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# Qualifications: Two Voices from the Debate



*Elizabeth Neumeier is a past-President of SPIDR and served on the Commission on Qualifications. She began her dispute resolution career as a lawyer for a labor union in the mid 1970's and then became a labor arbitrator. Her current practice includes consulting to courts, public policy facilitation and mediation, and labor-management arbitration and mediation.*

*What was the qualifications process for you when you decided to become a labor arbitrator in the '70's? Was there a sense at that time that there were certain steps that people had to go through to become qualified? Has the qualifications process changed much since then?*

The field of labor relations dispute resolution has been around for almost 50 years. Over those years, some patterns have evolved that people generally follow to become labor arbitrators. You first develop some substantive knowledge and a reputation for being competent — knowing what you are doing — and equally important, a reputation for integrity and fair dealing. Then people often apprentice themselves to an established arbitrator. Since you get cases by being selected by the parties directly, the parties decide whether you are qualified.

*It sounds as if there are already notions of who is qualified and who is not in this field. With SPIDR's new qualifications standards are they imposing something unnecessary? If those notions are already there, why change anything?*

It is important for people to understand that SPIDR is not "imposing new qualifications standards" on the field or anyone in it. SPIDR has identified skills necessary for competent performance and cautions that other specific skills may be required in certain contexts. Yes, there are "notions of who is qualified" out there, and one of the things that the Commission on Qualifications' second report does is to help articulate what those notions are and where they come from. One of the unique things about this field is that there are many paths to becoming qualified, and that they are all valid.

There are changes already occurring, regardless of whether SPIDR or others want them. With courts, bar associations and the government establishing ADR programs and referring cases to private practitioners and community programs, they

need a way they are comfortable with to determine who is qualified to receive those referrals. The easiest and most familiar path is to rely on credentials such as professional degrees. Those in the dispute resolution field know how detrimental that would be both in terms of excluding highly qualified people and by constricting dispute resolution to look like those professions. Therefore, we must go beyond "notions" to definitions of qualifications that those outside the field can understand and use.

*Many argue that the market is effectively deciding who is qualified and who is not qualified. Do you think it is necessary to have these guidelines placed on the field?*

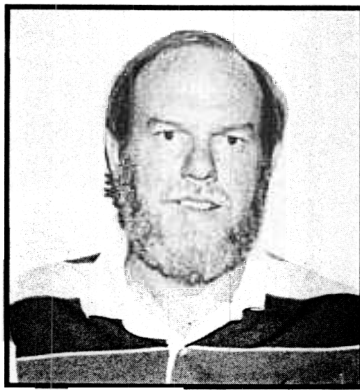
The [Commission on Qualifications'] first report talks about the free-market and how it works most effectively when parties have free choice to decide that they want to use a particular process: mediation, arbitration, or case evaluation. That also assumes that the parties have the knowledge and understanding required to make those decisions on an informed basis. I think SPIDR is quite comfortable in relying on the market in such circumstances. But what we are seeing in other areas is that the opportunity for free and informed party choice is not always present.

I will give you an example: on one side of the table you have a party who is a repeat player, and on the other side a party who may only have one case in a lifetime. Insurance industries handle thousands of claims every year. An individual person, hopefully, is not going to have many claims, and may only be in a mediation once. Now that kind of an imbalance in knowledge of how the system works, familiarity with the neutrals being used, and skills in representing one's own interest, is a different situation than that where the free market works best.

*You are saying that the market isn't so 'free.' It can favor big corporations because they know the territory and know what they are doing. By introducing these qualifications, are you claiming to help people who aren't as familiar with the process?*

What is happening is that different organizations are finding ADR appealing and are setting up lots of programs to handle different kinds of cases, and one of the things that they all have to deal with is who is going to be the neutral. Depending on who is setting up the program, they come in with a certain agenda. For example, the country bar associations are setting up programs and restricting the cases to lawyers only. If a program is going to offer the parties qualified people to handle their cases, SPIDR thinks it is

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*Daniel Joyce is currently the Executive Director of the Cleveland Mediation Center. He has worked at the Center for 15 years. He recently earned a M.A. from Antioch University. His thesis is entitled, "The Cost of the Professionalization of the Field of Conflict Resolution, Who Will Pay the Price?" He has authored several articles on the qualification issue.*

*Some people argue that the growth of conflict resolution programs has increased the number of poorly run agencies. One of the arguments for national qualifications is to create standards so organizations that may not be competent will have guidelines to which they will be responsive. What is your response to this argument?*

The real question in the qualifications movement is: who is advocating for qualifications? Is it an enraged public who has gotten disservice from mediators? If there were cases and there were statistics that showed that people have been harmed by incompetent mediators then the argument for the need for qualifications would hold water. But that is not the case. We do not have an uprising of enraged citizens demanding qualifications. We do have professionals who seek to protect their interests.

The other aspect of this debate that is rarely discussed—and many may find this sacrilegious—is that mediation is not that complicated. We are not doing brain surgery here. Using a client-centered approach, mediators help parties resolve their conflicts. Parties in mediation never abrogate their rights to more traditional processes. If they are not satisfied with the outcome they are simply back to square one. A disturbing aspect to this trend to qualify mediators is that it shifts the onus of the mediation from the disputants. I believe this is in part due to an effort by the professionals (attorneys and mental health workers) to valorize the skills that they have brought from their previous professions.

*Let's talk about your organization specifically. What ways does your organization currently determine who is qualified and how do you think your system is working?*

I think that it's the heart of the program: our community residents run this organization. They decide who can mediate in this community. I don't. The age, race, and gender of these community mediators reflects that of the disputants. The average household income of our clients is \$15,000; we work to try to reflect that in our mediators.

These mediators set guidelines for training. When people are finished with the training they determine themselves whether they are ready to mediate or not. That is done very openly, just like we would in resolving a conflict. They are

taught self evaluation skills, they ask for feedback from other panelists, and then they determine with staff if they are ready or not. Some people will never mediate, but *they* will decide that.

*Can you give some concrete examples about how national standards might affect this process, which sounds like an integral part of your organization.*

The two largest professional organizations SPIDR and AFM have published articles which state that it is their intention to use their standards to lobby for national standards. While SPIDR recognizes the "many paths" and does not advocate for a degree requirement for mediators, their ethical standards are troublesome. Those of us who mediate in communities and came from the path of the peace and justice movement are very disturbed by their insistence and position on neutrality. We spend a lot of time working with what Jim Laue referred to as "out power groups." Adherence to SPIDR's narrowly defined code of ethics would reduce us to defenders of the status quo. The AFM standards would exclude community mediators because they rely on degree requirements; additionally, they require that people take their training, which, coincidentally, is offered by their certified trainers. The average 40-hour training offered by AFM goes for \$800 a pop. This is only the initial expense in their certification process. Few community mediators can afford it.

*Do you see this happening already as a result of state-based standard setting?*

Well what happened here in Ohio is that the Supreme Court issued rules for local courts and has set qualifications. We have, however, been able to negotiate with them so that in fact community residents are qualified under their own credentials. We don't like that but we don't have a choice in the matter.

I was at a meeting of state leaders where the qualifications issue was raised, and except for one person, we all said we didn't want qualifications. But what happened, what was posed, was what I call the "wolf at the door" argument. Someone stated that the Florida Bar Association snuck strict mediator qualifications through the legislature. Amazingly people responded by saying, "Well we can't let that happen here in Ohio. If there are going to be qualifications we ought to be the people to draft them." What frightens me is that this scare tactic is being successfully used in many states and by professional organizations. Other options are not being explored.

*It sounds like community organizations had a voice in the Ohio decision. From your community-based vantage point, what has been your perception about who has been involved with the national qualification debate?*

Understanding the history of community-based programs and where we came from is essential, because what is lost in

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the national debate is the roots of the field that come from the peace and the social justice movements. The mental health professionals, the attorneys, and the professional mediators are the most vocal in the need for qualifications and they ignore the whole concept of community empowerment. This focus pits the practitioner against the disputants. That is the main thrust of it. So rather than teaching laypeople how to mediate their own disputes, established practitioners are looking to enhance their own skills, reputations, and incomes by setting qualifications.

*Do you think that community-based organizations should try harder to make their voice heard in this debate? What role can they play?*

I hope the newly formed NAFCM [National Association For Community Mediation] will play a major role and be a voice in the national debate. My concern is that NAFCM may let others frame the discussion. I mean the starting point should not be "What kind of standards should we recommend?" but "Who do standards benefit?" or my preference, "How can we oppose national and state wide standards?" My research has revealed that legislatures are reluctant to grant licensing privileges to groups when there is opposition within the groups seeking licensure.

*If the qualification process continues as is, do you see anything positive emerging? For instance, some people mention that these national qualifications might add a certain legitimacy to the field.*

I think that if there was room for dialogue it would be specifically on how we measure success in mediations. What you and I may not see as successful in a mediation, the clients think is. So how do you measure success anyhow? I also think there would be room for dialogue around more specific and sophisticated types of mediation.

*Some argue that qualifications are particularly important as the field begins to rely on mediators for sophisticated, specialized negotiations. Do you think that there is any place for national qualifications in certain types of mediation?*

I would be very careful about this aspect of the debate. I have doubts regarding the use of mediations for some environmental and public policy disputes. I think community mediators could be trained to intervene in some of these disputes but my orientation makes me question whether or not mediation is the correct conflict resolution tool. Currently professional mediators are mediating environmental issues within a legal context that allows what many contend is hazardous waste to exist in our inner cities. I think that rather than mediate this dispute community intervenors should organize citizens to demand laws that insure safer environments.

*Do you think that there is any aspect of the debate that we haven't touched on today?*

My work on the qualifications issue has led me to research other groups that have gone through licensure processes. Qualifications by definition exclude people from participating. We need to look at who will be excluded and to what end. My research overwhelmingly concludes that those who are most predominately excluded by licensure are people of low income and people of color. Qualifications most likely will insure a field of that is predominately middle class, college educated, and white. Many of us have a vision of a field that will truly reflect a multitude of values and cultures, and will be defined by community residents. ❖

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important that the qualifications standards be set with input from all of the stakeholders, including consumers. In order to determine who the appropriate stakeholders are you have to look at the context of the program.

*What exactly do you mean by 'context'?*

By the context, we mean that a civil court program that is going to be referring small claims cases to mediation might have different needs, goals, and values than, for example, a neighborhood community justice center. Those programs are being created to meet different kinds of needs, so you wouldn't want to take a boiler-plate set of standards and apply them. Standards developed to determine who the neutrals are need to be directly related to the values and the goals of all participants. There is a tendency for a group to want to start a dispute resolution program, and for someone to send them a copy of a list of qualifications from some other program. They may import something from a different context that ends up undermining what they are trying to do.

*Nonetheless, you feel that SPIDR's qualification guidelines are universal to some degree.*

Well, not exactly. The SPIDR Report sets out seven steps for those who need and want to establish qualifications standards to follow, so that they end up with something that really meets their needs and does not inappropriately bar entry. It is not SPIDR dictating: "These are the standards that ought to exist; if you use them, you are safe."

*There has been much controversy about the effect qualifications will have on this field. What effect would you say qualifications will have?*

We hope that this will help it move forward. One of the things that we see happening which SPIDR is very concerned about is an increasing tendency to use degree-based credentials as the basis for including somebody on a roster or

referring cases to them. And while training, for example, is important, the fact that you have taken a training course does not on its own mean that you are ready to actually go in and work with parties and handle their cases. So, to help show that there is another way, and to avoid having the field fall into the trap of just coming up with a rote formula—"If you have one of these degrees, and you have thirty hours of training, then you are good enough."- we wanted to show that there are other ways that work, and that they are out there in practice.

Some of the best models SPIDR highlights are found in community programs which combine such methods as life experience, training, supervised mediation, and co-mediation. SPIDR's interest centers around its commitment to make sure that the field remains vibrant and creative, and that its growth is not stymied by the erection of inappropriate barriers to entry. But it is still incumbent upon the dispute resolution field to be able to say why this person is good at this, and why that person isn't. We have to go beyond "Trust me, I know what I am doing."

*That raises the question about who would judge competency. If you are going to set qualifications, you must set someone who is going to be the arbiter of them.*

Right, and that goes back to, first, what is the context, and then second, who is responsible for insuring competence. It is a shared responsibility. In SPIDR's view, the neutral has to make sure that they are prepared to handle the type of case they are about to start. The program administrators have a responsibility, and we also think that the parties have a responsibility, to make sure that they are comfortable with the person with whom they are dealing, and to educate themselves enough about the process to be able to ask questions and participate. Ultimately, where the parties have free choice, qualifications are enforced by the parties. They could also be enforced by professional organizations that have the power to expel somebody from membership.

*But it seems that without concrete wording, the notion of competence can be easily manipulated.*

Well if you look at step six, on how competence is assessed, we list about a dozen methods of assessing practitioner competence, including training, self-assessment, peer-review, live or taped observation, written tests, performance tests, user evaluation. In SPIDR's view, people ought to assess competence using some combination of those methods, or other methods if they can think of some that we haven't got on this list. If all stakeholders are involved in developing the standards, manipulation will not be so easy.

*So the guidelines are not just for institutions to judge mediators, they are also for individuals to judge the mediators they are going to use.*

It is both, because it is a shared responsibility. One of the things about dispute resolution, as opposed to judicial litigation, is that it is an effort to put the control over the dispute back in the hands of the parties. If that is what the whole thing is about, if that is one of the fundamental values of the field, then the parties ought to have some responsibility for making sure they understand the process, for making sure they are comfortable with the mediator and asking questions if they are not sure about things. These are all part of the disputants owning the process. ♦

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