

**A Consumer Guide to**  
**Selecting**  
**A**  
**Mediator**

**NE  
SPIDR**

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## **Acknowledgments**

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## **Note to the Reader**

To make an informed choice of a mediator, NE SPIDR believes the consumer must have information and the ability to evaluate that information. This guide begins the educational process by presenting a framework for understanding mediator competence. In this guide, we suggest questions and points to consider when you are selecting a mediator. We anticipate that the guide will need to be updated as our knowledge grows and our experience broadens.

## **How to Use This Guide**

Feel free to mark the guide up. Use the checklists as you go. Don't feel that you must use all the information or go through all the suggested steps; use what seems most helpful.

For more information, contact :

**NE SPIDR**  
**c/o American Arbitration Association**  
**133 Federal Street**  
**Boston, MA 02110-1703**  
**telephone (617) 695-6050**

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## I. Purpose of This Brochure

This guide is for anyone looking for a mediator. It will be especially useful to consumers and people who have been referred to mediation and who must choose their own mediator. Our intention is to prepare the consumer for a dialogue with mediators regarding the consumer's specific

needs and expectations and the services which may be provided by the mediators.

This guide does not explain mediation or alternative dispute resolution (ADR) in detail, although a consumer needs at least a basic understanding of mediation to profit fully from this guide. To learn about mediation, consult books, articles and pamphlets at your local library, community mediation center, courthouse, bookstore, mediator's office, or your state's mediation association.

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

## II. What Qualifications Does a Mediator Need?

Qualifications refer to the amount and type of training, education and experience possessed by a mediator. In some states, courts or legislatures impose training or experience standards on mediators who practice in state or court-funded mediation programs. In most states, a person can offer private mediation services without taking a class, passing a test or having a special license or certification. In reality, however, many private mediators, and most of those who

work for or are associated with mediation organizations and programs, have some training or experience.

Most mediation programs impose their own training or experience standards

**Certification** recognizes that a person has completed a specific level of education or training, or has attained a specific amount of experience. In some cases, it recognizes that a person has achieved a particular level of skill in performing certain functions. Public, private, professional or educational bodies may certify.

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on mediators. For example, community mediation centers often require their volunteers to complete a certain amount of mediation training before handling cases.

Some national and local mediation membership organizations set training and experience requirements and ethical standards for their practicing members.

### **III. What Makes a Competent Mediator?**

There is no universal answer to this question. No particular type or amount of education or job experience has been shown to predict success as a mediator. Mediation training providers may give a certificate of completion of training to participants, but the training alone is not a guarantee of competence. Keep in mind that successful mediators come from many different backgrounds.

Competence depends partly on the context of the dispute and the parties' expectations. It also depends on whether the mediator has the right mix of acquired skills, training, education, experience and natural abilities to help resolve the specific dispute. Important skills include the ability to remain neutral, the ability to communicate, the ability to listen and understand, and the ability to define and clarify issues.

### **IV. Five Steps to Choosing a Qualified Mediator**

Because no formula can predict mediator competence, the consumer must do some groundwork before selecting a mediator. First, you must understand the mediation process. After you understand the basics, you can use the following process to choose a mediator:

#### **Checklist: Five Steps to Choosing a Mediator**

- |   |                          |
|---|--------------------------|
| <b>1. Decide what you want from mediation</b>         | <input type="checkbox"/> |
| <b>2. Get a list of mediators</b>                     | <input type="checkbox"/> |
| <b>3. Look over mediators' written qualifications</b> | <input type="checkbox"/> |
| <b>4. Interview mediators</b>                         | <input type="checkbox"/> |
| <b>5. Evaluate information and make selection</b>     | <input type="checkbox"/> |

These steps are described on the next pages. Remember during your search that a mediator should remain neutral and treat both parties with fairness and respect.

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## **Step 1. Decide What You Want from Mediation**

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

Think about your abilities. What are your strengths and weaknesses as a negotiator? What are the other party's strengths and weaknesses? What are your emotional limitations? Do you expect the mediator to help you stand your ground if the other person negotiates better than you or has more "power"? Thinking about these issues is especially important if there is a power imbalance between you and the other party. If there has been abuse or violence between you and the other party, please read the Domestic Abuse section on page 9.

Think about the dispute and the context in which you must resolve it. For example, is it a commercial dispute between experienced insurance company representatives or is it a divorce involving an emotional child custody decision? The approach or model that commercial disputants might prefer may differ greatly from the one preferred by disputing parents. What is the time frame for resolution?

Consider your budget. How much you can spend might limit your choice of mediator or mediation program.

### **Step 1: Decide What You Want from Mediation**

- **Mediator's approach**
- **Assess your abilities**
- **What is your time frame?**
- **What is your budget?**

## **Step 2. Compile a List of Names**

You can get a list of mediators from several sources.

**Word of Mouth.** Ask a friend, your attorney, your therapist, a clergy member or contact your local court for names of mediators in your area. Talk to people who have been in a mediation with the mediator. What was their case about and what were their impressions of the mediator?

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**Directories.** Check local listings in the Yellow Pages under “Mediation Services.” Martindale-Hubbell publishes a national Dispute Resolution Directory containing the names of about 60,000 service providers. State and local mediation organizations maintain directories of member-mediators. A directory of NE SPIDR members can be obtained by contacting NE SPIDR. See contact information at end of brochure. Also, some bar organizations publish directories of ADR providers.

**Community Mediation Centers.** Over 300 mediation or dispute resolution centers offer services throughout the country. Most train and supervise volunteer mediators and do not charge the public for their services. Look for a center in your area.

### **Step 2: Get Names**

- **Ask people and professionals whom you know**
- **Check directories**
- **Call your local mediation center**

### **Step 3. Evaluate Written Materials**

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

**Mediation Training.** How was the mediator trained? Some mediators receive formal classroom-style training. Some participate in apprenticeships or in mentoring programs. Did the training include lectures, role-playing and skills evaluations? While training alone does not guarantee a competent mediator, most professional mediators have had some type of formal training. How many hours of training has this mediator had? How recent was the training?

**Experience.** Evaluate the mediator’s type and length of experience (including number of years of mediation, number of mediations conducted and types of mediations conducted). How many cases similar to yours has the mediator handled?

**Written Materials.** Some mediators will write up notes about agreements or even draft agreements for the parties. If your mediator will prepare written materials, you may want to review a sample. Samples could include letters, articles or promotional materials. Any sample of the mediator’s written work should be clear, well organized, and use neutral language. Agreements or contracts should

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have detailed information about all items upon which the parties have agreed.

**Fees.** Understand the mediator's fee structure. Does the mediator charge by the hour or by the day? How much per hour/per day? Does the mediator charge for time spent preparing written work outside of the mediation session? Some mediators offer an introductory or orientation session after which the parties decide whether they wish to continue. Is it offered at no cost, reduced cost, or otherwise?

**Other Considerations.** Find out whether the mediator carries professional liability insurance which specifically covers mediation. Has the mediator received "approvals", and if so, from whom? Does the mediator belong to a national or local mediation organization, and is the mediator a practicing or general member? Cost may prevent some competent mediators from joining organizations, applying for approvals or carrying liability insurance.

If you are using mediators from a community mediation center, you may want information about the center. How long has it been in operation? How does the center select volunteer mediators? How does it train the mediators? How are the mediators supervised? What types of cases does the center handle?

### **Step 3: Evaluate Written Materials**

- **Training/Education: How much? What kind? How recent?**
- **Experience: What kinds of disputes? How many mediations?**
- **Written materials (if available): Complete? Concise?**
- **Fees: Hourly? Daily? How much?**
- **Other considerations: Affiliations? Approvals?**

### **Step 4. Interview the Mediators**

Begin your interview process with a meeting (or initial telephone interview). During the interviews, observe the mediators' interpersonal skills. Look for good verbal and non-verbal communication skills and the ability to listen and clarify issues. You may want to ask questions about matters covered in the written materials. Some topics which you may want to discuss during the interview are:

**Training, Knowledge and Experience.** Ask the mediator, "How has your education and experience prepared you to help us work

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out this specific dispute?" If the mediator has had formal training, did it include role-playing (in simulated disputes) and observations of skilled mediators? While training and education do not guarantee competence, mediation training is most effective when it includes practice-oriented segments such as role-playing and observation.

Ask "Do you participate in continuing education? Do you receive on-going supervision or evaluation?" Many professional mediation organizations encourage or require their members to participate in on-going education or other professional development.

Ask "Do you think subject-matter experience is necessary for this dispute? Why or why not?" In some cases, the parties may prefer a mediator with no special knowledge of the subject. Benefits of this approach include avoiding a mediator's pre-conceived notions of what a settlement should look like and letting the parties come up with unique or creative alternatives. However, when the subject of a dispute is highly technical or complex, a mediator with substantive knowledge may help the parties focus on the key issues in the dispute.

**Style.** Ask "What values and goals do you emphasize in your practice?" For example, does the mediator encourage the parties to speak directly to each other? Remember that different mediators may practice their craft in different ways, although some mediators can change their style to suit the parties' specific needs.

Another stylistic difference is the use of caucus. A caucus is a private meeting between the mediator and just one of the parties. Some mediators caucus frequently during the mediation process, while others seldom or never use this procedure. Ask the mediator whether s/he uses caucuses, and if so, when.

If the mediator is affiliated with a mediation program or organization, ask what values and goals the program emphasizes. How are cases screened and scheduled for mediation?

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

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**Standards of Conduct (Ethics).** Standards of conduct do not regulate who may practice, but rather create a general framework for the practice of mediation. National mediation organizations have adopted standards of conduct to which their members must adhere.

**Confidentiality.** Ask, "To what degree will this mediation process be confidential?" The mediator may have a written confidentiality agreement for you and the other party to read and sign. If the mediation has been ordered by the court, ask the mediator whether s/he will report back to the court at the conclusion of the mediation. Will the mediator share the comments you make during private caucus with the other party? If the parties' attorneys are not present during the mediation, will the mediator speak with them?

**Logistics.** Who will arrange meeting times and locations, prepare agendas, etc.? Will the mediator prepare a written agreement or memorandum if the parties reach a resolution?

**Cost.** Ask, "How would you estimate costs for this case? How can we keep costs down?" Are there any other charges associated with the mediation? Does the mediator perform any pro bono (free) services or work on a sliding fee scale? Will the fees change if more than one mediator attends the session ("co-mediate")?

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

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

If you decide to try mediation, it is important to let the mediator know about the abuse or violence and the fears you may have. If there is an active restraining order, make sure the mediator knows about it before the first session.

Ask what domestic violence training the mediator has had and if the mediator has worked with similar cases. Ask whether or not the mediator believes your case is suitable for mediation and why. Ask

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how the mediation process can be modified to insure fairness and safety. Can the mediation be done by telephone or in separate sessions ("shuttle mediation")? Should a support person (domestic violence advocate or your attorney) be present during the mediation? If your case is not suitable for mediation, what are your alternatives? Ask for referrals to other resources, such as a local domestic violence counselor.

#### **Step 4: Interview the Mediators**

- **Training /Experience**
- **Mediators' style/Approach**
- **Ethical standards**
- **Confidentiality**
- **Logistics: meetings, written agreements**
- **Cost**
- **Special Considerations: Domestic Abuse**

#### **Step 5. Evaluate Information and Make Selection**

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

- ◆ gathering background information,
- ◆ helping the parties communicate,
- ◆ referring the parties to other resources when appropriate,
- ◆ analyzing information and clarifying issues,
- ◆ exploring agreement options,
- ◆ managing cases, and
- ◆ drafting documents as appropriate.

Ask yourself which of the mediators best demonstrated these skills. Did the mediator understand your problem and what you feel is important? Did s/he understand your questions and answer them clearly? If the other party was present, did the mediator constructively manage any expressions of anger or tension? Did the mediator convey respect and neutrality? Did you trust the mediator? Did the mediator refer you to other helpful sources of information? Did the mediator ask questions to find out whether mediation is preferable or appropriate? Did s/he identify the issues? Of course, not every orientation interview permits the mediator to demonstrate all these

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skills, and every mediator has relative strengths and weaknesses. In selecting a mediator, you should be satisfied that the mediator can perform these tasks for you.

Review all the information gathered in your interviews. When selecting a mediator, make sure that the mediator's fees and availability coincide with your resources and time frame. The other parties to the mediation must agree to work with this mediator, too. You may want to select two or three acceptable mediators so that all parties can agree on at least one.

**Step 5: Evaluate**

- **Does the mediator have the qualifications and skills you want?**
- **Can you afford the fees?**
- **Can the mediator work within your time frame?**
- **Will the other parties agree to this mediator?**

**V. Summary**

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

**NOTES**

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## For More Information

For further information, contact:

**The New England Society of Professionals in Dispute Resolution (NE SPIDR)** is a chapter of SPIDR International. Chapter programs include presentations, panels, forums and workshops, as well as an annual all-day conference. These events address timely alternative dispute resolution issues and are presented by qualified and experienced professionals who advocate innovative means for expanding the use of ADR methods to resolve a wide range of interpersonal, community, commercial and public policy disputes. For a NE SPIDR membership directory, please call or write:

NE SPIDR  
c/o American Arbitration Association  
133 Federal Street  
Boston, MA 02110-1703  
telephone (617) 695-6050

**The Society of Professionals in Dispute Resolution, International (SPIDR)** is a non-profit organization promoting the use of alternative dispute resolution throughout the United States and other countries. SPIDR has issued two reports on mediator qualifications. Both draw on the observations of practitioners and consumers, the policies and personal goals of the SPIDR membership, and research attempting to quantify the combination of skills, training, education, experience and other attributes in a good mediator. Call or write:

SPIDR  
815 15th Street, NW; Suite 530  
Washington, DC 20005.  
telephone (202) 783-7277  
fax (202) 783-7281

## **Quick Reference**

### **Step 1: Decide What You Want from Mediation**

- Mediator's approach
- Assess your abilities
- What is your time frame?
- What is your budget?

### **Step 2: Get Names of Mediators**

- Ask people and professionals whom you know
- Check directories
- Call your local mediation center

### **Step 3: Evaluate Written Materials**

- Training/Education: How much? What kind? How recent?
- Experience: What kinds of disputes? How many mediations?
- Written materials (if available): Complete? Concise?
- Fees: Hourly? Daily? How much?
- Other considerations: Affiliations? Approvals?

### **Step 4: Interview the Mediators**

- Training /Experience
- Mediators' style/Approach
- Ethical standards
- Confidentiality
- Logistics: meetings, written agreements
- Cost
- Special Considerations: Domestic Abuse

### **Step 5: Evaluate**

- Does the mediator have the qualifications and skills you want?
- Can you afford the fees?
- Can the mediator work within your time frame?
- Will the other parties agree to this mediator?