SPIDR
SOCIETY OF PROFESSIONALS IN DISPUTE RESOLUTION

COMPETENCIES FOR MEDIATORS OF COMPLEX PUBLIC DISPUTES
An Overview Developed by the Environmental/Public Disputes Sector
Competencies for Mediators of Complex, Public Disputes

An Overview Developed by Environmental/Public Disputes Sector Society of Professionals in Dispute Resolution

As Adopted by the Board of Directors
January, 1992
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1. Competencies for Mediators of Complex, Public Disputes

An Overview Developed by Environmental/Public Disputes Sector
Society of Professionals in Dispute Resolution
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### I. Introduction

Questions about what qualifies an individual to serve as a mediator in environmental and complex public disputes are arising with ever increasing frequency from potential clients and practitioners. As federal and state legislatures and government agencies seek to authorize and/or use mediation processes, they look for advice and guidance about who is qualified to mediate complex, multi-party cases. Likewise, parties to a conflict, who frequently have a voice in selecting a mediator, also look for assistance. And from the other side as aspiring mediators and mediators from other sectors explore working with complex public disputes, they too inquire about the basic credentials needed to function effectively in this arena.

In 1989, the Society of Professionals in Dispute Resolution (SPI-DIR), published the report of its Commission on Qualifications for neutral practitioners in all dispute resolution fields, including family, labor, consumer, environmental, education, and community. This report recommended that no one organization set standards and qualifications for neutrals, given the great variety of practice sectors throughout the country. It also recommended that qualification requirements be the most stringent for services provided without client choice of neutral or dispute resolution process, and that any qualification standards developed be based on performance criteria and competency evaluation, not necessarily on academic credentials.

At the annual SPI-DIR Conference in fall 1989, the SPI-DIR Environmental Sector Committee proposed that a subcommittee be formed to consider the implications of the Qualifications Commission's report on mediation practice in the Environmental Sector. Mediation is by far the most prevalent third party assisted dispute resolution process used in environmental and complex public disputes, although arbitration and mini-trials are

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1. The "Report of the SPI-DIR Commission on Qualifications," is available from The Society of Professionals in Dispute Resolution, 815 15th Street, NW, Washington, DC 20005.
used on occasion. Six environmental mediators volunteered to work on the subcommittee and have developed this overview.  

The subcommittee defined its audience to be SPIDR members and other mediation practitioners, agencies and organizations that sponsor dispute resolution processes, parties in environmental conflicts, and organizations concerned about mediator credentials. The Subcommittee reviewed the report of the SPIDR Commission on Qualifications, and identified additional specific competencies and knowledge areas that were of particular significance for the environmental and complex public dispute mediation practice.

The purpose of this overview is to provide guidance to individuals who want to become mediators of environmental or other complex public disputes. The list of competencies suggests a range of skills that mediators in the field have found useful, and while lengthy is not complete. The competencies are not intended to be a tool for determining whether an individual is qualified to be a mediator or for assessing the quality or success of a mediator's work.

The subcommittee agreed with the SPIDR Commission on Qualifications that the assessment of competencies requires performance-based assessment or demonstration of competency, either through prior experience or observation and evaluation by competent mediators or trainers. How this performance can best be assessed is a topic for another paper.

II. Challenges That Arise for Mediators of Complex Public Disputes

The Subcommittee recognized that environmental and other complex public disputes represent a broad category of practice both in terms of issues addressed and types of interventions offered. Mediators in this field may work on:

- site-specific projects – such as, siting a county corrections facility, perserving a historic structure, or cleaning up a toxic spill.
- the creation of programs or plans – for topics such as air quality measures, social service delivery systems, regional transportation or community master plans.

2 Members of the subcommittee were: Susan Carpenter, Dan Dozier (Clean Sites, Inc.), Wendy Emrich (PennACCORD), Suzanne Goulet Orenstein (RESOLVE), Fran Snyder (New Jersey Center for Dispute Resolution), and Eileen Stief (PennACCORD).
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- the formulation of legislation - around issues such as safety standards, fair-housing practices, water rights, or wilderness designations.

- the development of administrative regulations - for removal of asbestos in school, handicap access, or for fugitive emissions from chemical processing equipment, as examples.

- government enforcement and other civil actions - related to educational mandates, Superfund or wetlands programs, for example.

Interventions may be called negotiations, mediations, roundtables, summits or dialogues. Parties can include local community members from the public and private sectors, statewide organizations or national interest groups and in some cases all three will be involved.

The subcommittee defined environmental and other complex public disputes as conflicts that affect members of the public beyond the primary negotiators at the table and almost always involve one or more levels of government, often as a party and frequently as a decision-maker. Multiple interests are involved and initially they may not be clearly defined. The issues are diverse, numerous and complex. Mediators must structure a negotiation to accommodate the particular factors of a controversy.

Mediation principles have been applied to environmental issues for two decades. As the body of knowledge and experience has accumulated around the practice of environmental mediation, environmental mediators have been asked to apply their skills to other public issues such as housing, public financing, education and social services. Mediators may be called in to assess a conflict, design a complex negotiation process and to run controversial meetings as well as to assist negotiators' efforts to reach agreements.

Beyond managing the negotiation process mediators often play an active role in convening the parties. They may construct and manage teams of mediation professionals, handle technical and financial resources, manage the logistics of meetings and minutes, communicate with constituency groups and the general public, and maintain an involvement with the parties during the implementation of agreements including related political or administrative decision-making. Mediators orchestrate task and caucus group sessions as well as full group meetings. The tasks of a mediator vary according to the support provided by a sponsoring agency or the parties. In some cases, for example, a sponsoring group will assume responsibility for meeting logistics
and written communication with the parties. In other cases the mediator will be asked to perform these tasks.

Challenges that face the mediator of complex public disputes include:

- **No formal convening mechanism exists.** Because no formal mechanism for convening parties exists, a mediator frequently works with the different interests to determine whether bringing parties together is an appropriate way to handle a conflict, and if it is, then works with the parties to design a negotiation process, establish an agenda and identify participants.

- **Determining whether to negotiate is a complex decision.** Parties present a variety of reservations when considering whether to negotiate. Both the parties and the mediators need to understand the range of outcomes possible for each side in alternative forums such as the courtroom or legislative arena and compare them to possible outcomes in negotiations. The process of determining outcomes is made more difficult by the political nature of many of these disputes. Thus, before sessions are convened, parties should examine the incentives and disincentives for all sides to negotiate and to settle. Mediators may also need to spend time explaining what a negotiation process looks like and how it works before parties decide whether it is in their interest to participate.

- **Multiple parties represent diverse interests and organizations.** Complex public disputes involve complicated networks of parties and the parties most often are groups or organizations. In some cases three or four parties will be actively involved, in others over fifty groups will have a strong interest. A mediator must work with the parties to determine who should be represented at the table. Once at the table the mediator must be able to handle the group dynamics that occur within large group meetings and must also be familiar with the parties's organizational cultures and their constraints.

- **Environmental and other public disputes often involve complex technical data.** Data may need to be gathered, analyzed, or supplemented in a way that is acceptable to differing points of view. The mediators must have enough familiarity with the technical issues to be able to establish acceptable approaches to fact-finding, manage discussions among parties and help parties evaluate the importance of the technical information.
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- **Environmental and other public disputes exist in a public arena and agreements reached need to withstand public scrutiny.** Parties may want "off-the-record" discussions while recognizing the public has the right to know how the discussions are progressing. The mediator is often responsible for balancing the need for confidentiality with the need to keep constituency groups and the general public informed throughout a negotiation.

- **Negotiations take place in the context of different political and organizational decision-making requirements.** Decisions made by corporations and government agencies typically require approval from a hierarchy of decision makers. Public interest groups on the other hand may rely on consensus procedures for making their decisions. Mediators must understand the decision-making structures of each party and adapt the negotiation process accordingly. In addition, depending on the issues and the stakeholders, government rules may require open meetings, mandate public hearings, prevent discussions between parties and regulators and require public comment periods.

- **Concerns regarding relative power among parties are often raised.** Parties may enter negotiations with questions regarding their own power and the strengths of the other parties' positions. Mediators work with parties to help them understand the different sources of power that each side brings to the table, including the power to implement agreements and the power to block or impede implementation. Other forms of power include financial resources, numbers of participants, knowledge, relationships, skills and access to authority. Parties may also need assistance understanding the powers associated with a consensus process, in particular the power each member has to block a decision of the group.

III. Knowledge Areas Recommended for Mediators of Complex Environmental and Public Dispute

The SPIDR Commission on Qualifications identified several knowledge areas that are important for qualifying all mediators and other neutrals. These include:

- **Knowledge of the particular dispute resolution process being used including:**
  - familiarity with existing standards of practice covering the dispute resolution process; and
-- familiarity with commonly encountered ethical dilemmas.

- Knowledge of the range of available dispute resolution processes, so that where appropriate, cases can be referred to a more suitable process.

- Knowledge of the institutional context in which the disputes arose and will be settled.

- Knowledge of the process that will be used to resolve the dispute if no agreement is reached, such as judicial or administrative adjudication or arbitration.

- Where parties legal rights and remedies are involved, awareness of the legal standards that would be applicable if the case were taken to a court or other legal forum.

In addition environmental and other complex public dispute mediators find useful familiarity with:

- Relevant government rules and procedures.

- The substance of the issues in conflict.

- Group dynamics that will arise in structuring and managing a productive negotiation.

Knowledge of the areas described above provides the foundation for acquiring mediation skills and conducting dispute resolution tasks effectively. Demonstrated knowledge in these areas is an important consideration when selecting mediators. Parties will often determine a mediator's capability by seeking confirmation that the mediator has familiarity with the subject matter of the dispute and/or experience with parties similar to those in the case in question such as government agency staff or environmental attorneys. Past experience as a neutral in similar cases can be one way of demonstrating competence in one or several knowledge areas.

IV. Specific Competencies Recommended for Environmental and Other Complex Public Dispute Mediators

Mediators of complex environmental or other public disputes apply a broad set of skills when engaged in their work. The nature of the issues, the number of parties involved, the structure of the negotiation process and the roles a mediator is asked to perform determine the appropriate skills. The intent of this list is to suggest a range of skills or competencies that
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This list builds on the work done by the SPIDR commission on qualifications. Items followed by an asterisk (*) are taken from the "Report of the SPIDR Commission of Qualifications."

Personal Qualities

Ability to:

- Have presence and persistence, i.e., an overt commitment to honesty, dignified behavior, respect for the parties, and an ability to create and maintain control of a diverse group of disputants. *

- Identify and to separate the neutral’s personal values from issues under consideration. *

- Be sensitive to strongly felt values of the disputants, including gender, ethnic and cultural differences. *

- Earn trust and maintain acceptability. *

- Adhere to ethical standards. *

Communication

Ability to:

- Listen actively and help others to do so. *

- Use clear, neutral language in speaking and writing. *

- Initiate and maintain productive discussions among conflicting parties.

- Keep accurate and constructive information flowing among parties and other actors during and between negotiation sessions.

- Handle intense emotions in individual conversations and in multi-party meetings.

- Convey complex or technical information to lay people and across technical disciplines.

- Work with the press throughout a negotiated process.
Explain process alternatives to stakeholders and to political and community leaders and obtain their support for a process.

**Conflict Analysis and Assessment**

**Ability to:**

- Identify personal and institutional sources of information and support.
- Conduct thorough and open-ended interviews with diverse people.
- Research, investigate and assimilate extensive complex or technical information quickly.
- Recognize the relationships among the parties, including sources of power, power imbalances and political dynamics.*
- Identify and separate key issues and interests that need to be addressed.*
- Frame issues for resolution or decision making.*
- Identify what interests need to be represented, and by whom.
- Recognize how the relationships among the stakeholders and the specific issues being addressed will affect the dynamics of negotiation.
- Weigh incentives/disincentives for settlement and reach honest conclusion that negotiations have a good chance of succeeding (or at least, will do no harm).
- Determine readiness for and appropriateness of neutral involvement.
- Assist parties in assessing resources available, including personnel, financial, time and information.

**Process Design**

**Ability to:**

- Assist the parties in the development of a common definition of the problem.
- Define goals for a negotiation with the parties.
o Explain process alternatives to stakeholders and to political and community leaders and obtain their support for a process.

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**Negotiation**

**Ability to:**

o Select an appropriate format(s) for negotiation sessions (roundtables, team negotiations, workshop sessions, task groups).

o Outline a sequence of general process steps that will lead negotiators to their desired outcome (groundrules, information gathering, options and agreement).

o Identify, define and get agreement on appropriate roles (negotiator, observer, technical expert, convener, sponsor, chairperson, mediator, facilitator, recorder).

o Assist in the identification of appropriate people for each role.

o Establish a timeframe for the process.

o Recognize when a team of mediators is appropriate and clarify the role each team member will play.

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o Understand the negotiating process and the role of advocacy.*

o Earn trust and maintain acceptability, instill and maintain confidence in the process and the neutral, and build and maintain trust among the parties.*

o Assist with in-team bargaining.

o Help participants to separate short from long term organizational interests.

o Help participants to convert positions into needs and interests.*

o Screen out non-mediable issues.*

o Help parties to invent creative options.*

o Help the parties identify principles and criteria that will guide their decision making.*

o Where appropriate, work with a single text document.

o Help parties assess their non-settlement alternatives.*

o Assist parties to make their own informed choices.*
Sequence issues and package alternatives.

Help parties assess whether their agreement can be implemented.*

Determine and enforce realistic timeframes for decision making.

Initiate and manage contacts between meetings in a manner that moves negotiations forward.

Respond effectively to crisis situations.

Identify appropriate monitoring activities to be stated in an agreement.

Assist representatives in managing communications with their constituent groups or organizational hierarchy in a way that maintains the flow of information and facilitates organizational commitment to the decision.

Facilitation

Ability to:

Determine conditions that make face-to-face group discussion more efficient than one-on-one communication.

Establish realistic and attainable meeting objectives.

Identify people who need to be present in order to make meeting(s) successful.

Oversee the preparation of information for a meeting, e.g., agendas, background materials, proposals, etc.

Create a working agenda and obtain group input and agreement on a final agenda.

Allocate adequate and realistic timeframes for moving through the agenda.

Assist participants in establishing behavioral and procedural guidelines, including expectations about confidentiality, press contacts, representation, and other safeguards.

Establish and maintain a productive tone during a meeting.

Keep discussions focused and moving.
• Sequence issues and package alternatives.
• Help parties assess whether their agreement can be implemented.*
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Data Management

ability to:
• Deal with complex factual materials.*
• Work with parties to identify data needs.
• Determine the importance of data and technical information to the resolution of issues.
• Organize complex and extensive information in formats and language useful to all parties.
• Oversee the joint creation and analysis of data bases.
• Use technical resource people effectively.
• Oversee the preparation of technical reports.
• Help parties reach agreements on data where differences occur.

Administrative

ability to:
• Coordinate activities and communication among players (negotiators, observers, resource people, constituents,
public, media) including minutes, reports, correspondence, caucuses and press contacts.

- Coordinate the activities of a mediation team.
- Handle logistical arrangements for multi-party meetings.
- Determine, arrange for and manage financial resources, including administrative costs, mediator fees, technical expert fees, and participant compensation, if needed.
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APPENDIX A
Tasks of a Complex Public Dispute Mediator
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Understanding the tasks public dispute mediators perform is key to appreciating the competencies they need to acquire. The following section outlines activities mediators conduct. In some cases a mediator will be involved in all three phases of a negotiation. In other disputes a mediator will work on only one or two of the phases listed below.

PRIOR TO CONVENING THE PARTIES

Public dispute mediators may spend weeks to months working with a conflict before the parties are brought together to discuss their differences. Careful preparation is critical to the success of a negotiation.

Analyzing the conflict. Mediators usually assess a conflict to determine what the issues are and whether the issues are appropriate for mediation, what interests must be represented and whether the parties are willing to discuss their differences with each other. They conduct interviews with representatives of the interested parties and other knowledgeable individuals and read background materials.

Designing a process. Mediators are often asked to recommend a process that will enable parties to reach agreements. A process is a sequence of activities that will vary according to the requirements of each conflict situation. For example, a series of facilitated joint meetings may be what's needed for a policy negotiation, while private meetings with each party followed by a joint meeting may be preferable in the settlement of a government enforcement action.

A mediator works with the parties and with the information gathered during an assessment to establish a common definition of the problem, clarify goals for the process, recommend a general process model, outline specific tasks for the negotiators, identify interested parties, possible negotiators and other roles that would be valuable.

Preparing to meet. A mediator must work with the parties to determine how the project is going to be managed, what funding will be necessary and how it will be obtained, invite negotiators and obtain their commitment to participate, prepare a description of the consensus-building process, collect background information about the issues being discussed, and draft and circulate operating groundrules.
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AFTER THE PARTIES ARE CONVENED

Once parties are convened a mediator oversees activities at the table and away from it. Along with negotiation sessions, a mediator may also work with task groups, communicate with individual negotiators, help constituency groups to reach agreements, and provide information to other interested organizations.

Designing and running negotiation sessions. A primary function of the mediator is to design and conduct negotiation sessions. This includes working with the parties to determine what topics are appropriate for discussion, develop an agenda, and decide on a meeting format. Sessions can cover groundrules parties will use, identifying issues and interests, reviewing information and data relevant to the problem, exploring possible solutions, and drafting agreements. For some of these tasks, facilitation of group discussions will be needed; however, mediation between interests is often a part of this process.

Promoting and monitoring communication at and away from the table. Public disputes affect a general population, as well as the negotiators. For an agreement to be reached and implemented a mediator must encourage productive communication among negotiators and promote regular and thorough discussions between negotiators and their constituency groups. Progress of the discussions at the table must be understood and agreeable to members of each interest group. When members of one group have difficulty agreeing on a point or strategy a mediator may be asked for help.

A mediator works with the parties to determine how much and what type of communication is appropriate for the general public and with the media. The mediator can oversee these communications as well.

Coordinating activities of the different players. Bringing ten to thirty parties together requires careful logistical planning and coordination. Mediators often arrange the time and the location of the negotiation sessions and notify all participants. In addition to general logistics, the mediator also works with people who serve as resource experts, observers, and the sponsoring and convening bodies to keep them informed and to clarify their roles. More complex public disputes frequently require more than one mediator and often draw on the skills of group facilitators and recorders during negotiation sessions or for task group work. The lead mediator coordinates the activities of the mediation team.

Overseeing requests made and approved by the negotiators. Mediators serve at the pleasure of the negotiators. As negotiators identify tasks, a mediator is responsible for
implementing or overseeing their completion. Negotiators may request that information be clarified, appropriate resource people be secured, technical information be collected or research conducted and that working groups be set up and staffed.

**Trouble shooting.** When multiple parties and complex issues are involved, a mediator expects to do trouble shooting at the table and away from it. Finding ways to reach agreement over controversial data or over an impasse in a draft agreement may require securing more information, identifying a resource person all sides can accept or setting up a task group to handle an impasse outside regular negotiating sessions. Hostile exchanges between two or more parties may require private conversations with individual negotiators and can lead to additional sessions among some or all of the negotiators. For all the problems that can be anticipated, there are an equal number or more that cannot. A mediator must be prepared to handle these problems as they arise.

IMPLEMENTING AGREEMENTS

Agreements reached can be as complex as the issues in dispute and they may take years to implement. Mediators are also retained to help with the implementation of agreements.

**Assisting the monitoring process as requested.** Negotiations should include a process for monitoring the implementation of agreements. Monitoring may take the form of a representative group of negotiators meeting periodically to oversee implementation, asking an appropriate agency, especially if it has enforcement powers, to oversee the completion of tasks, or the reconvening of all parties to review current progress. Public dispute mediators can be asked to oversee monitoring activities or called upon to convene and run particular monitoring committees, helping parties avoid or go around obstacles.

**Assisting with additional negotiations and re-negotiations.** Agreements vary in their level of specificity. Some carefully define exact substantive outcomes and others suggest procedures that permit parties to continue to work on an issue. Parties that reach a procedural agreement to establish a committee to propose new regulations may ask a mediator to work with the new committee. A mediator may also be called back to renegotiate parts of an agreement that parties later discover are not workable.