Preliminary Report
Should Arbitrators and Mediators be Regulated?

April 19, 2012

About 100 Arbitrators and Mediators attended the Town Hall on the Regulation of Mediators and Arbitrators at the ABA Section of Dispute Resolution’s 14th Annual Spring Conference. As Alternative Dispute Resolution (ADR) continues to grow, the question of mediator/arbitrator quality assurance remains unresolved. The Town Hall aimed to tackle the debate around whether arbitrators and mediators should be regulated, and if so, what those regulations should be and what next steps should be taken to move towards regulations.

As a special service to the field, the ABA Section of Dispute Resolution hosted a discussion of these issues within the ADR community with support from AmericaSpeaks, a leading facilitator of large deliberative processes. The process is highly interactive: participants will use keypads and groupware simultaneously to instantly prioritize recommendations and ensure that every voice is heard.

Who Attended the Town Hall

What is your gender?
- Male 48%
- Female 52%

What is your race/ethnicity?
- Asian 2%
- Black/African American 8%
- Hispanic/Latino (of any race) 2%
- Native American 0%
- White/Caucasian 80%
- Pacific Islander 1%
- Some other race 1%
- Two or more races 5%

What is the highest level of education you’ve completed?
- Associate Degree 0%
- College Degree 5%
- Post Graduate-Law Degree 65%
- Post Graduate in a field other than law 30%

What is your age?
- 17-24 years 1%
- 25-34 years 8%
- 35-44 years 14%
- 45-54 years 24%
- 55-64 years 32%
- 65 or better 21%

In which region of the country do you live?
- Northeast 13%
- Mid-Atlantic 42%
- Southeast 6%
- Midwest 10%
- South Central 4%
- Plains/Mountain States 2%
- Southwest 2%
- West Coast 13%
- Outside United States 8%

What is your level of involvement in ADR? Select all that apply
- Full-time working 66%
- Part-time working 29%
- Volunteer 36%
- Student 5%
- Academic 40%
- Other 11%

What is your profession of origin?
- ADR Practitioner 17%
- Counseling 0%
- Legal 61%
- Business/Management 7%
- Organizational Development 2%
- Teacher 2%
- Social Work 0%
- Other 11%

What is your specialty area(s)? Select all that apply
- Family 25%
- Education 22%
- Community 34%
- Workplace/Organization 44%
- Court-related (civil) 64%
- Court-related (criminal/restorative justice) 11%
- Commercial/International Business 46%
- Online DR 7%
- Health care 10%
- Other 22%
Examples of Competencies for Arbitrators
- Effective administration of process
- Neutrality
- Empathy

Note: due to the lower number of Arbitrators at the Town Hall, only examples of data were reported back and the data was not prioritized.

Important Competencies for Mediators-voted for top 2
- Patience 6%
- Listening: openly; without judging; reflectively 53%
- Neutrality 22%
- Professional experience 12%
- Facilitating communications 19%
- Intellectual acuity/flexibility - ability to pick up on what’s going on in the conversation 25%
- Competence in process 24%
- Sense of ethics 8%
- Comfort with conflict, tension 11%
- Engendering Trust 12%

Regulation is important to me.
1. Strongly agree 15%
2. Agree 18%
3. Neither agree nor disagree 24%
4. Disagree 18%
5. Strongly disagree 26%

Regulation is important to the ADR profession.
1. Strongly agree 24%
2. Agree 31%
3. Neither agree nor disagree 14%
4. Disagree 13%
5. Strongly disagree 19%

Regulation is important to people who use ADR services.
1. Strongly agree 26%
2. Agree 29%
3. Neither agree nor disagree 16%
4. Disagree 13%
5. Strongly disagree 16%

Mediation covers a unique body of knowledge that can be regulated.
1. Strongly agree 10%
2. Agree 26%
3. Neither agree nor disagree 19%
4. Disagree 19%
5. Strongly disagree 26%

Arbitration covers a unique body of knowledge that can be regulated.
1. Strongly agree 25%
2. Agree 0%
3. Neither agree nor disagree 50%
4. Disagree 0%
5. Strongly disagree 25%

Examples of Conditions Needed for Arbitrators
- None (no regulation)
- Where there is approval/agreement by arbitrators of terms of regulation
- Grandfathering exemption
- National license if 1) recognized in every state, 2) creates work, and 3) remediates pervasive problems
- Threshold educational/training levels for substantive areas

Conditions Needed for Mediators to be Regulated-voted for top 2
- If there is a real need – i.e., a strong rationale justifying regulation 24%
- Regulation must not exclude on basis of professional, educational, or cultural background 45%
- Regulation must be fair, neutral, and inclusive 51%
- Appropriate in court ordered cases 19%
- Regulation on state or national, not on local level 18%
- There are no conditions – a real distrust of how regulation would work 20%

MEDIATORS: Regulation would help which of the following areas the most. Select top 3
1. Enhance the quality of practice 17%
2. Enhance the public image of the profession 16%
3. Increase compensation for the practitioner 5%
4. Increase the individual’s competitive edge in the field 4%
5. Clients (individuals/organizations) could make better decisions about mediation/arbitration services 9%
6. Restrict entry to the profession 16%
7. Increase entry to the profession 1%
8. Protect consumers from unethical practice 16%
9. Ensure adherence to professional standards 18%

ARBITRATORS: Regulation would help which of the following areas the most. Select top 3
1. Enhance the quality of practice 5%
2. Enhance the public image of the profession 16%
3. Increase compensation for the practitioner 0%
4. Increase the individual’s competitive edge in the field 0%
5. Clients (individuals/organizations) could make better decisions about mediation/arbitration services 11%
6. Restrict entry to the profession 26%
7. Increase entry to the profession 0%
8. Protect consumers from unethical practice 21%
9. Ensure adherence to professional standards 21%

What should be the primary focus of regulation?
1. General regulations that applies across all areas 16%
2. Specific regulations within each area 17%
3. Both General and Specific 49%
4. Neither 18%
**ARBITRATORS:** Which of the following groups is best positioned to implement a regulatory system?

1. Courts 0%
2. Government entities 29%
3. Private organizations 0%
4. ABA Section of Dispute Resolution 14%
5. Interested individuals 0%
6. A volunteer committee 0%
7. Other 14%
8. No action should be taken 43%

**ARBITRATORS:** Which of the following groups should have primary responsibility to developing that regulatory system?

1. Courts 0%
2. Government entities 0%
3. Private organizations 17%
4. ABA Section of Dispute Resolution 0%
5. Interested individuals 0%
6. A volunteer committee 0%
7. Other 0%
8. No action should be taken 50%
9. Combination of groups 33%

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**Example of Next Steps the ABA should take to Develop an Arbitrator Regulatory System**

- Move to national round table for debate, separating consumer and employment arbitration

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**Examples of Next Steps to Improve Arbitrator Quality of Practice**

- Different stakeholders should be consulted before regulation if regulation is to happen
- Follow up on College of Commercial Arbitrators efforts, including further education
- Continue dialogue among arbitrators on best practices
- Free, on-line ethics training from ABA
- National data base for conflict checks and frequent user bias
- Rookie arbitrators need a “wing-woman” (mentor)

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**MEDIATORS:** Which of the following groups is best positioned to implement a regulatory system?

1. Courts 5%
2. Government entities 8%
3. Private organizations 23%
4. ABA Section of Dispute Resolution 3%
5. Interested individuals 3%
6. A volunteer committee 6%
7. Other 29%
8. No action should be taken 23%

**MEDIATORS:** Which of the following groups should have primary responsibility to developing that regulatory system?

1. Courts 0%
2. Government entities 2%
3. Private organizations 2%
4. ABA Section of Dispute Resolution 6%
5. Interested individuals 3%
6. A volunteer committee 0%
7. Other 5%
8. No action should be taken 18%
9. Combination of groups 65%

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**Examples of Next steps the ABA Should Take to Develop a Mediator Regulatory System**

- Convene a collaborative group of stakeholders (e.g., government, courts, academics, AAA, and ACR)
- Research existing standards and best practices for regulation
- Convene or facilitate a larger discussion group to explore possibilities of collaboration
- Consider the example of collaborative development of standards in AAA-ACR model standards of conduct
- Canvass research on mediation competence

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**Examples of Next steps to Improve Mediator Quality of Practice**

- Education of lawyers, users, law students and the public about mediation
- Find ways to measure participant satisfaction (surveying mediation users)
- Expanded mentoring and training of mediators - to include more observation
- Peer support groups to discuss mediation issues
### Polling Results for ARBITRATORS

**What are the 2 best ways to measure competency of arbitrators?**

1. Degrees/education 0%
2. Training requirements 9%
3. Mentoring or supervision 0%
4. Continuing education or training 18%
5. Performance tests or live or taped demonstrations 9%
6. User evaluations 18%
7. Complaint procedures 0%
8. References 27%
9. Program evaluation criteria/Experience 18%
10. None of the above—Arbitrators should not be regulated 0%

**A single national regulation system, if developed, should apply to which of the following? Select all that apply**

1. Entry level 25%
2. Every 5 years for active professionals 8%
3. Seasoned practitioners 17%
4. Part-time practitioners 33%
5. Other 17%

### Mediators should be regulated.

1. Strongly agree 0%
2. Agree 17%
3. Neither agree nor disagree 17%
4. Disagree 0%
5. Strongly disagree 67%

**If a national regulatory system were developed would you seek to become certified?**

1. Definitely 43%
2. Maybe 29%
3. No 14%
4. Don’t Know 14%

### Examples of Processes or Methods adapt to own practices

- Use polling keypads
- Could expand my work for large group facilitation
- Do exit surveys or evaluations for parties leaving mediation
- Use for scoping meetings

### Polling Results for MEDIATORS

**What are the 2 best ways to measure competency of mediators?**

1. Degrees/education 4%
2. Training requirements 14%
3. Mentoring or supervision 21%
4. Continuing education or training 8%
5. Performance tests or live or taped demonstrations 14%
6. User evaluations 13%
7. Complaint procedures 1%
8. References 5%
9. Program evaluation criteria/Experience 18%
10. None of the above—Mediators should not be regulated 3%

**A single national regulation system, if developed, should apply to which of the following? Select all that apply**

1. Entry level 31%
2. Every 5 years for active professionals 21%
3. Seasoned practitioners 18%
4. Part-time practitioners 21%
5. Other 9%

### Mediators should be regulated.

1. Strongly agree 21%
2. Agree 24%
3. Neither agree nor disagree 17%
4. Disagree 14%
5. Strongly disagree 24%

**If a national regulatory system were developed would you seek to become certified?**

1. Definitely 52%
2. Maybe 27%
3. No 16%
4. Don’t Know 5%

### Did you learn anything new today?

1. I didn’t learn anything new 5%
2. I learned a few new things 52%
3. I learned quite a bit 25%
4. I learned a lot 14%
5. I’m brimming with new knowledge 3%

### To what degree have your opinions/perspectives changed or shifted today?

1. Not at all 46%
2. A little bit 49%
3. Quite a bit 3%
4. A lot 1%

### What is your level of satisfaction with the Town Hall?

1. Very low 0%
2. Low 15%
3. Medium 25%
4. High 44%
5. Very High 16%

### What is your level of satisfaction with the use of technology at the Town Hall?

1. Very low 3%
2. Low 1%
3. Medium 9%
4. High 27%
5. Very High 60%