

## **We Need to Do More and Better Assessment of New Mediation Trainees**

Theory-of-Change Symposium

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[Rebecca Price](#) argues that the ADR community needs to do more to bridge the gap between training and practice. Not only would that help make better neutrals, it would help to level the playing field for newer neutrals and raise the quality of service to those in dispute. She is the director of the Alternative Dispute Resolution Program at the U.S. District Court for the Southern District of New York. These views are her own and not those of the Court.

### **The Goal**

One of my greatest aspirations for mediation is to improve mediator training and assessment because it is an obvious area where we can do more and better. My goal is to produce competent mediators and identify those who are not yet sufficiently competent to practice independently. Mediators' competence matters a lot for mediation participants and also has significant implications for public and private mediation providers, and for public perceptions of the field overall.

Definitions of "mediator competence" vary. For the purposes of this post, I'm defining it as (1) demonstrably understanding mediation (as distinct from arbitration, adjudication, early neutral evaluation, negotiation etc.), (2) understanding and supporting self-determination, (3) understanding and demonstrating neutrality and impartiality, (4) maintaining appropriate confidentiality, (5) upholding the core values of mediation practice, and (6) being responsive to differences in parties, forums, and subjects. This really is quite a lot.

Most mediation training in which I've participated (as a trainee AND trainer) offers some feedback to trainees through role plays but nothing else to distinguish people who might be competent mediators from those who might not yet be competent. Indeed, awkwardness, collegiality, and/or obliviousness may result in no meaningful feedback from coaches to trainees who seem to lack core mediation skills.

For coaches, there can be a disconcerting self-reflection when observing a trainee who is struggling as the coaches may think, "When I was at the stage of learning she is in now, I made similar mistakes...." These coaches may have been able to advance in mediation (mistakes and all) in part because no further credentialing or mentoring was offered beyond the initial training. Historically, mediators in many settings have been encouraged to "learn on the job" (albeit at the expense of unfortunate parties who, most certainly, were not being told of the service they were providing for the new mediator).

At this stage in the evolution of mediation practice, we don't have to continue to assume that people will learn basic skills and process "on the job." We could, as a profession, expand existing training and mentoring infrastructures in our communities for new mediators – or create these opportunities if they don't already exist. Some trainers and programs are explicit about "credentialing" prospective mediators. For example, in New York (and probably elsewhere), the community dispute resolution centers programs offer apprenticeships in addition to basic training. In these centers, mediators aren't allowed to take cases until they have completed an apprenticeship and passed an evaluation. [The International Mediation Institute also offers certification for mediators.](#) Many mediators, however, do not seek out and/or cannot afford the time and monetary commitments of this level of training.

We need to create an accessible mechanism to provide mediation trainees good assessments of their strengths and weaknesses. This would benefit a lot of ADR stakeholders, including mediation participants, mediators, and public and private mediation programs that rely on training providers for a pipeline of new mediators.

As a mediation program administrator, I need help in identifying competent mediators for my program. As a field, we need to develop measures of mediator competence that would allow programs to hone in on what we most need – which is good mediation skills and judgment.

In my experience, academic credentials are not necessarily good indicators of what I think are the core qualities of great mediators – creativity, optimism, connection, curiosity, dynamic engagement, persistence, and humility. Considering people's schooling, age, firm affiliation, social and professional networks often replicates existing hierarchies. In addition to being poor criteria of important mediation skills, these criteria screen out diverse people who may not have the same access to, for example, the partnership track, an Ivy League school, or a network of friends and colleagues who already serve as neutrals.

Letters of reference and interviews are helpful, but often not as much as one would imagine. References are written by people who like the candidate, and the writers therefore assume that because they like them, they will be competent mediators. These things are not always the same. Interviews give applicants a chance to talk about mediation techniques, but discussing mediation thoughtfully doesn't necessarily reflect the ability to provide competent mediation services.

## **A Strategy**

So what do I suggest to move this along? That's a hard question and I don't have a complete and definite answer. For now, I would focus on training providers and law school clinics because they often are the on-ramp in this profession. We need a tool that gives trainees a rough assessment of their knowledge and aptitude as a competent mediator at the conclusion of their initial training. Many such tools already exist and one could be developed that might be used nationally.

Training programs should offer the service of implementing the tool, perhaps for a small fee in addition to the cost of the training. It would most likely involve a role-play model and should require something less than what we would expect from someone who has completed a full apprenticeship or has had opportunities to shadow or co-mediate. After completing training, new mediators might opt to do the assessment, the results of which could be included with their applications to public or private mediation panels.

There are a number of formidable challenges to this idea, all of which have been explored in more depth by others. They include the challenges posed by mediation itself, which can be properly practiced in many different ways. It can be hard to develop a valid and consistent process for assessing role-play performances (or live mediation), even with careful training of assessors and careful development of assessment criteria and procedures. (An example of such an attempt can be found on the [SDNY mediation webpage](#) under “Mediator Evaluation Program.”) As mentioned above, mediators assessing role-plays may feel awkward giving candid assessments and they may make judgments based on their own views about what techniques are appropriate or not. Implementing post-training credentialing may serve as an entry barrier to newer and/or less confident mediators who may well be adept at actual practice. A significant challenge is the opinion of many mediators that the market itself should be the arbiter of effective practice. They may think, “If people hire me to mediate, I must be a good mediator.” Another challenge is the risk that mediators with backgrounds other than the law would be disadvantaged by a system giving priority to litigation risk analysis and subject-specific expertise over core mediation skills.

There is no way to perfectly address these and other concerns. However, I believe that it is possible to develop an assessment process that could focus on core skills (such as active listening, open questioning, demonstrating neutrality, and supporting self-determination) that cut across mediation practice styles. In my experience, the question of whether or not a mediator is competent often is answered by an individual’s ability to perform these core skills and promote these underlying principles. An assessment process that focused on core skills would be valuable regardless of the mediators’ backgrounds, types of cases to be mediated, and court, community, or private context.

## **In Conclusion**

At an ABA Dispute Resolution Section conference, I heard someone thoughtfully and passionately speak out against mediator credentialing. He said (I’m paraphrasing) that credentialing was a way to preserve the status quo, prevent change, and limit access to the field for new mediators. He said that it was as if we were pulling up the entry ramps to the mediation “boat,” which was now filled with everyone who got on before this change would go into effect.

Our field has evolved, and I think that having some accessible national credentialing linked to initial training may have the opposite effect. Instead of pulling up the on-ramp, it may give new neutrals a way to establish a basic level of skill, and may give parties in

dispute and mediation programs a basic level of comfort in the process. We all know that mediation training alone doesn't make a competent mediator. We should aim higher.