

Mediation II –Regulation of Mediation

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REGULATING MEDIATION [consider the up and downside of each]

- **licensing or certification requirement** (still a rarity; some movement toward voluntary certification)
 - o yet one needs a license to be a CPA, Attorney, hair cutter....
- **free market controls** (e.g., track records; sharing of info on Web)
 - o but there may not be equal access to information
 - o this supposes someone has to be a victim of a bad mediator to pave the way for others to learn from their bad experience
- **disclosure requirement** (“repeat player”) to make informed choice
 - o mediator makes full disclosure of relationships
 - o not all players have equal experience in the process
- **public/consumer education** (e.g., AAA, FINRA programs on how the process works)
- **after the fact controls** (e.g., law suits; but statutes and case law may prohibit suits for mere negligence or malpractice)
- **roster requirements** (e.g., organizations like AAA/FINRA have standards to get on their rosters; and they police their rosters)
- **voluntary standards** (i.e., belonging to an accrediting organization like AAA or FINRA)
- **codes of professional standards**
 - o model professional standards for mediators
 - o attorney codes of ethics/conduct
- **mandatory standards imposed by the state** (i.e., court referral programs)
 - o the Small Claims Court Mediation Program
 - o the SDNY mediation program
- **mandatory program standards**
 - o BBB lemon law programs
 - o NYCLA attorney-client fee program
- **training requirement** (e.g., organization or program requires mediator to be trained)