

Family mediators may look to new credential

By Deborah Elkins

Published: August 28, 2013

Tags: [ADR](#), [Domestic Relations](#)



When families split up legally, family mediators can keep them working together on common ground such as child-rearing.

This forward-looking practice may be what keeps family mediators reaching for new and better ways to work with other professionals in the evolving mediation marketplace.

Reston-based family mediator Lawrence D. Gaughan, who has observed and practiced family law and mediation in Virginia for over three decades, is working with a new professional association formed last year: the [Academy of Professional Family Mediators](#). The Academy is developing standards to begin its own certification program starting in late 2014, Gaughan said.

The divorce mediation movement started in the late 1970s, but did not gain much momentum until the early 1990s. As the mediation movement developed during the first two decades, "there were hundreds of mediation training courses that produced tens of thousands of would-be mediators," Gaughan said.

Training courses sometimes appeared to promise "almost magical conflict resolution skills and hordes of clients waiting to escape the perils of the adversarial system," Gaughan said. But many trainees never found enough clients to start an active mediation practice, and "far too much amateur mediation" occurred.

Statistics from the Supreme Court of Virginia support Gaughan's observation of a mediation boom-and-bust in the court-based certification program.

[Tables](#) published in February track the rise and fall of the certified mediator labor force, which includes non-lawyers and coverage beyond family mediation. The court first offered certification in 1993, but by 1995, when the first group of certified mediators was up for recertification, a number let their certifications lapse. A total of 2,817 individuals have been certified by the Supreme Court program since 1993, but 2,280 have let their certifications lapse.

As mediators have entered the marketplace, they have found professional support through the Supreme Court and through a variety of organizations, including a national organization, the Academy of Family Mediators.

More family lawyers and retired judges trained in mediation and began to offer mediation services in the early 1990s. Divorce mediation became more professional at the substantive level. AFM merged with other conflict resolution organizations in 2002 to form the Association for Conflict Resolution, which focused on process across a wide range of substantive areas, not just divorce, according to Gaughan. Few family law attorneys and retired judges who mediate joined the AFM or the ACR, he said.

During the past two decades, the greatest growth in family mediation has been with domestic relations practitioners who mediate as a sideline to their law practices, and with groups of retired judges. But they are competing with non-lawyer professionals, some of whom have enough knowledge of the legal side of divorce settlements to carry on successful mediation practices, according to Gaughan.

Family law attorneys need to become acquainted with the range of services offered by the non-lawyer mediators, in order to distinguish themselves in the marketplace and to identify other professionals on whom they can draw in their own mediation practices.

For parenting issues, mental health professionals do custody evaluations and act as parenting coordinators. Vocational specialists come into play when spousal support is at issue. Financial experts, especially accountants, identify and value assets and help couples sort out which property is marital and which is separate.

With a foundation of substantive legal knowledge and litigation skills, a lawyer-mediator is likely to analyze a particular mediation case by trying to predict what a court would do. Gaughan said that one contemporary movement that has helped lawyers get out of their "legal box" is collaborative practice, as fostered by the International Academy of Collaborative Professionals, to which Gaughan belongs. The [IACP includes over 100 members in Virginia](#), a majority of whom are lawyers.

A collaborative practice group allows a lawyer to work directly and on an ongoing basis with other experts. A mental health professional can coach a client in framing realistic goals and constructive participation in the process, while a financial professional can help figure out the dollars and cents issues.

The newly formed Academy of Professional Family Mediators also brings together mediators from the several fields of expertise, to promote professionalism and develop models for family mediation practice.

The Academy will be developing credentials to certify mediators for the title of Professional Family Mediator, under the auspices of the [National Commission for Certifying Agencies](#). Gaughan says this is the first time in the history of family mediation that "there is a credible plan to develop standards and procedures for such certification." Certification by the Academy means that only mediators who are formally certified may use the Professional Family Mediator title, he said.

Gaughan says the "traditional model of 'legal box' settlements" is based on "keeping the case out of court by means of a voluntary agreement," but collaborative practice and professional mediation looks to the parties' needs and desires "beyond just settling the case."

The judicial process does little to encourage express financial planning, Gaughan said. "The formal legal system, through the courts, is accustomed to looking backwards, not forwards." In fact, a court simply may not have the jurisdiction to shape future conduct or events.

As lawyers become more comfortable with thinking outside the "legal box," they can broaden the scope of options they can present to clients, Gaughan said. Lawyers should start by admitting how much they don't know about some aspects of divorce settlements and then identify other professionals who can help them to develop a more comprehensive approach.

Adversarial divorce practice is not going away. There are still unhappy marital partners who will fight tooth and nail, in nasty and wastefully expensive cases, according to Gaughan. And some cases will still settle tidily inside the legal box.

But lawyer-mediators who are aware of the full scope of process methods and substantive settlement options will realize there are cases that can be handled differently and less stressfully, Gaughan said.