

■ DISPUTE RESOLUTION

The focus is on removing barriers to the practice

By John Bickerman
SPECIAL TO THE NATIONAL LAW JOURNAL

FOR THE PAST 20 years, the legal community has been told to expect a tidal wave of mediation and arbitration that will affect the way American society resolves disputes. Trials were going to become a poor stepchild of a robust system of consensual dispute resolution processes that would be more efficient, produce better solutions and leave fewer scars on the participants.

It's true that we have seen some notable successes along these lines. It is hard to find a court that doesn't require spouses seeking divorce to mediate custody issues, for example. The awareness that trials are an imperfect and, at times,

toxic way of managing family disputes has been perhaps the greatest spur to growth of our field. Small claims also are routinely sent to mediation. And federal policy at every branch of government has encouraged or mandated alternative dispute resolution.

So why are there so many more mediators looking for work than there is work for them to do?

Instead of creating barriers to entry that limit the number of mediators and arbitrators, the dispute resolution field must take a hard look at the demand for its services and determine how better to meet the needs of its consumers. One major initiative of the Section of Dispute Resolution this year will be the work of the Task Force on the Quality of Mediation. The task force has drawn its members from a broad array of the legal community, including the plaintiffs' and defense bars, academia and accomplished mediators.

The task force already has held three focus groups that included different consumers of mediation. Preliminarily, the members of the task force learned that the traditional model of mediation may not be what sophisticated consumers expect. This in turn may call into question the manner in which we train mediators. More sessions are planned, but the work is exciting and may very well lead to a meaningful re-examination of the mediation field. (Anyone who would like to participate in this effort is encouraged to contact me directly at the e-mail address below.)

The section is the undisputed leader in the field of dispute resolution, having
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more members than any professional organization of dispute resolution professionals, and, more importantly, being the pre-eminent force in setting public policy in the field. In the year ahead, the task force will build upon its successful collaboration with the Section of Litigation in winning House of Delegates approval last August for model standards of mediation, and earlier work with the National Conference of Commissioners of Uniform State Laws in developing the Uniform Mediation Act.

Furthermore, the association's Section of Dispute Resolution has recently banded together with several public interest groups to lobby Congress against ill-conceived federal consent legislation that would eviscerate the ability of federal agencies to enter into consent agreements.

Pro bono and diversity also will continue to be priorities in the coming year. The section will initiate a pilot project with the Legal Aid Society of the District of Columbia to provide free mediators to resolve disputes between individuals who cannot afford legal assistance.

Additionally, the section will reach out to underserved populations, especially the American Indian community, which often have been ignored by the established legal community.

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