

A Local Official's Guide to
**Selecting a Conflict
Resolution Professional for
Inter-Agency Disputes**

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About the Intergovernmental Conflict Resolution Program

Thanks to generous funding from the JAMS Foundation, the Institute for Local Government offers local officials the Intergovernmental Conflict Resolution web page (www.ca-ilg.org/mediate) and other resources about using alternative dispute resolution techniques for avoiding and resolving disputes between public agencies in the future.

As part of that effort, we are collecting case studies involving alternative dispute resolution from around the country. Please contact the Institute at info@ca-ilg.org or 916.658.8208 with any information that will help us help local officials in this area.

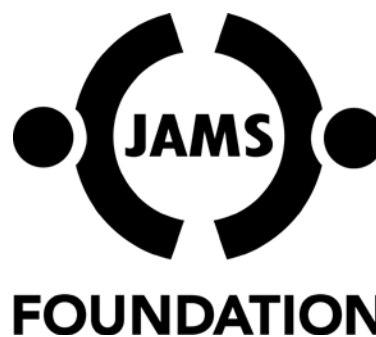


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Overview

Scenario: Two local agencies find themselves in a dispute with one another. Budgets are tight and though both are willing to consider litigation, they are curious whether the dispute can be resolved using alternatives to litigation. How does one go about finding a skilled and qualified conflict resolution professional who can help?

Conflict resolution professionals use a range of approaches including conflict assessment, fact-finding, conciliation and mediation (collectively, alternative dispute resolution or ADR). The nature of the disagreement or dispute will

determine which tool will be most useful. Each of these techniques is available to help local agencies work through and resolve many kinds of problems, conflicts, and disputes. Finding a conflict resolution professional is not unlike finding other kinds of professionals, but there are some nuances to be aware of. This guide outlines a six-step strategy to select the most effective conflict resolution professional for the situation.

Selecting A Conflict Resolution Professional

Jointly selecting a conflict resolution professional is the first step down the path of resolving the dispute.

Sometimes one agency might be wondering about the efficacy of alternative dispute resolution and whether it would be appropriate to present an alternative dispute resolution process to the other agency. One way to gather information is to have a conflict assessment performed that might help the agency determine whether to pursue a more extensive alternative dispute resolution process. An assessment of this nature will be most helpful if performed in the early stages of a dispute.

The purpose of such an assessment is to determine whether a collaborative process should be initiated to resolve a dispute by agreement. The objectives of an assessment are:

- to develop a clear understanding of the facts; to identify the key issues;
- to identify the stakeholders;
- to assess the feasibility of proceeding with an ADR process; and
- if feasible, which process would be most appropriate.

See www.ca-ilg.org/conflictassessment to learn more about assessment services available from the Institute for Local Government.

Many people consider themselves to be conflict resolution professionals, but not all have the appropriate skills, experience and training to manage a dispute between two or more local public agencies. It's a challenge: there are no clear criteria for what qualifies a person to mediate disputes between local agencies, nor is there a formula for determining which one of the qualified mediators is best suited to a particular dispute.

Here are the six steps:

1. Determine the Skill Set
2. Compile a List of Names
3. Evaluate Written Materials
4. Interview Candidates and Check References
5. Compare Competencies
6. Make a Selection

Note that all parties to a dispute should participate in the process of selecting a conflict resolution professional. For more about that issue, skip ahead to Step Six, Make a Selection (Page 10).

Qualities of an Effective Conflict Resolution Professional

To be helpful, a conflict resolution professional must be able to:

- Listen carefully
- Facilitate civil, constructive and effective communication
- Understand the issues giving rise to the dispute
- Help the parties define and clarify their interests and issues
- Understand the environment in which local agencies make decisions and the constraints local agencies face in working through those issues
- Remain impartial
- Handle intense emotions
- Help the parties reach agreement
- Stop the process when it does not seem to be resolving the issues or it seems to be making the dispute more intractable
- Maintain equanimity through tough sessions

Step One: Determine the Skill Set

Steps to Selecting a Conflict Resolution Professional

- ✓ Step One: Determine the Skill Set
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Since a local agency may ultimately decide to use a confidential dispute resolution process, the best practice suggests that local agencies start down this road as openly as possible.¹ Some thought needs to be given to the type of conflict resolution process that is most appropriate for the conflict and to matching the skills of the professional with the process

Fact-finding

Fact-finding works best when the parties' disagreement is about the facts underlying the dispute and this disagreement prevents them from moving forward to resolving the dispute. In the fact-finding process, a conflict resolution professional is hired to provide the parties with a mutual understanding of the facts and issues. A trusted impartial person can assist local officials in developing a common understanding of the facts and in identifying areas of agreement. Fact-finding does not usually involve confidential meetings.

Conflict Assessment

Sometimes a view of the conflict from the eyes of an impartial conflict resolution professional can help local agencies view the dispute from a different perspective and thereby better understand their options for resolving the dispute. Along with an assessment, a conflict resolution professional who is retained to assess the conflict will make recommendations for options to resolve the issues in dispute. Conflict assessment does not usually involve confidential meetings.

¹ The pamphlet called *Alternative Dispute Resolution: Navigating Special Legal Issues in Public Agency Disputes*, available on the Institute's website at www.ca-ilg.org/mediate, includes a sample resolution to use to initiate and alternative dispute resolution process. Typically, the litigation exception to state open meetings laws will allow the decision to use alternative dispute resolution to be made in closed session.

Conciliation

Conciliation or reconciliation opens channels of communication with the help of a “go-between” who helps to fashion informal mutual understandings that local officials may choose to recognize as formal agreements. This is typically a confidential process.

Mediation

Mediation is a more formal process which is especially appropriate when a dispute has clearly formed, when the parties to the dispute can be identified, and when a detailed resolution through a written agreement is desirable.

Sometimes it will make sense to begin with fact-finding or a conflict assessment before moving to conciliation or mediation.

The process agencies choose will influence their selection of a conflict resolution professional. Or, if agencies are uncertain about which process is appropriate, ask the conflict resolution professionals being interviewed for their recommendations, based upon a brief summary of the dispute.

“Conciliation or reconciliation opens channels of communication with the help of a ‘go-between’ ...”

Conflict Resolution Resources

For more information about resolving conflicts between local agencies, please see *A Local Official's Guide to Intergovernmental Conflict Resolution* at www.ca-ilg.org/mediate along with additional information about this topic.

Step Two: Compile a List of Names

Steps to Selecting a Conflict Resolution Professional

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✓ Step Two: Compile a List of Names

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The next step is to find people who might be able to help. Gather names from colleagues, local professional mediation associations, the “yellow pages,” national online resources such as www.acrnet.org and www.mediate.com, and selected community mediation programs. The MuniLink online database of products and services for local agencies also contains listings of conflict resolution professionals (www.cacities.org/munilink).²

Be especially alert for people who have background and experience with public policy disputes or public agency issues. People on the short list should be able to demonstrate that they have the skills, education and experience necessary to mediate or facilitate an intergovernmental dispute.

Disputes among public agencies present unique challenges, including the need to understand and respect public decision-making processes (including group decision-making processes), the role that politics plays in public agency decision-making, and the role that state and federal legal frameworks may play. Candidates should be familiar with how local agencies work and the constraints they and their officials face. Depending upon the nature of a specific dispute, specialized knowledge (such as land use or municipal finance) or experience may be desirable.

² The Institute’s website includes information about the experiences of officials in other states in selecting a mediator. See www.ca-ilg.org/mediate.

Step Three: Evaluate Written Materials

Call or write the conflict resolution professionals on the list and ask for their resume, references and a sample of their written work. These materials should cover most of the following topics:

ADR training

How was the conflict resolution professional trained and by what organization? While training alone does not guarantee a competent conflict resolution professional, most professionals have had some type of formal training. How recent was the training?

Experience

Evaluate the professional's type and amount of experience, particularly as it may relate to the dispute the agency needs help with. In particular, explore the professional's actual experience with disputes between local agencies.

Written work

Some conflict resolution professionals will write up notes about agreements or even draft agreements for the parties. Others do not prepare written agreements or contracts. If written work is one of the services needed, ask to review a sample. It should be clear, well organized and use neutral language.

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Cost

Understand the provider's fee structure. Are charges by the hour or the day? Are there additional costs (for example, expenses) that one should anticipate paying?

References

Do references include local officials who can attest to the professional's experience with cases involving local public agencies? If not, can these be provided?

Step Four: Interview Candidates and Check References

Steps to Selecting a Conflict Resolution Professional

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✓ **Step Four: Interview Candidates and Check References**

Step Five: Compare Competencies

Step Six: Make a Selection

The basic tasks a conflict resolution professional will perform include:

- Gathering background information on the dispute;
- Communicating with the parties and helping the parties communicate with each other;
- Listening carefully;
- Analyzing information;
- Defining and clarifying issues, and helping the parties do the same;
- Problem-solving; and
- Helping the parties find areas of agreement, shared interests and mutually advantageous resolutions.

Note that if the task at hand involves only fact-finding or conflict assessment, then the conflict resolution professional probably will not facilitate communication between the parties.

Different conflict resolution professionals have different styles. Their styles may or may not mesh with the styles or needs of the individuals likely to be involved in the mediation. Learn about such issues by asking questions like:

- What are the most important skills a successful conflict resolution professional possesses? Do you have these skills and, if so, explain how at least one of these skills has helped opposing parties to reach an agreement?
- How do you prepare participants for the dispute resolution process that is chosen?
- How would you describe your style? What values do you emphasize in your practice? Do you generally identify potential solutions or do you support the parties' efforts to do so? Do you never, always or sometimes caucus with individual parties during the ADR process? Do you specialize in one approach? What are some of the strategies that would work for our dispute? What are some of the things that would not work?
- How do you evaluate whether alternative dispute resolution is working?
- What is the most challenging part of resolving a dispute involving local government agencies?

It is usually important that the conflict resolution professional has had experience with local agency-related cases. Ask:

- Describe a dispute involving a local agency that you have helped to resolve. What was the dispute about and how was it resolved?
- Have you been involved in resolving any disputes among local agencies and, if so, what is your sense of how to make intergovernmental dispute resolution as successful as possible for all parties involved?
- How would you suggest that local agencies keep the public apprised of the conflict resolution process, if at all?
- How do you determine the positions of local officials? Do you speak with the staff? Do you speak with the elected officials?

Ask the conflict resolution professionals about ethical standards and confidentiality:

- What professional or personal standards guide your work? For example, the American Arbitration Association, American Bar Association, and the Association for Conflict Resolution have adopted “Model Standards of Conduct for Mediators” (2005). Conflict resolution professionals should be able to address such standards as self-determination of the parties to the dispute; informed consent throughout the process; even-

handed processes with no personal stake in the outcome; confidentiality; accurate representation of knowledge, skills, abilities and limitations; and promoting honesty and candor by participants.

- Do you have a prior relationship with any of the parties (including the local agency, specific office, or individual) or their attorneys?
- How do you handle confidentiality? Ask the conflict resolution professional to explain the degree of suggested confidentiality of the process.

It is useful to review a schedule of fees and other costs, as well as billing procedures during the interview:

- What is your fee structure? In addition to fees for the process itself, how are costs such as case preparation, agreement writing, communication between sessions, and travel determined?
- How is billing typically handled for your work?

It can also be important to ask about availability:

- If selected, when would you be able to begin work on this matter?

A final, but very important step: After interviewing candidates, **be sure to check references.**

Step Five: Compare Competencies

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✓ **Step Five: Compare Competencies**

Step Six: Make a Selection

Some questions to ponder:

- Did the conflict resolution professional demonstrate good listening skills at the interview?
- Does s/he understand local agencies and have experience relevant to the mediation of this dispute?
- Did s/he ask questions to find out which conflict resolution technique is preferable or appropriate for this conflict?
- Does the style and personality fit the content and dynamics of the dispute and the needs of all the parties involved?
- Did the candidate provide a sense of how s/he would approach case preparation and the mediation itself?
- Do all parties feel confident that the conflict resolution professional would be able to remain impartial, and that information the professional received would be kept confidential?
- Would the conflict resolution professional be able to explain process alternatives to stakeholders as well as to political and community leaders, to be able to obtain their support for a process?

Step Six: Make a Selection

All parties to a disagreement or dispute should participate in the identification and selection of a conflict resolution professional. This means that representatives of each party should be involved in reviewing preliminary information about available conflict resolution professionals and in interviewing possible candidates.

Reflecting on the information learned in the interviews can be a joint effort. This will allow both agencies to more easily agree upon a professional who seems best suited to help the agencies work through the areas of dispute.

After references have been checked, make a preliminary selection. Then contact the conflict resolution professional to: 1) confirm his/her continued interest in assisting, 2) agree upon a written contract with clear deliverables (including a start date for work under the contract) and billing information, and 3) establish protocols for managing the contract with the involvement of personnel from both agencies.

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Key Conflict Resolution Professional Qualifications

The most important qualifications that a conflict resolution professional must have are:

- Trustworthiness.
- Experience mediating or facilitating disputes among local agencies.
- Ability to help the parties define and clarify their issues and interests.
- Ability to bring the parties together, and where appropriate, to craft and document final settlements.
- Evaluate the candidates and make the selection based upon experience and knowledge of local agencies as well as the skills and ability to help this set of parties craft mutually acceptable solutions.

As the Process Proceeds

As agencies try alternative dispute resolution, remember that it is okay to begin with small steps, including an initial step of engaging in fact-finding or a conflict assessment. It is important for everyone involved to become familiar and comfortable with the alternative dispute resolution process.

Although it is important to allow sufficient time for the process public agencies have chosen to work, it is also important to evaluate along the way whether the process is helping. A skilled conflict resolution professional can assist with this ongoing analysis.

A skilled and impartial conflict resolution professional can save public agencies time and money, and help restore relationships by identifying solutions to conflicts that involve gains and advantages for each entity. In this way, the right conflict resolution professional can help the parties create lasting solutions to what seemed to be intractable problems.

Share Your Agency's Experiences

The Institute for Local Government is interested in learning about how the process of selecting a conflict resolution professional goes for local agencies, as well as about their experiences with alternative dispute resolution in general. Please contact the Institute at info@ca-ilg.org or log on to the Institute's website (www.ca-ilg.org/mediate) to share experiences and advice with fellow local agencies.

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ABOUT THE INSTITUTE FOR LOCAL GOVERNMENT

The Institute for Local Government is the nonprofit research affiliate of the League of California Cities and the California State Association of Counties. Its mission is to promote good government at the local level.

The Institute's current program areas include:

- Climate Change
- Collaborative Governance Initiative
- Healthy Neighborhoods
- Intergovernmental Conflict Resolution
- Land Use and Environment
- Local Government 101
- Public Service Ethics



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