

**OMA MEDIATION  
QUALITY ASSURANCE  
TASK FORCE**

**Final Report  
Executive Summary**

**October 29, 2007**

**with**

**Post Conference Note**

## Executive Summary

*The 2007 Task Force encourages the reader to first review this Executive Summary (pages 5-13) to get an overview of this important and intertwined subject. Then, for those readers who are intimately familiar with the subject, feel free to go directly to the 2007 Task Force Recommendations found at Section V, below, Page 38). For those who would like to understand the historical context, please start at the beginning of the Report (Page 14) for a chronological and progressive treatment of this issue.*

The 2007 OMA Mediation Quality Assurance Task Force respectfully presents this final report for the Board's consideration. The August 12, 2007 draft of this report was reviewed by the Board and it provided approximately 45 comments. This final report responds to those comments and represents the final work of the Task Force.

The Report was written by the Task Force in sections and stages. Because of deadline pressures, the members deferred to the judgment of the Task Force reporter to make final editing and stylistic decisions. However, the substantive recommendations enjoy the unanimous agreement of the Task Force members.

The Task Force notes that the recommendations are conceptual in nature. The Task Force does not believe that the specific details of each recommendation need to be implemented lock step. The reasoning and rationale were supplied for context. The details surrounding the recommendations can and should be explored to further frame the conversation – not to end it. However, the proposal is quite modest and reflects the Task Force desire to see something more done than the status quo surrounding the issue of “quality enhancement,” the term it prefers over “quality assurance.”

Since the demise of the Oregon Dispute Resolution Commission, the Oregon courts and the Oregon Department of Justice have taken action on this issue. (See, e.g. [Use Chief Justice's Order in Appendix 8](#)) and OR DOJ/DAS requirements at <http://www.doj.state.or.us/adr/index.shtml>.) If anything more is desired, then OMA is in the perfect position to implement those portions of its Strategic Plan involving “Quality Assurance Goals and Strategies,” (<http://www.mediate.com/oma/pg75.cfm>) which state:

- F. Mediators are competent to provide appropriate services.
  - 1. See Goal A under Education, (Support ongoing quality education for mediators),
  - 2. Develop process for identifying issues and exploring OMA's role regarding mediator competency
  - 3. Convene a task force to develop quality assurance recommendations to the board
  - 4. Determine which quality assurance recommendations to implement and how in the context of OMA's Core Standards of Mediation Practice.

## **I. Charge (Section I, Page 14)**

The OMA Board decided that it was time to revisit the mediator qualifications/competency issue. As a result, it created and charged the Quality Assurance Task Force (Task Force) as follows:

**Charge:** Identify issues and explore options surrounding mediator quality and competency, consider possible roles OMA might play, and develop options for consideration by the OMA board.

- 1) Investigate mediator quality and competency developments in other jurisdictions
- 2) Identify needs and issues in Oregon
- 3) Gather appropriate stakeholder input for development of concepts and recommendations
- 4) Explore options for engaging stakeholders at later implementation stages (if any)
- 5) Develop multiple concepts involving OMA and others, including implications and how they might be implemented by OMA

***2007 QA Task Force Note:** The 2007 Quality Assurance Task Force reviewed the invaluable work of OMA's 1998 Work Group and the excellent work of other organizations since then. The options and reasoning that applied when those reports were written are largely the same that exist today. Additionally, the Task Force concluded respectfully that there were insufficient resources to accomplish its full Charge within the Board's suggested timeframe unless it picked up where others left off, updated that work, and "Oregon-ized" their analysis and recommendations.*

*We also considered the "real world" practical issue surrounding implementation and concluded that only modest steps are viable at this time. Based on the experience of the OMA 1998 Work Group's efforts, even our limited recommendations could be a one to two year process and will be resource-intensive. Frankly, this Task Force does not see any other viable option for moving forward in the near term other than the ones it proposes below.*

*Finally, it thinks the Board should consider this report on an interim basis, explore the recommended approach, and provide further direction before other activities are pursued actively. As a result, the Task Force did not address the following Charge elements:*

- 1) *Rather appropriate stakeholder input for development of concepts and recommendations*
- 2) *Explore options for engaging stakeholders at later implementation stages (if any)*
- 3) *Develop multiple concepts involving OMA and others, including implications and How they might be implemented by OMA*

***Please see Report, pages 16 – 20, for Oregon Background and the National Perspective***

## **II. 2007 Task Force Assumptions, Basic Premises and Additional Considerations (Section IV. A, Page 21)**

The 2007 Task Force recommendations were based on the following assumptions, basic premises and considerations. The Board should explore these statements, assess their level of agreement/disagreement, and discuss next steps with a common understanding of these principles before it moves forward, one way or another.

1. The Task Force recognizes that the issue of “Quality Assurance” has been in limbo in Oregon. It is important for Oregon’s field of mediation to keep up with developments elsewhere in the nation. The field of mediation will continue to evolve and quality “assurance” actions by OMA should respond to this evolution. OMA should assume the professional responsibility of leadership in the QA field. It should be the driving force behind this locally, but should do so by carefully considering national trends as they continue to evolve.
2. The goal of mediation quality “assurance” is to benefit both the parties using mediation and the mediators. Mediators themselves know what constitutes good practices. We should become self-monitoring, rather than controlled or certified by other entities.
3. Conclusions and outcomes designed to improve mediation quality should clarify the essential components of a good mediation process while allowing for the legitimate diversity of styles and approaches that exist in this field. Quality “assurance” efforts should be directed towards the mediators, the end users, and the agencies and programs that employ and select mediators.
4. Nevertheless, the Task Force recognizes that even with quality “assurance” mechanisms in place, below-standard mediators cannot be prevented from mediating, because licensure is not practical at this time because it is not clear that we, as a field, are willing to embrace the costs and regulation that this would portend.
5. OMA should not restrict the right of parties to choose any person they can agree upon to assist them in solving their problem. Diversity of approaches and methods is important to practitioners and the field, as well as end users. Cultural competency is desirable and necessary for effectiveness.
6. The Task Force acknowledges that not everybody who mediates should be mediating, but voluntary certification exposes all who participate in ADR activities to issues and approaches concerning the provision of quality services.
7. Quality standards can be created for OMA membership and this will contribute to the advancement of the quality standard initiative. Mediators who fulfill the certification of completion requirements, i.e. having voluntarily demonstrated training, education, and experience, will have been exposed to the concepts of the provision of quality services and have been socialized into a culture that emphasizes quality services.

8. While OMA cannot assure quality, it can articulate the core training, ethical standards and experience requirements that are components of good mediation practice, create a process for responding to and learning from consumer complaints, and help mediators to become more self-reflective and self-monitoring.
9. No single path or profession is the only way to prepare for this work. Additionally, initial entry requirements must be followed by continuing efforts by mediators to keep up with the field. Good mediation requires ongoing training, education and experience.
10. The various uses of mediation (public policy, family, small claims, etc.) require some variations in preparation and process, and may require additional training, education, supervision, or on-going updating.
11. It is crucial to enhance quality mediation where parties must mediate and where those parties cannot choose their mediators. The less the parties have choice regarding which mediator they use, the more important it is that the mediators be adequately trained and monitored. Much of this responsibility to enhance mediator competency rests with the organizations that oversee these mediation programs. The 2007 Task Force opines that these organizations (courts and neighborhood programs) do a good job of training and mentoring mediators. However, if OMA set a higher foundation for quality enhancement it would become the de facto base, and all programs and the private sector would likely strive to meet those criteria deemed likely to enhance quality.
12. The Task Force recommends not pursuing performance-based testing at this time, but closely following national trends surrounding this issue.

*Please see Report, pages 23 – 31, for Motivating Issues, Evidence of a Problem, Brainstorming Options, Areas of Interest, and Categories of Options*

### **III. Consideration Of 1998 OMA Work Group Options (Section IV. H, Page 31), Conclusions (Section IV. I, Page 34), and Key Questions (Section IV. J. Page 35)**

The 2007 Task Force reviewed the options explored by its 1998 predecessor. Those options included:

1. Certification of Training Completion,
2. Certificate of Competence,
3. Licensure,
4. Public Education, and
5. “Do Nothing.”

The 2007 Task Force agrees with the 1998 conclusions that the licensure and “do nothing” options did not require further discussion at this time, and it adds the following:

1. The Certificate of Training Completion recommendation from the 1998 Report is the most analogous concept to what this Task force is recommending.
2. The Task Force is not recommending Certification of Competency at this time.
3. Public education is already being done, but could be refocused and/or supplemented to address the suggested construct if there is a sufficient consensus and resources to move forward.

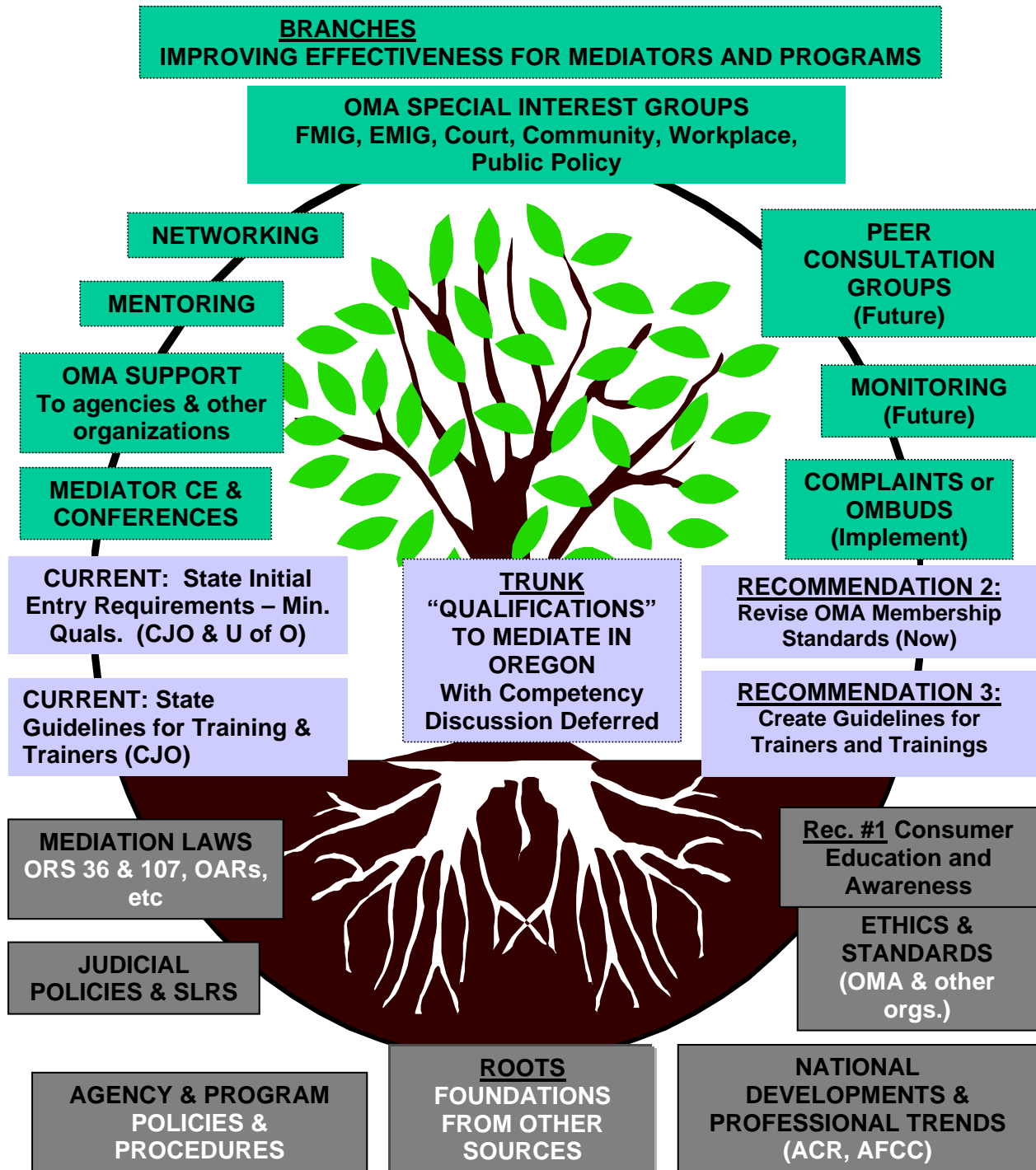
Finally, the 2007 Task Force considered the 1998 Work Group’s “Key Questions for Future Work in the Area of Competency” and concluded a further exploration of those questions would mire the discussion in needless dithering and paralyze the effort to accomplish what is doable in the present. Restated, answering them will not further the discussion because consensus is unlikely, the effort to answer all of the questions would take too long, the results would lead to a paradigm shift that the field is not truly ready for, and if it was, the resources are not available to pursue the process to completion at this time.

*Please see Report, pages 38 – 44, for an Overview of the Task Force’s Recommendations*

#### **IV. Specific Task Force Recommendations (Section VI, Page 45)**

The 2007 Task Force recognizes that with the demise of the Oregon Dispute Resolution Commission (ODRC) a vacuum was created, which made it more challenging for the field to advance and grow OMA should step in, continue ODRC’s work, and advance the issue of quality enhancement. It is not realistic to think that OMA can prevent individuals from practicing mediation. However, if OMA does not take affirmative action, some other entity (likely the courts as has been done in other states e.g. Florida and Maryland) will control the conversation and outcome by creating programs and setting standards that become the de facto minimum qualifications for all mediators, even if those mediators do not mediate in a court-annexed program. The time for OMA to take action is now.

# Oregon Mediation Association Quality Enhancement Initiative



*Conceptual framework is adapted from the Maryland Judiciary Mediation and Conflict Resolution Office (MACRO), Mediator Excellence Council's MPME Tree.*

The Task Force’s proposal is designed to educate the public and promote OMA mediators who have demonstrated training, education, and experience that manifest a reasonable likelihood that the member can provide quality services. While not a competency certification or licensure, it is the next logical step for the field in Oregon.

Our specific recommendations follow, and as a whole, we recommend they be referred to as **“OMA’s Quality Enhancement Initiative.”**

### **A. Consumer/Public Education (Section VI, Page 45)**

OMA should take more steps to aid those seeking assistance in solving their problem by providing more information about what situations are best handled by mediation, the characteristics of a good mediator, and lists of those persons who have complied with OMA’s Quality Enhancement Initiative. Examples include OMA’s website at <http://www.mediate.com/oma/pg25.cfm>. Additionally, the Oregon State Bar has information on mediation that can be found at <http://www.osbar.org/public/legalinfo/disputes.html>. Mediation programs should provide this kind of information as an integral part of their services. More specifically, the Task Force recommends that OMA make ongoing efforts to promote a better consumer understanding of what quality mediation is by informing them about OMA’s quality standards for mediators. The Task Force recognizes the work of OMA’s Advocacy Committee and supports their efforts.

Specifically, the 2007 Task Force suggests a new fee structure (see Section VI. F.1.) dedicated to marketing the value of “OMA Recognition of Practitioner Status,” discussed in the next section. This will create “value added” “brand recognition” if you will. Restated, OMA should target educational efforts to encourage the consumers of mediation services to consider selecting a mediator with “OMA Recognition of Practitioner Status.” This is because mediators who fulfill the requirements, i.e. having voluntarily demonstrated training, education, and experience, have been exposed to the concepts of the provision of quality services and have been socialized into a culture that emphasizes quality services.

### **B. Tiered OMA Membership (Section VI, Page 46)**

The Task Force recommends a tiered OMA membership approach with specified requirements demonstrating increasing levels of voluntary certification of compliance with **“OMA’s Quality Enhancement Initiative.”** The Task Force does not recommend that the word *assurance* be used because it might overstate the predicted results that would flow from the implementation of these recommendations.

For the same reason, the 2007 Task Force explored various terms that could be used to describe what a member received and what they could call themselves if they complied with the Task Force’s recommendations. We recommend that they receive a document (not a “certificate”) entitled, **“OMA Recognition of Practitioner Status,”** and that the recipients could say they were either an **“OMA Mediator Practitioner,”** or an **“OMA Advanced Mediator Practitioner,”** as appropriate. Recipients would not be able to say they were certified, approved, endorsed, or any other term that implies that OMA has assessed their competency.

1. OMA should adopt a construct that is similar to the 1998 Work Group “Certification of Completion” option. The proposed categories of OMA membership are conceptually described and distinguished as follows with each category having increasing types and amounts of requirements:
  - A. **OMA Member** (Current requirements for individual and organizational/program membership)
  - B. **OMA Mediator Practitioner** (See, e.g. Use Chief Justice’s Order as basis with serious consideration to raising those requirements for this category. See also, ACR “*Portfolio*” *Requirements of Certification Applicants*” at <http://www.acrnet.org/about/taskforces/certification.htm>), OR DOJ/DAS requirements at <http://www.doj.state.or.us/adr/index.shtml>, and Oregon Office for Community Dispute Resolution at <http://oocdr.uoregon.edu/docs/cdrrules.pdf>.)
  - C. **OMA Advanced Mediator Practitioner** (More requirements than “Mediator” category. Consider looking to the U.S. Institute for Environmental Conflict Resolution’s program as an example of increased requirements, which can be found at [http://www.ecr.gov/roster/r\\_entry.htm](http://www.ecr.gov/roster/r_entry.htm).)
2. In all categories, the OMA Core Standards should be referenced and each practitioner should agree to “abide by [those] Core Standards when serving as a mediator.” This is an important leg of the quality enhancement stool.
3. OMA should more actively promote, provide, and require continuing education activities for mediators in each “practitioner” membership category.
4. Specific requirements for each “practitioner” category should be designed to improve mediation quality and clarify the essential components of a good mediation process while allowing for the legitimate diversity of styles and approaches that exist in this field. The Task Force awaits Board direction before embarking on any discussion of the specific “practitioner” requirements. That endeavor will be a long, burdensome and potentially contentious process that may be unnecessary if the Board does not support pursuing this overall construct.
5. There should be a mentoring requirement as part of “practitioner” status. OMA Advanced Mediator Practitioners should mentor OMA Mediator Practitioners, and they should mentor OMA members.
6. This will also require “practitioner” status compliance and de-compliance mechanisms that may best be referred to the Standards and Practices Committee to develop. In the interim, the recommendation is for a review of a randomly selected number of practitioners from each category to do a “spot audit” to assess the need for more rigorous monitoring.

*Please see Report, pages 51 – 54, for Rationale and Concerns*

### **C. Guidelines for Trainers and Training (Section VI, Page 54)**

OMA should establish and publish guidelines for the training of mediators and list those scheduled trainings where the provider voluntarily certifies they have met the guidelines, which would be developed later assuming the Board approves the Task Force’s recommendations. Existing work that might be incorporated includes:

1. Recommend definition of required training components (Basis: Chief Justice Order 05-028 outlining training curriculum – Section 3.2., and Oregon Office for Community Dispute Resolution, OUS/UO Chapter 571, Division 100, Rules Governing the Community Dispute Resolution Program. They can be found at <http://oocdr.uoregon.edu/docs/cdrrules.pdf>.
2. Develop a “practitioner-like” status process for trainers. If a decision is made to do so, see Chief Justice Order 05-028 outlining trainer requirements – Section 3.2 (4).
3. Explore continuing mediator education corresponding to the recommended levels of OMA membership (see, Recommendation B), operational criteria and generic requirements to obtain continuing education. A model for approving programs can be found at the Oregon State Bar’s website: <http://www.osbar.org/docs/rulesregs/mclrules.doc>.
4. Define comity and reciprocity requirements for non-OMA trainings (e.g. out of state, Oregon State Bar, ACR, etc.).

### **D. Mediator Complaint Process (Section VI, Page 54)**

OMA should recognize and support the continued implementation of the OMA complaint process (an important element of OMA’s Quality Enhancement Initiative) in order to maintain and raise quality standards. This free or low cost service to assist those parties who encounter problems with mediation or similar service provided by an OMA member will help improve mediation in Oregon, educate the consumers, and further educate mediators. OMA’s Standards and Practices Committee is very close to launching such a program. Information can be found at <http://www.mediate.com/oma/pg77.cfm>.

### **E. Defer Competency, Licensure, and Program Competency Discussion (Section VI, Page 55)**

This Task Force does not endorse a system of “certification of competency” at this time. This process should not begin before the “**OMA Recognition of Practitioner Status**” construct has been implemented and we have experience with the model that can be evaluated. If that process cannot be implemented successfully, any “competency” model would likewise be unsuccessfully implemented at this time. Additionally, the Task Force is not currently aware of viable

performance-based testing that could be implemented as part of such a competency construct. This future endeavor might take the form of a competency-based approval process, such as Canada does, or some form of universal mediation testing, as was discussed a number of years ago (some beta testing of a paper/pencil instrument).

After OMA has experience with this new construct, the Task Force recommends OMA continue to monitor national trends, etc., and when appropriate, explore a Certification of Competency construct. Oregon needs to keep up with and ahead of the national trend as we have been slipping behind the curve over the last several years. Many other states have taken action in this area, while we have not. (See, e.g. Appendix 6). The field of mediation will continue to evolve and quality enhancement actions by OMA should respond contemporaneously to this evolution, recognizing however, that most states allow anyone to mediate outside of court-connected or certain publicly funded programs.

## **F. Implementation (Section VI, Page 55)**

The implementation of the Task Force's recommendations will be time, money and resource intensive. As a result, the OMA Board should consider a business plan that includes a fee structure based on tiered membership and service categories to provide resources sufficient to support the additional staff time necessary for the plan's implementation.

## **V. Next Steps (Section VIII, Page 58)**

The OMA Board should consider this Report and decide on next steps, which should involve outreach to the membership, perhaps at this year's annual meeting. ...

## **VI. Conclusion (Section IX, Page 59)**

The 2007 OMA Task Force recognizes that with the demise of the Oregon Dispute Resolution Commission (ODRC) a vacuum was created, which made it more challenging for the field to advance and grow. OMA should step in, continue ODRC's work, and advance the issue of quality enhancement. It is not realistic to think that OMA can prevent individuals from practicing mediation without licensure. However, if OMA does not take affirmative action, some other entity (likely the courts as has been done in other states e.g. Florida and Maryland) will control the conversation and outcome by creating programs and setting standards that become the de facto minimum qualifications for all mediators, even if those mediators do not mediate in a court-annexed program. The time for OMA to take action is now.

The Task Force's proposal is designed to educate the public and promote OMA self-certified mediators as having demonstrated training, education, and experience that manifest a reasonable likelihood that the member can provide quality services. While not a competency certification or licensure, it is the next logical step for the field in Oregon.

**Respectfully Submitted on October 29, 2007**

## POST-CONFERENCE NOTE

The Task Force would like to clarify one aspect of its report. While the Oregon Judicial Department (courts), the Oregon Department of Justice (public entities), and the University of Oregon (community mediation) have already adopted minimum requirements to meditate in and for their programs, we do **not** believe any of them plan to affirmatively step in and fill the entire void created by the demise of the Oregon Dispute Resolution Commission (ODRC). While the Portland State Hatfield School of Government (public policy) has yet to adopt requirements and the Oregon State Bar is not likely to do so, we do **not** believe they plan to fill it either. Restated, they do **not** intend to control the field of mediation in Oregon in the regulatory sense of the term.

However, the practical result of what they have done, will do, or could do is create de facto standards for competency, and control the conversation surrounding mediation in Oregon on an area-by-area basis. These are observations, not criticisms of them. In fact, the Task Force is grateful for what they have done. The question is if it is enough.

If mediators want **more** to happen with mediation in this state, and the Task Force thinks we should, we will have to do it. We believe there should be one umbrella voice **leading (not controlling)** the efforts and progress surrounding the effective use and promotion of mediation in Oregon. We think that voice should be OMA's. OMA should continue all of ODRC's work, advance the issue of quality enhancement, promote mediation, and take a strong statewide leadership role. This will provide needed integration, direction, and efficiencies.

One step in that journey is the Task Force's Quality Enhancement Initiative. It is designed to educate the public and promote OMA self-certified mediators as having demonstrated training, education, and experience that manifest a reasonable likelihood that the member can provide quality services. While not a competency certification or licensure, it is the next logical step for the field in Oregon. This endeavor is consistent with OMA's Strategic Plan and the time for purposeful action by OMA is now regardless of what our partners have done or will do.