"THE MEDIATOR AS CONFLICT MANAGER"
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INTRODUCTION:

1. Litigation related mediation is not the only use of a mediator's skills and experience.

2. Mediation is taking many different forms and formats as mediators, business managers, and disputants become more cost-conscious and cost-adverse when conflict arises.

3. The Model Standards of Conduct for Mediators (2005) approved by the ABA, AAA, and the Association of Conflict Resolution ("ACR") defines "mediation" in its Preamble as "a process in which an impartial third party facilitates communication and negotiation and promotes voluntary decision making by the parties to the dispute."

    a. Mediation involves "an impartial third party."

    b. Mediation "facilitates communication and negotiation."

    c. Mediation "promotes voluntary decision making."

    d. Mediation involves interaction with "the parties to the dispute."

4. Texas Mediator Credentialing Association's Standards of Practice and Code of Ethics

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defines “mediation” as “a process in which an impartial person, a mediator, encourages and facilitates communications between parties to a conflict and strives to promote reconciliation, settlement, or understanding.”

a. Mediation requires “an impartial person, a mediator....”

b. The mediator “encourages and facilitates communications”

c. The mediator “strives to promote reconciliation....”

d. The mediator “strives to promote...settlement....”

e. The mediator “strives to promote ... understanding.”

5. Conflict management and resolution in the family, the workplace, the marketplace, the healing place, the school house, the sports arena, and countless other places, before litigation or violence or other harm erupts, is being recognized more fully and powerfully every day.

6. Mediation as a dispute resolution methodology is evolving, changing, and taking on many additional dimensions.

7. Many new dispute resolution opportunities are emerging for trained, experienced, and skilled mediators.

8. I want to explore with you today some of these opportunities that are available to trained, experienced, and skilled mediators as well as some of the potential ethical issues raised by these opportunities.

9. Therefore, the reason for the topic, “The Mediator as Conflict Manager.”

I. **Flexibility.** Mediators have always been required to be flexible in their approach to dispute resolution.

A. A mediation with John Hughes, Fort Worth, Texas, as the mediator taught me this lesson about mediator flexibility.

1. I represented one of the disputants in this mediation that involved a shareholder dispute in a large domestic and international business resulting in shareholder deadlock between equal owners with millions in dispute.

2. A receivership had been requested from a Texas court by one of the equal owners which prompted an immediate agreement to mediate the dispute with

John Hughes as the mediator.

3. Numerous intergenerational stakeholders in the two equal shareholder groups represented by good trial counsel made for a combative, entrenched situation.

4. The all-day mediation session didn't get the dispute settled.

5. Late in the day mediator Hughes came up with a proposal that broke the impasse which allowed one group to value the company and the other group to choose whether to buy the valuing group's shares or sell their own shares to the valuing group at the price set by the valuing group.

6. After buy-in by both groups to this proposal and some fine-tuning of the proposal, this mediation produced a workable dispute resolution that the parties agreed to and implemented.

7. This allowed this viable business to avoid further internal war and to continue its growth and development.

B. This experience also taught me anew the importance of flexibility in mediators.

C. All experienced mediators have learned the necessity of flexibility in dispute resolution.

II. **Conflicts are Costly.** We all recognize that conflict can be costly, especially litigation.

A. As a result, formal methods of alternative dispute resolution have become an established, popular, and cost effective method of resolving conflict.

1. The following types of ADR are available in Texas by agreement of the parties, by motion of one of the parties, or by order of the court.[2]

a. Mediation. CPRC §154.023.

b. Moderated settlement conference. CPRC §154.025.

c. Early neutral evaluation. *See* Lopez, *Alternative Dispute Resolution*, 71 Tex.B.J., at 36-37.

d. Summary jury trial. CPRC §154.026.

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[2] *O'Connor's Texas Rules* (2009), pages 229-30.

e. Arbitration. CPRC §154.027.

(1) Binding arbitration - agreed or contractual or statutory. CPRC §154.027(b).

(2) Nonbinding arbitration. CPRC §154.027(a).

2. The following types of ADR are available in Texas only if both parties agree, and can be ordered by the court.[3]

a. Mini-trial. CPRC §154.024.

b. Special-judge trial. CPRC, ch. 151.[4]

c. Expert panel.[5]

d. Jury-determined settlement.[6]

e. Collaborative-law procedure. Texas Family Code §§6.603, 153.0072.

3. We also have in Texas the CPRC, ch. 152, system established by the commissioners court of a county for dispute resolution centers which have flourished in many Texas counties.

B. In some cases mediation is ordered by the court.[7] Other times, parties choose to enter into a formal mediation process.

C. But many organizations in a variety of sectors have recognized the effectiveness and

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[3]*O'Connor's Texas Rules* (2009), pages 230-31.

[4]Fees and costs paid by parties in equal shares. CPRC §151.009(a); state or a unit of local government "may not pay any costs related to a trial under this chapter." CPRC §151.009(c).

[5]*See* Kovach, *Mediation: Principles & Practice* at 13.

[6]*See* Kovach, *Mediation: Principles & Practice* at 15.

[7]*See Decker v. Lindsay*, 824 S.W.2d 247, 250 (Tex.App. - Houston [1st Dist.] 1992, *orig. proceeding*) ("A court cannot force the disputants to peaceably resolve their differences, but it can compel them to sit down with each other.").

benefits of less formal conflict resolution and management programs. These informal processes tend to focus more on interpersonal relationships than settlement.

III. **Non-Court-Ordered Mediation and Informal Conflict Resolution.** There are numerous settings and conditions under which non court-ordered mediation and informal conflict resolution is taking place - domestically and internationally.

A. Mediation programs have been adopted in a range of settings including labor unions, healthcare, schools, hospitals, government agencies, U.S. Postal Service, and other industries and situations.

B. The most informal conflict resolution practices are occurring in education, government, healthcare, and military sectors.

C. Details of how mediation and conflict resolution training have been implemented in these sectors are outlined below followed by a discussion of ethical issues that emerge as a result of these less formal conflict resolution procedures being employed.

IV. **Where is Informal Mediation and Conflict Resolution Taking Place?**

A. **Labor Unions**.

1. After becoming frustrated with lengthy and often ineffective grievance procedures, the Service Employees International Union (SEIU) Local 616 labor union, located in Washington, D.C., hired WorkdaySolutions, an international consulting firm specializing in resolving workplace and labor union conflict, to develop a new approach to resolving conflict.[8]

2. With 15,000 members, the SEIU Local 616 needed a conflict resolution system that focused on resolving issues in a timely and cost effective manner.

3. Specifically, the union's goal was to provide members with a "safe, confidential vehicle to improve to improve work relationships, enhance, communication and resolve conflict quickly."[9]

4. To achieve this goal, WorkdaySolutions developed a training program for union staff on conflict resolution techniques.

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[8] (WorkdaySolutions, 2004); http://www.seiu.org/; WorkdaySolutions, 5111 Telegraph Avenue, Suite 315, Oakland, CA 94609, www.workplacesolutions.com.

[9] *Id.*

a. The program consists of short presentations on mediation, facilitation, and early neutral intervention.

b. Trainees also learn to communicate openly and effectively as well as identify and de-escalate conflict. [10]

5. Initially, WorkdaySolutions provided mediation and facilitation services for the union; however, the union's ultimate goal is to implement a conflict resolution program run by program staff and members.[11]

B. **Healthcare**.

1. The American Hospital Association published its first study in 1988 recognizing the value of ADR as an effective tool for dealing with conflicts that arise between and among hospital administration, the governing body, and the medical staff.[12]

2. Karen Ignagni, President of America's Health Insurance Plans, in a 2004 article highlighted the need for ADR in healthcare: "Going to court to settle disputes is like waiting until a cancer is far along before trying to treat it. We would be much better off - our whole health care system would be much healthier - if we could screen our disputes early on and send them to the proper clinic for treatment and resolution. That is the promise of alternative dispute resolution in health care. It is a goal that we should be pursuing without delay and without reservation."[13]

3. Effective January 1, 2009, The Joint Commission on Accreditation of Healthcare Organizations (the "TJC") is requiring that healthcare organizations it accredits establish policies and procedures for conflict management among leadership groups within accredited organizations.

a. TJC is a not-for-profit healthcare accreditation body whose mission

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[10] *Id.*

[11] *Id.*

[12] AHA, Office of Legal and Regulatory Affairs, Legal Memorandum: Number Thirteen, *The Report of the Task Force on Dispute Resolution in Hospital-Medical Staff Relationships*, August 1988.

[13] *Liability and Health Care: Time for a Fresh Approach*, METRO.CORP.COUNSEL 34 (March 2004).

is to "continuously improve the safety and quality of care provided to the public…" (The Joint Commission, n.d.).

b. The New TJC Standard: "The governing body provides a system for resolving conflicts among individuals working in the hospital."[14]

c. TJC added Leadership Standard (LD.02.04.01), effective January 1, 2009, requiring hospitals to "manage conflict between leadership groups to protect quality and safety of care."[15]

d. Specifically, the Standard states that, "Conflict commonly occurs even in well-functioning hospitals and can be a productive means for positive change. However, conflict among leadership groups that is not managed effectively by the hospital… has the potential to threaten health care safety and quality."

e. The Standard places responsibility for implementation and application of conflict management on the organization, its governing body, and its leaders and calls for the following:

(1) "[A] system for resolving conflicts among individuals working in the hospital." Standard LD.01.03.01.

(2) "[A]n ongoing process for managing conflict among leadership groups." Standard LD.02.04.01.

(3) "[A] process for managing disruptive and inappropriate behavior." Standard LD.03.01.01.

f. The Standard's goal is not to resolve conflict, but to "create the expectation that organizations develop and implement a conflict management process…."

4. The Standard's Elements of Performance are summarized below.

a. Senior managers and leaders of the organized medical staff are to work with the governing body to create and implement an ongoing

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[14]The Joint Commission, Hospital Accreditation Program, Chapter Leadership, Standard LD.01.03.01. Pre-Publication Version, 2008.

[15]*Id.*

process for managing conflict among leadership groups.[16]

b. Individuals who assist the organization in implementing the process may be from inside or outside the organization, but should be skilled in conflict management.[17]

c. The process must be implemented when a conflict arises that threatens patent safety or quality of care and should include meeting with the parties in conflict as soon as possible, gathering necessary information, and working with parties to manage or resolve the conflict.[18]

5. The Joint Commission also issued on July 9, 2008, a "Sentinel Event Alert," regarding "behaviors [intimidating and disruptive] that undermine a culture of safety."[19]

a. The Alert references the new Leadership Standard for conflict management (which was pending at the time the Alert was issued).

b. The Alert interprets the pending Leadership Standard to require two performance elements to address intimidating and disruptive behavior in hospitals (along with 11 other "suggested actions").

(1) Adoption of a code of conduct that defines acceptable and disruptive and inappropriate behaviors.

(2) Implementation of a process for managing disruptive and inappropriate behaviors.

6. The American Health Lawyers Association has developed a "Toolkit for Managing Healthcare Conflict" as a complimentary resource to assist hospitals as they seek compliance with TJC's new Standard.[20]

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[16]"Elements of Performance for LD.02.04.01." The Joint Commission, 2009.

[17]*Id.*

[18] *Id.*

[19]"Sentinel Event Alert, Issue No. 40" (July 9, 2008), The Joint Commission.

[20] American Health Lawyers Association, n.d.

7. A well-known national consulting group of "conflict management strategists" is offering healthcare organizations the following services:

   a. Board Consultation and Conflict Management;

   b. Claims Staff Training;

   c. Emerging Conflict Assessments;

   d. Hospital Staff Conflict Management Training;

   e. Hospital Systems Design;

   f. Labor-Management Consultation and Conflict Management;

   g. Litigation Avoidance; and

   h. Managed Care Negotiation Training.

8. The National Naval Medical Center, Bethesda, Maryland ("NNMC") claims to have been the first acute healthcare institution in the U.S. to offer a full-time internal neutral for the resolution of healthcare disputes and issues.[21]

   a. NNMC took an experienced clinician and made this person "a well-trained and experienced organizational ombudsman/mediator."

   b. This organizational ombudsman/mediator at NNMC intervenes in patient-provider issues at the earliest possible opportunity and at the lowest possible level addressing medical errors, sentinel events, near-miss occurrences, dissatisfaction with treatment outcome or quality of care, patient deaths, and other potential claims against the institution.

   c. The NNMC ombudsman/mediator serves as an impartial third party who facilitates discussions between patients and providers; focuses on underlying issues, needs and interests; clarifies perceptions; frames issues; helps to create options; and assists in developing terms of a settlement agreement; using listening, coaching, shuttling

[21]Reported by Carole Houk in "The Internal Neutral: Why Doesn't Your Hospital have One?" at www.mediate.com/articles/houk.cfm.

between patients and providers, and conducting face-to-face mediation sessions.

d. Eighty-two cases handled in the first 18 months of NNMC's program achieved a 100% resolution rate with 77% resolved within 10 hours.

9. Carole Houk, who wrote the article about NNMC, designed the operating protocols for the first HealthCare Ombudsman/Mediator™ program within an acute care hospital in the U.S. which has now been adopted in many hospitals across the U.S.[22]

10. An oral surgeon friend, after serving as Vice President for Medical Staff, in a regional acute-care hospital, went to Pepperdine University's Strauss Institute for Dispute Resolution and obtained a Master's Degree in dispute resolution.

C. **United States Postal Service**.

1. In his paper, *The Postal Service's Decision to use Transformative Mediation,* Geoffrey A. Drucker (2004), Chief Counsel for Dispute Resolution for the United States Postal Service (USPS), discussed the success of mediation in the USPS's Resolve Employment Disputes, Reach Equitable Solutions Swiftly (REDRESS) program.

2. The USPS piloted the REDRESS program in three small Florida cities in 1994.

a. The goal of the program was to resolve Equal Employment Opportunity (EEO) complaints more swiftly through facilitative mediation (Drucker, 2004).

b. Results from the REDRESS pilot study revealed high levels of satisfaction by employees and supervisors (Drucker, 2004).

c. As a result of REDRESS's success, the USPS expanded the program to several other cities.

3. During this time, researchers compared the effectiveness of inside mediators (postal employees) to outsiders (mediation professionals) and found that outsider mediators achieved significantly higher rates of party satisfaction

[22] *Id.*

and resolution (Drucker, 2004).

4. The USPS decided to implement the program nationwide with the additional goal of improving how the USPS managed organizational conflict (Drucker, 2004).

    a. Executives wanted their employees to have a deeper capacity to handle conflict and develop positive relationships.

    b. The USPS hired Baruch Bush and Joseph Folger to develop a training program to implement transformative mediation.

    c. As expected, the national REDRESS program has had much success since it began in 1999.

D. **Government**.

1. Governments in North America, Europe, and Asia have appointed officials to ombudsman positions to investigate complaints of improper government activity against citizens.[23]

2. According to the Governmental Ombudsman Standards, a governmental ombudsman is "an independent, impartial public official with authority and responsibility to receive, investigate or informally address complaints about government actions, and, when appropriate, make findings and recommendations, and publish reports."[24]

3. Several levels of government institutions within the United States employ ombudsmen to assist the public in a variety of arenas.

4. The City of Portland, Oregon created the Office of the Ombudsman to assist citizens with complaints or concerns about city agencies (City of Portland Auditor's Office, n.d.).

5. The State of Washington employs a Special Education Ombudsman to provide support to parents, guardians, educators, and students with disabilities by helping them understand federal laws and regulations (OPSI State of Washington, n.d.).

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[23]United States Ombudsman Association, 2009; The European Ombudsman, n.d.; & Asian Ombudsman Association, n.d.

[24]United States Ombudsman Association, 2003, p.1.

6. The Texas Health and Human Services Department staffs an "Office of the Ombudsman" comprised of a team of professionals to assist clients with health and human services-related complaints (Texas Health and Human Services, 2005).

7. The U.S. Department of Education also utilizes the role of an ombudsman to assist the public with federal student aid issues (Federal Student Aid, 2009).

8. In general, the roles of ombudsmen include substantiating complaints from the public, explaining government laws and regulations to citizens, and acting as a neutral facilitator between the public and government agencies (City of Portland Auditor's Office, n.d.; OPSI, State of Washington, n.d.; Texas Health and Human Services, 2005; Federal Student Aid, 2009).

E. **Education**.

1. "Conflict Resolution Education in Teacher Education" ("CRETE") is a joint project of a number of U.S. colleges and universities funded by the U.S. Department of Education, the George Gund Foundation, JAMS Foundation, and the William and Flora Hewlett Foundation.[25]

   a. CRETE works with higher education faculty, field supervisors, and school-based mentor teachers to infuse conflict education into existing coursework and field supervision to provide pre-service teachers critical skills in conflict education and classroom management.

   b. The National Training and Technical Assistance Center for Drug Prevention and School Safety Coordinators, through a U.S. Department of Education grant, created in 2006 an on-line training course, "Managing and Resolving Conflicts Effectively in Schools and Classrooms."

   c. The goals of conflict resolution education include:

      (1) Enhancement of students' social and emotional development;

      (2) Creation of a safe learning environment;

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[25]*See* Margaret Leeds, "*CRETE Overview - Conflict Resolution Education in Teacher Education,"* TAM Conference 2009 Paper.

(3) Creation of a constructive learning environment; and

(4) Creation of a constructive conflict community.

2. Joe L. Cope, Chair, Associate Professor, and Executive Director of Abilene Christian University's Center for Conflict Resolution, in his Chapter 5, *Personnel and Conflict Resolution*, in Richard D. Sorenson and Lloyd M. Goldsmith's book, *The Principal's Guide to Managing School Personnel*, examines the principal's role as a leader and conflict resolution advocate and expert.

3. Cope (2009) outlines eight platforms to guide principals and their schools to peace: preserve purpose, protect process, practice patience, promote people, prize perceptions, praise progress, produce a plan, and perfect peace.

   a. "Preserve Purpose" requires addressing what is to be accomplished.

   b. "Protect Process" calls for fairness to all parties involved.

   c. "Practice Patience" calls for restraint in dealing with people.

   d. "Promote People" addresses the tendency in conflict to transfer the problem to the people involved rather than staying focused on resolution of the problem.

   e. "Prize Perceptions" calls for the testing of our perceptions and the creation of a pool of shared meaning.

   f. "Praise Progress" focuses on movement, the momentum of change, not winning.

   g. "Produce a Plan" stresses the importance of a plan for resolution of conflict.

   h. "Perfect Peace" is the goal of conflict resolution and requires continual honing and use of all conflict resolution skills.

4. None of the platforms involve formal conflict resolution procedures. Rather, Cope (2009) encourages school leaders to use these platforms as they move about their campuses managing conflict.

F. **Business.**

1. In February of 2003, the American Arbitration Association ("AAA") undertook a major research study aimed at examining the attitudes and experiences associated with the use of non-judicial dispute resolution. The study examined how these techniques and practices are employed by a broad sample of businesses, one that included *Fortune* 1000 companies, mid-size public companies, and privately-held businesses.[26]

2. The AAA study updated one of the few important empirical studies in the dispute resolution field published in 1998 by David B. Lipsky and Ronald L. Seeber, professors at Cornell University, *The Appropriate Resolution of Corporate Disputes: A Report on the Growing Use of ADR by U.S. Corporations*.

3. The AAA study posed two new questions:

    a. Can companies be identified as "dispute-wise," and if so, what are their characteristics?

    b. Is there any relationship between "dispute-wise management practices" and favorable economic and non-economic "outcomes"?

4. The AAA study estimated that in 2003 U.S. civil litigation was costing U.S. companies between $200 and $300 billion annually.

5. In the AAA study an independent market research firm interviewed 254 corporate general counsel, associate general counsel, or people in similar positions of seniority within legal departments. The interviewees were drawn from:

    a. 101 *Fortune* 1000 companies with mean revenues of $9.09 billion;

    b. 103 mid-size public companies with mean revenues of $384 million; and

    c. 50 privately-held companies with mean revenues of $690 million (most had revenues of less than $1 billion).

6. Here are some of the findings from this AAA study.

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[26]*Dispute-Wise Management, Improving Economic and Non-Economic Outcomes in Managing Business Conflicts* (New York: American Arbitration Association, 2003).

a. Companies that are most dispute-wise represent a broad array of businesses, with no single industry emerging as dominant.

b. It is possible to identify companies that can be described as "dispute-wise."

c. A composite picture of a dispute-wise company's legal department was outlined by an eight-item index of key characteristics.

(1) Legal staff has very good understanding of the broader business issues facing the company and industry. ("More Likely").

(2) Legal department is highly integrated into the general corporate planning process. ("More Likely").

(3) Legal department is focused on preserving relationships and settling cases rather than just winning cases. ("More Likely").

(4) Much time is spent on highly complex and technical issues. ("More Likely").

(5) Much time is spent on international issues (to avoid risk involved in uncertainty of judicial processes outside the U.S.). ("More Likely").

(6) Aggressive approach is taken when disputes arise (but not aggressively litigating every case or being part of a culture that favors litigation over ADR). ("More Likely.")

(7) Primary focus is on reviewing contracts and agreements. ("Less Likely").

(8) Often favor litigation over ADR. ("Less Likely").

d. The AAA study showed that dispute-wise management practices appear to be associated with positive business outcomes. The more likely outcomes included:

(1) Stronger relationships with customers, suppliers, employees, and partners;

(2) Appreciation and value for the fairness and speed of ADR processes in resolving disputes with customers and suppliers and rejecting "a single-minded focus on litigating at almost any cost approach";

(3) Lower legal department budgets and better management of in-house legal costs with higher degree of efficiency; and

(4) Utilize legal resources well.

e. The price/earnings ratios for the "most dispute-wise" companies averaged 28% higher than the mean for all publicly-held companies in the survey and 68% higher than the mean for companies in the "least dispute-wise" category.

f. Overwhelming majority of all companies surveyed used both mediation and arbitration with mediation favored somewhat over arbitration.

g. There is greater use of mediation and arbitration among *Fortune* 1000 companies than in mid-size and private companies.

h. The primary reasons given for use of mediation and arbitration by the companies surveyed included "saving money" and "saving time."

7. A recent survey on conflict resolution, as reported by WorkdaySolutions, conducted by Price Waterhouse Coopers and Cornell's PERC Institute, examined corporate views on conflict resolution.

a. Data collected from over 530 *Fortune* 1000 companies revealed the following trends:

(1) Ninety percent (90%) of respondents viewed alternative dispute resolution ("ADR") as a critical cost control technique;

(2) Fifty-four percent (54%) of respondents indicated that cost pressures directly affected their decisions to use ADR;

(3) Eighty-eight percent (88%) of respondents reported using mediation in the previous three years; and

(4) Twenty-five percent (25%) of respondents use grievance procedures for non-union employment dispute resolution.

8. Rand Corporation, as cited by WorkdaySolutions, has reported that the average amount spent by companies defending wrongful employment terminations from 1980 to 1998 was approximately $100,000 per case.

9. Corporations that have developed collaborative conflict management systems report significant savings in litigation costs.[27]

a. Brown & Root reported an 80% reduction in outside litigation costs;

b. Motorola reported a 75% reduction over a six-year period; and

c. NCR reported a 50% reduction and a drop of pending lawsuits from 263 in 1984 to 28 in 1998.

G. **Military**.

1. In his book *Conflict Resolution Training for Military Peacekeepers*, Greg Tillet discussed his work with Australian Defense Forces personnel prior to their deployment on peacekeeping operations.

a. Because of post-Cold War conflicts and the increasing complexity of threats to international security, the United Nations (UN) experienced an increased demand for peacekeeping operations (Tillet, 1996).

b. The Initiative on Conflict Resolution and Ethnicity ("INCORE"), examined the training and preparation of UN peacekeepers and reported that conflict resolution training was essential for all peacekeeping forces since they are inevitably involved in conflict between others, with others, and amongst themselves (Tillet, 1996).

c. To help Australian military personnel transition from their conventional adversarial military roles to a pacific peacekeeping role, Tillet (1996) developed a standard framework for conflict resolution training based on research data from Australian defense force personnel. The training seeks to build on the skills military personnel have already acquired in their conventional training.

[27]As cited by WorkdaySolutions.

d. The training consists of three components:

(1) An introduction to conflict and its resolution;

(2) The concept of analytical problem solving conflict resolution; and

(3) The application of the concept (Tillet, 1996).

e. Overall, the training has received positive responses from Australian military personnel involved. According to Tillet (1996), "The success of, and risks to, peacekeeping operations clearly relate to the ability of personnel at all levels to respond effectively to conflict…."

H. **Employee Assistance Programs**.

1. Many large employers have employee assistance programs ("EAP") to address and resolve all kinds of personal issues that keep employees from being productive in the workplace.

2. Many of these programs provide mediation services to reduce workplace hostility and strife.

3. Patricia M. Porter reported on her EAP experiences as a mediator in a presentation at the 2009 Annual TAM Conference in Dallas, Texas.[28]

a. Out of those experiences she and her peers discovered "conflict coaching" for persons involved in workplace disputes.

b. Porter attributed the concept of "conflict coaching" to Cinnie Noble who developed the CINERGY® "evidence-based conflict coaching model."

c. Noble's definition of "conflict coaching" is "a specialized one-on-one confidential process that integrates executive coaching and conflict management principles" with the "main objective...to help people increase their knowledge, skills and abilities, to engage more

[28]"The World of Conflict Coaching: Exploring What It Means for Mediators and Their Businesses," Patricia M. Porter, LCSW, 2009 Annual TAM Conference Paper, Dallas, Texas.

effectively in their interpersonal disputes."[29]

d. Porter described in her TAM presentation how she learned "conflict coaching" and "post-mediation coaching,"[30] and how she has used the method for "mediation coaching" and "as a stand alone process for clients who wanted to develop their conflict management skills, address potential disputes, prepare for a difficult conversation, or address conflict behaviors, like conflict avoidance, that impacted their performance behaviors."

4. Porter told of her work as a mediator with an institutional partnership that was experiencing conflict between professionals and scientists that threatened jobs and international reputations.

a. The pre-mediation sessions revealed that two individuals at the core of the dispute were "highly resistant to the mediation process."

b. But each of whom when presented with the option of "conflict coaching" agreed to discuss privately and separately their dispute.

c. After several such individual sessions sharing with a "conflict coach" their respective stories and discussing their individual goals, the two individuals agreed to a joint mediation session.

d. At this point the conflict coach provided "mediation coaching" to each of them to prepare and practice their new behavioral responses to the triggers anticipated in the mediation.

5. If you are interested, you can join a free group (by contacting Cinnie Noble, SIG Host, at cinnie@cinergycoaching.com.) known as the "International Coach Federation (ICF) Conflict Coaching Special Interest Group (SIG) which meets by telephone the last Tuesday of each month.

I. **Collaborative Law**.

1. Collaborative law "uses attorneys in a nonadversarial capacity to negotiate

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[29]*See* "Mediation Coaching: A Form of Conflict Coaching (2004)" at http://www.mediate.com/articles/noble4.cfm.

[30]*See* more about post-mediation coaching at http://www.mediate.com/articles/noble6.cfm.

with the parties to achieve settlement."[31]

a. But TEX.FAM.CODE §§6.603 and 153.0072 indicate that the collaborative lawyer is an advocate even though committed in writing "to use their best efforts and make a good faith attempt to resolve [the parties'] dissolution of marriage [and "the suit affecting the parent-child relationship"] dispute on an agreed basis...."

b. The Texas Family Code also requires that the "collaborative law agreement" include a provision for "full and candid exchange of information between the parties and their attorneys as necessary to make a proper evaluation of the case." TEX.FAM.CODE §6.603(c)(1).

2. But a sharp split among academics exists as to whether collaborative lawyers are advocates or neutrals.[32]

3. But if collaborative lawyers are to be viewed as neutrals some of the same ethical issues arise for them as for mediators as conflict managers or resolvers.

J. **The Peaceful Family Law Practice Group.**[33]

1. Michael A. Hiller, Hiller & Associates, Houston, Texas has developed a practice concept known as "reconciliation law and mediation."

2. Hiller describes it as a "third track" of family law along with collaborative law and litigation.

3. Hiller's concept calls for a voluntary written reconciliation agreement by the warring couple that calls for them to work on the marriage relationship for a designated period of time.

a. In the form of a post-nuptial agreement (if no lawsuit filed) or a temporary order (if a lawsuit has been filed).

b. If the reconciliation process doesn't work, the parties get to keep their

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[31]Christopher M. Fairman, *Ethics and Collaborative Lawyering: Why Put Old Hats on New Heads?*, 18 *Ohio State Journal on Dispute Resolution* 2 (2003).

[32]*Id.*

[33]Jenny B. Davis, *Texas Lawyer*, "For Better or for Worse," February 9, 2009.

lawyers unlike collaborative law.

V. The Ethical Issues Raised by the Mediator Acting as Conflict Manager.[34]

A. The ABA Model Rules of Professional Conduct (the "Model Rules"), first adopted in 1983, contained no guidance for ADR participants.

1. In February 2002 the ABA formally amended the Model Rules to recognize that lawyers may have non-representational roles as third-party neutrals.[35]

2. MODEL RULES OF PROF'L CONDUCT R.2.4 (2002) states: "A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties resolve the matter."

3. Model Rule 2.4(b) requires the lawyer serving as a third-party neutral to inform "unrepresented parties that the lawyer is not representing them."

4. Model Rule 2.4(b) also requires the lawyer as third-party neutral to explain the difference between lawyer's role as third-party neutral and lawyer's role as one who represents a client "when the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter."

B. In Texas we still do not have an ADR practitioner/lawyer ethical rule in the "Texas Disciplinary Rules of Professional Conduct."

1. Texas Supreme Court's "Ethical Guidelines for Mediators" counsels mediators not to give "legal or other professional advice to the parties." Guideline 11.

a. Comment (a) to Guideline 11 permits mediators to encourage parties to seek "legal, financial, tax or other professional advice before,

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[34]*See* Kimberly Kovach, *The Intersection (Collision) of Ethics, Law, and Dispute Resolution: Clashes, Crashes, No Stops, Yields, or Rights of Way,* 49 S.Tex.L.Rev. 789 (2008) and James J. Alfini, *Mediation as a Calling: Addressing the Disconnect Between Mediation Ethics and the Practices of Lawyer Mediators,* 49 S.Tex.L.Rev. 829 (2008).

[35]*See* MODEL RULES OF PROF'L CONDUCT preamble para. 3 (2002)("In addition to these representational functions [advisor, advocate, negotiator, evaluator], a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter.").

during or after the mediation process."

b. Comment (b) to Guideline 11 suggest that mediators "should explain generally to *pro se* parties" the risks in proceeding "without independent counsel or other professional advisors."

2. Texas Mediator Credentialing Association ("TMCA") Standards of Practice and Code of Ethics, Standard 11 ("Professional Advice") prohibits a mediator from giving "legal or other professional advice to the parties."

a. TMCA Standard 11 also contains the same Comments (a) and (b) found in the Texas Supreme Court's "Guidelines."

C. As the borders of mediation expand and informal conflict resolution increases, it is necessary to study the possible ethical hazards that may result from such changes.

1. How will conflicts of interests be avoided?

2. How will confidentiality be preserved in the settings previously discussed?

3. With this relatively recent expansion of mediation and informal conflict resolution, will self-determination be preserved?

a. Will impartiality be compromised?

b. Will mediator competence be sacrificed or ignored?

c. Will the quality of the mediation process be eroded?

4. It is critical that potential ethical challenges be discussed and anticipated.

D. **Confidentiality**.

1. The confidentiality protection provided mediators in Texas at CPRC §154.073 is not a universal grant of protection.

a. It only applies to "a communication related to the subject matter of any civil or criminal dispute made by a participant in **an alternative dispute resolution procedure,** whether before or after the institution of formal judicial proceedings." CPRC §154.073(a).

b. This statutory protection of confidentiality has four (4) stated

exceptions:

(1) "An oral communication or written material used in or made a part of an alternative dispute resolution procedure is admissible or discoverable **if it is admissible or discoverable** independent of the procedure." CPRC §154.073(c).

(2) "A final written agreement to which a government body, as defined by Section 552.003, Government Code, is a signatory...is subject to or excepted from required disclosure in accordance with Chapter 552, Government Code." CPRC §154.073(d).

(3) "If this section conflicts with other legal requirements for disclosure...the issue of confidentiality may be presented to the court having jurisdiction of the proceeding to determine, in camera,...whether the communications or materials are subject to disclosure." CPRC §154.073(e).

(4) "This subject does not affect the duty to report abuse or neglect under...Family Code...and abuse, exploitation, or neglect under...Human Resources Code." CPRC §154.073(f).

c. The phrase "alternative dispute resolution procedure" does not appear to be a defined term in the Texas confidentiality statute although used repeatedly in the ADR statute. *See* CPRC §§154.021(a), (a)(3), (b); 154.051(a); 154.053(a);154.055(a); and 154.073(a).[36]

d. The confidentiality protection does appear to apply for dispute resolvers engaged in the various "alternative dispute resolution procedures" described in the Texas ADR statute.

2. Standard V ("Confidentiality") of the *Model Standards of Conduct for Mediators*[37] calls for "the confidentiality of all information obtained by the mediator in mediation unless otherwise agreed by the parties or required by applicable law."

a. This includes "how the parties acted in the mediation." Standard

[36]Unlike "alternative dispute resolution system" defined in CPRC §152.001 for county-established systems.

[37]Adopted September 2005 by AAA, ABA, and ACR.

V.A.2.

b. The mediator may report "whether the parties appeared at scheduled mediation and whether or not the parties reached a resolution."

c. The mediator "shall not convey directly or indirectly to any other person any information...obtained during...[a] private session without the consent of the disclosing person." Standard V.B.

3. The Texas Supreme Court's "Ethical Guidelines for Mediators" states: "A mediator should not reveal information made available in the mediation process, which information is privileged and confidential, unless the affected parties agree otherwise or as may be required by law." Guideline No. 8 (Miscellaneous Docket No. 05-9107, adopted June 13, 2005).

a. But what about confidentiality protection for the emerging dispute resolution and dispute management roles and activities?

b. Additional strict guidelines must be established to protect the mediator or conflict resolver and the parties in these emerging dispute resolution methods.

c. These Texas Supreme Court "Ethical Guidelines for Mediators" are just that - for mediators - and refer to "the mediation process," to "mediator conduct," and "to mediators conducting mediations in connection with all civil, criminal, administrative and appellate matters, whether the mediation is pre-suit or count-annexed and whether the mediation is court-ordered or voluntary." Preamble to "Ethical Guidelines for Mediators."

d. These "Ethical Guidelines for Mediators" also call for the mediator to "protect the integrity and confidentiality of the mediation process" from "the first communication to the mediator" and "does not terminate upon the conclusion of the mediation." Guideline No. 2.

(1) Comment (a) prohibits the mediator's "use of information obtained during the mediation for personal gain or advantage."

(2) Comment (b) calls for the mediator to "always" place the "interests of the parties" above the mediator's interest.

(3) Comment (c) suggests that a mediator complete a mediation

"in a timely manner or as directed by a court."

(4) Comment (d) suggests that "the mediator should not solicit a specific case or matter."

4. The Texas Mediator Credentialing Association ("TMCA") made the SBOT ADR Section's "Ethical Guidelines for Mediators" mandatory rather than suggestive or permissive, as standards of practice and a code of ethics for TMCA credentialed mediators.[38]

a. Standard 2 states: "A mediator shall protect the integrity and confidentiality of the mediation process. The duty to protect the integrity and confidentiality of fthe mediation process commences with the first communication to the mediator, is continuous in nature, and does not terminate upon the conclusion of the mediation."

b. Comment (a) to Standard 2 requires that the mediator "not use information obtained during the mediation for personal gain or advantage."

5. TMCA Standard 8 ("Confidentiality") also requires that "A mediator shall not reveal information made available in the mediation process, which information is privileged and confidential, unless the affected parties agree otherwise or as may be required by law."

a. Comment (a) does prohibits the mediator to "permit recordings or transcripts to be made of mediation proceedings."

b. Comment (b) requires the mediator to "maintain confidentiality in the storage and disposal of records and schll render anonymous all identifying information when materials are used for research, educational or other informational purposes."

c. Comment (c) prohibits the mediator from disclosing "to the other parties information given in confidence by the disclosing party and shall maintain confidentiality with respect to communications relating to the subject matter of the dispute."

d. Comment (c) permits the mediator to "report to the court, if agreed to by the parties or requried by the court, whether or not the

[38] *See* "Texas Mediator Credentialing Association Standards of Practice and Code of Ethics."

mediation occurred, and that the mediation either resulted in a settlement or an impasse, or that the mediation was either recessed or rescheduled."

6. This means that employees and supervisors should understand that a mediator is not allowed to disclose any information obtained in the mediation without the consent of the parties (American Bar Association et al., 2005).

E. **Conflicts of Interest**.

1. According to the ABA/AAA/ACR Model Standards of Conduct (2005), "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."

a. Standard III ("Conflicts of Interest") of the "Model Standards of Conduct for Mediators" requires mediators to "avoid a conflict of interest or the appearance of a conflict of interest during and after a mediation."

(1) Standard III. A. suggests that a conflict of interest "can arise from involvement by a mediator with the subject matter of the dispute."

(2) Standard III.A. also suggests that a conflict of interest "can arise...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**." (Emphasis added.)

b. Standard III.F. prohibits a mediator from establishing "another relationship with any of the participants in any matter than would raise questions about the integrity of the mediation."

(1) These relationships include both "personal or professional relationships with parties, other individuals or organizations following a mediation in which they were involved...." Standard III.F.

(2) The mediator should consider the following factors in determining if such relationships "might create a perceived or actual conflict of interest":

(a) "time elapsed following the mediation";

(b) "nature of the relationships established"; and

(c) "nature of...services offered [in the new relationship]".

2. The Texas Supreme Court's "Ethical Guidelines for Mediators" asks that "Prior to commencing the mediation, the mediator should make full disclosure of any known relationships with the parties or their counsel that may affect or give the appearance of affecting the mediator's neutrality." Guideline No. 4 ("Disclosure of Possible Conflicts" (Miscellaneous Docket No. 9107, adopted June 13, 2005.

   a. This ethical guideline also counsels: "A mediator should not serve in a matter if a party makes an objection to the mediator based upon a conflict or perceived conflict." *Id*.

3. TMCA's Standard 4 ("Disclosure of Possible Conflicts") follows the Texas Supreme Court's Standard 4 but makes it mandatory for all TMCA credentialed mediators.

   a. TMCA's Standard 4, second sentence, states: "A mediator **shall** not serve in the matter if a party makes an objection to the mediator based upon a conflict or perceived conflict."

   b. Comment (a) to TMCA's Standard 4 also requires: "A mediator shall withdraw from mediation if it is inappropriate to serve."

   c. Comment (b) to TMCA's Standard 4 states: "If after commencement of the mediation the mediator discovers that such a relationship exists, the mediator shall make full disclosure as soon as practicable."

4. As organizations provide "in-house" mediation programs, there is a higher risk of the mediator having a conflict of interest.

   a. For example, TJC's new Standard permits hospital insiders to carry out the conflict resolution process (The Joint Commission, 2009). Yet, a hospital insider is more likely to have a relationship with disputing parties than an outside mediator.

   b. Similarly, the SEIU Local 616 labor union began their mediation

program by hiring WorkdaySolutions to provide outside mediators and facilitators to resolve union disputes (WorkdaySolutions, 2004). However, the union aspires to train their own inside mediators which may lead to a higher risk of conflicts of interest (WorkdaySolutions, 2004).

c. Over time, hospitals and the SEIU Local 616 may come to the same conclusions as the USPS who found that outside mediation professionals achieved higher party satisfaction and resolution than inside mediators who were postal employees (Drucker, 2004).

5. Furthermore, a conflict of interest can also occur when the mediator is involved in the subject matter of the dispute (American Bar Association et al., 2005).

a. As previously stated, part of the ombudsman's role at a government agency is to explain government regulations to citizens making him or her a subject matter expert for the party (City of Portland Auditor's Office, n.d.; OPSI State of Washington, n.d.; Texas Health and Human Services, 2005; Federal Student Aid, 2009).

b. Yet, the ombudsman is also charged with acting as a neutral between the citizen and the government agency (City of Portland Auditor's Office, n.d.; OPSI State of Washington, n.d.; Texas Health and Human Services, 2005; Federal Student Aid, 2009).

c. Thus, the ombudsman role inevitably carries a conflict of interest.

F. **Self-Determination**.

1. Mediators and conflict resolvers may be pressured to have high settlement rates for the purposes of receiving positive employer evaluations. As a result, mediators and conflict resolvers could be tempted to undermine party self-determination.

2. Standard I, Model Standards of Conduct for Mediators, calls "party self-determination" a fundamental principle of mediation practice. Standard I.A.1.

a. Self-determination in Standard I "is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome." Standard I.A.

b. Self-determination is to be exercised at every stage of the mediation:

(1) Mediator selection;

(2) Process design;

(3) Participation in or withdrawal from the process; and

(4) Outcomes. Standard I.A.

3. The mediator must not allow settlement rates, egos, increased fees, outside pressure from court personnel, program administrators, provider organizations, the media or others to undermine party self-determination. Standard I.B.

4. TMCA's Standard 1 states: "The primary responsibility for the resolution of a dispute rests with the parties."

a. The "Comment" to TMCA Standard 1 observes: "A mediator's obligation is to assist the parties in reaching a voluntary settlement. The mediator shall not coerce a party in any way. A mediator may make suggestions, but all settlement decisions are to be made voluntarily by the parties themselves."

G. **Impartiality**.

1. As informal conflict resolution increases in popularity, additional ethical issues that may be threatened include impartiality.

2. Specifically, it might be difficult to avoid the appearance of partiality as mediators and conflict resolvers are employed by organizations to resolve conflict within that organization. That is, parties may assume that a mediator or conflict resolver is biased because he or she works for the organization, therefore giving the appearance that he or she represents the organization and its values.

3. Standard II, ABA/AAA/ACR Model Standards of Conduct for Mediators, requires the mediator to decline the mediation that the mediator cannot conduct "in an impartial manner." Standard II.A.

a. "Impartiality" is defined in Standard II.A. as "freedom from favoritism, bias or prejudice."

b. Standard II.C. requires the mediator to withdraw if "unable to conduct a mediation in an impartial manner."

4. TMCA's Standard 9 ("Impartiality") states: "A mediator shall be impartial toward all parties."

a. But TMCA's "Comment" only requires an "offer to withdraw from the mediation process" when the mediator or the parties "find that the mediator's impartiality has been compromised."

b. This "Comment" also defines impartiality as "freedom from favoritism or bias in word, action, and appearance; it implies a commitment to aid all parties in reaching a settlement."

H. **Competence**.

1. Standard IV, Model Standards of Conduct for Mediators, limits the mediator to those mediations for which the mediator "has the necessary competence to satisfy the reasonable expectations of the parties." Standard IV.A.

a. The necessary skills mentioned in Standard IV.A.1. to insure competence in the mediator include training, experience in mediation, skills, cultural understandings, and "other qualities."

2. Texas Supreme Court's "Ethical Guidelines for Mediators" call for the mediator to "inform the participants of the mediator's qualifications and experience." Guideline 5.

a. The "Comment" to Guideline 5 describes the mediator's qualifications and experience as "the foundation upon which the mediator process depends."

b. This raises questions about newly licensed lawyers who expect to enter the legal job market for the first time as full-time mediators and dispute resolvers.

3. TMCA's Standard 5 makes mandatory what is found in the Texas Supreme Court's Guideline 5 and in the TMCA "Comment" makes mandatory the withdrawal of the mediator "if there is any objection to the mediator's qualifications to mediate the dispute."

I. **Quality of the Process**.

1. Standard VI, *Model Standards of Conduct for Mediators*, makes the mediator responsible for the manner in which a mediation is conducted.

    a. The mediator must "commit the attention essential to an effective mediation." Standard VI.A.1.

    b. The mediator should only accept the mediation if "the reasonable expectation of the parties concerning the timing of a mediation" can be achieved. Standard VI.A.2.

    c. The mediator is to "promote honesty and candor between and among all participants, and...not knowingly misrepresent any material fact or circumstance in the course of a mediation." Standard VI.A.4.

    d. "Mixing the role of a mediator and the role of another profession is problematic and thus, a mediator should distinguish between the roles." Standard VI.A.5.

    e. "The role of a mediator differs substantially from other professional roles." Standard VI.A.5.

2. Texas Supreme Court's "Ethical Guidelines for Mediators" calls for the mediator to "inform and discuss with the participants the rules and procedures pertaining to the mediation process." Guideline 6.

    a. At a minimum, the Court says, this includes:

        (1) Mediation is "private";

        (2) Mediation is "informal"; and

        (3) Mediation is "confidential."[39]

3. TMCA's Standard 6 ("The Mediation Process") makes this mandatory.

    a. Comment (a) requires this information be given to the "participants" "no later than the opening session."

    b. Comment (b) provides the same minimum information suggested in

[39]Comment (b) to Guideline 6.

the Texas Supreme Court's "comment" to its Guideline 6.

J. **Advancement of Mediation Practice**.

1. Standard IX, Model Standards of Conduct for Mediators, calls on mediators to "act in a manner that advances the practice of mediation."

2. Standard IX also calls on the mediator to "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." Standard IX.B.

VI. **Conclusion.**

A. As the field of mediation outgrows the confines of court-ordered mediation, mediators are faced with new opportunities and challenges. And, although it is necessary to discuss how ethical standards will be maintained, it is encouraging to know that more conflicts are potentially being prevented, effectively managed, and resolved.

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REFERENCES

Model Standards of Conduct. (2005). Standard III. Conflicts of Interest. Retrieved April 7, 2009, from Mediate.com Web site:

http://www.mediate.com/articles/model_standards_of_conflict.cfm#LinkTarget_328

American Health Lawyers Association, (n.d.). *Toolkit for Managing Healthcare Conflict*. Retrieved March 21, 2009 from American Health Lawyers Association Web site:

http://www.healthlawyers.org/Resources/ADR/Pages/ADRToolkit.aspx

Asian Ombudsman Association. (n.d.). "About Us: Objectives." Retrieved April 7, 2009, from Asian Ombudsman Association Web site:

http://www.aoa.org.pk/intro-objectives.asp

City of Portland Auditor's Office, (n.d.). "Welcome to Portland's Office of the Ombudsman." Retrieved March 18, 2009, from City of Portland Auditor's Office Web site:

http://www.portlandonline.com/Auditor/Index.cfm?c=26647

Cope, J. L. (2009). "Personnel and Conflict Resolution." In R. Sorenson and L. Goldsmith (Ed.), *The Principal's Guide to Managing School Personnel* (pp.85-101), Thousand Oaks, CA: Corwin Press.

Drucker, G.A. (2004). "The Postal Service's Decision to Use Transformative Mediation." In International Institute for Conflict Prevention and Resolution (Ed.), *Resource Book for Managing Employment Disputes*, New York: CPR Institute for Dispute Resolution, Inc.

European Ombudsman, The. (n.d.). "Could He Help You?" Retrieved April 7, 2009, from The European Ombudsman Web site:

http://www.ombudsman.europa.eu/media/en/default.htm

Federal Student Aid, (2009). "About the FSA Ombudsman." Retrieved March 12, 2009, from Federal Student Aid Web site:

http://www.ombudsman.ed.gov/about/about.html

Joint Commission, The. (n.d.). "About Us." Retrieved March 23, 2009, from The Joint Commission Web site:

http://www.jointcommission.org/AboutUs/

Joint Commission, The. (2009). 2009 Leadership Chapter: Hospital Program. Retrieved March 23, 2009, from The Joint Commission Web site:

http://www.jointcommission.org/NR/rdonlyres/0376B4EC-0F1A-42E0-AD23-7D7D1680E3C3/0/09_ld_hap_prepubstds.pdf

OPSI State of Washington, (n.d.). Special Education Ombudsman. Retrieved March 18, 2009, from OPSI State of Washington Web site:

http://www.k12.wa.us/SpecialEd/Ombudsman.aspx

Polkinghorn, B. & La Chance, R. (2007). "Graduate Programs in the Field of Conflict Resolution." Retrieved April 7, 2009 from Center for Conflict Resolution at Salisbury Web site:

http://www.conflict-resolution.org/sitebody/education/domestic.htm

Texas Health and Human Services, (2005). Ombudsman. Retrieved March 18, 2009, from Texas Health and Human Services Web site:

http://www.hhs.state.tx.us/OMB/

Tillet, G. (1996, June). *"Conflict Resolution Training for Military Peacekeepers."* Paper presented at the INCORE Conference on Training and Preparation of Military and Civilian Peacekeepers. Retrieved from:

http://www.ciaonet.org/conf/tig01/

United States Ombudsman Association. (2003). Governmental Ombudsman Standards. Retrieved April 7, 2009, from United States Ombudsman Association Website:

http://www.usombudsman.org/documents/PDF/References/USOA_STANDARDS.pdf

United States Ombudsman Association. (2009). "Welcome to USOA." Retrieved April 7, 2009, from United States Ombudsman Association Website:

http://www.usombudsman.org/index.cfm

WorkdaySolutions, (2004, March). "Labor Union Tackles Workplace Conflict." Retrieved March 23, 2009, from Mediate.com Web site:

http://www.mediate.com/articles/ripps1.cfm

APPENDIX

Graduate Programs in the Field of Conflict Resolution in the United States

Compiled by the Center for Conflict Resolution at Salisbury University

(Polkinghorn & La Chance, 2007)

Alabama

Faulkner University. Certificate in Dispute Resolution

California

California State University. M.A. in Negotiation, Conflict Resolution and Peacebuilding

City University of Los Angeles. Master of Laws in Conflict Resolution

Fresno Pacific University. Certificate in Conflict Management and Peacemaking, M.A in Conflict Management and Peacemaking

Golden State University. Certificate in Conflict Resolution

Pepperdine University. Certificate in Dispute Resolution, Masters in Dispute Resolution, LL.M. in Dispute Resolution

Saybrook Graduate School. Certificate in Peace and Conflict Resolution Studies

University of San Diego. M.A. in Peace and Justice Studies

Colorado

University of Denver. Certificate of Advanced Study in Alternative Dispute Resolution, M.A. in Conflict Resolution

District of Columbia

American University. M.A. in International Peace and Conflict Resolution, L.L.M in Litigation and Dispute Resolution

George Washington University. L.L.M. in Litigation and Dispute Resolution

Georgetown University. M.A. in Conflict Resolution

Florida

Nova Southeastern University. Certificate in Conflict Analysis and Resolution, M.S. in Conflict Analysis and Resolution, Ph.D. in Conflict Analysis and Resolution

Georgia

Kennesaw State University. Certificate in Alternative Dispute Resolution, M.S. in Conflict Management

Illinois

Illinois Institute of Technology. J.D. Certificate in Litigation and Alternative Dispute Resolution

Saint Xavier University. Certificate in Conflict Resolution

Indiana

Associated Mennonite Biblical Seminary. M.A. in Peace Studies

Indiana State University. Certificate in Mediation

Indiana University. Certificate in Conflict Management

University of Notre Dame. M.A. in Peace Studies, Ph.D. in Peace Studies

Kentucky

Sullivan University. Certificate in Conflict Resolution, M.S. in Conflict Resolution

Maryland

Goucher College. Certificate in School Mediation

University of Baltimore. M.S. in Negotiations and Conflict Management

Salisbury University. M.A. in Conflict Analysis and Dispute Resolution

Massachusetts

Brandeis University. M.A. in Coexistence and Conflict

Cambridge College. Certificate in Business Negotiation and Conflict Resolution

Clark University. Certificate of Advanced Graduate Study in Conflict Management

Lesley University. Graduate Certificate in Conflict Resolution and Peaceable Schools

The University of Massachusetts at Amherst. Ph.D. Concentration in the Psychology of Peace and the Prevention of Violence

University of Massachusetts Boston. Certificate in Dispute Resolution, Certificate in Dispute Resolution for K-12 Educators, M.A. in Dispute Resolution

Michigan

Wayne State University. Certificate in Dispute Resolution, M.A. in Dispute Resolution

Minnesota

Hamline University. Certificate in Alternative Dispute Resolution

Missouri

University of Missouri. LL.M in Dispute Resolution

Nebraska

Creighton University. Certificate in Negotiation and Dispute Resolution, M.S. in Negotiation and Dispute Resolution

New Mexico

University of New Mexico. Certificate in Dispute Resolution

New York

Syracuse University. Certificate in Applied Dispute Resolution and Conflict Management, Certificate in Social Movements and Strategies of Conflict, Certificate in Environmental, Public Participation and Conflict Studies, Certificate in International Conflicts and their Management, Certificate in Social Movements and Conflict Studies

Columbia University. *Teachers College*, Certificate in Conflict Resolution

Yeshiva University. Certificate in Dispute Resolution

North Carolina

University of North Carolina Greensboro. Certificate in Conflict Resolution, M.A. in Conflict Resolution

Ohio

Antioch University. Certificate in Conflict Resolution, M.A. in Conflict Resolution

Capital University Law School. Certificate in Dispute Resolution

Ohio State University. Certificate in Dispute Resolution

The University of Akron. Certificate in Divorce Mediation

University of Cincinnati. Certificate in Peace Education

Oklahoma

The University of Tulsa. Certificate in Dispute Resolution

Oregon

Portland State University. M.A. in Conflict Resolution, M.S. in Conflict Resolution

Oregon State University. Certificate in Peace Studies

Willamette University. Certificate in Dispute Resolution

University of Oregon. Master's in Conflict and Dispute Resolution

Pennsylvania

Acadia University. M.A. in International Peace and Conflict Resolution

Bryn Mawr College. Certificate in Conflict Resolution

Duquesne University. Certificate in Conflict Resolution and Peace Studies

Pennsylvania State University. Certificate in Dispute Resolution

Temple University. Certificate in Conflict Processes

South Carolina

Columbia College. M.A. in Human Behavior and Conflict Management

Tennessee

Lipscomb University. Certificate in Conflict Management, M.A. in Conflict Management.

Texas

Abilene Christian University. Certificate in Conflict Resolution, Certificate in Conflict Resolution for Educators, M.A. in Conflict Resolution and Reconciliation

Southern Methodist University. Certificate in Dispute Resolution, M.A. in Dispute Resolution

University of Houston. Certificate in Conflict Resolution

Vermont

School of International Training. Certificate in Conflict Transformation Across Cultures, M.A. in Conflict Transformation

Woodbury College. Certificate in Conflict Studies, Masters of Mediation and Applied Conflict Studies

Virginia

Eastern Mennonite University. Certificate in Conflict Transformation, M.A. in Conflict Transformation

George Mason University. Certificate in Conflict Resolution for Health Professionals, Certificate in Conflict Analysis and Resolution Advanced Skills, M.S. in Conflict Analysis and Resolution, M.S. in New Professional Studies: Peace Operations, Ph.D. in Conflict Analysis and Resolution

Washington

Antioch University Seattle. Certificate in Professional Mediation

Wisconsin

Marquette University. Certificate in Dispute Resolution

The University of Wisconsin Milwaukee. Certificate in Mediation and Negotiation, Certificate in Peace Studies