division of Wayne County Probate Court to serve as Project Director for the Michigan Supreme Court Task Forces on Gender and Racial/Ethnic Issues in the Courts. Beginning in July 1997, she served as consultant to the State Bar of Michigan on Open Justice Issues and special advisor to the State Bar of Michigan Task Force on Racial/Ethnic and Gender Issues in the Courts and the Legal Profession. In July, 2003, Ms. Weber became the Executive Director of the Detroit Metropolitan Bar Association and its Foundation. She is a founding member and former Board member of the National Consortium on Racial and Ethnic Fairness Issues in the Courts and received the Consortium's Founders Award in 1999.

JAY KAPLAN
Staff Attorney, LGBT Project, ACLU of Michigan

Jay Kaplan has been the staff attorney for the ACLU of Michigan's LGBT Project since it began operations in 2001. Prior to that he worked for Michigan Protection and Advocacy Service, specializing in disability rights issues and where he founded the HIV/AIDS Advocacy Program, the first legal services program for persons with HIV/AIDS in Michigan.

BELINDA DULIN
Executive Director, The Dispute Resolution Center

Ms. Dulin has been involved with conflict resolution programs since 1998. She has a bachelor's degree in Business Administration and a Master of Arts degree in Dispute Resolution, both from Wayne State University. Prior to becoming involved in community mediation, she worked in the corporate setting assisting with employment disputes whereby preserving the working relationships between employees and management. She began her employment with The Dispute Resolution Center 2003 as the Mediation Services Coordinator and assisted in launching the Small Claims Mediation Program and the Domestic Relations Motion Day Program. In 2006, she became the director of mediation services and was responsible for the development and administration of various civil and family mediation programs as well as facilitating workshops to community organizations. In the summer of 2007, Belinda accepted the position of Executive Director and continues to expand the DRC's services. Under her administration, she has expanded the small claims mediation program, where mediation is the first step for problem solving in the 14A and 14B District Courts; and, developed and implemented the truancy prevention mediation program - serving families and schools in identifying and resolving barriers that prevent students from getting to school consistently. The Dispute Resolution Center serves Washtenaw and Livingston Counties.

NELSON MILLER
Professor and Associate Dean, Thomas M. Cooley Law School

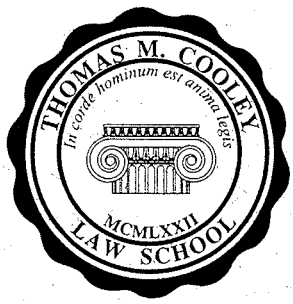
Dean Miller practiced civil litigation for 16 years from 1987 to 2004 before joining the Cooley faculty. Dean Miller's law practice was in both the state and federal courts, representing individuals, private corporations, non-profit corporations, government agencies, public schools, and public and private universities. He has served the State Bar of Michigan in several capacities including as an appointed and elected member of its Representative Assembly and an appointed member of its Law-Related Education Committee, Equal Access Initiative, Criminal Issues Initiative, and Publications and Websites Advisory Committee. His other public service includes writing United States Supreme Court amicus briefs for public interest organizations, providing pro-bono legal services to individuals at several community centers in West Michigan, forming and advising charitable and religious non-profit organizations, and serving as president and treasurer of a public charter school academy. Dean Miller also serves as president of the Kent County Legal Assistance Center, a public-private partnership organization that provides legal forms and information to thousands of unrepresented litigants every year. The State Bar of Michigan recognized Dean Miller as a Citizen Lawyer and in September 2005 gave him the John W. Cummiskey Award for pro-bono service.

MARK MCWILLIAMS
Director of Education Advocacy, Michigan Protection and Advocacy Service (MPAS)

MPAS is the protection and advocacy agency serving individuals with disabilities in Michigan; the MPAS Education Team provides individual and systemic advocacy and training on education and children's issues throughout the state. Mark has worked with individuals with disabilities in the protection and advocacy systems in Michigan, California, and West Virginia since 1986. He obtained his J.D. from the University of California Hastings College of Law in 1985, is an active member of the Michigan bar, and teaches Alternative Dispute Resolution at Thomas M. Cooley Law School. He lives with his family in Eaton Rapids.

DOUG VAN EPPS
Director of the Office of Dispute Resolution, Michigan Supreme Court

Mr. Van Epps oversees the implementation of ADR practices in the trial courts and manages the Community Dispute Resolution Program.



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THE HISTORY OF GENDER, RACIAL, AND ETHNIC INITIATIVES IN MICHIGAN—WHERE WE HAVE BEEN, WHERE WE HOPE TO GO, AND WHY IT IS IMPORTANT

Lorraine H. Weber

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TRANSCRIPT

THE HISTORY OF GENDER, RACIAL, AND ETHNIC INITIATIVES IN MICHIGAN— WHERE WE HAVE BEEN, WHERE WE HOPE TO GO, AND WHY IT IS IMPORTANT

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INTRODUCTION

Good afternoon,

I am both proud and a little amazed at the opportunity that I had early on in Michigan to be a part of this movement, and, as you might have gleaned from my introduction, I regret to say that I am indeed old enough to have been there pretty much from the beginning. As I look around this room, I see the faces of some who were there at the beginning with me, and I can assure you that this road was not walked without the partnership and incredible dedication of a large number of lawyers and judges who were and remain committed to the goal of changing our profession and our courts at the most fundamental levels. During the course of my presentation, you will hear some of these names, but it would be impossible to list them all. Suffice it to say that the efforts made and the successes that occurred required a unique collaboration of all sectors of the legal profession. Supreme Court Justices and judges from all levels of the judicial community were critical players along with their court administrators. Bar leaders, including state and special purpose groups, were particularly important in implementing recommendations and supporting the ongoing development of programs to affect change. Support from large law firms and corporations fueled the efforts with both funding and much-needed public support. Law schools contributed academic research and education. At the most fundamental levels, attorneys and judges devoted valuable time and energy to the effort. It is an effort that is still alive and well today because those

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individuals would not allow it to become another report filed away and put on the shelf, but rather they became invested in the purpose and meaning over the course of more than twenty years.

It was almost twenty years ago that I was hired by the Michigan Supreme Court to direct the administration of its gender and racial ethnic task forces. This began a career arc that lasted collectvely for nearly fifteen years as a consultant and educator around the country and here in Michigan. I was a founding member of the National Consortium on Race and Ethnic Fairness in the Courts and Special Advisor to the State Bar of Michigan Open Justice Initiatives. It has been about four years since I have been directly involved in the area of equality and justice, although as Executive Director of the Detroit Metropolitan Bar Association and its Foundation, I am certainly in a position to continue to create and to support programming related to these issues. I can tell you that this initiative continues to live in my heart as one of the most important and fulfilling professional responsibilities that I have undertaken, and I am particularly excited to share my recollections about what it was like and how we arrived at where we are today.

The title of this Symposium is The Road to Equality—Are We There Yet? It suggests that the quest for equality in the justice system is a journey, and like all journeys, it entails not only an understanding of where we are going but a much-needed perspective on where we started and what have we learned along the way. My job here today is to provide the historical perspective for this exploration and to create, if at all possible, the context for the discussion of the relationship between our system of justice and the aspiration to fairness and equality that lies at its very heart.

THE NATIONAL PERSPECTIVE

The dialogue about the impact of bias and the status of under-represented groups, which at the time we called minorities, began in the early 1980s and was initiated, in large part, by the National Organization of Women (NOW) as an essential part of their work on the Equal Rights Amendment (ERA). Its initial purpose was to address the increasingly challenging issue of gender bias issues within the domestic violence arena. From this platform, a national groundswell was developed, and, within a short time, the area of racial and ethnic fairness was also added to the agenda.

To give you a national perspective—at that time fewer than twenty states had begun gender-bias initiatives and only four states, including Michigan, had race and ethnic commissions. In 1980, NOW founded the National Judicial Education Program with a mission of eliminating gender bias in the courts. By 1982, NOW had convinced the United States Supreme Court to create the first task force to investigate gender bias in the courts. And by 1988, two leading judicial organizations called on all states to create task forces to examine gender bias in the courts.

One of those organizations, the National Association of Women Judges, joined with the National Judicial Education Program and developed the Gender Fairness Strategies Project by publishing and disseminating the *Action in the New Millennium* manual. This manual offers Gender Bias and Fairness Task Forces and Committees and court administrators a clear, comprehensive, and effective guide for eliminating bias from the courts. The mission was clear and unambiguous and included the following goals:

- Ensuring equal justice and access to the courts for all, including women, youth, the elderly, minorities, the underprivileged, and people with disabilities;
- Providing judicial education on cutting-edge issues of importance;
- Developing judicial leaders;
- Increasing the number of women on the bench in order for the judiciary to more accurately reflect the role of women in a democratic society; and
- Improving the administration of justice to provide gender-fair decisions for both male and female litigants.

At the same time, in December 1988, the New York Commission on Minorities, chaired by Ambassador Franklin H. Williams, organized and hosted the first meeting of the then-existing, state-court task forces and commissions on racial and ethnic bias. The purpose of the meeting was to provide the task forces and commissions from New Jersey, New York, Michigan, and Washington State an opportunity to discuss the status of their research and program activities, to share ideas, and to develop strategies for increasing the number of commissions and task forces around the country.

One of the outcomes of this historic meeting was a decision by the chairpersons and executive directors to schedule a follow-up meeting in Orlando, Florida, January 20-22, 1989, for the purpose of exploring and adopting a formal structure that would enhance communication between existing and future task forces and commissions on racial and ethnic bias in the judiciary. During the meeting, the group voted unanimously to establish a formal, cooperative relationship and to request that the National Center for State Courts act as the group's secretariat. The group adopted the name The National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts. In 2002, the name of the organization was changed to The National Consortium on Racial and Ethnic Fairness in the Courts (The National Consortium). The National Consortium became the guiding force on racial and ethnic equality in the country.

In the intervening years, the National Consortium has grown from four state task forces and commissions to thirty. Bylaws were adopted in 1995 at the Annual Meeting in New Orleans, Louisiana, and modified in 2005 at the Annual Meeting in Atlanta, Georgia. The organization was incorporated in

1999, and I am very proud to tell you that our own Michigan Supreme Court Justice, Marilyn Kelly, is the current Consortium Chair.

As a result of this effort, the National Center for State Courts created the Racial and Ethnic Fairness Initiative. Its purpose was to identify and create knowledge and practices that assist courts in implementing strategies that promote race and ethnic fairness in the courts and in the entire justice system. The Racial and Ethnic Fairness Initiative works to enhance the value of what was learned through previous state and national efforts. One example is the *Position Paper on State Courts' Responsibility to Address Issues of Racial and Ethnic Fairness*, which promotes fairness in the courts and generates new knowledge and strategies that can be applied in pursuit of the state courts' agenda.

The Initiative provides the following services: (1) makes readily accessible the finding and recommendations of the various state task forces and commissions on race and ethnic fairness in the courts and monitors progress reported by the states, (2) develops relevant educational materials for National Center constituency associations and groups, and (3) serves as a resource to state court customers on questions relating to racial and ethnic fairness matters in the state courts.

In 1990, the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) issued a resolution codifying their unconditional support for these efforts. The CCJ and COSCA's Access to and Fairness in the Courts Committee was charged with actively encouraging state courts to engage in outreach efforts to increase fairness and access to justice and sharing successful strategies and useful information among jurisdictions. These groups have long been committed to fairness and access to justice for everyone through improving all aspects of the administration of justice.

As you can see, it was becoming increasingly clear that while courts and lawyers had been the leaders in the very real gains for the Civil Rights Movement and feminism in the 1960s, the momentum now was carefully focused on the existence of such discrimination within legal institutions. The spotlight was no longer focused on schools, transit systems, public facilities, employment, and housing markets. The light of critical self-examination was firmly aimed toward our own profession, and we could no longer ignore the harsh truths that were revealed. Even more importantly, if the justice system were to change, it would not change because an outside entity forced it upon us. We would have to change from within and such change would require a commitment from the very top levels of influence and professional achievement—nothing short of the involvement of the highest court in the state would be enough to start the journey.

In light of this groundswell, support, public pressure, and the work of countless voices demanded self-examination and change. The journey, if you will, had to be undertaken. We could no longer pretend that we were

the only aspect of our society that had magically avoided the impact of discrimination, stereotyping, and bias.

Investigation after investigation and report after report across our nation were making the same findings. Public trust and confidence in the rule of law were suffering. Citizens did not believe that justice was available in equal measure to all nor did they believe that law was fairly applied regardless of gender, race, or ethnic origin. The worst part of this news was that this perception was more than just the imagination of those who were complaining—this perception was firmly founded in reality.

This reality was confirmed in a number of ways:

- An alarming number of judges, lawyers, court personnel, witnesses, and litigants had in fact experienced unfair and demeaning treatment based upon their race, ethnic origin, or gender;
- Substantive law and court rules had codified myths and stereotypes based upon assumptions about women and minorities;
- The application and adjudication of neutral legal standards reflected, in many instances, those same assumptions and beliefs;
- Representation and leadership within the courts and legal profession did not reflect the diversity and needs of the population served; and
- Income, position, and other employment disparities existed across the board for women and minority attorneys.

On another front, state and local bar associations across the county were looking at issues related to legal economics, image, quality of professional life, access to justice, and the future of the legal profession into the twenty-first century. In each instance, these important and necessary initiatives intersected with the existence of underrepresentation, bias, and invidious discrimination and led to the need for a comprehensive strategy to (1) raise both public and professional awareness of open-justice issues, (2) reduce or eliminate bias and discrimination within the courts and legal profession, and (3) increase public confidence in the fairness of the legal process and the equal application of law for all citizens.

Michigan was no exception. It was against this background that the Michigan legal profession took up the challenge of addressing the road to equality in its own backyard.

This road began in 1986 with the Michigan Supreme Court Citizen's Commission, headed by Justice Patricia Boyle. Among other things, the Commission found that one-third of the citizens that it had surveyed regarding the Michigan courts believed that women and African Americans were treated less fairly than Whites in the Michigan court system.

For many this was a disturbing and surprising finding. No profession is more dependent upon public confidence and the perception of fairness than the legal system in our country. The Commission could not ignore the implication of this data stating, "A fundamental principle of our constitutional government is that discriminatory treatment on the oasis of race, gender, economic class, religion, or physical condition cannot and will not be tolerated. Bias damages a court in its fundamental role as dispenser of justice."

With these words, the Michigan Supreme Court Citizens' Commission to Improve Michigan Courts called for the creation of task forces on gender, race, and ethnic issues in the courts and enlisted the aid of Supreme Court Justice G. Mennen Williams to the effort.

By 1996, several states throughout the country had created joint-bench and bar commissions to study the effect of gender discrimination in their court systems. The State Bar of Michigan, the Women Lawyers Association of Michigan, and numerous individual members of the Michigan judicial and legal community endorsed the Citizens' Commission's call for the Michigan Supreme Court to support a similar effort. They expanded their request to include the areas of racial and ethnic bias as well. This was a groundbreaking development as the Michigan Supreme Court's Task Force on Racial and Ethnic Issues in the Courts was the first of its kind in the nation. Michigan was setting a powerful example for other states to follow.

On September 15, 1987, the Justices of the Michigan Supreme Court issued Administrative Order No. 1987-6 creating the Task Force on Gender Issues in the Courts, chaired by former State Bar President Julia Darlow, and the Task Force on Racial and Ethnic Issues in the Courts, chaired by Court of Appeals Judge Harold Hood. Justice Williams was the Honorary Chair of both bodies until his death early in the process. I had the privilege of working with both task forces as Executive Director. The Michigan Supreme Court directed the task forces "to examine the courts and to recommend revisions in rules, procedures, and administration of the courts to assure equal treatment for men and women, free from race, ethnic, or gender bias."

After two years of extensive citizen, judicial and lawyer surveys, data collection, research, and seventeen statewide public hearings, the 1989 Task Forces concluded that a substantial number of citizens and lawyers believed that bias affects justice and that their perceptions of bias were often based on reality. These reports and their conclusions revealed that Michigan, like many other states, needed to address the manner in which courts treat those who often lack the power to make their voices heard.

The Reports, which were released in December of 1989, made hundreds of specific findings and 167 detailed recommendations urging individuals, agencies, organizations, and the courts to address the problems identified. They provided a roadmap for change, addressing not only how lawyers treat

one another, but also, more importantly, how to improve the quality of justice afforded to victims and litigants.

THE TASK FORCES

1989 Gender Report

The Task Force on Gender Issues in the Courts reported that its two-year examination of the Michigan courts established, as the Citizens' Commission suggested, that a substantial number of Michigan citizens believed that gender bias affects justice in the Michigan court system. The Task Force further concluded that the perceptions of gender bias were rooted in reality. Gender bias adversely affects the interpretation and application of substantive laws, practices, and procedures; the treatment of and relationships among participants in the court system, including parties, victims of violence, children of divorce, witnesses, court employees, judges and lawyers; and related educational and professional associations. The Task Force investigated the concerns of both men and women and found that gender bias adversely impacts both sexes.

The Task Force defined gender bias as "the tendency to think about and behave toward others primarily on the basis of their sex. It is reflected in attitudes and behavior toward women and men which are based on stereotypical beliefs about the "true nature," "proper role," and other "attributes" of the gender."

1989 Race and Ethnic Report

> The lack of equal opportunity for minority participation in business, corporate, and professional affairs, is a grave societal problem that will not be solved by legislation and judicial decrees alone. Full and equal opportunities for racial and ethnic minorities will exist only after an informed society rejects discrimination and racism, not only because they may be unlawful but also because they violate the moral and human values upon which our Nation was founded.

The Task Force identified many areas where race and ethnicity influence conduct, procedures, and, in some instances, case outcomes. While the Task Force was confident that it was not occurring in every court in every case, there is evidence that bias does occur with disturbing frequency at every level within the legal profession and court system. This damages the lives of individual litigants, witnesses, judges, lawyers, court personnel, and the court system itself. The oral and written testimony as well as research indicated that bias occurs in a variety of circumstances. However, the conclusions and recommendations in the Task Force's Final Report focused on five areas:

- Courtroom treatment of minority litigants, witnesses, jurors, and attorneys;
- Impact of racial and ethnic bias on the administration, staffing, and behavior of the court environment;
- Impact of racial and ethnic bias on the criminal justice process;
- Professional opportunity; and
- Development for minorities in the legal profession.

1989 Joint Recommendations

Additionally, a set of joint recommendations was developed by the Task Force on Race, Ethnic, and Gender Issues in the Courts—relating to Ethical Standards and Disciplinary Systems, Education, and Implementation.

The Implementation Recommendation made by both Task Forces was the critical piece to the ultimate success of the work of the two Task Forces. This recommendation called for the creation of a standing committee on Race, Ethnic, and Gender Issues in the Courts to be created by the Supreme Court. This Committee was responsible for number of things:

- Implement the Task Forces' recommendations and monitor implementation efforts on an ongoing basis;
- Work with the Michigan Judicial Institute, continuing-legal-education providers for attorneys, the National Judicial Education Program, and other similar entities to develop judicial- and legal-education programs on gender, racial, and ethnic fairness;
- Work with the State Court Administrative Office to establish a statistical database appropriate for monitoring areas of the Task Forces' concerns and performing studies in furtherance of the committee's charge;
- Monitor the impact of the changes in the Codes regarding the profession, the judiciary, and court operation. As a part of this process, monitor complaints to the Attorney Grievance Commission, the Attorney Discipline Board, the Judicial Tenure Commission, civil service entities, and individual courts from lawyers, litigants, court personnel, and others;
- Develop the information generated by these inquiries and information obtained by or provided to the Task forces through other sources into annual reports that (1) evaluate progress in implementing reforms and reducing gender, race, and ethnic bias; (2) describe the nature and disposition of the complaints received; (3) assess the extent that the findings and recommendations of the Task Forces are being integrated into judicial- and legal- education courses and programs; and (4)

identify new problems rooted in race, ethnic, and gender bias and suggest appropriate remedial action;

- Disseminate these Reports to the Chief Justice, the state judiciary, Task Force members, interested individuals and groups, and the media. Publish these reports in the Michigan Bar Journal; and
- Review appellate decisions on gender-, race-, and ethnic-related issues in all areas of law and inform the trial courts of those decisions which pertain to gender, race, and ethnic bias.

Not only in Michigan, but around the country, we were discovering that naming the problems and suggesting solutions were not enough. The implementation of programs and the evaluation of those programs were the critical missing links. In keeping with our analogy, we had determined where we should be going, but we were very hesitant to actually commit to the journey. We had accurately identified all the elements necessary to complete the journey, but we had not actually set into motion the means to implement those elements. We hoped that someone might put gas in the car, and we knew that they might even pull out of the driveway. But we were not going to monitor their progress, help them find the best route, or even determine whether or not they would eventually arrive at the proposed destination. Essentially, we were hoping that they would undertake the journey because we had told them that it was a good thing.

The truth was that this was sufficient for many to begin the process of change and for others it was not. For some, the reports were literally a nice place to visit, but they would not want to live there, and, for others, the recommendations were not even worth the paper they were written on. Even more disturbing was that we had no mechanism for knowing who was doing what and why or even whether it was achieving the result we had hoped.

Despite this strong recommendation, implementation and evaluation would not occur until eight years later in the fall of 1996, when Victoria A. Roberts, the first African-American female president of the SBM, determined that it was time to assess what, if any, progress had been made toward the goals identified in the 1989 Reports. To that end, she created the State Bar Task Force on Race, Ethnic, and Gender Issues in the Courts and the Legal Profession (State Bar Task Force). With thirty members drawn from diverse legal backgrounds and geographic locations, this group of experienced lawyers and judges was given the following mandate:

- Report on the current status of recommendations made in December 1989, by the Michigan Supreme Court's Task Forces on Racial, Ethnic, and Gender Issues in the Courts;
- Compare the progress in Michigan to that achieved in other states;

- Identify and develop a strategy for collecting information about race, ethnic and gender issues not addressed in the Supreme Court Task Force reports; and
- Develop a strategy for monitoring and implementing new and unrealized recommendations.

The initial development of this project was undertaken by the Task Force's co-chairs Dawn Van Hoek, State Appellate Defenders Office; Saul A. Green, Assistant United States Attorney; Nkrumah Johnson-Wynn, State Bar Associate Executive Director for an Open Justice System; and myself, as Special Advisor.

To meet this ambitious timeframe, the 1989 recommendations were divided into five major subject areas: Domestic Violence, Domestic Relations, Bias within the Court Environment, Bias within the Profession, and the Joint Recommendations of the Racial, Gender, and Ethnic Task Forces.

It was decided that three basic data-gathering techniques would be used to develop the final report. First, there would be a heavy emphasis on two types of questionnaires regarding all components of the legal system. The first questionnaire was designed to determine the degree of implementation of every recommendation made by the 1989 Task Force. The second questionnaire was more general in nature. This questionnaire was designed to gauge the degree of knowledge and the perceptions about implementation of the 1989 Task Force Reports. In all, 816 questionnaires were sent out and 399 were returned. The questionnaires were supplemented, as needed, by focus groups and direct interviews. These focus groups solicited information from individuals and organizations who had specialized knowledge and experience in these topic areas. Finally, legal research was conducted to develop a national perspective and research relevant to case law, statutory, and procedural issues.

Several conclusions were drawn from the results of the preliminary questionnaires and the comments that accompanied them. First, it was clear that the initial publication and dissemination of the 1989 Reports had been effective. Yet, receiving the Reports without an opportunity to examine, review, and internalize their contents had not resulted in meaningful awareness. As a result, respondents understood the overall purpose of the Reports without retaining specific information about the findings and recommendations.

This lack of detailed understanding of the Reports accounted for the belief, on the part of most respondents, that the 1989 Reports had not been effective in addressing issues of gender, race, and ethnic bias. Respondents seemed to lack both knowledge and confidence in the ability of the 1989 Reports to adequately address these concerns. Finally, a large majority of respondents did not believe that accountability, resource allocation, or follow-up on the implementation of the 1989 Reports was effective.

What then was the strategy for addressing the problem of race, ethnic, and gender bias in the Michigan justice system and the legal profession in the future? This report contained a detailed analysis of the status of each recommendation set forth in the 1989 Reports, the level of implementation achieved since that date, and additional recommendations for the future. However, like the 1989 Task Forces, there was unanimous agreement that some goals were so critical to the future of this work that they must be strongly emphasized.

Therefore, the State Bar of Michigan Task Force concluded that the 1989 Task Forces' joint recommendations correctly predicted the necessary steps to be taken to insure that their reports would not only raise awareness, but they would also reduce or eliminate bias and increase citizen confidence in the legal system. Three crucial areas were identified as the foundation for these changes: (1) ethical standards and disciplinary systems, (2) education, and (3) implementation.

Unfortunately, a review of those specific recommendations showed that only one area, judicial education, had been substantially addressed. No recommendations regarding the disciplinary system or the implementation plans had been substantially accomplished. Few of the remaining recommendations regarding attorney education, law schools or public initiatives had been adopted. Yet, it was not too late to accomplish the task. The Task Force once again called for the leadership of our profession to strongly endorse these fundamental changes.

ETHICAL STANDARDS AND DISCIPLINARY SYSTEMS

In 1989, the Task Force adopted joint recommendations calling for the amendment of the Code of Judicial Conduct, the Michigan Court Rules, and the Michigan Rules of Professional Conduct to specifically prohibit invidious discrimination and sexual harassment by judges and lawyers. Despite their adoption by the State Bar of Michigan Representative Assembly, these provisions were not enacted by the Michigan Supreme Court. The State Bar Task Force endorsed the enactment of these amendments as proposed in 1990 by the State Bar of Michigan Representative Assembly and recommended that the disciplinary systems for attorneys and judges actively promulgate policies and procedures designed to increase the confidence level of the public and the profession regarding their response and intervention in matters related to discrimination and bias.

EDUCATION

The 1989 Reports concluded that "education is an essential tool in efforts to eliminate race, ethnic, and gender bias from the Michigan court system. . . . An educational approach is appropriate because it focuses on understanding, not on blame." As a result, they proposed broad, educational

reforms for judges, court personnel, attorneys, law students, and the public. In each instance, they stressed the need for a broad spectrum of educational strategies. The Task Force found that in the preceding eight years much had been done in the area of education, yet there were still wide gaps in awareness and exposure of most of the profession to the issues of race, ethnic, and gender bias. As a result, the State Bar Task Force reinforced the call to adopt the 1989 recommendations with some modifications.

All members of the justice system should either receive or have access to the 1989 Task Force Reports and the 1997 State Bar of Michigan Report. Each member of the justice system and the legal profession should attend at least one training session that discusses the conclusions and recommendations. Courses should be developed at the Michigan Judicial Institute, the Institute of Continuing Legal Education, and all Michigan law schools that examine gender, race, and ethnic issues as they affect the justice system. Women and minorities should be included in all phases of the educational process as committee members, planners, faculty, and speakers. Ethics, substantive-law courses, and seminars should regularly include discussions of the nature and impact of bias and discrimination on the profession.

THE JOINT COMMISSION PROPOSAL

It was clear that the single, most important factor identified by the Task Force regarding realization of the 1989 Report goals was the creation of a permanent implementation effort. It was the opinion of the members of the 1989 Task Forces and the members of the State Bar Task Force that "[i]f the battle against bias is to be vigorously pursued and eventually won, the Supreme Court must lead the effort." Fundamental to the implementation proposal were the following factors: (1) continued leadership on the part of the Supreme Court; (2) an administrative structure which possesses sole responsibility and oversight for realization of the Report's recommendations and the development of new initiatives; (3) a research and evaluation methodology which identifies the extent and success of the Task Forces' educational efforts, the extent and success of the implementation of the specific recommendations, and the extent and success of the reduction of bias in the courts; and (4) the allocation of sufficient resources for the effort.

Therefore, the State Bar Task Force proposed that the Michigan Supreme Court and the State Bar of Michigan create a Joint Commission on diversity issues and the Michigan justice system. The Commission should not only work to implement the 1989 recommendations, but it should place special emphasis on the conclusions and recommendations of the State Bar Task Force and expand the scope of its inquiry to fairness and diversity issues, including the areas of disability and sexual orientation.

PRIORITY GOALS FOR THE FUTURE

The State Bar Task Force also identified some areas that it felt should be given special attention and emphasis. Several issues were identified by the Task Force members as necessary and fundamental to the appearance of fairness and equal treatment and the achievement of a truly bias-free and non-discriminatory justice system.

Domestic Violence Coordinating Councils

The Task Force believed that the continued creation of local and statewide coordinating councils was essential to the considerable success of the domestic-violence reforms that were adopted in the preceding eight years. Councils should be required in every county to establish effective procedures relating to the processing and resolution of domestic-violence cases.

Prosecutorial Responsibility for Personal-Protection Orders

Personal-protection-order statutes and court rules should be amended to encourage and allow prosecuting attorneys to assist applicants in obtaining personal-protection orders.

Evaluation of the Impact of MR 2.404 on Mediation Practices

By order of the Michigan Supreme Court dated March 5, 1997, the Michigan Court Rules were amended to adopt a new rule regulating the selection process for mediation panels. The rule specifically requires that the mediation process be free from race, ethnic, and gender bias and charges the State Court Administrative Office with the responsibility to evaluate the first annual reports filed by the chief judges pursuant to MCR 2.404 (D)(1) to determine the extent of compliance and the impact of the court rule amendment on increasing the number of women and minority mediators. The Task Force recommended that not only should the State Court Administrative Office function as a clearinghouse for this information, it should also be empowered to regulate, enforce, and sanction non-compliance.

Regulation and Supervision of Private Mediation and Alternative-Dispute-Resolution Systems

Regulation and supervision of mediation and alternative-dispute-resolution procedures should be extended to all private contractual, dispute-resolution services which are used to resolve legal disputes.

Recruitment and Retention of Women and Minority Faculty in Law Schools

Law schools should adopt and follow policies aimed at the recruitment, advancement toward tenure, and retention of women and minority faculty members. Out-of-state schools with good records in recruiting and retaining tenured women and minority faculty should be studied and their policies

should be adapted to Michigan law schools. Statistics should be collected that accurately reflect the recruitment, employment, and tenure patterns of law schools over an extended period of time.

Appointment and Hiring Policies and Practices in the Michigan Justice System

Progress must continue toward a representational bench and bar. The Governor should appoint more women and minorities to judicial positions at all levels and in jurisdictions throughout the state. Courts should appoint referees, magistrates, and *quasi*-judicial personnel in a number that accurately reflects the racial, ethnic, and gender demographics of the populations they serve. Representation should be increased in the Office of the Attorney General, State Public Administrators Office, prosecutors' offices, and in the disciplinary systems. The number of minorities hired as law clerks, judicial assistants, and commissioners should be increased at all levels of the judiciary, but particularly at the Michigan Court of Appeals and Michigan Supreme Court levels. Women and minorities should continue to be appointed, elected, and hired into positions of authority and leadership in the State Bar of Michigan.

Mandatory Legal Education and Court-Appointed Counsel

In accordance with the State Bar recommendation on MCLE, a system of mandatory legal education in the area of family law and family violence should be developed for judges and attorneys. Until a statewide mandatory, continuing-legal-education standard is adopted, each Circuit Court Family Division should adopt minimum, continuing-legal-education standards for appointment in that jurisdiction. Any attorney appointments out of the Family Division should be given only to attorneys who have complied with these requirements. Referrals from bar associations regarding family matters should be consistent with these requirements.

Court-Personnel Training

Quality-training programs on race, ethnic, and gender bias issues should be provided to all levels of court personnel. The Task Force recommends that funding for on-site programs be increased in order to enable the Michigan Judicial Institute to fully implement this recommendation.

State Court Administrative Office Regulation and Enforcement

The Michigan Supreme Court should develop specific standards related to court administration and race, ethnic, and gender bias. A mechanism for monitoring administrative compliance with Supreme Court standards should be developed. The State Court Administrative Office, at the direction of the Chief Justice of the Michigan Supreme Court, should be given the authority to review local court operations and make recommendations for improvements when necessary. This authority should include the ability to mandate

adoption of internal, administrative policies and procedures, which will enhance the fair and equitable delivery of justice to all citizens.

"One Court of Justice"—Funding Issues for the Future

The Michigan legislature should recognize the authority of the Supreme Court of Michigan under the Separation of Powers Doctrine. It should support the Supreme Court in the implementation of "One Court of Justice" and facilitate standardized administrative-delivery systems and uniform, equitable enforcement of gender-neutral policies and management practices. The legislature should fully fund all mandated requirements placed on state courts.

NOTEWORTHY ACCOMPLISHMENTS

Despite its many recommendations and concerns, the State Bar Task Force recognized and acknowledged many of the organizations that had worked to comply with and implement the goals set forward in the 1989 Reports. In many instances, these achievements were done completely voluntarily and without additional financial resources or personnel. The Michigan Judicial Institute had consistently and comprehensively designed its educational curriculum to reflect the recommendations of the 1989 Task Force as they relate to the education of judges and court personnel. The Prosecuting Attorneys Association of Michigan, the Prosecuting Attorneys Coordinating Council, the Domestic Violence Prevention and Treatment Board, and the State Court Administrative Office joined together to initiate significant reforms in the attitude about and the approach to domestic violence in Michigan. Of particular note was the progress achieved in the availability of personal-protection orders. The State Bar of Michigan responded to the challenge of the 1989 Reports by immediately establishing a Department for an Open Justice System dedicated to the implementation of numerous 1989 Task Force recommendations.

Despite the serious funding issues for Friends of the Court offices, many Friends of the Court reported serious efforts to increase enforcement and collection efforts on child support, enforce parenting-time requirements, utilize increased conciliation and mediation techniques, establish non-traditional office hours, and standardize judicial recommendations.

As a result of recommendations by the State Bar of Michigan Standing Committee on Standard Criminal Jury Instructions and the Michigan Supreme Court Standard Jury Instruction Committee, civil and criminal jury instructions were amended to adopt consistently gender-neutral language in almost all provisions and commentary. The Michigan State Bar Foundation has demonstrated a long commitment to supporting the efforts of the 1989 Task Forces and the State Bar Task Force, providing financial support for the 1997 project. The State Bar of Michigan Representative Assembly adopted proposed revisions to the Code of Judicial Conduct, Michigan Court Rule 9.205, and the Code of Professional Conduct. These proposals were

generated as a result of the 1989 recommendation and were a courageous and controversial action taken by the State Bar of Michigan.

The Michigan Supreme Court has provided leadership and guidance on the issues of bias and discrimination in the justice system of Michigan beginning with the Citizen's Commission to Improve Michigan's Courts in 1986. The establishment of the 1989 Task Forces and the Court's subsequent support of its findings and recommendations have been essential to the efforts for reform. Under its direction, the State Court Administrator's Office and the Michigan Judicial Institute had accomplished much toward the realization of the goals set forth in 1989. The State Court Administrative Office had provided invaluable support to the courts of this state in addressing the concerns of the 1989 Reports and providing administrative resources and guidance in their implementation.

CONCLUSIONS OF THE TASK FORCES

The Task Force report concluded that the appearance of bias as well as the reality of bias damages our profession and our courts in their fundamental role as protectors of freedom and dispensers of justice. In a very real sense, the implementation of these recommendations continued the drive to insure that the Michigan justice system accurately reflects the diversity of the constituency it serves, and participants at all levels are afforded a level playing field upon which to operate. The Task Force made clear that as we continue to strive for a bias-free society and justice system, lawyers, judges, and their leaders must be in the forefront of this effort. This report, coupled with the 1989 Reports, provided the members of our justice system with the knowledge and awareness needed to continue this elusive undertaking.

In 1998, as a response to this call, the State Bar of Michigan Board of Commissioners unanimously approved the creation of the State Bar of Michigan Open Justice Commission (Commission). The Commission was inaugurated at the September Annual Meeting of the State Bar of Michigan, and Supreme Court Justice Marilyn Kelly and Court of Appeals Judge Harold Hood were appointed co-chairs. This Commission was originally proposed as a joint commission with the Michigan Supreme Court but that idea was not accepted by the Court and the Commission remained a sole initiative of the State Bar of Michigan. In its mission statement, the Commission was specifically charged with the responsibility to "increase public confidence in the fairness of the legal profession and the equal application of law for all citizens."

At a national level, the call for the increase in public confidence was increasingly the primary argument for addressing these issues. When citizens turn to or are forced into litigation, they do so on the basis of an implied agreement between them and their government. The agreement rests on a foundation of defined rights and responsibilities between the parties. It is dependent on both the perception that each citizen can trust the

fairness, efficiency, and competency of the system to execute its responsibilities. From the time of the founding of this country, it was recognized that confidence on the part of all citizens in the administration of justice is essential to effective governance. This concept is reflected in the writings of Alexander Hamilton when he observed that "the simple administration of law brings out reverence, esteem, and affection in the people." Increasingly, judges and attorneys face cynicism from the public, failure of trust and confidence, and a loss of "reverence, esteem, and affection."

In May 1999, the National Conference on Public Trust and Confidence in the Justice System met in Washington, D.C., sponsored by the ABA, Conference of Chief Justice, Conference of State Court Administrators, and the League of Women Voters in cooperation with NSSCTS. There were nearly 400 attendees, which included teams from each state, composed of the Chief Justice, State Court Administrator, State Bar President, and other justice-system leaders. The focus of the conference was responding to two new national surveys. A key finding of these surveys was that women and men of color and white women have less confidence in our justice system than white men.

Thirteen years after the finding of the Michigan Supreme Court Citizens Commission, the same findings were being further reinforced: Public confidence critically intersects with issues related to diversity and discrimination.

As strategies were discussed by the conference, the top three strategies selected for increasing public confidence and trust were (1) improving education and training, (2) making courts more inclusive and outreaching, and (3) implementing recommendations regarding gender, race, and ethnic bias and replicating the success in other jurisdictions.

The conference engaged its participants in an intensive strategic-planning exercise to identify and prioritize recommendations for increasing public confidence in the courts and legal system. The conference participants were asked to address five questions.

1. How serious is the overall issue of loss of public trust?

When conference participants were asked about the seriousness of the problem of loss of public trust, ninety percent ranked it serious. Not only did they overwhelming identify it as serious, they felt it was their responsibility to do something about it. Judges and other court-related participants saw judges as the natural leaders in this effort. Attorneys focused on the organized bar for leadership.

2. What are the critical issues affecting public trust?

It is important to note that the national findings reviewed here are consistent with conclusions reached by Michigan's gender, race, and other open-justice initiatives at the state level—those being that the perception of

bias adversely affects justice; that the perception often is based on reality; and that race, ethnicity, gender, and other special populations were key factors in determining the degree of public trust and confidence.

3. What are the most effective strategies to deal with these critical issues?

By the end of the National Plan for Action Conference, the group had identified strategies that could positively impact public trust and confidence in the judicial system. Six strategies stood out clearly as the most important.

In order of priority, the six strategies were (1) improve education and training, including public-school education; (2) make the courts more inclusive and outreaching; (3) improve external communication; (4) provide swift, fair, and reasonably priced justice; (5) share public-trust programs and activities among states; and (6) implement recommendations of gender, race and bias task forces, and replicate successes.

4. What are the barriers to effectuating these strategies?

In the first open-microphone session, National Plan for Action Conference participants identified twenty-three barriers to the successful implementation of the six strategies. The barriers were then reduced to seven.

Problems in the legal profession

This included lack of diversity, lack of self-discipline, excessive use of legal jargon, failure to oppose legislative encroachment on the judicial branch, and failure of the profession to educate its members on the need for self-reform.

Problems in the judiciary

This included failure of judges to listen or interact with court users, too much hierarchy and too little democracy, a failure to lead, a lack of will to make changes, and a failure of quality control in the lower courts.

Weakness in procedures

This included tension between fairness and efficiency, emphasis on winning at the expense of collaboration and facilitation, and failure to develop judicial and non-judicial alternative-dispute-resolution mechanisms.

Poor attitudes on the part of the public

This included citizen dissatisfaction with government and generalized failure to realize that some skepticism about government is inherent in a democracy, insufficient public accessibility to court proceedings, failure to give sufficient education to the public on the role and procedures of the judiciary, unrealistic expectations about judges and courts, and media misinformation.

Insensitivity to minorities

This included failure to deal aggressively with racial and ethnic bias and a lack of understanding of how tribal judiciaries relate to state judiciaries.

Inadequate resources

This included inadequate resources provided to courts.

Lack of data

This included lack of empirical data defining the problems and identifying what works well.

5. What actions can be taken to help surmount the barriers and implement the strategies?

The National Plan for Action identified a number of vital strategies for planning a national agenda to enhance public trust and confidence. They also provide a roadmap for state initiatives. The State Bar of Michigan Justice Initiatives continues its commitment to designing, supporting, and implementing state and local projects that implement these strategies into a comprehensive plan for fair, equal, open, and accessible justice in our state.

These actions include the following:

- Develop and disseminate models or best practices,
- Exam the role of lawyers and their impact on public trust,
- Engage in public education at the state and local level,
- Improve public access through information technology,
- Foster and maintain a network to sustain public trust,
- Provide education programs for persons within the system,
- Develop standards and procedural reforms,
- Promote ongoing state dialogue on public trust,
- Provide specialized expertise,
- Act as liaison or take a proactive stance with the other branches of government.

The Emerging Role of the State Bar of Michigan Open Justice Commission

Over its five-year history, the State Bar of Michigan Open Justice Commission (Commission) implemented numerous projects directly related to these strategies. A principal objective of the Commission was to implement the recommendations of the 1989 reports. The conclusions of the national conference emphasized the importance of that mission and provided much needed credible support for the effort.

The first year of true implementation efforts for the Commission was 1999. In October of that year, the Commission adopted and funded thirty-one implementation projects. Over the next three years, additional projects were added. At its height, the Open Justice Commission had forty-three

members. In addition, over 115 committee members, more than seventy-five project members, twenty interns, and six independent contractors worked on these projects. Furthermore, the Commission developed a partnership with a variety of organizations and bar entities to accomplish its goals. As a result of this effort the Commission accomplished a number of substantive achievements:

Education

- Designed and implemented educational programs related to cultural awareness, juvenile justice, and sexual orientation for judges and lawyers designed to expand the knowledge and awareness of both lawyers and judges, encouraging an environment of inclusion and fairness. Distribution of 10,000 information booklets about the Open Justice Commission and its program;
- Participated in the National Bar Association Mid-Year Annual Conference with a Community Forum during the NBA Mid-year Conference and attendance at the Gertrude Rush Award Dinner;
- Development of the Open Justice Commission website;
- Production of a special Open Justice Forum sponsored by the Commission and offered at the State Bar of Michigan Annual Meeting;
- Design and production of the television and video presentation entitled "And Justice for All—An Open Justice Round Table;"
- Creation of a *Michigan Bar Journal* issue devoted exclusively to the Commission and Open Justice concerns;
- Creation and presentation of the program—"Teaching the Legal Community about the Gay, Lesbian, Bisexual, and Transgendered Community—A Resource Guide;"
- Development of a prototype curriculum for secondary schools and law schools using the Open Justice Round Table video; and
- Creation of CBS "Making a Difference" spotlights for justice programs of the State Bar.

Ethic and Discipline

- Review and update of the State Court Administrative Courthouse Access checklist;
- Compilation of a national survey detailing the current status of Judicial Canons and Rules of Professional Conduct in all fifty states as they relate to Open Justice concerns;
- Creation of the "Court Commitment to Service" code, which will be available for adoption by all courts in Michigan, subject to the approval of the Michigan Supreme Court; and

- Creation of a Masters in Litigation seminar focusing on bias, discrimination, and the effect of stereotypes in litigation (with the Litigation Section of the State Bar).

Professional Development and Opportunity

- Sponsorship of receptions for minority law students and judges at all Michigan law schools;
- Development of a Minority Opportunity Program for minority lawyers seeking positions with corporations, large law firms, or as outside counsel; and
- Conducting the Opening Doors Conference.

Criminal and Juvenile Justice

- Partnership with the Michigan Chapter of the ACLC in a Racial Profiling Project, including development of a training component for judges and lawyers;
- Development and distribution of a survey on juvenile-justice issues to the Michigan prosecutors;
- Development of a presentation on Disproportionate Minority Representation in the Juvenile Justice System and the delivery of that presentation to numerous state and national audiences; and
- Arrangement of two performances of an open-justice-issues presentation at the State Bar Annual Meeting including invitations to several Detroit school classes—students who attended then took part in activities and discussion following the presentation;

Disabilities

- Completion of a survey of attorneys who identified themselves as having a disability on the state bar dues notice regarding the impact of disabilities in the legal process and produced a report of findings and recommendations;
- Accessibility of the State Bar website;
- Development of a disabilities and law webpage and resource directory; and
- Creation of a law school forum for issues concerning disabilities.

Cross Cultural

- Translation and distribution of selected district court forms in eight languages;
- Adoption of a testing and certification program for foreign language interpretation in courts by the Michigan State Court

Administrator's Office in partnership with the Open Justice Commission;
- Creation of a Bench and Bar Holidays and Observances Guide; and
- Creation of a Cultural Awareness Resource Manual for judges and lawyers.

Domestic Violence

- Design and implementation of the Pro Bono Project for Domestic Violence Victims, including recruitment of attorneys, statewide training, and creation of manual and curriculum for representation of domestic-violence victims in civil matters; and
- Development of recommendations regarding Alimony Guidelines in the State of Michigan and state initiatives related to alimony issues.

Juries

- Receipt of an ABA Justice Initiatives grant in the amount of $2,500 to support the production of a video to encourage participant in the jury process with an emphasis on special populations; and
- Creation and implementation of a prototype secondary-school, civics-teachers training that focus on the jury process and the importance of participation and representation in that process.

Access to Justice

- Creation of a partnership with the Access to Justice Task Force to
identify joint initiatives and to explore areas of common concern; and
- Production of the Future Search Conference to plan for the Legal
Assistance Center for the Kent County courthouse

The State Bar Committee on Justice Initiatives

The Open Justice Commission became a part of the State Bar of Michigan Justice Initiatives program in 2003. Under the leadership of Judge Cynthia Stevens, the Committee on Justice Initiatives (CJI) is made up of seventeen members. The committee meets throughout the year and is organized into five major areas of interest:

- *Justice Policy Initiative.* Analyzes and recommends positions on proposed legislation, court rules, and other policies relevant to the justice initiatives.
- *Access to Justice Campaign.* SBM supports a staff that works with committed volunteers on growing the Access to Justice

Fund endowment, seeking current operations funds, and supporting forty-two local nonprofit agencies in their fundraising efforts to provide civil legal aid for the poor.

- *Equal Access Initiative.* Develops policies and programs to benefit underserved populations, including those with special needs, cognitive disabilities, and juveniles.
- *Pro Bono Initiative.* Encourages and coordinates free or discounted fees for civil legal services. Pro-bono service is a way that Michigan attorneys assist low-income individuals in need of legal assistance.
- *Criminal Issues Initiative.* Examines collateral civil consequences of criminal convictions and representational issues in the criminal-justice system.

CONCLUSION

No segment of society is so strategically positioned to attack minority problems as the legal profession. None has a higher duty to do so. That duty arises out of the unique offices that lawyers hold as ministers of the law, guardians of its conscience, and as teachers and advocates of fairness and equality.

These determinations were made over twenty-three years ago and much has changed since that time. However, it is far too premature to believe that the changes and accomplishments we have achieved have resolved all of these complex and challenging issues. Although we have come a very long way on the road to equality, we are in fact not there yet. The price of freedom is vigilance and I submit that this time our profession must practice a special kind of vigilance.

The United States is no longer a microcosm of European heritage and sensibilities; today it is truly a microcosm of the world. Diversity is no longer an interesting, philosophical sideshow to the American experience—it is the main event. It is not possible nor prudent for us, as a profession, to avoid grappling with the challenge and opportunity that diversity presents us with.

Why? The answer is one of enlightened self-interest and the requirements of the foundations of our professional oath.

- The constituency we serve is changing, and it requires us to serve those interests.
- Public trust and confidence rests in the perception of our citizens that our government is "by, for, and of the people," and we are the individuals that are charged with making that perception a reality.
- The public perception of lawyers as "special interest" and only serving "white male" values is resulting in an unprecedented view of lawyers as hired guns—without an overriding sense of

commitment to a set of nuclear family values based upon civic virtue and fundamental fairness.

- The face of those who practice law is changing. The survival of our profession requires us to respond to the needs of new and diverse attorneys. We cannot afford to disenfranchise those who may have previously been under-represented but will one day be our opponent in court, our colleague at the office, or the judge we appear before.
- We build strength through our diversity not in spite of it. This strength not only helps others but also helps ourselves.
- We level the playing field and change the rules of the game to reflect the changing nature of the players. We do this because we are more committed to the fundamental importance that the game be fair and inclusive than we are to winning by holding on to our outmoded mechanisms of privilege and power. By adding new ideas, beliefs, values, and experiences to the team, we certainly will change the nature of the game and how it is played, but those changes will make us stronger.

Now more than ever, we need the gifts, ideas, experienced minds, hearts, bodies, and spirit of every lawyer and judge—we cannot afford to overlook, waste, or misuse anyone's talents and time if our profession is to evolve and prosper. Judges and lawyers are typically over-occupied in their daily work, resolving tough questions and managing the complexity of the practice of law and the administration of justice. In the press of these responsibilities, it is easy to forget that our commitment is to serve and that the ultimate recipient of our service is the public. It is at our peril that we fail to recognize our responsibility to improve both the perception and the reality of fairness and openness in the profession and the courts.

The history of Michigan's legal profession and the pursuit of gender, racial, and ethnic fairness in our system of justice is one we can be proud of. However, as I said at the beginning, the journey is far from over. I am gratified that Thomas M. Cooley Law School has given prominence to this issue in this symposium and hope that those young lawyers who are being trained today will continue to strive for the vision that has been articulated and diligently worked toward over the last twenty-five years. Clearly, I believe strongly that it is a journey well worth taking. Thank you.

APPENDIX

The History of Open Justice in Michigan

1986—The Michigan Supreme Court Citizens' Commission to Improve Michigan Courts concluded that over one-third of Michigan's citizens believe that the Michigan court system discriminates against individuals on the basis of gender, race, or ethnic origin. The report called for further investigation.

1987—The Michigan Supreme Court created the Task Force on Gender Issues in the Courts and the Task Force on Racial and Ethnic Issues in the Courts. Their mission was to examine the courts and to recommend changes to assure equal treatment for men and women, free from race or gender bias.

1989—The Task Forces on Gender Issues in the Courts and Racial and Ethnic Issues in the Courts issued their reports. The reports concluded that a substantial number of citizens and lawyers believe that bias affects justice and that this perception of bias is based in reality. The reports contained 167 recommendations to improve the quality of justice and to eliminate bias and discrimination.

1996—The State Bar of Michigan created the State Bar of Michigan Task Force on Racial, Ethnic, and Gender Issues in the Courts and the Legal Profession. Its mission was to report on the status of the recommendations made by the Supreme Court task forces and to develop a strategy for implementing those recommendations and identifying new areas of concern.

1997—The State Bar of Michigan unanimously adopted the report of the Task Force on Racial, Ethnic, and Gender Issues in the Courts and the Legal Profession. A special emphasis was placed on the creation of an implementation commission.

1998—The State Bar of Michigan Board of Commissioners unanimously approved the creation of the State Bar of Michigan Open Justice Commission. The Commission was inaugurated at the September Annual Meeting of the State Bar of Michigan.

2003—The State Bar of Michigan creates the Committee on Justice Initiatives and forms an Equal Access Sub Committee to address these issues.

Evaluation of the Multi-Cultural Community Mediation Training Pilot Project
Dispute Resolution Center (DRC) of Washtenaw County

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July 2008

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INTRODUCTION

For over 30 years, community mediation programs have sought to resolve disputes between individuals, groups, and organizations in hundreds of communities across the country. The primary providers of community mediation services are typically local volunteers as third parties who are trained to resolve conflicts, but have no authority to impose an outcome (McGillis, 1997). Mediation is one of the oldest forms of conflict resolution and is used worldwide, in China, Malaysia, Singapore, Poland, Azebaijan, Israel, Norway, and Japan (Wall, Stark, & Standifer, 2001).

Mediation has numerous advantages over the formal litigation process, including increased privacy, greater flexibility, reduced costs, improved access, an emphasis on compromise, and perhaps one of its most celebrated advantages, its creation of an extremely accessible forum for minority and other disenfranchised groups to pursue justice for their complaints (Seth, 2000). In this sense, community mediation programs represent a prominent approach to restorative justice, which seeks the delivery of justice to address the harms to victims, the community, and offenders arising from crime, in contrast to retributive justice, which emphasizes only adjudicating and punishing offenders. Typically, community mediation program case processing is viewed by disputants as being more favorable than court cases processing for comparable matters (McGillis, 1997).

Over the years, community mediation programs have greatly expanded the range of cases they handle to include criminal case processing, civil case processing, school-based dispute resolution, domestic relations and custody dispute resolutions, the facilitation of public policy disputes, and victim-offender mediation efforts. New areas of application also include employment disputes, conflicts between landlords and tenants, as well as intergroup disputes, including conflicts between racial and ethnic groups and race motivated incidents. For example, in a report to the National Institute of Justice, McGillis (1997) describes a dispute resolution center in New Mexico that mediates conflicts between rival ethnic gang members and a New York State program which held a series of community meetings following the inception of a case that involved attacks on a young African American woman by two white assailants.

Community mediation programs often seek to ensure that individuals recruited as mediators are representative of the community in which the program is operating. This may be particularly important for minority and disenfranchised groups who bring a cultural context to the mediation process. Although race and ethnic mismatch between mediators and disputants does not ensure that culture will be ignored, the mediators' level of cultural awareness and sensitivity of those around the table can have a profound impact on the outcome and experience of the parties (O'Reilly, 2004).

Drawing from the field of psychology, ethnic match among counselors and clients is significantly associated with fewer drop outs after one session and more total sessions. Racial and ethnic minority clients were also found to be engaged in treatment longer when they were matched with ethnic-specific therapists or matched with therapists who were fluent in their native language (Bui & Takeuchi, 1992; Durvasula & Sue, 1996). In professional social work practice, the use of "cultural mediators," or individuals within the community who have high social status and knowledge of community traditions and values, has been found to render more culturally appropriate interventions and bridge the gap between the cultural and professional canons (Al-Krenawi & Graham, 2001). Thus, the recruitment of a diverse mediator pool has important implications for community mediation programs providing culturally appropriate and relevant services for minority and disenfranchised groups.

Although less is known about race and ethnic match in mediation, critics of mediation charge that stereotypes of race and culture can affect the conscious and unconscious ways we perceive ourselves and others, and as a result, how we interact with others. Similar images and stereotypes of people of different gender, class, sexual orientation, and religion can affect our interactions (O'Reilly, 2004). While, in general, the available pool of diverse mediators may make it impractical to match by race or culture, co-mediation is a model that is used successfully in community mediation programs. In particular, the use of cultural mediators in the mediation process may offer one solution to increasing the cultural relevance of the mediation process and alleviate potential problems of prejudices and stereotypes that might affect effective mediation.

PURPOSE AND OVERVIEW OF PILOT PROJECT

The purpose of this report is to present the findings of a pilot project to diversify the mediation pool at the Dispute Resolution Center (DRC) of Washtenaw County. The pilot project was initiated as a result of the DRC's need to address the lack of diverse and disenfranchised communities participating in the mediation process, both as volunteer community mediators or disputants. After nearly a year of planning, the project was implemented in November 2007 and a subsequent evaluation was conducted by Dr. Michael Spencer of the University of Michigan.

In this pilot, the DRC recruited 20 individuals from diverse backgrounds, particularly, but not exclusively, individuals from diverse racial and ethnic communities. These individuals were selected for their leadership and interest in the peaceful resolution of conflict in diverse communities. Individuals were also selected for their familiarity with the community and its cultural context. Recruitment was completed by a DRC staff member and DRC Board member, who made personal phone calls with individuals and offered them an invitation to a participate in State Court Administrative Office (SCAO) Approved 40 hour Basic Community Mediation Training over two successive weekends. Additionally, two participants contacted DRC staff about participating in the training after seeing information about the training on the DRC website. Participants attended free of charge but were asked to participate in a voluntary evaluation of the training. The training was conducted at the DRC's Ann Arbor, Michigan location and co-facilitated by

Ms. Susan Butterwick and Ms. Mary Lytle, both SCAO approved community mediation trainers. The project team decided that no modification would be made to the existing basic mediation curriculum or the existing training process in order to assess its content and appropriateness for diverse populations and to serve as a baseline for future projects that might adapt or modify the curriculum.

EVALUATION PLAN

The purpose of the evaluation was:

(1) To understand how conflict and mediation is perceived by a diverse group of community members who participate in basic mediation training through the DRC, including cultural relevance and appropriateness, satisfaction, and comprehension;
(2) To obtain information regarding how the mediation training could be improved to better take cultural differences into consideration;
(3) To examine their willingness to participate as volunteer mediators and the barriers to their participation;
(4) To investigate the level to which participants believe that DRC services are valuable to diverse communities and to identify barriers to utilization of services.

We accomplished these aims through the following process. First, we informed and received consent from all participants to take part in an evaluation of the DRC basic community mediation training. Participation in the training and evaluation were voluntary and all responses to the evaluation were anonymous. The evaluation consisted of several components: (1) a pre-post test questionnaire; (2) participant focus groups immediately following the training and three months post-training; (3) two DRC staff focus groups about one and two months post training; (4) a follow up interview with participants four to eight weeks post-training.

The pre-post test questionnaire included questions regarding participants' understanding of conflict mediation, ratings of the cultural relevance of specific components of the training and mediation process, satisfaction with the training and accommodations, the extent to which expectations were realized, and their willingness to act as mediators and to refer members of their community to mediation services and specifically the DRC. The pre and post tests took about 15-20 minutes to complete and consisted of both closed and open-ended questions. At the post test, participants were also asked to complete the regular DRC evaluation given to all DRC trainees.

A focus group immediately followed the 40 hour training. The focus group took about one hour to complete and participants were given a light dinner as a further incentive to stay and participate in the focus group. The focus group allowed for participants to elaborate on their responses to the post test as well as provide suggestions for how the training could be improved.

The follow up interviews allowed us examine the short and intermediate term impact of the training on participants and provides an opportunity to see if participants' views have changed since the training. We chose a four to six week period because this is about the time frame that mediators, who are likely to volunteer, will volunteer their services. We asked again about their perceptions of the cultural relevance of the mediation process, what types of conflicts they foresee people in their community coming to mediation for, the most effective ways in which these conflicts might be addressed, whether they have referred anyone to the DRC or to mediation, and the potential barriers to community members participating in mediation. We also attempted to learn how these barriers might be overcome. For the most part, these interviews took place in person, but several were conducted by phone and took about 30 minutes to complete.

At the midway point of the follow up interviews with participants, the preliminary results of the evaluation to date were shared with DRC staff. At this time, we engaged staff in a series of two focus groups to gain their input and to take part in the analysis and interpretation of the findings. Staff members were asked to consider ways in which training and the mediation process might be improved to address some of the issues that were brought up by participants.

The trainees also were invited to a "reunion" event in February 2008 and asked to participate in a focus group which fed back the findings to date and obtained further details about their feelings and attitudes about the training and its usefulness. This focus group was attended by six of the trainees and lasted about one hour. Participants were provided a light dinner in appreciation for their time.

The analysis plan for the data collected included both quantitative and qualitative (mixed) methods. We entered responses to survey questions into a statistical analysis program (e.g., SPSS) and descriptive statistics were calculated. We used our qualitative data to provide detailed themes and examples that we might be used to assist us in interpreting our findings. The final results will be presented to the staff and at national meetings and conferences.

RESULTS OF PARTICIPANT PRE-POST SURVEYS

Demographics characteristics. The 20 participants consisted of 75% women and 25% men. The educational level of the participants was quite high and included 5% who had some college education, 35% college graduates, and 60% post graduate degrees. The race/ethnicity of the participants were: 60% African American, 15% Arab American, 10% Asian American, 5% Latino, 5% Caucasian, 5% Other/Unspecified. All but four participants resided in Washtenaw County. Nine participants lived in city of Ypsilanti, three lived in Ann Arbor, two in Canton, and the remaining in Detroit and Lansing, Michigan. In addition to representing their racial/ethnic communities, several participants also represented their religious communities (i.e., Christian and Muslim) and one participant identified as an ally to the gay and lesbian community. All 20 participated in the pre-test, but only 17 participated in the post-test.

Current Knowledge of Conflict Mediation. Participants were asked to report their current knowledge of conflict mediation in general at both pre and post-test. There was a statistically significant increase in the knowledge gained by participants from pre to post-test, where participants were more likely to acknowledge that they were at least somewhat knowledgeable at the post test.

	Pre-test	Post-test
Very Knowledgeable	10%	35%
Somewhat Knowledgeable	50%	59%
A little Knowledgeable	20%	6%
Not Knowledgeable	20%	0%

When asked about their previous knowledge of mediation at the pre-test, participants described a number of experiences including classes and workshops, observations of informal mediation sessions, serving in a mediation role in their employment, such as family counseling or dealing with complaints. Others had no previous or very limited knowledge or experience with mediation. However, none of the participants had formal or extensive training in mediation.

Usefulness of Conflict Mediation. Participants perceived conflict mediation as very useful at both pre and post-test. Although there was an increase in the perception of usefulness, the difference was not significant, due to the large number who felt the training was useful at the pre-test.

	Pre-test	Post-test
Very Useful	95%	100%
Somewhat Useful	5%	
A little Useful	0%	
Not Useful	0%	

When asked why they felt mediation was useful, participants named a number of advantages, such as its use for cross cultural understanding, reduced caseload of the courts, reduced costs for plaintiffs, time savings, an alternative to legal actions, the informal setting, and bringing people to common ground. Others felt that it was useful for problem solving, getting people to communicate, and to facilitate win-win situations.

Participants were also asked about their interest in mediation and why they agreed to participate in the training. Besides the desire to acquire knowledge and skills in mediation, several individuals said they had a desire to work in both their racial/ethnic communities and the community at large. For example, a couple of individuals stated that they hoped to be able to bring a new resource and to give back to their community. Six individuals stated that they believed that the skills would be an asset in their professional work. Two individuals stated that they desire to become professional

mediators. Others stated their interests lie in the desire for personal growth, the unique opportunity presented, and the reputation of the DRC and its staff.

Usefulness of Conflict Mediation to your Community. Participants also perceived mediation as being very useful to their communities. Again, there was an increase in the number of participants who viewed mediation as useful to their community, but the increase was not significant.

	Pre-test	Post-test
Very Useful	80%	95%
Somewhat Useful	20%	5%
A little Useful	0%	0%
Not Useful	0%	0%

Met Expectations. The measures below were assessed at post-test only. First participants were asked if the training met their expectations. Overall, 70% of participants felt that the training completely met their expectations and 30% rated the training somewhat met expectations. No participants rated the training as either meeting their expectations a little or not meeting their expectations at all.

At the pre-test, participants were asked what they hoped to get out of the training. Participants were somewhat vague with their responses, but largely said that they hoped to gain formal mediation skills and the ability to resolve conflicts. Additionally, some participants stated they had more specific expectations such as learning to become an advocate for their community, to improve their listening skills, to be less judgmental, and to serve the DRC as a mediator. At the post-test, participants were asked why the training did or why did not meet their expectations. A majority of the respondents spoke to how they did not expect the training to be so detailed, rich, and complete. A couple of individuals cited the outstanding trainers for meeting their expectations.

Several individuals described how the training changed their perception of mediation and increased their desire to promote mediation in their communities. One participant stated that s/he was not aware of the grey areas in mediation and how it was not totally black and white. Two individuals noted limitations to the training experience, specifically how the coaches during the role play sometimes contradicted each other and how the cultural competence section of the training required more than 1.5 hours and rather a whole day. Otherwise, people were generally complimentary of the training and saw the experience as transformative in many ways.

Satisfaction and Confidence in Skills. Nearly all participants were very satisfied with the training, including 90% who rated their experience as very satisfied and 10% who were somewhat satisfied. Overall, participants had many positive things to say about the training and felt that it prepared them well for the next phase. With regard to confidence, 40% felt that they were very confident in their mediation skills post-training, while 60%

felt they were somewhat confident. Some felt that it provided a good foundation, but that more training was necessary before they felt confident mediating. One individual hoped that the instructors could have performed a mediation role play for participants to observe.

Willingness to Act as a Mediator. Overall, 70% of participants stated they were very willing to act as mediators in their community, while 30% stated they were somewhat willing. Several individuals reported that they have a great desire to serve as mediators, and saw it as their responsibility, citing the need for diverse mediators in the community. Others stated that their willingness was contingent on time constraints as well as the need to gain more confidence in their skills. One participant wrote, "I admire the center's mission. I respect the others who've been involved and would be honored to join their ranks."

Willing to Refer to Members of their Community to Mediation and to DRC for Services. All participants (100%) reported that they were very willing to refer members of their community to mediation and to the DRC for services. When asked why they would or why would not refer community members to mediation, a majority of the participants wrote that they believed that mediation was a good solution to resolving conflicts and gives parties the best opportunity to satisfy their needs. For example, one participant simply wrote, "Because I believe in the process." Two participants noted that mediation can save time and money and was a good alternative to litigation. However, one participant reported that s/he would need to be sure about what is eligible for mediation and what is not eligible before referring cases. In reference to the DRC in particular, participants noted the skilled and dedicated staff, their history of success, and their experience with the training as reasons they would refer community members to the DRC. For example, one individual wrote, "I have a good idea of what they are capable of achieving."

RESULTS OF PARTICIPANT FOCUS GROUPS AND PERSONAL INTERVIEWS

The following results are a summary of the participant focus group and follow up personal interviews with individual participants. All 20 trainees participated in the focus group immediately following the 40 hour training although two left before the focus group was completed. An additional 12 individuals were contacted and interviewed for the personal interviews. The remaining individuals could not be contacted due to incomplete contact information or lack of availability.

Meditation training and the mediation process

Participants were asked about their thoughts on mediation and the mediation process. During the focus group, it was apparent that nearly all of the participants were excited and highly motivated by the process. Many of the responses were focused less on the content of the training and rather commented on how atypical it was for such a diverse group to be in one place training for any purpose and many spoke about previous

experiences where they may have been the only minority at the training. They described how the composition of the group made for a more comfortable and relaxed learning environment primarily due to the setting created by such a diverse group. Nonetheless, participants did enjoy the training and commented on how mediation was useful and that they were very satisfied with the content of the training and the trainers.

Upon follow up with individuals 4-6 weeks post training, participants unanimously felt positive about the training and that it was clear, helpful, effective, and an important tool for resolving conflicts. For the most part, people's thoughts did not change since the training. One participant noted, "This process allows everyone to come out as a winner…It is incredible."

Many of the respondents had some prior experience with mediation and they agreed that this training reinforced the idea that mediation is an effective way to resolve conflict. For example, one participant stated, "The training helped me to say "yes this is a good thing." Others had no background in mediation and found the process and ideas behind mediation to be useful skills and they could really see the relevance and importance of the process. Some talked about using some of the tools in their own work and personal lives.

Although there were no suggestions among participants regarding how the training could have been improved during the focus group, more suggestions emerged during the interviews. For example, although some appreciated the structure, others would have liked more flexibility, such as more time to reflect, ask questions, and stop and "get out of character," in reference to the role plays. One participant stated, "If people are talking about something that seems to be important to them, let them talk." One suggestion for making this happen under the time constraints would be to reduce the class size to about 12 participants.

Finally, an important observation made by female participants in the focus group was the gender dynamics in the room, particularly among male participants who may not have perceived power imbalances, e.g., males speaking more often and at times having their opinions heard more loudly than others. One participant commented on how males may have been more convincing by portraying their experience and expertise as definitive and women buying in or giving in, even though their comments may be wrong. A particular incident was described where one male, in particular, pushed the group towards certain answers in a group exercise, citing his particular expertise and education, but it was later revealed that the answers were incorrect. Women noted that they could see gender as an important issue in mediation that was not addressed to the extent that it should in the training, particularly in male-female disputes. Others in the group, particularly an African American male, responded that gender alone should not be the only consideration for why males in the group spoke more often and with more authority. He noted that the intersection with race and gender should be considered. As an example, he noted that black males are often not heard in white professional settings and that this may have contributed to his need to be heard in this setting.

Using the Skills Learned and Volunteering

Several respondents said that they had a chance to use the skills they had learned, though one person writes, "with varying results." Some participants indicated that they were more easily able to "find common ground." Most of the respondents who indicated that they had used their skills said that they found they were using these skills in their own personal lives, not in a formal setting. Two participants had not had a chance to use their skills at all.

Most everyone interviewed had not volunteered at the center yet. The primary reason for not volunteering was time, particularly due to work commitments. However, others noted that there were other barriers, such as parking and family problems. One participant asked if parking could be provided by the DRC.

One participant indicated that he has not been contacted since his training. He mentions in several different questions that this has been a barrier to his involvement. The evaluator notes that this has changed since the interview. Another participant was involved in a mediation session but was involved personally and had a different view of the process. There were only two participants who had actively volunteered and observed several mediation sessions. One said that he found it difficult to just be an observer and not "jump in." Of the individuals who did not have a chance to volunteer, all respondents stated that they would like to volunteer and plan to do so soon. They looked forward particularly to observing.

When asked specifically about barriers to volunteering, the most common response was that the participants worked full-time or go to school full-time and do not have any extra time to volunteer. Several respondents said that there needs to be more follow-up and outreach from the DRC to re-engage involvement in the program. They indicated that the DRC needs to be more involved in the process and actively recruit participants to volunteer. One individual suggested that the DRC explore how they can help people schedule volunteering into their lives. The evaluator notes that two events have since been scheduled with the trainees, including a reception at the Board President's home and a reunion of the participants at the DRC about three months post training. In addition to not having time, there were more practical barriers such as not having enough money for gas and again, the availability of parking at the DRC location in downtown Ann Arbor.

Recruiting Mediators from Diverse Communities: Barriers and Solutions

Participants indicated several barriers to recruiting a diverse group of mediators. The respondents overwhelmingly indicated that a lack of awareness of what mediation actually is and what the benefits of a program like this are were the greatest barriers to recruitment. One participant stated, "a lack of education on what mediation is, and reservations on the public's part to engage in a program that they really do not know anything about, were the biggest barriers." Others noted a lack of advertising in their communities as another barrier.

Although participants acknowledged the challenges to recruiting mediators from diverse communities, they saw the challenge as something that could be overcome. Many participants stated that the best way to recruit diverse mediators would be through "word of mouth." Outreach must continue to be grassroots. For example, several respondents stated that those who have gone through the training would be the best people to speak to about the benefits of the process. They suggested that the recent graduates of the training would make good ambassadors for the DRC in their community. In addition to the current trainees, it was suggested that the DRC continue to locate individuals in the community who are leaders and who are respected in the community and provide mediation training. They believed that by developing a critical mass of individuals that have conviction and believe in mediation as a process, they will be able to recruit more individuals from diverse communities into the training.

Some also noted that purposeful recruitment of individuals with qualities and traits that are compatible with mediation should be explored. It would be important for the DRC to try and identify what these traits are. Some thoughts on people and places to recruit for mediators might be retired individuals, churches, mosques, community organizations, as well as Ypsilanti in general. A couple of respondents mentioned the idea of opening a center in Ypsilanti where there are more diverse people.

Cultural Relevance of the Training and Mediation Process

For the most part, people thought that the training was culturally relevant to their community and that the process would work across cultures. This was true during the focus groups as well as the post-training interviews. Participants noted that every culture has conflict and the mediation process was not necessarily seen as unique to one particular culture. One participant talked about how mediation was very congruent to his cultural background, "the fact that it is an unbiased process and that we can get two sides down to talk, is very relevant." Other participants noted that in many cases, mediation is informally happening already and that some cultures naturally value this kind of approach. For example, respondents noted how mediation already informally occurs in churches by religious leaders, community social workers, and in communities with a cultural propensity to turn to mediation first. One respondent identified Koreans, Indians, Pakistanis, Middle Easterners, Greeks and Italians as examples of cultural communities that have a propensity towards mediation.

Although most respondents were not specific about what customs or traditions mediation training should consider in its training, there was general agreement that mediators need to have familiarity with the culture, language, and custom, such as, how people approach problems, how people relate to one another, how people communicate (e.g., that some take time to warm up or display intense emotions), how willing people are to talk about family problems to strangers (e.g., some are suspicious of people trying to get into their business and are not forthcoming, due to historical mistreatment and discrimination). Therefore, it is important that the mediators be people that can be trusted. This could be done by having mediators present themselves as fair. One particular concept that was

mentioned that could be useful to discuss in training was the concept of shame and how individuals may hide things that they are ashamed of.

Several participants also expressed value for the level of subjectivity present in the mediation process, but expressed the importance for the mediators to be aware of their own cultural biases. For example, one individual talked about the importance of understanding the role of the patriarchy in Latino culture. Another respondent stated that Middle Easterners favor an outsider to the specific community to mediate, as an internal mediator would not want to be seen as a "troublemaker." Yet, this individual goes on to say, "we prefer to have someone from the culture or sub culture because of trust, because they know the traditions, they know the idiosyncrasies and all the special considerations."

Most everyone felt the training content was relevant. However, there were some notes of caution expressed by participants. For example, some thought that the training was not culturally specific, and rather was generic. Others thought that the examples were somewhat stereotypical and not relevant, such as the "beach house" example, and would have liked to see more culturally diverse role plays highlighting specific cultural groups (Arab, Latino, LGBTQ, etc.) and to debrief these topics. One participant felt that the training could have benefited from asking participants questions, such as how would this concept be applied in different racial/ethnic cultures? Others felt that there were important cultural factors that could be examined and explored more in the training, such as the importance of fostering trust, ways of listening, being non-judgmental, as well as matching mediators with clients by culture. Several individuals noted that the training could benefit from including more self-reflective content regarding working across cultures, such as looking at individuals own discomfort with people who are different from them, examining those feelings more closely—"what is going on inside people's hearts and minds." Additionally, a couple of participants felt it was important to recognize the significance of faith/religion to the community and how this might be useful in the process.

When asked again about the content of the training again in the second focus group, participants were somewhat more critical about the need for more cultural relevance to the training. For example, one participant commented that individuals may not see the process as relevant to them if they do not see themselves in the process, such as the videos and the role plays—"the process must reflect the people." One participant talked about how this needs to be "explicit" and that there is a need to be "very real" with it, because "oppressed minorities are not used to demanding what it needs." Participants discussed how models for incorporating minority perspectives and that the talents for how to do this exist. The work of Edwin Nichols on cultural diversity and how different groups see the world was cited as one possible source. Scenario Role Play: The Blees Method was another resource that was offered.

Participants were reminded in both the focus groups and the interviews that the DRC intentionally did not modify its basic mediation training for this group and that the purpose of this was to obtain baseline attitudes and reactions to the training before

modifications were made for future groups. Participants understood the rationale for this and acknowledged that this was a pilot project in its beginning stages.

With regard to the training environment, two respondents stated that initially the training did not seem warm and friendly, which would be very important for people from different cultures. Part of this was due to the training being so driven by the outline or agenda items. One participant felt like the training could have benefited from trainers using plain language, being real, relaxed, approachable, and not so concerned about getting every point across. However, these individuals did note that the trainers were respectful and listened to people.

During the second post-training focus group, participants were asked if it was important for the trainers to be from racial/ethnic minority groups. The group did not believe that this was imperative, but noted that it could be a factor. One participant suggested that there be more "train the trainers" workshops to diversify the pool of trainers. Participants felt similarly about the need to have mediators of the same race/ethnicity in the community. While it was not imperative, there was an expressed need for diverse mediators. For example, one participant stated that African Americans tend to be straightforward about their preference for mediators of color out of a concern for issues of fairness, but s/he did not know if this would be the case for other groups. There was consensus, however, that cultural competency training was absolutely necessary and that failure to do so would mean ignoring the proverbial "elephant in the living room."

Serving Diverse Communities through Mediation: Barriers and Solutions

As with the barriers to recruiting a diverse pool of mediators, the biggest barrier noted for serving diverse communities through mediation was a lack of knowledge about the mediation process, what it is about and the services it offers. Again, instrumental barriers such as parking and the DRC's location were noted. Particularly Ann Arbor was cited as a place that is not only difficult park, but a place where people of color might be looked down upon. Several participants spoke about how intimidating it was to come to Ann Arbor for services of any kind and that the community, although perceived as liberal and diverse, was not necessarily welcoming to people of color. Others noted the fact that some cultural groups, like African Americans and Arabs are scared of or distrustful of all things legal, particularly in our post-911 society. Coming to downtown Ann Arbor and specifically to a location where government buildings and courthouses were present only creates further distrust.

Participants stated that more education is needed about both how minority groups view mediation as well as education about the DRC and its service to the community. Although mediation is informal and flexible compared to the formal legal system, people are not aware of this and thus fail to see the difference in the two processes. Nearly all respondents said that more outreach and increased visibility on the part of the DRC would be necessary to change this perception.

For example, participants stated that the DRC should increase its visibility in churches, mosques, community organizations, civic organizations, and clubs; place where informal mediation is already happening. Regular presentations to such places would help to get the word out about mediation and the DRC. One participant felt that the DRC could improve its visibility by getting more involved in issues that concern the community and acting as advocates for these issues outside of the mediation process. Participant suggested information booths at festivals, circulating a newsletter aimed at these communities, radio and television ad, fliers, as well as the internet, e.g., Facebook, MySpace, and email. Others suggested training more people at universities, high schools, and community colleges, as well as marketing mediation to local businesses and helping professions. Minority fraternities and sororities were other possible places to locate diverse mediators. However, most people felt that the effort should be at a grassroots level and reiterated that there needs to be more of a push for ambassadors in the community to get the word out.

Nearly all of the participants stated that they would be willing ambassadors for the DRC as a result of their increased knowledge of the mediation process, the DRC, and the usefulness of its services. However, they suggested that the Center should give these ambassadors information, such as Center fliers and handouts, so that they can share the information with others. On the other hand, the participants also recognized that as leaders in the community, they are very busy people and this can be a barrier to their participation. They implore staff to be persistent with them and acknowledged that they would not want to waste the scarce resources that the Center invested in them.

RESULTS OF DRC STAFF AND TRAINERS FOCUS GROUPS

Following the training, the DRC staff and trainers met with the evaluator for two focus groups. The questions focused on staff and trainers reflections of the pilot project to date, observations of the trainings, how the training differenced from typical trainings, and ways in which the process for recruiting diverse mediators and serving diverse communities could be improved. The findings below represent the various themes that emerged from the focus groups.

Sense of Community. Observations by DRC staff largely focused on the interactions of the participants at the training. Staff noted there was an "instant bonding" among participants and that the training appeared to create community that was unique compared to other trainings. Some noted that this had much to do with the fact that the members had so much in common with one another; there was a "comfort level of being in a group where they are not the only one." One example that was cited was during the first lunch break where people naturally grouped themselves to go to lunch together despite the fact that they did not know one another a few hours earlier. The trainers also noted that this bonding was a challenge at times, as the group was sometimes difficult to get focused after breaks and there were several side conversations that were sometimes distracting to the trainers. One trainer suggested that it might have been a good idea for people to sit in different seats on different days. This would also help with people getting to know other people in the group.

Staff comments affirmed those of the participants who spoke about the level of comfort among participants due to the high ratio of minorities. Others thought that the environment may have been due to the fact that there were no lawyers present. One staff noted that although lawyers can be skeptical, ask questions to pick apart the mediation process, and keep others from asking questions, she wondered if it might be good for lawyers too to be in a room with diverse community people. Staff discussed the possibilities of future trainings that mixed both professionals and community leaders, but that the appropriate ratio should be at least balanced in order to be successful.

The trainers, on the other hand, were less convinced that the group differed from other community mediation trainings and one trainer spoke about how she has observed a similar bonding in other groups. She noted that these other groups were often diverse in other ways including socioeconomic status. The other trainer, however, was surprised that the group bonded so quickly given that they came from such different backgrounds. The trainers, who were both white women, also expressed some concern over whether the group would accept the training without having a lot of information about mediation and whether they would be rejected by participants for "not knowing the culture." The group acknowledged that the selection of two white trainers was intentional and was done this way because this was typical of mediation trainings that have been held in the past in the Center. Again, the lack of manipulation was intended to obtain a baseline for future modifications that the Center might make in future trainings.

Recruitment. A large part of the staff and trainer focus group discussions centered on the process of recruiting the participants for the training. The recruitment was largely done by the DRC's Board President, a white Jewish woman and a staff member, who was an African American Christian woman. For recruitment in the African American community, the staff member approached recruits through their spirituality. She appealed to African American individuals by viewing their participation as a calling that was pre-destined and that she was a vessel for God's purpose. She rationed that this approach would reach leaders in faith communities, who already use mediation informally in their personal lives and their work, and because she would be asking them to make a personal sacrifices in order to come to the training. She noted that her success was largely due to her credibility, which arose from her history in the community and her own shared history as an African American. Also, she stressed that there was a need for ongoing commitment to the individuals who attended the training, again noting that people sacrificed personally and made it a priority to come to the 40 hour training, including lost wages and their own emotional challenges.

The Board President described her recruitment as appealing to her personal relationships with individuals and to her own enthusiasm for the project. She talked about making individuals feel special, that they were hand-picked individuals who were an "illustrious group of people in level of experience, leadership, and commitment." She also appealed to people to participate as a favor to her personally. She did wonder, however, how replicable this approach was and questioned whether there were other approaches that could have been taken. One staff member stated that the Center needs to define who it

wants to recruit, who to target, and how much resources it will commit to this kind of effort, acknowledging that this kind of effort requires money to be successful.

Accomplishments and Successes. Staff and trainers both felt that the training went very well. They identified the outreach effort as a major success, not only for the training, but to increase the visibility of the DRC in communities of color. They also noted that the planning that went into the training was elaborate and specific, although they wondered if such an elaborate planning effort would be necessary in the future. However, more than anything, they realized that undergoing the process forced them to "tell their story." The group took the time to become their own ambassadors for the program, and that this may not have been done so systematically and with such great effort if it were not for the project. The Center Director noted that the success of the project could also be attributed to the number of different pieces of the Center who were committed to the project, including the Board, staff, consultants, trainers, and trainees. She stated that "a lot of different voices were included in the project and we had 100% commitment to the goal of the project." She stressed that even if people did not come to the training, the Center was successful in getting the word out to a number of people who would have otherwise never heard of mediation or the Center. Staff also noted that the trainees are now telling the Center's story to their community and even if they do not mediate regularly, these individuals are excellent new partners for achieving the Center's mission.

Challenges and Barriers. There were several challenges that were associated with the project, including the new transitions occurring in the Center due to a new Director, new offices, and coordinating the project along with the regular duties and responsibilities of the Center. In addition, staff noted that there were administrative challenges, as the project brought a lot of different and new questions to the Center without a designated person responsible for these questions. Recruiting and following up with individuals, which was often one-on-one or in person, was also a challenge, but it was noted that this kind of interaction was important and meaningful, as it presented an opportunity to develop trust. Staff described how the short term pay off for this type of trust building was high. For example, staff described how different that atmosphere was at a recent mediator appreciation event, which some described as more vibrant, warm, and diverse.

Lack of resources, and specifically funding for this kind of effort, was also a major challenge to the ongoing success of the project. Staff wondered if they could do this again in the future noting the cost of the trainers and materials. Could scholarships be provided on an ongoing basis for specific individuals and how will this be paid for? Although this was acknowledged as a major challenge, the staff also saw this as an opportunity and believed that there might be others who were committed to serving diverse communities who might assist in fundraising and providing resources. One staff member suggested that half day and full day workshops that could be led by trainees and used as fundraisers. There was general agreement that advanced trainings on cultural issues presented an opportunity for not only disseminating important skills, but also raising money for the Center and its programs.

There were also several challenges in the recruitment process, as one individual stated that she did not have a lot of contacts in certain diverse communities, although it was an opportunity to meet a lot of new people. She also noted that she often did not have the right materials, except for a flier, which was not enough, especially for people with no background on mediation. It was suggested that a letter or some kind of information sheet be created for people with no knowledge of mediation. Despite these challenges, recruitment was not only successful, but there is still a long and growing list of people who are interested in participating in the project. The new challenge is what to do with these people? What is the incentive for these individuals to participate in regular training?

Cultural factors. Staff also noted that time became an issue for the training due to the late arrival of some of the participants. It was noted that time may be a western concept and that in future training, more time should be allotted for people to arrive and mingle, perhaps with food. This would give people an opportunity to network and contribute to a more welcoming environment.

The content of the training and its cultural relevance was also discussed by staff and trainers. One staff questioned whether the videos depicting white males might be boring and out of date. While there was general agreement, it was also noted that better and new materials featuring diverse individuals are not available and that this is an ongoing challenge. One trainer stated that different people have different reactions to the videos and affirmed that it is very difficult to find videos with good techniques.

The group also discussed the coaches who were brought in to assist with the role play situations. Again, the group acknowledged that they did their "usual thing" and did not try to manipulate who they brought in as coaches, according to the evaluation plan. However, they also noted that it might have been a good idea to bring in some diverse coaches.

The community role plays themselves were also noted as potentially problematic and one staff expressed the need for more role play with cultural conflicts. However, some staff expressed concern and highlighted the need to be sensitive to the possibility of stereotypes that might be embedded in cultural role plays and the inability to check in on these issues every time. Others felt that we did not need to be so sensitive to this at the risk of not using cultural role plays, as stereotypes are the norm in minority communities and not such a big deal if debriefed appropriately. Staff noted that role plays that were more generic lacked a sense of realness and authentic voice. For example, staff described how the civil case was far more effective and emotional because it dealt with issues of trust as well as loss and grief. Also, one staff noted how one African American male was not into his role as a white male during one of the role plays and refused to take part in it. There was a general consensus that trainers should do more debriefing after role plays and that we should incorporate such hesitations to participation in the debriefing process.

The group also discussed the cultural competence section of the training and its effectiveness. One of the trainers spoke of how she usually asks participants to complete the family history section ahead of time and that this is where the trainees usually come together as a group. However, this was not necessarily the case with this group, as there were not a lot of individuals volunteering and in fact, one participant questioned the appropriateness of the exercise for African Americans. It was unclear as to whether people did not share due to the limitations of the exercise, if people already felt comfortable with the information, or if the group did not want to engage in a discussion of cultural differences among themselves due to a sense of solidarity and intense bonding that was established by the group from the onset of the training.

Intergroup and intragroup conflicts among diverse communities were also discussed in the focus group. Specifically, the racial divide between whites and African Americans in Ypsilanti and intragroup conflict within the Arab community were put forth as examples. The staff questioned whether there was something they could do as a Center and how they could support those individuals who are already doing this work in the community. The use of co-mediation was suggested as one way in which the Center could play a role in this process.

The trainers observed that it might have been important for them to know who the trainees were and where they came from prior to the class. This might have allowed for them to better prepare for some of the possible cultural issues that might come up. For example, it might have been good to know what communities the trainees came from and what they intended to do with the training. Although the trainers got to know the trainees quite well by the end, they felt it was mostly one dimensional.

The participants' age differences were observed as a possible barrier to the training. Staff thought that older members were a bit more engaged than younger members in the training and that this may have been possibly due to different expectations or learning styles. For example, were younger participants more bored, did they expect something different, were they intimidated, did the training need to be at a faster pace, are these differences attributed to personalities, culture, or age? More information is needed to determine if differences by age could be attributed to these observations.

Next Steps. The group engaged in an extensive discussion of the question, "how do we do this kind of training once again?" Staff spoke about the need to capitalize on the energy that was in the room and several suggestions were made on how to do this, including creating a contact list to allow participants to network with each other, having a reunion of the participants to rekindle the sense of community during the training, and to give them tasks to do so that they can stay engaged in the Center. One task that was described was asking participants to be recruiters for the Center. It was noted that a couple individuals have already contacted the Center and that one participant even came to a recent brown bag. The question arose, however, as to how to best engage people with full schedules? Individuals suggested more flexibility with hours, including evening and weekends and that this might be necessary if they are serious about diversity. The

staff also wanted to know where individuals would like to host mediation in the community.

Another idea that emerged was to ask participants if they would be willing to help set up presentations for their groups in the community. Specifically, staff believed that if the trainees opened the door for the Center, who are essentially strangers, to their friends, the Center would have some credibility in presenting its message.

Staff also acknowledged that training people would not be enough and that if participants haven't done anything yet, it might be because we haven't asked them to do anything yet. Additionally, there might be other incentives that need to be in place for people to stay engaged, for example, reduced fees for future workshops and inviting individuals to be presenters themselves at the Center brown bags. Finally, staff noted that there was a greater need to view these volunteers as resources and that there may be a need for a staff member to be committed specifically to coordinating volunteers.

LESSONS LEARNED AND RECOMMENDATIONS

Several important lessons were learned from the pilot project and the evaluation results reported above. These lessons are summarized below.

The DRC learned:

1) It can be successful in recruiting and training a diverse group of community members to serve as community mediators. The trainees were an extraordinary group of dedicated and committed individuals who care deeply about their community. The group was also highly educated, held positions of status in the community, and represented outstanding candidates for mediation training.
2) Its training curriculum and the processes of the training, for the most part, were useful and relevant to diverse communities. The materials resonated with individuals who stated that the process of mediation exists within a number of cultural groups.
3) The principles of mediation were important to the community and, in fact, many individuals in the community already act as informal mediators in their professional and work settings.
4) There are several modifications that will be necessary to increase the relevance of the training to diverse communities. While there are some areas in which materials and resources are available for increasing cultural relevance, other materials may need to be developed that teach good skills and techniques.
5) There are a number of challenges to recruiting and retaining mediators from diverse communities, including the time it takes to recruit individuals, ongoing funding to support training for disenfranchised communities, and the time constraints of trainees to act as community mediators.
6) Its participation in the project contributed to an increase in the visibility of the Center in diverse communities and that they have gained a number of

ambassadors in the community who they can call upon to continue their outreach efforts or to volunteer their specific cultural expertise.

Based on the findings of the project, several recommendations are warranted. These recommendations emerged from DRC staff, participants in the project, as well as the evaluator's observations of the process.

1) The DRC should capitalize on this pilot project and use it as a spring board for recruiting more community mediators from diverse communities and as a vehicle for increasing its visibility and services to these communities.
2) The DRC must continue to dedicate itself to increasing the cultural competence of its existing mediator pool. Attention to cultural factors is important whenever mediators deal with diverse communities, no matter who the mediators are.
3) The DRC should consider utilizing the participants from the project as resources for training mediators about cultural competence. Advanced cultural trainings and workshops could be co-facilitated among DRC staff and project participants and the fees for these workshops could be used to fund future trainings for diverse communities.
4) The DRC should examine the content of its training, particularly the videos and role plays, to include more diverse individuals and cultural issues. If such materials are not available, the DRC should either develop such materials or advocate for the development of such materials.
5) The DRC must prepare for an increase in intergroup conflict cases if it is serious about serving diverse communities. It must become aware of the issues that are present within the community and develop trainings that specifically address these issues. A needs assessment, such as a community survey to ascertain the kinds of conflicts that exist within the community, should be completed to determine existing issues.
6) The DRC must continue to seek funding for its ongoing efforts to recruit and retain a diverse pool of mediators. This may include the need to fund a staff dedicated to such efforts as well as incentives for participating in the training. Although the project revealed that, once trained, individuals buy into the mediation process and acknowledge its usefulness, getting diverse individuals initially to come to the training may require added incentives, such as discounts or scholarships. Once the DRC becomes more established in the community, this may become less important, but it will take more time and outreach efforts before this happens.
7) The DRC should consider the location of its offices and consider partnering with community agencies and organizations about locating some of its services in diverse communities, such as Ypsilanti. If the DRC expects diverse individuals to trust the Center and learn about mediation, it must be accessible to the community. Accessibility might also include extended evening and weekend hours, so that working families who are unable to take off from work might access services.
8) The DRC should develop information packets and advertising that are aimed at diverse communities who have very little information about mediation. Both

DRC staff and its new ambassadors could use the materials in their recruitment efforts, including presentations to community groups that may be set up by community ambassadors for DRC staff.

In conclusion, the DRC experienced great success with its multicultural pilot project and looks forward to its ongoing work towards increasing its diverse mediation pool and serving diverse communities. Although there is more effort and funding that is required to insure the future success of the project, the DRC took a great leap forward toward meeting this aim and developing a model for other community mediation centers who also are seeking to increase the diversity of its mediation pool. The ongoing success of the project will be contingent upon the continued dedication to the goals of this project and the ability of the DRC to articulate how it was successful in achieving its goals. Continued evaluation of the DRC efforts is necessary to further understand the issues and barriers to these goals and the replication of its efforts throughout the country.

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"Crafting Vision and Action for Michigan: Toward an Effective ADR System that Addresses Issues of Diversity"

As parent of an adult child who has recently come out, I am now confronting a whole new set of personal concerns that will probably be with me for the rest of my days. How will our extended families respond? Will she be safe on the street or in her home? Will she face retaliation from her employer if someone sees her kissing her girlfriend on her lunch break? If they become partners and own joint property, will they find the help they need to settle any disputes that may come up should they decide to go their separate ways?

Alternative Dispute Resolution (ADR) is relevant to all these concerns and more, whether we are talking about facilitative mediation, family group conferencing, or victim/offender dialogue. The question remains, is our community of private practitioners and volunteer neutrals prepared to do more than what may be generally expected of them? On one level, our Lesbian, Gay, Bisexual and Transgender (LGBT) clients should receive the same professional assistance as anyone else. There is a valid argument to be made that mediation is mediation regardless of who is sitting at the table. But we have also learned that a lack of awareness on the part of a mediator may indeed turn the tables when a disputant is turned off by cultural insensitivity.

Are members of the LGBT community truly welcome when they join us at the mediation table? Are mediators familiar with the history of the gay rights movement? Are they aware of the current legal issues affecting sexual minorities? Do they understand what true hospitality may look like through transgender eyes? Have ADR practitioners or local Community Dispute Resolution Programs (CDRP) made an effort to draw on the wisdom of the LBGT community to inform their practice? Have straight mediators spent time considering how their language and personal assumptions may impact negotiations involving LGBT disputants? Are there gay mediators among us who have chosen to remain closeted suspecting they would not be welcome at the table either?

Many of these questions were raised in our own practice as a CDRP. We found that cases were coming to us from the courts where either a disputant’s homophobia was lurking under the surface and making settlement extremely difficult, or we were asked to mediate property division in the breakup of same-sex relationships. I am happy to say we had considerable success in helping those who were sent our way, but we knew not everyone on our mediator roster was prepared to be of service in these cases. We were also concerned that those performing intake tasks at our office and working with students in our local schools were adequately prepared to be of assistance to those approaching them for help.

In an effort to address these concerns, our program collaborated with leaders from the LGBT community and its allies, the American Civil Liberties Union of Michigan, local counselors, educators and social workers, along with ADR experts to develop a diversity training for mediators working with LGBT disputants. The eight hour advanced mediator training was intended to increase sensitivity and awareness regarding sexual minorities as

participants in the mediation process. It received prior approval from the State Court Administrative Office as satisfying the court rules for continuing mediator education. Someone noted this was the first training of its kind in the state, but the important thing is our agency does not have a copyright on it and anyone can duplicate it in his or her own context. We found the training to be a great way to get our program and mediators connected with local leaders in the LGBT community, learn what it means to be an ally, become better informed on legal issues, and learn more about the challenges confronting young people and elders. We increased our understanding of how language and our hidden assumptions can impact mediation with LGBT disputants in ways we had not considered. We also found this training works. In their evaluations the majority of participants gave the training very high marks and noted they had no previous awareness of several issues covered in the training. Many reported they felt better equipped to mediate conflicts involving LGBT disputants as a result.

But inspiration is followed by more perspiration. Despite the cliché, you can build it but that doesn't mean anyone is going to come. Awareness on the part of mediators is one thing, but increasing awareness of the services among those who may need them is another. To tackle this challenge we returned to the group who helped create the training. They provided important input during the development of the brochure we now use to promote mediation among potential LGBT clients (see attached). We also used some additional grant money from the local foundation that helped finance the training to put an advertisement in a periodical popular with Michigan's LGBT community, *Between the Lines* (also attached). Yet, none of this assures you phones will be ringing. Ultimately, relationships need to be developed and trust established, not just to increase referrals, but to collaborate in the creation of a truly inclusive and welcoming community in which ADR plays a decisive and valuable role.

Respectfully submitted,

Barry Lee Burnside, Program Coordinator
Dispute Resolution Services of Gryphon Place
November 25, 2009

What is Dispute Resolution Services of Gryphon Place?

Dispute Resolution Services (DRS) is a program of Gryphon Place, a not-for-profit agency which helps People find solutions to life challenges.

DRS is one of Michigan's Community Dispute Resolution Programs. These programs were established to offer residents an alternative to settling disputes in court.

Dispute Resolution Services also:

- Provides workshops in conflict resolution
- Facilitates group meetings where conflict is present
- Trains new mediators

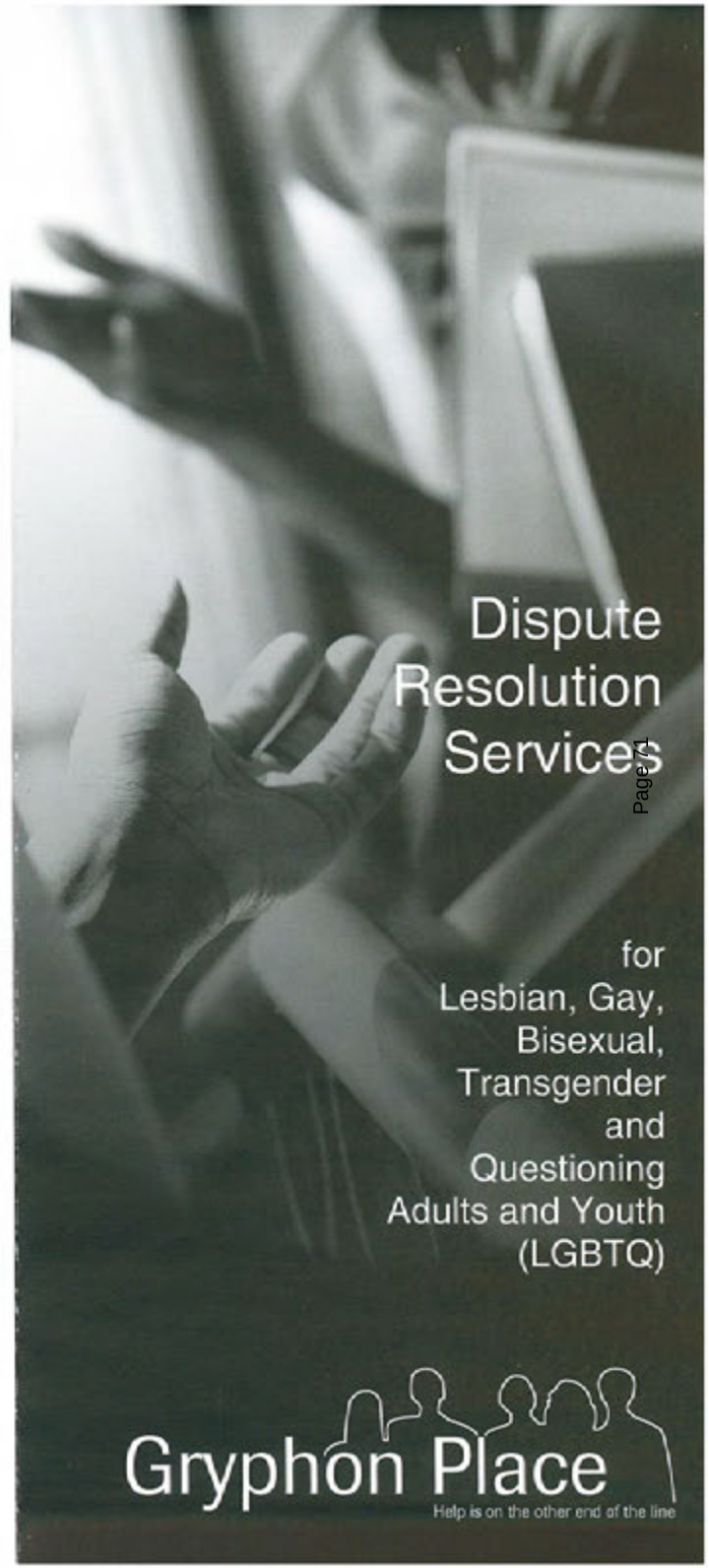
of
Gryphon Place

Serving Kalamazoo, Calhoun, and Barry Counties

Gryphon Place

1104 South Westnedge
Kalamazoo, MI 49008

269.381.1510
fax: 269.381.0935
www.gryphon.org



Dispute Resolution Services

for Lesbian, Gay, Bisexual, Transgender and Questioning Adults and Youth (LGBTQ)

Gryphon Place

Help is on the other end of the line

What is Mediation?

- **Collaborative:** People meet to discuss their problem with an impartial third person.
- **Voluntary:** Everyone joins the conversation willingly.
- **Private:** What is said in mediation is kept confidential.
- **Informal:** Mediation provides a more relaxed setting than court.
- **Empowering**: People with the dispute determine the outcome.
- **Effective:** Seventy to eighty percent of mediated conflicts result in agreement.

Who are the Mediators?

- **Training**: All mediators complete 40 hours of training approved by the State of Michigan. Mediators serving LGBTQ clients complete an additional 8 hours of training.
- **Commitment:** Mediators are from all walks of life and are dedicated to serving their community.

Why Mediate?

- **Welcome:** Mediators assigned to cases involving LGBTQ clients are prepared to make everyone feel welcome during mediation.
- **Safety:** Mediation is a safe place for LGBTQ disputants to bring up any issues that might be related to sexual orientation. Mediators are committed to making sure everyone is treated with respect.

"Mediation provides a valuable and powerful tool to the GLBT community. Courts often do not recognize the legal needs of this community, especially when it comes to family matters. I have found that mediation allows GLBT persons to settle matters with dignity and move on with their lives."

Margo Runkle
Attorney, Mediator

What Can Be Mediated?

Family Conflict

- Youth and Parent
- Separation and Property Division
- Parenting Time
- Elder Care

Employment Issues

- Workplace Discrimination
- Co-worker Conflict

Education Problems

- Harassment
- Equal Access

General Disputes

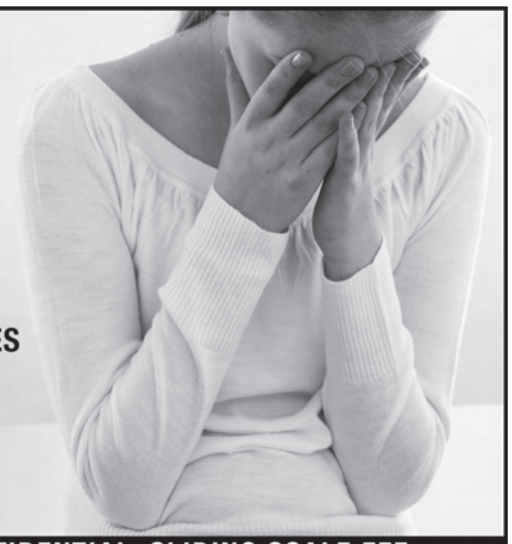
- Neighborhood
- Landlord Tenant
- Business/Contract

How Much Does It Cost?

Fees vary depending on the type of dispute. A sliding fee scale is used for those of lower income and no one is turned away for inability to pay.

Getting Started

Contact DRS and a staff member will gather information, determine if the dispute is suitable for mediation, contact the other parties and schedule the session.



Resources to keep you healthy and whole

NATIONAL RESOURCES

Counseling & hotlines

Depression and Bipolar Support Alliance

www.dbsalliance.org

800-826-3632

DBSA's mission is to educate patients, families, professionals and the public concerning the nature of depressive and manic-depressive illnesses as treatable medical diseases; to foster self-help for patients and families; to eliminate discrimination and stigma; to improve access to care; and to advocate for research toward the elimination of these illnesses.

The Gay And Lesbian National Hotline

www.glnh.org

Phone: 1-888-843-4564

GLNH is a non-profit organization which provides a vital service to our community by providing nationwide toll-free peer-counseling, information and referrals.

The Trevor Project
www.thetrevorproject.org/home1.aspx

866-488-7386

A national 24-hour toll-free suicide prevention hotline aimed at gay or questioning youth. The Trevor Helpline is geared toward helping those in crisis, or anyone wanting information on how to help someone in crisis. All calls are handled by trained counselors, and are free and confidential.

Gay, Lesbian, Bisexual and Transgender Helpline and Peer Listing Line

800-399-7337

Young people can talk to a peer without being judged or rushed into any decision they are not prepared to make. Issues include sexuality and safer sex practices, coming out, HIV and AIDS, depression and suicide, and anti-gay/lesbian harassment and violence.

MICHIGAN RESOURCES

www.pridesource.com: Fully searchable database online of most nonprofit services supporting LGBT communities. Counseling, medical and dental practices supportive of LGBT community. Sample of some listings follow:

Hotline:

Affirmations Community Center

800-398-GAYS (4297)

Triangle Foundation

877-787-4264 *to report hate crimes.*

Families and friends support

COLAGE is the only national and international organization in the world specifically supporting young people with gay, lesbian, bisexual, and transgender parents.

www.colage.org

People and Places:

Parents & Friends of Lesbians and Gays (PFLAG)

PFLAG promotes the health and well-being of gay, lesbian, bisexual and transgendered persons, their families and friends through: support, to cope with an adverse society; education, to enlighten an ill-informed public; and advocacy, to end discrimination and to secure equal civil rights.

http://community.pflag.org

Information about PFLAG Detroit, including support, education and advocacy information, plus local community information.

www.pflagdetroit.org

MICHIGAN CHAPTERS

PFLAG-Detroit
248-656-2875
www.pflagdetroit.org

PFLAG - Downriver, Michigan
Serves Downriver area in southeastern Michigan
734-783-2950
pflagdownriver.org

PFLAG - Ann Arbor
www.pflagaa.org
734-741-0659

PFLAG - Genesse County
810-659-1254
www.pflagflint.org

PFLAG - Grand Rapids
www.pflaggrandrapids.org

PFLAG - Jackson
(517) 750-3045
www.webspawner.com/users/pflagjackson

PFLAG - Keweenaw
906-482-4357
www.keweenawpflag.org

PFLAG - Lansing Area Michigan

517-332-4550
www.geocities.com/pflaglansing

PFLAG - Southwest Michigan
www.pflagswm.org

PFLAG - Kalamazoo/Southwest Michigan
PO Box 50564
Kalamazoo, MI 49005

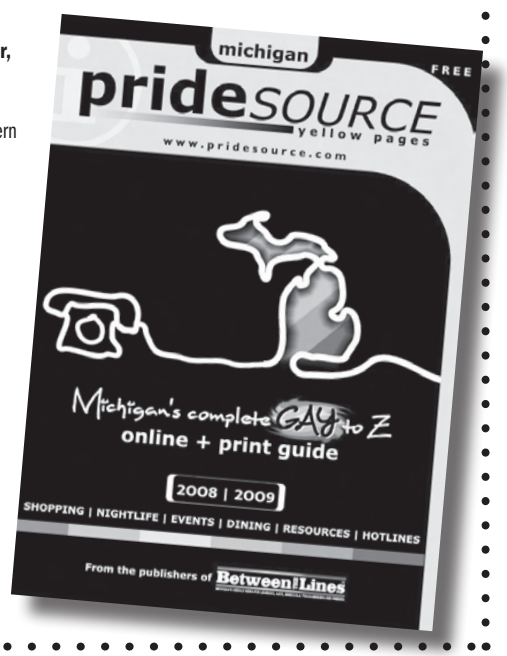
PFLAG - St. Joseph/Berrien County

(269) 429-6160
www.outcenter.org./pflag.htm

PFLAG Tri-Cities
989-941-1458

pflag@pflag-mbs.org

Find hundreds more Michigan LGBT resources online at www.pridesource.com



An Analysis of Diversity Trainings in United States Community Mediation Centers
The Dispute Resolution Center (DRC), Ann Arbor, Michigan

Naomi Warren, MSW, JD
University of Michigan
September 2009

This project was funded in part by a grant of the Michigan Supreme Court, State Court Administrative Office, Office of Dispute Resolution.

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An Analysis of Diversity Trainings in United States Community Mediation Centers
The Dispute Resolution Center (DRC), Ann Arbor, Michigan

INTRODUCTION

Cultural identity is not always understood and addressed effectively in the field of mediation. Race, gender, sexual orientation, age (both older adulthood and adolescence), socio-economic disparity, and disability are often the "elephant in the room" when people are attempting to resolve a conflict.

Many community mediators lack the life experiences or professional skills to be effective mediators in conflicts involving cultural identity. The Dispute Resolution Center in Ann Arbor, Michigan conducted a basic 40-hour mediator training in November, 2007, in which all invited participants were individuals from minority communities. A subsequent evaluation suggested ways in which the training could be improved, particularly with regard to structure, role plays, exercises and class make-up. To build upon this evaluation, the DRC embarked upon a further study to examine other community mediation centers' training curricula and practices with a specific focus on issues of diversity and cultural competence.

PURPOSE AND OVERVIEW OF DIVERSITY TRAINING PROJECT

The purpose of this report is to present the findings of this study that looked at diversity trainings at community mediation centers across the country. The study was initiated as a cooperative effort between The Dispute Resolution Center (DRC) in Ann Arbor, Michigan and the State Court Administrative Office (SCAO) of Michigan. The study began in March of 2009 and was completed 6 months later.

The purpose of the project was:

(1) To research best practices used in community mediation centers across the country to determine what efforts centers have made to build competence, overcome apprehensions and unconscious behavior, and reach out to diverse communities to expand services, enlarge mediator pools, and serve multi-cultural constituents more effectively;
(2) To identify useful curricula and, when possible, secure permission to utilize those curricula in Michigan's 20 community mediation centers (CDRP);
(3) To gather information in preparation for a plan in Michigan designed to increase the level of awareness among Community Dispute Resolution Program (CDRP) center board members, staff, and volunteer mediators' personal sensitivities and cultural competence, increase the skills of mediators in dealing with cases involving conflicts of cultural identity, and increase the skills of mediators in conflicts in which the parties come from different cultural backgrounds.

In this study, the DRC used a mixed method quantitative and qualitative methodological approach. The quantitative element consisted of an online survey and the qualitative element included phone interviews with both respondents and key non-respondents.

Quantitative

The project began by identifying community mediation centers across the country. This list of centers was generated by adding to a list developed by the President of the DRC's board of directors. From this list, an excel document was created that included the centers' name, address, website, and contact person. The final document included a total of 297 centers across all but 4 states and the District of Columbia (no centers were identified in Idaho, Louisiana, South Dakota, or West Virginia). Two centers had co-program managers, so 299 e-mails were sent out inviting respondents to participate in a brief, online survey (see attached Appendix I). The survey was administered via an online survey tool called surveymonkey.

Next, an online survey was created with questions developed in cooperation with this study's advisory committee. The advisory committee consisted of professors, lawyers, judges, social scientists, community members, mediators, mediation trainers, and administrators from diverse backgrounds and cultures (see attached Appendix II). The advisory committee met initially to discuss the scope and purpose of the study, and committee members also provided feedback on the online survey questions and format. In addition, the Executive Director of the DRC administered a "test run" among area community mediation center directors in order to get their feedback on the flow and clarity of the online survey. Ultimately, the survey was distributed to all 299 contact people. The target response number was 30 centers; 44 completed the survey.

The online survey included questions about both the centers' training(s) around issues of diversity as well as their organizational structure. The survey was estimated to take no longer than 15 minutes to complete and consisted of both closed and open-ended questions. Potential respondents were given one month to answer these questions before the online tool automatically closed the survey.

In analyzing the quantitative data, we entered responses to survey questions into a statistical analysis program (e.g., SPSS) and descriptive statistics were calculated.

Qualitative

Once the online survey tool was automatically closed to respondents, DRC staff, volunteers, and the board president divided up the responses and made follow-up phone calls to those centers where either a) surveys were incomplete or b) surveys indicated potential key findings that warranted further probing. In addition, certain key non-respondents were identified and called. These centers were identified either because they were reputed to have strong diversity training and/or curriculum or because the DRC was aware that they had been doing work in this area.

Each follow-up phone interview lasted an average of 1 hour, with some conversations lasting as long as 3 hours. In addition, some phone conversations led to additional phone interviews with related individuals from other organizations. The phone interviews were largely semi-structured. They followed a general starting format, where respondents were asked to give more information regarding certain questions – particularly names of trainers, types of diversity initiatives, and whether they had curricula they were willing to share. A specific emphasis was placed on increasing general understanding about the centers' programs and experiences that might inform the DRC in terms of increasing skills regarding diversity and training DRC mediators to be more effective.

These follow up interviews allowed us both to clarify some of the respondents' answers to the online survey as well as to explore their answers more deeply.

In analyzing the qualitative data, we identified key themes and examples that might be used in assisting the interpretation of our findings.

The final results of both the quantitative and qualitative data will be, in aggregate form, presented to DRC and SCAO staff, made available to all study participants, and shared at future national meetings and conferences.

RESULTS OF ONLINE SURVEYS

Location within the United States. The 44 respondents came from a total of 12 states, with the largest number (ten) coming from Michigan. In addition, six of the respondents were from California, one was from Georgia, one was from Iowa, two were from Massachusetts, two were from Maryland, one was from Missouri, two were from New York, five were from North Carolina, four were from Tennessee, four were from Virginia, and six were from Washington state. Thus, every region was represented in some capacity with the exception of the Southwest.

Training/Workshops. Respondents were asked eight questions about diversity trainings and workshops with which they and/or members of their organization might be familiar. First, they were asked whether their organization offered diversity training to mediators (community, attorney, or volunteer), board/staff, and other organizations. Nearly half of the respondents (20) indicated that they offered diversity training to mediators. Slightly fewer (15) stated they offered such training to their board/staff, and less than a quarter (10) offered diversity training to other organizations. (See Table 1)

Table 1: Diversity Trainings Offered

	Does your organization offer diversity training to:
Mediators (community/attorney/volunteer)	20
Board/staff	15
Other organizations	10

Next, respondents were asked who conducts these trainings – internal or staff trainers or independent/contract trainers. Of those organizations that indicated they offered diversity trainings, seventeen indicated that the trainers were internal or staff and twelve stated that the trainers were independent/contract trainers. (See Table 2) A few organizations then noted the trainers' names, affiliations, and type/title of training. Most of these trainings had to do with issues of culture, with some trainings particularly noting issues of identity and power with regard to cultural conflict. A few trainings had to do with particular identity groups (e.g., gender, sexual orientation) but many were general "diversity" trainings.

Table 2: Who Conducts Trainings

	Who conducts these trainings?
Internal or staff trainers	17
Independent/contract trainers	12

Respondents were then asked whether they offer other diversity initiatives, such as brown bag meetings, lectures, movies, or dialogue groups. About a third of the respondents (15) answered that they did offer such initiatives. (See Table 3) The types of initiatives these respondents listed included, but are not limited to: film screenings, continuing education workshops, wine and cheese gatherings, outside speakers, lunch and learn meetings/brown bags, and dialogue groups.

Table 3: Other Diversity Initiatives

	Do you offer other diversity initiatives?
Yes	15
No	14
No response	15

Next, respondents were asked what they believe are core components of an effective diversity training program for mediators. Slightly fewer than half the respondents stated examples of core components, with many of the responses centering on some element of self-awareness. Such responses included: "self-reflection on biases, prejudices;" "intense self-reflection and constant evolution;" "recognizing your own biases;" "self-awareness of own prejudices;" "becoming aware of their own thoughts, biases, assumptions." Respondents also spoke about understanding cultural differences and the role of power in conflict, as well as helping mediators gain understanding about "where people are coming from." They mentioned, too, the importance of respect and listening ability, cultural competence, and the ability to connect concepts of inclusion, cultural sensitivity, and awareness of biases. A few respondents indicated that this was an issue they were unsure about, and/or they were in the process of formulating an answer to that question as an agency.

Respondents were then asked whether they have an effective diversity module in their basic mediator training and, if so, whether they would be willing to share that curriculum. Over a third of respondents (17) indicated that they had an effective diversity module. Of those respondents, ten stated that they would be willing to share their curricula. Respondents were also asked whether they have an effective advanced or stand alone diversity training and, if so, whether they would be willing to share that curriculum. Only a quarter of respondents (11) indicated they had an effective advanced/stand alone diversity training and, of those, only six stated they would be willing to share it. (See Tables 4 and 5) However, it should be noted that concerns arose in sharing the curricula when this issue was addressed in the follow-up phone interviews. Although the respondents indicated a willingness to share curricula in the online survey, implementing this became an issue because of proprietary concerns.

Table 4: Effective Modules

	Do you have an effective:
Diversity module in your basic mediator training	17
Advanced or stand alone diversity training	11

Table 5: Willing to Share Curricula

	Would you be willing to share your curricula?
Diversity module in your basic mediator training	10
Advanced or stand alone diversity training	6

Next, respondents were asked whether their staff and/or mediators attended independent conferences and/or trainings related to diversity and mediation which they felt were of particularly high quality. Only eight of the respondents indicated that they had. (See Table 6) Although respondents were then asked to note the trainer's name, affiliation, and type/title of training, only one did. Four respondents did comment on the follow-up question which asked them to describe what distinguished these programs from other programs. These comments included length, depth, exercises, class discussion, and content that was well-prepared and relevant to their community.

Table 6: Independent Diversity and Mediation Conferences/Trainings

	Have your staff and/or mediators attended independent conferences and/or trainings related to diversity and mediation which they felt were of particularly high quality?
Yes	8
No	18
No response	18

Finally, respondents were asked whether they had met with resistance when introducing diversity training and, if so, from whom. Only six respondents indicated that they had met such resistance. This resistance came from trainees (5), the community (4), trainers (2), mediators (2), staff and board (2), and other sources (1). (See Table 7)

Table 7: Resistance to Diversity Training

	Have you met with resistance when introducing diversity training?
Trainees	5
Community	4
Trainers	2
Mediators	2
Staff and board	2
Other sources	1

The Organizations. Respondents were asked an additional seven questions specifically about their organizations (board, staff, mediators, etc.). First, they were asked whether their organization had assessed the multi-cultural needs of their community. Over a third of the respondents (17) indicated that they had addressed this need. (See Table 8) They did this in a variety of ways – through meetings with community leaders and agency heads; demographic analyses; focus groups and questionnaires; surveys and relationship building activities; community dialogues and cross cultural inventories; as well as videotaped interviews with cultural groups' leadership. These methods varied in terms of their format and formality, but all appeared to involve some level of depth and preparation.

Table 8: Assessed Multi-Cultural Community Needs

	Have you assessed the multi-cultural needs of your community?
Yes	17
No	13
No response	14

Respondents were next asked to indicate what diverse groups are primarily represented in their service areas. As examples of what was meant by "diverse groups," the following identities were included as a non-exhaustive list: gender, race, ethnicity, sexual orientation, religion, age, and disability. Respondents primarily listed diversity with regard to race/ethnicity, but they also mentioned sexual orientation, Native American tribes, and immigrants as important groups. In addition, a few respondents noted gender, religion, age, and ability status. Two respondents listed "all of the above" as groups in their service areas.

Respondents were then asked whether their organization reflects the diversity of their service area. Most of the responses indicated that at least some part of the organization

(board, staff, mediators, clients) reflected the diversity of their service area. (See Table 9) However, there was a technical problem with this particular question on the online survey tool; respondents were not able to choose any of the responses (strongly disagree, somewhat disagree, somewhat agree, strongly agree) more than once for any given indicator. Thus, these responses are potentially inaccurate and incomplete.

Table 9: Organization Reflection of Service Area Diversity

	Strongly disagree	Somewhat disagree	Somewhat agree	Strongly agree
Board	3	3	5	4
Staff	1	6	5	5
Mediators	1	5	8	4
Clients	0	2	6	9
Total	5	16	24	22

When respondents were asked whether they were concerned that their organizations do not reflect the diversity in their service area, only a quarter (11) of respondents said they were. (See Table 10) Many of those who responded that they were concerned then answered the follow-up question of what plans they had to address their concern. Some of these plans included: recruiting from diverse areas; targeting specific communities; identifying and implementing a diversity training as a form of recruitment; electing more people from diverse backgrounds to serve on the board; and outreach efforts.

Table 10: Concern about Organization not Reflecting Service Area Diversity

	Are you concerned that your organization does not reflect the diversity in your service area?
Yes	11
No	15
No response	18

Next, respondents were asked whether they use non-English speaking mediators or translators as an organization. Nearly half of the respondents (19) indicated that they did. (See Table 11)

Table 11: Non-English Mediators or Translators

	Do you use non-English speaking mediators or translators?
Yes	19
No	9
No response	16

Finally, respondents were asked whether they felt they had successfully addressed issues of diversity in terms of their organization, recruiting volunteers, mediator skills, and providing services in multiple locations. Respondents noted more successes than failures in their responses. (See Table 12) As noted above, however, this was one question where there were technical difficulties with the online survey tool, so the responses may not be thorough and/or accurate.

Table 12: Success in Addressing Diversity Issues

	Strongly disagree	Somewhat disagree	Somewhat agree	Strongly agree
Your organization	0	6	6	3
Recruiting volunteers	0	4	8	1
Mediator skills	1	1	4	3
Services in multiple locations	3	2	2	10
Total	4	13	20	17

RESULTS OF PHONE INTERVIEWS

The phone conversations with respondents varied according to where the respondents were in the process of addressing issues of diversity at their own centers. Some respondents were "thirsty" to learn more about what others were doing and were excited to make connections with other centers in order to move forward on the often challenging process of addressing diversity issues in mediation. Other respondents had been addressing these issues for years – some for as many as 40 years – but were still excited to share what they knew and help centers that were just venturing into this area.

Among those respondents with experience in addressing issues of diversity, the following themes emerged as potential components of a "best practices" model.

Skilled/Self-Aware Trainers. Several respondents could not over-state the importance of trainers who were skilled in talking about – and facilitating conversations about – diversity. One respondent noted that "there seem to be some trainings out there that can open up people's vulnerabilities and then leave them. It is pretty tender stuff sometimes." Another respondent suggested that one particularly powerful way of successfully handling these vulnerabilities is for the trainers themselves to engage in self-exposure. This requires trainers not only to know themselves, but be willing to share the challenges they may have faced when working through these issues. Several respondents also spoke about the importance of "doing one's homework" in terms of researching the demographics of the communities in the centers' service areas. Indeed, it appeared important that trainings be tailored so that issues faced by the centers' particular communities be addressed. Respondents also spoke about the importance of trainers drawing from their personal experiences when speaking to issues of diversity. Indeed, trainers' own keen self-awareness appeared to be a major contributing factor to the success of trainings on issues of diversity in mediation. The opposite was also true;

respondents that expressed frustration with their diversity trainings noted that their trainers did not have the level of self-awareness necessary to be effective.

Trainer Diversity. In addition to having skilled and self-aware trainers, a few respondents noted the importance of having diversity among the trainers themselves. In one respondent's words, "We have found that bringing in presenters with a variety of backgrounds and expertise works well by exposing our mediators, board and staff to other presenters, strengthens collaboration and partnerships, and overall makes for a richer program."

Trainee Diversity. Respondents also spoke about the importance of having diversity in the room when conducting mediation trainings. One respondent stated, "The diversity of the class… was very beneficial to everyone, including the trainers." Several centers emphasized the importance of using community connections to advertise/post notices of Basic Mediator Trainings to draw a more diverse group of trainees. One respondent noted that in order to work toward their goal of diversifying their mediator pool, the center's staff was meeting with groups of community leaders to determine what outsiders think is the need in the community with regard to conflict resolution and diversity.

Facilitator Outreach. Several centers provide facilitation services using facilitators (distinct from mediators) who are trained to work with agencies dealing with poverty, drug abuse, youth, housing, and other social service issues. The facilitators are trained primarily in leading dialogue groups with these agencies. A secondary effect of having facilitators work with these agencies is that the centers are then able to outreach to these same agencies by way of list-serves to advertise for mediator trainings. Thus, the mediator pool comes from individuals who already are dealing with issues of diversity and are familiar with some of the challenges marginalized communities are facing. Moreover, the social service agencies become more familiar with the community mediation centers and become major sources of volunteers and referrals to the centers.

Role Plays. Several respondents mentioned role plays as a potentially powerful way to illuminate issues of diversity in mediation. These role plays, which use diverse characters and situations, often touch on themes such as power and culture, and they lead to follow-up conversations reflecting self-awareness. Although some centers were willing to share their role plays with the DRC and other centers, they cautioned that it is important to tailor role plays so they are appropriate for the communities with which each center works. Moreover, at least one center noted the importance of not "playing into stereotypes" when designing role plays.

Exercises. Respondents noted that in addition to role plays, other exercises were often useful in helping to explore biases, assumptions, and prejudices. A "social identity profile" was one such exercise, in which individuals identify the particular lenses through which they see the world. Another involved participating in a "Theatre of the Oppressed" activity or singing a song related to one's own culture at the beginning of training sessions. These exercises could be used both internally, among board and staff, as well as during mediation trainings. Some centers noted that the most successful way

of addressing diversity issues was to weave these kinds of exercises – as well as role plays – throughout the entire diversity training, rather than having one distinct segment of the training be devoted to diversity. In the opinion of one respondent, this latter approach may "soften" people but is not effective in sending the message that diversity often underlies all of our interactions and is not easily confined to a single component.

Diversity Ombudsperson. Because conversations about diversity often engender strong emotional reactions, centers noted the importance of being prepared to deal with these emotions when they surface. More than one center talked about having the trainer, a staff person, or a volunteer designated to follow up with people who might be having difficulties dealing with sensitive issues. These individuals ask questions such as, "What came up for you?" or "What was challenging about naming that 'elephant' in the room?" during trainings and workshops.

Non-English Speaking Mediators. Several centers emphasized an importance in having non-English speaking mediators as a way to address issues of diversity in their communities. In particular, there was a common theme of a desire to train Spanish-speaking mediators. Some centers teach the Basic Training in English with Spanish-speaking translators and materials in Spanish. Others have outreached to Latino groups in order to draw more Spanish-speaking mediators into their pool.

Agency Commitment. Several respondents who have been working in this area for years noted that it was only possible to be successful in this venture if the agency itself had a commitment to do the preparation work: work that includes preparing staff, board, and mediators to learn potentially new ways of training and working, to be uncomfortable, to share personal experiences, and to commit as individuals and to each other to do this challenging work. One respondent had a single piece of important advice for centers beginning to work on issues of diversity: "Have *lots* of internal conversations within your organization." This respondent felt strongly that the success of their center was firmly rooted in the fact that a commitment to addressing diversity issues "came from the ground up." In other words, the center staff and board were committed early on to making diversity a priority. It became integrated into the agency, but only through ongoing internal conversations is it possible to remain successful in this commitment. This requires, according to one respondent, the agency creating a "safe space" where staff, board, and mediators can learn about how our own cultural experiences affect our views in working with one another and with clients. It also requires, in the words of one agency, a willingness to pledge to "sit in the fire" to work with difficult issues such as race.

LESSONS LEARNED AND RECOMMENDATIONS

Several important lessons were learned from the pilot project and the evaluation results reported above. These lessons are summarized below.

The DRC learned:

1) Community mediation centers across the country are in a range of different places in terms of addressing issues of diversity in their communities. Some centers have been addressing these issues for years, while others are just beginning to do so. The centers that have been addressing these issues seemed very willing to share their information and experiences, and the centers who didn't feel they had much to offer were eager to learn from other centers' experiences.
2) Nearly all of the centers seemed excited about the idea of connecting one another - particularly on the issues at the root of this study. They seemed interested to learn about what other centers were doing to address diversity and cultural issues, and how those experiences could be shared and adapted to help other centers do the same.
3) There does not appear to be a single effective model for addressing issues of diversity in mediation. Rather, centers are engaging in many different effective strategies, such as outreach into various cultural communities and local agencies, agency introspection and self-awareness, diversity trainings, and dialogues. The key seems to be engaging in strategies that are tailored to one's own community.
4) There are at least some centers that indicated they are willing to share their curricula around diversity trainings - either a module in the basic mediator training or an advanced training in diversity issues in mediation. However, these centers have proprietary concerns and are willing to share the curricula only at a fee.
5) A few centers are willing to share the names of trainers, agencies, and/or materials. Although some information was already offered and given to the DRC, issues of recommending and using proprietary information must be addressed before distribution.
6) Not all agencies addressing these issues are community mediation centers per se. Some state organizations and governmental agencies are taking responsibility for helping community mediation centers address these issues as well.

Based on the findings of the project, several recommendations are warranted. These recommendations emerged as a direct result of engaging in this study. Although the purpose of this survey was to elicit information primarily about diversity and mediation training curricula, it is evident that formal education alone may not be adequate in addressing the effectiveness of agencies and their mediators in serving diverse populations in conflict.

1) Encourage community mediation centers to hold internal dialogues with board, staff, and volunteers to begin personal and institutional self awareness and "where are we" assessments on issues of diversity. In dealing with sensitive issues, these discussions should occur in a "safe place" using trained facilitators and tools and exercises that have been thought through well.
2) Encourage community mediation centers to address the diversity of their client populations and needs through informal internal discussions as well as through meeting with community leaders.

3) Encourage community mediation centers' board, staff, and volunteers to outreach into diverse communities in their service area by attending community-based events and local gatherings.
4) Encourage community mediation centers to make the diversification of staff, trainers, trainees, and board members a priority.
5) Expand into diverse communities by engaging in outreach presentations to social service agencies, internet marketing of trainings, newsletters for faith-based organizations, etc.
6) Offer diversity trainings to agency board, staff, and mediators. Independent trainers and diversity organizations exist in most cities.
7) Encourage community mediation centers to incorporate role plays and exercises in all mediator trainings that include situations and character parts reflecting different cultural backgrounds and highlighting personalities representing various social identities, such as gender, race, ethnic identity, sexual orientation, religion, age and disability.
8) Determine which materials can be made available for further distribution to Michigan's community mediation centers. This may include, among other things, role plays and exercises, reading lists, and multi-media references that the centers can tailor to their own communities.
9) Consider ways of increasing the number of non-English speaking mediators, providing support to the community mediation centers in Michigan so they can begin training and using facilitators to connect with outside agencies in the community.
10) Encourage the centers to use an ombudsperson during trainings to ensure a more effective training process in dealing with sensitive cultural topics.
11) Work to maintain and strengthen the important connections that have been made through this study with centers and organizations across the country. One potential way of doing this is hosting an annual conference for center representatives to share with one another what they have learned and where they are in the process of addressing diversity issues in mediation.
12) Encourage the Michigan State Court Administrative Office to implement standards of excellence in diversity, including, for example, designing and offering diversity workshops and encouraging Michigan's community mediation centers to reflect the demography and diversity of their service areas.

In conclusion, this pilot study illuminated a broad range of practices and experiences from which the DRC and SCAO can continue working to enhance the effectiveness of community mediation centers. Information was gained and relationships were built. Although this was simply another step in the process of addressing issues of diversity in mediation, the step was an important one. The ongoing success of both the DRC and SCAO's efforts in this area will depend upon their continued commitment to implement necessary changes agency- and state-wide. Michigan is positioned to move forward in this field, but in order to do this it must continue along in the process and use this study as a springboard for follow-up actions in this area.

Appendix I: Cover Letter Inviting Centers to Participate in Study

What diversity trainings are offered by other community mediation centers?

How do community mediation centers address increasingly diverse clientele?

Respond to this brief online survey and we will send you the results.

By responding to this brief online survey, you can join other community mediation centers in learning more about how they address issues of diversity in mediation! The survey consists of 15 questions and should take no more than 15 minutes to complete.

PLEASE RESPOND BY JULY 31st*
http://www.surveymonkey.com/s.aspx?sm=nkIM9nMo9cLLie6rgQCmwA_3d_3d
(click here or paste into web browser to access survey)

PROJECT DESCRIPTION

Cultural identity is not always understood and addressed effectively in the field of mediation. Race, gender, sexual orientation, age (both older adulthood and adolescence), socio-economic disparity, and disability are often the "elephant in the room" when people are attempting to resolve a conflict.

The Dispute Resolution Center in Ann Arbor, Michigan is conducting a study of diversity trainings and initiatives used by community mediation centers across the country. This project is funded in part by the Office of Dispute Resolution, Michigan Supreme Court, which also financially supports Michigan's network of 20 Community Dispute Resolution Program centers.

Our goal is to research best practices used in Community Mediation Centers, especially in regard to diversity training. We are interested in discovering what efforts, if any, have been made by centers to enhance mediator skills, overcome apprehension and unconscious behavior, enlarge mediator pools and serve multi-cultural constituents more effectively.

For more information about this project, please contact:

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dulinb@ewashtenaw.org
www.mimediation.org

Please reference "Community Mediation Diversity Scoping Study" in the subject line of your e-mail.

***Identifying information by respondents will be confidential to The Dispute Resolution Center and all data will be released in aggregate form.**

Important: This email message may contain confidential, privileged information. It is intended exclusively for the party addressed. If you receive this message in error, please notify the above sender by telephone IMMEDIATELY. Any disclosure of the information to individuals other than the addressee may be governed by law.

Appendix II: List of Advisory Committee Members

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LGBT FAMILY LAW AND THE NEED FOR ALTERNATIVE DISPUTE RESOLUTION

i. Michigan has a constitutional amendment, approved by voters in 2004 that states that "the union of one-man and one-woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose." This constitutional amendment has been interpreted by the Michigan Supreme Court in ***National Pride at Work v Granholm*** , 481 Mich 56 (2008) to not only prohibit the fundamental right to marry, but to prohibit the recognition of same-sex relationships in any context, including public employers voluntarily providing health insurance benefits to domestic partners of employees. Michigan is one of 5 states that has the farthest reaching constitutional amendment- it takes virtually everything off the table- marriage, civil unions, and domestic partner benefits. Michigan's Supreme Court is the only state court in the country that has sanctioned such a broad reading of a "Marriage Amendment."

A ***Giancaspro v Congleton*** (Michigan Court of Appeals 2009)- Michigan's "Marriage" Amendment does not prohibit court from assuming jurisdiction over a custody dispute involving two lesbian moms who legally adopted their children in Illinois prior to moving to Michigan.

II. Since 1996 Michigan has two statutes that 1) prohibit same-sex couples from marrying MCL 555.1 and that 2) Michigan does not have to recognize marriages between same-sex couples solemnized in other states. MCL 551.271

III. Issue of Second Parent Adoption in Michigan- Michigan adoption law requires that if a person who is adopting children is married, his/her spouse has to join in the adoption petition. MCL 710.24(1). Some judges have read this requirement as limiting joint adoption to married couples. The Michigan Court of Apperals has interpreted the Michigan adoption code to mean that two people married to others cannot jointly adopt. ***In re Adams***, 189 Mich App 540 (1991). Some argue that this decision should apply to any two unmarried persons, but as of this date, no Michigan appellate court decision has been rendered regarding whether a gay couple could jointly adopt.

In 2006, a lesbian mom petitioned the Court to undo a second-parent adoption that had been granted 9 years previously prior to the couple's break up. The trial court held and the Michigan Court of Appeals affirmed in the case of ***Hansen v McClellan***, 2006 WL 3524059 Mich App, December 7, 2006 (No 269618) (unpublished decision), that second parent adoptions lawfully granted cannot be collaterally attacked beyond the time for filing an appeal.

BRIAN DICKERSON: Judge's ruling hits kids, not gay parents

June 10, 2002

BY BRIAN DICKERSON
FREE PRESS COLUMNIST

Our roads and sewers are crumbling. Michigan's economy is sucking wind. Thousands of trained killers are plotting to attack us, and our top law enforcement agencies aren't speaking to one another.

But be of good cheer, citizens! Your state Supreme Court is hard at work, and last week its crusading chief justice nipped another threat to the American way of life in the bud.

I speak, of course, of the dangerous practice of allowing gay couples to adopt children.

Michigan is not one of the forward-looking, family-values-exalting states that bans gay adoptions outright. Only three states -- Utah, Florida and Mississippi -- have taken that bold step into the 19th Century.

But Michigan courts have been reluctant to authorize adoptions by gay couples, even where one of the partners is the child's only legal parent. The result is that children who are effectively being raised and supported by two parents can only enjoy a legal relationship with one.

De facto parents

Lawyers who specialize in family law say the prohibition of joint adoptions by gay couples is a triumph of form over substance. Individual gays are still eligible to adopt children in Michigan, and they may do so only after any same-sex partner residing in the adoptive household has passed muster with the court.

In recent years, trial judges in the circuit court that serves Washtenaw County have permitted some gay partners who share a household and a stable, long-term relationship to jointly adopt children. The typical adoptee in these cases is a biological or adoptive child of one of the partners who resides in a household with both.

Washtenaw's practice has worked well for everyone with an immediate stake in it -- adoptive parents, adoptees, and a society purporting to believe that, all other things being equal, a child with two responsible parents is better off than a child with one.

But those who have never been comfortable with any family but the Cleavers can't stand the idea of gay couples adopting, and recently, Michigan Supreme Court Chief Justice Maura Corrigan decided to put an end to the practice.

Open to interpretation?

Corrigan (and many other legal scholars) say that Michigan's statutory language -- which authorizes adoptions by "a person" or "that person, together with his wife or

her husband, if married" -- implicitly prohibits any unmarried couple from petitioning the court to adopt a child together.

But judges in New Jersey have construed similar statutory language to permit adoptions by two unrelated persons, and the only Michigan appellate court precedent that addresses the matter directly concerned a man and a woman, each remarried to someone else, who attempted to jointly adopt their own natural daughter.

Ordinarily, the legality of Washtenaw County's practice of approving adoptions by unmarried partners would be resolved only after someone with the legal standing to challenge such an adoption sued to block it.

But no one directly affected by the practice seems inclined to challenge it, and the crusading Corrigan was not about to wait for the issue to ripen in the usual way.

So she encouraged the chief of the Washtenaw County Circuit Court, Judge Archie Brown, to put the kibosh on gay couples who want to adopt.

Brown has no authority to overrule his fellow judges. But he does supervise the Washtenaw circuit's clerical staff, and last week he obediently ordered them not to accept any more adoption petitions from unmarried couples.

The homophobic hate-slingers who fancy themselves the last defenders of "family values" were quick to praise Brown's directive. But it is hardly a death knell for gay adoption.

Gay men and women will still enjoy the right to adopt children, and those children will continue to reside in households shared by their parents' gay partners. The court's refusal to grant those partners parental status simply means that the children they help raise will grow up without the medical insurance coverage, Social Security protection and other benefits children in other two-parent families enjoy.

As in many previous blows for "family values," the only real victims of Brown's directive are children.

Move over, Mississippi. Fear and loathing are alive and well in the Great Lakes State.

IV. CHILD CUSTODY ISSUES- LGBT PARENT V. LGBT PARENT

What rights do LGBT parents have after a relationship has ended?

The lack of legal recognition for our family relationships can lead to the end of important parent-child relationships. After a break-up, biological or adoptive parents may terminate contact between the child and the co-parent (who is not legally recognized as a parent) if they find visitation too inconvenient or form a new relationship. This severely limits the legal rights of the co-parent for custody and visitation with his/her child.

Michigan courts have refused to recognize the concept of equitable, de facto or psychological parent[1] outside of a legal marriage. **Van v Zahorik**, 460 Mich 320 (1999). Without recognition as an equitable parent, the other non-legally recognized parent would be allowed to file for custody as a "third party" only if:

- he/she is a guardian or limited guardian or
- if divorce or separate maintenance proceedings have been instituted or
- if there is a finding of parental unfitness or
- if a child has been placed for adoption (with certain restrictions applying)

Or if **all** of the following are met under M.C.L. §722.26 c (1)(b):

- the child's biological parents have never been married to one another;
- the child's parent who has custody of the child dies or is missing and the co-parent has not been granted legal custody under the court order; and

---

[1] To prove de facto or psychological parenthood, courts generally require a person to show that:
1. The biological or adoptive parent consented to and fostered the parent/child relationship; 2. He or she lived with the child; 3. He or she assumed the obligations of parenthood without expecting to be paid for his or her work; 4. He or she has been in a parental role long enough to have established a bonded, dependent relationship with the child. Appellate courts that have recognized de facto parenthood include California, Colorado, Indiana, Maine, Maryland, Massachusetts, New Jersey, New Mexico, Pennsylvania, Rhode Island, Washington, West Virginia, and Wisconsin.

- the third person is related to the child within the fifth degree of marriage, blood or adoption.

Under these limited specific criteria, many LGBT co-parents will lack legal standing to file under the Child Custody Act. However, in **Terry v. Affum**, 237 Mich App 522 (1999) the Court of Appeals held that a person without standing to file a custody action could still be awarded visitation where it is in the best interests of the child, and provided there is already an existing custody dispute before the court. This can be a Catch-22 situation for LGBT co-parents because usually there will not be a custody dispute already before the court.[2]

Thus, Michigan's present legal landscape puts families at risk where the ties are not defined by biology, adoption or marriage. Even when relationships end, it is best when same-sex co-parents respect their families and their relationships and focus on the best interests of the child.

[2] Michigan law has no provision for third-party visitation, with the exception of grandparenting-time in limited circumstances. M.C.L. §722.27(b). However, Michigan's grandparenting-time statute was held unconstitutional by the Michigan Court of Appeals in January 2002. DeRose v. DeRose, 2002 WL 100683. This decision was based on a legal parent's fundamental right to raise and make decisions about their children, without interference from third parties. See Troxel v Granville, 530 U.S. 57 (2000).

MICHIGAN

MP&AS "PROTECTING THE RIGHTS OF PERSONS WITH DISABILITIES"

PROTECTION & ADVOCACY SERVICE, INC.

Elmer L. Cerano, *Executive Director*

"Access to Justice Issues for Persons with Disabilities"
Mark McWilliams, MPAS
State Bar of Michigan Task Force on
Diversity in Alternative Dispute Resolution (ADR)
December 9, 2009

- Access for persons with disabilities includes access for persons with hidden disabilities, cognitive and intellectual disabilities, and mental illness.
- Access for persons with disabilities requires rededication to core ADR values of choice and self-determination, individually and systemically, in the face of stereotypical thinking that tends to deny those values.
- Access for persons with disabilities is tied to economic access.
- Access for persons with disabilities must respect the civil rights and public interest aspects of their disputes.
- Access for persons with disabilities requires rejection of oppressive language ("confined to a wheelchair," "retarded," "crazy") and rejection of the culture of pity.
- A high percentage of children and youth in court systems have disabilities, some of which lie at the very heart of the reason for court involvement.

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United Nations Convention on the Rights of Persons with Disabilities

The United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol was adopted on 13 December 2006 at the United Nations Headquarters in New York, and was opened for signature on 30 March 2007. There were 82 signatories to the Convention, 44 signatories to the Optional Protocol, and 1 ratification of the Convention. This is the highest number of signatories in history to a UN Convention on its opening day. It is the first comprehensive human rights treaty of the 21st century and is the first human rights convention to be open for signature by regional integration organizations. The Convention entered into force on 3May 2008.

The Convention marks a "paradigm shift" in attitudes and approaches to persons with disabilities. It takes to a new height the movement from viewing persons with disabilities as "objects" of charity, medical treatment and social protection towards viewing persons with disabilities as "subjects" with rights, who are capable of claiming those rights and making decisions for their lives based on their free and informed consent as well as being active members of society.

The Convention is intended as a human rights instrument with an explicit, social development dimension. It adopts a broad categorization of persons with disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. It clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced.

The Convention was negotiated during eight sessions of an Ad Hoc Committee of the General Assembly from 2002 to 2006, making it the fastest negotiated human rights treaty.

-- http://www.un.org/disabilities/default.asp?navid=12&pid=150

From Article 13, Access to Justice:

> States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

1 BEYOND BIAS

Observation-Based Attribution as an Intercultural Professional Skill

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Attribution

The problem with bias and prejudice is not with attributing characteristics to persons. Cognitive psychologists agree that attribution is an inescapable and necessary skill without which we could not survive—no less relate and communicate.

The problem is with (1) the information basis on which we attribute characteristics to one another, (2) the nature of the characteristics we attribute, and (3) the skill with which we make attributions.

Observation

Attribution should be based on observation of the individual whom the professional serves. Category-based attribution is hazardous because one must (a) know reliable and relevant detail about the categories, (b) correctly discern the individual's membership in the category, and (c) hope that the individual possesses the category-based detail you attribute and that the detail will help you serve the individual.

Observation-based attribution eliminates all three of the hazards associated with category-based attribution. The professional observes the individual, taking clues from what the individual expresses and the way in which it is expressed, to discern relevant aspects of the individual's capacities, preferences, and interests.

Acquisition

A professional needs three things in order to acquire observation-based attribution as a professional skill: (1) a conceptual framework for relevant, service-based attribution; (2) awareness of one's own service-related attribute preferences; and (3) skill in applying the framework in a way that contributes to the professional service.

CRITERIA FOR APPROPRIATE ATTRIBUTION

The attributes that a professional may choose to discern and assign to an individual client must be value free, relevant to the service, and detailed enough to provide meaningful assistance to the professional in quickly discerning important characteristics of the individual to be served.

"Value free" means that the attributes are not judgmental of the individual's belief system or merit but are instead factual. Attributes like "lazy," "rude," "dumb," and "insolent" are value laden. Attributes having to do with the preference of language register, such as intimate, casual, or consultative, are value free.

"Relevant" means that the attributes will help the professional in rendering service. Non-relevant attributes may include dance, music, sports, and personal-dress preferences. Relevant attributes may include available resources or preferences regarding the conduct of the professional relationship.

THE FRAMEWORK

The five value-free attributes most likely to be relevant to professional service are the client's (1) communication preferences, (2) cognitive habits, (3) reference systems, (4) resources, and (5) relationship preferences. Each of these five attributes can be subdivided into several categories the understanding of which will give the professional a working framework within which to better understand and serve clients in an intercultural manner.

Communication: Intimate, Casual, Consultative, Formal, and Frozen.

Cognition: Objective-Setting, Planning, Implementing, and Assessing.

Resources: Food, Housing, Transportation, Time (Schedule), and Legal Status.

Reference: Therapeutic, Providential, Probabilistic, Moral, Instrumental, and Pragmatic.

Relationship: Transactional, Relational, Expert, and Non-Expert.

2 COMMUNICATION

One way that we can transform culture from a prison to a bridge is through the study of communication. Language is experiential. Our use of it reflects what we have acquired through experience. Linguistic signposts (the certain and sometimes odd words that clients employ) particularize client meanings. To the attentive professional attuned to intercultural communication, they are like clues not only to the personal story of the client but to the way that the client thinks and values. Culture is a silent language, but verbal communication reveals it to those professionals who are capable of its discernment. We only need a system—tools, methods, insights—to better understand another's habits, practices, interests, and preferences.

The framework employed here is that of five language "registers": frozen, formal, consultative, casual, and intimate Clients of diverse backgrounds may speak in different language registers than those which you typically employ or know. Be sensitive to those registers. Your ability to comprehend the client's situation and appreciate the client's ethical interests, depend on your developing sufficient context. Context arises through communication—through the lawyer's assist and uptake of the client's story. Consider the following five different language registers clients may employ in telling their stories. Clients of all socioeconomic classes and cultures may employ each of these different language registers in different settings and at different times. Avoid allowing biases and stereotypes to influence your choice of register or the response you make to the register employed by a client.

FROZEN: uses quoted or rote language that does not change. Examples: "The Lord is my shepherd"; "Blessed are the poor." It establishes identity and beliefs. As cultural metaphor, it reflects power, depth, and continuity of experience but is often explicitly rejected by professionals trained in analytical rather than analogical traditions.

FORMAL: uses titles and recognizes education, certifications, and roles. Examples: "Thank you, sir"; "I was a Phi Delta Alpha"; "You're a Notre Dame grad?" It grants honor, invokes authority, and establishes relationship through membership and role. Its use may indicate a client's willingness to accept social distinctions lending stability to relationships. It is a clue to the way in which a client may prefer to structure relationships. The professional who responds in kind may find a basis for trust.

CONSULTATIVE: employs the speaker's and listener's knowledge, skills, experience, and other performance-based qualifications. It is used more commonly in transactional settings perceived to involve the bargained exchange of services and goods rather than involvement in relationship. Examples: "Here's what will happen if you make that choice"; "Just tell me the options so I can decide"; "There is nothing else I can offer you." It communicates practical information in a purposeful, pragmatic, means-leading-to-ends mode. Professionals who use only consultative register may not recognize its weaknesses and the value of other registers. It can be cold and insensitive to clients who habitually or out of choice employ other registers.

CASUAL: based on the speaker's and listener's familiarity with one another and willingness to treat one another on equal terms. Examples: "I haven't seen you lately"; "You look tired today." It establishes relationship through familiarity with common knowledge and experience, not for bargain, service, or exchange. The professional's use of casual register can be either an invitation to trust or, where inappropriately employed, a sign of carelessness or lack of respect.

INTIMATE: assumes complete and implicit trust between speaker and listener. It is usually employed in family or other interdependent relationships but may be used in professional settings for quite different reasons. Examples: "You must help me"; "Just tell me what to do." It is employed in cries for help or other emotion-based, deeply inter-personal interaction at less than arms-length. It may indicate unfamiliarity with other language registers.

Exercises in Language Registers

I usually use the _____ language register.

The most common language register used in the home where I grew up was _____.

The language register that I first typically employ in a professional setting is _____.

Which register is: "You don't trust me, do you?" _____; "What've you been up to?" _____; "So there's my problem. What do you think?" _____; "Sure, I went to State. You, too?" _____; "'To be, or not to be.' " _____.

Write something you would say to a client who is speaking in intimate register: _____
_____.

Write something you would NOT say to a client who speaks in formal register: _____
_____.

Think of an incident in which someone's misuse of registe negatively affected communication and relationship.

3 COGNITION

Clients of diverse educational, socioeconomic, and cultural backgrounds may have different cognitive practices and habits than those which you typically employ or recognize in others. When clients communicate in a language register other than consultative, their interpretation of events and construction of meaning may be different from professionals who function in stable environments in which actions produce predictable responses. Clients employing intimate or casual registers may benefit more by relationship than service. Some clients will not employ cognitive practices basic to professionals. In those cases, you can make explicit the steps the client must follow and skills the client must exercise. But performance-based activities are not the only and sometimes not even the most beneficial services for clients. Relationship—the trust and respect that is exchanged in professional consultation—may be more valuable than the professional service. As you consider the following four cognitive skills, consider also watching for, valuing, supporting, and adapting to clients' different ways of thinking.

OBJECTIVE-SETTING: Some clients, and especially those speaking intimate or casual register, will not have the practice of determining (even implicitly) the goals and objectives for consultations. They are not employing consultative language, and so they are not thinking in consultative (transaction, purpose-based) terms. It is wrong to assume that they are incapable or disinterested. Questions like "How can I help you?" and "What would you like to see happen?" can encourage clients to consider objectives. Not every consultation will have a clear objective. It may take more than one consultation to develop the trust and context that will make goals clear.

PLANNING: Some clients will not have the planning skills commonly employed by professionals. It is wrong to assume that they do not care about matters that seem to be best addressed by careful planning. Professionals may list the steps a client needs to take to obtain an objective. Professionals should ensure that steps are clear, complete, prioritized, and memorialized in a manner the client can rely upon. With clients who appear by their confusion or frustration not to be capable of conceptualizing a plan, professionals may appropriately name only the first step and request that the client return when that step is completed, or may encourage the client to seek social support from a friend or family member who is an experienced planner. Do not misattribute confusion over a plan as carelessness or unwillingness to see a problem addressed. Detailed planning may be an unfamiliar and otherwise unnecessary practice for certain clients.

IMPLEMENTING: Some clients will not implement plans developed in consultation with a professional. Professionals should not assume that clients who fail to persevere are lazy or disinterested. It may be that the client lacks the resources that the plan requires, the professional misunderstood the client's goal or objective, or the client correctly recognizes or unwisely fears that the goal will not be achieved. It may also be that the client benefits more from having a plan than in following it. Even if there are no real obstacles and the plan laid out for the client can be readily accomplished, the fact of the consultation and of the professional relationship may be more important to the client than the accomplishment of the plan the professional has helped to articulate.

ASSESSING: Some clients will not have the skill of assessing plans as they are implemented in order to clarify, adjust, change, or reverse the plan when appropriate. Professionals should help those clients with assessment. If the client seems unable to follow the plan, then the professional should help the client reconsider the client's resources, and should ensure that the plan is properly drawn and prioritized and that the steps taken so far achieved the intended interim result. The professional should ensure that the client has not perceived a defect in the plan or even in the goal or objective. Professionals can help clients assess and modify plans in ways that will enable and empower the client while preserving the client's dignity and autonomy.

Cognitive Skill Exercises

Recall an instance when a situational constraint prevented you from completing an assigned task, but you were blamed instead for a lack of motivation or intent:

Rate your capability on each of the following cognitive skills:

Objective-setting:	1 2 3 4 5 6 7 8 9 10
Planning:	1 2 3 4 5 6 7 8 9 10
Implementing:	1 2 3 4 5 6 7 8 9 10
Assessing:	1 2 3 4 5 6 7 8 9 10

Rate someone you know who lacks these skills:

Objective-setting:	1 2 3 4 5 6 7 8 9 10
Planning:	1 2 3 4 5 6 7 8 9 10
Implementing:	1 2 3 4 5 6 7 8 9 10
Assessing:	1 2 3 4 5 6 7 8 9 10

What would you ask a client to help the client set a goal or objective? _____

Name situational reasons (as opposed to client attributes) why a client might not be implementing a plan: _____

_____.

4 REFERENCE

Clients of diverse backgrounds will have different reference points, belief systems, or worldviews. Worldview can depend on and affect understandings about cosmology, (the origin and nature of the universe), epistemology (how we think), ontology (the nature of existence), axiology (how we conceive of relationship), and teleology (what is our purpose). Clients communicate their reference points, belief systems, and worldviews through both overt and subtle statements and behaviors. Be sensitive to the diversity of your clients' reference points, belief systems, and worldview, or you may fail to understand, serve, and support a diverse clientele. Identify your cultural references, belief system, and worldview, and appreciate how distinct it may be from the worldview held by some clients. Consider ways in which you can help your clients draw on their cultural references, belief systems, and worldviews. The list below is only a small start to a rich store of human understanding.

THERAPEUTIC: Some clients act on the basis of their mood, affect, and strength or absence of feelings. When clients operate from a psychological or therapeutic standpoint, they consider how events make them feel and then shape their behavior accordingly, stating "I feel strongly about this" and "I don't like that." Professionals who recognize when clients are using sensual and emotional responses to govern their behavior can ask, for example, "How, then, would pursuing that claim make you feel?" Exploring other bases for decision-making can offer clients a broader view. The world is not based entirely on how clients feel about rights and obligations.

PROVIDENTIAL: Some clients act on an understanding of the world's design and beneficence rather than on therapeutic or psychological concepts. They consider how events relate to attitudes and behaviors, and accept that events happen for reasons, stating, "She had it coming," and "that is the way things work." Generating options that go beyond the instrumental course can support a client who perceives a larger design and beneficence.

PROBABILISTIC: Some clients act on the basis that events happen largely by chance. They consider how statistically likely it will be that certain events occur, asking "What are my chances of that?" A suitable response might be, "It seems to me that you have a better than even chance of success." Alternatives can also be proposed where probabilistic thinking creates more uncertainty, less meaning, and weaker relationships than the client desires.

MORAL: Some clients act on the conviction that people have inherent value, indicating right and wrong conduct fitting to their person. They consider what actions are fitting to the nature and relationships of the persons those actions will affect, stating, "let's do the right thing." Alternative courses depend on identifying the standard that governs right action and promotes character. A response might be, "the option we are talking about is wrong, isn't it?" Considering the fitness of actions to human nature and relations can ground decisions in more stable conceptualizations.

INSTRUMENTAL: Some clients act with confidence that actions produce predictable results. They consider what result their conduct will produce, stating, "Can you assure me that we will see that result?" It depends on knowledge of the circumstance and experienced judgment as to probable outcomes and results. Professionals might caution clients about the reliability of purely instrumental thinking and help clients understand the strength and weaknesses of instrumental thinking.

PRAGMATIC: Some clients reason less about effects, right and wrong, and likelihoods, and act more on the basis of immediate possibilities, stating, "The point is, I can't do that." There can be considerable value to pragmatism especially to clients who face severe resource constraints. Overly pragmatic judgments may produce greater uncertainty than judgments made with some consideration given to general standards and long-term predictable results. Professionals do well to balance the pragmatic with the principled and to help their clients do the same.

Exercises on Reference Systems

Describe your own worldview by identifying the following:
a. I would prefer to reflect a _____ view.
b. In times of challenge, I probably tend to a _____ view.
c. My satisfaction comes when I reflect a _____ view.
d. When serving a client, I first employ a _____ view.

Write a statement you hear from clients holding the view:
Providential:_____.
Probabilistic:_____.
Instrumental:_____.

Write something you would not say to a client holding to:
Therapeutic:_____.
Moral:_____.
Pragmatic:_____.

What strengths might clients with these views possess?
Therapeutic:_____.
Providential:_____.
Probabilistic:_____.
Moral:_____.
Instrumental:_____.
Pragmatic:_____.

5 Resources

Clients of diverse educational, socioeconomic, and cultural backgrounds will have different available resources. "Resources" includes basics like food, housing, and transportation but also intangibles like an official address, a recognized legal status, flexibility of schedule, available time, and a calendar or other system by which to keep a schedule. Professionals may be accustomed to making assumptions about clients' available resources because their usual clientele tends to share the same resources. Avoid assuming that resources exist or do not exist. Especially avoid blaming clients where their failures are due to lack of resources rather than unwise choices. Clients vary in their willingness and ability to communicate their resources and resource limitations. Be sensitive not only to your client's available resources but to your client's willingness and ability to articulate them. Be aware of how your resources differ from those possessed by the client and how that disparity may change your perspective or influence your advice. Consider ways in which you can help your clients draw on their available resources. The list below, though incomplete, may help. Finally, be ready to recognize, inventory, and draw upon a client's particular strengths. Clients completely without material resources may yet possess significant character resources.

FINANCES: There are obviously disparities in the financial resources clients have to pay for services. Even in pro bono situations where the clients are not paying for direct service, some clients will not have the money or finances needed to benefit from the service. It is not primarily the direct lack of income that is the problem for many clients. Rather, the financial resource limitation is that many clients lack discretionary funds to devote to unusual needs. Be sensitive to resource disparities. Consider the costs of actions you propose to a resource-limited client. Help clients understand those costs and plan for meeting them.

FOOD: Given available food pantry and soup kitchen programs, actual hunger may seldom be a direct impediment to a client's ability to benefit from professional service. But some clients must devote a disproportionate amount of their resources, including time and money, to obtaining food and making it consumable for themselves and their families. Understand and respect those demands upon clients' time and resources.

HOUSING: Housing (including heat, hot water, and available restroom facilities) can vary widely from client to client. Housing can impact a client's ability to benefit from professional service. Unstable housing can require that the client devote disproportionate time and other resources to it. Respect those demands and limitations when allocating tasks to the client. Addresses and contact information typically depend on stable housing. When a client's unstable housing does not provide reliable contact, explore options with the client such as using a relative's or private social service nonprofit's address.

TRANSPORTATION: The availability of transportation also varies widely among clients and can affect the client's ability to benefit from professional service. Clients who lack reliable transportation may find it difficult or impossible to carry out allocated tasks. Help clients explore and confirm alternative plans where transportation is necessary but unavailable. Clearly articulate transportation requirements.

LEGAL STATUS: Legal status, including citizenship and criminal history, is a resource and can have a significant impact on a client's ability to benefit from professional service. Even where legal status is not relevant to the service, the client may misperceive that legal status does have an effect. Be sensitive to potential legal status issues. Explain how legal status may be treated by the involved agencies.

SCHEDULE: Clients can vary widely in conceptualizing time. Some are monochromic (time as points on a line), others polychromic (time as indeterminate). Professionals tend to see time one way, when clients may see it another way. Clients vary in their schedule demands, flexibility of schedule, and ability to maintain a calendar.

Resource Exercises:

Recall a time when your limitation in one of the above resources interfered with your responsibilities at your school or to your family or employer.

Think of a family member or friend who, right now, is substantially lacking in one of the above resources, and think of challenges that person faces.

Write for each client-resource limitation how it may affect your service:
Finances:_____
Food:_____
Housing:_____

Write for each client-resource limitation how you might alter your service:
Transportation:_____
Legal status:_____
Schedule:_____

Think of four ways your personal resources might be different from a client's.

6 RELATIONSHIP

Clients may have different needs and preferences for different forms of professional relationship. Individuals form relationships along various spectrums, for instance, from individual to collective, independent to interdependent to dependent, competing to sharing, and authoritarian to egalitarian. One client may act as a loner, eschew offers of help, hoard resources, and demand rights and equal treatment from others. Another may act like an old friend, welcome social and other support, give away personal assets, and readily submit to the superior rights and authority of others. These and other behaviors and preferences may have much to do with the way the client anticipates and constructs relationships.

Professionals should recognize that there are a variety of appropriate forms of professional relationship. Some professionals may serve client populations within which there is little need to develop variety in professional relationships. Professionals should avoid assuming that the usual way in which they conduct the professional relationship will best serve all clients. Some clients will benefit more by a different form of professional relationship. Be sensitive not only to your client's service needs but to your client's need for certain forms and styles of professional relationship. Consider ways in which you can alter your standard treatment of the relationship in order to better serve unique or unusual client needs. The list below, though incomplete, may help.

TRANSACTIONAL: A common conception of the professional relationship is as a transaction for services between independent selves. Some clients will expect that the professional treat the client relationship as an exchange of a valued service for consideration of some kind—payment, a promise to pay, or good will. These clients may prefer not to engage in any professional communication or make any disclosure (even such as name and address) that to them appears to go beyond the information strictly necessary for the service. These clients may in extreme cases decline to disclose their name or address or, more commonly, be reluctant to share the social context out of which their service need arose.

RELATIONAL: Some clients may not be accustomed or may not desire to treat a person-to-person relationship in a transactional sense. They may prefer to treat the participants in the relationship, and therefore the relationship itself, as having inherent value, or may treat the professional as an interdependent part of a communal self. Horizontal collectivism is a sound way of seeing relationships in many communities and circumstances. Clients may accordingly insist on disclosing the social or familial context even when not apparently relevant to the service, and may invite the professional to make equivalent disclosures. Clients who think and behave relationally may feel that the consultation was worthwhile whether or not the professional rendered a usual service.

EXPERT: There can be variety in the degree to which the client respects and relies on the professional's expertise. Authority can be defined from above or below—by the client or professional. The client may demand that the professional exercise authority over the client's matter to a greater degree than the professional is accustomed. Vertical collectivism demands that the authority take responsibility for the subject. Clients may assume and accept that the professional has superior knowledge, skill, and experience. They may desire to rely on the professional's expertise and judgment more, and on the professional's information less.

NON-EXPERT: Some clients are less willing to treat professionals as experts and more interested in treating them as providers of means and information. They may not desire the professional's recommendation, counseling, and advice—only the literal service or information. Do not assume that the client desires recommendations where the client is prepared to decide with only your information. Clients make decisions on the goals and objectives of professional service, not the professional. Clients may also choose the means to achieving objectives.

Professional Relationship Model Exercises:

Identify the relationship model you prefer to follow as a professional: _____.

Identify the relationship model you prefer to follow as a client: _____.

List a problem you might encounter if you follow each of these models, but it is the wrong model for the client's preferences:

Transactional _____
Relational _____
Expert _____
Non-Expert _____

Name a benefit to each model:

Transactional _____
Relational _____
Expert _____
Non-Expert _____

TASK FORCE ON DIVERSITY IN ALTERNATIVE DISPUTE RESOLUTION

Crafting an Effective Alternative Dispute Resolution System that Addresses Issues of Diversity

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RESOURCE MATERIALS

December 9, 2009

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Standing Committee on Diversity

Goals

The 2007-2008 Goals for the Diversity Committee are as follows:

1. Improve the employment opportunities for ADR professionals of color, women, persons of any sexual orientation and religion, and persons with impairments and/or disabilities, by raising awareness of diversity in the ADR field and exploring proactive solutions to eliminating employment barriers these ADR professionals encounter.

2. Enhanced awareness of diversity in the ADR field and barriers will be developed through presentations and networking with organizations inside and outside of the ABA with compatible diversity objectives and with the other ABA Sections.

3. Sponsor networking and social events at the Section and Annual Meetings and co-sponsor programs with diverse organizations involving ADR professionals of color, women, persons of any sexual orientation and religion, and persons with impairments and/or disabilities.

4. Initiate discussions about diversity/cultural competency among DR Committees and ABA Sections.

5. Increase participation of ADR professionals of color, women, persons of any sexual orientation and religion, and persons with impairments and/or disabilities to encourage those identified to join and to take an active role in the Section, including participation in the

Leadership

Chair: Angelia Janette Tolbert

Committee Roster

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Dispute Resolution Diversity Committee
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Programs, Meetings and Events

Section Events

40-Hour Family Mediation Training
November 9, 2009 - November 13, 2009
Location: TBD
Format: Live/In-Person

Fifth Annual Arbitration Training Institute A Comprehensive Training in Commercial Arbitration
February 10, 2010 - February 13, 2010
Omni Shoreham Hotel
Washington, DC
Format: Live/In-Person

2010 Representation in Mediation Competition
February 26, 2010 - March 13, 2010
Location: TBD
Format: Live/In-Person

Article Links

Section's programs, so that they can have the opportunity to advance to leadership positions.

6. Explore leadership mentoring opportunities with DR Section Leadership for ADR professionals of color, women, persons of any sexual orientation and religion, and persons with impairments and/or disabilities with mentoring to take on leadership roles at both the committee and section levels.

7. Stress the importance of diversity and recognize contributions by ADR professionals of color, women, persons of any sexual orientation and religion, and persons with impairments and/or disabilities by having diverse panels in all Section programming and diverse participation in all Section publications, including regular reports on achievements in the diversity area in the Section?s publications.

8. Encourage DR and ABA publication, newsletter and webpage articles and faculty presentations by Diversity Committee members, diverse ADR professionals and those interested in diversity.

WE STRIVE FOR DIVERSITY IN THE ADR PROFESSION

The Diversity Committee is made up of Alternative Dispute Resolution neutrals from around the world, which includes persons of color, women, Gay, Lesbian, Bisexual and Transgender persons and persons with impairments or disabilities. Our goal is to strive for diversity within the Dispute Resolution Profession and to have it mirror the diversity of our society. The ability of our Profession to facilitate justice and mediate effectively calls for diversity within our Profession that fairly represents the population that we serve. We have a long way to go before we can achieve our objective of a diverse Profession. However, diversity will never be achieved if we do not lead the way.

Articles

Michael S. Greco

Immediate Past President, American Bar Association

Corporations will carry the Bottom Line Torch and Ignite The Diversity Fire in the ADR Profession

Why Do We Care About Diversity?

How do You Ensure the Public?s Confidence in ADR: Create an Alt. Diverse Resolution Profession

Diversity Links

ACCESS ADR, A Project Promoting Diversity in ADR

Commission on Racial and Ethinic Diversity in the Profession

Publications

Employing Lawyers with Disabilities in Corporations and Law Firms

January 16, 2007

The first-ever National Conference on the Employment of Lawyers with Disabilities, which I hosted in Washington, DC, as President of the American Bar Association (ABA) in May 2006, challenged legal employers to hire and retain lawyers with disabilities. The Conference was sponsored by the ABA Commission on Mental and Physical Disability Law, the ABA Office of the President and the federal Equal Employment Opportunity Commission.

This historic event was part of my commitment to make the legal profession more open to lawyers with disabilities in the same way that the profession has reached out to women and persons of color and from racially and ethnically diverse backgrounds. As my esteemed law partner, former U.S. Attorney General Richard Thornburgh said in delivering the Conference?s keynote address:

We can talk a good game about diversity and about how we're open to hiring lawyers with disabilities. But if we don't really do it, don't do the recruiting we need to do, or don't change our profession's attitudes and practices, then the aims of this Conference will not have been achieved.

Nor, may I add, will the legal profession reflect the true diversity of our nation.

President John F. Kennedy once told us that "a journey of a thousand miles starts with a single step." The first two steps in the journey to make law offices across America diverse with regard to disability have been taken. The May 2006 Conference was an unqualified success, and the *Conference Report*, which is available on the ABA Commission's website (www.abanet.org/disability), has been issued. The next step is up to corporate counsels, and leaders of law offices and legal employers throughout our country.

What Needs To Be Done?

In the legal profession, disability diversity encompasses lawyers already employed when they become impaired, and lawyers with a disability during all or most of their lives. The major concern of the first group is accommodations that will allow them to continue as they

have in the past. Such impairments typically occur later in life, and often these lawyers choose not to consider themselves as having a disability. Also, because recently disabled lawyers already are part of a firm, there is less resistance to providing them with reasonable accommodations.

The primary concern for the second group is obtaining employment and the availability and effectiveness of reasonable accommodations once employed. What law firms should do for members of these two groups differs depending on whether the issues involve hiring or retention.

Some of the most important steps that law offices can take to improve hiring practices involve common sense, include:

- Appointing a diversity representative well-versed in disability issues to the firm's management committee.
- Understanding the requirements of the Americans with Disabilities Act (ADA) and state disability discrimination laws.
- Referencing persons with disabilities in the equal opportunity language in job announcements.
- Writing job descriptions that only include the specific tasks essential to the position to be filled, and evaluate candidates based on ability to perform them.
- Asking interview questions first that highlight candidates' strengths, and then inquiring about any limitations.

The Workplace

Once a lawyer with a disability is hired, both the individual and the law office benefit by making the workplace "disability friendly." For example:

- Establishing flexible work arrangements for all employees.
- Prorating billable hours or billing hours directly to the firm.
- Appointing a committee chaired by a well-respected senior partner that includes representatives from all employment levels to address diversity issues, including disability.
- Specifying in an official document that diversity, including persons with disabilities, is an important value, and monitoring diversity progress.

- Creating an active mentor program, individualized to meet different needs, including those of lawyers with disabilities.
- Creating a centralized fund to pay for reasonable accommodations.

Concluding Thoughts

I have suggested some concrete actions that corporations and law offices can take to make the hiring and retention of lawyers with disabilities more successful. Other practical suggestions and perspectives are contained in the ABA Commission's *Conference Report*, which I hope you will read. The adoption of such suggestions and perspectives will increase the potential that lawyers with disabilities will be hired and retained.

Yet, much hard work remains before we will be able to see the day when the face of our profession is truly diverse, and all lawyers with and without disabilities are considered equal before the Bar. That day will come only when you and I, and our corporate and law firm colleagues across the land, make the commitment to hire and retain lawyers with disabilities. It is past time for us to make that commitment.

Corporations Will Carry the Bottom Line Torch and Ignite the Diversity Fire in the ADR Profession

By Elizabeth A. Moreno, Esq.

Diversity happens when it has a positive impact on the bottom line. This was the overall consensus of representative corporations, law firms and Alternative Dispute Resolution (ADR) providers at the April 5, 2006 ABA Dispute Resolution Diversity Forum held in Atlanta. The purpose of the Diversity Forum was to address ways in which the ADR profession can become more inclusive to minority and woman neutrals.

The corporate panel, who was represented by corporate counsel from Cingular Wireless and T-Mobile and employee internal dispute resolution directors from Coca Cola Enterprises and Shell, agreed that awareness needs to be raised that the profession needs to become more diverse. The lack of diversity is problematic in the employment arena. Corporations are finding that mediation is losing its effectiveness and they are losing their credibility with employees when they can only offer a homogenous group of neutrals to resolve workplace disputes. Corporations have an immediate need for

Diverse ADR neutrals and the national ADR providers they use are not delivering a diverse panel.

Shell, which has an employee internal dispute resolution program 'RESOLVE', is not comfortable with just raising an awareness. They are taking affirmative steps to make sure that they can choose neutrals from a diverse ADR panel. Several years ago, Shell was one of the first to carry the torch in demanding that their law firms commit to diversity within their firms and if not, Shell would end its relationships with the firms. Once again Shell has come to the forefront and announced that they will extend their supplier diversity program to certified minority and women ADR neutrals. Shell is committed to the economic development of minority and women owned and operated firms and actively engage in efforts to provide for supplier inclusion by partnering with minority and women's business enterprises. Certified minority and women owned ADR firms would become part of Shell?s second tier supplier diversity program, in that certified women and minority enterprises would enter into subcontracts with Shell's primary national suppliers of ADR services. Shell is in the process of developing details of the demands that would be made on the primary supplier of ADR services to utilize minority and women owned ADR enterprises. Shell astutely recognizes that by embracing the concept of inclusion, Shell will rise to a higher level, reflecting its belief that it will benefit from diversity through better relationships with customers, suppliers, partners, employees, government and other stakeholders, with positive impact on the bottom line.

Representative Law firms agreed that law firm Diversity initiatives did not gain any momentum until corporations made demands that law firms commit to diversity or they would lose the corporation as a client. Law firms were represented by Buckley King, Littler Mendelson, Paul Hastings, and Powell Goldstein, who agreed that diversity in the ADR profession needs to take place, but that it is the economic motivation that will move Diversity forward in the ADR profession. If corporations make demands that law firms use ADR providers that are diverse in mediating or arbitrating their cases, or risk losing business, they will use diverse ADR panels. The representative Atlanta law firms are beginning to look at the utilization of diverse ADR providers more seriously after law firms heard similar representations at the Atlanta Legal Diversity Conference in July 2005. At that conference, Wal-Mart announced that their law firms must embrace diversity at all levels, including its vendors

and must demonstrate that there are substantive numbers of women and minority lawyers in the upper level of their firms. If not, their relationship with the firms will be terminated. Representatives from Visa International, Del Monte, Pitney Bowes and Cox Communications made similar representations. These diversity demands came on the heels of Sara Lee's 'call to action' letter in 2004, signed by more than 100 general counsel, indicating that they would consider a firm's diversity when hiring outside counsel.

What did the representative national ADR providers, National Arbitration Forum (NAF), Resolute Systems, Inc. (RSI) and National Association Securities Dealers (NASD), have to say after hearing the corporate and law firm panels? The representative ADR providers were aware of the issues and were taking steps to diversify their panel of neutrals. However, they confirmed that demands will cause them to step up their efforts in order to avoid a blow to their bottom line. NASD already has a statement on their web site that they are committed to diversity and that they carefully select from a broad cross -section of people, diverse in culture, profession, and background. NAF and RSI will place a similar statement on their web sites. The representative providers have been actively recruiting diverse neutrals through networking at Diversity functions and with minority organizations, and by sponsoring or presenting training sessions for ADR minority professionals.

Unless it affects the bottom line, entities will not be motivated to move forward and embrace diversity. Now that corporations are beginning to make noises and demands about utilization of diverse ADR panels, law firms and ADR providers are beginning to realize that corporate demands may affect their relationship with that corporation in the future and ultimately, their bottom line. Shell Oil has taken the step to carry the bottom line torch which will ignite the Diversity fire in the ADR profession.

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Modified by David J Moora on November 3, 2008

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ADA Guidelines Raise the Ethics Bar

By Judy Cohen

The rapid expansion of civil rights mediation, a relatively new field, is partly driven by ADA complaints, thousands of which have been mediated over the last 10 years. Innovative practices in civil rights mediation pose powerful challenges to accepted notions about mediator ethics. The existing guidance, the Model Standards of Conduct for Mediators, was introduced in 1994, shortly after the Americans With Disabilities Act or ADA[1] was enacted. Consequently, the framers did not have the opportunity to consider the emerging complexities of the ADA and other civil rights mediation or of generic mediation involving participants with disabilities. Interaction across race and gender lines — however uneasy that interaction might be — is not new to most mediators, but integrating people with disabilities into the process has proven problematic for many.

Charting new terrain

The Model Standards, according to their Introductory Note, provide "a general framework," "a beginning, not an end," "a step in the development of the field." Taking a next step, 12 mediation practitioners gathered in 1998 to form the ADA Mediation Guidelines Work Group. Their vision was to identify aspects of generic mediator guidance that did not adequately address, or that militated against, people with disabilities participating equally in mediation, and to articulate alternatives.

The drafters solicited public comments and discussed and incorporated feedback from a wide range of perspectives, building on the foundation of the Model Standards, as well as on the work of specialties — including elder law, bioethics and family mediation. This process culminated in the ADA Mediation Guidelines, issued in February of 2000.[2]

There were some surprises along the way. While the orthodox view was that a skilled mediator can handle any type of case, many practitioners were responsive and willingly submitted ideas and queries. However, a number of disability rights activists argued that they should not need to be skilled mediators to take on ADA cases. And a minority among mediators expressed that it was improper to develop supplemental guidance.

If a party discloses to the mediator that he or she has cancer or AIDS, the mediator should already have some sense of the particular obstacles the person may face.

Access to the process

While the ADA is a legal statute, the Guidelines' context is ethical and practical — highlighting a fundamental conflict on disability access between legal requirements and mediator ethics. Developing case law[3] has narrowed the definition of disability. Many individuals who would traditionally be considered disabled, or who are treated as if they are disabled — for example, those with severe facial disfigurements, but no functional limitations — have gradually lost legal protection from discrimination.

However, consistent with the Model Standards' ethical guidance that mediators are obligated "to make mediation accessible to those who would like to use it,"[4] the Guidelines suggest that, in assessing whether to provide disability accommodations, "the broadest definition of disability should be applied, including chronic conditions, episodic symptoms and temporary disabilities."[5]

This broad definition is essential to preserving the perception of the mediator's neutrality. The question of whether an individual even has a disability is often a component of a dispute; indeed, it is often the first objection raised by a respondent in an ADA mediation. A mediator who makes a disability determination, or bases a decision about whether to accommodate on such an assessment, is not playing a neutral role — and in fact is generally not competent to determine whether a party has a disability as defined in the ADA. In any case, such an action would reflect bias.

In practice, a fundamental ADA mediator tool is the ability to work with an individual who has a disability to develop and provide accommodations to the process. To handle accommodations competently, a mediator should understand the range of disabilities and feel comfortable addressing disability issues. For example, if a party discloses to the mediator that he or she has cancer or AIDS, the mediator should already have some sense of the particular obstacles the person may face. Rather than shrink from discussing the impact of the disability, the skilled ADA mediator explores the person's needs without being invasive or directive.

Knowledge about the disability — that the person might fatigue easily, or that the disability is stigmatized — may facilitate the mediator's explo-

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ration of potential modifications. However, because each person experiences a disability differently, the most effective and respectful accommodation process relies on the individual as the critical information source.

Mediator bias

Equal access to the process requires an unbiased mediator. The Model Standards instruct that: "A mediator should guard against partiality or prejudice based on the parties' personal characteristics, background or performance at the mediation."[6]

But disability prejudice is significant and pervasive in our culture. Mediators who do not have insight into the disability experience are prone to share society's assumption that people with disabilities are dependent, need help and cannot make their own decisions. Equal access for people with disabilities can be undermined by the negative attitudes of other mediation participants, including the mediator.

Mediators who cannot remain impartial are obligated to withdraw, according to the Model Standards.[7] But whether a particular mediator withdraws will depend on his or her personal practice and moral code; some may be loath to address their biases or to recuse themselves. Blatant biases reflect a dehumanizing view of people with disabilities, but most parties can easily perceive subtle, or even subconscious, bias.

From the beginning, bias has been one of the most challenging aspects of ADA mediation. As the Work Group members were painfully aware, people with disabilities frequently report that they feel that mediators disregard their views and do not regard them as equal participants. Striving to address this, the Guidelines include several examples. In one of them, the mediator bias scenario concerns a party with major depression who has been disciplined for tardiness on the job. The mediator has not been responsive to the party's hesitation about an 8 a.m. start time. The party consequently appears late. The mediator, insensitive to disability-related or other reasons why the person might be tardy, begins to "wonder how s/he ever held and job in the first place, and unconsciously discounts the few remarks that the employee makes during the session."[8]

The Work Group was not able to address this problem beyond suggestions on awareness training and the recommendation that basic ADA mediator training be followed by ongoing support and skills development, such as apprenticeship.

Competency

The Model Standards define mediator competency according to whether "the parties are satisfied with the mediator qualifications."[9] When the Model Standards were promulgated, the concept of acceptability was based largely on labor arbitration practice. This approach is effective in the labor-management context in which:

- arbitrators have long-standing credibility and often ongoing relationships with the parties
- the work product — that is, the award — is available for review
- the parties and the neutral are knowledgeable about the substantive and procedural issues, and
- the table is comparatively balanced.

But this does not translate well to ADA mediation, where, as in family, bioethics or environmental mediation, the table is typically unbalanced, the mediator is unknown to at least one of the parties and has qualifications that are hard to verify, and resolution depends on specific skills and knowledge the parties do not have. The Guidelines created for the first time a quantifier for ADA mediator competency, summarized by the view that: "Mediators should have knowledge of disabilities, disability access and disability law."[10]

Training

The Guidelines recommend at least 14 hours of specialized training for already skilled mediators, including at least three hours each of substantive law and disability awareness.[11]

Awareness topics include disability etiquette — that is, appropriate ways to interact with people with disabilities — and addressing individual biases about disability. A requisite training component is "at least one opportunity for participants to interact with a person who has a disability."[12] Many new ADA mediators are transformed by hearing perspectives that arise from life experiences different from their own. For example, in recent trainings, a person with a mental health condition explained how she managed the voices that she heard as she worked; and a wheelchair user described his hurt when co-workers brushed off his exclusion from activities in inaccessible locations.

The Guidelines also suggest that each trainee should have the opportunity to roleplay and receive feedback as mediator at least once.[13] In ADA mediation, this is one of the most effective ways to identify mediators who are not comfortable with disabilities. Ultimately, this attention may assist in screening out those with strong anti-disability bias.

Confidentiality

Confidentiality is addressed in the Model Standards in terms of "reasonable expectations of the parties."[14] In ADA mediation, confidentiality is particularly significant because of the sensitive nature of disability-related information. New ADA mediators sometimes question the fairness of arranging access to the process directly and confidentially with the person with a disability. But mediators should realize that concerns about job security or about the reactions of co-workers may make a person reluctant to disclose a disability. Additionally, as the Guidelines explain, even after disclosing a disability, "there still may be information that the person does not wish to reveal, such as the diagnosis or the severity of his/her limitations or health problems."[15] The mediator may reality-test with the person about benefits and deficits of disclosure. Ultimately, though, whether to disclose is a per-

sonal decision, and the mediator needs to respect the person's assessment and decision.

Capacity to mediate

The core value of the ADA Mediation Guidelines is self-determination. This conflicts with the Model Standards' only clause to explicitly address disability concerns. The Model Standards reflect a pre-ADA ethic of protecting people with disabilities rather than the current view — oriented towards recognizing their independence and abilities. Thus, the Model Standards articulate that:

A mediator shall withdraw from a mediation or postpone a session if the mediation is being used to further illegal conduct, or if a party is unable to participate due to drug, alcohol, or other physical or mental incapacity.[16]

This statement has received particular attention by ADA mediators. In 2001, notably, the ABA Commission on Disability Law began a project to revisit this language and its unintended disempowerment of people with disabilities. And the disability and ADR committees of the Association of the Bar of the City of New York[17] initiated a collaboration to address it. The group composed new language, merging the framers' legitimate intent to protect people with impaired capacity with a post-ADA approach that recognizes the mediator's role in cases in which any mediation party — not just a person with a disability — encounters obstacles to participating fully.

The Committee separated out the stigmatizing reference to illegal conduct, which is not related to self-determination or disability. The Committee also deleted the reference to drug and alcohol use, reasoning that medications for disability conditions may cause impairments (such as difficulty concentrating) or the perception of impairment (such as trembling) and that, similar to any other mediation capacity issue, impairments or apparent impairments caused by substances are best addressed on a case-by-case basis. The Committee's proposed language, submitted as a recommendation to the Joint Committee currently revising the Model Standards, [18] is that:

A mediator shall withdraw from a mediation or postpone a session if the mediation is being used to further illegal conduct.

When a party appears to have difficulty comprehending the process, issues, or settlement options, or difficulty participating actively in the mediation process, the mediator should explore with the party the circumstances and potential accommodations, modifications, or adjustments that would enable the party's comprehension and/or participation. If no accommodation, modification, or adjustment can reasonably be provided that enables the person's participation to a reasonable level, the mediator should postpone or terminate the session.

The proposed language acknowledges that there are many potential reasons why parties may not have the capacity to mediate, such as distraction by extreme anger or language barriers. Capacity to mediate is no longer characterized as a disability concern, but given a universal context.

A mediator who is disability-aware cannot balance an unbalanced table, but can help create the conditions for self-determination.

Coercion

According to the Model Standards, self-determination relies on "the ability of the parties to reach a voluntary, uncoerced agreement."[19] Building on this, the Guidelines stress that the parties must be "aware of their legal rights and responsibilities under the ADA prior to the mediation so that they can participate meaningfully and make informed decisions."[20]

An early debate in ADA mediation practice was whether a mediator should provide legal educational material to the parties. The Work Group concluded that, because the critical information for parties is how the law applies to their case, legal handouts are not adequate and that parties in ADA mediation should be represented. Accordingly, the Guidelines state that parties in an ADA mediation should "be advised of the risks of not being represented by counsel or of not having a potential agreement reviewed by counsel."[21]

People with disabilities in ADA mediation are frequently unrepresented, and find themselves negotiating across the table from attorneys, human resources directors and managers. In rights-based ADA mediation, a person with a disability who lacks understanding of the legal issues involved cannot make an informed decision. In these circumstances, there is a risk of coercion. The party's ability to exercise self-determination is further impaired when the mediator has both an inadequate background in ADA law and strong biases–biases that may comport with those of the non-disability side of the table.

A mediator who is disability-aware, in legal and substantive disability issues, cannot balance an unbalanced table, but can help create the conditions for self-determination. Such a mediator can reality-test and assist in generating options objectively and can work with the parties to help ensure informed decisions.

In public accommodation cases, mediation normally involves straightforward applications of law — for instance, putting in a ramp according to specifications laid out in the regulations. These cases are frequently brought by disability advocates who understand ADA rights and obligations, and who are less likely to be coerced or make uninformed decisions.

However, the vast majority of ADA cases are employment mediations. Such cases primarily involve unrep-

resented employees and developing case law, individualized remedies, technical workplace issues, entwined relationships — and also deep self-esteem, privacy and identity issues. Moreover, employees have a desperate reliance on the outcome, especially because it is often difficult for people with disabilities to find employment. To ensure that a party is not coerced, the mediator must be highly skilled, with a clear understanding of current case law, as well as knowledge of workplace practices.

Other mediation participants

The role of educator is antithetical to the neutral mediator function. However, an educator may, in certain circumstances, be introduced in the mediation process. The Model Standards allude to the mediator's responsibility "to make the parties aware of the importance of consulting other professionals, where appropriate, to help them make informed decisions."[22] And the Guidelines go a step further in recognizing the potential for neutral experts to play a critical role in reality-testing and helping the parties collaborate on creative and realistic options. The Guidelines describe the various roles of neutral experts in providing supplementary disability-related information "to educate the mediator and the parties" and "to assist in developing options." [23]

Challenges remain

The baseline practices and ethics outlined in the ADA Mediation Guidelines are part of a larger movement in the ADR field to develop and improve the process. The Guidelines are a small step toward developing a theory and practice of ADA mediation — a work in progress, with the hope that mediators will participate in ongoing collaboration regarding their application and continuing development.

Endnotes

[1] 42 U.S.C. §§ 12101-12213.

[2] The scope of mediation in the Guidelines extends to mediating claims arising under the ADA and other disability civil rights statutes, such as the Rehabilitation Act of 1973, the Fair Housing Amendments Act of 1988 and state and local civil rights laws. The accessibility guidance, however, applies to any kind of mediation in which a person with a disability participates.

[3] *See, Sutton v. United Airlines*, 527 U.S. 471(1999); *Murphy v. United Parcel Serv.*, 527 U.S 516 (1999); *Albertson's, Inc. v. Kirkingburg*, 527 U.S. 555 (1999) and *Toyota Motor Mfg., Ky, Inc. v. Williams*, 534 U.S. 184 (2002). In all of these cases, the U. S. Supreme Court took a restrictive view of what it takes to demonstrate a disability under the ADA.

[4] Model Standards of Conduct for Mediators, IV, Comments.

[5] ADA Mediation Guidelines, IB1.

[6] Model Standards of Conduct for Mediators, II, Comments.

[7] *Id.*, VI, Comments.

[8] ADA Mediation Guidelines, IIIA2.

[9] Model Standards of Conduct for Mediators, IV.

[10] ADA Mediation Guidelines, IV.

[11] *Id.*, IIIB1.

[12] *Id.*, IIIB2.

[13] *Id.*, IIIB1(3).

[14] Model Standards of Conduct for Mediators, V.

[15] ADA Mediation Guidelines, D1.

[16] Model Standards of Conduct for Mediators, VI, Comments.

[17] The Committee on Alternative Dispute Resolution and the Committee on Legal Issues Affecting People with Disabilities.

[18] Send comments to: Professor Joseph B. Stulberg, Reporter for Joint Committee, Moritz College of Law, The Ohio State University, 55 West 12th Avenue, Columbus, OH 43210-1391.

[19] Model Standards of Conduct for Mediators, I.

[20] ADA Mediation Guidelines, IE1.

[21] *Id.*, IE2.

[22] Model Standards of Conduct for Mediators, I, Comments.

[23] ADA Mediation Guidelines, IIB2.

Question of Competencies in ADA Mediations

By Peter R. Maida

When the Americans With Disabilities Act (ADA)[1] was passed in 1990, it presented the question of whether disability has a unique impact on mediation. Many mediators, faced with a party with a disability, resorted to a way of thinking about the professional/client relationship that was retrograde: the person with the disability was objectified. The general standards and guidelines of mediation practice were no longer sufficient. Somehow the analysis of the problem became focused on the person with the disability — objectifying the disability — to the exclusion of other factors that might affect the outcome.

However, thinking more precisely about competencies and capacities in ADA mediation, the potential value of mediator rosters and mediator training can help point the way back to basic principles preserving the integrity of all participants. It also helps sharpen the focus on mediator responsibility and avoids the negative consequences associated with objectifying disability.

Establishing competencies

Most mediators are able to distinguish between impediments in the mediation process related to competency that can be overcome and those that cannot. However, the important question is whether the door to mediation services is shut more often to clients with disabilities than to those with no apparent disabilities who happen to lack the competencies to mediate. The response to a person who has no apparent disability but exhibits behaviors associated with cognitive or mental disabilities is to assume that an inability to mediate is because of a disability. And a person with a disability who is able to mediate is thought of as a "superperson" — able to work harder at mediation than a non-disabled person to overcome the disability. The scenarios are demonstrated in the following chart.

This focus highlights a possible conclusion about the relationship between disability and its role in mediation — particularly if disability is objectified, giving it more importance than it actually has in the success or failure of the process. When parties have difficulty with mediation so that the outcome is doomed and one of the

CHART 1: MEDIATION SUCCESS OR FAILURE BASED ON MEDIATOR ASSUMPTIONS ABOUT PARTY DISABILITY

	When disability is apparent	When disability is not apparent
Behaviors evidencing ability to mediate	Success of mediationseen as related to factors external to the disability, or the perception that party has been able to overcome the disability	Success of the mediation is not seen as related to a disability
Behaviors evidencing inability to mediate	Party's inability to continue the mediation is seen as related to the disability	Party's inability to continue the mediation seen as possibly related to a disability

Experience demonstrates that mediator assumptions influence how mediators characterize what is going on in the mediation. Mediators often ascribe too much significance to disability.

CHART 2: WHAT HAPPENS WHEN MEDIATOR SUSPENDS ASSUMPTIONS ABOUT DISABILITIES AND THINKS ONLY ABOUT COMPETENCIES

	PARTY EXERCISES COMPETENCIES		PARTY DOES NOT EXERCISE COMPETENCIES	
	Disability apparent	**Disability not apparent**	**Disability apparent**	**Disability not apparent**
Behaviors evidencing ability to mediate	Competencies are intact and exercised	Competencies are intact and exercised	Mediator views success as related to factors external to competencies, such as time constraints or third party pressure	Mediator views success as related to factors external to competencies, such as time constraints or third party pressure
Behaviors evidencing inability to mediate	Mediator views failure as related to factors external to competencies, such as time constraints or third party pressure	Mediator views failure as related to factors external to competencies, such as time constraints or third party pressure	Mediator sees need to facilitate competencies	Mediator sees need to facilitate competencies

In this chart, competencies refer to the skills required to participate in a mediation, such as the ability to engage in problem-solving and decision making, and the ability to anticipate future scenarios. The assumption of this article is that most people, with or without disabilities, are competent to mediate. This chart suggests that when mediators withhold judgments about disability, they are likely to be more effective in disability-related mediations because they focus on facilitating the actual competencies needed by the parties.

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parties has a disability, the tendency might be to relate the failure of mediation to that disability. Where there is a non-apparent disability in a failed mediation, the tendency is to search for and attribute the failure to factors associated with mental and cognitive disability. If the mediation has a successful outcome, it is rarely attributed to disability, which is more often seen as an impediment to successful mediation.

Changing the cells in the chart based on specific disabilities would demonstrate other aspects of this problem, such as the lethal role of mental disability with respect to the success of mediation. In these cases, the headings on the side of the chart might read: "Not appropriate for mediation" or "Therapeutic mediation only."

Now consider the chart below in which competencies are the principle determinants of the success or failure of mediation.

Chart 2 demonstrates what happens if one considers the important role of competencies in mediation when disability is not given as the reason for success or failure. Disability status is unimportant; instead, competencies to mediate are highlighted. Some disabled people are able to mediate because of competencies that aid in mediating, such as ability to collaborate or ability to appreciate the interests expressed by the other party. When a disabled person is not able to express these competencies, the mediation might fail because of competencies that are blocked rather than because of disability. The key to the ability to mediate when competencies are blocked is the same for all parties whether disabled or not — that is, either an advocate has to represent one's interests, or the mediator must work on facilitating the competencies needed to continue. Thus, other factors play a role in the mediation's success or failure. The advice and support of advocates is crucial to being able to mediate for some. Chart 2 illustrates that it is possible to explain success or failure in mediation without objectifying disability — that is, making it the central focus.

Competencies v. mental capacity

Some mediation practitioners have focused on whether there are benefits in distinguishing between determining capacity and facilitating competencies in mediation.[2] Using the plural form of competency points to an important distinction. To participate in mediation, all parties must have certain competencies. Some are obvious, such as:

- thinking and behaving in a collaborative manner
- balancing the emotional and cognitive dimensions of problemsolving
- understanding the interests of other parties
- risk-taking, and
- following shared principles when making decisions.

Most individuals have the competencies to participate in mediation. The mediator's role is to help activate competencies that already exist, or to be a role model for parties about the competencies needed to complete the mutual problem-solving process.

Capacity usually refers to a legal or mental health finding about a person's overall ability to function. A court generally determines capacity after a lengthy consideration of data about individual ability to function, to understand and to make decisions. In the mental health context, capacity determination is usually based on the findings of a battery of specific tests.

Mediators usually have neither the legal authority nor the technical expertise to determine capacity. Even if they had both, determining capacity as defined in law and mental health would raise ethical issues in requiring a mediator to function as someone other than a mediator while delivering mediation services. Testing for capacity determination also raises the issue of the client's lack of informed consent before being tested.

The ADA and competencies

The ADA states: "Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials and arbitration is encouraged to resolve disputes arising under this Act."[3] Interpreted liberally, the person with a disability is empowered to play a role in determining appropriateness. In mediation, this recalls the importance of self-determination. The ADA acknowledges that input from all parties is important in implementing its provisions.

Although the ADA doesn't directly address the dispute resolution practitioner's behavior, he or she must determine the appropriateness of mediation without violating the civil rights of the person with the disability. Determining capacity without the expertise, legal authority and consent of the person with the disability could violate civil rights by withholding access to service. On the other hand, facilitating competencies in aid of determining appropriateness falls within a mediator's range of skills and party expectations. In addition, facilitating competencies is interactive, involving not only the mediator but also all parties in the mediation.

Finally, facilitating competencies is a skill that is useful whenever anyone in the mediation seems to be "outside" the process. The mediator must judge when the mediation is not proceeding — and the reason may be one or more parties are not acting competently. In mediation, determining capacity usually has an indirect reference to the cognitive, emotional or behavioral abilities of an individual. Certainly, people without disabilities can reveal failures to act competently. Sometimes people without disabilities are categorized as if they have disabilities when they demonstrate behaviors that the mediator associates with disability status.

Do not presume that when a person with a disability is in mediation, his or her capacity has to be determined beforehand. Focusing attention only on that person will result in treat-

ing him or her differently than an individual about whom capacity is not deemed an issue. The objective as mediators ought to be to approach all parties in mediation — including ourselves — as if an audit of competencies needs to be made constantly from the beginning. A good revelation is to ask yourself what every individual will need to get through the mediation. This often results in a list of competencies to consider and suggests approaches to take. Consider emotions, for example, whose expression may not stop or impede the mediation process. When they do, the mediator must address the impediments to continuing. Likewise, not all competency deficits or blocks stop the process. When they do, be prepared to facilitate activating competencies that need to be strengthened, supported, unblocked, acknowledged or reinforced.

Being drawn to mediation because of a sincere desire to help usually serves no useful purpose in determining capacity — or in facilitating competencies.

Mediator competencies

A number of dispute resolution specialists have helped focus the thinking about mediator competencies, although there is little agreement about what they are and how to measure them.[4] Competencies of mediators are directly related to competencies needed by parties. For example, a mediator who expects parties to collaborate in reaching a mutually acceptable resolution of their disagreement ought to be able to facilitate collaborative behavior. This requires distinguishing between party moves that are competitive from those that are collaborative. If parties must balance emotional and cognitive factors to function, a mediator must be able to identify whether the emotional and cognitive dimensions of behavior and thought are in or out of balance.

Rosters and competencies

Rosters, which can aid in facilitating mediators' competencies, have become the usual way of delivering mediation services in this country.[5] Thousands of rosters put mediators at the hands of government agencies and of local, state and federal courts as well as the private sector. Various government agencies use rosters of mediators who specialize in EEO disputes. And many organizations have rosters specializing in other substantive areas of practice such as commercial, construction, family and small claims disputes.

After the ADA was passed, the U.S. Department of Justice (DOJ) was interested in having a roster of mediators throughout the country that would bring the necessary skills to the table when mediation was used to resolve disagreements implementing the new law. The DOJ, as well as disability rights advocates, were concerned that people would be asked to bargain away their rights in mediation. The DOJ sponsored 25 trainings over five years to create a roster of individuals experienced in mediating civil rights disputes as well as training in the substantive aspects of the law. The training produced a national roster of about 600 individuals with substantive expertise in the ADA. However, roster membership doesn't guarantee that mediators will exercise the competencies necessary to provide services that meet the needs of all parties.

Thirteen years after the ADA was passed, cases are now sufficiently different so that each one presents a new challenge for a mediator. A helpful practice to ensuring that all parties' needs are met as well as supporting the learning that experience brings is to supervise and monitor cases that roster mediators are assigned.[6]

Monitoring and supervising provide important mentoring and learning opportunities. Observing how mediators facilitate competencies of all parties can be especially helpful when experience is shallow. Getting guidance and an opportunity to ask questions helps mediators deliver appropriate services. Roster management also helps to avoid practices that deprive individuals of their rights as well as those that objectify disability and impede successful practice.

Viewing mediation involving people with disabilities with a broader scope highlights the responsibilities to clients, regardless of their personal characteristics. Not only does this improve practice techniques, but it also helps avoid the negative consequences associated with focusing on the disability. These consequences include:

- objectifying the disability, thereby supporting the belief that a person with a disability in mediation is significantly different from a person without a disability
- encouraging the mediator to think about the person as the "identified patient" — the one labeled and often scapegoated as the problem — rather than focusing on the competencies of all parties at the mediation, including the mediator
- depriving people with disabilities of their rights to have access to mediation
- overreaching, where mediators function as judges and mental health professionals
- depriving the person with the disability of self-determination
- relying on stereotypical notions of how people with disabilities behave, and
- assuming erroneously that the disability is more directly connected to mediation competencies than other characteristics of the parties.

Rosters remain helpful because of the possibility of reaching a large group of mediators through convenient newsletters and normal supervisory contact. Also, particularly with a roster that spe-

cializes in mediation of disability cases, the day-to-day mentoring helps maintain the broader vision, so important in avoiding the objectification of disabilities.

Training and competencies

One way to ensure that roster mediators share common skills, knowledge and abilities is through training. Through training, all mediators can examine assumptions with respect to people with disabilities in their roles as parties in mediation. Mediators in training are usually instructed to look for real or potential violence, mental, cognitive and behavioral indicators influencing client decisionmaking. Other than this, most discussions about capacity in training focus on a party's inability to continue.

Mediators generally fend for themselves in determining capacity to mediate, with vague notions about how to determine whether mediation is the appropriate method of dispute resolution. Being drawn to mediation because of a sincere desire to help usually serves no useful purpose in determining capacity — or in facilitating competencies. And interventions based on problemsolving techniques from professions such as social work, law, human resources and finance usually have goals other than facilitating the client's ability to participate in a process whose central principle is self-determination.

Consequently, training is probably the most difficult activity to discuss. There are many different types of training, most held in private settings. And complaints about training are not about failing to meet some standards with respect to determining capacity. Questions abound, including: Is a four-day training about a disability substantive area better than a one-day session? Is 40 hours better? Is training that focuses on disability part of the problem of objectifying disability and distorting its role in reaching a mediated agreement? How is training focused on the legal requirements of the ADA to avoid objectifying disability? Political agendas often influence the answers. Is sensitivity or cultural diversity training that focuses on disability good or bad? Or is the trap of objectification also a problem with these types of trainings? A goal would be to have mediators that understand the substantive area, including legal and disability awareness, combined with the opportunity to mediate cases with supervision and the possibility of mentoring.

Mediation trainers should:

- avoid using the terminology usually associated with determining capacity—for example, "this mediation failed because of the person's disability" or "this disabled person doesn't have the capacity to mediate"
- include exercises that focus on recognizing cues of competencies necessary for the mediation to proceed regardless of who is presenting the behavior
- teach a range of techniques that encourage trainees to test whether a blocked competency may be impeding mediation progress
- present strategies about intervening to determine whether the trainee has assessed correctly what competency needs to be facilitated
- introduce techniques that would represent a non-intrusive reinforcing of blocked competencies, and
- instruct about how determining competencies occurs throughout the mediation for all parties — including the mediator.

Endnotes

[1] 42 U.S.C. §§12101-12213.

[2] *See* Susan H. Crawford, Lewis Dabney, Judith M. Filner & Peter R. Maida, *From Determining Capacity to Facilitating Competencies: A New Mediation Framework*, 20 Conflict Resol. Q. 385-401 (2003).

[3] 42 U.S.C. § 12212.

[4] *See Report on Mediator Credentialing and Quality Assurance*, ABA Section of Disp. Resol. Task Force on Mediator Credentialing and Quality Assurance (2003) and Judith M. Filner, An Introduction to Mediator Credentialing (2000), available online at http:// www.keybridge.org/med_info/credentialing.htm.

[5] *See* Peter R. Maida, *Rosters and Mediator Quality*, Disp. Resol. Mag., Fall, 2001, pp. 17-20.

[6] The Key Bridge Foundation supervises and monitors cases assigned to the ADA Mediation Roster that was established through U.S. Department of Justice funding. The decision to supervise and monitor was made after a brief period of assigning cases and waiting until they were completed before contacting the mediator. It became apparent that roster mediators required technical assistance in this new substantive area of practice.

Eliminating Barriers for Minority ADR Neutrals

By Floyd D. Weatherspoon

The use of alternative dispute resolution (ADR) has grown by leaps and bounds during the past 25 years. Indeed, ADR has expanded from its traditional use in labor arbitration into the judicial systems, educational systems, community disputes, state and federal agencies, and complex commercial disputes. Corporations have found ADR to be so cost effective that many have made ADR mandatory in resolving employment disputes. Similarly, the banking industry has incorporated the use of ADR as a mandatory method for resolving credit card and contract disputes. The use of ADR is also expanding in the health care field, in special education, natural disasters and on-line disputes.

Participants at the National Conference of Minority Professionals in Alternative Dispute Reolution.

Exclusionary Practices

As the use of ADR has grown, so has the need for competent ADR professionals, e.g., mediators, arbitrators, facilitators, etc. In addition, ADR organizations, including state and federal governments and corporations have created and expanded ADR rosters and panels to provide arbitration, mediation and facilitation services. Unfortunately, minority ADR neutrals have been intentionally and unintentionally excluded from receiving such opportunities.

Not only have minorities been disproportionately excluded from ADR rosters and panels, they are often not selected as trainers in a myriad of training programs provided by colleges and universities, private training organizations and governmental agencies. Ironically, minorities are aggressively recruited to attend such programs but rarely chosen to serve as a facilitator or trainer. Often, those opportunities are only made available to the same select non-minority trainers and facilitators. With few exceptions, minorities are also often excluded from the high-paying lucrative rosters.

In surveys conducted during the 2004 and 2005 National Conference of Minority Professionals in Alternative Dispute Resolution held at Capital University Law School (Columbus, Ohio), minority participants identified a number of obstacles they face as neutrals. The major obstacle identified by minority ADR neutrals was that the selection practices and processes used to select neutrals negatively impacts their efforts to gain acceptance on the lucrative ADR rosters and panels.

Minorities seem to have no trouble serving on community mediation rosters or doing *pro bono* work. However, with few exceptions, minority ADR neutrals report a difficulty in making the transition from serving as a voluntary neutral to being compensated as a professional ADR neutral. Even in the judicial system with court appointed neutrals, minorities are often under-represented on rosters. Minority neutrals identified exclusionary selection criteria as a major obstacle to placement on rosters and panels. ADR providers were described as the "gate keepers" who "sit at the door" to disperse ADR opportunities to those who have met their subjective requirements.

The selection of individuals to the various rosters and panels reminds me of when I pledged a fraternity. I was required to engage in a selection process that felt somewhat meaningless and arbitrary until it was determined by those in power that I was acceptable for admission into the exclusive club. At the end, I felt I had endured too much to turn back, even though the process did not make me a loyal frat brother. Similarly, the criteria for entrance into the exclusive ADR club are often not relevant and at times, the process

can even be arbitrary and discriminatory. Those who make it through the process buy into and propagate a selection system that has a disparate impact on women and minority neutrals. They too take the position, "I met the criteria and every one interested in becoming a part of this exclusive club must also meet the same criteria." This appears to be the sentiment of those who become a part of a system that may unintentionally exclude minority and women neutrals.

In Search of a Mentor

Finding a compatible and committed mentor is a challenge for any new ADR practitioner, but can be especially daunting for minority neutrals. It is crucial to locate a mentor who is well-respected in the field and who can introduce new minority neutrals to advocates and ADR providers. My first attempt at finding a mentor was not successful. I asked a law professor who taught ADR courses if he would permit me to sit in on one of his classes. His response was a resounding "no". At first, I was disheartened but I have come to understand that it is better for a prospective mentor to decline up front than to say "yes" and never be available or committed.

My next strategy was taking a graduate level labor arbitration course taught by a well-respected labor arbitrator at the local university. After completing the course, I asked him whether I could shadow him with his U.S. Postal Service labor cases. He gave an enthusiastic "yes". He introduced me to the advocates and gave me ideas on how to become an effective arbitrator. The U.S. Postal Service was one of the first arbitration rosters that accepted me.

Similarly, in the private sector, I met another law professor at a reception who was a white male with extensive experience as a labor arbitrator. He made a telephone call to the advocates of a permanent local arbitration panel and I was soon placed on another panel. I often share this story with new minority ADR neutrals because I was able to make a meaningful contact at a reception where I was the only minority present. In fact, I almost did not attend because I knew I would be the only minority present. Nevertheless, I forced myself to attend, engaged in the dialogue and made contacts. It appeared to me that everyone knew one another. In reality, the new non-minority neutrals were actively engaging in networking and making contacts. These kinds of informal gatherings can often be more useful than getting another degree or attending a training program.

The failure on the part of ADR providers, including governmental agencies, to make a conscious effort to circulate information within the minority ADR network is not necessarily intentional discrimination but just indifference. Nevertheless, the end result is still the same—the exclusion of minority neutrals.

As Director of Minority ADR Initiatives, I have contacted members of the National Academy of Arbitrators to serve as mentors for individuals completing our new Minority Labor Arbitrator Development Program. In most cases, the mentors have been white males who have readily agreed to serve as mentors. Minority members of the Academy have also served as mentors, as well as volunteering to serve as instructors for our labor arbitration training program. Interestingly, the difficulty in ensuring that the mentoring program is successful has been the failure of mentees to contact their mentors on a regular basis to develop a professional relationship. Developing a meaningful professional relationship between new minority ADR neutrals and well-established non-minority ADR neutrals can be a challenge.

In my own professional experience, as well as in the Minority Labor Arbitration Development Program, the mentors have been white males with 20 plus years of experience. I encourage new minority ADR neutrals to seek this group out for mentoring and coaching. I sense that these mentors do not feel threatened or in competition with new minority ADR neutrals. They seem to welcome the opportunity to help minorities enter a field that has been largely dominated by Caucasians.

Racial and Ethnic Discrimination

In my experience, many minority neutrals believe discrimination exists in selecting minority neutrals to serve on various rosters and panels. ADR organizations and administrators readily deny any such practice exists and are angered when such allegations are suggested. However, many minority ADR neutrals perceive that the selection processes are exclusionary and that these processes discriminate against minority neutrals. This theory of discrimination was articulated by the Supreme Court's decision in *Griggs v. Duke Power*. The Supreme Court determined that discrimination is not only overt "but also practices that are fair in form but discriminatory in operation" is still discrimination. (401 U.S. 424, 431 (1971)).

The Supreme Court cited the familiar Aesop's fable of the fox and the stork to illustrate how discrimination can occur

without racial animus. As the story goes, the fox and stork each invited the other to dinner but served dinner in a manner which prevented the other from eating. The Supreme Court determined that selection devices must not be designed to prevent "all seekers" a fair opportunity to be considered. Similarly, when ADR organizations and ADR providers invite minority neutrals to apply but their selection devices cause minorities to be disproportionately excluded, then this may result in unintentional discrimination. Just like the fox and the stork, the invitation is used as a pretext to exclude.

As *Griggs* illustrates, discrimination is not always blatant; indeed it is often delivered with a smile. Minority neutrals often share their experiences of communicating with administrators of ADR programs and providers around the country who advise them of the process and selection criteria for placement on their roster. The code words for exclusion are terms such as "qualification," "criteria," "quality of service" and "standards." Depending on the manner in which these terms are presented, minority ADR neutrals may interpret these terms to mean "minorities need not apply." Clearly, all of these factors can and should be a consideration for placement on the various ADR rosters. However, the question is whether these factors are related to what neutrals do. Do these criteria predict performance as a neutral? Often there is no real correlation.

Elimination of Discriminatory Practices

The exclusion of minority lawyers in major law firms mirrors the exclusion of minority ADR neutrals on rosters and panels. Discriminatory selection processes, stereotypical biases and the "good ole boys" network are just a few of the barriers that minority lawyers face in gaining employment in major law firms. Sometimes it takes an economic incentive to effect change. For example, opportunities for minority lawyers in major law firms may increase since Wal-Mart threatened to take its business elsewhere unless the problem was addressed. Similarly, if major corporations that are contracting for ADR services issue a similar ultimatum, ADR providers would re-evaluate their selection devices and develop programs for minorities to gain placement on their rosters.

Left to right: Terrence Wheeler, Center for Dispute Resolution at Capital University Law School; Donna Parchment, Dispute Resolution Foundation in Kingston, Jamaica; Agnes Wilson, American Arbitration Association; Jack Guttenberg, Capital University Law School; Floyd Weatherspoon, Capital University Law School

ADR providers should evaluate whether their selection devices are having a disproportionate impact on minority ADR neutrals. If their selection devices can be justified based on a business necessity, they should also explore whether other selection devices could be used which would have fewer discriminatory effects on minority neutrals but still achieve their overall goals. This principle was also mandated in *Griggs*.

The federal government is a major user of ADR as well as a major contractor for ADR training. Unfortunately, even the government has subjective selection devices that disproportionately exclude minority ADR neutrals. For example, government agencies often contract with ADR consulting firms to conduct ADR training and/or to provide neutrals without considering whether they have a diverse pool of ADR trainers and/or neutrals. Moreover, they establish internal pools of ADR neutrals, which are not reflective of the employees they will serve. These practices can be perceived as unintentional discrimination.

Some people might assume that minority neutrals will not be acceptable to advocates, unable to handle complex issues, incompetent and inexperienced. Non-minorities, especially white male neutrals, normally don't face such biases. I recall contacting a major ADR provider to request support of the National Minority ADR conference and being informed by a senior official that they didn't see the benefit of their participa-

Not only have minorities been disproportionately excluded from ADR rosters and panels, they are often not selected as trainers in a myriad of training programs provided by colleges and universities, private training organizations and governmental agencies.

tion in the conference because none of the participants would meet their qualifications. Without inquiring into the qualifications of the participants, the bias and racial assumption was that none of the minority neutrals were qualified.

Often minority ADR neutrals are unaware or the last to know about new developments and expansion of opportunities in the field of ADR. By the time the information accidentally filters down to the minority ADR network, the new ADR initiative is already in place, the qualifications have been established, the roster is closed and the same select group of non-minority neutrals has been selected by their associates. For example, a permanent panel of neutrals was being selected at a federal agency and three months after the panel of non-minorities was selected, I received a call inquiring whether I was aware of any minority neutrals who could be considered when they select members for their roster in a few years. Why was the absence of minority neutrals not considered when the list was first established?

The lack of information sharing with minority ADR neutrals is not limited to any one field. Minority ADR neutrals are often ignored and excluded from opportunities involving disputes related to banking, special education, construction, federal labor issues, and even sports. Recently, I tried to organize a training program on sports arbitration as a part of our Minority ADR Initiative. I learned very quickly that information on opportunities in this field is closely held and reserved for only a few non-minorities. The failure on the part of ADR providers, including governmental agencies, to make a conscious effort to circulate information within the minority ADR network is not necessarily intentional discrimination but just indifference. Nevertheless, the end result is still the same—the exclusion of minority neutrals.

The solution to this barrier is quite simple. If there is a good faith intention to share information regarding paid opportunities and to diversify rosters, then ADR providers should make a concerted effort to circulate information in a timely manner to various minority professional organizations. Diversity means more than selecting one superstar minority neutral. In addition, ADR organizations can establish a network of minority neutrals in the various fields. ADR providers can circulate their announcements to organizations such as the Association for Conflict Resolution and the National Bar Association, as well as to minority networks such as the Mediators of Color Alliance (MOCA).

Helping minority ADR neutrals to gain opportunities and acceptance in the field of ADR requires ADR providers to continue evaluating their selection procedures for placement on rosters and panels. In addition, lawyers who now play a major role in selecting neutrals to serve in private disputes must also look outside their network for diversity. Finally, minority ADR neutrals must be vigilant in their efforts to seek opportunities and acceptance in the field.

The role of minorities in ADR is more vital today than it has ever been. Changes to the current processes must be made to ensure equal and effective ADR. The future of ADR depends upon the increased inclusion of minority neutrals. It is my belief that increasing the number of minority neutrals will lead to an increase in the use of ADR and will enhance users' satisfaction with ADR outcomes.

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