

## **Mediator Qualifications, Certification & Credentialing** by Joe L. “Joey” Cope

As individuals explore ways to settle disputes and consider mediation, the most common question is “Who will the mediator be?” Their natural concerns are those of fairness of the process and the skill and experience of the mediator. The next most often asked question is “How do I find a ‘certified’ mediator?”

### **Mediator Qualifications**

Each individual state has unique standards governing the selection and qualification of mediators in “court-annexed” mediations. Court-annexed mediations arise from disputes that are the subject of a lawsuit and are under the jurisdiction of a court. The State of Texas has set forth its standards for mediator selection in the Texas Civil Practice and Remedies Code, Title 7, Chapter 154, §154.052.

In summary, that statute states:

- The mediator must be an impartial third party.
- The impartial third party must have completed a minimum of 40 classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution system or other dispute resolution organization approved by the court making the appointment.
- In disputes relating to the parent-child relationship, the impartial third party must complete the 40 classroom hours of training detailed above plus an additional 24 hours of training in the fields of family dynamics, child development, and family law.
- The court making the appointment may appoint an impartial third party who has not met the training requirements set forth above if the court believes that person has other legal or other professional training or experience in dispute resolution processes that would make him or her an appropriate choice under the circumstances of the case.

Please note that these requirements govern the qualifications of mediators for only court-annexed mediations. Individuals seeking to resolve private (non-court related) disputes are free to select any other person to facilitate a dispute resolution process like mediation.

Whether the dispute is court-annexed or private, the Alternative Dispute Resolution Section recommends that individuals seek out mediators who have appropriate training and experience. The standards for court-annexed mediators are an excellent guideline for determining whether an individual has the training and experience necessary.

### **“Certified” Mediators**

Neither the State of Texas nor the Alternative Dispute Resolution Section of the State Bar of Texas certifies or licenses mediators. There is no official central registry of mediators or licensing body. Mediators in Texas are subject to the advisory Ethical Guidelines for Mediators promulgated by the Texas Supreme Court offered as best practice for professionals in the field.

Occasionally an individual practicing mediation in Texas advertises or presents themselves to the public as a “certified mediator.” The use of the word “certified” by some mediators has caused confusion among members of the public. Often what the mediators mean by saying that they are “certified mediators” is that they have completed the training required by statute and have received a certificate of completion for that course or those courses. Even though not uncommon, this practice is misleading and the information is not accurate.<sup>1</sup>

For court-annexed mediation, an individual court is allowed to establish and maintain a list of mediators it finds to meet the qualifications set forth by statute.

### **Training Standards in Texas**

Occasionally a mediator will advertise that his or her training met the standards set for mediators by the State Bar of Texas. As a general statement, this representation is also misleading.

In order to address the question of training standards, a group of Texas mediators formed the Texas Mediation Trainers Roundtable in 1992. Since its inception, the TMTR has convened regularly to establish and maintain training standards for both the Basic 40-Hour Mediation Training and the Family Mediation Training. More information about these standards is available on the group’s website: <http://tmtr.org>.

The standards established by the TMTR have been embraced as the accepted training outline for county Dispute Resolution Centers, the Texas Association of Mediators, and the Texas Mediator Credentialing Association. Individual training organizations are able to review those standards and to indicate their compliance with them. Training organizations that have offered evidence of compliance may request a listing on TMTR’s website: <http://tmtr.org/trainers/>.

The State Bar does approve certain ADR courses for mandatory continuing legal education (MCLE) credit hours. However, that approval is made in view of the requirements for MCLE credit for Texas lawyers and does not reflect whether the content provides sufficient instruction in mediation or other dispute resolution processes to satisfy training for court-annexed mediation.

### **Mediator Credentialing and Professional Associations**

The absence of a central governmental authority directly overseeing mediators does not indicate disinterest on the part of the State of Texas. Indeed, with the passing of legislation mandating Texas courts to promote alternative dispute resolution, the Texas Supreme Court created an Advisory Committee on court-annexed mediation. The Advisory Committee recommended “the

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<sup>1</sup> Other states may, in fact, have certification programs and practitioners from those jurisdictions may rely on that foreign designation. However, when practicing mediation in Texas, it is important that individual practitioners review the qualifications of the state in determining how they promote and present themselves to the public.

Court adopt specific rules of ethics for ethics for mediator conduct and a procedure for enforcing compliance with the rules.”<sup>2</sup>

While considering those recommendations, the Supreme Court was also aware of the formation of the Texas Mediator Credentialing Association (TMCA) and its work in addressing mediator qualifications and ethics through credentialing. After meetings involving members of the Court, the Advisory Committee, and TMCA representatives, the Court decided not to implement or enforce rules for mediator ethics or to credential or certify mediators. The Supreme Court did adopt “as aspirational the Ethical Guidelines for Mediators published by the Alternative Dispute Resolution Section of the State Bar of Texas in 1994.”<sup>3</sup>

The voluntary Texas Mediation Credentialing Association (TMCA) does have a grievance procedure and will investigate complaints against its credentialed mediators. In the event that a credentialed mediator is found to have violated the published standards of the TMCA, that person will be subject to appropriate sanctions by the organization – including the loss of credentials. For more information about the Texas Mediation Credentialing Association, see its website: <http://www.txmca.org>.

Other private associations for mediators promote the professionalism of practitioners in the State of Texas. The Texas Association of Mediators (<http://txmediator.org>) and the Association of Attorney Mediators (not exclusively for Texas practitioners, <http://www.attorney-mediators.org>) are two broad-based organizations that also specify qualifications and ethical standards as requirements for association. And, of course, the Alternative Dispute Resolution Section of the State Bar of Texas is the largest association of ADR professionals in the state (<http://texasadr.org>).

## **Conclusion**

The ADR Section encourages all mediators in the State of Texas to be clear in all representations to the public regarding their qualifications and experience.<sup>4</sup> Mediation continues to serve the needs of parties in conflict in a timely, inexpensive, and effective manner through qualified professionals.

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<sup>2</sup> Judge John Coselli, *Court Appointed Mediator Qualifications and Credentialing*, *Mediation Benchbook*, p. 3, Texas Mediator Credentialing Association (July 2011). Available electronically at [www.txmca.org](http://www.txmca.org).

<sup>3</sup> Coselli, *supra*.

<sup>4</sup> “A mediator should inform the participants of the mediator’s qualifications and experience.” Guideline 5, Ethical Guidelines for Mediators, Texas Supreme Court, Misc. Docket No. 11-9062.