Mediation in Oregon

Desk Memo

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Executive Summary

This memorandum is prepared as a comparative element in the scope of a research project on the state and development of mediation in Finland (in Finnish: *Suomalaisen sovittelun tila ja mahdollisuudet*, SUSTIMA), conducted by the University of Eastern Finland and funded by the Finnish government's analysis, assessment, and research activities (VN TEAS). It identifies a wide range of topics related to mediation in Oregon that could lead to future study or collaboration between researchers in Finland and those in Oregon.

The state of Oregon in the United States has a population of 4.2 million people, slightly more than half of whom live in the largest metropolitan area. Because roughly half of Oregon's 63 million acres is owned by the state or federal government, the state has been a hotbed of public-private disputes over land management and use. Perhaps partially because of these conflicts, Oregon has been a leader in the use and formalization of alternative dispute resolution (ADR), which encompasses mediation, arbitration, and other forms of collaborative decision making.

In the United States as a whole, the field of ADR primarily arose out of labor relations. By the 1970s, mediators and legal professionals were expanding mediation

beyond labor relations as a more durable and cost-effective alternative to litigation. In the 1990s, mediation began to be institutionalized when Congress and state legislatures passed ADR legislation. Circuit courts also began using volunteer mediators to resolve small claims and family law cases.

Throughout the state, there is a patchwork of mediation activities embedded in a variety of institutional homes, including mediation for almost all types of non-criminal court cases, labor and employment disputes, medical malpractice, educational services for students with disabilities, environmental cleanup claims, public disputes with government agencies, community disputes, and public policy disputes.

In Oregon, the 1989 legislature created the Oregon Dispute Resolution Commission to establish qualifications for those who sought to provide dispute resolution services with state funds. By the early 2000s, Oregon universities became the home for ADR practices. Functions of the Oregon Dispute Resolution Commission were moved to Portland State University's National Policy Consensus Center (NPCC) and the University of Oregon Law School. For the past fifteen years or so, the infrastructure supporting mediation and other ADR has been relatively stable in Oregon.

In Oregon, there is no licensure or certification for mediators and no clear consensus on what qualifications mediators need. Despite the lack of certification, mediators are trained and held to professional standards through attorney rules of professional conduct, mediation organizations' core standards of practice, university educational programs in conflict resolution and a range of continuing education.

The history and practice of mediation in Oregon have produced a number of lessons relevant to the institutionalization and widespread use of mediation. Those include:

- Innovation comes where the need is strong—contentious labor relations and the high cost of litigation sparked the need for alternatives.
- Oregon benefited from having the right people in the right place at the right time to champion and embrace mediation.
- In Oregon, institutional funding helped mediation take root.

- Mediation has been institutionalized in an *ad hoc* way over time, allowing for innovation.
- In most cases, it is up to the parties to select and pay for mediation services..
- Nothing in the public sphere, including mediation, is apolitical. As a result, publicly funded ADR programs must stay in touch with allies who can offer support in political settings.

There are still unresolved and emerging issues in the field. They include the following:

- Certifying and credentialing mediators (or not)
- Using mediation to reckon with past harm, for example restorative justice
- Bringing mediation tools to bear on racial and social justice
- Increasing availability of data related to the effectiveness of mediation in Oregon (and elsewhere).

There are many places where further exploration might be worthwhile and helpful to the comparative study with Finland. We are eager to continue to learn from one another about the field of mediation in our respective countries.

Introduction

This memo is intended to provide a high-level overview of mediation in the State of Oregon in the United States. In particular, it focuses on the history, practice, and institutionalization of both formal and informal mediation practices and their evolution over time. Clearly, it would be impossible to cover all aspects of mediation in Oregon in a brief memorandum. Nonetheless, this memo identifies a wide range of topics related to mediation in Oregon that could lead to future study or collaboration between researchers in Finland and those in Oregon.

This memorandum begins with a snapshot of the State of Oregon in order to understand the context in which these practices arose. Second, it offers a brief history of mediation and other forms of dispute resolution in the United States and in Oregon in particular. Third, it provides an overview of definitions and styles of mediation regularly practiced in Oregon. Fourth, this memo explores the places and institutions where mediation practices are nested and how they are supported. Fifth, it looks to professional standards, training and continuing education, and the debate over the certification of mediators. Sixth, it offers lessons learned from the Oregon experience. And, finally, it identifies some of the ongoing and emerging issues in mediation in Oregon.

Snapshot of the State of Oregon

Oregon is a state of 63 million acres in the Pacific Northwest region of the United States. Oregon was the 33rd state admitted to the Union, entering in 1859, after several years as a territory.

The population of Oregon is about 4.2 million people, three-quarters of whom are white; 15 percent of whom are Latino, Latina, or Latinx; 5 percent of whom are Asian or Pacific Islander; 2 percent of whom are African American; and 1 percent of whom are Native American or Alaska Native. The population of the state has doubled since 1970.

The state borders the Pacific Ocean to the West, Washington to the North, California to the South, and Idaho to the East. The geography, topography, and climate are quite varied, including everything from temperate evergreen rainforests to rocky coasts to an arid high desert plateau.

Portland is the largest city in the state, with a population of 645,000 in the city itself, and 2.4 million people living in the larger metropolitan area. It sits on the northern border of the state, 110 miles east of where the Columbia River empties into the Pacific Ocean. The capital city is Salem, which is situated in the middle of the Willamette Valley, 45 miles south of Portland.

Just over half of the landmass in Oregon is owned by the state or federal government, which is relevant in that public land ownership and management has been the source of some of the most notorious and ongoing conflicts in the state. In that regard, Oregon is well known for several well-documented public lands disputes, including the 1990 listing of the of the Northern Spotted Owl on the federal Endangered Species List, which effectively ended large-scale logging in Oregon's wet west-side forests; and the conflict that became known as the Sagebrush Rebellion, a movement beginning in the 1970s, which focused on restrictions (such as grazing, mining, etc.) on public lands in the arid West, including Central and Eastern Oregon. The resolution of those types of public lands conflicts is expensive, and, in many cases, impossible to resolve through litigation. As a result, the parties began to look for other ways to resolve their conflicts.

Despite—and perhaps partially because of—those entrenched environmental conflicts, Oregon has been a leader in experimenting with and formalizing mediation and other forms of dispute resolution and collaborative decision-making, which will be explored in the next section.

History of Mediation and Alternative Dispute Resolution

In the United States, the field that came to be known as "alternative dispute resolution" began with informal versions of what we now call mediation. One of the

most famous examples was a 1790 dinner involving Alexander Hamilton and James Madison at the home of Thomas Jefferson. The core of the dispute was whether or not there should be a national bank associated with the newly formed constitutional government. Hamilton was in favor; Madison was against. Using some unconventional mediation tactics, Jefferson reportedly plied the two disputants with fine wine, French delicacies, and famous Jeffersonian hospitality. In the end, Madison agreed to a federal treasury, and Hamilton agreed to moving the capitol to Washington, D.C. The deal became known as the "dinner table bargain."

In the subsequent years, there were several well-known instances of what we would now call mediation in both international and domestic affairs. Formal alternative dispute resolution, however, primarily arose out of labor relations. Though the first federal legislation to formally adopt alternative dispute resolution was the 1888 Arbitration Act that applied binding arbitration to certain railroad disputes, arbitration became much more commonly used in union-management conflicts throughout the early and mid-twentieth century. Many of the best known practitioners of dispute resolution started their careers in labor relations. By the mid-1970s, mediators and arbitrators were actively seeking to expand alternative dispute resolution to arenas outside of labor disputes, piloting concepts like the "multi-door courthouse."

In the late 1970s and early 1980s, the field began to expand rapidly. Litigation was becoming a very expensive and very slow way to resolve disputes. Arbitrators and mediators began to form professional associations. In 1981, Roger Fisher and William Ury published *Getting to Yes*, which became the definitive text on interest-based negotiations, which informed the practice of mediation for several decades. In 1983, Harvard University launched the Program on Negotiation. And in 1985, the Hewlett Foundation launched its alternative dispute resolution project, which funded many of the core programs in the states, including in Oregon.

By the mid 1980s, mediators, judges, and reform-minded lawyers were promoting mediation and other forms of alternative dispute resolution as a means to reach more resilient agreements and to avoid the extreme delays and costs associated

with litigation. In the late 1980s and early 1990s, both Congress and state legislatures began passing alternative dispute resolution legislation. Similarly, state courts began adopting judicial rules to promote settlement conferences and mediation. Circuit courts across the state began using volunteer mediators to resolve small claims and eventually family law cases.

By the beginning of the twenty-first century, most law schools offered some form of alternative dispute resolution in their curriculum and many lawyers were leaving or retiring from litigation practices to become mediators.

Oregon followed a very similar path as the rest of the country, but the development of the field was further enhanced by some extraordinary leadership. Chief Justice Edwin Peterson of the Oregon Supreme Court took on a major overhaul of the judicial department in the mid-1980s, which included a focus on alternative dispute resolution at all levels. Bryan Johnston and Susan Leeson, both faculty members at Willamette University, headed up the founding of the Dispute Resolution Center at Willamette Law School, creating a hub for dispute resolution practices in the state. Susan Leeson went on to serve on the Oregon Court of Appeals and the Oregon Supreme Court, taking her commitment to mediation and other dispute resolution practices with her. In addition, there was a cadre of mediators in the state who were eager to both expand the practice and train others in order to fulfill increased demand.

The Oregon Mediation Association was founded in 1986, with the mission of increasing professionalism among mediators and in the practice of mediation. In 1989, the Oregon Legislature created the Oregon Dispute Resolution Commission. Oregon was one of many states that created similar commissions to help support and professionalize the field of alternative dispute resolution. The purpose of the commission was to promote best practices in dispute resolution; to develop qualifications, rules, and standards for those who sought to provide dispute resolution services with state funds; and to establish dispute resolution hubs throughout the state. Throughout the 1990s and early 2000s, there were multiple efforts to both codify the practices of dispute resolution and create best practices for the field.

These efforts were reversed when the tide turned and dispute resolution commissions were abolished across the country, and university centers—such as the ones in Oregon—became the home for dispute resolution practices in states. In Oregon, the dispute resolution commission was abolished in 2005, and the functions of the commission were transferred to the University of Oregon (for community dispute resolution) and Portland State University (for public policy dispute resolution).

Eventually, the field of public policy dispute resolution became nested in an array of processes now known as collaborative governance.[1] Oregon Consensus joined Oregon Solutions in the National Policy Consensus Center (NPCC) at Portland State, forming a hub for collaborative governance and offering a range of services for Oregon agencies and communities. While Oregon Consensus focuses on collaborative agreement-seeking (formerly called public policy dispute resolution), Oregon Solutions focuses on creating the conditions for collective action. In agreement-seeking processes, the participants endeavor to arrive at a shared decision; and in collective action processes, the participants strive to achieve a shared goal by aggregating their resources. In 2011, NPCC partnered with the Policy Consensus Initiative and a group of community-based partners to found Oregon's Kitchen Table, a statewide community engagement program that helps bring the voices of ordinary Oregonians into collaborative processes.

For the past fifteen years or so, the infrastructure supporting mediation, dispute resolution, and collaborative governance in Oregon has been relatively stable, allowing for the practice to proliferate and take hold in a wide array of contexts. Though there have been ups and downs in state funding and attitudes toward mediation and other dispute resolution practices, the infrastructure and funding has remained basically intact.

[1] In 2007, Chris Ansell and Alison Gash wrote an article entitled "Collaborative Governance in Theory and Practice" that applied many of the principles and practices of public policy dispute resolution to a broader range of public issues.

With regard to statewide policy, the most innovative new legislation of the last few years has been related to restorative justice. The 2019 legislature applied a restorative justice lens to both juvenile justice reform and criminal cases involving a finding of mental illness. The community dispute resolution centers are supporting many of the local efforts in using restorative justice to reduce youth recidivism.

In addition, the Oregon Department of Education has made restorative justice a high priority in its long-range strategy to strengthen school communities and increase graduation rates. Oregon's community dispute resolution centers have also been supporting restorative justice programs in schools across the state. According to the Oregon Office for Community Dispute Resolution's most recent report, a project piloting restorative justice at Central Medford High School significantly reduced other disciplinary actions by the schools over three consecutive academic years.

Definitions

Below are some of the definitions used in state statute and Oregon administrative rules, as well as the definition used by the Oregon Mediation Association.

<u>Oregon Statutes</u>

Oregon law defines dispute resolution services as including "but . . .not limited to mediation, conciliation and arbitration." (ORS 36.110(4))

Oregon law defines mediation as: "a process in which a mediator assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution of the controversy and includes all contacts between a mediator and any party or agent of a party, until such time as a resolution is agreed to by the parties or the mediation process is terminated." (ORS 36.110(5))

Oregon Judicial Department

The courts define arbitration as: "a procedure much like a trial, but less formal. Instead of a decision being made by a judge or jury, an arbitrator hears the evidence and makes a decision."

Model Administrative Rules

As in all states, executive branch agencies are required to create administrative rules that govern many of the details of how they function. The Oregon Attorney General's Office promulgates model administrative rules for state agencies (and others) to use and adapt in creating their own rules.

In Oregon, the attorney general has adopted a model rule related to collaborative dispute resolution. That rule suggests that an agency may use collaborative dispute resolution to resolve current or potential disputes:

> Unless otherwise precluded by law, the agency may, in its discretion, use a collaborative dispute resolution process in contested cases, rulemaking proceedings, judicial proceedings, and any other decision-making or policy development process or controversy involving the agency. Collaborative dispute resolution may be used to prevent or to minimize the escalation of disputes and to resolve disputes once they have occurred. (OAR 137-005-0010(1))

The model rules are very flexible in their approach and also allow for a broad range of processes to meet the agency's and the other parties' needs:

> The collaborative means of dispute resolution may be facilitated negotiation, mediation, facilitation or any other method designed to encourage the agency and the other participants to work together to develop a mutually agreeable solution. The agency may also consider using neutral fact-finders in an advisory capacity. (OAR 137-005-001(3))

Oregon Mediation Association

The Oregon Mediation Association defines mediation as "a conflict resolution process in which one or more impartial persons intervene in a conflict with the disputants' consent and help them negotiate a mutually acceptable agreement. The

mediator does not take sides or decide how the dispute should be resolved."

Styles of Mediation

In Oregon, as in the rest of the country, there are three primary types of mediation practiced—evaluative, facilitative, and transformative. The three styles are practiced in a variety of contexts, and a combination of two or more of them may be used in any given process.

Evaluative Mediation

Evaluative mediation is practiced most often in the context of litigation or threatened litigation. An evaluative mediator first learns about the nature of the dispute and the merits of each party's potential claim or defense. In seeking to settle the dispute, the evaluative mediator often points to the potential for success or failure based on the strength of each party's case. In evaluative mediation, the parties are often in separate rooms, with the mediator moving back and forth between them. It is often assumed that an evaluative process might be complete after a single or very few meetings.

The mediator is typically an attorney and sometimes has subject-matter expertise. In the case of evaluative mediation, the mediator often proposes an outcome or at least elements of an outcome based on the mediator's opinion about how the case would be resolved by litigation or other means. Oregon makes clear that mediators working in the context of litigation will practice evaluative mediation at least some of the time. (See ORS 36.196(3) ("The mediator may propose settlement terms either orally or in writing."))

Facilitative Mediation

Facilitative mediation is used most often and in the most diverse circumstances. At its heart, facilitative mediation is related to interest-based negotiation. It is designed to assist the parties in identifying their own interests, recognizing where they overlap and diverge from the other party or parties' interests, and to assist the parties in

reaching a resolution that maximizes the satisfaction of those interests. While the mediator designs and structures the process, the outcome is determined by the parties. It is practiced broadly and across subject areas.

In most instances, it is assumed that the basic mediation style is facilitative unless the mediator or the parties indicate otherwise. This is demonstrated in the OMA Consumer Guide to Mediation:

> Mediation is a consensual process in which an impartial third person assists two or more parties to reach a voluntary agreement which resolves a dispute or provides options for the future. The mediator helps the parties identify their individual needs and interests, clarify their differences, and find common ground. A few points to keep in mind:
>
> • The parties are the decision makers; the mediator has no authority to render a decision.
>
> • The parties determine the issues that need to be addressed; the mediator guides the process and maintains a safe environment.
>
> • The mediator models and facilitates active listening skills.
>
> • The mediator does not give advice to the parties, legal or otherwise. However, the mediator may help the parties generate options for the parties to evaluate, possibly with the advice and assistance of another professional.
>
> • The process is usually confidential, with any exceptions disclosed and discussed prior to beginning a mediation.
>
> • The success of mediation rests largely on the willingness of the parties to work at understanding each other and to seek solutions that meet each other's needs.

(See appendix A for more details.)

Transformative Mediation

The third form of mediation is called "transformative mediation," which is an offshoot of facilitative mediation. Transformative mediation centers the parties even more than facilitative mediation and focuses less on the presenting dispute and more on

"transforming" the relationship between the parties. In a transformative mediation process, the parties not only jointly develop the outcome, but they also largely structure the process. There is much less pressure toward resolution of the presenting conflict, fully allowing the parties to decide that they do not want to reach resolution. In addition to other contexts, transformative mediation is sometimes associated with restorative justice or other victim-offender mediation practices.

The Continuum of Mediation Practice

In practice, there is not a bright line between the three types of mediation styles. Instead, these styles occur on a continuum, with the fewest interventions by the mediator on the transformative end to the most interventions by the mediator on the evaluative end.

The parties, particularly in multi-party cases, may have different experiences and therefore expectations of how a mediation should proceed. Parties from the private sector and public regulatory agencies are often very familiar with evaluative mediation, so they may bring in the expectation that the mediator make predictions about the outcome of a potential case or other alternatives to settlement.

In other types of mediation in Oregon, and particularly in public policy mediation, mediators are much more likely to use facilitative mediation, or in some cases, transformative mediation. In the instance of public policy mediation, the parties often have strong input on the question of whether they are actually seeking a negotiated outcome and on the design of the process at the beginning of the process, with a stronger and stronger focus on resolution as the case proceeds. In that sense, a public policy mediation process may often begin with a more transformative approach, and then move more toward a facilitative approach as the parties near resolution. It is worth noting, however, that a complex, multi-party public policy mediation case may involve elements of all three styles, as suggested in the example of the SageCon project described below.

It is worth noting that Oregon mediator and University of Oregon *pro tem* faculty member Sam Imperati is a national expert on the continuum of mediator styles and their implications for case outcomes, mediator ethics, and standards of practice. (See Samuel J. Imperati, "Mediator Practice Models: The Intersection of Ethics and Stylistic Practices in Mediation," 706 *Willamette Law Review* 33:3, Summer 1997.)

Where Mediation is Practiced, Institutionalization, and Funding Sources

Throughout the state, there is a patchwork of mediation activities embedded in a variety of institutional homes, with varied sources of support and funding.

Judicial Department

There are opportunities for alternative dispute resolution in almost all types of non-criminal cases that come before the Oregon and federal courts.

Arbitration

Oregon law requires mandatory arbitration in cases involving less than $50,000 and in contested divorce cases involving only the division of property (ORS 36.405(1)).

In cases involving mandatory arbitration, the court sends the parties a list of three potential arbitrators from which they can choose. The parties may choose one of the listed arbitrators or another arbitrator whom they choose together. The standards for court-appointed arbitrators and the compensation level are set by the Oregon Judicial Department.

Mediation

In most Oregon counties, courts require mandatory mediation in divorce cases involving child custody disputes. Parties may seek a waiver from mandatory mediation if there is a history of domestic violence.

In most cases, mediation is also mandatory in cases involving small claims, adult guardianship, evictions and landlord-tenant disputes, and commercial and other civil litigation.

In the case of mandatory mediation, qualifications for court-connected mediators are established by the Oregon Judicial Department. Those mediators work for a set hourly rate, and, in some instances, the hours available to the parties are limited. The Oregon Judicial Department establishes the minimum qualifications and training requirements for mediators. Mediators who wish to be appointed as court-connected mediators submit their qualification documentation to local circuit courts that then review and approve those requests. (See appendix C for more details.) The local courts then maintain a list of court-connected mediators from which the parties may choose.

Overall, fewer than one percent of all civil cases filed go to trial in Oregon. That means that more than 99 percent of them are settled some other way—through arbitration, negotiation, a settlement conference with a judge, or through mediation with a private mediator. Though the Oregon Judicial Department does not keep specific records on mediation, it does keep records on the number of cases tried in front of either a judge or a jury. For example, in 2019[2], there were 59,422 civil cases filed in Oregon. Of those cases, 350 were tried in a bench trial (before a judge) and 169 of them were tried in a jury trial. The rest were resolved in some other way. (See appendix B for more details.)

Most mediators in civil matters are current and former attorneys who have a private mediation practice. In most instances, the parties jointly agree on a mediator and how that mediator will be compensated.

Criminal and Juvenile Cases

Even in criminal cases, most cases are settled with some type of agreement, though the majority of those are negotiated by the lawyers and parties without the help

[2] For the purposes of this memo, we are using 2019 statistics. 2020 statistics are available, but the courts—like all institutions—were affected by the COVID-19 pandemic, potentially skewing the statistics.

of a mediator. In addition, there are numerous local programs that provide support for victim-offender mediation. Those programs mostly function outside the judicial system, though some of the referrals come from the court or from some other party in the criminal justice system. The vast majority of the cases referred to victim-offender mediation involve juvenile offenders.

Labor and Employment Disputes

As discussed above, many of the dispute resolution practices that have become mainstream first took hold in labor relations disputes. In the United States, there is a distinction between "labor law," which governs unions and other collective relationships between employees and their employers, and "employment law," which governs the relationships between individual employees and their employers and disputes regarding terms of employment, working conditions, etc.

In Oregon, in labor matters, strike-eligible public unions[3] are not permitted to strike until they have participated in mandatory mediation. When public unions are prohibited by law from striking, the union and management are required to participate in both mediation *and* arbitration.

Mediation is often used in ordinary employment disputes as well, and employers frequently hire mediators to resolve ordinary workplace disputes between employees or between supervisors and employees. The employer typically pays the costs of mediation.

Medical Mediation

In 2014, the Oregon Legislature passed a bill permitting patients and their families to enter into mediation with medical providers who are alleged to have

[3] In Oregon, many public employees are members of labor unions. Most of those unions are legally permitted to go on strike if they are unable to reach a collective bargaining agreement with their employers. Some workers, however, are not permitted to strike, even if they have reached impasse. Most of those workers are employed in public safety agencies, such as the police force, corrections (jails and prisons), prosecutors' offices, etc.

committed a medical error. The law is intended to replace costly and time-consuming malpractice claims in court and to boost the reporting of medical errors. The program is overseen by the Oregon Patient Safety Commission, but the patient and the healthcare provider are ultimately responsible for selecting and hiring a mediator should the parties wish to pursue mediation or facilitation. (ORS 31.250).

Educational Mediation

The Oregon Department of Education provides a mediation program for disputes involving the needs of students with disabilities and other special education students. These tend to involves disputes over whether individual schools are providing the necessary services for students with special needs or whether the student is correctly placed in a classroom. The program is voluntary, and both parents and educators must agree to it, but if the parties opt for mediation, the Oregon Department of Education selects the mediator and pays for the mediation.

There are also a variety of school-based mediation programs, which employ tools such as peer mediation and restorative justice. Though the state department of education strongly encourages restorative justice, most of the on-the-ground programs are *ad hoc* and are deployed on a district-by-district or school-by-school basis. Community mediation programs (discussed below) often provide technical assistance and training in the school-based programs. There are a variety of public and private grant programs to support school-based programs that are designed in part to help keep young people out of the criminal justice system.

Environmental Cleanup Claims

In 2014, the Oregon Legislature passed a bill to try to resolve some very specific disputes involving insurance coverage of environmental cleanups. Among other things, the bill requires insurance companies to participate in nonbinding mediation for cases involving certain environmental cleanup claims. The Oregon Department of Justice maintains a list of qualified mediators for these cases. (ORS 465.484)

Disputes Involving State Agencies

The Oregon Department of Justice "encourages the use of collaborative problem-solving processes, which enable decision-makers and affected parties to jointly engage in problem-solving procedures and which produce mutually beneficial agreements." Often, those processes require the agency to hire a mediator or facilitator to aid the parties. Until this year, the Department of Justice has maintained a complete roster of qualified mediators and facilitators whom agencies may contract with should they need their services. Though the person-to-person mediation roster is still maintained by the Department of Justice, Oregon Consensus has recently taken over the public policy dispute resolution/collaborative governance roster. Once the agency has selected a mediator or a facilitator from the roster, the agency is responsible for executing the contract and paying the mediator or facilitator. It is worth noting that some of the work contemplated by the Department of Justice involves public policy dispute resolution and/or agreement-seeking and overlaps with the work of Oregon Consensus detailed below.

Community Dispute Resolution

The Oregon Office for Community Dispute Resolution was moved to the University of Oregon School of Law following the dissolution of the Oregon Dispute Resolution Commission. The community dispute resolution office oversees and supports fifteen dispute resolution centers in twenty-four counties.

The local centers train and support volunteer mediators to provide mediation assistance in community-based disputes. They also provide a wide range of services, including school-based restorative justice, landlord-tenant assistance, and training on dialogue, mediation, and facilitation. The community dispute resolution program was originally partially funded through a percentage of court filing fees. Now, that program is also funded by a lump-sum legislative allocation.

Public Policy Mediation/Collaborative Agreement-Seeking

Oregon Consensus is the state's public policy dispute resolution center, and is the hub for collaborative agreement-seeking. After the Oregon Dispute Resolution Commission was abolished, Oregon Consensus was formed at Portland State University to serve as the state's program for public policy dispute resolution and collaborative agreement-seeking.[4]

As they describe their work: "Oregon Consensus helps people reach agreement on public policy issues. By public policy, we mean the actions that governing bodies take, in the public interest, to address society's needs or problems." Oregon Consensus projects tend to be longer-term and complex, and they work on anywhere from eight to twelve cases per year. Originally, as with the Community Dispute Resolution Centers, Oregon Consensus[5] was partially funded through a percentage of court filing fees. Now, that program is partially funded by a lump-sum legislative allocation. The rest of their budget is provided through fee-for-service contracts and grants.

There are a number of examples that illustrate how collaborative agreement-seeking works in Oregon. We offer one complex example that averted serious environmental and economic consequences and involved a large number of stakeholders. In 2010, the United States Fish and Wildlife Service (USFWS) determined that the greater western sage-grouse should be listed under the Endangered Species

[4] Collaborative agreement-seeking includes public policy dispute resolution, but also includes other multi-party processes that are less mired in conflict. Collaborative agreement-seeking is grounded primarily in negotiation theory. The work of the collaborative agreement-seeking group is to surface the various interests and perspectives, and then to align those interests to find a window of agreement.

[5] As mentioned above, Oregon Consensus has a partner organization—Oregon Solutions—which assists communities in collective action projects that do not involve conflict or classic mediation but require the complex coordination of activities to reach a shared goal. Oregon Solutions receives some funding from the legislature, and the rest of its activities are supported by fee-for-service contracts and grants.

Act. An endangered species listing by USFWS can result in the restriction of human activities (industry, recreation, etc.) that interfere with the listed animal's habitat.

In this instance, the sage-grouse is a ground-dwelling bird that can fly fast but not far. They are known for their elaborate mating rituals in which the males puff up their bright yellow throat sacks and engage in a strutting "dance" to attract the females. After mating, the hens nest on the ground, using sagebrush and tall grass for cover. Because of their need for both space and a very specific landscape, sage-grouse are particularly susceptible to habitat disruption, predators, and development. As a result of increased human presence, wildfire, and the spread of invasive species, by 2010, the Western United States had experienced a twenty percent loss in the sage-grouse population, with further losses predicted. Though they determined that the listing was warranted, the federal government did not immediately include the sage-grouse on the endangered species list, because other, higher priority species took precedence, and resources were limited. Shortly thereafter, a federal court gave USFWS approximately five years to make a final determination about whether or not to list the greater western sage-grouse as an endangered species.

The decision whether or not to list the sage-grouse was a significant one. There are more than 43 million acres of sagebrush habitat in the western United States, with 18 million of those acres in Oregon alone. That habitat spans public and private lands and is also home to ranchers and other human residents, as well as to heavily-used outdoor and recreational sites. As a result, the decision to list the sage-grouse would have had far-reaching consequences for Central and Eastern Oregon, along with much of the rest of the Intermountain West.

Once the court set the timeline, the Governor of Oregon, in partnership with the US Department of the Interior Bureau of Land Management, and the United States Natural Resource Conservation Service, convened a large cross-sector group to develop a collaborative approach to safeguard the sage-grouse and its habitat while also protecting the economic well-being of the region. The group coalesced as the Sage-

Grouse Conservation Partnership (SageCon), which ultimately engaged hundreds of people and dozens of agencies and organizations in the effort to meet those dual goals.

Oregon Consensus staff members worked with the collaborative governance group to form working groups to deal with everything from habitat impact mitigation to wildfire and invasive species.

The collaborative governance group met for over three years, simultaneously coordinating their work with eleven other Western states to develop the Greater Sage-Grouse Conservation Strategy, which resulted in a detailed plan and, significantly, in the USFWS declining to list the sage-grouse as an endangered species

In a report evaluating the process, the writers concluded (among many other things):

> Interviewees felt that having a neutral facilitator and an engaged project manager created an environment of mutual respect, fostered trust, mitigated power differentials, and helped convey a commitment to timely results. Having a dedicated project manager moved the process forward by providing a practical problem-solver and someone to conduct shuttle diplomacy and help subgroups negotiate components of the overall outcome. The SageCon leadership group, which was composed of the facilitation team, the project manager, conveners, and a few key members of the full group, also helped the project adapt nimbly to internal and external policy developments.

(See appendix D for additional details.)

It is worth noting that the Oregon Consensus facilitator and project manager spanned the range of mediator styles listed above, though they relied most heavily on facilitative techniques.

Standards, Training, Capacity Building, and Professionalization of the Field

In Oregon, there is no licensure or certification for mediators. At this point, anyone can deem themselves a mediator and begin taking cases. As the Oregon Mediation Association put it: "In Oregon, as in most states, a person can offer private mediation services without taking a class, passing a test or having a special license or

certification." They went on to say: "There is currently no clear consensus on what qualifications mediators need in order to perform competently in the many and varied contexts in which mediation is practiced. Currently in Oregon, as in most states, there is no process for a person to become certified or licensed to provide mediation services."

Nonetheless, there have been several efforts to improve training, set standards, and professionalize the field. At various points in Oregon's history, there have been conversations about certifying mediators, but no clear consensus has been reached. Below are some of the ways in which mediators are trained and held to professional standards.

Attorney Rules of Professional Conduct

Lawyers who are serving as mediators are bound by the rules of professional conduct that govern attorneys. Most of those rules have to do with ethical issues, such as avoiding conflict of interest, and do not lay out standards of practice.

The American Bar Association (ABA) (along with the American Arbitration Association and Association for Conflict Resolution) does have a model standard of conduct for mediators. (See appendix E.) The model standard does not have a binding effect on lawyer-mediators or state bar associations, but it does provide a template for states that are seeking to create their own standards of conduct. The nine standards include: 1) self-determination; 2) impartiality; 3) conflicts of interest; 4) competence; 5) confidentiality; 6) quality of the process; 7) advertising and solicitation; 8) fees and other charges; 9) advancement of mediation practice. (See appendix E for more details.)

Core Standards of Practice

Around the same time, the Oregon Mediation Association also developed core standards for the practice of mediation. (See appendix F.) Again, the standards are non-binding. Though the core standards clearly draw on the ABA model, they are more expansive when it comes to the nuts-and-bolts practice of mediation. The preamble states, in part: "These Core Standards guide mediators in demonstrating their

professionalism and represent a next step in the ongoing development of mediation as a tool that truly allows participants a viable and reliable choice when determining the appropriate manner in which to resolve their differences."

There are ten standards:

I. SELF-DETERMINATION: Mediators respect, value, and encourage the ability of each participant to make individual decisions regarding what process to use and whether and on what terms to resolve the dispute.

II. INFORMED CONSENT: To fully support Self-Determination, mediators respect, value, and encourage participants to exercise Informed Consent throughout the mediation process. This involves making decisions about process, as well as substance, including possible options for resolution. Initially and throughout the mediation process, mediators further support Self-Determination by making appropriate disclosures about themselves and the specific mediation approaches they use.

III. IMPARTIAL REGARD: Mediators demonstrate Impartial Regard throughout the mediation process by conducting mediations fairly, diligently, even-handedly, and with no personal stake in the outcome. Mediators avoid actual, potential, or perceived conflicts of interest that can arise from a mediator's involvement with the subject matter of the controversy or the participants, whether past or present, that reasonably raise a question about the mediator's Impartial Regard. Where a participant or the mediator questions the mediator's ability to give Impartial Regard and the issue cannot be resolved, the mediator declines to serve or withdraws if already serving.

IV. CONFIDENTIALITY: Confidentiality is a fundamental attribute of mediation. Mediators discuss confidentiality issues as soon as practical and before confidential information is provided by anyone. Mediators are aware of, comply with, and make participants, representatives, and others in attendance aware of (or determine they already are aware of) laws and regulations regarding confidentiality, non-discoverability, and inadmissibility of mediation communications, as well as any applicable exceptions.

V. PROCESS AND SUBSTANTIVE COMPETENCE: Mediators fully and accurately represent their knowledge, skills, abilities, and limitations. They mediate only when they offer the desired approach and possess the level of substantive knowledge, skills, and abilities sufficient to satisfy the

participants' reasonable expectations they participate with an open mind throughout the process.

VI. GOOD-FAITH PARTICIPATION: Mediators explain to the participants, representatives, and others in attendance that they can improve the mediation process and probability of success when they participate with an open mind throughout the process.

VII. FEES: Mediators inform participants of the basis for any mediator compensation, fees, and costs, including the source of the payment, as soon as practical and prior to substantive discussions. Mediators charge reasonable fees, considering, among other things, the mediation service, the type and complexity of the matter, the expertise of the mediator, the time required, and the rates customary in the community.

VIII. ADVERTISING AND SOLICITATION: Mediators are truthful and not misleading by omission in advertising and solicitation activities. Mediators do not make promises or guarantees of specific results.

IX. DUAL ROLES AND HYBRID PROCESSES: Mediators engage only in the role(s) to which the participants consent during mediation or any hybrid process that includes mediation, e.g., "mediation - arbitration" ("med-arb") or "arbitration - mediation" ("arb-med"). Mediators do not provide participants with legal advice, therapy, counseling, or other professional services during mediation without the prior Informed Consent of the participants. Mediators do not engage in any other services for any of the participants involving the same or significantly related issues, unless the other participants provide their Informed Consent. Before providing such services, mediators consider the impact that providing additional services for any participant may have on the other participants' views of the mediator's Impartial Regard.

X. MEDIATION PRACTICE: Mediators act in a manner that enhances the integrity and quality of the mediation field.

(See appendix F for more details.)

Training and Education

Mediators and those who wish to pursue an interest in mediation have a range of opportunities to learn more through both degree-granting and non-degree programs.

Academic Programs

There are programs in dispute and conflict resolution at the University of Oregon, Oregon State University, and Portland State University. There is also a conflict resolution program at Willamette University Law School and a course on alternative dispute resolution at Lewis and Clark Law School. Finally, there is a graduate certificate program in collaborative governance offered jointly through the public administration department and the National Policy Consensus Center at Portland State University.

Though the details of the curriculum for each program are beyond the scope of this memo, each university has its own focus and faculty that have a wide-range of interests. There is a good deal of collaboration between the faculty of University of Oregon and Portland State University, particularly in the area of collaborative governance.

Continuing Education

Though there are no formal statewide requirements for mediators in Oregon, there are several places where mediators may pursue additional education, including: 1) the Oregon Mediation Association; 2) community mediation centers; 3) university-based programs; 4) the Oregon State Bar Alternative Dispute Resolution Section; and 5) private trainers. There is also a long list of national trainers and educational providers that provide training to Oregon mediators.

Though there are no overarching statewide standards, the Oregon Judicial Department does require court connected mediators to complete a basic mediation curriculum. The department requires that mediators have undergone training that includes at least eight elements (see appendix G):

1. An understanding of conflict resolution and mediation theory;

2. How to effectively prepare for mediation;

3. How to create a safe and comfortable environment for the mediation;

4. How to facilitate effective communication between the parties and between the mediator and the parties;

5. How to use techniques that help the parties solve problems and seek agreement;

6. How to conduct the mediation in a fair and impartial manner;

7. An understanding of mediator confidentiality and ethical standards for mediator conduct adopted by Oregon and national organizations; and

8. How to conclude a mediation and memorialize understandings and agreements.

Mediators who work in the area of family law and child custody are required to participate in some additional content-specific training related to child welfare and family dynamics.

Proposed Certification

Though there is not a statewide licensure or certification process for mediators, many of the state agencies and other government and private entities that regularly hire mediators do have training and experience requirements established by statute or rule.

In addition, the Oregon Mediation Association continues to work on a certification process and has formed a Mediator Certification Advisory Group. That group has created draft credentials on which they are currently seeking input. (See appendix H.) As they point out, certification does not indicate mediator competence, but instead is a set of credentials.

The goal of the certification process is "to take one evolutionary step forward to enhance the quality of mediation services delivered and provide consumers with information to make informed decisions when choosing a mediator." Another goal is "to 'get ahead' of any attempt by other entities who might try to regulate the field."

The proposed certification process would include:

1) a series of courses that includes basic mediation, equity and social justice, core standards and practices, confidentiality, the court system, public records, and basic relevant legal concepts;

2) practical experience or a supervised practicum;

3) a quiz on confidentiality and core standards;

4) an agreement to abide by standards and practices;

5) an agreement to seek participant feedback;

6) ongoing coaching;

7) continuing mediator education; and

8) agreement to use the mediator complaint process

(See appendix H for more details.)

There is not clear agreement about whether mediators should be certified at all. In fact, there is significant opposition to the idea. The opponents of certification see it as contrary to the basic philosophy of mediation, which envisions ordinary people helping others solve conflicts outside the legal context. Some of these dispute resolution processes (such as small claims, community disputes, and restorative justice) rely heavily on volunteers and peer mediators, and certification would vastly change the practice and culture in those arenas. Opponents also see certification as a kind of gatekeeping, preventing people of color and other members of historically underrepresented communities from joining the field. These opponents argue that the best strategy to achieve some of the same goals is to educate the public about how best to choose an appropriate mediator and hold them accountable.

Oregon Mediation Association

The Oregon Mediation Association (OMA) is the primary voluntary association of mediators in Oregon. The mission of the organization is "to help Oregonians transform the way they confront and resolve conflict in their personal lives and in their communities." Currently, there are approximately 350 members of OMA. Membership is open to anyone with an interest in mediation, and membership dues are on a sliding scale. As detailed above, OMA has been very involved in the discussion around mediator certification and other efforts to professionalize the field of mediation. In addition, OMA holds trainings throughout the year as well as a multi-day annual conference. The sessions at the annual conference span a wide range of topics and practice areas.

OMA also maintains a list of mediators, all of whom have committed to "the OMA Core Standards of Practice and OMA Mediator Complaint Process." They also provide a "Consumer Guide to Mediation." (See appendix A for details.)

Researchers in Oregon

There are scholars and researchers studying and writing about mediation at the University of Oregon, Portland State University, and Willamette University (in addition to other institutions). There is a list of full-time and part-time faculty available on each of their websites. If you have particular research interests, we would be happy to help facilitate a connection to Oregon researchers.

Lessons Learned

The history and practice of mediation in Oregon have produced a number of lessons. Of course, practitioners have learned a good deal about the mechanics of mediation and have become increasingly more sophisticated in designing and executing effective processes, but there are also lessons that are relevant to the institutionalization and widespread use of mediation. Those include:

1. Innovation comes where the need is strong In the United States, the contentiousness, disruption, and violence of labor relations first sparked the need for alternatives. Then, the high cost and profound inefficiency of litigation caused judges and lawyers to look to mediation for relief. As practitioners in other arenas have struggled with their own challenges, mediation and dispute resolution have spread in those contexts as well.

2. As it happens with many change movements, Oregon benefited from having the right people in the right place at the right time. As interest in dispute resolution began to sweep across the country, the Chief Justice of the Supreme Court, key law school faculty members, and eager practitioners were ready to champion and embrace mediation and find a home for it in the courts, in law schools, and in other institutions That institutionalization allowed mediation and other forms of dispute resolution to take root in Oregon, and we are still reaping the benefits of that enthusiasm and leadership up to the present time.

3. In Oregon, a critical mass of mediators and other practitioners helped support the proliferation of dispute resolution practices. As demand increased, those practitioners were available not only to provide services but also to offer training. Eventually, universities and other institutional actors picked up some of the training and education functions.

4. Mediation, other forms of dispute resolution, and collaborative governance have been institutionalized in an *ad hoc* way over time. In other words, the spread of mediation and dispute resolution was not based on some form of omnibus legislation, but rather was applied in very particular policy settings, like environmental remediation, family law, and natural resource public policy disputes. This allows for innovation in particular practice areas, but it also creates gaps in coverage in places where mediation and other dispute resolution tools might be helpful.

5. In most cases, it is up to the parties to select and pay for mediation services. Without clear certification standards, the burden often falls on the parties to accurately assess what they need from a mediator at each stage of the process. There is

disagreement about whether individual parties should have to make these determinations.

6. In Oregon, institutional funding helped mediation and other forms of dispute resolution take root. Legislative funding (through the allocation of court filing fees) of the Dispute Resolution Commission offered enough support so that the practice of mediation could take hold and eventually proliferate. Ongoing funding has sparked innovation, particularly in the community dispute resolution and collaborative governance arenas.

7. Nothing in the public sphere, including mediation, is apolitical. In the same way that political and social winds blew mediation into favor, eventually they blew it right back out, at least in some political circles, making it vulnerable to cuts. As a result, publicly funded programs like Oregon Consensus, Oregon Solutions, and the Oregon Office for Community Dispute Resolution must stay in touch with allies and community advocates who can offer support in the legislature and other political settings.

Unresolved and Emerging Issues

Though the structure, supporting institutions, and practice of mediation have been relatively stable for the past fifteen years or so, there are still unresolved and emerging issues in the field. In addition to the professionalization questions raised above, many of the emerging issues involve social and racial justice and diversity, equity, and inclusion. Here are some of the issues the field is facing:

1. *Certification and credentialing:* As set forth above, there is a long-term and ongoing discussion about how to ensure that mediators are serving the public well while still staying true to the philosophy of mediation. It is almost certain that the conversation about training, education, and certification will continue.

3. *Justice, equity, diversity, and inclusion in the field:* The practitioner field in Oregon is overwhelmingly white and aging. There is an ongoing discussion about the renewal and diversification of the field. Proposals range from scholarships to hiring

practices to examining the foundations of mediation itself to ensure its relevance to communities of color and historically underrepresented communities

4. *Processes to reckon with past harm:* There is a heightened interest in employing some of the tools of mediation to processes that consider and reckon with past harm. Some of those processes involve individual harm, like restorative justice, which is practiced sporadically in Oregon.

In addition, there is interest in processes that are intended to redress community harm. There is a particular interest in exploring truth-and-reconciliation-type processes to address long-term issues like racist policing and discriminatory housing processes. The City of Portland is exploring a truth-commission model to address police violence.

5. *Social Justice:* As set forth above, public policy mediation took hold in the natural resource arena, and has a strong record of success. As racial and social justice take center stage in some of the most significant public policy conflicts in Oregon, policymakers and members of the mediation community are working to determine how the tools of mediation might be brought to bear on those issues.

6. *Effectiveness of Mediation*: We understand that you are interested in data related to the effectiveness of mediation in Oregon (and elsewhere). That data is not readily or publicly available. It may be an area for further study.

Conclusion

This is intended to provide a high-level summary of the history and practice of mediation in the State of Oregon. Of course, there are many places where further exploration might be worthwhile and helpful to the comparative study with Finland. We are eager to continue to learn from one another about the field of mediation in our respective countries.

Appendices

Appendix A	Oregon Mediation Association, *Consumer Guide to Mediation*
Appendix B	Oregon Judicial Department, *Cases Tried Analysis – Manner of Disposition* (2019)
Appendix C	Oregon Judicial Department, *Court Connected Mediator Qualifications Rule* (2015)
Appendix D	Jennifer H. Allen *et. al.*, *Advancing Collaborative Solutions: Lessons for the Oregon Sage-Grouse Conservation Partnership (SageCon)* (2017)
Appendix E	American Arbitration Association *et al.*, *Model Standards of Conduct for Mediators* (2005)
Appendix F	Oregon Mediation Association, *Core Standards of Mediation Practice* (April 23, 2005)
Appendix G	State Court Administrator Guidelines Relating to Oregon Judicial Department Court-Connected Mediator Qualifications Rules Section 3.2 Basic Mediation Curriculum
Appendix H	Oregon Mediator Certification Advisory Group, *Concept Overview: Background, Rationale, and Goals for Creating the Oregon Credentialed Mediator*

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Appendix A: Oregon Mediation Association, *Consumer Guide to Mediation*

CONSUMER'S GUIDE TO MEDIATION

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I. Purpose of This Guide

This guide is for anyone looking for a mediator. This Guide begins the educational process of making an informed choice of mediator, by presenting a framework for understanding mediator competence. This Guide will be especially useful to people who have been referred to mediation and must choose a mediator, mediation programs and court systems that provide information to consumers, and to lawyers or other professionals advising their clients and judges who refer litigants to mediation.

> **Mediation** is a conflict resolution process in which one or more impartial persons intervene in a conflict with the disputants' consent and help them negotiate a mutually acceptable agreement. The mediator does not take sides or decide how the dispute should be resolved.

II. Mediation: What It Is and What It Is Not

A consumer needs at least a basic understanding of mediation to profit fully from this Guide. To learn more about mediation, consult books, articles and pamphlets at your local library, community mediation center, courthouse, bookstore, or mediator's office. The information contained here is necessarily brief, but does give an overview of the essential points which should be kept in mind when choosing and working with a mediator.

What Mediation Is

Mediation is a consensual process in which an impartial third person assists two or more parties to reach a voluntary agreement which resolves a dispute or provides options for the future. The mediator helps the parties identify their individual needs and interests, clarify their differences, and find common ground. A few points to keep in mind:

- The parties are the decision makers; the mediator has no authority to render a decision.
- The parties determine the issues that need to be addressed; the mediator guides the process and maintains a safe environment.
- The mediator models and facilitates active listening skills.

- The mediator does not give advice to the parties, legal or otherwise. However, the mediator may help the parties generate options for the parties to evaluate, possibly with the advice and assistance of another professional.
- The process is usually confidential, with any exceptions disclosed and discussed prior to beginning a mediation.
- The success of mediation rests largely on the willingness of the parties to work at understanding each other and to seek solutions that meet each other's needs.

What Mediation Is Not

Mediation is not litigation. Litigation is the formal legal process in which parties use the court process to resolve their disputes. The judge or jury determines the outcome of this process, unless a negotiated settlement is reached first.

Mediation is not arbitration. Arbitration is a form of private adjudication, where parties present evidence and argument to an impartial third person (the arbitrator). The arbitrator then reviews the evidence and renders a decision which may be imposed on the parties. The arbitrator determines the outcome, much as a judge determines the outcome of a trial and the arbitrator's decision may or may not be binding on the parties.

Mediation is not counseling or therapy. Although the process is often therapeutic for the parties, the primary goal of mediation is to reach an agreement, not to resolve the feelings associated with the dispute.

What is the difference between a mediator and an attorney? In many instances a mediator may be an attorney, but mediators and attorneys have different roles. Traditionally, attorneys represent the interests of their clients, advise them of their rights, responsibilities and obligations, discuss their legal options, and advocate on behalf of their client. Mediators, however, do not represent either side of a dispute, even if the mediator is also an attorney. Mediators assist people in dispute to communicate with each other in an effort to resolve their conflict.

What Sets Mediation Apart

- Mediation approaches disputes from a fresh perspective. Instead of looking backward to decide who is at fault, it looks forward to what agreements the parties can reach to resolve their disputes or govern their future interactions.
- The mediator uses his or her skills to help parties understand each other's needs and interests to find common ground. From these, the parties begin to generate options.
- The options are not based on "giving in" or compromise of any principle. Instead, they are based on a search for creative ways to resolve differences and meet identified needs.
- Agreements are reached only when the parties all agree. Because mediated agreements are voluntary, they are more likely to be followed by all parties.

What Are the Steps to Mediation?

Different mediators describe the process differently. However, there are several common stages that the parties move through with the assistance of the mediator.

1. **The Introduction.** The mediator sets the stage, discusses the ground rules and describes the process.
2. **Information Sharing**. The parties have an opportunity to share information and describe their desired outcomes.
3. **Defining the Issues and Understanding Interests**. The parties discuss the issues that need attention and the underlying needs and interests they hope to satisfy.
4. **Generating Options Toward a Solution**. The parties generate and evaluate options that will best satisfy their needs and interests.
5. **Writing the Agreement.** If agreement is reached and the parties desire a written record, the mediator may write or help the parties write their agreement as an outline for agreed upon future action.

III. What Makes a Competent Mediator?

There is no universal answer to this question. No particular type or amount of education or job experience has been shown to predict success as a mediator. Successful mediators come from many different backgrounds. Having a particular background does not guarantee a skillful mediator.

Some mediators specialize in particular types of disputes, for example divorce or child custody disputes. Others, particularly those at community mediation centers, have extensive experience in neighbor-to-neighbor issues. There are mediators who focus on business issues such as contract disputes, and others who have a particular interest in environmental mediation.

How effective a mediator will be depends partly on the context and content of the dispute, on what expertise or knowledge the parties expect and on their own personalities and working style. It also depends on whether the mediator has the right mix of acquired skills, training, education, experience and natural abilities to help resolve the specific dispute. Important skills and abilities include neutrality, ability to communicate, and ability to define and clarify issues.

IV. What Qualifications Does a Mediator Need?

Qualifications refer to the amount and type of training, education and experience possessed by a mediator. There is currently no clear consensus on what qualifications mediators need in order to perform competently in the many and varied contexts in which mediation is practiced or how to assess and evaluate competence in mediators. In Oregon, as in most states, a person can offer private mediation services without taking a class, passing a test or having a special license or certification. In reality, many private mediators and those who work for or are associated with mediation organizations and programs, have some training and experience.

Mediators in programs that receive state funds to provide dispute resolution services in Oregon must meet the minimum qualification and training requirements established by the Oregon Office of Community Dispute Resolution and set out in Oregon Administrative Rule Chapter 571. Court connected mediation programs have similar training and experience requirements for mediators

operating under those programs. Individual programs often have additional requirements for training and practice under the supervision of an experienced mediator.

Mediation referral services may impose training, experience or other requirements on mediatos who wish to be included on their rosters. Some national and local mediation membership organizations set training and experience requirements as well as ethical standards for their practicing members. In 2010 OMA adopted training and experience guidelines for private practitioners in order to support that portion of Oregon's mediator population.

V. Five Steps to Choosing a Qualified Mediator

No easy formula can predict mediator competence, so the consumer must do some groundwork before selecting a mediator. First, you must understand how mediation works. After understanding the basics, you can use the following process to choose a mediator:

Five Steps to Choosing a Mediator

1. Decide what you want from mediation
2. Get a list of mediators
3. Look over mediator's written qualifications
4. Interview mediators
5. Evaluate information and make decision

These steps are described below. Remember during your search that a mediator should remain neutral and treat both parties with equal fairness and respect.

1. Decide What You Want from Mediation

Think about your goals for the mediation and the best way to get there. How do you want the mediator to participate? Many mediators and dispute resolution firms or services can help you understand what services would be best for your dispute. Some will contact the other party to the dispute to introduce the concept of mediation.

Do you want a mediator who suggests options in order to help move the parties towards agreement? Or, do you want a mediator who resists offering opinions so the parties feel responsible for their agreement? Think about past attempts at negotiation and problems with those attempts. What are your choices if mediation does not work?

Do your goals match your abilities? What are your strengths and weaknesses as a negotiator? What are the other party's strengths and weaknesses? What are your emotional limitations? Do you expect the mediator to help you stand your ground if the other person negotiates better than you or has more "power?" Thinking about these issues is especially important if there is a power imbalance between you and the other party. If there has been abuse and or violence between you and the other party, please read the Domestic Abuse section.

Are your goals realistic in your time frame? Think about the dispute and the context in which you must resolve it. What is the time frame? Is this a commercial dispute between experienced insurance company representatives, or is it a divorce involving an emotional child custody decision? The

approach or model that commercial disputants might prefer may differ greatly from the one preferred by a mother and father.

What about budget? Consider your budget. How much you can spend might limit your choice of mediator or mediation program. Many private mediators publish their fee schedule and are willing to discuss arrangements that would keep the process affordable.

2. Compile a List of Names.

You can gather a list of mediators from several sources.

Word of Mouth. Ask a friend, your attorney, your therapist, or another professional. Describe your case to a mediator and ask, "Other than yourself, who are the most skilled mediators in this kind of case?" Talk to people who have been in a mediation with the mediator (you can ask the mediator for names of clients). What was their case about and what were their impressions of the mediator?

Written Lists. Check local listings in the Yellow Pages. Many courthouses maintain a list of mediators available locally. OMA also maintains an online directory of member-mediators and their fee structures.

Referral Services. Many national mediator membership organizations and trade organizations keep lists of practitioner members and offer referral services. Some may charge for the referral services.

Community Mediation Centers. Neighborhood mediation or dispute resolution centers offer services in many Oregon counties. Volunteer mediators receive training and supervision before handling cases independently. Most programs do not charge the public for their services. The Oregon Office of Community Dispute Resolution maintains a list of all such community mediation programs.

3. Evaluate Written Materials.

Call or write several mediators on your list and ask them to send you their promotional materials, resume, references and a sample of their written work. These materials should cover most of the following topics.

Mediation Training. While training alone does not guarantee a competent mediator, most professional mediators have had some type of formal training. How was the mediator trained? Some mediators receive formal classroom-style training. Some participate in apprenticeships or in mentoring programs. Was the training geared toward this type of dispute? How many hours of training has this mediator had? How recent was the training?

Experience. Evaluate the mediator's type and amount of experience (number of years of mediation, number of mediations conducted, types of mediations conducted). How many cases similar to yours has the mediator handled? If you think it is important that the mediator knows the subject matter of your dispute, how much experience has the mediator had in that field? A mediator's experience is particularly important if he or she has limited formal training.

Written Work. Some mediators will write up notes about agreements or even draft agreements for the parties. Other mediators do not prepare written agreements or contracts. If your mediator will prepare

written work, you may want to review a sample. Samples could include letters, articles or promotional materials. Any sample of the mediator's written work should be clear, well organized, and use neutral language. Agreements or contracts should have detailed information about all items upon which the parties have agreed.

Orientation Session. Some mediators offer an introductory or orientation session after which the parties decide whether they wish to continue. Is it offered at no cost, reduced cost, or otherwise?

Cost. Understand the provider's fee structure. Does the mediator charge by the hour or the day? How much per hour/day? What about other expenses?

Other Considerations. Does the mediator belong to a national or local mediation organization, and is the mediator a practicing or general member? Some competent mediators may choose, for reasons of cost or otherwise, not to join professional organizations or carry liability insurance. If this is a concern, ask the mediator about it.
If you are using mediators from a community mediation center, you may want information about the center. How long has it been operating? How does the center select volunteer mediators? How does it train the mediators? How are the mediators supervised? What types of cases does the center handle?

4. Interview the Mediators.

Mediation can help you resolve conflicts and can be custom designed to serve all participants' needs. While mediation is very useful to help you resolve your disputes, not all mediators are the same. Regardless of the mediator or mediation program you use, you may wish to interview the mediator first by telephone, and ask several questions described below. During the interview, observe the mediator's interpersonal and professional skills. Qualities often found in effective mediators include neutrality, emotional stability and maturity, integrity, and sensitivity. Look also for good interviewing skills, verbal and nonverbal communication, ability to listen, ability to define and clarify issues, problem-solving ability, and organization.

Ethics. Ask "Which ethical standards will you follow?" (You may ask for a copy of the standards). All mediators should be able to show or explain their ethical standards (sometimes called a code of conduct) to you. If the mediator is a lawyer or other professional, ask what parts of the professional code of ethics will apply to the mediator's services. Ask the mediator, "Do you have a prior relationship with any of the parties or their attorneys?" The mediator should reveal any prior relationship or personal bias which would affect his or her performance, and any financial interest that may affect the case. Finally, ask the mediator whether any professional organization has taken disciplinary action against him or her.

Standards of Conduct (Ethics). Standards of conduct do not regulate who may practice, but rather create a general framework for the practice of mediation. National mediator organizations have adopted voluntary standards of conduct

Specialty/Subject Matter Expertise. Some mediators specialize in particular kinds of disputes. Some mediators, for example, primarily mediate divorce cases or child custody disputes. Others, particularly those at community mediation centers, have extensive experience in mediating neighbor-to-neighbor issues. There are mediators who focus on business issues, such as contract disputes, and others who have a particular interest in environmental mediation. You may want to ask the mediator about his/her experience mediating cases like yours.

In other cases, for example where the subject of the dispute is highly technical or complex, a mediator who comes to the table with some substantive knowledge could help the parties focus on the key issues in the dispute. Or, parties may want someone who understands a cultural issue or other context of the dispute.

Training. Most mediators have taken at least 30-40 hours of basic mediation training. Many have taken more than that, and others will have taken additional training in advanced techniques or concentrated subject areas. You may want to ask the mediator if he or she has taken any specialized training that fits the type of dispute in which you are involved.

Please note: In Oregon, no statewide organization or government agency certifies or licenses mediators, nor is there a test to take or any required course work. Although some mediators may be certified in a specific area by a particular organization, the State has no certification program of its own. Some state agencies do require experience and training before they will hire or assign a mediator to a state sponsored or ordered mediation.

Experience. Asking about a mediator's experience may also help you determine if you are hiring a skilled mediator. You may want to ask the mediator how many mediations he or she has mediated, the kinds of cases they were, and the average length of those mediations. You can also ask if the mediator or mediation program has handled disputes similar to yours, and if so, how often were the disputes settled?

Other Background/Expertise. Mediators may have very diverse backgrounds, and having a certain background does not guarantee a skilled mediator. Some might have backgrounds as attorneys, social workers, teachers, or mental health professionals. Others might not have a specific professional background. You might choose a mediator because they have a specific background or because they do NOT have a specific background.

Approach to Mediation/Mediation Philosophy. You can ask mediators about their approach to mediation or their mediation style. Some mediators let the participants guide the process, while others guide the participants through a process. Some mediators help the participants generate all of the options; others may suggest options. You can also ask if they belong to any professional organizations and what, if any, standards of practice they adhere to in their practice or program. You should feel comfortable with the approach your mediator uses.

R**eferences.** You may want to ask for references–past clients who have used their services. Since mediation is a confidential process, some mediators simply may not be able to provide you with references. Others may have mediation clients who have agreed to serve as references.

Confidentiality. The mediator should explain the degree of confidentiality of the process. The mediator may have a written confidentiality agreement for you and the other party to read and sign. If the mediation has been ordered by the court, ask the mediator whether he or she will report back to the court at the conclusion of the mediation. How much will the mediator say about what happened during mediation? How much of what you say will the mediator report to the other parties? Does the

confidentiality agreement affect what the parties can reveal about what was said? If the parties' attorneys are not present during the mediation, will the mediator report back to them, and if so, what will the mediator say? The mediator should be able to explain these things to you.

Logistics. Who will arrange meeting times and locations, prepare agendas, etc.? Will the mediator prepare a written agreement or memorandum if the parties reach a resolution? What role do the parties' lawyers or therapists play in the mediation? Does the mediator work in teams or alone?

***Special Considerations If There Has Been Domestic Abuse Between You and the Other Party.**

If there has been domestic abuse or violence between you and the other party, you should understand how it can affect the safety and fairness of the mediation process. Talk to your lawyer, a domestic violence counselor, women's' advocate, or other professional who works with victims of domestic abuse before making the decision to mediate.

All family mediators should be knowledgeable and skilled in the screening and referral of cases involving abusive relationships. They should be able to explain the potential risks and benefits of mediation when control, abuse, and violence issues exist. Any mediator who handles such cases should have special training in domestic violence issues and should offer special techniques and procedures to minimize risk and maximize safety of all participants.

If you decide to try mediation, it is important to let the mediator know about the abuse or violence. Some ways you can tell the mediator include asking your lawyer to tell the mediator, or telling the mediator yourself. You can tell the mediator yourself in the initial telephone call, or when filling out any written questionnaires. If there is an active restraining order, make sure the mediator knows about it.

Ask what domestic violence training the mediator has had and if the mediator has worked with similar cases. Ask whether or not the mediator believes your case is suitable for mediation and why. Ask how the mediation process can be modified to make it safer and fairer. Can the mediation be done by telephone or in separate sessions ("shuttle mediation")? Can a support person (domestic violence advocate or your attorney) be present during the mediation? If your case is not suitable for mediation, what are your alternatives? Ask for referrals to other resources, such as a local domestic violence counselor.

5. Evaluate Information and Make Decision.

During the interviews, you probably observed the mediators' skills and abilities at several important tasks. These tasks, which mediators perform in almost all mediations, include:

- gathering background information,
- communicating with the parties and helping the parties communicate,
- referring the parties to other people or programs where appropriate,
- analyzing information,
- helping the parties agree,
- managing cases, and
- documenting information.

Ask yourself which of the mediators best demonstrated these skills. Did the mediator understand your problem? Understand your questions and answer them clearly? If the other party was present, did the mediator constructively manage any expressions of anger or tension? Did the mediator convey respect and neutrality? Did you trust the mediator? Did the mediator refer you to other helpful sources of information? Understand what was important to you? Pick up on an aspect of the conflict that you were not completely aware of yourself? Did the mediator ask questions to find out whether mediation is preferable or appropriate? Understand the scope and intensity of the case? Of course, not every orientation interview permits the mediator to demonstrate all these skills, and every mediator has relative strengths and weaknesses. But you should be satisfied that the mediator can perform these tasks for you before beginning.

Review the other questions on this checklist. Make sure that the mediator's cost and availability coincide with your resources and timeframe. The other parties to the mediation must agree to work with this person, too. You may want to suggest two or three acceptable mediators so that all parties can agree on at least one.

Finally, consider evaluations of others who have used this mediator or your own previous experience with this mediator. If applicable, consider the goals and procedures of any organization with which the mediator is associated.

VI. Conclusion

The increasing use of mediation has outpaced knowledge about how to measure mediator competence. You can choose a qualified mediator by thinking about what you expect, gathering information about mediators, and evaluating that information using the information in this guide.

Appendix B: Oregon Judicial Department, *Cases Tried Analysis – Manner of Disposition* (2019)

JD / Court / Case Type	Bench Trials Cases	Bench Trials % Cases	Jury Trials Cases	Jury Trials % Cases	Other Cases	Other % Cases	Total Cases	Total % Cases
Civil	350	0.59%	169	0.28%	58,903	99.13%	59,422	100.00%
Juvenile	686	5.91%		0.00%	10,929	94.09%	11,615	100.00%
Probate	12	0.10%		0.00%	12,221	99.90%	12,233	100.00%
Civil Commitment	12	0.18%		0.00%	6,717	99.82%	6,729	100.00%
Dissolution	1,062	6.61%		0.00%	15,003	93.39%	16,065	100.00%
Felony	456	1.71%	770	2.89%	25,446	95.40%	26,672	100.00%
Landlord Tenant	1,278	6.97%	5	0.03%	17,056	93.00%	18,339	100.00%
Misdemeanor	426	0.83%	1,264	2.48%	49,333	96.69%	51,023	100.00%
Other Domestic Relations	903	8.37%		0.00%	9,884	91.63%	10,787	100.00%
Parking	1,069	0.44%		0.00%	242,685	99.56%	243,754	100.00%
Procedural Matters	292	3.91%	9	0.12%	7,162	95.97%	7,463	100.00%
Protective Order	76	0.47%		0.00%	15,949	99.53%	16,025	100.00%
Small Claims	1,179	2.06%		0.00%	56,179	97.94%	57,358	100.00%
Violation	4,444	2.25%	8	0.00%	193,069	97.75%	197,521	100.00%
Total Cases Terminated	**12,245**	**1.67%**	**2,225**	**0.30%**	**720,536**	**98.03%**	**735,006**	**100.00%**

JD / Court / Case Type	Bench Trials Cases	Bench Trials % Cases	Jury Trials Cases	Jury Trials % Cases	Other Cases	Other % Cases	Total Cases	Total % Cases
1	**441**	**1.71%**	**83**	**0.32%**	**25,217**	**97.96%**	**25,741**	**100.00%**
Jackson	**441**	**1.71%**	**83**	**0.32%**	**25,217**	**97.96%**	**25,741**	**100.00%**
Civil	18	0.58%	9	0.29%	3,086	99.13%	3,113	100.00%
Juvenile	34	3.61%		0.00%	907	96.39%	941	100.00%
Probate	1	0.14%		0.00%	719	99.86%	720	100.00%
Civil Commitment		0.00%		0.00%	650	100.00%	650	100.00%
Dissolution	53	5.67%		0.00%	882	94.33%	935	100.00%
Felony	10	0.35%	34	1.20%	2,797	98.45%	2,841	100.00%
Landlord Tenant	64	5.97%		0.00%	1,008	94.03%	1,072	100.00%
Misdemeanor	5	0.13%	40	1.00%	3,940	98.87%	3,985	100.00%
Other Domestic Relations	60	9.52%		0.00%	570	90.48%	630	100.00%
Procedural Matters	5	0.58%		0.00%	859	99.42%	864	100.00%
Protective Order		0.00%		0.00%	930	100.00%	930	100.00%
Small Claims	100	1.98%		0.00%	4,939	98.02%	5,039	100.00%
Violation	91	2.26%		0.00%	3,930	97.74%	4,021	100.00%
2	**875**	**2.63%**	**90**	**0.27%**	**32,329**	**97.10%**	**33,294**	**100.00%**
Lane	**875**	**2.63%**	**90**	**0.27%**	**32,329**	**97.10%**	**33,294**	**100.00%**
Civil	10	0.18%	7	0.12%	5,631	99.70%	5,648	100.00%
Juvenile	48	4.75%		0.00%	962	95.25%	1,010	100.00%
Probate	1	0.09%		0.00%	1,080	99.91%	1,081	100.00%
Civil Commitment		0.00%		0.00%	162	100.00%	162	100.00%
Dissolution	113	7.95%		0.00%	1,308	92.05%	1,421	100.00%
Felony	61	3.21%	42	2.21%	1,800	94.59%	1,903	100.00%
Landlord Tenant	116	6.61%		0.00%	1,640	93.39%	1,756	100.00%
Misdemeanor	23	1.45%	41	2.59%	1,519	95.96%	1,583	100.00%
Other Domestic Relations	114	11.12%		0.00%	911	88.88%	1,025	100.00%
Procedural Matters	3	0.58%		0.00%	515	99.42%	518	100.00%
Protective Order	67	3.41%		0.00%	1,898	96.59%	1,965	100.00%
Small Claims	82	0.99%		0.00%	8,204	99.01%	8,286	100.00%
Violation	237	3.42%		0.00%	6,699	96.58%	6,936	100.00%
3	**908**	**3.07%**	**187**	**0.63%**	**28,506**	**96.30%**	**29,601**	**100.00%**
Marion	**908**	**3.07%**	**187**	**0.63%**	**28,506**	**96.30%**	**29,601**	**100.00%**
Civil	66	1.31%	13	0.26%	4,944	98.43%	5,023	100.00%
Juvenile	145	15.41%		0.00%	796	84.59%	941	100.00%
Probate	5	0.42%		0.00%	1,187	99.58%	1,192	100.00%
Civil Commitment		0.00%		0.00%	465	100.00%	465	100.00%
Dissolution	71	5.03%		0.00%	1,340	94.97%	1,411	100.00%
Felony	52	2.51%	94	4.53%	1,928	92.96%	2,074	100.00%
Landlord Tenant	71	4.04%		0.00%	1,686	95.96%	1,757	100.00%
Misdemeanor	51	1.62%	79	2.51%	3,017	95.87%	3,147	100.00%
Other Domestic Relations	65	6.90%		0.00%	877	93.10%	942	100.00%
Procedural Matters	12	2.44%	1	0.20%	479	97.36%	492	100.00%
Protective Order		0.00%		0.00%	997	100.00%	997	100.00%
Small Claims	97	1.74%		0.00%	5,484	98.26%	5,581	100.00%
Violation	273	4.89%		0.00%	5,306	95.11%	5,579	100.00%
4	**3,266**	**0.80%**	**613**	**0.15%**	**406,566**	**99.05%**	**410,445**	**100.00%**
Multnomah	**3,266**	**0.80%**	**613**	**0.15%**	**406,566**	**99.05%**	**410,445**	**100.00%**
Civil	41	0.30%	76	0.55%	13,614	99.15%	13,731	100.00%
Juvenile	56	3.93%		0.00%	1,369	96.07%	1,425	100.00%
Probate	1	0.05%		0.00%	2,131	99.95%	2,132	100.00%
Civil Commitment		0.00%		0.00%	2,559	100.00%	2,559	100.00%

JD / Court / Case Type	Bench Trials Cases	Bench Trials % Cases	Jury Trials Cases	Jury Trials % Cases	Other Cases	Other % Cases	Total Cases	Total % Cases
Dissolution	141	5.15%		0.00%	2,597	94.85%	2,738	100.00%
Felony	42	1.39%	122	4.03%	2,860	94.58%	3,024	100.00%
Landlord Tenant	278	4.71%	1	0.02%	5,618	95.27%	5,897	100.00%
Misdemeanor	53	0.66%	400	4.95%	7,626	94.39%	8,079	100.00%
Other Domestic Relations	114	4.93%		0.00%	2,200	95.07%	2,314	100.00%
Parking	1,069	0.44%		0.00%	242,685	99.56%	243,754	100.00%
Procedural Matters	176	19.66%	8	0.89%	711	79.44%	895	100.00%
Protective Order	2	0.06%		0.00%	3,530	99.94%	3,532	100.00%
Small Claims	261	3.39%		0.00%	7,440	96.61%	7,701	100.00%
Violation	1,032	0.92%	6	0.01%	111,626	99.08%	112,664	100.00%
5	**580**	**2.77%**	**168**	**0.80%**	**20,186**	**96.43%**	**20,934**	**100.00%**
Clackamas	**580**	**2.77%**	**168**	**0.80%**	**20,186**	**96.43%**	**20,934**	**100.00%**
Civil	9	0.17%	12	0.22%	5,382	99.61%	5,403	100.00%
Juvenile	26	8.00%		0.00%	299	92.00%	325	100.00%
Probate		0.00%		0.00%	1,111	100.00%	1,111	100.00%
Civil Commitment		0.00%		0.00%	619	100.00%	619	100.00%
Dissolution	130	8.54%		0.00%	1,392	91.46%	1,522	100.00%
Felony	75	3.89%	57	2.96%	1,795	93.15%	1,927	100.00%
Landlord Tenant	81	18.37%	2	0.45%	358	81.18%	441	100.00%
Misdemeanor	79	1.95%	97	2.39%	3,881	95.66%	4,057	100.00%
Other Domestic Relations	82	10.11%		0.00%	729	89.89%	811	100.00%
Procedural Matters		0.00%		0.00%	551	100.00%	551	100.00%
Protective Order	1	0.10%		0.00%	1,034	99.90%	1,035	100.00%
Small Claims	83	2.70%		0.00%	2,995	97.30%	3,078	100.00%
Violation	14	25.93%		0.00%	40	74.07%	54	100.00%
6	**476**	**3.56%**	**44**	**0.33%**	**12,858**	**96.11%**	**13,378**	**100.00%**
Morrow	**4**	**0.78%**	**1**	**0.20%**	**505**	**99.02%**	**510**	**100.00%**
Civil		0.00%		0.00%	104	100.00%	104	100.00%
Juvenile		0.00%		0.00%	24	100.00%	24	100.00%
Probate		0.00%		0.00%	24	100.00%	24	100.00%
Civil Commitment		0.00%		0.00%	15	100.00%	15	100.00%
Dissolution	1	2.44%		0.00%	40	97.56%	41	100.00%
Felony	1	1.37%		0.00%	72	98.63%	73	100.00%
Landlord Tenant	1	12.50%		0.00%	7	87.50%	8	100.00%
Misdemeanor		0.00%	1	1.32%	75	98.68%	76	100.00%
Other Domestic Relations	1	3.03%		0.00%	32	96.97%	33	100.00%
Procedural Matters		0.00%		0.00%	21	100.00%	21	100.00%
Protective Order		0.00%		0.00%	24	100.00%	24	100.00%
Small Claims		0.00%		0.00%	61	100.00%	61	100.00%
Violation		0.00%		0.00%	6	100.00%	6	100.00%
Umatilla	**472**	**3.67%**	**43**	**0.33%**	**12,353**	**96.00%**	**12,868**	**100.00%**
Civil	54	5.06%	1	0.09%	1,012	94.85%	1,067	100.00%
Juvenile		0.00%		0.00%	162	100.00%	162	100.00%
Probate		0.00%		0.00%	248	100.00%	248	100.00%
Civil Commitment		0.00%		0.00%	75	100.00%	75	100.00%
Dissolution	25	8.77%		0.00%	260	91.23%	285	100.00%
Felony	14	1.93%	19	2.61%	694	95.46%	727	100.00%
Landlord Tenant	48	15.34%		0.00%	265	84.66%	313	100.00%
Misdemeanor	12	0.85%	23	1.63%	1,374	97.52%	1,409	100.00%
Other Domestic Relations	30	11.81%		0.00%	224	88.19%	254	100.00%
Procedural Matters	6	3.77%		0.00%	153	96.23%	159	100.00%

JD / Court / Case Type	Bench Trials Cases	Bench Trials % Cases	Jury Trials Cases	Jury Trials % Cases	Other Cases	Other % Cases	Total Cases	Total % Cases
Protective Order		0.00%		0.00%	283	100.00%	283	100.00%
Small Claims	30	2.42%		0.00%	1,209	97.58%	1,239	100.00%
Violation	253	3.81%		0.00%	6,394	96.19%	6,647	100.00%
7	**286**	**2.65%**	**25**	**0.23%**	**10,480**	**97.12%**	**10,791**	**100.00%**
Gilliam		**0.00%**		**0.00%**	**148**	**100.00%**	**148**	**100.00%**
Civil		0.00%		0.00%	38	100.00%	38	100.00%
Juvenile		0.00%		0.00%	2	100.00%	2	100.00%
Civil Commitment		0.00%		0.00%	7	100.00%	7	100.00%
Dissolution		0.00%		0.00%	6	100.00%	6	100.00%
Felony		0.00%		0.00%	20	100.00%	20	100.00%
Misdemeanor		0.00%		0.00%	18	100.00%	18	100.00%
Other Domestic Relations		0.00%		0.00%	10	100.00%	10	100.00%
Procedural Matters		0.00%		0.00%	5	100.00%	5	100.00%
Protective Order		0.00%		0.00%	8	100.00%	8	100.00%
Small Claims		0.00%		0.00%	7	100.00%	7	100.00%
Violation		0.00%		0.00%	27	100.00%	27	100.00%
Hood River	**128**	**2.74%**	**12**	**0.26%**	**4,538**	**97.01%**	**4,678**	**100.00%**
Civil		0.00%		0.00%	297	100.00%	297	100.00%
Juvenile	3	6.82%		0.00%	41	93.18%	44	100.00%
Probate		0.00%		0.00%	64	100.00%	64	100.00%
Civil Commitment		0.00%		0.00%	17	100.00%	17	100.00%
Dissolution	11	12.50%		0.00%	77	87.50%	88	100.00%
Felony	1	0.40%	4	1.59%	246	98.01%	251	100.00%
Landlord Tenant	3	11.11%		0.00%	24	88.89%	27	100.00%
Misdemeanor	3	0.43%	7	1.00%	693	98.58%	703	100.00%
Other Domestic Relations	14	21.54%		0.00%	51	78.46%	65	100.00%
Procedural Matters		0.00%		0.00%	83	100.00%	83	100.00%
Protective Order		0.00%		0.00%	57	100.00%	57	100.00%
Small Claims	20	5.90%		0.00%	319	94.10%	339	100.00%
Violation	73	2.76%	1	0.04%	2,569	97.20%	2,643	100.00%
Sherman	**6**	**2.82%**	**3**	**1.41%**	**204**	**95.77%**	**213**	**100.00%**
Civil	1	2.94%	1	2.94%	32	94.12%	34	100.00%
Juvenile		0.00%		0.00%	2	100.00%	2	100.00%
Probate		0.00%		0.00%	1	100.00%	1	100.00%
Dissolution	1	9.09%		0.00%	10	90.91%	11	100.00%
Felony		0.00%		0.00%	27	100.00%	27	100.00%
Misdemeanor	1	1.11%	2	2.22%	87	96.67%	90	100.00%
Other Domestic Relations	1	25.00%		0.00%	3	75.00%	4	100.00%
Procedural Matters		0.00%		0.00%	2	100.00%	2	100.00%
Protective Order		0.00%		0.00%	6	100.00%	6	100.00%
Small Claims		0.00%		0.00%	6	100.00%	6	100.00%
Violation	2	6.67%		0.00%	28	93.33%	30	100.00%
Wasco	**151**	**2.66%**	**8**	**0.14%**	**5,527**	**97.20%**	**5,686**	**100.00%**
Civil	2	0.52%	1	0.26%	380	99.22%	383	100.00%
Juvenile		0.00%		0.00%	99	100.00%	99	100.00%
Probate		0.00%		0.00%	92	100.00%	92	100.00%
Civil Commitment		0.00%		0.00%	43	100.00%	43	100.00%
Dissolution	13	13.68%		0.00%	82	86.32%	95	100.00%
Felony		0.00%	2	0.80%	248	99.20%	250	100.00%
Landlord Tenant	9	10.98%		0.00%	73	89.02%	82	100.00%
Misdemeanor	1	0.18%	5	0.88%	564	98.95%	570	100.00%

JD / Court / Case Type	Bench Trials Cases	Bench Trials % Cases	Jury Trials Cases	Jury Trials % Cases	Other Cases	Other % Cases	Total Cases	Total % Cases
Other Domestic Relations	11	17.46%		0.00%	52	82.54%	63	100.00%
Procedural Matters		0.00%		0.00%	63	100.00%	63	100.00%
Protective Order		0.00%		0.00%	101	100.00%	101	100.00%
Small Claims	27	5.84%		0.00%	435	94.16%	462	100.00%
Violation	88	2.60%		0.00%	3,295	97.40%	3,383	100.00%
Wheeler	**1**	**1.52%**	**2**	**3.03%**	**63**	**95.45%**	**66**	**100.00%**
Civil		0.00%		0.00%	19	100.00%	19	100.00%
Juvenile		0.00%		0.00%	2	100.00%	2	100.00%
Civil Commitment		0.00%		0.00%	1	100.00%	1	100.00%
Dissolution	1	20.00%		0.00%	4	80.00%	5	100.00%
Felony		0.00%	1	9.09%	10	90.91%	11	100.00%
Landlord Tenant		0.00%	1	100.00%		0.00%	1	100.00%
Misdemeanor		0.00%		0.00%	12	100.00%	12	100.00%
Other Domestic Relations		0.00%		0.00%	5	100.00%	5	100.00%
Procedural Matters		0.00%		0.00%	2	100.00%	2	100.00%
Protective Order		0.00%		0.00%	2	100.00%	2	100.00%
Violation		0.00%		0.00%	6	100.00%	6	100.00%
8	**25**	**2.54%**	**9**	**0.91%**	**952**	**96.55%**	**986**	**100.00%**
Baker	**25**	**2.54%**	**9**	**0.91%**	**952**	**96.55%**	**986**	**100.00%**
Civil	4	2.15%	1	0.54%	181	97.31%	186	100.00%
Juvenile		0.00%		0.00%	94	100.00%	94	100.00%
Probate		0.00%		0.00%	79	100.00%	79	100.00%
Civil Commitment		0.00%		0.00%	9	100.00%	9	100.00%
Dissolution	9	11.84%		0.00%	67	88.16%	76	100.00%
Felony	1	0.93%	4	3.70%	103	95.37%	108	100.00%
Landlord Tenant	2	50.00%		0.00%	2	50.00%	4	100.00%
Misdemeanor	1	0.53%	4	2.13%	183	97.34%	188	100.00%
Other Domestic Relations	3	6.25%		0.00%	45	93.75%	48	100.00%
Procedural Matters	5	6.41%		0.00%	73	93.59%	78	100.00%
Protective Order		0.00%		0.00%	58	100.00%	58	100.00%
Violation		0.00%		0.00%	58	100.00%	58	100.00%
9	**108**	**4.48%**	**24**	**1.00%**	**2,278**	**94.52%**	**2,410**	**100.00%**
Malheur	**108**	**4.48%**	**24**	**1.00%**	**2,278**	**94.52%**	**2,410**	**100.00%**
Civil	41	10.38%		0.00%	354	89.62%	395	100.00%
Juvenile	34	17.44%		0.00%	161	82.56%	195	100.00%
Probate		0.00%		0.00%	8	100.00%	8	100.00%
Civil Commitment		0.00%		0.00%	14	100.00%	14	100.00%
Dissolution	2	1.57%		0.00%	125	98.43%	127	100.00%
Felony		0.00%	12	2.83%	412	97.17%	424	100.00%
Landlord Tenant	5	12.20%		0.00%	36	87.80%	41	100.00%
Misdemeanor		0.00%	12	1.82%	647	98.18%	659	100.00%
Other Domestic Relations	12	11.01%		0.00%	97	88.99%	109	100.00%
Procedural Matters	5	5.15%		0.00%	92	94.85%	97	100.00%
Protective Order		0.00%		0.00%	110	100.00%	110	100.00%
Small Claims	3	2.05%		0.00%	143	97.95%	146	100.00%
Violation	6	7.06%		0.00%	79	92.94%	85	100.00%
10	**125**	**3.04%**	**14**	**0.34%**	**3,976**	**96.62%**	**4,115**	**100.00%**
Union	**95**	**2.92%**	**9**	**0.28%**	**3,155**	**96.81%**	**3,259**	**100.00%**
Civil		0.00%	1	0.30%	334	99.70%	335	100.00%
Juvenile	4	5.33%		0.00%	71	94.67%	75	100.00%
Probate		0.00%		0.00%	120	100.00%	120	100.00%

JD / Court / Case Type	Bench Trials Cases	Bench Trials % Cases	Jury Trials Cases	Jury Trials % Cases	Other Cases	Other % Cases	Total Cases	Total % Cases
Civil Commitment		0.00%		0.00%	25	100.00%	25	100.00%
Dissolution	4	3.81%		0.00%	101	96.19%	105	100.00%
Felony	7	2.93%	3	1.26%	229	95.82%	239	100.00%
Landlord Tenant	25	32.05%		0.00%	53	67.95%	78	100.00%
Misdemeanor	5	1.15%	5	1.15%	424	97.70%	434	100.00%
Other Domestic Relations	6	6.82%		0.00%	82	93.18%	88	100.00%
Procedural Matters	3	6.98%		0.00%	40	93.02%	43	100.00%
Protective Order		0.00%		0.00%	79	100.00%	79	100.00%
Small Claims	5	1.89%		0.00%	260	98.11%	265	100.00%
Violation	36	2.62%		0.00%	1,337	97.38%	1,373	100.00%
Wallowa	**30**	**3.50%**	**5**	**0.58%**	**821**	**95.91%**	**856**	**100.00%**
Civil	1	1.12%	1	1.12%	87	97.75%	89	100.00%
Juvenile		0.00%		0.00%	125	100.00%	125	100.00%
Probate		0.00%		0.00%	58	100.00%	58	100.00%
Civil Commitment		0.00%		0.00%	4	100.00%	4	100.00%
Dissolution	2	6.06%		0.00%	31	93.94%	33	100.00%
Felony	1	4.00%		0.00%	24	96.00%	25	100.00%
Landlord Tenant	3	33.33%	1	11.11%	5	55.56%	9	100.00%
Misdemeanor	2	2.17%	3	3.26%	87	94.57%	92	100.00%
Other Domestic Relations	1	5.88%		0.00%	16	94.12%	17	100.00%
Procedural Matters	1	5.56%		0.00%	17	94.44%	18	100.00%
Protective Order		0.00%		0.00%	19	100.00%	19	100.00%
Small Claims	6	12.77%		0.00%	41	87.23%	47	100.00%
Violation	13	4.06%		0.00%	307	95.94%	320	100.00%
11	**492**	**2.65%**	**56**	**0.30%**	**18,014**	**97.05%**	**18,562**	**100.00%**
Deschutes	**492**	**2.65%**	**56**	**0.30%**	**18,014**	**97.05%**	**18,562**	**100.00%**
Civil	5	0.19%	5	0.19%	2,591	99.62%	2,601	100.00%
Juvenile	9	3.03%		0.00%	288	96.97%	297	100.00%
Probate		0.00%		0.00%	599	100.00%	599	100.00%
Civil Commitment		0.00%		0.00%	212	100.00%	212	100.00%
Dissolution	54	6.23%		0.00%	813	93.77%	867	100.00%
Felony	7	0.50%	15	1.07%	1,380	98.43%	1,402	100.00%
Landlord Tenant	30	5.74%		0.00%	493	94.26%	523	100.00%
Misdemeanor	3	0.09%	36	1.03%	3,467	98.89%	3,506	100.00%
Other Domestic Relations	43	10.31%		0.00%	374	89.69%	417	100.00%
Procedural Matters	1	0.28%		0.00%	350	99.72%	351	100.00%
Protective Order		0.00%		0.00%	708	100.00%	708	100.00%
Small Claims	59	3.21%		0.00%	1,777	96.79%	1,836	100.00%
Violation	281	5.36%		0.00%	4,962	94.64%	5,243	100.00%
12	**287**	**2.95%**	**85**	**0.87%**	**9,362**	**96.18%**	**9,734**	**100.00%**
Polk	**287**	**2.95%**	**85**	**0.87%**	**9,362**	**96.18%**	**9,734**	**100.00%**
Civil	3	0.35%		0.00%	852	99.65%	855	100.00%
Juvenile	2	1.40%		0.00%	141	98.60%	143	100.00%
Probate		0.00%		0.00%	217	100.00%	217	100.00%
Civil Commitment		0.00%		0.00%	64	100.00%	64	100.00%
Dissolution	11	3.79%		0.00%	279	96.21%	290	100.00%
Felony	24	5.42%	25	5.64%	394	88.94%	443	100.00%
Landlord Tenant	33	13.69%		0.00%	208	86.31%	241	100.00%
Misdemeanor	31	2.40%	59	4.57%	1,202	93.03%	1,292	100.00%
Other Domestic Relations	14	5.81%		0.00%	227	94.19%	241	100.00%
Procedural Matters	3	2.54%		0.00%	115	97.46%	118	100.00%

JD / Court / Case Type	Bench Trials Cases	Bench Trials % Cases	Jury Trials Cases	Jury Trials % Cases	Other Cases	Other % Cases	Total Cases	Total % Cases
Protective Order		0.00%		0.00%	187	100.00%	187	100.00%
Small Claims	44	4.67%		0.00%	898	95.33%	942	100.00%
Violation	122	2.60%	1	0.02%	4,578	97.38%	4,701	100.00%
13	**270**	**2.20%**	**21**	**0.17%**	**11,958**	**97.62%**	**12,249**	**100.00%**
Klamath	**270**	**2.20%**	**21**	**0.17%**	**11,958**	**97.62%**	**12,249**	**100.00%**
Civil	7	0.76%	2	0.22%	911	99.02%	920	100.00%
Juvenile	8	1.81%		0.00%	434	98.19%	442	100.00%
Probate		0.00%		0.00%	317	100.00%	317	100.00%
Civil Commitment		0.00%		0.00%	262	100.00%	262	100.00%
Dissolution	21	5.97%		0.00%	331	94.03%	352	100.00%
Felony	5	0.54%	8	0.86%	914	98.60%	927	100.00%
Landlord Tenant	46	9.47%		0.00%	440	90.53%	486	100.00%
Misdemeanor	4	0.22%	11	0.61%	1,785	99.17%	1,800	100.00%
Other Domestic Relations	16	6.11%		0.00%	246	93.89%	262	100.00%
Procedural Matters	10	4.93%		0.00%	193	95.07%	203	100.00%
Protective Order	2	0.34%		0.00%	587	99.66%	589	100.00%
Small Claims	40	2.98%		0.00%	1,302	97.02%	1,342	100.00%
Violation	111	2.55%		0.00%	4,236	97.45%	4,347	100.00%
14	**487**	**3.17%**	**59**	**0.38%**	**14,808**	**96.44%**	**15,354**	**100.00%**
Josephine	**487**	**3.17%**	**59**	**0.38%**	**14,808**	**96.44%**	**15,354**	**100.00%**
Civil	8	0.63%	5	0.39%	1,253	98.97%	1,266	100.00%
Juvenile	41	13.31%		0.00%	267	86.69%	308	100.00%
Probate		0.00%		0.00%	414	100.00%	414	100.00%
Civil Commitment	1	0.35%		0.00%	283	99.65%	284	100.00%
Dissolution	20	5.42%		0.00%	349	94.58%	369	100.00%
Felony	2	0.19%	19	1.82%	1,024	97.99%	1,045	100.00%
Landlord Tenant	71	22.61%		0.00%	243	77.39%	314	100.00%
Misdemeanor	4	0.17%	35	1.46%	2,352	98.37%	2,391	100.00%
Other Domestic Relations	29	10.03%		0.00%	260	89.97%	289	100.00%
Procedural Matters	5	1.79%		0.00%	275	98.21%	280	100.00%
Protective Order		0.00%		0.00%	584	100.00%	584	100.00%
Small Claims	33	1.93%		0.00%	1,681	98.07%	1,714	100.00%
Violation	273	4.48%		0.00%	5,823	95.52%	6,096	100.00%
15	**718**	**4.26%**	**94**	**0.56%**	**16,054**	**95.19%**	**16,866**	**100.00%**
Coos	**582**	**4.41%**	**69**	**0.52%**	**12,534**	**95.06%**	**13,185**	**100.00%**
Civil	7	0.57%	4	0.32%	1,225	99.11%	1,236	100.00%
Juvenile	34	8.44%		0.00%	369	91.56%	403	100.00%
Probate		0.00%		0.00%	273	100.00%	273	100.00%
Civil Commitment		0.00%		0.00%	87	100.00%	87	100.00%
Dissolution	31	10.99%		0.00%	251	89.01%	282	100.00%
Felony	12	2.36%	30	5.91%	466	91.73%	508	100.00%
Landlord Tenant	47	15.56%		0.00%	255	84.44%	302	100.00%
Misdemeanor	22	1.72%	35	2.74%	1,220	95.54%	1,277	100.00%
Other Domestic Relations	42	15.85%		0.00%	223	84.15%	265	100.00%
Procedural Matters		0.00%		0.00%	182	100.00%	182	100.00%
Protective Order		0.00%		0.00%	343	100.00%	343	100.00%
Small Claims	1	0.05%		0.00%	1,960	99.95%	1,961	100.00%
Violation	386	6.36%		0.00%	5,680	93.64%	6,066	100.00%
Curry	**136**	**3.69%**	**25**	**0.68%**	**3,520**	**95.63%**	**3,681**	**100.00%**
Civil	6	1.73%		0.00%	341	98.27%	347	100.00%
Juvenile	19	24.05%		0.00%	60	75.95%	79	100.00%

JD / Court / Case Type	Bench Trials Cases	Bench Trials % Cases	Jury Trials Cases	Jury Trials % Cases	Other Cases	Other % Cases	Total Cases	Total % Cases
Probate		0.00%		0.00%	118	100.00%	118	100.00%
Civil Commitment		0.00%		0.00%	11	100.00%	11	100.00%
Dissolution	18	15.93%		0.00%	95	84.07%	113	100.00%
Felony	2	1.39%	9	6.25%	133	92.36%	144	100.00%
Landlord Tenant	17	23.29%		0.00%	56	76.71%	73	100.00%
Misdemeanor	4	0.92%	16	3.68%	415	95.40%	435	100.00%
Other Domestic Relations	5	2.86%		0.00%	170	97.14%	175	100.00%
Procedural Matters		0.00%		0.00%	60	100.00%	60	100.00%
Protective Order		0.00%		0.00%	137	100.00%	137	100.00%
Small Claims		0.00%		0.00%	430	100.00%	430	100.00%
Violation	65	4.17%		0.00%	1,494	95.83%	1,559	100.00%
16	**497**	**4.26%**	**54**	**0.46%**	**11,117**	**95.28%**	**11,668**	**100.00%**
Douglas	**497**	**4.26%**	**54**	**0.46%**	**11,117**	**95.28%**	**11,668**	**100.00%**
Civil	9	0.63%	2	0.14%	1,407	99.22%	1,418	100.00%
Juvenile	67	11.19%		0.00%	532	88.81%	599	100.00%
Probate		0.00%		0.00%	490	100.00%	490	100.00%
Civil Commitment	5	1.21%		0.00%	409	98.79%	414	100.00%
Dissolution	57	10.38%		0.00%	492	89.62%	549	100.00%
Felony	19	1.66%	26	2.27%	1,099	96.07%	1,144	100.00%
Landlord Tenant	57	13.35%		0.00%	370	86.65%	427	100.00%
Misdemeanor	4	0.31%	26	2.02%	1,259	97.67%	1,289	100.00%
Other Domestic Relations	52	7.96%		0.00%	601	92.04%	653	100.00%
Procedural Matters		0.00%		0.00%	268	100.00%	268	100.00%
Protective Order		0.00%		0.00%	735	100.00%	735	100.00%
Small Claims	35	1.83%		0.00%	1,882	98.17%	1,917	100.00%
Violation	192	10.88%		0.00%	1,573	89.12%	1,765	100.00%
17	**172**	**2.23%**	**56**	**0.73%**	**7,475**	**97.04%**	**7,703**	**100.00%**
Lincoln	**172**	**2.23%**	**56**	**0.73%**	**7,475**	**97.04%**	**7,703**	**100.00%**
Civil	3	0.37%		0.00%	811	99.63%	814	100.00%
Juvenile	9	7.38%		0.00%	113	92.62%	122	100.00%
Probate		0.00%		0.00%	230	100.00%	230	100.00%
Civil Commitment		0.00%		0.00%	50	100.00%	50	100.00%
Dissolution	10	4.85%		0.00%	196	95.15%	206	100.00%
Felony	9	1.78%	27	5.33%	471	92.90%	507	100.00%
Landlord Tenant	16	9.64%		0.00%	150	90.36%	166	100.00%
Misdemeanor	7	0.57%	29	2.38%	1,183	97.05%	1,219	100.00%
Other Domestic Relations	19	18.45%		0.00%	84	81.55%	103	100.00%
Procedural Matters	6	3.33%		0.00%	174	96.67%	180	100.00%
Protective Order		0.00%		0.00%	285	100.00%	285	100.00%
Small Claims	3	0.38%		0.00%	784	99.62%	787	100.00%
Violation	90	2.97%		0.00%	2,944	97.03%	3,034	100.00%
18	**313**	**3.07%**	**26**	**0.26%**	**9,848**	**96.67%**	**10,187**	**100.00%**
Clatsop	**313**	**3.07%**	**26**	**0.26%**	**9,848**	**96.67%**	**10,187**	**100.00%**
Civil	1	0.13%	1	0.13%	759	99.74%	761	100.00%
Juvenile	5	3.97%		0.00%	121	96.03%	126	100.00%
Probate		0.00%		0.00%	156	100.00%	156	100.00%
Civil Commitment		0.00%		0.00%	52	100.00%	52	100.00%
Dissolution	2	1.18%		0.00%	168	98.82%	170	100.00%
Felony		0.00%	11	3.27%	325	96.73%	336	100.00%
Landlord Tenant	28	19.31%		0.00%	117	80.69%	145	100.00%
Misdemeanor	5	0.57%	14	1.60%	855	97.83%	874	100.00%

JD / Court / Case Type	Bench Trials Cases	Bench Trials % Cases	Jury Trials Cases	Jury Trials % Cases	Other Cases	Other % Cases	Total Cases	Total % Cases
Other Domestic Relations	10	11.76%		0.00%	75	88.24%	85	100.00%
Procedural Matters	4	3.60%		0.00%	107	96.40%	111	100.00%
Protective Order		0.00%		0.00%	198	100.00%	198	100.00%
Small Claims	4	0.28%		0.00%	1,432	99.72%	1,436	100.00%
Violation	254	4.43%		0.00%	5,483	95.57%	5,737	100.00%
19	**97**	**2.11%**	**8**	**0.17%**	**4,500**	**97.72%**	**4,605**	**100.00%**
Columbia	**97**	**2.11%**	**8**	**0.17%**	**4,500**	**97.72%**	**4,605**	**100.00%**
Civil	2	0.29%	4	0.58%	688	99.14%	694	100.00%
Juvenile	5	0.42%		0.00%	1,189	99.58%	1,194	100.00%
Probate		0.00%		0.00%	147	100.00%	147	100.00%
Civil Commitment		0.00%		0.00%	39	100.00%	39	100.00%
Dissolution	19	7.22%		0.00%	244	92.78%	263	100.00%
Felony	1	0.26%	2	0.52%	383	99.22%	386	100.00%
Landlord Tenant	21	21.88%		0.00%	75	78.13%	96	100.00%
Misdemeanor	5	1.01%	2	0.41%	486	98.58%	493	100.00%
Other Domestic Relations	15	8.47%		0.00%	162	91.53%	177	100.00%
Procedural Matters	12	7.10%		0.00%	157	92.90%	169	100.00%
Protective Order		0.00%		0.00%	253	100.00%	253	100.00%
Small Claims	15	2.79%		0.00%	523	97.21%	538	100.00%
Violation	2	1.28%		0.00%	154	98.72%	156	100.00%
20	**701**	**2.33%**	**259**	**0.86%**	**29,119**	**96.81%**	**30,079**	**100.00%**
Washington	**701**	**2.33%**	**259**	**0.86%**	**29,119**	**96.81%**	**30,079**	**100.00%**
Civil	22	0.32%	14	0.20%	6,880	99.48%	6,916	100.00%
Juvenile	73	7.66%		0.00%	880	92.34%	953	100.00%
Probate		0.00%		0.00%	1,021	100.00%	1,021	100.00%
Civil Commitment		0.00%		0.00%	118	100.00%	118	100.00%
Dissolution	152	7.71%		0.00%	1,820	92.29%	1,972	100.00%
Felony	60	2.12%	110	3.88%	2,663	94.00%	2,833	100.00%
Landlord Tenant	91	3.03%		0.00%	2,912	96.97%	3,003	100.00%
Misdemeanor	49	0.97%	135	2.68%	4,847	96.34%	5,031	100.00%
Other Domestic Relations	84	10.45%		0.00%	720	89.55%	804	100.00%
Procedural Matters	1	0.13%		0.00%	775	99.87%	776	100.00%
Protective Order		0.00%		0.00%	1,221	100.00%	1,221	100.00%
Small Claims	130	2.80%		0.00%	4,511	97.20%	4,641	100.00%
Violation	39	4.94%		0.00%	751	95.06%	790	100.00%
21	**182**	**2.51%**	**20**	**0.28%**	**7,050**	**97.21%**	**7,252**	**100.00%**
Benton	**182**	**2.51%**	**20**	**0.28%**	**7,050**	**97.21%**	**7,252**	**100.00%**
Civil	2	0.24%	1	0.12%	818	99.63%	821	100.00%
Juvenile		0.00%		0.00%	142	100.00%	142	100.00%
Probate		0.00%		0.00%	213	100.00%	213	100.00%
Civil Commitment	3	1.83%		0.00%	161	98.17%	164	100.00%
Dissolution	11	4.28%		0.00%	246	95.72%	257	100.00%
Felony		0.00%	6	1.86%	316	98.14%	322	100.00%
Landlord Tenant	4	2.60%		0.00%	150	97.40%	154	100.00%
Misdemeanor	5	0.47%	13	1.21%	1,056	98.32%	1,074	100.00%
Other Domestic Relations	6	6.38%		0.00%	88	93.62%	94	100.00%
Procedural Matters	11	9.17%		0.00%	109	90.83%	120	100.00%
Protective Order	2	1.00%		0.00%	198	99.00%	200	100.00%
Small Claims	12	0.82%		0.00%	1,453	99.18%	1,465	100.00%
Violation	126	5.66%		0.00%	2,100	94.34%	2,226	100.00%

JD / Court / Case Type	Bench Trials Cases	Bench Trials % Cases	Jury Trials Cases	Jury Trials % Cases	Other Cases	Other % Cases	Total Cases	Total % Cases
22	**205**	**2.29%**	**23**	**0.26%**	**8,731**	**97.46%**	**8,959**	**100.00%**
Crook	**113**	**2.77%**	**15**	**0.37%**	**3,955**	**96.87%**	**4,083**	**100.00%**
Civil	4	1.16%	1	0.29%	339	98.55%	344	100.00%
Juvenile	8	7.84%		0.00%	94	92.16%	102	100.00%
Probate		0.00%		0.00%	87	100.00%	87	100.00%
Civil Commitment		0.00%		0.00%	14	100.00%	14	100.00%
Dissolution	8	7.34%		0.00%	101	92.66%	109	100.00%
Felony	3	1.04%	9	3.13%	276	95.83%	288	100.00%
Landlord Tenant	15	14.02%		0.00%	92	85.98%	107	100.00%
Misdemeanor	6	0.74%	5	0.62%	797	98.64%	808	100.00%
Other Domestic Relations	8	8.51%		0.00%	86	91.49%	94	100.00%
Procedural Matters	1	1.54%		0.00%	64	98.46%	65	100.00%
Protective Order		0.00%		0.00%	117	100.00%	117	100.00%
Small Claims	10	2.00%		0.00%	490	98.00%	500	100.00%
Violation	50	3.45%		0.00%	1,398	96.55%	1,448	100.00%
Jefferson	**92**	**1.89%**	**8**	**0.16%**	**4,776**	**97.95%**	**4,876**	**100.00%**
Civil	7	2.21%		0.00%	310	97.79%	317	100.00%
Juvenile	6	5.41%		0.00%	105	94.59%	111	100.00%
Probate		0.00%		0.00%	40	100.00%	40	100.00%
Civil Commitment		0.00%		0.00%	18	100.00%	18	100.00%
Dissolution	5	5.49%		0.00%	86	94.51%	91	100.00%
Felony	1	0.49%	4	1.95%	200	97.56%	205	100.00%
Landlord Tenant	4	4.40%		0.00%	87	95.60%	91	100.00%
Misdemeanor	7	1.42%	4	0.81%	482	97.77%	493	100.00%
Other Domestic Relations	2	3.39%		0.00%	57	96.61%	59	100.00%
Procedural Matters	2	2.20%		0.00%	89	97.80%	91	100.00%
Protective Order		0.00%		0.00%	161	100.00%	161	100.00%
Small Claims	12	3.05%		0.00%	382	96.95%	394	100.00%
Violation	46	1.64%		0.00%	2,759	98.36%	2,805	100.00%
23	**323**	**2.28%**	**64**	**0.45%**	**13,754**	**97.26%**	**14,141**	**100.00%**
Linn	**323**	**2.28%**	**64**	**0.45%**	**13,754**	**97.26%**	**14,141**	**100.00%**
Civil	2	0.10%	3	0.15%	2,031	99.75%	2,036	100.00%
Juvenile	18	2.50%		0.00%	703	97.50%	721	100.00%
Probate	2	0.43%		0.00%	464	99.57%	466	100.00%
Civil Commitment	1	0.90%		0.00%	110	99.10%	111	100.00%
Dissolution	25	4.03%		0.00%	596	95.97%	621	100.00%
Felony	12	1.03%	20	1.71%	1,137	97.26%	1,169	100.00%
Landlord Tenant	41	10.49%		0.00%	350	89.51%	391	100.00%
Misdemeanor	8	0.52%	41	2.65%	1,501	96.84%	1,550	100.00%
Other Domestic Relations	16	5.03%		0.00%	302	94.97%	318	100.00%
Procedural Matters	6	3.35%		0.00%	173	96.65%	179	100.00%
Protective Order	1	0.22%		0.00%	461	99.78%	462	100.00%
Small Claims	29	0.78%		0.00%	3,675	99.22%	3,704	100.00%
Violation	162	6.71%		0.00%	2,251	93.29%	2,413	100.00%
24	**27**	**2.71%**	**23**	**2.31%**	**947**	**94.98%**	**997**	**100.00%**
Grant	**9**	**2.01%**	**8**	**1.79%**	**430**	**96.20%**	**447**	**100.00%**
Civil		0.00%	1	0.58%	172	99.42%	173	100.00%
Juvenile		0.00%		0.00%	24	100.00%	24	100.00%
Probate		0.00%		0.00%	1	100.00%	1	100.00%
Civil Commitment	1	10.00%		0.00%	9	90.00%	10	100.00%
Dissolution	4	14.29%		0.00%	24	85.71%	28	100.00%

JD / Court / Case Type	Bench Trials Cases	Bench Trials % Cases	Jury Trials Cases	Jury Trials % Cases	Other Cases	Other % Cases	Total Cases	Total % Cases
Felony		0.00%	3	6.82%	41	93.18%	44	100.00%
Misdemeanor	1	1.69%	4	6.78%	54	91.53%	59	100.00%
Other Domestic Relations	2	9.09%		0.00%	20	90.91%	22	100.00%
Procedural Matters	1	1.82%		0.00%	54	98.18%	55	100.00%
Protective Order		0.00%		0.00%	21	100.00%	21	100.00%
Violation		0.00%		0.00%	10	100.00%	10	100.00%
Harney	**18**	**3.27%**	**15**	**2.73%**	**517**	**94.00%**	**550**	**100.00%**
Civil		0.00%		0.00%	155	100.00%	155	100.00%
Juvenile	4	11.11%		0.00%	32	88.89%	36	100.00%
Civil Commitment	1	100.00%		0.00%		0.00%	1	100.00%
Dissolution	2	5.88%		0.00%	32	94.12%	34	100.00%
Felony	1	1.82%	7	12.73%	47	85.45%	55	100.00%
Landlord Tenant		0.00%		0.00%	1	100.00%	1	100.00%
Misdemeanor	2	1.17%	8	4.68%	161	94.15%	171	100.00%
Other Domestic Relations	4	21.05%		0.00%	15	78.95%	19	100.00%
Procedural Matters	1	5.56%		0.00%	17	94.44%	18	100.00%
Protective Order		0.00%		0.00%	20	100.00%	20	100.00%
Violation	3	7.50%		0.00%	37	92.50%	40	100.00%
25	**278**	**2.61%**	**84**	**0.79%**	**10,284**	**96.60%**	**10,646**	**100.00%**
Yamhill	**278**	**2.61%**	**84**	**0.79%**	**10,284**	**96.60%**	**10,646**	**100.00%**
Civil	4	0.29%	3	0.22%	1,366	99.49%	1,373	100.00%
Juvenile	17	8.06%		0.00%	194	91.94%	211	100.00%
Probate	2	0.63%		0.00%	318	99.38%	320	100.00%
Civil Commitment		0.00%		0.00%	91	100.00%	91	100.00%
Dissolution	25	6.36%		0.00%	368	93.64%	393	100.00%
Felony	22	3.40%	35	5.41%	590	91.19%	647	100.00%
Landlord Tenant	36	13.09%		0.00%	239	86.91%	275	100.00%
Misdemeanor	12	0.88%	46	3.39%	1,298	95.72%	1,356	100.00%
Other Domestic Relations	17	8.06%		0.00%	194	91.94%	211	100.00%
Procedural Matters	4	1.69%		0.00%	233	98.31%	237	100.00%
Protective Order		0.00%		0.00%	407	100.00%	407	100.00%
Small Claims	32	2.28%		0.00%	1,373	97.72%	1,405	100.00%
Violation	107	2.88%		0.00%	3,613	97.12%	3,720	100.00%
26	**44**	**1.92%**	**10**	**0.44%**	**2,233**	**97.64%**	**2,287**	**100.00%**
Lake	**44**	**1.92%**	**10**	**0.44%**	**2,233**	**97.64%**	**2,287**	**100.00%**
Civil	8	5.76%		0.00%	131	94.24%	139	100.00%
Juvenile		0.00%		0.00%	44	100.00%	44	100.00%
Probate		0.00%		0.00%	59	100.00%	59	100.00%
Civil Commitment		0.00%		0.00%	9	100.00%	9	100.00%
Dissolution	1	2.13%		0.00%	46	97.87%	47	100.00%
Felony	1	0.69%	5	3.47%	138	95.83%	144	100.00%
Landlord Tenant	9	37.50%		0.00%	15	62.50%	24	100.00%
Misdemeanor	2	1.45%	5	3.62%	131	94.93%	138	100.00%
Other Domestic Relations	1	4.76%		0.00%	20	95.24%	21	100.00%
Procedural Matters		0.00%		0.00%	18	100.00%	18	100.00%
Protective Order		0.00%		0.00%	60	100.00%	60	100.00%
Small Claims	6	6.90%		0.00%	81	93.10%	87	100.00%
Violation	16	1.07%		0.00%	1,481	98.93%	1,497	100.00%
27	**62**	**3.07%**	**26**	**1.29%**	**1,934**	**95.65%**	**2,022**	**100.00%**
Tillamook	**62**	**3.07%**	**26**	**1.29%**	**1,934**	**95.65%**	**2,022**	**100.00%**
Civil	3	0.81%		0.00%	368	99.19%	371	100.00%

JD / Court / Case Type	Bench Trials Cases	Bench Trials % Cases	Jury Trials Cases	Jury Trials % Cases	Other Cases	Other % Cases	Total Cases	Total % Cases
Juvenile	11	11.96%		0.00%	81	88.04%	92	100.00%
Probate		0.00%		0.00%	135	100.00%	135	100.00%
Civil Commitment		0.00%		0.00%	53	100.00%	53	100.00%
Dissolution	9	5.88%		0.00%	144	94.12%	153	100.00%
Felony	10	5.03%	5	2.51%	184	92.46%	199	100.00%
Landlord Tenant	6	17.65%		0.00%	28	82.35%	34	100.00%
Misdemeanor	9	1.35%	21	3.16%	635	95.49%	665	100.00%
Other Domestic Relations	4	6.67%		0.00%	56	93.33%	60	100.00%
Procedural Matters	8	8.79%		0.00%	83	91.21%	91	100.00%
Protective Order	1	0.76%		0.00%	130	99.24%	131	100.00%
Small Claims		0.00%		0.00%	2	100.00%	2	100.00%
Violation	1	2.78%		0.00%	35	97.22%	36	100.00%
Total Cases Terminated	**12,245**	**1.67%**	**2,225**	**0.30%**	**720,536**	**98.03%**	**735,006**	**100.00%**

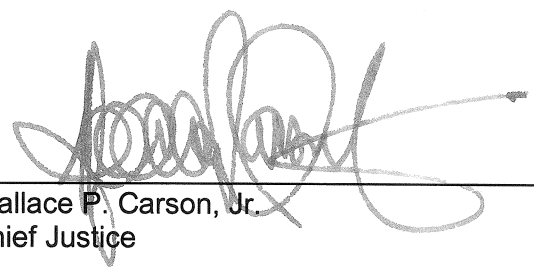
Appendix C: Oregon Judicial Department, *Court Connected Mediator Qualifications Rule* (2015)

In the Matter of the Adoption of Oregon Judicial Department Court-Connected Mediator Qualifications Rules, Effective August 1, 2005	)	CHIEF JUSTICE ORDER
	)	No. 05-028
	)	
	)	ORDER TO ADOPT OJD COURT-CONNECTED MEDIATOR QUALIFICATIONS RULES

Pursuant to ORS 1.002 and 36.200, it is ordered that the rules concerning court-connected mediator qualifications, as shown in Attachment A, are adopted and are effective August 1, 2005.

These rules shall be known as the OJD Court-Connected Mediator Qualifications Rules.

Dated this 28th day of July, 2005



Wallace P. Carson, Jr.
Chief Justice

Oregon Judicial Department Court-Connected Mediator Qualifications Rules

Effective
August 1, 2005

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OREGON JUDICIAL DEPARTMENT
COURT-CONNECTED MEDIATOR QUALIFICATIONS RULES

PREFACE

Historical Background:

Court-Connected Mediator Qualifications were first adopted by the Oregon Dispute Resolution Commission (ODRC) between 1992 and 1998. In October 2003, the legislature abolished the ODRC and transferred responsibility for establishing such rules on qualifications to the Oregon Judicial Department (OJD). At that time, Chief Justice Wallace P. Carson, Jr., adopted a version of these rules as Uniform Trial Court Rules Chapter 12.

Prior to its abolition, the ODRC had begun a process of reviewing and revising the substance of these qualifications. Upon receiving the responsibility for these rules, the OJD convened the Court-Connected Mediator Qualifications Advisory Committee to continue the work begun by the ODRC. The committee included representatives from each of the kinds of court-connected mediation, as well as advocates for users of mediation.

The committee included mediation coordinators from urban and rural trial courts; domestic relations mediators from county-based agencies and independent contractor panels; private mediators; mediation trainers; and representatives of the Oregon Association of Community Dispute Resolution Centers, Oregon Association of Family Court Services, Oregon Department of Justice, Oregon Mediation Association, Oregon State Bar Alternative Dispute Resolution Section Executive Committee, Oregon State Bar Family Law Section Executive Committee, State Family Law Advisory Committee, and University of Oregon Law School Office for Dispute Resolution.

During the development of this proposal, public comment was solicited through a variety of channels, including all of the groups represented above plus trial court administrators, Oregon State Bar Litigation Section Executive Committee, Oregon Trial Lawyers Association, and Oregon Association of Defense Counsel.

After consideration of comments received, the Chief Justice decided to remove these rules from under the structure of the Uniform Trial Court Rules (UTCR) and issue them as a separate policy. Final rules were adopted by Chief Justice Order effective on August 1, 2005. These rules are not part of the UTCR and are not subject to the UTCR process.

Process for Revision:

The rules will be updated as necessary. Questions or comments can be submitted at any time to:

Statewide Appropriate Dispute Resolution Analyst
Supreme Court Building
1163 State Street
Salem, OR 97301-2563
503.986.4539
ojd.adr@ojd.state.or.us

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OREGON JUDICIAL DEPARTMENT
COURT-CONNECTED MEDIATOR QUALIFICATIONS RULES

1: GENERAL REQUIREMENTS FOR ALL COURT-CONNECTED MEDIATORS

SECTION 1.1 APPLICABILITY

Sections 1.1 to 3.6 of these rules:

(1) Establish minimum qualifications, obligations, and mediator disclosures, including education, training, experience, and conduct requirements, applicable to:

(a) General civil mediators as provided by ORS 36.200(1).

(b) Domestic relations custody and parenting mediators as provided by ORS 107.775(2).

(c) Domestic relations financial mediators as provided by ORS 107.755(4).

(2) Provide that a mediator approved to provide one type of mediation may not mediate another type of case unless the mediator is also approved for the other type of mediation.

(3) Do not:

(a) In any way alter the requirements pertaining to personnel who perform conciliation services under ORS 107.510 to 107.610.

(b) Allow mediation of proceedings under ORS 30.866, 107.700 to 107.732, 124.005 to 124.040, or 163.738, as provided in ORS 107.755(2).

(c) In any way establish any requirements for compensation of mediators.

(d) Limit in any way the ability of mediators or qualified supervisors to be compensated for their services.

SECTION 1.2 DEFINITIONS

As used in these rules:

(1) “Approved mediator” means a mediator who a circuit court or judicial district of this state officially recognizes and shows by appropriate official documentation as being approved within that court or judicial district as a general civil mediator, domestic relations custody and parenting mediator, or domestic relations financial mediator for purposes of the one or more mediation programs operated under the auspices of that court or judicial district that is subject to Section 1.1.

(2) “Basic mediation curriculum” means the curriculum set out in Section 3.2.

(3) “Continuing education requirements” means the requirements set out in Section 3.6.

(4) “Court-system training” means a curriculum or combination of courses set out in Section 3.5.

(5) “Determining authority” means an entity that acts under Section 1.3 concerning qualification to be an approved mediator.

(6) “Domestic relations custody and parenting mediation curriculum” means the curriculum set out in Section 3.3.

(7) “Domestic relations custody and parenting mediation supervisor” means a person who is qualified at the level described in Section 2.2.

(8) “Domestic relations custody and parenting mediator” means a mediator for domestic relations, custody, parenting time, or parenting plan matters in circuit court under ORS 107.755 who meets qualifications under Section 2.2 as required by ORS 107.775(2).

(9) “Domestic relations financial mediation supervisor” means a person who is qualified at the level described in Section 2.3.

(10) “Domestic relations financial mediation training” means a curriculum or combination of courses set out in Section 3.4.

(11) “Domestic relations financial mediator” means a mediator for domestic relations financial matters in circuit court under ORS 107.755 who meets qualifications under Section 2.3 as required by ORS 107.755(4).

(12) “General civil mediator” means a mediator for civil matters in circuit court under ORS 36.185 to 36.210, including small claims and forcible entry and detainer cases, who meets qualifications under Section 2.1 as required by ORS 36.200(1).

(13) “General civil mediation supervisor” means a person who is qualified at the level described in Section 2.1.

(14) “Independent qualification review” means the process described in Section 3.1.

(15) “Mediation” is defined at ORS 36.110.

SECTION 1.3 DETERMINING AUTHORITY, DETERMINING MEDIATOR QUALIFICATIONS, OTHER RESPONSIBILITIES AND AUTHORITY

(1) The determining authority:

(a) Is the entity within a judicial district with authority to determine whether applicants to become an approved mediator for courts within the judicial district meet the qualifications as described in these rules and whether approved mediators meet any continuing qualifications or obligations required by these rules.

(b) Is the presiding judge of the judicial district unless the presiding judge has delegated the authority to be the determining authority as provided or allowed by statute. Delegation under this paragraph may be made to an entity chosen by the presiding

judge to establish a mediation program as allowed by law or statute. A delegation must be in writing and, if it places any limitations on the presiding judge's ultimate authority to review and change decisions made by the delegatee, must be approved by the State Court Administrator before the delegation can be made.

(2) Authority over qualifications. Subject to the following, a determining authority, for good cause, may allow appropriate substitutions, or obtain waiver, for any of the minimum qualifications for an approved mediator.

(a) Except as provided in paragraph (b) of this subsection, a determining authority that allows a substitution must, as a condition of approval, require the applicant to commit to a written plan to meet the minimum qualifications within a specified reasonable period of time. A determining authority that is not a presiding judge must notify the presiding judge of substitutions allowed under this subsection.

(b) For good cause, a determining authority, other than the presiding judge for the judicial district, may petition the presiding judge for a waiver of specific minimum qualification requirements for a specific person to be an approved mediator. A presiding judge may waive any of the qualifications to be an approved mediator in an individual case with the approval of the State Court Administrator.

(3) The determining authority may revoke a mediator's approved status at his or her discretion, including in the event that the mediator no longer meets the requirements set forth in these rules.

(4) The determining authority may authorize the use of an evaluation to be completed by the parties, for the purpose of monitoring program and mediator performance.

(5) In those judicial districts where a mediator is assigned to a case by the court, or where mediators are assigned to a case by a program sponsored or authorized by the court, the determining authority shall assure that parties to a mediation have access to information on:

(a) How mediators are assigned to cases.

(b) The nature of the mediator's affiliation with the court.

(c) The process, if any, that a party can use to comment on, or object to the assignment or performance of a mediator.

(6) The minimum qualifications of these rules have been met by an individual who is an approved mediator at the time these rules become effective if the individual has met the minimum requirements of the Uniform Trial Court Rules in effect prior to August 1, 2005.

(7) The State Court Administrator may approve the successful completion of a standardized performance-based evaluation to substitute for formal degree requirements under Sections 2.2 or 2.3 upon determining an appropriate evaluation process has been developed and can be used at reasonable costs and with reasonable efficiency.

SECTION 1.4 MEDIATOR ETHICS

An approved mediator, when mediating under ORS 36.185 to 36.210 or 107.755 to 107.795, is required to:

(1) Disclose to the determining authority and the participants at least one of the relevant codes of mediator ethics, standards, principles, and disciplinary rules of the mediator's relevant memberships, licenses, or certifications. It is not the court's responsibility to enforce any relevant codes of mediator ethics, standards, principles, and/or rules;

(2) Comply with relevant laws relating to confidentiality, inadmissibility, and nondiscoverability of mediation communications including, but not limited to, ORS 36.220, 36.222, and 107.785; and

(3) Inform the participants prior to or at the commencement of the mediation of each of the following:

(a) The nature of mediation, the role and style of the mediator, and the process that will be used;

(b) The extent to which participation in mediation is voluntary and the ability of the participants and the mediator to suspend or terminate the mediation;

(c) The commitment of the participants to participate fully and to negotiate in good faith;

(d) The extent to which disclosures in mediation are confidential, including during private caucuses;

(e) Any potential conflicts of interest that the mediator may have, i.e., any circumstances or relationships that may raise a question as to the mediator's impartiality and fairness;

(f) The need for the informed consent of the participants to any decisions;

(g) The right of the parties to seek independent legal counsel, including review of the proposed mediation agreement before execution;

(h) In appropriate cases, the advisability of proceeding with mediation under the circumstances of the particular dispute;

(i) The availability of public information about the mediator pursuant to Section 1.5; and

(j) If applicable, the nature and extent to which the mediator is being supervised.

SECTION 1.5 PROVIDING AND MAINTAINING PUBLICLY AVAILABLE INFORMATION

(1) Information for court use and public dissemination: All approved mediators must provide the information required to the determining authority of each court at which the mediator is an approved mediator. Reports must be made using the form located in Appendix A of these rules, or any substantially similar form authorized by the determining authority.

(2) All approved mediators must update the information provided in Section 1.5 at least once every two calendar years.

(3) The information provided in Section 1.5 must be made available to all mediation parties and participants upon request.

2: QUALIFICATIONS FOR COURT-CONNECTED MEDIATORS BY CASE TYPE

SECTION 2.1 QUALIFICATION AS AN APPROVED GENERAL CIVIL MEDIATOR, ONGOING OBLIGATIONS

To become an approved general civil mediator, an individual must establish, to the satisfaction of the determining authority, that the individual meets or exceeds all the following qualifications and will continue to meet ongoing requirements as described:

(1) Training. An applicant must have completed training, including all the following:

(a) The basic mediation curriculum described in Section 3.2, or substantially similar training; and

(b) Court-system training in Section 3.5, or substantially similar training or education.

(2) Experience. An applicant must have:

(a) Observed three actual mediations; and

(b) Participated as a mediator or co-mediator in at least three cases that have been or will be filed in court, observed by a person qualified as a general civil mediation supervisor under this section and performing to the supervisor's satisfaction.

(3) Continuing Education.

(a) During the first two calendar years beginning January 1 of the year after the mediator's approval by the determining authority, general civil mediators must complete at least 12 hours of continuing education as follows:

(i) If the approved mediator's basic mediation training was 36 hours or more, 12 hours of continuing education as described in Section 3.6.

(ii) If the approved mediator's basic mediation training was between 30 and 36 hours, then one additional hour of continuing education for every hour of training fewer than 36 (i.e., if basic mediation training was 30 hours, then 18 hours of continuing education; if the basic mediation training was 32 hours, then 16 hours of continuing education).

(b) Thereafter, as an ongoing obligation, an approved general civil mediator must complete 12 hours of continuing education requirements every two calendar years as described in Section 3.6.

(4) Conduct. An applicant and, as an ongoing obligation, an approved general civil mediator must subscribe to the mediator ethics in Section 1.4.

(5) Public information. An applicant and, as an ongoing obligation, an approved general civil mediator must comply with requirements to provide and maintain information as provided in Section 1.5.

(6) Supervision. A qualified general civil mediation supervisor is an individual who has:

(a) Met the qualifications of a general civil mediator as defined in this section, and

(b) Mediated at least 35 cases to conclusion or completed at least 350 hours of mediation experience beyond the experience required of an approved general civil mediator in this section.

SECTION 2.2 QUALIFICATION AS AN APPROVED DOMESTIC RELATIONS CUSTODY AND PARENTING MEDIATOR, ONGOING OBLIGATIONS

To become an approved domestic relations custody and parenting mediator, an individual must establish, to the satisfaction of the determining authority, that the individual meets or exceeds all the following qualifications and will continue to meet ongoing requirements as described.

(1) Education. An applicant must possess at least one of the following:

(a) A master's or doctoral degree in counseling, psychiatry, psychology, social work, marriage and family therapy, or mental health from an accredited college or university.

(b) A law degree from an accredited law school with course work and/or Continuing Legal Education credits in family law.

(c) A master’s or doctoral degree in a subject relating to children and family dynamics, education, communication, or conflict resolution from an accredited college or university, with coursework in human behavior, plus at least one year full-time equivalent post-degree experience in providing social work, mental health, or conflict resolution services to families.

(d) A bachelor’s degree in a behavioral science related to family relationships, child development, or conflict resolution, with coursework in a behavioral science, and at least seven years full-time equivalent post-bachelor’s experience in providing social work, mental health, or conflict resolution services to families.

(2) Training. An applicant must have completed training in each of the following areas:

(a) The basic mediation curriculum in Section 3.2;

(b) The domestic relations custody and parenting mediation curriculum in Section 3.3; and

(c) Court-system training in Section 3.5, or substantially similar training.

(3) Experience. An applicant must have completed one of the following types of experience:

(a) Participation in at least 20 cases including a total of at least 100 hours of domestic relations mediation supervised by or comediated with a person qualified as a domestic relations custody and parenting mediation supervisor under this section. At least ten cases and 50 hours of the supervised cases in this paragraph must be in domestic relations custody and parenting mediation. At least three of the domestic relations custody and parenting mediation cases must have direct observation by the qualified supervisor; or

(b) At least two years full-time equivalent experience in any of the following: mediation, direct therapy or counseling experience with an emphasis on short-term problem solving, or as a practicing attorney handling a domestic relations or juvenile caseload. Applicants must have:

(i) Participated as a mediator or comediator in a total of at least ten cases including a total of at least 50 hours of domestic relations custody and parenting mediation, and

(ii) An understanding of court-connected domestic relations programs.

(4) Continuing education. As an ongoing obligation, an approved domestic relations custody and parenting mediator must complete 24 hours of continuing education every two calendar years, beginning January 1 of the year after the mediator's approval by the determining authority, as described in Section 3.6.

(5) Conduct. An applicant and, as an ongoing obligation, an approved domestic relations custody and parenting mediator must subscribe to the mediator ethics in Section 1.4.

(6) Public information. An applicant and, as an ongoing obligation, an approved domestic relations custody and parenting mediator must comply with requirements to provide and maintain information in Section 1.5.

(7) Supervision. A qualified domestic relations custody and parenting mediation supervisor is an individual who has:

(a) Met the qualifications of a domestic relations custody and parenting mediator as defined in Section 2.2,

(b) Completed at least 35 cases including a total of at least 350 hours of domestic relations custody and parenting mediation beyond the experience required of a domestic relations custody and parenting mediator in this section, and

(c) An understanding of court-connected domestic relations programs.

SECTION 2.3 QUALIFICATION AS AN APPROVED DOMESTIC RELATIONS FINANCIAL MEDIATOR, ONGOING OBLIGATIONS

To become an approved domestic relations financial mediator, an individual must establish, to the satisfaction of the determining authority, that the individual meets or exceeds all the following qualifications and will continue to meet all ongoing requirements as described.

(1) Education. An applicant must meet the education requirements under Section 2.2 applicable to an applicant to be approved as a domestic relations custody and parenting mediator.

(2) Training. An applicant must have completed training in each of the following areas:

(a) The basic mediation curriculum in Section 3.2;

(b) The domestic relations custody and parenting mediation curriculum in Section 3.3;

(c) Domestic relations financial mediation training in Section 3.4; and

(d) Court-system training in Section 3.5, or substantially similar training.

(3) Experience. An applicant must have completed one of the following types of experience:

(a) Participation in at least 20 cases including a total of at least 100 hours of domestic relations mediation supervised by or comediated with a person qualified as a domestic relations financial mediation supervisor under this section. At least ten cases and 50 hours of the supervised cases in this paragraph must be in domestic relations financial mediation. At least three of the domestic relations financial mediation cases must have direct observation by the qualified supervisor; or

(b) At least two years full-time equivalent experience in any of the following: mediation, direct therapy or counseling experience with an emphasis on short-term problem solving, or as a practicing attorney handling a domestic relations or juvenile caseload. Applicants must have:

(i) Participated as a mediator or comediator in a total of at least ten cases including a total of at least 50 hours of domestic relations financial mediation, and

(ii) An understanding of court-connected domestic relations programs.

(4) Continuing education. As an ongoing obligation, an approved domestic relations financial mediator must complete 24 hours of continuing education every two calendar years, beginning January 1 of the year after the mediator's approval by the determining authority, as described in Section 3.6.

(5) Conduct. An applicant and, as an ongoing obligation, an approved domestic relations financial mediator must subscribe to the mediator ethics in Section 1.4.

(6) Public information. An applicant and, as an ongoing obligation, an approved domestic relations financial mediator must comply with requirements to provide and maintain current information in Section 1.5.

(7) Insurance. As an ongoing obligation, an approved domestic relations financial mediator shall have in effect at all times the greater of:

(a) $100,000 in malpractice insurance or self-insurance with comparable coverage; or

(b) Such greater amount of coverage as the determining authority requires.

(8) Supervision. A qualified domestic relations financial mediation supervisor is an individual who has:

(a) Met the qualifications of a domestic relations financial mediator as defined in this section,

(b) Completed at least 35 domestic relations cases including a total of at least 350 hours of domestic relations financial mediation beyond the experience required in this section, and

(c) Malpractice insurance coverage for the supervisory role in force.

3: COMPONENTS OF QUALIFICATIONS FOR COURT-CONNECTED MEDIATORS

SECTION 3.1 INDEPENDENT QUALIFICATION REVIEW

(1) In programs where domestic relations financial mediators are independent contractors, the determining authority must appoint a panel consisting of at least:

(a) A representative of the determining authority;

(b) A domestic relations financial mediator; and

(c) An attorney who practices domestic relations law locally.

(2) The panel shall interview each applicant to be an approved domestic relations financial mediator solely to determine whether the applicant meets the requirements for being approved or whether it is appropriate to substitute or waive some minimum qualifications. The review panel shall report its recommendation to the determining authority in writing.

(3) Nothing in this section affects the authority under Section 1.3 to make sole and final determinations about whether an applicant has fulfilled the requirements to be approved or whether an application for substitution should be granted.

SECTION 3.2 BASIC MEDIATION CURRICULUM

The basic mediation curriculum is a single curriculum that is designed to integrate the elements in this section consistent with any guidelines promulgated by the State Court Administrator. The basic mediation curriculum shall:

(1) Be at least 30 hours, or substantially similar training or education.

(2) Include training techniques that closely simulate the interactions that occur in a mediation and that provide effective feedback to trainees, including, but not be limited to, at least six hours participation by each trainee in role plays with trainer feedback to the trainee and trainee self-assessment.

(3) Include instruction to help the trainee:

(a) Gain an understanding of conflict resolution and mediation theory,

(b) Effectively prepare for mediation,

(c) Create a safe and comfortable environment for the mediation,

(d) Facilitate effective communication between the parties and between the mediator and the parties,

(e) Use techniques that help the parties solve problems and seek agreement,

(f) Conduct the mediation in a fair and impartial manner,

(g) Understand mediator confidentiality and ethical standards for mediator conduct adopted by Oregon and national organizations, and

(h) Conclude a mediation and memorialize understandings and agreements.

(4) Be conducted by a lead trainer who has:

(a) The qualifications of a general civil mediator as defined in Section 2.1, except the requirement in Section 2.1(1)(a) to have completed the basic mediation curriculum;

(b) Mediated at least 35 cases to conclusion or completed at least 350 hours of mediation experience beyond the experience required of a general civil mediator in Section 2.1; and either

(c) Served as a trainer or an assistant trainer for the basic mediation curriculum outlined in this section at least three times; or

(d) Have experience in adult education and mediation as follows:

(i) Served as a teacher for at least 1000 hours of accredited education or training for adults, and

(ii) Completed the basic mediation curriculum outlined under this section.

SECTION 3.3 DOMESTIC RELATIONS CUSTODY AND PARENTING MEDIATION CURRICULUM

The domestic relations custody and parenting mediation curriculum shall:

(1) Include at least 40 hours in a domestic relations custody and parenting mediation curriculum consistent with any guidelines promulgated by the State Court Administrator.

(2) Include multiple learning methods and training techniques that closely simulate the interactions that occur in a mediation and that provide effective feedback to trainees.

(3) Provide instruction with the goal of creating competency sufficient for initial practice as a family mediator and must include the following topics:

(a) General Family Mediation Knowledge and Skills;

(b) Knowledge and Skill with Families and Children;

(c) Adaptations and Modifications for Special Case Concerns; and

(d) Specific Family, Divorce, and Parenting Information.

(4) Be conducted by a lead trainer who has all of the following:

(a) The qualifications of a domestic relations custody and parenting mediator as defined in Section 2.2,

(b) Completed at least 35 cases including a total of at least 350 hours of domestic relations custody and parenting mediation beyond the experience required of a domestic relations custody and parenting mediator in Section 2.2,

(c) Served as a mediation trainer or an assistant mediation trainer for the domestic relations custody and parenting mediation curriculum outlined in this section at least three times, and

(d) An understanding of court-connected domestic relations programs.

SECTION 3.4 DOMESTIC RELATIONS FINANCIAL MEDIATION TRAINING

(1) Domestic relations financial mediation training shall include at least 40 hours of training or education that covers the topics relevant to the financial issues the mediator will be mediating, including:

(a) Legal and financial issues in separation, divorce, and family reorganization in Oregon, including property division, asset valuation, public benefits law, domestic relations income tax law, child and spousal support, and joint and several liability for family debt;

(b) Basics of corporate and partnership law, retirement interests, personal bankruptcy, ethics (including unauthorized practice of law), drafting, and legal process (including disclosure problems); and

(c) The needs of self-represented parties, the desirability of review by independent counsel, recognizing the finality of a judgment, and methods to carry out the parties' agreement.

(2) Of the training required in subsection (1) of this section:

(a) Twenty-four of the hours must be in an integrated training (a training designed as a single cohesive curriculum that may be delivered over time).

(b) Six hours must be in three role plays in financial mediation with trainer feedback to the trainee.

(c) Fifteen hours must be in training accredited by the Oregon State Bar.

SECTION 3.5 COURT-SYSTEM TRAINING

When court-system training under this section is required, the training shall include, but not be limited to:

(1) At least six hours including, but not limited to, the following subject areas:

(a) Instruction on the court system including, but not limited to:

(i) Basic legal vocabulary;

(ii) How to read a court file;

(iii) Confidentiality and disclosure;

(iv) Availability of jury trials;

(v) Burdens of proof;

(vii) Basic trial procedure;

(viii) The effect of a mediated agreement on the case including, but not limited to, finality, appeal rights, remedies, and enforceability;

(ix) Agreement writing;

(x) Working with interpreters; and

(xi) Obligations under the Americans with Disabilities Act.

(b) Information on the range of available administrative and other dispute resolution processes.

(c) Information on the process that will be used to resolve the dispute if no agreement is reached, such as judicial or administrative adjudication or arbitration, including entitlement to jury trial and appeal, where applicable.

(d) How the legal information described in this subsection is appropriately used by a mediator in mediation, including avoidance of the unauthorized practice of law.

(2) For mediators working in contexts other than small claims court, at least two additional hours including, but not limited to, all of the following:

(a) Working with represented and unrepresented parties, including:

(i) The role of litigants' lawyers in the mediation process;

(ii) Attorney-client relationships, including privileges;

(iii) Working with lawyers, including understanding of Oregon State Bar disciplinary rules; and

(iii) Attorney fee issues.

(b) Understanding motions, discovery, and other court rules and procedures;

(c) Basic rules of evidence; and

(d) Basic rules of contract and tort law.

SECTION 3.6 CONTINUING EDUCATION REQUIREMENTS

(1) Of the continuing education hours required of approved mediators every two calendar years:

(a) If the mediator is an approved general civil mediator:

(i) One hour must relate to confidentiality,

(ii) One hour must relate to mediator ethics, and

(iii) Six hours can be satisfied by the mediator taking the continuing education classes required by his or her licensure unless such licensure is not reasonably related to the practice of mediation.

(b) If the mediator is an approved domestic relations custody and parenting or domestic relations financial mediator:

(i) Two hours must relate to confidentiality;

(ii) Two hours must relate to mediator ethics;

(iii) Twelve hours must be on the subject of either custody and parenting issues or financial issues, respectively;

(iv) Twelve hours can be satisfied by the mediator taking the continuing education classes required by his or her licensure unless such licensure is not reasonably related to the practice of mediation; and

(v) The hours required in subparagraphs (i) and (ii) can be met in the hours required in subparagraph (iii) if confidentiality or mediator ethics is covered in the context of domestic relations.

(2) Continuing education topics may include, but are not limited to, the following examples:

(a) Those topics outlined in Sections 3.2, 3.3, and 3.4;

(b) Practical skills-based training in mediation or facilitation;

(c) Court processes;

(d) Confidentiality laws and rules;

(e) Changes in the subject matter areas of law in which the mediator practices;

(f) Mediation ethics;

(g) Domestic violence;

(h) Sexual assault;

(i) Child abuse and elder abuse;

(j) Gender, ethnic, and cultural diversity;

(k) Psychology and psychopathology;

(l) Organizational development;

(m) Communication;

(n) Crisis intervention;

(o) Program administration and service delivery;

(p) Practices and procedures of state and local social service agencies; and

(q) Safety issues for mediators.

(3) Continuing education shall be conducted by an individual or group qualified by practical or academic experience. For purposes of this section, an hour is defined as 60 minutes of instructional time or activity and may be completed in a variety of formats, including but not limited to:

(a) Attendance at a live lecture or seminar;

(b) Attendance at an audio or video playback of a lecture or seminar with a group where the group discusses the materials presented;

(c) Listening or viewing audio, video, or internet presentations;

(d) Receiving supervision as part of a training mentorship;

(e) Formally debriefing mediation cases with mediator supervisors and colleagues following the mediation;

(f) Lecturing or teaching in qualified continuing education courses; and

(g) Reading, authoring, or editing written materials submitted for publication that have significant intellectual or practical content directly related to the practice of mediation.

(4) Continuing education classes should enhance the participant's competence as a mediator and provide opportunities for mediators to expand upon existing skills and explore new areas of practice or interest. To the extent that the mediator's prior training and experience do not include the topics listed above, the mediator should emphasize those listed areas relevant to the mediator's practice.

(5) Where applicable, continuing education topics should be coordinated with, reported to, and approved by the determining authority of each court at which the mediator is an approved mediator and reported at least every two calendar years via the electronic Court-Connected Mediator Continuing Education Credit Form available on the Oregon Judicial Department's web page or other reporting form authorized by the appropriate determining authority.

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Appendix A

Court-Connected Mediator Information for Public Dissemination

Name of Mediator:	
Business or Program Name (if applicable):	
Business or Program Contact Information below (as applicable)	
Mailing Address:	
Telephone Number:	Fax Number:
E-Mail Address:	

Description of mediation training: _____

_____

_____

Description of other relevant education: _____

_____

_____

If you are a domestic relations mediator, description of formal education: _____

_____

_____

Description of mediation experience, including type and approximate number of cases mediated: _____

_____

_____

Relevant organizations with which the mediator is affiliated: _____

_____

_____

Description of other relevant experience: _____

_____

Description of fees (if applicable): _____

_____

Description of relevant codes of ethics to which the mediator subscribes: _____

_____

_____

I hereby certify that the above is true and accurate.

_____ _____

(Name) (Date)

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7/27/05

Appendix D Jennifer H. Allen *et. al., Advancing Collaborative Solutions: Lessons for the Oregon Sage-Grouse Conservation Partnership (SageCon)* (2017)

Advancing Collaborative Solutions: Lessons from the Oregon Sage-Grouse Conservation Partnership (SageCon)

National Policy Consensus Center

April 2017
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EXECUTIVE SUMMARY

The Sage-Grouse Conservation Partnership, also known as "SageCon," was an unprecedented collaborative effort among federal, state, and private stakeholders to address landscape-scale threats to greater sage-grouse while also acknowledging rural economic and community interests across eastern Oregon's sagebrush range. A U.S. Fish and Wildlife Service (USFWS) preliminary finding that the sage-grouse warranted listing under the endangered species act, and a subsequent court settlement setting a deadline for a final listing decision were key drivers for SageCon participants to seek proactive solutions to protect the bird. A cadre of diverse Eastern Oregon stakeholders with experience working collaboratively on related public lands issues helped set the stage for the collaborative effort.

As part of what the Department of the Interior described as a historic outcome, SageCon produced the 2015 Oregon Sage-Grouse Action Plan, which details voluntary and state-regulated conservation measures to preserve habitat and protect Oregon's sage-grouse population from threats on public and private land. SageCon—as one part of a broader multi-state collaborative effort—led to a subsequent USFWS finding that the sage-grouse no longer warranted listing as endangered.

In our study of this collaborative effort, we interviewed seventeen SageCon participants to identify collaborative approaches that may offer promise for other conservation and public policy efforts. We explored participant motivation for engaging in the process, collaborative process design, integration of science into the SageCon deliberations, and other experiences that interviewees found relevant.

What We Heard

Our study suggests that SageCon's success was due in large measure to the composition of the group, context of the events, and the design and implementation of the collaborative process. Key lessons include the following:

Urgency, experience and engagement. Interviewees reported being motivated to engage in the process by a number of factors, including a sense of urgency to avoid having the bird listed as endangered, the involvement of committed high-level leaders, a desire to build working relationships, a wish to integrate good science into the process, and a belief that the SageCon effort was meaningful and impactful. Many had also developed experience working collaboratively with each other on a spectrum of related issues.

Well-vetted science. Having a mechanism to bring credible scientific information into the dialogue—along with the availability of a well-articulated technical statement of needed conservation objectives—helped prevent things from getting bogged down in scientific debate. Interviewees reported that the science had generally been well-vetted on the ground and reflected conditions in the

field. Also, developing and reviewing technical information collaboratively during SageCon meetings helped establish a shared scientific framework.

Neutral facilitation and project management. Interviewees felt that having a neutral facilitator and an engaged project manager created an environment of mutual respect, fostered trust, mitigated power differentials, and helped convey a commitment to timely results. Having a dedicated project manager moved the process forward by providing a practical problem-solver and someone to conduct shuttle diplomacy and help subgroups negotiate components of the overall outcome. The SageCon leadership group, which was composed of the facilitation team, the project manager, conveners, and a few key members of the full group, also helped the project adapt nimbly to internal and external policy developments.

High-level and well-connected conveners. Having conveners and participants who were high-level decision-makers and well-connected inside and outside their agencies conveyed the importance of the effort and encouraged others to remain engaged. These leaders also assisted in bringing resources to the table, helped with ongoing problem solving, and ensured commitment to follow through. It was also helpful that institutions enabled personnel to take risks and explore innovative approaches.

Collaborative participants. Interviewees saw SageCon participants as inclined toward collaboration, able to move beyond positional thinking, and creative in their problem solving.

Balancing structure with adaptability. The interviews revealed that the ability of the process to adapt to address evolving or emerging issues (e.g., through delegation to work groups or subcommittees) was viewed as a strength and reduced the perception of top-down control. On the other hand, some interviewees felt that the ad hoc approach led at times to a lack of transparency and that more effort (especially early on) to describe the purpose, structure and roles would have helped provide clarity and improved transparency.

Communication and outreach. Some interviewees felt that a more robust and deliberate communication effort could have helped keep participants informed and brought newcomers up to speed more quickly. Strategic communication might also have engaged affected communities more effectively and strengthened their commitment to SageCon outcomes; holding more meetings in affected communities could also have assisted in this effort.

Resources to participate. Finding time and adequate funding to participate was a particular challenge for smaller agencies and organizations. In particular, the participation of high-level leaders from key decision-making agencies triggered a perceived need for other groups to have their highest level leaders present. Resulting time demands were a strain. Distance from meeting locations also exacerbated time and resource concerns for some participants. Finding ways to help smaller organizations defray costs of transportation, lodging and staff time could allow them to participate more fully in the process.

Suggestions for Collaborators

The SageCon process illustrates a model for successfully addressing complex issues across a broad landscape. Overall, SageCon participants shared a sense of accomplishment in their ability to agree on sage-grouse conservation actions based on the best available science while also considering the needs of rural Eastern Oregon communities. The agreements were sufficient to avoid an endangered species listing, and have shown initial strength and signs of durability in Oregon. In a sense, through their collaborative efforts, SageCon

participants have developed a shard vision for the future in Eastern Oregon.

Our examination produced the following list of possible considerations and approaches for collaborative groups wishing to apply what we've learned from SageCon's success:

- ***Make the most of context***
  Recognize situations where the legal or regulatory context creates a meaningful but time-limited opportunity for stakeholders to create an alternative outcome better suited to their interests. Such a context—in which the issues are both important and urgent—supports collaboration.

- ***Build on experience and relationships***
  When identifying necessary participants (decision makers, affected parties), seek to engage individuals who understand the potential benefits (and costs) of a collaborative approach and who can think creatively about solutions. Also seek to engage individuals with previous collaborative experiences or working relationships across areas of interest.

- ***Highlight benefits of collaboration***
  Remind people that a collaborative solution may reduce the likelihood of an outcome being imposed from outside the stakeholder group.

- ***Use high-level conveners***
  Seek the involvement of high-level committed project conveners, participants, sponsors or advocates who can do the following:
  - Give the project gravitas.
  - Signify high-level commitment to project goals.
  - Enhance visibility and transparency.
  - Make decision-makers more accessible.
  - Connect project members and project issues to broader constituencies, wider issues, or extended geographic regions.
  - Enhance the group's access to funding and other resources.

- ***Use a neutral facilitation/project management team***
  Use a neutral facilitator to balance power and input. Use a nonaligned project manager to monitor group and subgroup work and outside events, conduct shuttle diplomacy, lead meetings, be the point of contact, and balance the focus between process and work. Consider choosing a project manager who has significant knowledge of the subject matter and related politics, and who has existing relationships with key actors and familiarity with their interests and positions.

- ***Keep the process adaptable but clear***
  Balance the level of structure and flexibility in the collaborative process. Ensure that group purpose, roles and expectations are clear at the outset, but also help group members recognize the value of remaining flexible about the process. Discuss how any need for process adjustments would be determined, and how adjustments would be devised, communicated, agreed upon, and implemented. Take care not to foster the misperception that an outcome is preordained.

- ***Use a planning team***
  For large or geographically-dispersed efforts that may rely on subcommittees, use a core planning team to collaborate on meeting design in coordination with the project manager. Make sure the core team is representative of the interests at the table.

- ***Use technical subcommittees and expertise***
  Consider using subcommittees (or funded or in-kind staff) who can do a deep dive on technical policy issues or science and

report back to the full group. In addition, seek to include some participants with subject matter expertise as well as some participants with special sensitivity to the dynamics of the group.

- ***Think outside the box***
  Encourage participants to seek novel solutions by thinking outside of the constraints of precedent or their organization's limitations. Where appropriate, encourage participating leaders to ease their control of the process and outcomes in order to allow their participating staff to take risks and consider adaptive solutions.

- ***Help remove participation barriers***
  Seek ways to help small organizations defray costs of participation to ensure balanced representation at the table. While exploring opportunities for remote participation may be one avenue, finding ways to allow small organizations to fully participate in face-to-face meetings is also important. Carefully consider meeting location to improve participation and access and to demonstrate attention to local concerns and impacts.

- ***Vet the science on the ground***
  Encourage participants to bring well-vetted science to the process; ideally, in addition to being vetted by experts, science should be evaluated in the field with impacted communities. Ensure that participants have the freedom to scrutinize and challenge the science and to offer additional data. Help participants identify commonalities in science contributed by different interests.

- ***Strive for continuity in participation***
  Strive to maintain continuity in who attends meetings, minimizing use of substitute attendees when practical so that the group can build trust and construct a shared understanding of where they have been and where they are going. Give attention to thorough on-boarding of participants who join the group in progress.

- ***Listen to communities***
  Fully acknowledge the concerns of communities who will be most impacted by the outcome of the process; ensure they feel their voices are heard and given due consideration.

- ***Communicate vigorously***
  Have a clear communication strategy that does the following:
  - Communicates purpose, roles and expectations of the effort at the start.
  - Promptly conveys any changes in purpose, roles, and expectations.
  - Keeps all participants informed of subcommittee developments.
  - Keeps all participants informed about related efforts or relevant political or substantive developments.
  - Ensures effective onboarding of new team members.
  - Keeps the collaborative group informed about subsequent phases of a project that follow close on the heels of the project.
  - Creates project visibility that:
    - encourages confidence and investment of resources from leaders and decision makers;
    - keeps affected communities connected to the effort;
    - gives the project an identity or brand that is easy to communicate about; and
    - fosters confidence that the groups' work product will have visibility after the project ends.

- ***Seek timely feedback***
  Have participants evaluate the process while it is fresh. Use evaluation results to inform discussion of how any subsequent phases of the project could be supported or improved. ■

1. INTRODUCTION

In 2010, the U.S. Fish and Wildlife Service (USFWS) determined that the Greater Western Sage-Grouse[1] warranted listing as endangered under the Endangered Species Act (ESA) based on statutory factors that included threats to habitat, and inadequate regulatory mechanisms for conservation. But due to higher-priority listing actions, the bird was precluded from listing at the time. Soon after, however, a federal court approved a settlement that established deadlines for USFWS to make final determinations on ESA status for hundreds of species with the warranted-but-precluded status.[2] A deadline for a final determination on the sage-grouse was set for September 2015.

> *"A truly historic effort—one that represents extraordinary collaboration across the American West."*
> *—Sally Jewell, U.S. Secretary of the Interior*

In response to the warranted-but-precluded finding and the subsequent deadline, organizations involved in public land management across the western United States set about to find collaborative solutions to protect the bird while also accommodating working landscapes and rural economies. In Oregon, this work ultimately took shape as the Sage-Grouse Conservation Partnership (SageCon), a group of public and private organizations and individuals who worked together to develop conservation strategies that spanned diverse physical and political landscapes. SageCon produced and garnered support for the 2015 Oregon Sage-Grouse Action Plan.[3] The plan will guide management of Oregon's nearly eighteen million acres of sagebrush habitat using voluntary and state-regulated conservation measures on public and private lands. Adopted by gubernatorial executive order,[4] the plan was central to a September 2015 USFWS determination that protecting sage-grouse under the federal Endangered Species Act was no longer warranted. The determination averted potential outcomes that many feared could not only signal the decline of a landmark species but could also result in significant restrictions on land use and development opportunities with an estimated economic impact in the billions of dollars.[5] [6]

The U.S. Department of the Interior described the effort to conserve sage-grouse (of which SageCon was a significant component) as "the largest land conservation effort in U.S. history."[7] Interior Secretary Jewell heralded it as a "truly historic effort—one that represents extraordinary collaboration across the American West."[8] According to USFWS, it was an "unprecedented, landscape-scale

The greater sage-grouse is native to the sagebrush steppe of the intermountain and western plains regions of North America. The birds depend on sagebrush for survival, relying on these large plants for food and shelter in fall and winter, congregating nearby for elaborate courtship displays in spring, and hiding nests and chicks from predators.[9]

conservation effort" that "significantly reduced threats to the greater sage-grouse across 90 percent of the species' breeding habitat."[10] While some may debate the overall success of the multi-state sage-grouse conservation effort, the process was nevertheless noteworthy in its ability to gain commitments from diverse actors to manage the species at the landscape scale and therefore avoid a more rigid regulatory outcome. SageCon, with its proactive collaborative effort to define a comprehensive and statewide approach to sage-grouse conservation, positioned Oregon as a leader in the range-wide effort.

Our study examines the collaborative process underpinning the SageCon Partnership to identify lessons relevant to other collaborative efforts. Many of these lessons suggest an emerging Oregon model for collaborative management of public lands.

This report is a tool for anyone who seeks to foster collaborative approaches to conservation and other complex public issues. In it, we situate SageCon in its socio-political and historic context, describe the collaborative structure and process underpinning SageCon, discuss the results of our stakeholder interviews, and offer suggestions for groups undertaking collaborative policy work.

SageCon produced and garnered support for the 2015 Oregon Sage-Grouse Action Plan. The plan will guide management of Oregon's nearly eighteen million acres of sagebrush habitat using voluntary and state-regulated conservation measures on public and private lands.

The report is organized as follows:

- Section two provides background about SageCon and related processes that may have shaped SageCon relationships and outcomes.
- Section three examines the structure and implementation of the collaborative process, and identifies lessons learned.
- Section four examines events since the SageCon process that build on and further illuminate lessons learned.
- Section five draws on lessons learned to offer suggestions for other groups that are designing a collaborative policy-making process.
- Section six offers our final reflections. ■

A Declining Species

Greater sage-grouse (*Centrocercus urophasianus*), with an estimated North American population of 100,000 to 500,000 in year 2000,[11] occupy 173 million acres[12] in eleven western states and two Canadian provinces. Due to habitat loss since European settlement, the species has declined from an estimate of between two and sixteen million birds that once ranged sixteen states and three provinces.[13] In Oregon specifically, the sage-grouse population was estimated at 30,000 birds in 2003.[14] Those birds, representing six percent of the entire species' population, inhabit seven counties in southeast and south-central Oregon (having disappeared from the Columbia Basin and the Oregon side of the Klamath Basin.)[15] Since European settlement, Oregon's nearly eighteen million acres of sagebrush habitat have been reduced by 21 percent due to ranching, agriculture, invasive species, energy production, infrastructure development and urbanization.[16] Although Oregon's sage-grouse population has declined steadily for twenty years, large swatches of intact habitat remain. The state is considered a stronghold for the species.[17]

2. BACKGROUND

2.1 The SageCon Process

In June 2012, the Oregon Governor's Natural Resources Office (GNRO), the Federal Bureau of Land Management (BLM), and the regional leadership of the U.S. Natural Resource Conservation Service (NRCS) convened SageCon to develop a collaborative approach to sage-grouse conservation that could alleviate the need for listing the bird as endangered. The group's agreed upon objectives were as follows:[18]

- Provide a forum to coordinate federal, state, local, and private efforts to conserve Greater Sage-Grouse in Oregon.
- Inventory existing strategies and approaches and, where appropriate, identify additional means to address the full range of threats to sage-grouse viability and recovery in Eastern Oregon.
- Coordinate with USFWS requirements and the schedule for the sage-grouse ESA listing decision, in order to provide timely and relevant input on Oregon's sage-grouse and sagebrush habitat conservation strategies and approaches.

2.1.1. SageCon Partners

SageCon was supported and funded by several partner organizations as follows:

- The Oregon Watershed Enhancement Board (OWEB) contributed resources to support a collaborative focus on state policy and conservation planning.
- BLM and NRCS funded high-level coordination and communication around sage-grouse conservation efforts.

- The Oregon Legislature and state agencies funded activities focused more specifically on state policy development and regulation.
- The National Policy Consensus Center at Portland State University provided facilitation and staff support for SageCon meetings.
- The Oregon Governor's Office provided funding for a project manager to coordinate planning related to state and private lands, and a technical lead person (engaged through Oregon State University) to oversee data, mapping, and scientific analysis.

A full list of stakeholders involved in the SageCon Partnership is available on the Oregon Explorer website.[19]

2.1.2. Collaborative Structure of SageCon

The full SageCon Partnership met fifteen times through September 2015. Several sub-groups met between meetings. Subgroups serving the team included the following:

- **Core team—**A project facilitation and support group, plus lead staff for federal and state agencies, and NGO partners, all of who met bi-monthly from 2012–2015 to coordinate federal-state policy issues;

share information on state, regional and national conservation planning; conduct planning; oversee development of the Sage-Grouse Action Plan; and develop agendas for full SageCon meetings and subgroup meetings.

- **Technical team**—Technical experts who managed the data, maps, graphics, reports, and associated analyses needed to support the state's Action Plan.

- **Mitigation working group**—Experts in designing and developing tools and programs for tracking and accounting for habitat impacts and conservation benefits tied to incentive and regulatory programs. They helped develop and build agreement around a mitigation protocol.

- **Policy coordination working group**—Policy staff from key SageCon participant groups who collaborated to ensure policy recommendations were vetted across the many interests at the table.

- **Fire and invasive species working group**—A range of experts who addressed the two most significant non-anthropogenic threats to sage-grouse habitat in Oregon and the Great Basin, drawing on scientific data and analysis including field research and tests conducted by federal, state, private, and university partners. SageCon contracted regional-level experts for this team, who worked to ensure that SageCon efforts coordinated with concurrent projects that were addressing fire-and-invasive species at the range-wide level (including a project to create a Fire and Invasives Assessment Tool, and another to establish Resilience and Resistance science principles.)

- **Oregon Fish and Wildlife Commission (OFWC) rules advisory committee**—Established near completion of the SageCon process pursuant to state administrative law rulemaking process, this committee assisted in developing OAR 635-140-0000 Sage-Grouse Mitigation Rules.

- **Land Conservation and Development Commission (LCDC) sage-grouse rules advisory committee**—Established near completion of the SageCon process pursuant to state administrative law rulemaking process, this committee assisted in developing OAR 660-023-0115 providing land use protection for sage-grouse habitat.

- **Additional ad hoc work groups**—The Energy/Siting Working Group and the Conservation Work Group met as necessary to get input from key stakeholders when work products were close to completion.

SageCon was overseen by a project manager (lead staff for the state) with a mission to complete a plan that would provide conservation measures adequate to meet the needs of USFWS while protecting rural community economies. The individual who served as project manager had strong subject matter knowledge and existing relationships with many participants. She performed shuttle diplomacy when needed, working behind the scenes to solve problems, and serving as a key point of contact.

SageCon was staffed, on the process side, by individuals from the National Policy Consensus Center (NPCC) at Portland State University. A senior level facilitator from NPCC facilitated all of the full SageCon Partnership meetings in cooperation with the process conveners (GNRO, BLM, and NRCS) and the project manager. NPCC staff also drafted agendas, provided for meeting logistics and drafted meeting summaries. Subgroup meetings were led or facilitated by the project manager with NPCC providing meeting support and drafting meeting summaries. Full SageCon Partnership meetings were held in locations across the state, including Prineville, Bend and Salem.

Subgroup meetings were also held in various locations, including as far east as Burns.

2.1.3. State Action Plan and Executive Order

SageCon's work culminated in the Oregon Sage-Grouse Action Plan, published on September 17, 2015. The Action Plan, which focused on both state and private lands with an eye toward future coordination with federal land management, had the following objectives:

- Create a framework for action and accountability among private, nongovernmental, local, state, and federal partners in advancing immediate and long-term efforts.
- Work to achieve sage-grouse population and habitat objectives by building upon and enhancing past and ongoing efforts, including ODFW's Greater Sage-Grouse Conservation Assessment and Strategy for Oregon (2011).[20]

In addition, the Action Plan emphasized the need for implementation to be adaptable and to be sustained by stable, long-term funding and commitments.

Additional state-specific measures to ensure effective implementation of the Action Plan are as follows:

- Adoption of rules by OFWC regarding mitigation for habitat impacts, and adoption of rules by LCDC regarding land use protection for sage-grouse habitat.
- Issuance by Governor Kate Brown of Executive Order 15-18 directing state agencies to implement and adhere to the Action Plan.
- The 2015 Oregon Legislature's advancement of over $3 million in 2015–17 biennial funding for sage-grouse and Action Plan-specific items tied to state agency budgets, as well as a commitment by OWEB to provide $1 million in state lottery funds over ten years. These funds were in addition to existing state agency program budgets that support work related to sage-grouse. They were also in addition to significant funding and in-kind commitments from NGOs, landowners, and local and federal agencies.

These implementation commitments—through rules, gubernatorial executive order, and state and partner funding—played an important role not just in implementing the agreements reached through the SageCon process and documented in the Action Plan, but also in communicating to USFWS (before its listing decision) that SageCon partners were meaningfully and responsibly

2015 Oregon Sage-Grouse Action Plan: An All-Lands, All-Threats Approach

The Oregon Sage-Grouse Action Plan moved beyond an issue-specific approach to sage- grouse conservation to a broader landscape-scale approach that addresses impacts to sage-grouse and their habitat on all lands—federal, state, and private. Also, unlike other efforts, it addresses all types of threats to the bird and its habitat, ranging from energy development to invasive plants and wildfire.

addressing threats to sage-grouse and sage-grouse habitat in Oregon.

The administrative rules developed in conjunction with the Action Plan provided regulatory commitments focused on threats posed by humans and threats that are less responsive to regulation (i.e., wildfire, and invasive grass and juniper encroachment). The funding ensured advancement of voluntary habitat actions and other actions by agencies and partners. Funds amassed around the Action Plan are important for leveraging federal dollars for jointly funded state-federal actions to address wildfire and invasive plants across the entire Great Basin. The funds also advanced work of economic and social value to partners and rural communities (e.g., jobs, rangeland and forage health, and local capacity to address fire).

2.1.4. SageCon Achievements

In sum, this multifaceted state response to the threat of an ESA listing, engineered through a broad-based collaborative effort, and reaching an alternative outcome acceptable both to the federal regulatory agency charged with making the decision whether to list, and, for the most part, to a very diverse set of stakeholders affected by the decision, was the crowning achievement of SageCon. On the way there, it helped to construct highly functional working relationships—and while those relationships will be tested over time, they form a foundation for the continued collaboration that will be necessary to keep an ESA listing at bay in the face of continually dynamic species ecology and political and regulatory scrutiny.

2.2. Contextual Factors Influencing the SageCon Process

This report focuses on the SageCon process itself, but SageCon took shape within a context of statewide, regional and national conservation efforts that may have shaped SageCon outcomes by building the experience, relationships, and expectations of SageCon participants. This section provides background on those early efforts.

> To better manage stakeholder engagement, REECon enlisted Oregon Solutions from the National Policy Consensus Center to help develop a Declaration of Cooperation that articulated REECon's objectives, principles, and commitment to collaboration.

2.2.1. Oregon Conservation Strategy

The scientific, political, and legal debate over the status of the greater sage-grouse dates back to 2005 when Oregon prioritized sage-grouse in its landscape-scale planning, management and monitoring efforts as part of the Oregon Department of Fish and Wildlife's (ODFW) Oregon Conservation Strategy.[21] The strategy, Oregon's first overarching conservation plan for fish and wildlife, listed sagebrush as one of eleven "strategy habitats" and sage-grouse as one of 294 "strategy species." By 2010 ODFW was leading development of the Greater Sage-Grouse Conservation Assessment and Strategy for Oregon, which aimed to identify threats and opportunities for conserving the sage-grouse in particular.

2.2.2. Renewable Energy and Eastern Oregon Landscape Conservation Partnership

In 2011, interest in wind energy development was booming in Eastern Oregon. In response, the Oregon Governor's Office convened state and federal agencies in Oregon to form the Renewable Energy and Eastern Oregon Landscape Conservation Partnership (REECon). The group focused on how to approach renewable energy siting and development in Oregon's sagebrush country, and soon expanded to include representatives from county government, conservation groups, and industry.[22]

To better manage stakeholder engagement, REECon enlisted Oregon Solutions from the National Policy Consensus Center[23] at Portland State University (PSU) to help develop a Declaration of Cooperation (DOC) that articulated the group's objectives and principles and each agency's commitment to the collaboration.[24]

Several years later, interest in renewable energy siting in Eastern Oregon diminished, and REECon broadened its focus to address other sagebrush threats, including invasive annual grasses, juniper, wildfire, and development not related to renewable energy. A more diverse set of participants was attracted by these issues. The REECon process eventually developed into the SageCon process.

2.2.3. Regional Sage-Grouse Task Force

Across the west, efforts similar to REECon were underway. In 2011, to better coordinate state and federal efforts, DOI and the Wyoming Governor called for eleven Western states to form a Sage-Grouse Task Force.[25] The task force became a forum for government leaders to share information about conservation actions and to identify a strategy to restore sage-grouse habitat while preserving social and economic opportunities in rangeland communities. Oregon played a leadership role in this multi-state effort, and SageCon—focused at the state level—was informed by the work of the regional task force and served as a model for other states.

2.2.4. Conservation Objectives Team Report

In 2013, at the request of the states, USFWS convened a Conservation Objectives Team (COT) including state and USFWS biologists to compile the most recent range-wide conservation science about sage-grouse and to delineate reasonable conservation objectives. The COT Report[26] informed state-level efforts such as SageCon about what to address based on current science by helping to define the challenges facing sage-grouse with population-scale information. To a

certain extent, this information provided a roadmap for SageCon and others to use in fashioning plans that would meet the USFWS needs for making a no-list finding. This was also reflective of the in-the-room role that USFWS took in helping states fashion adequate plans for sage-grouse conservation.

2.2.5. BLM Resource Management Plan Amendment

During development of state-led conservation plans, BLM undertook its Resource Management Plan Amendment (RMPA) process, affecting most of sagebrush country in the West, including ten million acres in Oregon. The planning effort had strong bearing on the ultimate ESA-listing decision for sage-grouse. Individual SageCon members engaged with BLM's process, and the SageCon table provided a venue for information sharing and coordination of the RMPA and SageCon processes. As part of its RMPA work, BLM issued a Strategic Plan for Addressing Rangeland Fire Prevention, Management and Restoration.[27] That work informed SageCon's approach to fire and invasive plant management and is specifically referenced in the Action Plan.

2.2.6. Candidate Conservation Agreements with Assurances

In Oregon, the Harney Soil and Water Conservation District (SWCD), in cooperation with USFWS, convened local stakeholders to identify a menu of conservation measures that landowners could agree to take as part of enrollment in Candidate Conservation

Agreements with Assurances (CCAA). CCAAs are formal, voluntary agreements between the USFWS and non-federal landowners in which landowners agree to reduce threats to a species that is or may soon be a candidate for listing as endangered. In exchange, participants receive legal assurance that they will not be required to take additional measures if the species is later listed. [28] USFWS has found that CCAAs protect land from large-scale development and advance actions that improve rangeland health to the benefit of sage-grouse as well as livestock forage.

Following Harney County's example, several Oregon counties developed similar CCAAs, enrolling millions of private land acres in agreements to conserve sage-grouse habitat. In addition, the Oregon Department of State Lands crafted a CCAA covering its more than 600,000 acres of state-owned lands within sage-grouse habitat.

Complementary to the CCAA effort, the NRCS created the Oregon Model to Protect Sage-Grouse,[29] a multi-million dollar commitment to help private landowners implement conservation measures committed to in the CCAAs. Throughout the SageCon effort, the NRCS was actively supporting significant habitat restoration efforts (such as juniper removal) on primarily private lands throughout the bird's range, as well as research on the effectiveness of these efforts.

While much of the substantive work relating to CCAAs occurred outside of SageCon meetings, SageCon and its workgroups provided a forum for communication and coordination related to CCAA development in Oregon, and CCAA's have become an important component of the all-lands, all-threats approach that SageCon articulated in the state Action Plan.

Overall, the related efforts described above either laid important groundwork or provided important contemporary context for the SageCon process as it evolved. The early work done by ODFW on the Oregon Conservation Strategy and the efforts made in the REECon process provided a base of scientific understanding and helped future SageCon participants build relationships and knowledge about the complex ecological, legal and political environment. The Regional Task Force and the COT Report helped provide early guidance and direction for SageCon's efforts. Coordination with the RMPA process and the development of CCAAs helped shape and realize SageCon's efforts to craft an outcome that reflected an all-lands, all-threats approach. SageCon was a unique effort, but its uniqueness was shaped by these external factors (including, of course, the pending regulatory deadline) as well as by SageCon's own internal dynamics. ■

3. UNDERSTANDING THE SAGECON PROCESS

To explore the dynamics of SageCon's collaborative process, the National Policy Consensus Center, in partnership with other researchers from Portland State University, interviewed seventeen SageCon participants throughout summer 2016.[30] The pool of interviewees reflected a balanced representation of the interests at the SageCon table. A description of the interview methodology is available in appendix A.

The interviews provided insights into what participants felt contributed to the success of the planning effort as well as what could have been improved. Consistent engagement of leadership, widespread commitment to a collaborative process, and effective facilitation and process management were some of the most important elements of the SageCon process according to interviewees. Clarifying roles, investing in a communications strategy to keep people informed and enhance transparency, and mitigating the resource constraints faced by some participants were seen as key areas for improvement. Interview responses are summarized in full in appendix B.

This section includes our analysis of interviewee's observations and integrates reflections from our own experiences with SageCon. In our discussion, we examine the structure and implementation of the collaborative process and tease out lessons that can be generalized to help inform other collaborative efforts.

3.1. Process Design and Structure

The urgency of the SageCon process helped keep participants focused and engaged. The level of concern about alternative outcomes (and endangered species listing) may have

been significantly more important in this situation than other natural resource issues. However, these dynamics do not alone explain the complex mix of factors that supported collaboration among SageCon participants. The design and implementation of the collaborative process are keys to understanding what made SageCon a success and how other collaborative groups can replicate that success.

We learned the following about the design, structure and implementation of the SageCon process:

The urgent need for action to avoid adverse regulatory consequences combined with an evolving history of collaboration and relationship-building in Eastern Oregon created a crucial context for the SageCon process.

- Together, the prospect of an ESA listing, a foundation for constructive working relationships, and participants' familiarity with the collaborative process provided a context that was supportive of and perhaps crucial to the project outcomes.

- The possibility of an ESA listing for the greater sage-grouse was perceived by

participants from all sides of the issue as an outcome that was not ideal–either because it would create onerous burdens, or because it would limit options or opportunities for positive conservation actions. The apparent inevitability of a listing absent a collaborative effort to develop an alternative was a strong motivation for participation.

- At the same time, many of the affected or interested participants had engaged in various collaborative efforts around natural resources issues in Eastern Oregon—including efforts related to species, habitat and sagebrush. (For example, the Malheur National Wildlife Refuge Comprehensive Conservation Plan (CCP) was developed through a collaborative process that brought a range of stakeholders—scientists, ranchers and farmers, elected officials, environmental groups, and others—together with USFWS staff.) These collaborative efforts and the relationships they fostered accelerated formation of good working relationships and trust during SageCon and demystified the collaborative process.

- Pre-existing relationships helped the group engage more quickly in open and constructive interactions, avoid surprises (because participants were comfortable sharing information), and stay on course, even when the conveners or project manager offered ideas that were not particularly in line with the group's direction.

The combination of neutral facilitation, strong project management, and high-level decision-makers as conveners was instrumental to moving the process forward.

- Having a neutral forum and facilitator contributed to the success of the process by doing the following:

Engagement of key decision makers as conveners or active participants who were committed to a collaborative process encouraged others to participate and stay engaged in the process.

  - Giving the participants confidence that they would be heard.
  - Creating the space to build trust, particularly in early stages when participants were still assessing their willingness to engage and gauging how they fit in.
  - Mitigating power differentials among participants.
  - Easing tensions as the group navigated difficult issues, even after the group was well-established with a clear shared direction.

- Having a dedicated project manager moved the process forward by providing a point of contact, a practical problem-solver, and someone to conduct shuttle diplomacy and help subgroups negotiate the components of the overall outcome.

- Engagement of key decision makers as conveners or active participants encouraged others to participate and stay engaged. The stature of leaders, their dedication to collaboration, and their commitment of time and resources conveyed the importance of the effort and the commitment to follow-through.

- Some participants felt some of their concerns were dismissed without being addressed. While overlooking some issues is somewhat unavoidable when participants bring a complex set of interests, there may be ways to ensure that concerns that cannot be fully addressed are better acknowledged and flagged for future consideration or action.

- Some participants felt that interests were sometimes over-represented by a disproportionate number of attendees from one organization. Imposing limits on the number of attendees from an organization would have conflicted with SageCon's "welcome all-comers" approach. In addition, such limitations might have forced organizations to focus on high-level attendees while omitting subject experts. In such situations, where the number of representatives is not balanced, a neutral facilitator plays a critical role in balancing participant power (real and perceived).

Maintaining a balance of structure and flexibility in the collaborative process helped participants engage comfortably but also allowed the process to adapt to new information and external factors in a shifting political environment.

- Time revealed that SageCon's function was primarily to be an information-sharing forum, not a decision-making venue. However, working in the early stages to clarify the purpose, as well as roles, responsibilities and logistics might have avoided some confusion.

- At the same time, there was value in allowing flexibility in the process, since over-structuring it might have limited participation and created the appearance that outcomes were pre-ordained. (For example, the process structure allowed for the efficient and timely convening of relevant individuals—offline and between full SageCon meetings—to address a rapidly emerging issue. The outcome of that meeting would then be reported to the full group at the next meeting.

- Participants vary in their level of comfort with a firmly-structured process versus a flexible or ambiguous one; therefore, it is important to find ways to engage people with varied needs for structure.

- By relaxing their control of the process, high-level leaders largely allayed perceptions of top-down control and allowed for adaptive decision-making.

- The project manager, convener and decision-makers helped convey a commitment to achieving meaningful outcomes in a timely manner; thereby allaying any concerns that the neutral facilitators might focus too heavily on process for its own sake.

- While some participants reported discomfort with sometimes not receiving meeting materials until the meeting, staff reported that delays often accommodated up-to-the-minute information or a need to provide context in-person to avoid confusion or undue concern. Keeping participants better informed about when to expect materials might have been helpful.

3.2. Process Implementation

Having a dedicated cross-sector core team advance the project by nimbly adapting the process to internal and external policy issues and other changes was valuable.

- A leadership group comprising the facilitation team, the project manager, conveners, and a few key members of the full group (representatives balanced across sectors) helped the project progress. They collaborated on developing meeting agendas, tracking subcommittees and related outside projects, assessing the full group's readiness to take on issues, and adapting process structure as issues arose.

Maintaining consistent involvement of the same individuals (even when they were representing a larger organization) helped the group align on component pieces of the overall outcome as the work progressed.

- Consistent involvement of the same individuals contributed to:
  - relationship building and trust;
  - development of a shared knowledge base regarding the technical and political aspects of the issues;
  - a shared understanding of the evolution of the group's discussion and thoughts on issues over the course of the effort; and
  - Formation of a solid relationship base that will not fray during the Action Plan implementation phase.

Having participating leaders engaged who were well connected within their agencies or communities of interest gave the project gravitas and fostered outside connections that helped validate and inform the project.

- Federal agency leadership and engagement in SageCon were instrumental in enhancing the work and political dynamic between multilevel stakeholders at the SageCon table and the regional coordination efforts each agency was beholden to. Counties engaged at the highest levels as well, with several county commissioners in regular attendance. Similarly, leaders from key nongovernmental organizations regularly participated. This consistent, high level engagement added gravitas and momentum to the effort.

- Well-connected leaders in the group took issues up their chain of command or out to their constituencies when needed. Those connections helped with ongoing problem solving (e.g., when a policy issue arose that required higher authorities to weigh in). These connections to senior leadership also helped bring validation and encouragement at critical moments (e.g., when Interior Secretary Sally Jewell and Oregon Governor Kate Brown conducted site visits in March 2015).

Developing and reviewing technical information collaboratively during SageCon meetings helped establish a shared scientific framework, avoiding a "my science versus your science" dynamic.

Having staff from participating agencies and organizations think flexibly about options, even when at times constrained by the parameters of their organizations, helped produce workable solutions.

- It was important that institutions enabled personnel to take risks and explore innovative approaches.
- It was valuable to have agency participants who were simultaneously technically capable *and* sensitive to the dynamics of the policy process and thus could think creatively and flexibly about options in an informed way.

Having mechanisms to bring credible scientific and technical information into the dialogue, and the availability of a well-articulated technical statement of conservation objectives, helped prevent things from getting bogged down due to a lack of data, and helped foster shared understanding of what was known.

- Mechanisms for integrating science into the process included having a full-time technical coordinator and a focused technical team that helped process and apply data to inform discussions about conservation and policy. Participants were willing—and often eager—to bring their data to the table, and it was helpful to have an easy to identify point of access.
- In addition, the availability of a well-articulated technical statement of population-scale conservation objectives that would help ensure successful

sagebrush and sage-grouse conservation—the Conservation Objectives Team Report—provided a useful touchstone or roadmap for SageCon participants to assess the adequacy of developing strategies.

- Developing and reviewing technical information collaboratively during SageCon meetings helped establish a shared scientific framework, avoiding a "my science versus your science" dynamic. ODFW, USFWS, and other organizations all came to the table with or supported basically the same set of data and information, which provided a foundation for policy agreements.[31]

- At times stakeholders did take issue with the currency and accuracy of data, mapping, and basic ideas about what factors affect sage-grouse numbers and viability. However, having an environment where everyone was able to voice their concerns about what the science suggested helped the group move through some of these challenges and overall there was minimal push-back on the science.

- During this process, it became clear how important it is that science be more than a modeling exercise—that it be vetted on the ground, in order to provide an understanding of distinct land conditions and to engage with the people who live and work there.

Having a clear communication strategy and more proactive outreach—both internally to process participants and externally to the broader public—would have helped foster a greater sense of transparency during and immediately following the process.

- The primary vehicles for communication with SageCon participants were the meetings themselves (and associated materials provided before or during the meetings) and a website with archived meeting materials. The Oregon Solutions staff maintained the website and kept a comprehensive email list of individuals and organizations that had participated or expressed interest in the SageCon process. Staff sent meeting notices, materials and information to everyone on the list. For participants who attended meetings regularly this communication approach was reasonably effective at keeping participants up to date, and it helped encourage meeting participation. It was most effective during periods when the full SageCon group was meeting more frequently. Those who were involved in other associated work groups or ad hoc meetings had more opportunity to be informed on all that was happening between meetings. There was no formal or routine strategy for otherwise communicating with or updating participants or interested parties about ongoing SageCon-related efforts.

- Consequently, some participants felt the process was not as transparent as it could have been. Most acknowledged the necessity of getting work done through small-group meetings between full SageCon meetings, but also suggested that communication about what was happening between SageCon meetings could have been much more robust, engaging and proactive.

- The need to engage and incorporate new participants during a process of this length and complexity is not uncommon. A communication strategy could have assisted with developing an orientation for incoming participants.

- A more robust communication strategy for participants would also have been helpful during the final stages of Action Plan development when full SageCon meetings were less frequent and a lot of work was happening quickly between meetings. For example, some participants

noted that it would have been helpful during preparation of the final project report to set clear group-editing expectations so people could track how their input was addressed and why.

- There was no formal strategy for communicating about the SageCon process to the outside world. The process relied on participants to communicate news and progress to their constituencies, but made no independent effort to communicate beyond those on the comprehensive email list. Interviewees suggested that having a communication plan for broadly informing the public and affected communities about the process would have been beneficial.

- Among other benefits, an external communication plan that raised public awareness about the SageCon effort could have done the following:
    - Fostered a common lexicon and a "brand" for the effort for use throughout the process and the implementation phase.
    - Helped with onboarding new individual or organizational participants.
    - Communicated the potential long-term benefits of successful collaboration on sage-grouse conservation to communities in sagebrush country and thereby secured broader support for SageCon outcomes.

Finding ways to help smaller organizations defray costs of transportation, lodging and staff time could allow them to participate more fully in the process.

- Some of the smaller organizations and local governments had limited time and resources to participate. Consequently, they felt frustration and may have been constrained in their ability to participate. Possible solutions might include a more robust effort to enable remote meeting participation, including live video conferencing and real-time presentation sharing. A substantial commitment of resources would be needed for technology support. On the other hand, encouraging remote participation can hinder person-to-person interactions, relationship building, and trust that can be crucial to successful collaboration.

Fully embracing the concerns of the communities and participants that are likely to be the most affected would have better promoted fairness and confidence in the process.

- Efforts were made to hold meetings in central Oregon aimed for locations that were equidistant for participants from eastern Oregon and the Salem/Willamette Valley area; however, not holding full-SageCon meetings in Eastern Oregon exacerbated perceptions of power imbalance and insensitivity to the most affected communities.

- Taking the SageCon process to communities most likely to be affected (by holding meetings there, doing more public outreach and education, or even providing a forum for public input) might have helped demonstrate more clearly that the process valued local knowledge—anecdotal, practical, and scientific.

- Analysis of social and economic impacts—an issue of significant importance to local affected communities—was not as thorough as some participants wanted. Making the effort to provide more robust analysis and incorporate it into the discussion would have provided assurances to some participants that the process and outcomes were fair.

4. ACTION PLAN IMPLEMENTATION AND BEYOND

This study focused on the SageCon process that led up to the decision not to list the Sage-Grouse; however, due to the timing of the study, a number of interviewees raised issues related to the subsequent implementation of the Action Plan and the role of the SageCon Partnership going forward. This section of the report provides an update on Action Plan implementation in order to illustrate significant developments that may be addressing some of the concerns raised by interviewees. We examine these developments and findings related to post-SageCon events to further illuminate lessons learned.

4.1. Reconvening after the SageCon Process

The full SageCon Partnership reconvened on September 30, 2016—their first full meeting since before submittal of the Action Plan and the USFWS decision not to list sage-grouse a year earlier. Participants celebrated their successful collaboration and received extensive information about Action Plan implementation efforts and sage-grouse conservation in Oregon. They also discussed future roles and structure for SageCon.

Participants reported seeing implementation of the Oregon Sage-Grouse Action Plan as an opportunity to further integrate broader economic and social considerations affecting the communities and landscapes covered by the plan. They shared concerns about maintaining momentum, and expressed concern that losing key leaders could threaten long-standing relationships and commitments to provide resources for plan implementation.

4.2. Maintaining Momentum

Because the interviews with participants reflected in this report took place before the reconvening of the SageCon partners in September 2016, some interviewees commented that they felt that SageCon (as one interviewee put it) "fell off the face of the earth" after the USFWS decision not to list the bird.[32] Given the importance of robust implementation of the plan to the long term success of the process, the lack of communication during the year after the decision caused some concern. It would have been helpful to have had a plan in place for continued communication about implementation efforts before SageCon adjourned. Interviewees suggested that having a roadmap for future SageCon meetings and some clarity about roles for implementation could help maintain momentum for the plan. The September 2016 SageCon partnership meeting may have alleviated some of this concern.

4.3. Re-setting the Table and Embracing Broader Context

Some interviewees felt that the decision not to list the bird offered an opportunity to bring new voices into the discussion, to create a clearer process structure, and to remedy the perception of some rural participants that they were forced to participate in the process or choose the lesser of two evils. Some interviewees suggested that, by articulating a broad set of goals that include goals meaningful to Eastern Oregon communities (such as rural economic health) as well as to sage-grouse conservation, the implementation process could accomplish outcomes that would be even more significant and productive for affected communities.

Similarly, some participants noted that it will be important to be aware of other environmental conservation issues that overlap with sage-grouse efforts (e.g., wolf population management), as working on issues in parallel silos can strain the resources of participants, and can lead to fatigue in communities. Several interviewees noted that implementation efforts also need to incorporate climate change, water resources, noxious weeds or other invasive species.

Overall, there was acknowledgement that developing a more integrated approach or collaborative system to address the complex social, economic and environmental issues facing Eastern Oregon would be a worthwhile effort.

Participants also recognized this shift from Action Plan development to implementation as a natural point to adjust the structure and procedures of the SageCon team itself. Participants offered suggestions regarding the structure of SageCon leadership, the frequency and location of meetings, and other process details.

Participants recognized this shift from Action Plan development to implementation as a natural point to adjust the structure and procedures of the SageCon team itself.

The SageCon meeting that took place after our interviews attempted to address some participant concerns. Among other adjustments, the conveners and process team proposed a restructuring of SageCon leadership to create the SageCon Coordinating Council. The process would remain focused on implementation of the Action Plan and coordination with federal implementation efforts. And, while the Oregon Governor's Natural Resource Office would formally convene the process, a new Coordinating Council, including federal, state, and county government leaders along with leaders from the conservation and agricultural sectors, would provide overall direction and oversight of the effort. This council would replace the SageCon conveners and core team with a more explicitly inclusive leadership group. A decision on the structure for SageCon moving forward is pending.

In the interviews, participants raised additional issues that they hoped will be addressed in the implementation phase, including making sure there would be adequate state and federal resources invested in implementation efforts to ensure that the decision not to list sage-grouse as endangered will be upheld during the USFWS five-year review in 2020.

4.4. Turnover

Interviewees noted that turnover in personnel at key agencies—departures at ODFW and BLM in particular—pose a significant challenge for Action Plan implementation because implementation responsibilities are passing to individuals who were not involved in planning and who may not receive sufficient guidance. The

ongoing engagement of the GNRO was identified as important for keeping state agencies on task with implementation. One participant suggested that the implementation plan adopt an adaptive management strategy that accommodates the changing cast of characters and shifting policy context.

4.5. Institutionalizing Trust

Questions about how to institutionalize collaborative approaches to conservation were raised by a number of interview participants. While personal and professional relationships are clearly important elements of the collaborative process, there was interest in figuring out how to establish a framework that fostered ongoing problem solving and proactive engagement on challenging issues rather than "jumping from fire to fire." One state agency participant noted that one challenge with institutionalizing collaboration is that the best learning occurs "at the table." The participant noted that, although there are programs like PSU's Executive Seminar Program[33] that are effective because they let participants experience collaboration in action, the cost and time demands of such programs may make providing this kind of experience more broadly a challenge. ■

5. SUGGESTIONS

Distillation of our analysis of SageCon renders the following list of possible considerations and approaches for collaborative groups wishing to apply what we've learned from SageCon's success:

5.1. Context

- Recognize situations where the legal or regulatory context creates a real but time-limited opportunity for stakeholders to create an alternative outcome better suited to their interests. Such a context—in which the issues are both important and urgent—supports collaboration.

- When identifying necessary participants (decision makers, affected parties), look for individuals who understand the potential benefits (and costs) of a collaborative approach and who can think creatively about solutions, and look for individuals with previous collaborative experiences or working relationships across areas of interest.

- Remind people that a collaborative solution may reduce the likelihood of an outcome being imposed from outside the stakeholder group.

5.2. Process Design

- Use a neutral facilitator to balance power, broaden input, ease tension around controversial topics, and foster trust within the group.

- Use a neutral project manager to do the following:
    - Monitor the progress and products of the group and any subgroups.

    - Conduct shuttle diplomacy (with transparency).
    - Lead meeting planning.
    - Monitor relevant outside events.
    - Provide a primary point of contact for the project.
    - Maintain a balanced focus on process and outputs.

- Consider choosing a project manager who has:
    - knowledge of the subject matter and politics surrounding the issue;
    - existing relationships with key actors;
    - experience with related efforts; and
    - understanding of the interests and positions of current stakeholders.

- For large or geographically dispersed efforts that may rely on subcommittees, use a core planning team to collaborate on meeting design in coordination with the project manager. Make sure the core team is representative of the interests at the table.

- Seek the involvement of high-level committed project conveners,

participants, sponsors or advocates who can do the following:

  - Give the project gravitas.
  - Signify high-level commitment to project goals.
  - Enhance visibility and transparency.
  - Make decision-makers more accessible.
  - Connect project members and project issues to broader constituencies, wider issues, or extended geographic regions.
  - Enhance the group's access to funding and other resources.

- Seek to include some participants with subject matter expertise as well as some participants with special sensitivity to the dynamics of the group. Consider using subcommittees (or funded or in-kind staff) who can do a deep dive on technical policy issues or science and report back to the full group.

- Balance the level of structure and flexibility in the collaborative process. Ensure that group purpose, roles and expectations are clear at the outset, but also help group members recognize the value of remaining flexible about the process. Discuss how any need for process adjustments would be determined, and how adjustments would be devised, communicated, agreed upon, and implemented. Take care not to foster the misperception that an outcome is preordained.

5.3. Process Implementation

- Encourage participants to seek novel solutions by thinking outside of the constraints of precedent or their organization's limitations.
- When available, utilize a well-articulated, widely-accepted technical or scientific assessment of outcomes or objectives needed to be attained in order to achieve the desired policy outcome of the collaborative effort—that is, an independent reference for technical progress or success.

- Seek ways to help small organizations defray costs of participation to ensure balanced representation. While exploring opportunities for remote participation may be one avenue, finding ways to allow small organizations to fully participate in face-to-face meetings is also important.

- Carefully consider meeting location to improve participation and access and to acknowledge local concerns and impacts.

- Encourage participating leaders to ease their control of the process and outcomes and allow their participating staff to take risks and consider adaptive solutions.

- Encourage participants to bring well-vetted science to the process; ideally, in addition to being vetted by experts, science should also be vetted in the field with impacted communities.

- Ensure that participants have the freedom to scrutinize and challenge the science and to offer additional scientific data they may be aware of. Help participants identify commonalities in science contributed by different interests.

- Strive to maintain continuity in who attends meetings, minimizing use of substitute attendees when practical so that the group can build trust and construct a shared understanding of where they have been and where they are going. Give attention to thorough on-boarding of participants who join the group in progress.

- Fully acknowledge the concerns of communities who will be most impacted by the outcome of the process and ensure they feel their voices are heard and given due consideration.

- Have a clear communication strategy that does the following:
    - Clarifies purpose, roles and expectations of the effort at the start.
    - Promptly conveys any changes in purpose, roles, and expectations.
    - Keeps all participants informed of subcommittee developments.
    - Keeps all participants informed about related efforts or relevant political or substantive developments.
    - Ensures effective onboarding of new team members.
    - Keeps the group informed about subsequent phases of a project that follow close on the heels of the project.
    - Creates project visibility that:
        - encourages confidence and investment of resources from leaders and decision makers;
        - keeps affected communities connected to the effort;
        - gives the project an identity or brand that is easy to communicate about; and
        - fosters confidence that the groups' work product will have visibility after the project ends.
- Have participants evaluate the process while it is fresh. Use evaluation results to inform discussion of how any subsequent phases of the project could be supported or improved. ■

6. FINAL REFLECTIONS

While every natural resource management challenge and related collaborative effort has its own characteristics, reflecting on the SageCon process offers potential to inform other such initiatives to address complex issues across the landscape. This report has sought to distill some of the lessons learned that may have broader applicability.

Positive outcomes of the planning process are worth reiterating. Overall, participants shared a sense of accomplishment in their ability to come together and achieve some level of agreement on a set of sage-grouse conservation actions based on the best available science and sufficient to avoid an endangered species listing. Stakeholders were also able to build that plan while considering the interests of rural Eastern Oregon communities concerned about maintaining robust traditional western economies and lifestyles as well as a healthy sagebrush ecosystem. In a sense, SageCon participants developed a shared vision for the future in Eastern Oregon.

The agreements reached in Oregon have shown initial strength and signs of durability: although litigation challenging state and federal sage-brush conservation planning, as well as the decision not to list the bird, is

prevalent across the eleven-state range of the bird, there has been only one legal challenge filed in Oregon—a challenge to the BLM RMPA.[34] So, while there are still issues to be resolved, for the most part a cautious optimism appears to have prevailed—or at least a willingness to see if collaborative implementation efforts can address these issues. This is a significant testament to the goodwill generated by the SageCon process, even though choices about how to balance diverse stakeholder needs and sage-grouse habitat needs will continue to test the implementation process. Time will reveal whether the SageCon process will adapt to meet future challenges and maintain the collaborative commitments that have been so important to the success of the process to date. ■

APPENDIX A: INTERVIEW METHODOLOGY

The National Policy Consensus Center, in partnership with other researchers from Portland State University, interviewed seventeen SageCon participants throughout summer 2016. Interviews took place after the SageCon process was completed and USFWS had decided not to list sage-grouse as endangered but before implementation of the Action Plan began.

Interviewees volunteered in response to an open invitation to participate in the study. The pool of interviewees reflected a balanced representation of the interests at the SageCon table. Interviewees included the following:

- County officials
- Other local government staff
- Federal agency staff
- State agency staff
- Tribal representatives
- Soil and Water Conservation District staff
- Representatives of conservation NGOs
- Representatives of the livestock industry
- SageCon project management staff

We conducted roughly half of the interviews by phone and half in person.

Interviews were semi-structured with prompts to maintain a set sequence of topics. However, interviewees were encouraged to build their own story and elaborate as they wished. The interviews explored participants' perceptions about the following:

- Their own motivation to engage (and stay engaged) in the collaborative process.
- Factors or events that were especially significant in moving SageCon forward.
- Lessons learned about the structure and implementation of the collaborative process itself, including what was helpful and what could be improved.
- Ways in which scientific and technical information entered the process.
- Any other SageCon experiences they wished to discuss.

Interview results were compiled and organized thematically without attribution.

APPENDIX B: SUMMARY OF INTERVIEW FINDINGS

The following is a summary of interview responses organized thematically without attribution. While not all interview responses are reported here, this summary broadly illustrates the full range of themes raised by interviewees. Note that responses reflect not only events during the SageCon process, but also events after the SageCon process but before implementation of the Action Plan.

Sources of Motivation to Stay Engaged
Various interviewees reported the following sources of *motivation for staying engaged in the SageCon process*:

Urgency to avoid negative outcomes

- There was urgency to find solutions before the court-ordered decision deadline in order to preserve the ability to shape the outcome.
- SageCon might prevent perceived negative outcomes like those experienced by rural communities when the Northern Spotted Owl was listed as endangered.
- SageCon might avoid perceived negative dynamics like those that emerged around the Oregon Plan for Salmon and Watersheds. [35]

High-level leadership involvement

- Strong involvement from top-level state leaders from the Governor's Natural Resources Office (GNRO) sent a clear signal to state agencies and stakeholders from other sectors about the priority of the SageCon effort.
- The active engagement of high-level federal agency leaders in Oregon (including BLM and USFWS) and their efforts to maintain an open dialogue about policy developments regionally and nationally, and their willingness to bring SageCon concerns to their superiors helped create a sense that input was being taken seriously at the federal level.

Importance of balanced representation

- Unless representatives from rural communities were engaged, people who derive their livelihood from the rangelands might not be adequately represented in the ESA listing decision or BLM's Resource Management Plan Amendment (RMPA) process.

Potential for an effective solution

- Collaboration could produce a realistic compromise that accommodated the full range of interests—from wildlife conservation to sustainable local economies—if SageCon could get out in front of the issue and avoid a listing.
- SageCon appeared to represent the best possible channel for achieving a positive outcome for the sage-grouse.

Desire to integrate science

- Engagement could help ensure that the Action Plan was consistent with the best available science about sage-grouse so that the mitigation approach would be rigorous, scientifically-sound, and outcome-based.

- Government agencies could share data and protect the integrity of previous sage-grouse scientific research and planning.

Opportunity to do something comprehensive and impactful

- SageCon was an opportunity to address topics across multiple jurisdictions in a coordinated way, and to implement conservation on a landscape scale—as opposed to parcel by parcel.
- SageCon was an opportunity to engage in an effort that was meaningful.

Opportunities to build relationships

- SageCon was an opportunity to build working relationships with leaders and constituencies.

The Role of Science
Various interviewees reported the following perceptions regarding *the role of science in the SageCon process*:

Many participants had positive feedback on the use of science in the SageCon process, including:

- The way that scientific information was brought into the discussion contributed to the success of the effort.
- ODFW and others came to the table with good science and data, and while there was some debate over particular topics, most of the information had been well vetted by credible experts.
- ODFW's use of Local Implementation Teams to ground-truth core-area maps with local landowners helped gain buy-in, build support and ensure information reflected the real-world situation.

On the other hand, some participants had concerns over how science was incorporated in the process, including comments such as:

- There was sometimes resistance to questioning of data.
- There was some lack of transparency about sources as data was developed.
- Science was, at times, disregarded when policy decisions were made. In particular, social sciences and the quantification of social impacts received less attention than some thought they deserved.

Neutral Forum
Various interviewees reported the following perceptions regarding *the neutrality of the discussion forum:*

- Process facilitation and management were done well in general.
- Having neutral staff that did not represent a particular interest or position was valuable.
- The process was not overly directed by any particular agency agenda. Oregon Consensus and Oregon Solutions were viewed as the "holders of the process," with a facilitative role that provided transparency.
- The facilitators and project manager together helped create an environment of mutual respect that made it possible for diverse parties to feel heard, participate constructively, and raise contentious issues early in the process for discussion later.

- Most views were heard, but some concerns were not always fully addressed.
- Issues were at times "summarily removed" from consideration even though not all participants were on board with dismissing the issues.

Working Relationships
Various interviewees reported the following perceptions regarding *SageCon working relationships:*

- Relationships that were built among process participants during previous sage-grouse conservation efforts (dating as far back as the 2010–2012 REECon process) contributed to the success of the SageCon process by providing for more open and constructive interactions during the negotiations.
- Due to pre-existing long-term relationships there were few surprises along the way because everyone was sharing information as it became available.
- Pre-existing relationships helped the group stay on course, even when the conveners or project manager offered ideas that were not particularly in line with the group's direction.
- It was impressive how pleasant and amenable group participants were—even when participants were upset, or had strong views.
- Maintaining SageCon relationships with people who have different interests could have positive implications for future work.

The Nature of Collaboration
Various interviewees reported the following perceptions regarding the *collaborative nature of SageCon participants:*

- The collaborative nature and experience of local, state and federal leaders as well as other participants were important for SageCon's success.
- The ability of individual agency leaders to think and act "outside of the box" of perceived agency cultures, and the ability of advocates on all sides to move beyond positional thinking, to listen to other interests, and to work toward creative solutions were critical to SageCon's success.
- If individuals with different personalities and experiences had been involved, the process might not have been as successful.
- The process might not be replicable with a different cast of characters.

Roles and Expectations
Various interviewees reported the following perceptions regarding *roles and expectations for SageCon*:

- The inherent flexibility of the process was perceived by some participants as useful in allowing the process to respond to changing issues and political dynamics.
- Others felt that it would have been helpful at the outset to have a deliberate process of defining roles, setting the agenda, and developing explicit operating principles.
- Particularly early in the process, SageCon's role in decision making about sage-grouse conservation issues and strategies was not well-defined.

- Greater clarity of roles and expectations might have reduced the amount of shuttle diplomacy that was needed to keep the process on track.
- Perhaps the relatively under-structured process would not have gone as smoothly if key participants were not already committed to constructive collaboration.
- The ad hoc nature of the process was at times confusing and frustrating.

Transparency and Communication
Various interviewees reported the following perceptions about *transparency and communication during the SageCon process*:

Transparency
- The process was not as transparent and participatory as it was purported to be—there were behind-the-scenes negotiations and decision making that were not always apparent.
- The need to get work done outside of full-group meetings was legitimate, but better communication about what was going on between meetings would have been helpful.
- Transparency may have been reduced somewhat due to the tension between having a structure that delegated work and decision making to smaller groups (for the sake of efficiency) versus maintaining broad real-time transparency about issues and process.
- As the listing decision deadline got close, the final push to complete the Action Plan disappeared into a "black box." (Some respondents reported that this final push to complete the final written product began when the content of the plan was 80 percent complete.)

Communication to Participants
- A more robust and deliberate communication effort could have helped convey information more efficiently and effectively to participants and thereby have reduced concerns about transparency.
- A more formal communication structure for the process might have helped newcomers to the process get up to speed more quickly.
- Short notice of some full SageCon meetings, and occasions when meeting materials were not distributed in advance of the meeting, were somewhat frustrating.
- Communication about the progress and content of the two rulemaking processes that ODFW and DLCD were undertaking jointly via two SageCon committees could have been improved.

External Communications
- An external communication plan may have fostered a common lexicon and a "brand" for the effort that could have been sustained during staff onboarding, throughout the process, and into the implementation phase.
- Greater investment in communication outreach could have demonstrated the long-term benefits of successful collaboration to communities in sagebrush country and could have secured broader support for SageCon outcomes.
- Having a communication plan for broadly informing the public and affected communities about the process would have been more effective.

Time and Resource Commitments
Various interviewees reported the following perceptions about *time and resource commitments during the SageCon process*:

- The process required substantial time and personnel.
- Finding time and adequate funding to participate was a particular challenge for smaller agencies and organizations.
- While the engagement of the GNRO staff was an important contribution to the success of the effort, this staff was spread thin; consequently, at times accessibility and effectiveness were somewhat limited.
- Sometimes one or more entities (usually federal or state agencies) were over-represented at meetings, creating the appearance that they had a more dominant presence.
- Engagement of high-level players from key decision-making agencies triggered a perceived need for other participating groups to have their highest-level leaders present in order to have equal impact. Resulting time demands were a strain.
- Distance from meeting locations exacerbated time and resource concerns for some participants, particularly some who lived in the heart of sage-grouse country. (No meetings of the full SageCon Partnership, but some meetings of smaller working groups, were held in that area of the state.)
- Long travel to meetings was frustrating for some participants from the communities most affected by the ultimate outcome; as one participant noted, "Prineville is not Eastern Oregon."

Trust Issues
Various interviewees reported the following perceptions about *trust among SageCon participants*:

- Overall, most participants felt that the process was helpful in building working relationships and trust among diverse interests, although a few voiced concern that some participants might not be actively participating or candidly sharing their views, but rather just "waiting to sue."
- The process might be a waste of time if participants were working on a deal that other participating organizations were simply going to challenge in court. Some felt—particularly those from potentially affected rural communities—that the urgency created by the deadline for a listing determination forced them "over a barrel," faced with choosing the lesser among evils. [36]
- Ongoing collaboration around implementation of the Action Plan may provide opportunities to address lingering or unaddressed concerns, such as consideration of the impacts from predators on sage-grouse.

NOTES

[1] Spelling of the common name of the species *Centrocercus urophasianus* varies. In this report we use "Western Greater Sage-Grouse," "greater sage-grouse," or "sage-grouse."

[2] The stipulated settlement agreement from the U.S. District Court case *Center for Biological Diversity v. Salazar* may be downloaded at this link: https://www.fws.gov/endangered/improving_ESA/WILDLIFE-218963-v1-hhy_071211_exh_1_re_CBD.PDF

[3] The Oregon Sage-Grouse Action Plan may be downloaded from the Oregon Explorer website at this link: http://oregonexplorer.info/content/oregon-sage-grouse-action-plan?topic=203&ptopic=179

[4] Oregon Executive Order 15-18 adopting the Oregon Sage-Grouse Action Plan and directing state agencies to implement the plan may be downloaded at this link: http://www.oregon.gov/gov/admin/Pages/executive-orders.aspx

[5] Elizabeth Chuck and Jim Urquhart, "The $5.6 Billion Bird: How Will the Sage Grouse Fight End?" (*NBC News*, September 22, 2015), para. 4. http://www.nbcnews.com/news/us-news/5-6-billion-bird-why-u-s-needs-greater-sage-n424311

[6] Reid Wilson, "Western States Worry Decision on Bird's Fate Could Cost Billions in Development" (*The Washington Post*, May 11, 2015), para. 3. https://www.washingtonpost.com/blogs/govbeat/wp/2014/05/11/western-states-worry-decision-on-birds-fate-could-cost-billions-in-development/

[7] U.S. Department of the Interior, Office of the Secretary, Press Release, "Historic Conservation Campaign Protects Greater Sage-Grouse" (September 22, 2015), para. 1. https://www.doi.gov/pressreleases/historic-conservation-campaign-protects-greater-sage-grouse

[8] U.S. Department of the Interior, Office of the Secretary, Press Release, "Historic Conservation Campaign Protects Greater Sage-Grouse" (September 22, 2015), para. 4. https://www.doi.gov/pressreleases/historic-conservation-campaign-protects-greater-sage-grouse

[9] Encyclopedia of Life, "*Centrocercus urophasianus* Greater Sage-grouse" (n.d.) http://eol.org/pages/1049185/details

[10] U.S. Department of the Interior, Office of the Secretary, Press Release, "Historic Conservation Campaign Protects Greater Sage-Grouse" (September 22, 2015), para. 1. https://www.doi.gov/pressreleases/historic-conservation-campaign-protects-greater-sage-grouse

[11] U.S. Fish and Wildlife Service, "Notes from the Lek, Greater Sage-Grouse Conservation Primer Series, Primer 1: Beginners' Guide to Greater Sage-Grouse" (c. 2010). http://www.fws.gov/greatersagegrouse/factsheets/Primer1-SGBeginnersGuide.pdf

[12] U.S. Department of the Interior, Office of the Secretary, Press Release, "Historic Conservation Campaign Protects Greater Sage-Grouse" (September 22, 2015), para. 3. https://www.doi.gov/pressreleases/historic-conservation-campaign-protects-greater-sage-grouse

[13] U.S. Fish and Wildlife Service, "Greater Sage-Grouse—Species Information," (n.d.) http://www.fws.gov/greatersagegrouse/speciesinfo.php

[14] Oregon Governor's Natural Resources Office, "The Oregon Sage-Grouse Action Plan" (2015), p. 10. http://oregonexplorer.info/content/oregon-sage-grouse-action-plan?topic=203&ptopic=179

[15] Oregon Department of Fish and Wildlife, "Greater Sage-Grouse Backgrounder" (2015), p. 2. http://www.dfw.state.or.us/wildlife/sagegrouse/docs/Greater_Sage_Grouse_Candidate_species_Backgrounder.pdf

[16] Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service, "Greater Sage-Grouse" (n.d.), para. 4–7. https://www.fws.gov/oregonfwo/articles.cfm?id=149489436

[17] Oregon Department of Fish and Wildlife, "Greater Sage-Grouse Backgrounder" (2015), p. 1. http://www.dfw.state.or.us/wildlife/sagegrouse/docs/Greater_Sage_Grouse_Candidate_species_Backgrounder.pdf

[18] Oregon Sage-Grouse Conservation Partnership, "Oregon's Sage-Grouse Conservation Partnership (SageCon)" (2013), p. 1. http://orsolutions.org/wp-content/uploads/2013/12/SageCon_OverviewFactSheet_2013.pdf

[19] A full list of SageCon partners is included in the appendix to the Oregon Sage-Grouse Action Plan. "Appendix 1: SageCon Partners" may be downloaded from the Oregon Explorer website at this link: http://oe.oregonexplorer.info/ExternalContent/SageCon/Appendices_Combined.pdf

[20] The Oregon Sage-Grouse Action Plan may be downloaded from the Oregon Explorer website at this link: http://oregonexplorer.info/content/oregon-sage-grouse-action-plan?topic=203&ptopic=179

[21] Oregon Department of Fish and Wildlife, "Oregon Conservation Strategy" (Salem, Oregon, 2016).

[22] Learn more about the Renewable Energy and Eastern Oregon Landscape Conservation Partnership at the Oregon Solutions website at this link: http://orsolutions.org/osproject/renewable-energy-and-eastern-oregon-landscape-conservation-partnership

[23] The National Policy Consensus Center (NPCC) was established in 2000 to lead, research, and develop the field of collaborative governance and consensus-building around public policy issues. Oregon Solutions and Oregon Consensus are statewide programs under the NPCC umbrella that serve to build more durable, sustainable and collaborative relationships through stakeholder engagement, mediation processes, and implementation on the ground.

[24] Oregon Solutions has found that the clarity around roles and commitments embodied in Declarations of Cooperation—which are central to the Oregon Solutions approach—can help facilitate successful partnership efforts. Visit the Oregon Solutions website to view the REECon Declaration of Cooperation at http://orsolutions.org/wp-content/uploads/2011/09/FINAL_DoC.pdf

[25] To learn more about the Sage-Grouse Task Force, see the website of the Western Governors Association at this link: https://www.westgov.org/about/411-sage-grouse

[26] Download the report of the Conservation Objectives Team, "Greater Sage-Grouse Conservation Objective: Final Report" at this link: https://www.fws.gov/greatersagegrouse/documents/COT-Report-with-Dear-Interested-Reader-Letter.pdf

[27] Download BLM's Strategic Plan for Addressing Rangeland Fire Prevention, Management and Restoration at this link https://www.forestsandrangelands.gov/rangeland/documents/SecretarialOrder3336.pdf

[28] To learn more about Candidate Conservations Agreements (CCAs) see the Harney County website at this link: http://www.co.harney.or.us/sagegrouse-links.html and download a CCA fact sheet by the U.S. Fish and Wildlife Service at this link: https://www.fws.gov/endangered/esa-library/pdf/CCAs.pdf

[29] To learn more about the Oregon Model to Protect Sage-Grouse see the website of the U.S. Department of Agriculture Natural Resources Conservation Service Oregon at this link: http://www.nrcs.usda.gov/wps/portal/nrcs/detail/or/home/?cid=nrcseprd346415

[30] Interviews took place after the SageCon process was completed and after USFWS had decided not to list sage-grouse as endangered but before implementation of the Action Plan had begun. Consequently, interviewee responses reflected not only events during the SageCon process, but also events after the SageCon process and before implementation of the Action Plan.

[31] The Eastern Oregon Agricultural Research Center (a joint effort among Oregon State University and the USDA's Agricultural Research Service) and The Nature Conservancy both had field staff working on invasive plant issues, and they had good credibility with the ranching community. ODFW staff were well regarded for their role in researching and converting the sage-grouse field work into workable principles and for conducting many "road shows" and field studies around the state to get local buy-in and to ground-truth the science.

[32] Near the end of the SageCon process, but before work was to begin on implementation of the Action Plan, there was a significant lapse in communication to the larger group. Some SageCon participants were uncomfortable with uncertainty about SageCon's likely role during implementation. Discomfort was addressed by a meeting that provided information about ongoing implementation efforts and reemphasized the importance of developing a consistent and structured communication approach as implementation moved forward.

[33] More information on PSU's Executive Seminar Program is available at https://www.pdx.edu/cps/executive-seminar-program-for-natural-resources-0

[34] The Oregon Sage-Grouse Action Plan has not been challenged to date. Concerns about BLM's Oregon RMPA resulted in a lawsuit filed by the Harney County Soil and Water Conservation District in December 2016.

[35] The Oregon Plan for Salmon and Watersheds was developed with the intent to avoid the listing of Coho salmon, but the listing did in fact occur. Many of the actions in the salmon plan were difficult to implement because they were voluntary and under-resourced.

[36] This response echoes an overarching sense sometimes expressed by rural communities in Eastern Oregon that they are repeatedly on the defensive with respect to natural resource issues despite their sincere belief that they have generally been good stewards of the land.

Appendix E American Arbitration Association *et al., Model Standards of Conduct for Mediators* (2005)

MODEL STANDARDS OF CONDUCT FOR MEDIATORS

AMERICAN ARBITRATION ASSOCIATION
(ADOPTED SEPTEMBER 8, 2005)

AMERICAN BAR ASSOCIATION
(APPROVED BY THE ABA HOUSE OF DELEGATES AUGUST 9, 2005)

ASSOCIATION FOR CONFLICT RESOLUTION
(ADOPTED AUGUST 22, 2005)

SEPTEMBER 2005

The Model Standards of Conduct for Mediators
2005

The Model Standards of Conduct for Mediators was prepared in 1994 by the American Arbitration Association, the American Bar Association's Section of Dispute Resolution, and the Association for Conflict Resolution[1]. A joint committee consisting of representatives from the same successor organizations revised the Model Standards in 2005.[2] Both the original 1994 version and the 2005 revision have been approved by each participating organization.[3]

Preamble

Mediation is used to resolve a broad range of conflicts within a variety of settings. These Standards are designed to serve as fundamental ethical guidelines for persons mediating in all practice contexts. They serve three primary goals: to guide the conduct of mediators; to inform the mediating parties; and to promote public confidence in mediation as a process for resolving disputes.

Mediation is a process in which an impartial third party facilitates communication and negotiation and promotes voluntary decision making by the parties to the dispute.

Mediation serves various purposes, including providing the opportunity for parties to define and clarify issues, understand different perspectives, identify interests, explore and assess possible solutions, and reach mutually satisfactory agreements, when desired.

Note on Construction

These Standards are to be read and construed in their entirety. There is no priority significance attached to the sequence in which the Standards appear.

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[1] The Association for Conflict Resolution is a merged organization of the Academy of Family Mediators, the Conflict Resolution Education Network and the Society of Professionals in Dispute Resolution (SPIDR). SPIDR was the third participating organization in the development of the 1994 Standards.

[2] Reporter's Notes, which are not part of these Standards and therefore have not been specifically approved by any of the organizations, provide commentary regarding these revisions.

[3] The 2005 version to the Model Standards were approved by the American Bar Association's House of Delegates on August 9, 2005, the Board of the Association of Conflict Resolution on August 22, 2005 and the Executive Committee of the American Arbitration Association on September 8, 2005.

The use of the term “shall” in a Standard indicates that the mediator must follow the practice described. The use of the term “should” indicates that the practice described in the standard is highly desirable, but not required, and is to be departed from only for very strong reasons and requires careful use of judgment and discretion.

The use of the term “mediator” is understood to be inclusive so that it applies to co-mediator models.

These Standards do not include specific temporal parameters when referencing a mediation, and therefore, do not define the exact beginning or ending of a mediation.

Various aspects of a mediation, including some matters covered by these Standards, may also be affected by applicable law, court rules, regulations, other applicable professional rules, mediation rules to which the parties have agreed and other agreements of the parties. These sources may create conflicts with, and may take precedence over, these Standards. However, a mediator should make every effort to comply with the spirit and intent of these Standards in resolving such conflicts. This effort should include honoring all remaining Standards not in conflict with these other sources.

These Standards, unless and until adopted by a court or other regulatory authority do not have the force of law. Nonetheless, the fact that these Standards have been adopted by the respective sponsoring entities, should alert mediators to the fact that the Standards might be viewed as establishing a standard of care for mediators.

STANDARD I. SELF-DETERMINATION

A. A mediator shall conduct a mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome. Parties may exercise self-determination at any stage of a mediation, including mediator selection, process design, participation in or withdrawal from the process, and outcomes.

1. Although party self-determination for process design is a fundamental principle of mediation practice, a mediator may need to balance such party self-determination with a mediator’s duty to conduct a quality process in accordance with these Standards.

2. A mediator cannot personally ensure that each party has made free and informed choices to reach particular decisions, but, where

appropriate, a mediator should make the parties aware of the importance of consulting other professionals to help them make informed choices.

B. A mediator shall not undermine party self-determination by any party for reasons such as higher settlement rates, egos, increased fees, or outside pressures from court personnel, program administrators, provider organizations, the media or others.

STANDARD II. IMPARTIALITY

A. A mediator shall decline a mediation if the mediator cannot conduct it in an impartial manner. Impartiality means freedom from favoritism, bias or prejudice.

B. A mediator shall conduct a mediation in an impartial manner and avoid conduct that gives the appearance of partiality.

1. A mediator should not act with partiality or prejudice based on any participant's personal characteristics, background, values and beliefs, or performance at a mediation, or any other reason.

2. A mediator should neither give nor accept a gift, favor, loan or other item of value that raises a question as to the mediator's actual or perceived impartiality.

3. A mediator may accept or give de minimis gifts or incidental items or services that are provided to facilitate a mediation or respect cultural norms so long as such practices do not raise questions as to a mediator's actual or perceived impartiality.

C. If at any time a mediator is unable to conduct a mediation in an impartial manner, the mediator shall withdraw.

STANDARD III. CONFLICTS OF INTEREST

A. A mediator shall avoid a conflict of interest or the appearance of a conflict of interest during and after a mediation. A conflict of interest can arise from involvement by a mediator with the subject matter of the dispute or from any relationship between a mediator and any mediation participant, whether past or present, personal or professional, that reasonably raises a question of a mediator's impartiality.

B. A mediator shall make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for a mediator. A mediator's actions necessary to accomplish a reasonable inquiry into potential conflicts of interest may vary based on practice context.

C. A mediator shall disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality. After disclosure, if all parties agree, the mediator may proceed with the mediation.

D. If a mediator learns any fact after accepting a mediation that raises a question with respect to that mediator's service creating a potential or actual conflict of interest, the mediator shall disclose it as quickly as practicable. After disclosure, if all parties agree, the mediator may proceed with the mediation.

E. If a mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, a mediator shall withdraw from or decline to proceed with the mediation regardless of the expressed desire or agreement of the parties to the contrary.

F. Subsequent to a mediation, a mediator shall not establish another relationship with any of the participants in any matter that would raise questions about the integrity of the mediation. When a mediator develops personal or professional relationships with parties, other individuals or organizations following a mediation in which they were involved, the mediator should consider factors such as time elapsed following the mediation, the nature of the relationships established, and services offered when determining whether the relationships might create a perceived or actual conflict of interest.

STANDARD IV. COMPETENCE

A. A mediator shall mediate only when the mediator has the necessary competence to satisfy the reasonable expectations of the parties.

1. Any person may be selected as a mediator, provided that the parties are satisfied with the mediator's competence and qualifications. Training, experience in mediation, skills, cultural understandings and other qualities are often necessary for mediator

competence. A person who offers to serve as a mediator creates the expectation that the person is competent to mediate effectively.

2. A mediator should attend educational programs and related activities to maintain and enhance the mediator's knowledge and skills related to mediation.

3. A mediator should have available for the parties' information relevant to the mediator's training, education, experience and approach to conducting a mediation.

B. If a mediator, during the course of a mediation determines that the mediator cannot conduct the mediation competently, the mediator shall discuss that determination with the parties as soon as is practicable and take appropriate steps to address the situation, including, but not limited to, withdrawing or requesting appropriate assistance.

C. If a mediator's ability to conduct a mediation is impaired by drugs, alcohol, medication or otherwise, the mediator shall not conduct the mediation.

STANDARD V. CONFIDENTIALITY

A. A mediator shall maintain the confidentiality of all information obtained by the mediator in mediation, unless otherwise agreed to by the parties or required by applicable law.

1. If the parties to a mediation agree that the mediator may disclose information obtained during the mediation, the mediator may do so.

2. A mediator should not communicate to any non-participant information about how the parties acted in the mediation. A mediator may report, if required, whether parties appeared at a scheduled mediation and whether or not the parties reached a resolution.

3. If a mediator participates in teaching, research or evaluation of mediation, the mediator should protect the anonymity of the parties and abide by their reasonable expectations regarding confidentiality.

B. A mediator who meets with any persons in private session during a mediation shall not convey directly or indirectly to any other person, any information that was obtained during that private session without the consent of the disclosing person.

C. A mediator shall promote understanding among the parties of the extent to which the parties will maintain confidentiality of information they obtain in a mediation.

D. Depending on the circumstance of a mediation, the parties may have varying expectations regarding confidentiality that a mediator should address. The parties may make their own rules with respect to confidentiality, or the accepted practice of an individual mediator or institution may dictate a particular set of expectations.

STANDARD VI. QUALITY OF THE PROCESS

A. A mediator shall conduct a mediation in accordance with these Standards and in a manner that promotes diligence, timeliness, safety, presence of the appropriate participants, party participation, procedural fairness, party competency and mutual respect among all participants.

1. A mediator should agree to mediate only when the mediator is prepared to commit the attention essential to an effective mediation.

2. A mediator should only accept cases when the mediator can satisfy the reasonable expectation of the parties concerning the timing of a mediation.

3. The presence or absence of persons at a mediation depends on the agreement of the parties and the mediator. The parties and mediator may agree that others may be excluded from particular sessions or from all sessions.

4. A mediator should promote honesty and candor between and among all participants, and a mediator shall not knowingly misrepresent any material fact or circumstance in the course of a mediation.

5. The role of a mediator differs substantially from other professional roles. Mixing the role of a mediator and the role of another profession is problematic and thus, a mediator should distinguish between the roles. A mediator may provide information that the mediator is qualified by training or experience to provide, only if the mediator can do so consistent with these Standards.

6. A mediator shall not conduct a dispute resolution procedure other than mediation but label it mediation in an effort to gain the protection of rules, statutes, or other governing authorities pertaining to mediation.

7. A mediator may recommend, when appropriate, that parties consider resolving their dispute through arbitration, counseling, neutral evaluation or other processes.

8. A mediator shall not undertake an additional dispute resolution role in the same matter without the consent of the parties. Before providing such service, a mediator shall inform the parties of the implications of the change in process and obtain their consent to the change. A mediator who undertakes such role assumes different duties and responsibilities that may be governed by other standards.

9. If a mediation is being used to further criminal conduct, a mediator should take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.

10. If a party appears to have difficulty comprehending the process, issues, or settlement options, or difficulty participating in a mediation, the mediator should explore the circumstances and potential accommodations, modifications or adjustments that would make possible the party's capacity to comprehend, participate and exercise self-determination.

B. If a mediator is made aware of domestic abuse or violence among the parties, the mediator shall take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.

C. If a mediator believes that participant conduct, including that of the mediator, jeopardizes conducting a mediation consistent with these Standards, a mediator shall take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.

STANDARD VII. ADVERTISING AND SOLICITATION

A. A mediator shall be truthful and not misleading when advertising, soliciting or otherwise communicating the mediator's qualifications, experience, services and fees.

1. A mediator should not include any promises as to outcome in communications, including business cards, stationery, or computer-based communications.

2. A mediator should only claim to meet the mediator qualifications of a governmental entity or private organization if that entity or organization has a recognized procedure for qualifying mediators and it grants such status to the mediator.

B. A mediator shall not solicit in a manner that gives an appearance of partiality for or against a party or otherwise undermines the integrity of the process.

C. A mediator shall not communicate to others, in promotional materials or through other forms of communication, the names of persons served without their permission.

STANDARD VIII. FEES AND OTHER CHARGES

A. A mediator shall provide each party or each party's representative true and complete information about mediation fees, expenses and any other actual or potential charges that may be incurred in connection with a mediation.

1. If a mediator charges fees, the mediator should develop them in light of all relevant factors, including the type and complexity of the matter, the qualifications of the mediator, the time required and the rates customary for such mediation services.

2. A mediator's fee arrangement should be in writing unless the parties request otherwise.

B. A mediator shall not charge fees in a manner that impairs a mediator's impartiality.

1. A mediator should not enter into a fee agreement which is contingent upon the result of the mediation or amount of the settlement.

2. While a mediator may accept unequal fee payments from the parties, a mediator should not allow such a fee arrangement to adversely impact the mediator's ability to conduct a mediation in an impartial manner.

STANDARD IX. ADVANCEMENT OF MEDIATION PRACTICE

A. A mediator should act in a manner that advances the practice of mediation. A mediator promotes this Standard by engaging in some or all of the following:

1. Fostering diversity within the field of mediation.

2. Striving to make mediation accessible to those who elect to use it, including providing services at a reduced rate or on a pro bono basis as appropriate.

3. Participating in research when given the opportunity, including obtaining participant feedback when appropriate.

4. Participating in outreach and education efforts to assist the public in developing an improved understanding of, and appreciation for, mediation.

5. Assisting newer mediators through training, mentoring and networking.

B. A mediator should demonstrate respect for differing points of view within the field, seek to learn from other mediators and work together with other mediators to improve the profession and better serve people in conflict.

Appendix F Oregon Mediation Association, *Core Standards of Mediation Practice* (April 23, 2005)

OREGON MEDIATION ASSOCIATION CORE STANDARDS OF MEDIATION PRACTICE

Revised April 23, 2005

PREAMBLE

These Core Standards of Mediation Practice are designed as an educational tool to: (1) guide mediators in Oregon in the practice of mediation, (2) inform participants about mediation, and (3) promote public trust and confidence in mediation as an effective and productive process for resolving disputes. Each member of the Oregon Mediation Association (OMA) agrees to abide by these Core Standards when serving as a mediator. These Core Standards recognize that the role of mediator is complex, individual practice areas vary, and a full spectrum of personal, professional, and cultural diversity surrounds mediator approaches. These differences are valuable. These Core Standards should not be construed to favor or disfavor any particular approach.

These Core Standards guide mediators in demonstrating their professionalism and represent a next step in the ongoing development of mediation as a tool that truly allows participants a viable and reliable choice when determining the appropriate manner in which to resolve their differences. The Core Standards and the Comments that follow each of them are not intended to dictate conduct in a particular situation, define "competency," establish "best practices," or create a "standard of care." They are not intended to be disciplinary rules. The use of the word "should" is intended to guide, not limit the exercise of the mediator's individual judgment in the actual application of these Core Standards in a particular situation. The chosen order and format of the Core Standards and Comments are not intended to reflect any relative priority. The Comments are provided to give additional guidance and aid in the interpretation of the Standard.

When these Core Standards conflict with or are silent on subjects covered by applicable laws, regulations, professional licensing rules, professional ethical codes, or contracts by which the mediator may be bound, mediators should be aware and make participants and others in attendance aware that those requirements may take precedence over these Core Standards.

DEFINITIONS

Mediation is defined in Oregon as ". . . a process in which a mediator assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution of the controversy and includes all contacts between a mediator and any party or agent of a party, until such time as a resolution is agreed to by the parties or the mediation process is terminated." (Oregon Revised Statutes 36.110(6))

Party is defined in Oregon as follows ". . . a person, state agency or other public body is a party to mediation if the person or public body participates in a mediation and has a direct interest in the controversy that is subject of the mediation." (Oregon Revised Statutes 36.234)

Participant is used in these Core Standards as a substitute for the term **party** as defined above, because the term is less adversarial and better reflects the important differences between the mediation and adjudication processes. As used in these Core Standards, the term **participant** does not include the mediator, representatives, or others in attendance.

Approach is used in these Core Standards to signify the behaviors, philosophies, processes, styles, and techniques used by mediators to conduct mediation.

I. SELF-DETERMINATION

Mediators respect, value, and encourage the ability of each participant to make individual decisions regarding what process to use and whether and on what terms to resolve the dispute.

Comments

1. Self-determination is a fundamental principle of mediation that distinguishes it from other dispute resolution processes, including, but not limited to, litigation. Participants should be free to choose their own dispute resolution process, and mediators should encourage them to make their own decisions on all issues.
2. Mediators respect the culture, beliefs, rights, and autonomy of the participants. Mediators should defer their own views to those of the participants, recognizing that the collaborative interaction between the participants is often the key to resolution.
3. Mediators should educate participants about the continuum of mediation approaches and identify the approaches the mediator practices. Engaging the participants in a discussion to establish expectations about these approaches will help the participants give their Informed Consent to the approach best suited for their particular situation.
4. While a mediator cannot ensure that participants are making informed and voluntary decisions, mediators should help participants understand the process, issues, and options before them and encourage participants to make informed and voluntary decisions.
5. Mediators should encourage participants to consider the benefits of participation in mediation and agreement, as well as the consequences of non-participation and non-agreement.
6. Participation in mediation is usually a voluntary process. Even when mediation is "mandatory," participants who are unable or unwilling to participate effectively in the mediation process should be free to suspend or withdraw from mediation. Mediators should respect a participant's informed decision to continue or end the process.

II. INFORMED CONSENT

To fully support Self-Determination, mediators respect, value, and encourage participants to exercise Informed Consent throughout the mediation process. This involves making decisions about process, as well as substance, including possible options for resolution. Initially and throughout the mediation process, mediators further support Self-Determination by making appropriate disclosures about themselves and the specific mediation approaches they use.

Comments

1. Informed Consent is a critical part of a participant's ability to exercise Self-Determination.
2. Mediators should disclose or offer to disclose the information reasonably necessary for each participant to make informed decisions about whether to use the mediator and whether to participate in a specific mediation process and approach. Mediators should explain their approach, along with the roles of the mediator, participants, representatives, and others in attendance.
3. Mediators should seek participant agreement on the presence or absence of persons at the mediation.
4. Mediators should disclose information regarding conflicts of

interest, fees, relevant relationships, process competency, and substantive knowledge of the subject matter in dispute. Mediator disclosures should be truthful and not misleading by omission.

5. Mediators should make ongoing, good-faith efforts to assess the freedom and ability of each participant to make choices regarding participation in the mediation and options for reaching agreement. In assessing the situation, the mediator should consider factors such as the abilities, learning style, language competency, and cultural background of each participant. Mediators should suspend, end, or withdraw from the mediation if they believe a participant is unable to give Informed Consent.
6. Mediators should make participants aware of the importance of consulting with other professionals to help them exercise Informed Consent and Self-Determination.
7. If a participant withdraws from a multi-participant mediation, the mediator may continue the mediation with the Informed Consent of the remaining participants. The mediator should explain to the participants, representatives, and others in attendance that the withdrawing participant is not bound by any subsequent agreement but continues to be bound by any confidentiality obligations in place prior to the withdrawal.

III. IMPARTIAL REGARD

Mediators demonstrate Impartial Regard throughout the mediation process by conducting mediations fairly, diligently, even-handedly, and with no personal stake in the outcome. Mediators avoid actual, potential, or perceived conflicts of interest that can arise from a mediator's involvement with the subject matter of the controversy or the participants, whether past or present, that reasonably raise a question about the mediator's Impartial Regard. Where a participant or the mediator questions the mediator's ability to give Impartial Regard and the issue cannot be resolved, the mediator declines to serve or withdraws if already serving.

Comments

1. Mediators should make reasonable inquiry, based upon practice context, whether there are facts that a reasonable person would consider likely to create a potential or actual conflict of interest.
2. If there are any circumstances that reasonably raise a question as to the mediator's ability to demonstrate Impartial Regard, the mediator should disclose or offer to disclose information about those circumstances to the expressed satisfaction of all participants. Disclosure should include actual and potential conflicts of interest reasonably known to the mediator, as well as any present or prior relationship, personal or professional, between the mediator and any participant, representative, or other person in attendance. After disclosure or offer to disclose, a mediator may serve with the Informed Consent of all participants.
3. Mediators should guard against the potential impact on their Impartial Regard, even to the point of not serving, of a participant's personal characteristics, background, values, beliefs, or conduct during the mediation process. This also includes situations where the mediator's ability to demonstrate Impartial Regard is compromised or appears to be compromised because of the mediator's personal biases, views, or reactions to any position, argument, participant,

representative, or other person in attendance.
4. Mediators should not influence participant decisions because of the mediator's interest in higher settlement rates, increased fees, or non-participant pressures from court personnel, program administrators, provider organizations, the media, the public, or others. Mediators do not knowingly misrepresent any material fact or circumstance in the course of the mediation process.
5. Mediators should explain or offer to explain that they are not acting on behalf of or representing any participant. Whether or not participants have attorneys, mediators should advise them to seek independent legal advice and the review of any documents before signing them.
6. Mediators should avoid conflicts of interest when recommending or referring participants to other professionals for services.

IV. CONFIDENTIALITY

Confidentiality is a fundamental attribute of mediation. Mediators discuss confidentiality issues as soon as practical and before confidential information is provided by anyone. Mediators are aware of, comply with, and make participants, representatives, and others in attendance aware of (or determine they already are aware of) laws and regulations regarding confidentiality, non-discoverability, and inadmissibility of mediation communications, as well as any applicable exceptions.

Comments

1. Mediators should understand the laws and regulations regarding open meetings and public records, as well as any exceptions applicable to the cases they mediate.
2. In advance of receiving confidential communications, mediators should educate themselves and inform all participants about their reporting obligations (e.g., mandatory Child Abuse or Elder Abuse reporting) and how those obligations influence the way the mediators conduct mediation.
3. Mediators who meet with participants in private during mediation should not convey confidential mediation communications without the prior consent of the disclosing participant.
4. The obligation for mediators to protect the confidentiality of mediation communications includes the obligation not to communicate information about how participants acted during the mediation process.
5. Mediators should not use information acquired during mediation to gain personal advantage for themselves or others.
6. The definition of mediation in ORS 36.110 (6) can include facilitation, a process different from mediation. As a result, laws and regulations regarding confidentiality, non-discoverability, and inadmissibility of mediation communications, as well as any applicable exceptions, may apply to a particular facilitation process.

V. PROCESS AND SUBSTANTIVE COMPETENCE

Mediators fully and accurately represent their knowledge, skills, abilities, and limitations. They mediate only when they offer the desired approach and possess the level of substantive knowledge, skills, and abilities sufficient to satisfy the participants' reasonable expectations.

Comments

1. Mediators should exercise their independent judgment when their abilities or availability are unlikely to satisfy the participants' articulated expectations. When exercising their judgment, mediators should consider factors such as the participants involved, their agreed-upon mediation approach, and the complexity, subject matter, and specific issues of the dispute.
2. Mediators should have, maintain, and improve their process skills and substantive knowledge necessary to reasonably satisfy the expectations of the participants in the matters they mediate.
3. Mediators should strive to satisfy the reasonable process expectations of the participants by raising timing and pacing issues with the participants, representatives, and others in attendance.
4. Mediators should have information regarding their training, education, and experience readily available for review by the participants prior to the mediation session.
5. Mediators should be aware of and comply with the requirements of the Americans with Disabilities Act (and similar federal, state, and local laws and regulations), along with the laws regarding domestic violence, child abuse, and elder abuse. Additionally, mediators should be aware of and comply with the laws and regulations concerning their obligations, if any, in situations where the mediation is being used to further illegal conduct.

VI. GOOD-FAITH PARTICIPATION

Mediators explain to the participants, representatives, and others in attendance that they can improve the mediation process and probability of success when they participate with an open mind throughout the process.

Comments

1. Mediators should promote honesty and candor and inform participants that the mediator is not a guarantor of the participants' Good-Faith Participation.
2. In a manner that does not violate Confidentiality, mediators should discuss with the participants any concerns regarding Good-Faith Participation and the impact of these concerns on the process and on the mediator's Impartial Regard.

VII. FEES

Mediators inform participants of the basis for any mediator compensation, fees, and costs, including the source of the payment, as soon as practical and prior to substantive discussions. Mediators charge reasonable fees, considering, among other things, the mediation service, the type and complexity of the matter, the expertise of the mediator, the time required, and the rates customary in the community.

Comments

1. Mediators should not charge fees in a manner that impairs the mediator's Impartial Regard. While a mediator may accept payments in unequal amounts from the participants, the mediator should be attentive to the real or perceived impact unequal payments may have on the mediator's Impartial Regard.
2. Mediators may pay for listings or membership in referral organizations or services and accept referrals from those organizations or services.
3. Mediators who charge fees should have written fee policies or agreements.
4. Mediators should promptly account

for and return any unearned compensation, fees, and costs.
5. Mediators should not charge fees contingent on the substantive outcome of the mediation.
6. Mediators should consider the impact on their Impartial Regard if they give or accept anything of value for a referral. The payment or acceptance of anything of value for a referral will compromise the mediator's Impartial Regard if there is a resulting expectation of biased behavior or results from the mediator.
7. Mediators may accept or give symbolic gifts, incidental items or supporting services that are provided to facilitate the mediation or respect cultural norms, as long as such practice does not impact the mediator's Impartial Regard.

VIII. ADVERTISING AND SOLICITATION

Mediators are truthful and not misleading by omission in advertising and solicitation activities. Mediators do not make promises or guarantees of specific results.

Comments

1. Mediators should not make themselves publicly available to serve unless they can meet participants' reasonable expectations that they are qualified.
2. Mediators should claim designations such as "certified," "qualified," or "advanced" only if such status has been granted to them by an entity that provides such designations to practitioners, the granting entity has a formalized procedure for granting such designations, that procedure is readily available for public review, the mediator currently holds the stated designation, and the mediator names the granting entity. Mediators are not "certified" simply because they have received a certificate of training completion.
3. Mediators should not solicit business in a manner that could impact their Impartial Regard or otherwise undermine the integrity of mediation as a viable process to resolve disputes.
4. In their advertising or solicitation activities, mediators should not identify individuals, organizations, or entities as mediation participants without their prior permission.

IX. DUAL ROLES AND HYBRID PROCESSES

Mediators engage only in the role(s) to which the participants consent during mediation or any hybrid process that includes mediation, e.g., "mediation - arbitration" ("med-arb") or "arbitration - mediation" ("arb-med"). Mediators do not provide participants with legal advice, therapy, counseling, or other professional services during mediation without the prior Informed Consent of the participants. Mediators do not engage in any other services for any of the participants involving the same or significantly related issues, unless the other participants provide their Informed Consent. Before providing such services, mediators consider the impact that providing additional services for any participant may have on the other participants' views of the mediator's Impartial Regard.

Comments

1. Mediating toward a voluntary agreement between the participants differs substantially from other service relationships. A dual role is created when the mediator provides additional services to the participants. Providing referrals,

information, facilitation, education, and/or training does not create a dual role.
2. Dual roles can be challenging. Mediators should discuss with participants the differences between the various services that could be provided by the mediator or others.
3. Mediators who undertake a dual role assume additional obligations and potential liabilities. For example, if they are licensed or regulated in other fields, their actions as mediators may be governed by the regulatory and ethical codes and rules of those other fields.
4. Mediators should consider the impact on their Impartial Regard when they are discussing with the participants the possible acceptance of a dual role. Mediators should recommend that participants seek independent professional advice before they give their Informed Consent to the mediator performing a dual role.

X. MEDIATION PRACTICE

Mediators act in a manner that enhances the integrity and quality of the mediation field.

Comments

1. Mediators should participate in outreach and education efforts to assist the public in developing an improved understanding of and appreciation for mediation.
2. Mediators should improve and promote mediation by sharing their knowledge and skills through training, mentoring, and networking with others.
3. Mediators should participate in mediation research whenever practical.
4. Mediations should be open to and provide opportunities for feedback from mediation participants to enhance their mediation skills.
5. Mediators should work toward making mediation accessible to everyone in Oregon, including providing services at a reduced rate or on a pro bono basis, as appropriate.
6. Mediators should foster diversity in the field by reaching out to individuals with differing backgrounds and perspectives.
7. Mediators should demonstrate respect for differing points of view within the field, seek to learn from other mediators, and work together to improve the practice of mediation.
8. Mediators who charge a fee are encouraged to have malpractice insurance.
9. Mediators should model conflict resolution skills and use mediation in their own activities when appropriate.
10. Mediators should offer to mediate any concerns about their conduct raised by participants in their mediations in order to promote understanding between the participants and the mediator.
11. Mediators should have a file storage policy and advise the participants about that policy.
12. Mediators should be aware of and abide by rules governing the unlawful practice of law and unauthorized practice of psychology.
13. Mediators should provide these Core Standards to the mediation participants as soon as practical.
14. Organizations and programs that maintain rosters of, approve, appoint, or provide mediators should make reasonable efforts to ensure that each of their mediators is aware of and has agreed to abide by these Core Standards.

Appendix G State Court Administrator Guidelines Relating to Oregon Judicial Department Court-Connected Mediator Qualifications Rules Section 3.2 Basic Mediation Curriculum

State Court Administrator Guidelines
Relating to Oregon Judicial Department
Court-Connected Mediator Qualifications Rules Section 3.2
Basic Mediation Curriculum

A basic mediation curriculum should include instruction to help the trainee:

1. Gain an understanding of conflict resolution and mediation theory, including instruction on:

    a. Conflict theory;

    b. Dispute resolution systems;

    c. The evolution of mediation as a practice; and

    d. Theories regarding the steps or phases of a mediation and transitions from one phase to another.

2. Effectively prepare for mediation, including instruction on:

    a. Case management models so that the trainee might gain a general awareness of the ways that mediations are handled in various courts and programs that the trainee might encounter;

    b. Assessing disputants and conflicts to ensure that the matter is within the mediator's skill and ability;

    c. Structuring the process to ensure that it is appropriate for that particular matter;

    d. The use of joint session and caucus-based models of mediation;

    e. Helping parties, via premediation communications, understand the mediation process including its potential benefits and its limitations;

    f. Helping parties understand the mediator's role and the value of parties obtaining independent legal advice;

    g. Use of premediation agreements; and

    h. The mediator's role in ensuring party self-determination with respect to both the process and the outcome of the mediation. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes a free and informed choice to agree or not agree.

3. Create a safe and comfortable environment for the mediation, including instruction on:

    a. Making opening statements, setting the tone, and explaining the process; and

    b. Establishing trust and respect.

4. Facilitate effective communication between the parties and between the mediator and the parties, including instruction on:

    a. Techniques that encourage effective listening, such as active listening, clarifying, reframing, paraphrasing, body language, open-ended questions, empathy, and validation;

    b. Legal and practical aspects of candor and confidentiality in mediation;

    c. Cross-cultural and diversity awareness; and

    d. Dealing with strong emotions and interpersonal conflict.

5. Use techniques that help the parties solve problems and seek agreement, including instruction on:

    a. Creating a climate conducive to resolution or problem solving;

    b. Identifying and distinguishing between positions and underlying interests;

    c. Identifying, prioritizing, and assessing options including BATNA analysis; and

    d. Techniques for breaking an impasse.

6. Conduct the mediation in a fair and impartial manner, including instruction on:

    a. Maintaining mediator impartiality;

    b. Mediator confidentiality;

    c. Impartial regard; and

    d. The mediator's duties with respect to assessing and responding to any potential conflicts of interest.

7. Understand mediator confidentiality and ethical standards for mediator conduct adopted by Oregon and national organizations.

8. Conclude a mediation and memorialize understandings and agreements, including:

    a. Elements of an agreement;

    b. Instruction on the mediators' appropriate role in these activities; and

    c. Any postmediation follow-up.

Appendix H Oregon Mediator Certification Advisory Group, *Concept Overview: Background, Rationale, and Goals for Creating the Oregon Credentialed Mediator*

OREGON MEDIATOR CERTIFICATION ADVISORY GROUP (OCAG)

Concept Overview: Background, Rationale, and Goals for Creating the "Oregon Credentialed Mediator" ("OCM")

A) In Oregon, most mediation programs (court annexed, family, government, and community) have various mediator qualification requirements. They include various combinations and amounts of training, experience, monitoring, ethics, and continuing education. The OMA Board approved the OMA Model Guidelines for Private Practitioner Mediator Education, Training, and Experience on 12/15/2010, in part, because there was not any dedicated program for the private sector. However, it was never implemented. The Oregon Association of Community Dispute Resolution Centers approved its Quality Assurance and mediator Certification Program (aspirational/non-mandatory) on 5/5/2016.

B) These proposed guidelines are open to all mediators who practice in Oregon. In developing them, OCAG looked to similar programs for guidance (e.g. Florida, Idaho, Maryland, Oregon Supreme Court, Texas, and Washington, etc.).

C) A goal of this proposed initiative is to take one evolutionary step forward to enhance the quality of mediation services delivered and provide consumers with information to make informed decisions when choosing a mediator. Another goal is to "get ahead" of any attempt by other entities who might try to regulate the field.

D) The mediator credentialing being discussed here is voluntary and self-reporting. There is no formal "approval" process, but an applicant must certify that they have met the requirements and provide documentation of such, publicly. No one is required to be credentialed in order to mediate. However, several entities already have mediator qualification requirements in their programs (e.g. community, court, and public policy). This proposed concept is designed to meet or exceed the requirements of most programs.

E) OCAG recognizes there are many paths to demonstrate the effective practice of mediation. This proposed concept is designed to provide a base level of training and experience including the common 32-hour basic mediation training and additional learning modules – to raise the current standards.

F) The proposal is not designed to certify mediator competency, which isn't guaranteed even with licensing. The proposed OCM credentialing designation is a statement that the mediator holding it has completed the core elements generally recognized as necessary to meet the reasonable expectations of the parties and participants in general.

G) The proposed OCM credential would allow the holder to note they are a professional mediator, either pro-bono or private. It is not a credential for specific types of mediation (e.g. workplace, domestic relations, community, etc.)

H) OCMs may not state or imply that their credential is applicable where other programs (e.g. Oregon Chief Justice Order) require more or different requirements.

I) The proposed guidelines provide a guide mediator development, education, and experience, all designed to help the public recognize the value of mediation and mediators. They provide a mechanism for mediators to engage in regular peer review and improve their practice of mediation. This is intended to encourage confidential feedback for continuing professional development.

J) There will be an OCAG credentialing application form available online at [URL.] There will also be paper copies and assistance uploading available upon request through the affiliated entities.

K) OCAG will undertake an education initiative informing the public about this program and the benefits of mediation. Please see http://www.ormediation.org/find-a-mediator/qualifications/ for an example.

L) Each applicant self-certifies with a statement verifying the accuracy of application contents. That statement will contain an agreement to stop using the OCM credential if the qualifications are not met and an agreement to comply with any spot audit conducted by the administrator or affiliated entity.

M) Mediator Complaint process: see, http://www.ormediation.org/find-a-mediator/mediator-complaint-process/ or process used by organization where the mediation took place.

N) The proposed program is expected to evolve and improve over time based upon the principles of adaptive management and collaborative discussion with the public, users, institutions, and colleagues. After a trial period, OCAG will explore expanding the programs to offer credentials in specific subject matter areas (e.g. workplace, domestic relations, community, etc.)

O) The essential credentialing components follow:

1) No formal academic degree or graded test required.

2) Basic mediation training course of at least 32 hours comparable to the curriculum developed by Resolution Oregon, the Oregon Supreme Court's Chief Justice Order, or both.
3) An eight-hour course on equity/social justice/implicit bias/diversity and inclusion in mediation.
4) A four-hour course on OMA's Core Standards and Practices, found at http://ormediation.org/wp-content/uploads/2016/04/CoreStandardsFina_2005.pdf
5) An eight-hour court system course comparable to that described at https://www.courts.oregon.gov/courts/multnomah/programs-services/Documents/Mediation_CJO_05028.pdf
6) An advanced four-hour course on mediation confidentiality and the mediation aspects of public meetings and public records laws.
7) A four-hour course that provides a general overview of basic legal concepts that typically arise in mediation.
8) Experience or Practicum: You may satisfy this element by completing one of the following two options:
    - If practicum:
        a. 20 hours of observation: 6 mock/14 actual cases, and
        b. 24 hours mediating or co-mediating.

    or

    - If experience: 20 cases as mediator or co-mediator totaling at least 100 hours.
9) Take OMA (non-graded) quizzes on Confidentiality and Core Standards.
10) Agreement to abide by the applicable guidelines including the OMA Core Standards of Practice and those of the mediator's underlying profession.
11) Agreement to seek and review mediation participant feedback.
12) Ongoing Coaching: Observed once a year by another credentialed mediator of the person's choosing who provides written feedback for purposes of self-reflection. Only a record of the date, activity, and the mediator coach are submitted, not the coaching report.
13) Continuing Mediator Education: 24 hours every three years with two of those credits on ethics and two on confidentiality.
14) Agreement to use the existing Mediator Complaint process: see, http://www.ormediation.org/find-a-mediator/mediator-complaint-process/ or the process used by organization where the mediation took place.

OREGON MEDIATOR CERTIFICATION ADVISORY GROUP (OCAG)

Please scan the following Table of Contents, which contains background materials, to see if there are topics on which you would like to take a "deep dive. If there are, please review them. If not, please know the essential elements are contained above, so reading the is "optional," if you will.

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1) CONSISTENCY WITH CURRENT OMA STANDARDS

The following Standards are foundational to these guidelines. (Emphasis added.)

I. **SELF-DETERMINATION:** Mediators respect, value, and encourage the ability of each participant to make individual decisions regarding what process to use and whether and on what terms to resolve the dispute. …

Comment 5: Mediators should encourage participants to consider the benefits of participation in mediation and agreement, as well as the consequences of non-participation and non-agreement.

II. **INFORMED CONSENT:** To fully support Self-Determination, mediators respect, value, and encourage participants to exercise Informed Consent throughout the mediation process. This involves making decisions about process, as well as substance, including possible options for resolution. Initially and throughout the mediation process, mediators further support Self-Determination by making appropriate disclosures about themselves and the specific mediation approaches they use.

V. **PROCESS AND SUBSTANTIVE COMPETENCE:** Mediators fully and accurately represent their knowledge, skills, abilities, and limitations. They mediate only when they offer the desired approach and possess the level of substantive knowledge, skills, and abilities sufficient to satisfy the participants' reasonable expectations.

Comments:

1. Mediators should exercise their independent judgment when their abilities or availability are unlikely to satisfy the participants' articulated expectations. When exercising their judgment, mediators should consider factors such as the participants involved, their agreed upon mediation approach, and the complexity, subject matter, and specific issues of the dispute.

2. Mediators should have, maintain, and improve their process skills and substantive knowledge necessary to reasonably satisfy the expectations of the participants in the matters they mediate.

3. Mediators should strive to satisfy the reasonable process expectations of the participants by raising timing and pacing issues with the participants, representatives, and others in attendance.

4. Mediators should have information regarding their training, education, and experience readily available for review by the participants prior to the mediation session.

5. Mediators should be aware of and comply with the requirements of the Americans with Disabilities Act (and similar federal, state, and local laws and regulations), along with the laws regarding domestic violence, child abuse, and elder abuse. Additionally, mediators should be aware of and comply with the laws and regulations concerning their obligations, if any, in situations where the mediation is being used to further illegal conduct.

X. MEDIATION PRACTICE: Mediators act in a manner that enhances the integrity and quality of the mediation field.

Comments:

4. Mediations should be open to and provide opportunities for feedback from mediation participants to enhance their mediation skills.

6. Mediators should foster diversity in the field by reaching out to individuals with differing backgrounds and perspectives.

7. Mediators should demonstrate respect for differing points of view within the field, seek to learn from other mediators, and work together to improve the practice of mediation.

8. Mediators who charge a fee are encouraged to have malpractice insurance.

9. Mediators should model conflict resolution skills and use mediation in their own activities when appropriate.

10. Mediators should offer to mediate any concerns about their conduct raised by participants in their mediations in order to promote understanding between the participants and the mediator.

11. Mediators should have a file storage policy and advise the participants about that policy.

12. Mediators should be aware of and abide by rules governing the unlawful practice of law and unauthorized practice of psychology.

13. Mediators should provide these Core Standards to the mediation participants as soon as practical.

14. Organizations and programs that maintain rosters of, approve, appoint, or provide mediators should make reasonable efforts to ensure that each of their mediators is aware of and has agreed to abide by these Core Standards.

2) How Much Law, If Any, Does A Mediator Need To Know: A Proposal for Law, Confidentiality, and Ethics Training Beyond Basic

INTRODUCTION

"ADR" in Oregon means, "Appropriate Dispute Resolution," not, Alternative. Even if we use the later term, it is referring to the process (informal vs. formal, self-determined vs. imposed), parties select in hope of resolving the underlying substantive rights and responsibilities at issue.

The Oregon Certification Advisory Group (OCAG) is considering the essential requirements to be "certified" or "credentialed." "Certification" or whatever we eventually call it, serves society first and those being certified second. There are sociological/cultural reasons for certifications of any type. They provide some indices of competency and adherence to standards protective of the public. One of the topics OCAG is considering is, "How much law, if any, should a mediator know to be "certified?"

Our deliberations should be framed within the context of the OMA Core Standards of Mediation Practice. http://ormediation.org/wp-content/uploads/2016/04/CoreStandardsFina_2005.pdf. The below Appendix contains the relevant sections, with emphasis added, to provide our existing construct underlying this proposal.

PROPOSAL OVERVIEW: THE FOUR COMPONENTS (20 IN CLASSROOM HOURS + Two, One Hour Open Book Quizzes)

Parties mediate in the shadow of the law even when they do not want to use the law as an underlying interest or reference point. Some parties and mediators may not like that, but it is an indisputable reality, especially in the areas of:

A) Confidentiality and the exceptions;

B) Mediator malpractice and ethics;

C) Elder and child abuse reporting;

D) Contracts and settlement agreement enforceability;

E) Overarching areas: Civil Rights, ADA, etc.; and

F) Procedural process and time/money associated with not settling for a BATNA discussion, both as to process and substance.

This proposal is designed to provide the mediator with sufficient general knowledge to help the parties exercise Self-Determination based upon Informed consent.

Please keep in mind that the time available will limit the amount of information that can be conveyed to about 50 points.

A) Court System (Existing) – 8 Hours;

B) Basic Law (New) – 4 Hours;

C) ORS Chapter 36 Nuances and Beyond (Expanded) – 4 Hours; and

D) Mediator Ethics/Standards of Practice (Expanded) – 4 Hours.

TRAINING OBJECTIVES

This proposal's training objectives are:

A) Become generally familiar with basic legal concepts (Cliff Notes, not nuances) that often arise in mediation.

B) Learn:

1) The difference between "legal advice" and "legal information;"
2) How to avoid the unauthorized practice of law;
3) How to spot a legal issue;
4) Where to get legal information for the mediator and the parties;
5) When to use legal information and when not to use it;
6) How to raise a legal issue when you do (not to answer it); and
7) How to have a legal process and substantive "reality testing" (BATNA) conversation with them.

INDIVIDUAL COMPONENT DETAILS

The draft elements for each component follow.

A) Court System

It is common for parties in mediation to think about what would happen if their dispute is not settled at mediation. They wonder what would happen if they go to court and what would happen after court. Is this always the case, no, but when they do, the mediator should have sufficient knowledge to alert them to the general topics they should consider when making an informed decision. This proposal would take existing rules and add them to this draft program.

Section 3.5, Court-System Training per Oregon Chief Justice Order, https://www.courts.oregon.gov/courts/multnomah/programs-services/Documents/Mediation_CJO_05028.pdf, was created with extensive input from the community programs. There was countless discussion on creating the correct balance on the quantum of knowledge necessary. It does not make sense to reinvent the wheel because it has been working for years. The Order states:

At least eight (8) hours including, but not limited to, the following subject areas identified in the Chief Justice Order:

1) Instruction on the court system including, but not limited to:

   a) Basic legal vocabulary;

   b) How to read a court file;

   c) Confidentiality and disclosure;

   d) Availability of jury trials;

   e) Burdens of proof;

   f) Basic trial procedure;

   g) The effect of a mediated agreement on the case including, but not limited to, finality, appeal rights, remedies, and enforceability;

   h) Agreement writing;

   i) Working with interpreters; and Obligations under the Americans with Disabilities Act;

   j) Working with represented and unrepresented parties, including:

      (i) The role of litigants' lawyers in the mediation process;
      (ii) Attorney-client relationships, including privileges;

(iii) Working with lawyers, including understanding of Oregon State Bar disciplinary rules; and

(iv) Attorney fee issues.

(k) Understanding motions, discovery, and other court rules and procedures;

(l) Basic rules of evidence; and

(m) Basic rules of contract and tort law.

3) Information on the range of available administrative and other dispute resolution processes.

4) Information on the process that will be used to resolve the dispute if no agreement is reached, such as judicial or administrative adjudication or arbitration, including entitlement to jury trial and appeal, where applicable.

5) How the legal information described in this subsection is appropriately used by a mediator in mediation, including avoidance of the unauthorized practice of law.

B) Basic Law

At least six (6) hours including, but not limited to, the following subject areas:

1) Available Damages;
2) Judgments and Their Collection;
3) Federal vs. State vs. Administrative Jurisdiction;
4) Contract Law: Formation, Breach, Defenses, and Damages;
5) Tort Law: Intentional, Negligence, Breach, Damages with Basic Elements of Nuisance, Defamation, Privacy, Misrepresentation, Fraud;
6) Statutes of Limitation, and
7) Evidence: Admissibility, Privileges.

C) ORS CHAPTER 36 and BEYOND

1) At least four (4) hours including, but not limited to, the following subject areas:

a) ORS Chapter 36 Nuances;

b) The necessary provisions in an Agreement to Mediate;

c) Basic Public Records Law;

d) Basic Open Meetings Law; and

e) Basic Public Officials Law.

2) Take OMA Confidentiality Quiz (open book ~ 1 additional hour):

www.surveymonkey.com/r/2QL72RY?sm=bwGNoHJznEgeWz2R6hxnTA%3d%3d

D) Mediator Ethics: OMA Core Standards of Mediation Practice

1) At least four (4) hours including, but not limited to, the following subject areas:

a) The specific standards and their nuances; and

b) Exploring common ethical challenges;

2) Take OMA Mediator Quiz (open book ~ 1 additional hour)

http://www.surveymonkey.com/s.asp?u=832042804463

POLICY REASONING

WHAT IS THE LAW? As a social construct, the law is simply our agreed-upon rules to govern behavior in a civilized society. A lot of it is common sense and accessible if people are open to learning it. The reasons for inclusion are no different than the reasons for adding an equity component to this proposal … both are essential to a fair society. The law has a strong equity element, in general, and particularly in substantive areas like civil rights, substantive due process, procedural due process, Access to Justice, Environmental Justice, etc.

WE DON'T NEED TO KNOW THE LAW: A common statement in opposition to mediators learning the law is that mediation is extra-legal … outside of the law. Example: "I don't need to know anything about the law to mediate." This is the functional equivalent of a lawyer who mediates saying, "I don't need to know anything about psychology because I'm not a psychologist and the only issue here is predicting the likely outcome in court." This proposal is based upon the belief that mediators need to know a little about each as we are an interdisciplinary field.

I DON'T WANT TO BE A LAWYER: This educational component is not designed to make anyone a lawyer … far from it … we are talking ~22 hours versus three years of law school. It is designed to provide guidance on common legal principles that frequently arise in mediation. The goal is to give mediators enough awareness to know when the parties really should get legal advice, where to go for help, and how to satisfy their expectations consistent with our Standards.

I TELL THEM I'M NOT A LAWYER: It is not enough to just tell the parties once, at the beginning of the session, that "I'm not an attorney and you should get legal advice." Parties are generally new to mediation, are anxious and do not always fully integrate the ramifications of what we are telling them. There needs to be sufficient full disclosure at the time the topic is germane to ensure their Self-Determination is based upon Informed Consent, as highlighted above. Parties don't know what they don't know, they often think they know what the law is, or should be, they usually don't, and only later realize they made a big mistake. When they do, we shouldn't be surprised when they blame us, especially if they're mediating in the court context or they subsequently enter the court system. Whether their concerns are justified will turn, in part, on whether their expectations were reasonable per the Standards.

THIS IS ABOUT THE PARTIES: If our Standards mean anything, they stand for the proposition that our focus should be party-centric, not mediator-centric. As a result, decisions about this training component should be answered from the perspective of the parties. We cannot assume to know their perspective or decide they should not consider the law just because the mediator does not know it. If they want legal information as a reference point for fairness, and we cannot give them what they want, then we need to refer them to another mediator who can.

Restated, many parties want to know what could happen in court if they can't reach an agreement. That is a perfect example of a party's "reasonable expectation." They will not be happy with the mediation process when they get shot down by the judge if the mediator did not even raise that possibility by providing "legal information" (vs "legal advice") out of their own self-defined view of what the party should consider. We are perfectly comfortable "reality testing" in areas we are familiar with, but we resist a party's self-determined interest when it involves using the law as a basis for fairness.

You do not have to be an attorney to give legal information and certainly not to advise the parties where to go to get more legal information or legal advice. Both are appropriate mediator-centric behaviors under the Standards.

FAIRNESS: The concept of equity, at its roots, is a recognition of an underlying need for fundamental fairness. The law is one reference point of fairness. Our impartiality requires us to help the parties have the conversation they want by framing the issues with something like, "Is what would happen in court something we need to discuss as it relates to this particular conflict?" That question supports Self-Determination. If the answer is yes, the mediator can give them information which is not giving them legal advice.

If the mediator, does not have sufficient subject matter familiarity to satisfy the reasonable expectations of the parties, then the mediator should withdraw and refer. In a nutshell, knowing enough to raise the issues consistent with the Standards is necessary, but it does not mean promoting a point of view on what the "equitable" or "legal" outcome should be. Mediators should be trained to recognize these issues and frame them in a way that maintains their Impartial Regard.

IS THERE A PROBLEM: As an aside, I regularly represent mediators in my lawyer capacity who have been accused of running afoul of the law and/or Standards. Is it common, no; but when it happens it is a very sticky wicket, embarrassing, has financial ramifications, and is bad for mediation's reputation as a good process. Additionally, the results of the OMA quizzes referenced above show there is a meaningful lack of full understanding in the community.

CONCLUSION

Finally, if we want to be taken seriously and promote the broader use of mediation, we need to raise the bar beyond what the typical mediator in Oregon currently knows. There is virtually no association that has such minimal qualifications. Consider the vast difference in what it takes to be a Manicurist versus a Mediator. Parties are confiding in and trusting us to help manage meaningful life issues. We should be ready, willing, and able to afford them the same care we would like to be provided if we were in their shoes … self-determination, fundamental fairness, and impartial regard.

3) Background: Basis for Current Proposal

A) For the deep history, please read: http://www.ormediation.org/what-is-mediation/guidelines-for-mediators/mediator-certification/

B) OMA Standards and Practices Committee 12-07-09 Proposed OMA Model Guidelines for Private Practice Mediator Education, Training, and Experience – Foundation for this current initiative.

1) Oregon's Prior Discussions on Mediator Competency Schemes

In 1998, the Final Report of the Oregon Mediator Competency Workgroup (convened by OMA and the ODRC) was issued. It addressed five options for ensuring competency:

a) Certification of Training Completion,

b) Certificate of Competence,

c) Licensure,

d) Public Education, and

e) "Do Nothing."

In 2007, OMA convened a task force to revisit the question. Please review the task force report at http://www.omediate.org/docs/OMA%20QA%20TF%20Report.pdf

The 2007 Task Force reviewed the options explored by its 1998 predecessor and agreed with the 1998 conclusions that the "licensure" and "do nothing" options did not require further discussion at that time, and added the following:

1. The Certificate of Training Completion recommendation from the 1998 Report is the most analogous concept to what this Task force is recommending.
2. The Task Force is not recommending Certification of Competency at this time.

3. Public education is already being done but could be refocused and/or supplemented to address the suggested construct if there is a sufficient consensus and resources to move forward.

The OMA Board committed to implement measures based on the 2007 Bryan Johnston-led Task Force findings. Its June 16, 2008 Quality Enhancement Initiative [http://www.omediate.org/docs/2008qeiboardreportfinal.pdf] states, in part:

The "Quality Enhancement Initiative" (QEI) will emphasize six elements. The elements are Leadership through Partnerships, Consumer Education, Mentoring, Mediation Complaint Process, Model Standards for Qualifications, and Model Standards for Training and Trainers.

…

Emphasis #5 – Develop Model Standards – Mediator Education, Experience, & Training

The Board believes that identifying the education, experience, and training that provides the foundation for the successful practice of mediation will enhance the quality of mediation services delivered, provide consumers with information to make informed decisions when choosing a mediator, and provide prospective mediators with specific ideas on how to prepare themselves to become a mediator.

The Board will collaborate with leaders across the areas of mediation practice to acknowledge existing "standards," identify areas where "standards" are lacking, and engage practitioners in the development of standards, indices, or guidelines where they are lacking. Whether the term standard, indices, guideline, or other term is the most appropriate – will be determined in the development process.

Finally, "model standards, indices, guidelines, etc." must be readily accessible by mediators, consumers, and the general public. In addition, it is important to have a readily accessible forum where mediators can display their education, experience, and training for consumers. OMA will explore the options and provide such a forum.

The Board's 2009-2011 Strategic Plan http://www.omediate.org/pg75.cfm provides:

Mediators are competent to provide appropriate services.

1. See Goal A under Education (support ongoing quality education for mediators)

2. Develop Model Standards for Mediator Education, Experience, and Training

3. Develop Model Standards for Training Programs and Trainers

4. Promote a readily accessible forum where mediators can display their education, experience, and training for consumers

OMA's Standards and Practices Committee is now proposing the "OMA Model Guidelines for Private Practice Mediator Education, Training, and Experience" as the next logical step in implementing the Boards' June 16, 2008 Quality Enhancement Initiative and the OMA 2009-2011 Strategic Plan.

2) "Problem" to be Solved

In Oregon, most of the mediation community's practice areas (court annexed, family, government, and community) have standards or requirements, which include mediator training, experience, internship, monitoring, ethics, and continuing education. However, mediators in private practice not operating under one of these umbrellas have no such mechanism. These proposed guidelines are intended to help the private sector, catch-up, if you will, with the sectors that have standards, requirements, or guidelines already in place. The proposal requires more experience to make up for the lack of supervision and mentoring that exists in the court and community programs.

3) Goals of Proposal

Take one evolutionary step forward with private sector mediators to enhance the quality of mediation services delivered, provide consumers with information to make informed decisions when choosing a mediator, and provide prospective mediators with specific ideas on how to prepare to become a mediator.

4) Committee Generated Advantages to Proposal

a) Provides some indication of competency to the consumer

b) Private practitioner mediators will have a consistent and recognizable standard with which to advertise their training background

c) Standard will be compatible with those already in place in Oregon

d) Disclosure is voluntary – does not prohibit anyone from being an OMA member, but it does clarify varying mediator backgrounds

e) Establishes some career development guidelines

f) Brings Oregon mediators into parity with those in Washington and Idaho

g) Keeps Oregon consistent with trends in the field

5) Committee Generated Disadvantages to Proposal

a) May lead to erroneous assumptions about mediator competency

b) Does not actually establish competency, simply enables citation of relevant training and experience

c) No assurance of compliance

Proposal Overview

The proposal uses existing Oregon standards or requirements as a starting point for training and experience guidelines for private practice mediators. However, because these mediators are operating without the benefit of program managers or other supervisory oversight, additional measures were thought to be appropriate in some areas, e.g., more experience to compensate for the lack of apprenticeship/internship opportunities.

A) This voluntary model is designed to provide guidance to mediators, programs, and consumers that use private practice mediators about minimum education, training, and experience. They should be read in conjunction to OMA's Core Standards of Mediation Practice. (http://www.omediate.org/pg61.cfm)

B) Meeting these Guidelines is not proof of competency. Users of private mediators must carefully consider all relevant factors in their selection process.

C) These Guidelines are a beginning – not an end to OMA's efforts to promote the provision and use of quality mediation services.

Proposal Implementation Mechanics

1) Voluntary, Not Condition of Membership

These Model Guidelines are intended to be voluntary, not mandatory. Meeting the model guidelines is not anticipated to be a condition of OMA membership. Instead, OMA practitioner members will be able to indicate which mediator "competency" constructs they meet on their OMA membership form, etc.

2) Advertising

Members may self-certify that their training, education, and experience meet these model guidelines. When making representations, mediators should provide the website to these Guidelines. They may not say they are "Certified," "Qualified," "Licensed," or use terms that convey a similar meaning.

OMA will develop a web mechanism where members can self-certify, and that mechanism will cross-reference these Guidelines, so the consumer knows the basis for the representation.

Private practitioners who meet the Model Guidelines may advertise that fact on their OMA web listing and other promotional materials. However, they should not advertise they are an "OMA Certified Mediator" or words that imply such imprimatur because this

is not a certification program. They may advertise along the following lines: “I meet OMA’s Model Guidelines for Private Practice Mediator Education, Training, and Experience.”

The intended purpose is to enable OMA practitioner members to make accurate representations as to their professional background pertaining to mediator training, experience, and ongoing continuing education. This, in turn, will assist consumers to make better-informed mediator selections. Mediators are encouraged to include on their web site sufficient information to give an accurate picture of the nature of their practice and qualifications.

3) Education and Enforcement Options

The committee does not anticipate any enforcement issues. If questions arise concerning a mediator’s representations, information about qualifying training activities may be requested. In the event that an OMA member is found not to meet the Model Guidelines, they will be asked to refrain from making inaccurate references to OMA’s Guidelines. The Standards and Practices Committee may conduct random audits and would be responsive to inquiries made through the OMA Voluntary Mediation Process for Resolving Disputes with OMA Mediators. http://www.omediate.org/pg77.cfm.

Standards and Practices Committee is authorized to:

1) Conduct random reviews to determine if a mediator’s advertising and representations are consistent with these Guidelines and the Core Standards. It may also respond to inquiries made through the OMA Voluntary Mediation Process for Resolving Disputes With OMA Mediators. (http://www.omediate.org/pg77.cfm.) It may educate members, the membership, and Board if issues are found.
2) Answer questions and interpret these Guidelines.
3) Conduct surveys to assess the effectiveness of the Guidelines.
4) Work with stakeholders to monitor and evaluate Guidelines, and
5) Make recommendations to the Board for improvement to its “Quality Enhancement Initiative”
6) Such authorized ongoing activities of the Standards and Practices Committee shall be exercised in reasonable and appropriate consultation and coordination with other OMA committees, e.g., Member Services, under the continuing supervision and direction of the OMA Board.

Feedback on 2009 Proposal

1) Feedback Process

A) Notices through OMA Flash and Conference Brochure

B) OMA members asked to complete a survey

C) Draft proposal was circulated to sand input requested of the OSB ADR and Litigation Sections, PSU Hatfield School of Government, U of O and Willamette University ADR programs, Oregon Office for Community Dispute Resolution, Oregon Association for CDRC's, Willamette University CR program, Oregon Judicial Department, Oregon Department of Justice, State Court of Appeals Mediation Program, and the Federal Court Mediation Program

D) Annual Conference Workshop

2) Summary of Feedback

Generally, most of the feedback from all sources expresses or implies strong approval of the adoption of the basic proposal, and most specific comments seem to express a desire that various refinements, clarifications, or additional concerns be considered or dealt with as the Guidelines and their administration evolve in the future.

SurveyMonkey: Rating Scale: 1 – 7 (1= Strongly Disagree to 7 = Strongly Agree)

Survey Respondents: A maximum of 19 responded, typically only 12-14 responded to questions. 12 identified themselves from Willamette Valley, and 7 were in private practice, with an average of 6-10 years of experience.

1. OMA should be an active participant in setting Oregon mediator competency schemes for all venues. Average Score: 6 with 73% neutral or in agreement.

2. OMA should be an active participant in setting Oregon mediator competency only where there is a void. Average Score: 4.84 with 53% neutral or in agreement.

3. This issue has been sufficiently studied in Oregon. Average Score: 4.84 with 79% neutral or in agreement.

4. Unlike many mediation venues, private sector mediators in Oregon are not subject to appropriate training, experience, and educational requirements. Average Score: 5.17 with 83% neutral or in agreement.

5. Private sector mediators should be expected to perform in accordance with standards comparable to those practicing in other, more regulated sectors: i.e.,

court-annexed, family, community, education, government, etc. Average Score: 5.68 with 95% neutral or in agreement.

6. Articulated ADVANTAGES to the proposal:

a. Provides some indication of competency to the consumer: Average Score: 5.80 with 93% neutral or in agreement.

b. **Private practitioner mediators will have a consistent and recognizable standard with which to advertise their training background: Average Score:** 5.86 with 100% neutral or in agreement.

c. Standard will be compatible with those already in place in Oregon: Average Score: 5.93 with 93% neutral or in agreement.

d. Disclosure is voluntary – does not prohibit anyone from being an OMA member, but it does clarify varying mediator backgrounds: Average Score: 5.94 with 94% neutral or in agreement.

e. Disclosure is voluntary – does not prohibit anyone from being an OMA member, but it does clarify varying mediator backgrounds: Average Score: 5.94 with 94% neutral or in agreement.

f. Establishes some career development guidelines: Average Score: 5.86 with 93% neutral or in agreement.

g. Brings Oregon Mediators into Parity with those in Washington and Idaho: Average Score: 5.07 with 100% neutral or in agreement.

h. Keeps Oregon Consistent with Trends in the field: Average Score: 5.93 with 93% neutral or in agreement.

7. Respondent suggested other ADVANTAGES:

- May increase availability of mentorship/apprenticeship and CE opportunities
- OMA takes an active leadership role in providing/encouraging consumer information and mediator training
- Proposal is not onerous to the practitioner

8. Articulated DISADVANTAGES to the proposal:

a. May lead to erroneous assumptions about mediator competency: Average Score: 5.0 with 100% neutral or in agreement.

b. Does not actually establish competency, simply enables citation of relevant training and experience: Average Score: 5.57 with 93% neutral or in agreement.

c. No assurance of compliance: Average Score: 5.73 with 100% neutral or in agreement.

9. Respondent suggested other DISADVANTAGES:

- Potential for misuse and misunderstanding but regardless, the current guidelines are an excellent starting point
- It does not have the formality and support of being issued by the state
- It may lead to accumulating course work solely for advertising
- There is a wide range of private practices/types, some guidelines should be fine-tuned by type, – and E.G. #cases for workplace and public policy should be different.

10. The current mediator competency schemes in Oregon are adequate for now. Average Score: 5.17 with 92% neutral or in disagreement.

11. For this section, we are providing a brief summary of the 13 elements of the Private Practice Proposal. Please select your level of agreement with each recommended element.

a. OMA initiated and adopted: Average Score: 6.07 with 93% neutral or in agreement.

b. No Formal Education/Degree: Average Score: 5.33 with 67% neutral or in agreement.

- Concern that community programs doing domestic relations mediation when practitioners don't have any degree at all … Would be good to have some experience equivalency or something.
- Although I don't have a relevant degree, I would lean towards some acknowledgement of those who do. Though not essential, it is a substantial benefit.
- Consider a degree requirement for Family Mediation, the same as the court-connected requirement.
- Break formal education requirement down by practice area. If practicing divorce mediation need to have some formal education or degree such as in the OJD rule.

- We should move in the direction of formal education/degree.

c. Number of Mediations - 20 completed cases: Average Score: 5.77with 85% neutral or in agreement.

- Does this requirement penalize mediators who live outside the major population areas and not have as many opportunities for mediation?
- Increase the number of mediations.
- This requires access to opportunities to mediate that might not be available in areas with small populations.

d. Training 30 hours or 200 hours experience: Average Score: 5.29 with 74% neutral or in agreement.

- A basic mediation course should be the bare bones requirement.
- Match practice area. A 30-hour basic training not adequate for family mediation.
- Require it or comparable training.

e. Curriculum – starting with the Court Model: Average Score: 5.46 with 100% neutral or in agreement.

- Don’t feel that there was substantive information gleaned that wasn't court specific.

f. Experience - 200 hours or basic training: Average Score: 5.46 with100% neutral or in agreement.

- Increase requirement.
- My concern is that this requires access to opportunities to mediate that might not be available in areas with small populations.
- Unsure as to whether 50 hours should be required in the primary "subject" area. "Subject" could be broadly or narrowly defined, which could lead to unnecessary complexity in terms of compliance.

g. No Test: Average Score: 5.69 with 92% neutral or in agreement.

- Testing could be helpful but also concerned testing will be too narrow.
- It does seem to me there is a level of base understanding that could be validated through testing i.e. OMA standards or confidentiality indicate a level of awareness.

h. Supervision or Mentoring recommended: Average Score: 6.15 with 100% neutral or in agreement.

i. Context is sufficient to satisfy reasonable expectations of participants: Average Score: 5.92 with 100% in agreement.

- Consistent with OMA Standards

j. Subject Matter Familiarity sufficient to satisfy reasonable expectations of participants: Average Score: 5.92 with 100% in agreement.

- Consistent with OMA Standards

k. Standards of Practice – OMA: Average Score: 6.42 with 100% neutral or in agreement.

- Could build on practices in other states.

l. Quality Feedback Loop through participant evaluations encouraged: Average Score: 6.17 with 100% in agreement.

- Very Helpful.

m. Continuing Education - 24 hours every two year: Average Score: 6.38 with 100% in agreement.

- Want OMA to be a leader in providing these opportunities, including credits via remote participation such as video broadcast or online or DVD.
- Increase over time.

12. Overall, the proposed elements are appropriate: Average Score: 6.0 with 93% neutral or in agreement.

13. Adherence to this proposal should be voluntary: Average Score: 5.71 with 74% neutral or in agreement.

14. Overall, I support which of the following options (respondents chose one):

- **Do nothing at this time** zero responded
- **Adopt above committee proposal** 4 responded
- **Adopt above committee proposal with changes** 6 responded
- **Other** 4 responded

15. Please Provide Any Additional Comments, Questions, or Concerns:

- Do we have some idea of how many individuals are practicing privately AND do NOT meet the standards for court/DOJ mediators?
- Need to work on mentoring/supervisory area.
- Now is the time to implement the guidelines - then evaluate & refine over next few years.
- I support adopt above with changes. Would want input on changes before adopting.

A. Pre-Conference Feedback Summary

1) I support the idea of a model guidelines, but I think there is still work to be done on them. I don't want them to be so rigid that it blocks people out yet not become so structured that it appears they are written by lawyers.

2) I do not understand the rationale as to why the private sector mediator standards and qualifications should be different from public sector. If it is good enough to protect the public, and allow access to people sufficiently trained even in rural counties for those cases coming to publicly funded services, why would this not be the same minimal standard for private sector? I don't like the idea of perpetuating the public/private split - mediation cases require a base level of knowledge, skill, and personal abilities by the mediator, no matter what venue they come in, and I think the public sector min qualifications are just that - the minimum qualifications that make sense.

There is substantial disagreement about what constitutes competent mediation, as well as whether the Model Standards offer the right guidance to practitioners. OMA can have a strong role in educating the public about the various questions they might ask a mediator before selecting him or her. We worry that in OMA's attempt to create "standards," you might actually become less effective educators. It is not clear that the proposed solution would make it more evident to anyone how any particular mediator was "performing," especially in relationship to "standards." Thus, consumers could potentially be more misled about mediator "competency" than they are now with the marketplace regulating this issue.

B. Conference Feedback Summary

1) Background information that went into formation of model guidelines:

- What efforts have gone into investigating various possible approaches to apprenticeship and mentoring as devices for education and training?
- How much real data is available on whether other states have actually improved mediator quality through education and training?

- Does the proposal promote any identifiable goal of, e.g., reducing the number of disputes which reach the court system?
- Why doesn't the proposal parallel the kinds of requirements imposed by various professional psychology and counseling organizations?

2) **Design of model guidelines:**

- Are the Model Guidelines and the existing Core Standards of Mediation Practice complementary and consistent? How do they interact with each other?
- The Model Guidelines should be accompanied by positive statements of "Core Competencies" of the kind found in, e.g., various academic journals.
- The proposal should include a requirement that all mediators have at least one bachelor's or professional academic degree.
- Although the proposal will be expressly "evolutionary" and not "revolutionary," it should be made clear that the board envisions, on a long-term basis, ever more detailed and rigorous guidelines.

3) **Prospective use of model guidelines by mediators:**

- Is it more than a marketing tool to be used by mediators?
- The proposal probably provides serious consumers with a larger information basis, whether or not it improves mediator quality.

4) **Implementation:**

- Compliance with the Model Guidelines should never become a *requirement* for OMA membership.
- The proposal should include an attempt to specify who will be qualified to provide education and training – or at least some general attempt to describe a procedure by which trainers and educational programs will be identified and/or certified.
- If OMA wants to enhance mediator competency, shouldn't it start out by requiring criminal background checks on all members.
- Continue outreach to OMA members and larger community about the guidelines

- OMA itself should design and/or sponsor, or at least clearly identify, the core education and training programs, which it envisions as being necessary.
- OMA needs to develop and implement specific mentoring programs.
- Change the 20-actual-mediation cases guideline (Grid Line III) to include participation as a shadow observer or the like.
- As a matter of public education, as well as mediator marketing, do something to help clear up some of the confusion surrounding "volunteer" mediator, mediator "intern" in various programs and at various levels.

F. Conclusion

As a result of the above, the Standards and Practices Committee revised its Proposal. The major changes between this proposal and the version submitted to members are:

1) Added to the background section, A. 2) "Problem" to be Solved: "These guidelines are intended to help the private sector, catch-up, if you will to the other sectors. The guidelines require more experience to make up for the lack of supervision and mentoring that exists in the court and community programs."
2) Added under Number of Mediations: Participation in 20 Actual Completed Cases as Co-Mediator, or Mediator (Added language underlined)
3) Added: Study OMA Core Standards and take OMA Standards Quiz
4) Added: Study ORS Chapter 36 and take OMA Confidentiality Quiz
5) Added: A six hour court system course comparable to that described at (http://www.ojd.state.or.us/Web/OJDPublications.nsf/Mediation?OpenView&count=1000)
6) Added under Curriculum: Start with Court Model for Curriculum and Trainer Qualifications (Added language underlined)
7) Added under Experience: 200 hours of mediation experience as an observer, co-mediator, or mediator. Hours spent mediating to achieve the Number of Cases Element count towards this element (Added language underlined)
8) Added: 50 hours of additional mediation experience every 2 years
9) Added under Standards of Practice: OMA's in addition to those required by profession of origin (Added language underlined)

10) Added to Continuing Education: 24 hrs. every 2 years with one credit on confidentiality and one on ethics (Added language underlined)

11) Added: Section XV on Member Certification and Advertising

12) Added Section XVI on Ongoing Monitoring and Evaluation

The OMA Board approved the OMA MODEL GUIDELINES FOR PRIVATE PRACTITIONER MEDIATOR EDUCATION, TRAINING, AND EXPERIENCE on 12/15/2010.

4) 2017 OMA Conference Survey: Conflict Engagement in Today's America By Sam Imperati, JD and Devin Howington, PhD. **ICMresolutions**

The fall 2017 OMA conference featured a plenary session designed to explore several issues facing Oregon mediators. The presentation can be found at: https://www.mediate.com/ICM/pg41.cfm. The issues we discussed included:

1) Mediation: "Profession" or a "Trade Association?"
2) Do we want to become a "Profession?"
3) Can we ethically promote "Social Justice" or "Access to Justice"?
4) Should we broaden our mediator role definition?
5) "Competency" Options

At the end of the presentation, we conducted a poll designed to take the pulse of those in attendance. The results should not be used to predict the views of all OMA members. We offer this information only to promote further discussion and exploration on what it means to be a mediator in Oregon.

The demographics of the 56 participants follow and should be considered in interpreting the data.

1) There was a wide range in experience: 27% had mediated fewer than 25 cases, while 38% mediated over 200.
2) There were several students and people who indicated they did not know enough about some topics to form an opinion.
3) The respondents were fairly evenly split on the "Never Paid" to "Always Paid" continuum.
4) The most frequent areas of mediation were Small Claim/Landlord-Tenant (42%), Family (36%), Community (32%), and Workplace (25%).

5) 60% of the respondents mediated in a non-litigation setting and 40% in a litigation setting.

The overall results are presented below.

Question	***Options* and Results (Percentages)**		
Are we a "Profession" or a "Trade Association?"	*Profession* 46.4%	*Trade* 37.5%	*No Answer* 16.1%
Should we become a Profession?	*Yes* 89.3%	*No* 1.8%	*Unsure/No Answer* 8.9%
Do the OMA Standards allow us to promote substantive "Social Justice" in our roles as mediators?	*Yes* 28.6%	*No* 55.4%	*Maybe/Other/No Answer* 16%
Do the OMA Standards allow us to promote procedural "Access to Justice" in our roles as mediators?	*Yes* 82.1%	*No* 7.2%	*Maybe/Other/No Answer* 10.7%
Should we update our current Standards to broaden our role definition?	*Yes* 51.8%	*No* 23.2%	*No Answer* 25%
Where should we go from here on competency? (≠ 100)	*Status Quo* 8.9%	*Certification* 64.3%	*Licensing* 14.3%

For further analyses, we split the data into participants with experience in less than 100 cases (48%) and more than 100 cases (52%). We found two differences worth noting when we analyzed the data through that lens.

1) Most (62%) of experienced mediators (those with over 100 cases) said that our OMA standards do not allow us to promote substantive social justice as mediators; whereas, less experienced mediators (less than 100 cases) were

more uncertain (48% said yes, 29% said no with the remainder saying "maybe" or providing no answer).

2) Experience did not have as large of effect on the question about procedural justice: Most experienced (79%) and unexperienced (85%) respondents said our standards did allow us to promote procedural justice.

The survey results should be interpreted cautiously given the small number of respondents, the large number of skipped questions, and the addition of unique responses to the multiple-choice format. Nevertheless, the survey results are an appropriate place to continue our exploration. Your comments are appreciated and should be sent to SamImperati@ICMresolutions.com.

If there is sufficient feedback, we will report the results. Either way, let's keep talking!

5) Current OMA Website Materials of Qualifications (http://www.ormediation.org/find-a-mediator/qualifications/)

Qualifications

There is currently no clear consensus on what qualifications mediators need in order to perform competently in the many and varied contexts in which mediation is practiced. That said, OMA has defined Core Standards of Mediation Practice to help define expectations for the profession. OMA standards and guidelines are researched and developed by the Standards and Practices Committee prior to submission to the OMA board for approval. University and community based program use these standards to establish clear expectations for their students and volunteers.

In addition, mediators in programs that receive state funds to provide dispute resolution services must meet the minimum qualification and training requirements established by the Oregon Dispute Resolution Commission and set out in Oregon Administrative Rules (OAR Chapter 718). Individual programs often have additional requirements for training and practice under the supervision of an experienced mediator. It is typical for a mediator to have completed a 32-40 hour basic mediation training. After such training, new mediators commonly receive mentoring from experienced mediators. Mediators specializing in areas such as workplace disputes, family mediation, land-use issues, etc. commonly complete additional training in those specific areas. Mediators also seek continuing education opportunities on an on-going basis. Before you sign up for a training, or if you are consider hosting your own, consider OMA's Model Guidelines for Mediator Education, Training, and Experience.

OMA Certification

OREGON MEDIATOR CERTIFICATION ADVISORY GROUP (OCAG)

In the interests of promoting high quality mediation practices, OMA has worked for years towards a certification process. This is currently still a work in progress. For more information see our Certification page.

Additional guidelines that may apply:

Although the state of Oregon does not regulation mediators as a whole, various rules and statutes do govern specific types or mediation:

- Court Connected Mediator Rules Qualifications and training requirements for court connected mediators
- ORS Chapter 36 Oregon statutes related to mediation and arbitration
- Oregon State Bar Rules of Professional Conduct For Lawyers as Mediators. See Rule 2.4
- Oregon Office of Community Dispute Resolution Rules Qualifications and training information for Community Dispute Resolution Centers
- Consumer's Guide to Mediation Selecting a mediator
- Mediator Competency History of Mediation in Oregon: Certification, Licensure and Enhancing Mediator Competency

How Can I Become A Mediator?

As a first step, consider becoming a volunteer mediator at your local community mediation program. Many of these programs offer low-or-no cost training in exchange for volunteer commitments. See the Community Dispute Resolution Program page for more information.

If you are seeking advanced training or continuing education opportunities, check out OMA's Training and Education Calendar and educational programs offered through one of Oregon's many University-based conflict resolution programs.

6) Consumer guide to Mediation: Current OMA Website Materials (http://www.ormediation.org/find-a-mediator/qualifications/)

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people contributed their knowledge, time and useful suggestions on the substance and format of the guide and many contributed valuable comments on drafts. Thanks to

all who gave so freely of their expertise and time, and exhibited such support and enthusiasm for the project.

I. Purpose of This Guide

This guide is for anyone looking for a mediator. This Guide begins the educational process of making an informed choice of mediator, by presenting a framework for understanding mediator competence. This Guide will be especially useful to people who have been referred to mediation and must choose a mediator, mediation programs and court systems that provide information to consumers, and

to lawyers or other professionals advising their clients and judges who refer litigants to mediation.

Mediation is a conflict resolution process in which one or more impartial persons intervene in a conflict with the disputants' consent and help them negotiate a mutually acceptable agreement. The mediator does not take sides or decide how the dispute should be resolved.

II. Mediation: What It Is and What It Is Not

A consumer needs at least a basic understanding of mediation to profit fully from this Guide. To learn more about mediation, consult books, articles and pamphlets at your local library, community mediation center, courthouse, bookstore, or mediator's office. The information contained here is necessarily brief, but does give an overview of the essential points which should be kept in mind when choosing and working with a mediator.

What Mediation Is

Mediation is a consensual process in which an impartial third person assists two or more parties to reach a voluntary agreement which resolves a dispute or provides options for the future. The mediator helps the parties identify their individual needs and interests, clarify their differences, and find common ground. A few points to keep in mind:

• The parties are the decision makers; the mediator has no authority to render a decision.

• The parties determine the issues that need to be addressed; the mediator guides the process and maintains a safe environment.

• The mediator models and facilitates active listening skills.

• The mediator does not give advice to the parties, legal or otherwise. However, the mediator may help the parties generate options for the parties to evaluate, possibly with the advice and assistance of another professional.

• The process is usually confidential, with any exceptions disclosed and discussed prior to beginning a mediation.

• The success of mediation rests largely on the willingness of the parties to work at understanding each other and to seek solutions that meet each other's needs.

What Mediation Is Not

Mediation is not litigation. Litigation is the formal legal process in which parties use the court process to resolve their disputes. The judge or jury determines the outcome of this process, unless a negotiated settlement is reached first.

Mediation is not arbitration. Arbitration is a form of private adjudication, where parties present evidence and argument to an impartial third person (the arbitrator). The arbitrator then reviews the evidence and renders a decision which may be imposed on the parties. The arbitrator determines the outcome, much as a judge determines the outcome of a trial and the arbitrator's decision may or may not be binding on the parties.

Mediation is not counseling or therapy. Although the process is often therapeutic for the parties, the primary goal of mediation is to reach an agreement, not to resolve the feelings associated with the dispute.

What is the difference between a mediator and an attorney? In many instances a mediator may be an attorney, but mediators and attorneys have different roles. Traditionally, attorneys represent the interests of their clients, advise them of their rights, responsibilities, and obligations, discuss their legal options, and advocate on behalf of their client. Mediators, however, do not represent either side of

a dispute, even if the mediator is also an attorney. Mediators assist people in dispute to communicate with each other in an effort to resolve their conflict.

What Sets Mediation Apart

• Mediation approaches disputes from a fresh perspective. Instead of looking backward to decide who is at fault, it looks forward to what agreements the parties can reach to resolve their disputes or govern their future interactions.

• The mediator uses his or her skills to help parties understand each other's needs and interests to find common ground. From these, the parties begin to generate options.

• The options are not based on "giving in" or compromise of any principle. Instead, they are based on a search for creative ways to resolve differences and meet identified needs.

• Agreements are reached only when the parties all agree. Because mediated agreements are voluntary, they are more likely to be followed by all parties.

What Are the Steps to Mediation?

Different mediators describe the process differently. However, there are several common stages that the parties move through with the assistance of the mediator.

1. **The Introduction.** The mediator sets the stage, discusses the ground rules, and describes the process.

2. **Information Sharing**. The parties have an opportunity to share information and describe their desired outcomes.

3. **Defining the Issues and Understanding Interests**. The parties discuss the issues that need attention and the underlying needs and interests they hope to satisfy.

4. **Generating Options Toward a Solution**. The parties generate and evaluate options that will best satisfy their needs and interests.

5. **Writing the Agreement.** If agreement is reached and the parties desire a written record, the mediator may write or help the parties write their agreement as an outline for agreed upon future action.

III. What Makes a Competent Mediator?

There is no universal answer to this question. No particular type or amount of education or job experience has been shown to predict success as a mediator. Successful mediators come from many different backgrounds. Having a particular background does not guarantee a skillful mediator.

Some mediators specialize in particular types of disputes, for example divorce or child custody disputes. Others, particularly those at community mediation centers, have extensive experience in neighbor-to-neighbor issues. There are mediators who focus on business issues such as contract disputes, and others who have a particular interest in environmental mediation.

How effective a mediator will be depends partly on the context and content of the dispute, on what expertise or knowledge the parties expect and on their own personalities and working style. It also depends on whether the mediator has the right mix of acquired skills, training, education, experience, and natural abilities to help

resolve the specific dispute. Important skills and abilities include neutrality, ability to communicate, and ability to define and clarify issues.

IV. What Qualifications Does a Mediator Need?

Qualifications refer to the amount and type of training, education and experience possessed by a mediator. There is currently no clear consensus on what qualifications mediators need in order to perform competently in the many and varied contexts in which mediation is practiced or how to assess and evaluate competence in mediators. In Oregon, as in most states, a person can offer private mediation services without taking a class, passing a test, or having a special license or certification. In reality, many private mediators and those who work for or are associated with mediation organizations and programs, have some training and experience.

Mediators in programs that receive state funds to provide dispute resolution services in Oregon must meet the minimum qualification and training requirements established by the Oregon Office of Community Dispute Resolution and set out in Oregon Administrative Rule Chapter 571. Court connected mediation programs have similar training and experience requirements for mediators operating under those programs. Individual programs often have additional requirements for training and practice under the supervision of an experienced mediator.

Mediation referral services may impose training, experience or other requirements on mediators who wish to be included on their rosters. Some national and local mediation membership organizations set training and experience requirements as well as ethical standards for their practicing members. In

2010 OMA adopted training and experience guidelines for private practitioners in order to support that portion of Oregon's mediator population.

V. Five Steps to Choosing a Qualified Mediator

No easy formula can predict mediator competence, so the consumer must do some groundwork before selecting a mediator. First, you must understand how mediation works. After understanding the basics, you can use the following process to choose a mediator:

Five Steps to Choosing a Mediator

1. Decide what you want from mediation

2. Get a list of mediators

3. Look over mediator's written qualifications

4. Interview mediators

5. Evaluate information and make decision

These steps are described below. Remember during your search that a mediator should remain neutral and treat both parties with equal fairness and respect.

1. Decide What You Want from Mediation

Think about your goals for the mediation and the best way to get there. How do you want the mediator to participate? Many mediators and dispute resolution firms or services can help you understand what services would be best for your dispute. Some will contact the other party to the dispute to introduce the concept of mediation.

Do you want a mediator who suggests options in order to help move the parties towards agreement? Or, do you want a mediator who resists offering opinions so the parties feel responsible for their agreement? Think about past attempts at negotiation and problems with those attempts. What are your choices if mediation does not work?

Do your goals match your abilities? What are your strengths and weaknesses as a negotiator? What are the other party's strengths and weaknesses? What are your emotional limitations? Do you expect the mediator to help you stand your ground if the other person negotiates better than you or has more "power?" Thinking about these issues is especially important if there is a power imbalance between

you and the other party. If there has been abuse and or violence between you and the other party, please read the Domestic Abuse section.

Are your goals realistic in your time frame? Think about the dispute and the context in which you must resolve it. What is the time frame? Is this a commercial dispute between experienced insurance company representatives, or is it a divorce involving an emotional child custody decision? The approach or model that commercial disputants might prefer may differ greatly from the one preferred by a mother and father.

What about budget? Consider your budget. How much you can spend might limit your choice of mediator or mediation program. Many private mediators publish their fee schedule and are willing to discuss arrangements that would keep the process affordable.

2. Compile a List of Names.

You can gather a list of mediators from several sources.

Word of Mouth. Ask a friend, your attorney, your therapist, or another professional. Describe your case to a mediator and ask, "Other than yourself, who are the most skilled mediators in this kind of case?" Talk to people who have been in a mediation with the mediator (you can ask the mediator for names of clients). What was their case about and what were their impressions of the mediator?

Written Lists. Check local listings in the Yellow Pages. Many courthouses maintain a list of mediators available locally. OMA also maintains an online directory of member-mediators and their fee structures.

Referral Services. Many national mediator membership organizations and trade organizations keep lists of practitioner members and offer referral services. Some may charge for the referral services.

Community Mediation Centers. Neighborhood mediation or dispute resolution centers offer services in many Oregon counties. Volunteer mediators receive training and supervision before handling cases independently. Most programs do not charge the public for their services. The Oregon Office of Community Dispute Resolution maintains a list of all such community mediation programs.

3. Evaluate Written Materials.

Call or write several mediators on your list and ask them to send you their promotional materials, resume, references, and a sample of their written work. These materials should cover most of the following topics.

Mediation Training. While training alone does not guarantee a competent mediator, most professional mediators have had some type of formal training. How was the mediator trained? Some mediators receive formal classroom-style training. Some participate in apprenticeships or in mentoring programs. Was the training geared toward this type of dispute? How many hours of training has this mediator had? How recent was the training?

Experience. Evaluate the mediator's type and amount of experience (number of years of mediation, number of mediations conducted, types of mediations conducted). How many cases similar to yours has the mediator handled? If you think it is important that the mediator knows the subject matter of your dispute, how much experience has the mediator had in that field? A mediator's experience is particularly important if he or she has limited formal training.

Written Work. Some mediators will write up notes about agreements or even draft agreements for the parties. Other mediators do not prepare written agreements or contracts. If your mediator will prepare written work, you may want to review a sample. Samples could include letters, articles, or promotional materials. Any sample of the mediator's written work should be clear, well organized, and use neutral language. Agreements or contracts should have detailed information about all items upon which the parties have agreed.

Orientation Session. Some mediators offer an introductory or orientation session after which the parties decide whether they wish to continue. Is it offered at no cost, reduced cost, or otherwise?

Cost. Understand the provider's fee structure. Does the mediator charge by the hour or the day? How much per hour/day? What about other expenses?

Other Considerations. Does the mediator belong to a national or local mediation organization, and is the mediator a practicing or general member? Some competent mediators may choose, for reasons of cost or otherwise, not to join professional organizations or carry liability insurance. If this is a concern, ask the mediator about it.

If you are using mediators from a community mediation center, you may want information about the center. How long has it been operating? How does the center select volunteer mediators? How does it train the mediators? How are the mediators supervised? What types of cases does the center handle?

4. Interview the Mediators.

Mediation can help you resolve conflicts and can be custom designed to serve all participants' needs. While mediation is very useful to help you resolve your disputes, not all mediators are the same. Regardless of the mediator or mediation program you use, you may wish to interview the mediator first by telephone, and ask several questions described below. During the interview, observe the mediator's interpersonal and professional skills. Qualities often found in effective mediators include neutrality, emotional stability and maturity, integrity, and sensitivity. Look also for good interviewing skills, verbal and nonverbal communication, ability to listen, ability to define and clarify issues, problem- solving ability, and organization.

Ethics. Ask "Which ethical standards will you follow?" (You may ask for a copy of the standards). All mediators should be able to show or explain their ethical standards (sometimes called a code of conduct) to you. If the mediator is a lawyer or other professional, ask what parts of the professional code of ethics will apply to the mediator's services. Ask the mediator, "Do you have a prior

relationship with any of the parties or their attorneys?" The mediator should reveal any prior relationship or personal bias which would affect his or her performance, and any financial interest that may affect the case. Finally, ask the mediator whether any professional organization has taken disciplinary action against him or her.

Standards of Conduct (Ethics). Standards of conduct do not regulate who may practice, but rather create a general framework for the practice of mediation. National mediator organizations have adopted voluntary standards of conduct

Specialty/Subject Matter Expertise. Some mediators specialize in particular kinds of disputes. Some mediators, for example, primarily mediate divorce cases or child custody disputes. Others, particularly those at community mediation centers, have extensive experience in mediating neighbor-to-neighbor issues. There are mediators who focus on business issues, such as contract disputes, and others who have a particular interest in environmental mediation. You may want to ask the mediator about his/her experience mediating cases like yours.

In other cases, for example where the subject of the dispute is highly technical or complex, a mediator who comes to the table with some substantive knowledge could help the parties focus on the key issues in the dispute. Or, parties may want someone who understands a cultural issue or other context of the dispute.

Training. Most mediators have taken at least 30-40 hours of basic mediation training. Many have taken more than that, and others will have taken additional training in advanced techniques or concentrated subject areas. You may want to ask the mediator if he or she has taken any specialized training that fits the type of dispute in which you are involved.

Please note: In Oregon, no statewide organization or government agency certifies or licenses mediators, nor is there a test to take or any required course work. Although some mediators may be certified in a specific area by a particular organization, the State has no certification program of its own. Some state agencies do require experience and training before they will hire or assign a mediator to a state sponsored or ordered mediation.

Experience. Asking about a mediator's experience may also help you determine if you are hiring a skilled mediator. You may want to ask the mediator how many mediations he or she has mediated, the kinds of cases they were, and the average length of those mediations. You can also ask if the mediator or mediation program has handled disputes similar to yours, and if so, how often were the disputes settled?

Other Background/Expertise. Mediators may have very diverse backgrounds, and having a certain background does not guarantee a skilled mediator. Some might have backgrounds as attorneys, social workers, teachers, or mental health professionals. Others might not have a specific professional background. You might choose a mediator because they have a specific background or because they do NOT have a specific background.

Approach to Mediation/Mediation Philosophy. You can ask mediators about their approach to mediation or their mediation style. Some mediators let the participants guide the process, while others guide the participants through a process. Some mediators help the participants generate all of the options; others may suggest options.

You can also ask if they belong to any professional organizations and what, if any, standards of practice they adhere to in their practice or program. You should feel comfortable with the approach your mediator uses.

References. You may want to ask for references–past clients who have used their services. Since mediation is a confidential process, some mediators simply may not be able to provide you with references. Others may have mediation clients who have agreed to serve as references.

Confidentiality. The mediator should explain the degree of confidentiality of the process. The mediator may have a written confidentiality agreement for you and the other party to read and sign. If the mediation has been ordered by the court, ask the mediator whether he or she will report back to the court at the conclusion of the mediation. How much will the mediator say about what happened during mediation? How much of what you say will the mediator report to the other parties? Does the confidentiality agreement affect what the parties can reveal about what was said? If the parties' attorneys are not present during the mediation, will the mediator report back to them, and if so, what will the mediator say? The mediator should be able to explain these things to you.

Logistics. Who will arrange meeting times and locations, prepare agendas, etc.? Will the mediator prepare a written agreement or memorandum if the parties reach a resolution? What role do the parties' lawyers or therapists play in the mediation? Does the mediator work in teams or alone?

***Special Considerations If There Has Been Domestic Abuse Between You and the Other Party.**

If there has been domestic abuse or violence between you and the other party, you should understand how it can affect the safety and fairness of the mediation process. Talk to your lawyer, a domestic violence counselor, women's' advocate, or other professional who works with victims of domestic abuse before making the decision to mediate.

All family mediators should be knowledgeable and skilled in the screening and referral of cases involving abusive relationships. They should be able to explain the potential risks and benefits of mediation when control, abuse, and violence issues exist. Any mediator who handles such cases should have special training in domestic violence issues and should offer special techniques and procedures to minimize risk and maximize safety of all participants.

If you decide to try mediation, it is important to let the mediator know about the abuse or violence. Some ways you can tell the mediator include asking your lawyer to tell the mediator, or telling the mediator yourself. You can tell the mediator yourself in the initial

telephone call, or when filling out any written questionnaires. If there is an active restraining order, make sure the mediator knows about it.

Ask what domestic violence training the mediator has had and if the mediator has worked with similar cases. Ask whether or not the mediator believes your case is suitable for mediation and why. Ask how the mediation process can be modified to make it safer and fairer. Can the mediation be done by telephone or in separate sessions ("shuttle mediation")? Can a support person (domestic violence advocate or your attorney) be present during the mediation? If your case is not suitable for mediation, what are your alternatives? Ask for referrals to other resources, such as a local domestic violence counselor.

5. Evaluate Information and Make Decision.

During the interviews, you probably observed the mediators' skills and abilities at several important tasks. These tasks, which mediators perform in almost all mediations, include:

• gathering background information,

• communicating with the parties and helping the parties communicate,

• referring the parties to other people or programs where appropriate,

• analyzing information,

• helping the parties agree,

• managing cases, and

• documenting information.

Ask yourself which of the mediators best demonstrated these skills. Did the mediator understand your problem? Understand your questions and answer them clearly? If the other party was present, did the mediator constructively manage any expressions of anger or tension? Did the mediator convey respect and neutrality? Did you trust the mediator? Did the mediator refer you to other helpful sources of information? Understand what was important to you? Pick up on an aspect of the conflict that you were not completely aware of yourself? Did the mediator ask questions to find out whether mediation is preferable or appropriate? Understand the scope and intensity of the case? Of course, not every orientation interview permits the mediator to demonstrate all these skills, and every mediator has relative strengths and weaknesses. But you should be satisfied that the mediator can perform these tasks for you before beginning.

Review the other questions on this checklist. Make sure that the mediator's cost and availability coincide with your resources and timeframe. The other parties to the mediation must agree to work with this person, too. You may want to suggest two or three acceptable mediators so that all parties can agree on at least one.

Finally, consider evaluations of others who have used this mediator or your own previous experience with this mediator. If applicable, consider the goals and procedures of any organization with which the mediator is associated.

VI. Conclusion

The increasing use of mediation has outpaced knowledge about how to measure mediator competence. You can choose a qualified mediator by thinking about what you expect, gathering information about mediators, and evaluating that information using the information in this guide.

7) How do Proposed Requirements Compare to Oregon Manicurists and Massage Therapists?

Mediator	***Manicurist*** ***(Nail Technologist)***	***Massage Therapist***
Qualifications & Requirements to Practice: *None required*	**Qualifications & Requirements to Practice:** *Yes* • Successful completion of all courses required by State Board of Education • Successful passage of certification examination	**Qualifications & Requirements to Practice:** *Yes* • Successful completion of all courses required by State Board of Education • Successful passage of **two** certification examinations
Education: *None required*	**Education:** *None required*	**Education:** *None required*
Training, Skills & Experience: **OAR 438-019-0010 states:** Community Mediator Qualifications (1) A mediator shall have completed at least 30 hours of basic mediation training and hold a certificate demonstrating such training. (2) Such training described in section (1) of this rule shall address the following areas: (a) Active listening, empathy, and validation;	**Training, Skills & Experience:** 600 hours • Nail Technology – 350 hrs. **and** • Safety/Sanitation Course – 150 hrs. **and** • Career Development Course – 100 hrs.	**Training, Skills & Experience:** 625 hours • Health Sciences consisting of Anatomy and Physiology, Pathology, and Kinesiology – 200 hrs. **and** • Massage Theory and Practical Application, Clinical Practice, Business Development, Sanitation, Communication, and Ethics– 300 hrs. **and** • Additional hours in any of the above subject areas – 125 hrs.

(b) Sensitivity to and awareness of cross-cultural issues; (c) Maintaining neutrality; (d) Identifying and reframing interests and issues; (e) Establishing trust and respect; (f) Using techniques to achieve agreement and settlement, including creating a climate conducive to resolution, identifying options, working toward agreement, and reaching consensus; (g) Shaping and writing agreements; and (h) Ethical standards for mediator conduct adopted by state and national organizations.		
Licensing Test: *N/A* **License Renewal:** N/A	**Licensing Test:** *Yes, must pass* **License Renewal:** *Yes, every two years*	**Licensing Test:** *Yes, must pass both:* • *Oregon Jurisprudence (law) exam*

Continuing Education: ??	**Continuing Education:** *No*	• *Board approved written National Examination. (MBLEX , NCBTMB, CESI* **License Renewal:** *Yes, every two years* **Continuing Education:** *No*
Character and Fitness Component: *None*	**Character and Fitness Component:** *None*	**Character and Fitness Component:** • *Required to submit 3 references* • *Finger printing/background check* • *Questions on application regarding character and fitness*
<u>These were the previous mediator requirements:</u> **OAR 718-020-0070 states:** Mediators shall complete a basic mediation curriculum and an apprenticeship. • A basic mediation curriculum shall be at least 30 hours and shall include: 1. a minimum of six hours' participation by each trainee in no less		

than three supervised role plays

2. a trainee self-assessment
3. an evaluation of the trainee by the trainer which identifies areas where trainee improvement is needed
4. segments on active listening, empathy, and validation; sensitivity and awareness of cross-cultural issues; maintaining neutrality; identifying and reframing issues; establishing trust and respect; using techniques to achieve agreement and settlement; shaping and writing agreements; assisting individuals during intake and case development; ethical standards for mediator conduct adopted by state and national organizations

- The apprenticeship shall include participations in a minimum of two mediation cases under the supervision of an experienced mediator or trainer, with at least one case

resulting in a completed mediation session.

6) **8ow Does the Oregon Board of Psychologist Examiners Manage Their "Oregon Jurisprudence Examination"? (https://www.oregon.gov/Psychology/Documents/Candidate_Handbook_Rev.8-17.pdf)**

OREGON BOARD OF PSYCHOLOGIST EXAMINERS

Oregon Jurisprudence Examination

CANDIDATE HANDBOOK

Created 09/08; Revised 08/17

OREGON BOARD OF PSYCHOLOGIST EXAMINERS OREGON JURISPRUDENCE EXAMINATION - INFORMATION FOR EXAMINEES -

This Candidate Handbook is designed to provide candidates who qualify to take the Oregon Jurisprudence Examination with general information regarding the examination process.

SECTION I: **EXAMINATION AUTHORITY, PURPOSE, & DEVELOPMENT**

AUTHORITY

ORS 675.110 The State Board of Psychologist Examiners has the following authority:

(1) To determine qualifications of applicants to practice psychology in this state; to cause to have examinations prepared, conducted, and graded and to grant licensing to qualified applicants upon their compliance with the provisions of ORS 675.010 to

675.150 and the rules of the Board.

ORS 675.045 Examination Rules:

(1) The State Board of Psychologist Examiners shall adopt rules governing examinations required by the board.

(2) When the board requires a board administered examination, the board shall: (a) Maintain a complete record of the proceedings and of the questions asked and

responses given; and

(b) Inform applicants in writing of the examination results for each tested subject

area.

(3) Upon written request to the board, an applicant who fails a board

administered examination may review the record of the examination. To ensure and maintain test security, the applicant shall sign a confidentiality agreement prior to reviewing the record of the examination.

(4) Any applicant who fails a board administered examination shall be: (a) Allowed to petition the board to reconsider the results of the entire examination or the results of a particular tested area. (b) Reexamined.

PURPOSE

The purpose of the examination is to determine the competency of each candidate to practice psychology safely and responsibly in Oregon, with knowledge of applicable laws and regulations, including the APA Ethical Principles and Code of Conduct.

EXAMINATION DEVELOPMENT

The Oregon Jurisprudence Examination was developed by Oregon licensed psychologists under the direction of the Board. All items were created and refined by a small task force and a subcommittee of the Board. Psychometric evaluation was conducted using an Expert Panel of senior psychologists, with assistance from Portland State University's Psychology Department.

SECTION II: STR U CTU R E, CON TEN T A R EA S, A N D SCOR I N G S Y S TEM

EXAMINATION STRUCTURE and CONTENT

The Oregon Jurisprudence Examination is an open book, multiple-choice examination with a time limit of 2 hours. Copies of the Statutes ORS 675.010-150; Oregon Administrative Rules Chapter 858; APA Ethical Principles of Psychologists and Code of Conduct, and the Statutes Pertaining to the Practice of Psychology are provided to candidates at the examination. These booklets must be turned in along with all test materials after completion of the exam, or after the time limit has expired, whichever occurs first.

The examination evaluates a candidate's knowledge of:

 Oregon Revised Statutes enacted by the Oregon State Legislature that direct psychological practice, including but not limited to: privilege, confidentiality of protected health information parental authority, rights of minors, mandated abuse reporting for special populations, duty to report prohibited or unprofessional conduct, records, rights of mentally ill persons, commitment and least restrictive care, practice regulations, licensure regulations.

 Oregon Administrative Rules (Chapter 858) that implement, interpret, or prescribe law or policy or describe a procedure or practice requirement, including but not limited to: licensure and renewal requirements and procedures, continuing education, maintenance of records, Board notification requirements, and investigations.

 APA Ethical Principles of Psychologists and Code of Conduct, including but not limited to: resolving ethical issues, competence, avoiding harm, multiple relationships, conflict of interest, privacy and confidentiality, advertising practices, record keeping and fees, education and training, research and publication standards, bases for assessments and therapy, and informed consent.

EXAMINATION ITEMS

The examination consists of 60 multiple-choice items. There is only one correct answer for each item. There are no “trick” questions in the examination.

Sample Items

Each multiple-choice item requires the examinee to select the correct answer from the options provided. The following are examples of the type of items candidates will encounter in the examination:

1. You are treating a client for depression. The client asks you if he could work off his balance of payment by helping you upgrade your electronic billing and documentation system. You recognize that this request might present a problem. The ethical principle that best describes the problem is:

A. Conflict of Interest

B.* Maintaining Confidentiality

C. Conflicts between Ethics and Organizational Demands

D. Bartering

2. A psychologist, Dr. Gray, had been treating a client, Linda Johnson, for anxiety and panic attacks. Ms. Johnson dropped out of treatment without explanation, even though Dr. Gray attempted to make contact with her. Recently, Ms. Johnson contacted Dr. Gray’s office requesting her records in preparation for a court custody case with her ex-husband. Which of the following most accurately describes Dr. Gray's obligations according to Oregon law:

A. Provide her with a written summary.

B. Refuse to allow Ms. Johnson to have a copy of her records, but agree to review them with her in a session.

C.* Provide Ms. Johnson with a copy of her records.

D. Refuse to allow her to have a copy of her records, but agree to provide the records to her attorney.

*Denotes the correct answer.

SECTION II I:A DM I NI STR A TI ON P R OCEDU R ES

EXAMINATION SCHEDULING PROCEDURES

The Oregon Jurisprudence Examination is held at least twice a year. Once candidates have met the requirements to take the examination and are approved by the Board, they may request to be scheduled for an upcoming examination administration. Candidates’ written request for the examination and exam fee must both be postmarked (or received) at least 30 days prior to the requested examination date. There are no exceptions.

The examinations are held in Salem. Candidates are notified in writing at least 30 days prior to examination date of the exact time and location. Written notification includes a Letter of Approval; a copy of the Oregon statutes and administrative rules, which includes the APA Ethical Principles and Code of Conduct; and the Statutes Pertaining to the Practice of Psychology, as study materials.

Once a candidate has been approved and scheduled to take the examination, the examination fee is not refundable.

CANCELLATION AND RESCHEDULING POLICY

Candidates may cancel or reschedule no less than 14 days prior to their scheduled examination date without penalty. Rescheduling less than 14 days prior to the scheduled examination date will result in forfeiture of the exam fee. When rescheduling, the candidate's written request for a new examination date and exam fee (if applicable) must be postmarked (or received) at least 30 days prior to the requested examination date. There are no exceptions.

In the event that severe weather or another emergency forces closure of an examination site on a scheduled examination date, the examination will be rescheduled at no additional charge to those who were approved. Board staff will attempt to contact each candidate in this situation. However, all candidates are strongly advised

to visit the Board's website or contact the Board's office by phone to check if the examination will proceed.

REPORTING TO THE EXAMINATION TEST SITE

On the day of the examination, each candidate should plan on arriving at the test site

15-20 minutes prior to the scheduled examination time. This allows time for sign-in and identification verification. The exam will begin at the appointed time, the test site doors closed, and no one will be admitted after this time. We will not be able to make any exceptions. Please note that you are not allowed to leave the test site once you are signed in.

REQUIRED IDENTIFICATION AT EXAMINATION TEST SITE

Each candidate will be required to provide one of the following valid forms of identification:

• A current State issued Driver's License.

• A current State Department of Motor Vehicles Identification Card.

• A current U.S. military issued identification card.

• A current passport.

All photographs must be recognizable as the person to whom the card was issued.

SPECIAL ACCOMODATIONS AVAILABLE

Written requests for special accommodation for a verified disability or for English as a second language must be made at the time the request to sit for the examination is made, or when the disability becomes known to you. The request must include:

• Verified Disability: Written verification of disability from a qualified care provider (i.e. a person certified or licensed by the state to provide such services) detailing the nature, extent and duration of disability, and a recommendation for accommodation.

• English as a Second Language: Written request for reasonable accommodation detailing the level of proficiency in English, including, but not limited to, the number of years speaking and/or writing English, and a list of all national written or jurisprudence examination, academic coursework, and dissertation in English language; a history of special accommodations granted in similar testing circumstances, for example, interpreter or extra time granted in a jurisprudence examination process in other licensing jurisdictions or degree granting institutions; a statement documenting extent that English will or will not be the language in which professional services are provided; other information to support request for special accommodation; recommendation for accommodation.

SECURITY PROCEDURES

The following security procedures will apply:

• Candidates are not allowed to bring anything into the examination site other than the required identification.

• Candidates are not allowed to communicate verbally or otherwise with any examination candidate during the examination.

• Candidates are prohibited from sharing any of the content of the examination to anyone else after the examination, including their residency supervisor.

• Candidates may not leave the examination room once they are checked in.

• By appearing at the examination site to take the test, candidates agree to abide by the Oregon Jurisprudence Examination rules detailed in the last page of this handbook.

Water will be provided at the site. Candidates may take restroom breaks as needed.

EXAMINATION SCORING AND RESULTS PROCEDURES

The Board shall determine the passing score for each administration of the examination. Each item has been carefully scrutinized by a group of experts in terms of its difficulty and content validity. The passing score is based on the distribution of weighted scores for each form of the examination.

Two different test scorers shall score the examinations. Candidates shall be assigned a number so test scorers do not know the identity of the candidate. Board staff shall notify each candidate in writing regarding the results of their examination.

Examination results are mailed to examinees within one week after the exam.

RECONSIDERATION, REVIEW AND RE-EXAMINATION

Reconsideration/Rescoring. Within thirty days after notice of the examination results, an applicant who does not pass the examination may petition the Board in writing to have their examination rescored.

Review. An applicant who does not pass the examination may review the examination record of incorrect questions and answers at the Board's office within a period of ninety days following the date of the examination and upon written request to the Board. The purpose of the review is to assist the candidate in preparing to retake the examination. To maintain test security, the applicant shall sign a confidentiality agreement. No more than one inspection shall be allowed.

Reexamination. An applicant who does not pass the examination may be reexamined. If an applicant does not pass the second examination and wishes to take a third examination, the applicant must submit a study plan prior to being approved for the third examination. If a candidate fails to pass the third examination, the candidate's application for licensure shall be denied. The Board's decision shall be final.

OREGON JURISPRUDENCE EXAMINATION RULES

A candidate taking the Oregon Jurisprudence Examination administered by the Oregon Board of Psychologist Examiners for licensure as a psychologist or psychologist associate is required to comply with ORS 675.010–675.150 and OAR Chapter 858, and is not allowed to do any of the following:

1. Have an impersonator take the examination on his/her behalf.

2. Impersonate another to take the examination on that person's behalf.

3. Communicate examination content with another examinee or with any person other than the examination staff.

4. Copy questions or make notes of examination materials.

5. Provide copies of questions or notes of examination materials to any other person, including but not limited to:

a. Others who are preparing to take the examination for licensure as a psychologist or psychologist associate, or

b. Persons who are preparing others to take the examination for licensure as a psychologist or psychologist associate.

6. Obstruct in any way the administration of the examination.

A violation of any of the above rules or verbal directives of the Board or Board staff, will disqualify the candidate and the Board will initiate appropriate administrative action to deny issuance of a license.

9) How doles the State Board of Licensed Social Workers Manage Their Oregon Statutes and Administrative Rules Exam? See, https://www.oregon.gov/blsw/Documents/OregonRulesAndLawsExam.pdf

10) Information on Implementation (Lynn Johnson and Brian Egan)

Needs:

• an online form for collecting mediator basic qualifications information and

• a directory to display mediators' profiles

Since there will not be a review of the information mediators provide, there is no requirement for reviewer assignments and such. Also, since there is no fee required, there is no provision for collection of funds.

Given these parameters, the development of an online form is simple requiring only a couple days to develop. However, these specifications/requirements invite a new set of questions. Those questions include:

• where would this form be located online. That is; would it be on OMA's website or a new website? If it's on OMA website, how will it impact the existing paid directory that is already there? If it's on a separate website, what else might need to be there beside the registration/sign-up form?

• will it be necessary to monitor or secure the entries? (Can we remove erroneous, inflammatory, or whatever content?)

• How would the logos or trademarks be distributed and monitored?

Putting up an online form is not technologically difficult, probably a bit more than we realized. However, what that online form implies and requires on the backside is significant, self-administering is not likely.

The answers to our questions were an invitation to a whole host of new questions.

11) OREGON ASSOCIATION OF COMMUNITY DISPUTE RESOLUTION CENTERS QUALITY ASSURANCE AND CERTIFICATION PROGRAM

Adapted from Resolution Washington quality assurance and certification requirements - dated 1999, 12/1/2011 and 2/9/2012

The Oregon Association of Community Dispute Resolution Centers (OACDRC) quality assurance and certification standards were developed to ensure that all residents of Oregon served by dispute resolution centers have access to skilled mediation practitioners for conflict resolution services.

The association believes that mediator competency is acquired through instruction in relevant theory combined with practical experience and the purposeful application of reflective practice to evaluate skill level. Using a three tiered structure, OACDRC members strive to solidify the foundation of quality mediation training in Oregon through a process that includes: 1) Formal training, 2) Practicum and 3) Continuing education.

Formal training - 32 - 40 hour basic mediation training

OACDRC has adopted student learning objectives which establish and insure a standard body of skills and knowledge that provides participants an introduction to basic mediation. Practice of these skills is obtained through completion of an approved mediation practicum program.

Practicum

Certified mediators serve as mentors by demonstration of the mediation process. Practicum participants first observe, analyze, debrief and evaluate the skill set in live mediations. Practicum participants then, with the guidance of their mentor, practice, analyze, debrief and evaluate their own developing skillset in live mediations as they participate as half of the mediation team.

Prerequisite: completion of approved 32-40 hour basic mediation training that meets the learning objectives set by OACDRC.

- Entry into the Practicum is by application, which may vary from one DRC to another. The practicum includes a minimum of 20 hours of time allocated to observations and/or mocks. At least 14 hours of which must be in observation of at least 3 live completed cases. The other 6 hours can be allocated to mocks or more observation of actual mediations.

- A minimum of 24 hours of actual experience in the role of mediator or co-mediator in at least 4 live, separate and completed cases.

- 1-2 times a year the practicum participant will be observed by a certified DRC staff member. This can occur at any time after the minimum number of required observations have been accomplished.

- A minimum of 12 hours of additional education during the practicum.

• Decision to Certify: After all of the above have been fulfilled, a decision to certify includes assessment of the PP's ability to meet the 27 skills for competent performance as a mediator, as approved by OACDRC in 2016.

Continuing education

Once a mediator has been certified, the minimum standard for maintaining certification requires ongoing supervision and assessment by the local DRC. Best practices recommend recertification every three years by fulfilling requirements in the following three categories:

1. **Education**

A minimum of 12 hours per year (36 hours over three years) that typically includes the following types of activities:

• Classes, conferences, in-service programs

• Teaching, coaching, mentoring

• Peer review, self-study, reading, roundtable discussions

• Testing scenarios, mocks, auditing basic mediation training

2. **Practice of mediation**

A minimum of two cases per year.

3. **Demonstration of competency**

A certified mediator will be reviewed and provide feedback regarding competency at least every two years based on OACDRC's competency guidelines.

OACDRC values both the strength of a unified statewide approach to mediation, while upholding local decision-making of individual DRC's. Local DRCs make decisions about the following issues:

1. Grandfathering provisions
2. Reciprocity for other DRC certified mediators

Directors from OACDRC meet quarterly to network, share information about programs, and participate in administrative and strategic decision-making to further develop the field of community conflict resolution in Oregon.

Membership in our association is open to programs/centers that meet the requirements of ORS 36.135 (use volunteers, community-based, government or non-profit program). There are currently 16 community programs that belong to our organization. Our programs offer a variety of mediation and conflict resolution services that include

neighborhood, victim-offender, youth- parent, workplace, elder, public policy, peer and truancy mediation, as well as large and small group facilitation and community dialogue on issues important to our communities. Our mission is:

“To promote and strengthen quality dispute resolution through community-based programs in Oregon.”

Basic Mediation Training Required Student Learning Objectives

Introduction: The following student learning objectives establish a standard body of skills and knowledge which will provide participants an introduction to basic mediation. They provide a basis for a typical 32 - 40 hour basic mediation training and are not intended to limit or restrict additional learning objectives that trainers or Dispute Resolution Centers find appropriate.

Course Objective: Upon completion of the training the trainee will have completed at least one complete mock mediation, employing the skills, strategies, and processes outlined below. The focus will have been on practicing the skills learned in the basic training. Mastery of these skills is achieved by completing a mediation practicum program.

Upon completion of the Basic Mediation Training, trainees:

Pre-Mediation

1. Are familiar with the intake process, screening criteria and determination of the appropriateness of the dispute for mediation for the Dispute Resolution Center where they will volunteer.

2. Are aware of the additional skills, knowledge, and training needed for effective intake.

3. Understand the process they need to undertake to become grounded in the role of a neutral; including the ability to focus oneself, and be open, impartial and fully present for the parties.

4. When co-mediating, can identify and share appropriate information with their co-mediator.

5. Understand and can adjust the physical attributes of the mediation setting to promote effective dialog (location of parties, mediators, observers, white boards, etc.)

Mediator Opening Statement

1. Understand and are able to explain mediator opening statements and agreements to mediate relevant to their Dispute Resolution Center.

2. Are aware of which issues are not protected by confidentiality and how exceptions to confidentiality should be handled in accordance with their Dispute Resolution Center.

3. Are able to explain both confidentiality and privilege and the exceptions.

4. With mandatory reporting requirements understand how their obligations will be met in accordance with the requirements of their Dispute Resolution Center.

5. Are aware of the importance of delivering their opening statement in a neutral and balanced manner and with confidence and authority.

Client Opening Statement (listening skills)

1. Equitably conduct the client opening statement process in which they listen to each party's opening statement, accurately and impartially summarize the relevant emotion, content and underlying interests.

2. Understand the fundamental role of feedback in assuring and conveying effective listening.

3. Are able to analyze obstacles to communication and to apply strategies to improve parties' ability to communicate.

4. Demonstrate active listening and attending behaviors while listening to parties and taking notes.

5. Appropriately summarize and reframe parties' statements in neutral language.

Exploration of Conflict (Exploration may be a separate step prior to agenda building. It will likely occur periodically as issues are clarified and negotiated.)

1. Explore and analyze the issues of the conflict sufficiently to be able to summarize parties' positions, related feelings, and underlying interests.

2. Appropriately use inquiry techniques (open ended and closed questions) to ascertain greater insight into the dynamics of the conflict and reveal underlying interests.

3. Are able to identify and articulate any common values and interests that exist between the parties so as to promote a sense of connection and positive spirit between the parties.

Agenda

1. Know when and how to transition to agenda building.

2. Assist parties to create an agenda which equitably reflects the issues of the conflict in neutral, non-positional, language.

3. Understand that issues related to establishing and determining the order of an agenda have strategic importance and are able to apply techniques to assist parties in determining how to proceed.

Negotiation

1. Assist discussion of each issue, asking questions to identify common and conflicting interests, and helping parties to craft proposals addressing the interests at the table.

2. Understand negotiation theory including positions, interests, settlements, bottom lines, BATNAs, WATNAs, and the role of the third party neutral in assisting in a negotiation.

3. Help parties to identify interests and utilize the interests to improve the effectiveness of the negotiations.

4. Understand how power imbalance can affect negotiation and will apply strategies to assure equitable representation of all parties' interests.

5. Understand how parties' approach to negotiation can be affected by their culture, gender, and other attributes of their identity. Participants will begin to develop strategies for promoting productive negotiations when identity differences might otherwise lead to misunderstanding, distrust, or other challenges to productive negotiation.

6. Understand negotiations strategies related to limited resource distribution, future

behavior, values, interests, identities, communication, and relationships.

7. Respect the ethical standard of self-determination, and engage the parties to ensure that negotiations are party driven.

Written Agreement

1. Understand and apply the essential elements of durable agreements (who, what, when, where, how, what if).

2. Demonstrate the ability to help parties develop durable written agreements characterized by clarity, balance, adherence to ethical standards and contingencies for potential difficulties.

3. Help parties develop agreements that are perceived as sufficiently fair as to achieve voluntary compliance.

4. Appropriately adjust the "level of agreement and enforceability" to reflect the needs of the parties (a spectrum from simply documenting the conversation to drafting enforceable contracts).

5. Demonstrate appropriate use of reality testing in developing agreements.

6. Are able to appropriately use written agreement forms provided by their Dispute

Resolution Center.

Caucus

1. Understand the risks and benefits of caucuses in a mediation and appropriately determine when to use a caucus.

2. Understand that caucus is optional, and not a mandatory part of the mediation process.

3. Demonstrate techniques to make caucus productive such as building rapport, reality tests, role reversal, rehearsal and preparation for return to open session, coaching, identification of key issues, exploration of options, allowing for venting, developing alternatives for settlement, education regarding negotiation process, etc.

4. Are able to inform parties of the process and confidentiality practices regarding caucus.

5. Manage transition to and return from caucus appropriately preparing parties to resume the joint session.

6. Understand and adjust interaction during caucus to help parties while maintaining

appropriate levels of impartiality.

7. Assist the party not in caucus to engage in constructive activity while waiting.

8. Distinguish between caucus and breaks and inform parties of how a caucus or break can be requested by either the mediation team or client.

General

1. Have self-knowledge of their conflict styles, history, and attitudes and how their personal experience may influence their aptitude for or approach to conflict resolution.

2. Are able to perceive the conflict styles of others, and will be able to adjust their mediator interventions to work effectively with all conflict styles.

3. Understand that communication is comprised of both verbal and non-verbal elements and will be able to identify how either of these can escalate or de-escalate conflict.

4. Understand that a sense of physical safety is essential for all mediation parties and mediators, and will be aware of strategies for promoting both actual physical safety and the sense of safety.

5. Are able to help parties acknowledge the impact of their statements on the other parties, and clarify their intention in making these statements.

6. Understand basic conflict theory including definitions of conflict and the relationship of conflict to emotions and interests.

7. Understand that there is a continuum of conflict resolution methods, including negotiation, mediation, arbitration and litigation, and will understand the advantages and disadvantages of each.

8. Understand ethical issues related to mediation, particularly as it relates to confidentiality, self-determination, and voluntary participation.

9. Are familiar with the OACDRC programs can adopt the Oregon Mediation Association Core Standards of Mediation Practice (2005) or an otherwise accepted state-wide standard. Lawyers acting in the role of mediator should be familiar with the Oregon State Bar Rules of Professional Conduct, Rule 2.4 (Lawyer serving as a mediator). Mediators practicing in Small claims should be familiar with the Oregon Judicial District Court- connected Mediator Qualifications (2005).

10. Are able to discern which issues in a conflict are negotiable and which are non-negotiable, and will have a sense of how to guide parties in discussing these issues.

11. Appropriately manage the emotional climate to foster productive dialog.

12. Appropriately manage anger through acknowledgement of underlying emotions.

13. Are able to terminate or conclude the resolution process at an appropriate time and in an appropriate manner.

14. Understand the importance of debriefing with co-mediators, observers and program staff for the purpose of furthering their own and other's development as skillful and effective mediators.

Requirements for Competent Performance as a Mediator

The practicum participant has demonstrated competent performance in the following areas:

Relational skills

1. Recognize and uncover the underlying interests of each party;

2. Reframe parties' positions into needs and interests;

3. Provide space for and give voice to diverse perspectives;

4. Sensitive to strongly felt values of the disputants, including gender, ethnic, and cultural differences;

5. Establish and maintain trust throughout the process;

6. Create and maintain control of a diverse group of individuals;

7. Recognize and manage power imbalances.

Process skills

1. Listen actively;
2. Understand the negotiation process;
3. Understand non-judgmental facilitation vs. the role of advocacy;
4. Assist individuals during intake and case development to resolve disputes with minimum of 3rd party intervention;
5. Use clear, neutral language in speaking and writing;
6. Help parties invent creative options for resolution.

Substantive skills

1. Determine whether a case is appropriate for mediation;
2. Understand the issues from the perspectives of both parties;
3. Help parties assess whether their agreement can be implemented;
4. Understand the negotiation process vs. the role of advocacy;
5. Help parties shape and write agreements;
6. Analyze problems, identify and separate the issues involved, and frame those issues for resolution;
7. Help parties assess their non-settlement alternatives.

Fundamental mediation standards

1. Understand and follow ethical standards for mediator conduct adopted by state and national organizations;
2. Screen out issues not appropriate for mediation;
3. Help parties assess their need for expert outside information.
4. Deal with complex factual issues and materials;
5. Help the parties identify principles and criteria that will guide them in decision making;
6. Identify and separate the mediator's personal values from issues under consideration;
7. Help the parties make their own informed choices.

OREGON MEDIATOR CERTIFICATION ADVISORY GROUP (OCAG)

Minimum Standards for Certification via a Dispute Resolution Center

Practicum Program

Certification: The recognition of the successful completion of a Practicum qualifying the individual to mediate with the dispute resolution center (DRC) issuing the certification. This certification does not extend to mediators practicing outside the DRC which has issued the certification.

Prerequisite: Completion of a 32-40 hour Basic Mediation Training that meets the required student learning objectives.

1. **Entry into Practicum:** Includes entry exercise/exam, application form, and continued thorough record keeping by DRC and practicum participant (PP) throughout the practicum participant's history. The specific process for entering into the practicum program may vary from one DRC to another.

Ø Best Practice: The DRC may include an interview/orientation as part of the application process. (Some DRCs use an exercise/exam to review answers with practicum participant during this interview/orientation).

2. **Minimum Observations:** (Observation hours may include 30 minutes for set up and 30 minutes for debrief.): Minimum of 20 hours of time allocated to observations and/or mocks. At least 14 hours must be in observations of at least 3 completed cases. The other 6 hours can be allocated to mocks or more observation of actual mediations.

Ø Best Practice: Minimum of 20 hours of time allocated to observations of actual cases.

3. **Minimum Mediations:** (Mediation hours may include 30 minutes for set up and 30 minutes for debrief.): A minimum of 24 hours of actual experience in the role of mediator or co-mediator in at least 4 separate and completed cases. These cases may include small claims mediation cases with appropriate supervision. Evaluation forms will be completed for all co-mediations and should be retained in the practicum participant's file. The evaluation form is filled out by the mentor mediator or an observing DRC staff member who, at a minimum, is a certified and experienced mediator. If the DRC uses a mediator self-reflection instrument this form should be filled out by the PP and reviewed with the PP by a DRC staff member.

4. **Mediator observations:** 1-2 times a year the practicum participant will be observed by a DRC staff member. This can occur at any time after the minimum number of required observations has been accomplished.

Ø Best Practice: 1 mediation observation should be completed after the practicum participant's observations and 1 mediation observation should be completed after the PP has completed 24 hours of co-mediating. Both mediations are to be observed by a DRC staff member.

5. **Additional Practicum Education:** A minimum of 12 hours of additional education during the practicum that might include, but is not limited to:

• In-services

• Conference attendance

• Seminars

• Book review/article review

• Role playing & debriefing (mocks/demonstrations)

• Peer consultation

• "What ifs?"

6. **Practicum Participant Engagement:** It is the responsibility of the PP to stay engaged and remain active throughout the course of the practicum and the DRCs responsibility to provide opportunities to learn and encouragement for consistent involvement.

7. **Decision to Certify:** Prior to certification, after all of the above have been fulfilled, it is recommended that the DRC implement a defined process that is used in every case to certify mediators. At a minimum the decision to certify would include assessing the practicum participant's ability to meet the skills for competent performance as a mediator that follow this discussion. The process of certification may also include, but is not limited to:

• Interview with PP

• Written self-evaluation by PP

• Feedback by mentors (to DRC point person overseeing the Certification process)

• Review of PP's files

• Write up a final narrative recommendation

Ø Best Practice: A team approach with consensus reached among all members of the certification committee/team as to whether to certify a practicum participant.

That a practicum participant has met minimum requirements does not necessarily mean the DRC is required to certify. The DRC should do so only if they feel the PP is ready for certification.

OREGON MEDIATOR CERTIFICATION ADVISORY GROUP (OCAG)

Minimum Standards & Best Practices for Re-certification of Community

Dispute Resolution Mediators

Mediator Certification

Once a mediator has been certified, *the minimum standard* for maintaining certification requires ongoing supervision and assessment by the local DRC. *Best Practices* recommend re- certification every three years by fulfilling requirements in the following three components: (1) Continuing Education; (2) Practice; and (3) Competency.

1. **Continuing Education:** Participation in 12 hours of Continuing Education per year (or 36 hours over three years). Continuing education includes the following types of activities:

- Classes, conferences, in-service programs
- Teaching, coaching, mentoring
- Peer review, self-study, reading, roundtables, roundtable discussions
- Testing scenarios, mocks

2. **Practice of Mediation:** A minimum of two cases per year, or the possible substitution of a mock mediation when necessary because of DRC caseload.

3. **Demonstration of Competency:** A mediator must demonstrate competency in addition to fulfilling continuing education and practice requirements. Local DRCs will review and provide feedback about a mediator's competency at least every two years based on OACDRC competency guidelines.

Local DRCs make decisions about related issues:

- Grandfathering provisions
- Reciprocity for other DRC certified mediators

Best Practices for Specialized Mediation

It is the local DRC's responsibility to make sure mediators have adequate training and anticipate the areas of practice requiring specialized training. Typically areas of practice include, but are not limited to the following:

- Divorce, parenting plans
- Facilitation/Multi-Party
- Land Use
- Parent-Youth
- Probate

- Elder
- Small Claims
- Landlord-Tenant
- Restorative Justice programs
- Workplace
- Truancy

DRCs are encouraged to expand the use of mediation for unique and varied types of cases. In new or specialized applications, DRCs should consult with other providers to learn about existing Best Practices and training resources. Credit for Mediation Training

Various types of credit may be awarded for mediation training. Interested DRCs can learn more about credit options from the organizations listed below and from other DRCs.

- Academic Credit through colleges and universities
- CLE (Continuing Legal Education) through the Oregon State Bar
- CEU (Continuing Education Units)
- Human Resources Credit through the Human Resources Certification Institute, an affiliate of the national organization Society for Human Resource Management
- Clock Hours for educators and social workers (through local Educational Service Districts (ESDs) and statewide social worker association)

Definitions of Common DRC Terms

Active/Inactive: Active: continues to be engaged on a regular basis as defined by each center. Inactive: is no longer engaged on a continuing regular basis as defined by each center.

Certification: Recognition of successful completion of Practicum qualifying an individual to mediate with the dispute resolution center (DRC) issuing the certification. This certification does not extend to mediators practicing outside the program which has issued the certification.

Certified Mediator: A mediator meeting the following minimum qualifications:

1. Basic Certification by a DRC.
2. Trained and experienced in the specialized area of mediation being mentored (i.e. Divorce, Restorative Justice, Workplace, etc.)
3. Proficient in his or her craft.

4. Adheres to OMA Core Standards of Mediation Practice (2005) or an otherwise accepted state-wide standard.

5. 24 hours minimum additional continuing education hours (exclusive of Divorce and Restorative Justice training).

Continuing Education: Additional training/education that is completed by a certified mediator to remain current and up to date in the field.

Ethics/Standards: Standards are those basic practices all mediators are asked to support and adhere to. Ethics are the written and possibly unwritten moral requirements under which we operate. OACDRC programs can adopt the Oregon Mediation Association Core Standards of Mediation Practice (2005) or an otherwise accepted state-wide standard. Lawyers acting in the role of mediator should be familiar with the Oregon State Bar Rules of Professional Conduct, Rule 2.4 (Lawyer serving as a mediator). Mediators practicing in Small claims should be familiar with the Oregon Judicial District Court-connected Mediator Qualifications (2005).

Intake/Case Management: Intake /case management includes, but is not necessarily limited to the following:

1. Initial contact with clients seeking services.

2. Contact with all parties to determine willingness to participate and appropriateness of case for mediation.

3. Scheduling first session and collection of any fees that may be required prior to session.

4. Final disposition of the case. Which may include, but is not limited to:

a. tracking progress of case

b. conducting follow up where necessary

c. filing documents in office

d. recording statistics on computer e.g. rescheduling sessions

f. confirmation with all parties e.g. closing the file

Mediator Style vs. Standards: Standards are those basic practices all mediators are asked to support and adhere to. Style is the individual manner by which a mediator practices their profession.

Practicum: The program a practicum participant completes to become a certified mediator. The practicum involves additional training, observing and co-mediating cases.

Practicum participant: A person trained in Basic Mediation who has been “accepted” into a program working toward certification as a mediator.

Trainee: A person who has completed Basic Mediation Training.

13) Misc. OMA Certification Issues – 2015
General Information – Not Legal Advice. Please get independent legal advice.

A. Liability Issues

Immunity as a mediation program:

Section 36.110. (8) "Mediation program" means a program through which mediation is made available and includes the director, agents and employees of the program.

The plain meaning of the statute would be that a "mediation program" is a program that offers mediation services. Under its current form OMA would not qualify as a "mediation program."

Decertification / Denial of Application:

Analysis of the Decertification Variations from April 9th Meeting Notes:

1) Applicant not approved:
    a. Person clearly does not meet the criteria: this scenario would not raise any liability issues because it could be objectively shown that they don't meet the requirements.
    b. Questionable whether the person meets the criteria: this will depend on what the requirements are. If the requirements are straightforward and objective such as requiring a certain number of hours of training or a certain number of hours of experience then this will not be much of an issue. On the other hand there may be some requirements that you decide to include that would require that decisions be made on a case by case basis:
        i. WMA requires applicants that have been convicted of a felony or have been the respondent in a professional liability suit to submit an explanation. Implicating such a requirement would require individualized decisions and would give OMA a lot of discretion.
        ii. Maryland requires applicants to pass a performance based assessment consisting of a one hour videotaped mediation role-play during which the candidate mediates a case with two parties and is reviewed by MCDR certified assessors and both assessors must award a passing score.
        iii. You might want to have a mechanism to waive some of the training requirements for experienced mediators coming from out of state.

iv. Some of the states require writing samples from the applicants and evaluating the writing samples would require at least some level of discretion.

2) Applicant fails to re-certify: this is another situation that is pretty cut and dry and would not be likely to lead to any liability. Not paying their dues is straight forward and so is failing to meet continuing education requirements as long as those requirements are clearly laid out.

3) Egregious behavior:

   a. **See Appendix A**. If an OMA certification is not a practical necessity in order to mediate in Oregon then the court will be unlikely to scrutinize OMA's decision to decertify. Even if the court does review OMA's decision, if the decision complies with OMA's own rules then OMA's decision probably won't be overturned.

   b. To make it easy to show that the decision complies with OMA's own rules you would want to have clear policies and procedures in place including grounds for decertification.

   c. As a matter of contract law you would want to have clear policies and procedures that you can point to. If you decertify someone and the decertification rules are not clear then they could potentially have a breach of contract claim. That is easily preventable through clear policies and contract drafting. In fact a lot of the risk of liability with regard to decertification can be dealt with through contract law because as part of the application you can require that the applicant agree to the grievance procedures, agree to appeal decertification through OMA procedures, and waive the right to bring a lawsuit against OMA.

   d. You may also want to consider including a mechanism in the application process to disqualify people that have committed egregious behavior prior to applying. For example if someone has already been kicked out of another mediation organization for unethical conduct. In which case you would want a process for the applicant to appeal the initial decision. (Idaho, Washington, and Texas all have some form of grievance or appeals process. The Idaho process is the most clearly laid out and the most comprehensive)

<u>Negligent Referral</u>

This could arise if a participant in a mediation wanted to the sue the mediator and upon realizing that the mediator was immune might try to sue OMA for "referring" the mediator. Oregon courts impose a high bar for a plaintiff to bring a claim for negligent representations based on purely economic damages. (**See Appendix B** for discussion

of the negligent representation case) That bar to negligent representation claims would make it challenging to successfully bring to a claim against OMA for negligent referral.

To protect against even that, this type of liability can probably be dealt with using disclaimers. (**See Appendix C** for additional examples of disclaimer language).

One issue to consider with disclaimers is that if the requirements to get certified are low and there is a really strong disclaimer then it diminishes the value of the certification. If the disclaimer is included then the requirements need to be high enough to make the certification meaningful. Another way to take the sting out of the disclaimer is to include a list of the requirements that OMA is certifying. The Oregon State Bar Lawyer Referral Service does this at the end of the disclaimer:

"LRS lawyers are in good standing with the bar, have no current disciplinary proceedings pending, carry malpractice insurance, and agree to abide by our customer service standards."

B. Practices of Other Mediation Organizations

The is a broad range of approaches to certification taken by the various mediation organizations, some of them are fairly organized and structured while others are haphazard and undeveloped. Some of the important issues that we have identified are addressed in a comprehensive manner by some organizations and completely ignored by others. I think there is something to learn from each organization's approach and I think it can be brought together and synthesized into a more complete certification process that fully addresses each of the issues of concern. (Below is a summary of the different practices of the areas we researched: Idaho Mediation Association, Washington Mediation Association, Maryland Council for Dispute Resolution, Association for Conflict Resolution, Florida Academy of Professional Mediators, and Texas Association of Mediators. For a fact sheet on each organization (**See Appendix D**.)

Requirements:

1) Education: Interestingly, Texas is the only organization that has minimum education requirements. The fact that most of the organizations do not require it may be an indication that OMA should not include it, but I think if the vast majority of mediators in Oregon do have a college education then it would make sense to include such a requirement for certification but it could include a more lenient policy for making up for lack of education with a certain level of experience.

2) Training: The organizations require 36-80 hours of training. They pretty much all require about 40 hours of basic training and one or two require some additional training.

3) Experience: This varies wildly from 40 hours to 360 hours to 150 mediations.

4) A few of the organizations require writing samples. It is not necessarily a bad idea to make sure that they are capable of drafting an agreement, but the evaluation of the writing sample leaves a lot of room for discretion which could lead to disputes over the quality of the writing sample. It depends on how discretionary you want the application process to be and how time intensive.

5) The Maryland approach is interesting and there actually observing someone mediate is probably the best way to evaluate their abilities, but that gets into a pretty subjective evaluation and I would imagine that most denials would be disputed. It would also make the application process more complicated and more expensive.

In general the higher we set the bar with regard to these requirements the more valuable the certification becomes. Especially if we are going to say that this certification is no guarantee of quality, it won't mean much if it is really easy to meet the qualifications. There is always the option of having different levels of certification.

Ethics Compliance:

Some require a sworn affidavit attached to established Ethics Standards and some do not, but don't see any reason we wouldn't require adherence to the OMA Ethics Standards.

Potential Disqualification:

In Florida if the applicant is a felon or has had professional license revoked then they are barred. (Unless they have had their civil rights restored/professional license restored) In Washington applicants have to submit a statement explaining an felony or professional liability claims and WMA has discretion to accept or deny. It might not be a bad idea to ask on the application if the mediator has ever been expelled or decertified from another mediation organization.

Liability Insurance:

ACR is the only that requires it, requiring it is another way to enhance the value of the certification, but I am not sure if it is even necessary considering mediators have qualified immunity in Oregon. There is also the increased administrative burden of checking to make sure that they have up to date liability insurance.

Continuing Education:

Several don't even require it, but I think best practices would be to require it. Really the only question is how much should be required and how would you want to track it. The benefit is that it adds value and credibility to the certification the drawback is the increased administrative burden of tracking.

Decertification / Denial of Application:

Idaho is the only one that actually sets out a clear grievance procedure. I think that it is important not only to have one, but to have one that is accessible to the public so that there can be accountability and to weed out unethical practitioners. A transparent grievance process adds credibility but increases the administrative burden. Based off of the research it does not appear that OMA would be exposing itself to liability by decertifying people for unethical conduct as long as there are clear rules and OMA applies the rules equally. This process should be created from the outset, not thrown together haphazardly after some egregious conduct occurs and you need to find a way to decertify someone.