

Redefining the Basic Unit Commissioner Training Module Known
as "Counseling" Into Correctly Defined Basic Components of Alternative
Dispute Resolution (ADR)

by

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<u>Table of Contents</u>	<u>Page</u>
I. Abstract	5
II. Dedication and Acknowledgements	9
III. Introduction	10
IV. Dispute resolution in Commissioner Training of the Boy Scouts of America.	11
V. An Overview of Alternative Dispute Resolution.	14
VI. Counseling Methods as a “Best Practices” Tool Set for Dispute Resolution	
a. Description	16
b. Elements	18
c. Suggested Appropriate Training Level for Commissioner Application	20
VII. Mentoring as an Informal and Preemptive Method of Dispute Resolution	
a. Description	20
b. Elements	22
c. Suggested Appropriate Training Level for Commissioner Application	25
VIII. Intervention and Intercession as Informal Methods of Dispute Resolution	
a. Description	25
b. Elements	27
c. Suggested Appropriate Training Level for Commissioner Application	29
IX. Conciliation and Negotiation as Formal Methods of Dispute Resolution	
a. Description	31
b. Elements	32
c. Suggested Appropriate Training Level for Commissioner Application	33

X. Mediation as a Formal Method of Dispute Resolution	
a. Description	33
b. Elements	34
c. Suggested Appropriate Training Level for Commissioner Application	36
XI. Arbitration as a Formal Method of Dispute Resolution	
a. Description	36
b. Elements	37
c. Suggested Appropriate Training Level for Commissioner Application	38
XII. Summary and Conclusion concerning the Method Appropriate for Commissioner Alternative Dispute Resolution.	39
XIII. Bibliography	43
XIV. Appendix 1: Slide Outline for <i>Forms of Dispute Resolution</i>	45
XV. Appendix 2: Tennessee Code Annotated Section 63-11-203	50
XVI. Appendix 3: Tennessee Code Annotated ; Title 40 Criminal Procedure, Chapter 39 Sexual Offender Registration and Monitoring; Part 2 –Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004.	51
XVII. Biography of Dennis P. McNamee, J.D., and Attorney at Law.	52

I. Abstract

The Commissioner Fieldbook for Unit Service looks at training for what it calls “counseling” in Section 10. This section mixes counseling techniques with what many practitioners of regulated professions recognize are models of alternative dispute resolution. Each of these techniques are generally thought of outside of Scouting as a part of specialized professions. We would need different levels of training and licensing to be involved with each different technique. Commissioners need to be properly trained and limited in their use of dispute resolution techniques. This matches their involvement to their level of experience and expertise. In this paper I will consider the various models of alternative dispute resolution (ADR), define them along with the elements and techniques for each.

Alternative dispute resolution includes formal and informal dispute resolution processes and techniques that act as a means for disputing parties to come to an agreement. ADR is generally classified into at least four formal and three to four informal types: intervention and intercession, conciliation and negotiation, mediation, and arbitration. Intervention or intercession refers to the informal methods used to offer immediate, short-term personal help to individuals or organizations who experience an event that produces emotional, mental, physical, and behavioral distress or problems. Intercession and Intervention training for the Commissioner should address helping an individual understand a crisis or difficulty, and their response to it as well as becoming aware of and appropriately expressing feelings, such as anger and guilt.

Counseling is a talking therapy and aims to increase the individual's sense of their own well-being. Counseling is often broken into type by the institution providing the counseling. The two most common types are pastoral, or church and religion based, and secular counseling. The two types of counseling concern themselves with different philosophical

methodologies with many of the same basic elements. While most of these techniques, or tools, require special training within the professional education and certification program of counselors or psychoanalysts, there are several which can be used during an informal process, and are commonly used as best practices in business and industry during the training and probationary period of a new employee. The most commonly used best business training practice is referred to as mentoring. Techniques applied by business and professionals are: use of common language, use of active listening, and application of reflective statements. For the mentoring process we add another practice known as shadowing, a technique not used in formal counseling settings. To apply the techniques of common language, active listening, making reflective statements, and shadowing effectively, the Unit Commissioner should make plans to attend the week long course, *Wood Badge for the 21st Century*.

In negotiation and conciliation, a formal process, participation is voluntary. Conciliation is a form of arbitration and consists of two opponents directly communicating with one another, often directly, face to face. This process normally precedes court action, and is a highly formalized action involving one or more attorneys or judges behind the scenes as coaches. The coaches participate only after training in law and experience in the specialties of mediation and arbitration. This is one of the three formalized levels which requires complete professional training and professional licensing before a regulatory board or a paraprofessional association such as the American Arbitration Association

Mediation is a formal method of resolving conflict just prior to court action. To be successful there must be two parties who have identifiable and conflicting points of view as to the appropriate course of action in some activity. The intermediary or mediator is there to insure clarity in communication between the parties. While this seems to be close to an intervention or intercession, the mediation ends in a formalized agreement or contract which

has all of the same legal rights and remedies as a contract. It is possible, however, to set up an intercession to resemble some of the elements of mediation, with the elimination of a formalized agreement at the end of the process. This is the second of the three formalized levels which requires university level training and professional licensing before a regulatory board or through a paraprofessional organization such as the American Arbitration Association.

Arbitration is a mini trial. Arbitration is a process of dispute resolution in which a neutral third party, the arbitrator renders a decision, much like a judgment resulting from a trial. There is a hearing at which both parties appear with their differences and solutions to the case to be presented to the arbitrator. After the parties present their cases, there is a judgment like the order from a judge in a trial. In many cases arbitration is so similar to trial that each side presents expert witnesses for examination with the opposing party entitled to cross examination. This is the third of the three formalized levels which requires professional training and professional licensing through a regulatory body or through a paraprofessional organization such as the American Arbitration Association.

The methodologies enumerated in this paper and their applications, when used, seem the same. The skills are often exactly the same. The principles of liability and the statutory requirements that could be violated are the difference. The cure for the difference is in keeping the principles simple, within "best business" practices, and the Scouting skill set for all Unit Commissioners at all experience levels. Further we should call the Scouting process or methodology something appropriate so that no Unit Commissioner ever has to face personal liability for over extending him or herself into what could be an explosive situation.

In this paper, I conclude that the most appropriate models to use in dispute resolution and working with leaders for the Commissioner Service are the informal models of:

mentoring, intervention and intercession. We should actually rename the training session and refer to it as “Intervention” or “Intercession rather than “Counseling,” and stress mentoring and shadowing as methods for leaders to train so that problems are preempted and may become non issues. I also conclude that training in the “best business practices” of identifying units in difficulty, use of common language, active listening and making reflective statements should be stressed for Commissioners. These skills can be introduced or reinvigorated through additional training in the College of Commissioner Sciences and *Wood Badge for the 21st Century*.

II. Dedication and Acknowledgements

To all the Scouts and Scouters of the Middle Tennessee District, for whom I have the utmost respect.

III. Introduction

The Commissioner Fieldbook for Unit Service¹ addresses counseling unit leaders in Section 10. This section mixes counseling techniques with what practitioners of regulated professions recognize are models of alternative dispute resolution (ADR). Each of these



counseling techniques is thought of outside of Scouting as a tool needing management by other professionals. So, we would need different levels of training and licensing to be involved with them. To its credit, The Commissioner Fieldbook for Unit Service does give some instruction for this mix and match of professional techniques.

The field book titled, Administration of Commissioner Service² sets up the topics for training Master's level candidates in the College of Commissioner Science. Its brief description of, and instructions for, dispute resolution also mixes elements of counseling and models of dispute resolution, into a single set of instructions. Neither of these Commissioner training resources defines alternative methods of dispute resolution. These omissions may create situations in which Commissioners may find themselves without proper training and accidentally subject to legal liability. This Fieldbook mirrors the basic training slides commonly available for the initial training of Unit Commissioners.

The result of our basic Scout commissioner training can be to give Commissioners the impression that they may have Scouting's approval to perform activities that licensed

¹ Boy Scouts of America, Irving, Texas, Fieldbook for Unit Service, (2010), Section 10 at page 34.

² Boy Scouts of America, Counseling Skills, MCS 306, Administration of Commissioner Services, at page 171.

professionals perform, as long as it is within the “Scouting umbrella.” So that Commissioners can be trained or limited for their level of experience and expertise, the various models of alternative dispute resolution need to be defined, and discussed with the elements and the techniques of each.

The various basic components of alternative dispute resolution that this thesis will explain include: counseling as a common tool of dispute resolution and business “best practices”, conciliation (also known as negotiation), mediation, and arbitration³. I will look at, intercession and intervention as alternatives to the more formal methods of ADR, and because training can prevent future crises we will also look at mentoring as a preemptive tool for dispute resolution. This thesis will also illustrate the elements to carry out each method.

IV. Dispute Resolution in Commissioner Training of the Boy Scouts of America

The Commissioner’s Fieldbook for Unit Service⁴ is the generally used guidebook for directing the actions of Commissioners in the Boy Scouts of America.⁵ It quickly runs through topics of importance to the discussion and resolution of unit difficulties such as: how the commissioner should act in conducting an interview, interaction with the leader or leaders, making suggestions, leadership styles, decision making by the



³ Reed, Shedd Morehead and Corley, *Alternatives to Litigation, The Legal and Regulatory Environment of Business*, 12th Edition, McGraw-Hill publishing, . 81 to106,(2002).

⁴ Boy Scouts of America, Irving, Texas, Commissioner Fieldbook for Unit Service, (2010), Section 10, 34 and 35.

⁵ *Ibid.*

higher authority of the unit leader being interviewed, and some tips for leading the discussion with the leader.

While the manuals attempt to be useful in leading the Unit Commissioner through the process of resolving disputes within a unit, by simplifying the steps to a resolution, it does so by combining techniques and styles of several different levels of dispute resolution that a professional in one of several fields⁶, would prefer not to combine⁷. For example, before the steps to understanding are begun the Commissioner Fieldbook, states that the purpose of counseling is to:

- Help to solve a problem⁸,
- [Provide]⁹Encouragement in a difficult task,
- Help interpreting¹⁰ facts, [and]
- [Provide] Assistance to resolve indecision or confusion.¹¹

A quick reading of the manual makes me think that common non-professional meanings must certainly apply for Unit Commissioners, and that all of these could apply in the same situation. However, to those of us in the professions who deal with dispute resolution on a daily basis¹², the words in these points have subtle meanings that can lead to misinterpretation, and serious consequences. For example, the first point may lead us to believe that we may need to solve a problem, immediately. While this may occur during

⁶ Psychology, psychiatry, medicine and law in particular.

⁷ This may simply be for expedience in training, or to make Commissioners aware of boundaries for which a professional scouter is better equipped.

⁸ Defined by the Miriam Webster Collegiate Dictionary, Eleventh Edition at page 989, definition 1 subsection 2, a, as: an intricate unsolved question, and at 2, b, as: a source of perplexity, distress or vexation; and at definition 2 as, dealing with social conduct or social relationship.

⁹ Wording in brackets is provided to insure clarity

¹⁰ The Miriam Webster Collegiate Dictionary at page 645 also indicates that one who interprets, is a negotiator or represents by term of art to bring those who do not understand to a realization.

¹¹ Commissioner Fieldbook for Unit Services, Section 10, 34, paragraph three.

¹² See footnote 6.

discussions, it seems more likely that an initial conversation, or “counseling session”¹³ with a leader is to determine if there really is a problem.

It is likely that a friendly conversation, a pat on the back, or public acknowledgement of support would work better with point two, encouragement in a difficult task, and not require special skills or training. To emphasize the impact simple encouragement can have on various Scouting units it is presented with clarity in the basic objectives for discussions between Unit Commissioners and their unit leaders. When we discuss interpreting facts, we begin to apply elements of three different forms of dispute resolution that have nothing to do with counseling, or as I would rather think of it, as a friendly conversation with a fellow Scouter. The fourth point, helping in some way to resolve confusion or indecision takes us from the friendly conversation into what I think of as forms of intervention, negotiation, mediation and conciliation.

The Fieldbook, as well as other manuals from the National Council, not to mention stock training slides, are unclear on how many leaders should be involved in a “counseling” session. The unit on counseling frequently uses plural pronouns in various situations, such as: “support their thinking,” “help them,” and “encourage them.” In other cases it appears that the Fieldbook would prefer for the Unit Commissioner to converse with only one leader at time. Then, pronouns or individual names are utilized such as in point three on page 94:

Try to *understand* what a leader tells you. The commissioner first tries to understand before he or she tries to be understood. You may need to check out your understanding with the other person (“Bill, are you saying that . . . ?” or “Bill, is . . . how you really feel?”)¹⁴

¹³ I will refer to the term counseling as it is used by the manuals previously footnoted to avoid early confusion.

¹⁴ Commissioner Fieldbook for Unit Services, section 10, 94.

or as in point four which immediately follows it and reads:

Let the leader know that you *really hear* what they are saying. Acknowledge with brief verbal or nonverbal cues what the leader is saying so they know they are not talking to dead air.¹⁵

If a Commissioner is to provide some guidance to unit leaders, either alone or in a group, how clear should we make the instructions given the Commissioner at basic training, or at subsequent levels of training? How should we combine the trainings to make the most sense? More importantly, how do we tell a Commissioner that his level of expertise has been exceeded by the situation in which he or she finds themselves if we are not clear on what dispute resolution skills they should attempt to use? An examination of Alternative Dispute Resolution and its different methodologies may help us answer these questions.

V. An Overview of Alternative Dispute Resolution.

Alternative dispute resolution (ADR) includes formal and informal dispute resolution



processes that act as a means for disagreeing parties to come to an agreement. ADR is generally classified into at least four formal and two or three informal types:

mentoring¹⁶, intervention and intercession¹⁷, conciliation¹⁸ and negotiation¹⁹, mediation²⁰,

¹⁵ *Ibid.*

¹⁶ Defined by the Miriam Webster Collegiate Dictionary, Eleventh Edition at page 778, as the term *mentor*, "Tutor, coach."

¹⁷ See note 23.

¹⁸ Is defined as: "The adjustment and settlement of a dispute in a friendly and unantagonistic manner." (emphasis added) Black's Law Dictionary, 6th Edition, West Group, Westlaw Publishing, New York, New York, 1990, at page 289.

and arbitration.²¹ Counseling,²² while defined in Tennessee State statute²³, is not strictly considered one of the forms of ADR, but is useful in the ADR process in providing tools, such as “best business practices” as a way of allowing opposing parties to discover if they really have a problem, or they are saying the same things just not listening to each other. The less formal methods of intervention and intercession use general business methods of coaching to prevent crises. ADR is most frequently used alongside existing legal systems and methods can vary in the United States from state to state and county to county.

Alternative dispute resolution is of two types in the law. First, they are methods for resolving disputes outside of the court system, but with some legally binding effect, and directed by a court. Second, they can be informal methods completely independent of our court system. There are also, free-standing or independent methods, such as mediation-intercession programs, and ombudsman offices within organizations to work with difficulties in the administration of a specific program or business. Methods used in mediation, conciliation, and arbitration are similar, whether or not they are a part of a court action

The classic formal tribunal form of ADR is arbitration (binding or non-binding) with private judges (either sitting alone, on panels or over summary jury trials). Another classic form is the mediation process with a court appointed mediator or panel. Informal methods include social processes, referrals to non-formal authorities (such as a respected member of a

¹⁹ Is defined as: “the process of submission and consideration of offers until and acceptable offer is made and accepted.” Black’s Law Dictionary, 6th Edition, at page 1636.

²⁰ Is defined as: “Private, informal dispute resolution process in which a neutral third person, the mediator, helps disputing parties to reach an agreement. The mediator has no power to impose a decision on the parties.” Black’s Law Dictionary, 6th Edition, at page 981.

²¹ Arbitration is defined as: “A process of dispute resolution

²² Defined by the Miriam Webster Collegiate Dictionary, Eleventh Edition at page 284, as “professional guidance of the individual by utilizing psychological methods, esp. in collecting case history data using various techniques of the personal interview and testing interests and appetites.”

²³ See appendices 2 and 3 at sections XV, and XVI, for definition by inference.

trade or social group) and intercession.²⁴ An example of intercession is a Unit Commissioner going back and forth between disputing parties in an attempt to find a middle ground. The major differences between formal and informal processes are, (a) whether they are required before a trial, (b) the possession or lack of a formal structure for the application of the procedure, and (c) the need for professional education and licensing in a special professions²⁵.

For example, intercession is the use of best practice tools without any process. Negotiation within a compulsory labor arbitration setting is the use of legal tools within a highly formalized and controlled setting. Calling upon an organizational ombudsman's office is never a formal procedure. It is always voluntary, and no one can be compelled to use an ombudsman office. Informal referral to a willing co-worker, as a business coach, may have the ability help co-workers work out issues. This would also be an informal procedure that could be called an intervention. Co-worker interventions usually requires few, if any, professional credentials. Here is where it seems the Unit Commissioner concept fits most closely.²⁶

VI. Counseling Methodologies as a "Best Practices" Tool Set for Dispute Resolution

a. Description of Counseling.

Counseling, by Tennessee State statute,²⁷ is the consultation with a professionally credentialed psychotherapist for the treatment of mental and emotional disorders using

²⁴ Intercession is the act of interceding, defined as: "to intervene between parties with a view to reconciling parties." Miriam Webster Collegiate Dictionary, Eleventh Edition, 651 to 652.

²⁵ See footnote 6.

²⁶ Wikipedia, Alternative Dispute Resolution, the free encyclopedia, (2009), at http://en.wikipedia.org/wiki/Alternative_dispute_resolution.html.

²⁷ Tennessee Code Annotated Section 63-11-201.

psychological methods²⁸. Counseling itself does not include more simple methods of physiological interventions or intercession, although they may be used in the process. This type of treatment has been used in one form or another through the ages in many societies, but it was not until the late 19th century that it received scientific impetus under the direction of Sigmund Freud. Although Freud's theoretical formulations have come sharply into question, his treatment method involving individualized client-psychologist sessions has been used in various forms for years.²⁹

Counseling is a talking therapy and aims to increase the individual's sense of their own well-being. Counselors and psychotherapists employ a range of techniques based on relationship building, dialogue, communication and behavior change that are designed to improve the mental health of a client or patient, or to improve group relationships (such as in a family). Counseling may also be performed by practitioners, all regulated under Tennessee Statute,³⁰ with a number of different qualifications, including psychiatry, clinical psychology, clinical social work, counseling psychology, mental health counseling, clinical or psychiatric social work, marriage and family therapy, rehabilitation counseling, music therapy, art therapy, drama therapy, dance/movement therapy occupational therapy, psychiatric nursing, psychoanalysis and others. Licensing requirements can vary, but often involve graduate school and supervised clinical experience.³¹

²⁸ In Tennessee, State Law specifically refers to "counseling" as the description of services provided with psychological treatment, see Tennessee Code Annotated Section 63-11-203. Therefore, as it is used at law, it is not appropriate to use the term "counseling" in a generic sense.

²⁹ *Psychological counseling*, definition of Psychological counseling , (2007), at <http://encyclopedia2.thefreedictionary.com/Psychological+counseling.html>.

³⁰ See note 27.

³¹ *Psychotherapy*, Wikipedia, the free encyclopedia, (2009), at <http://en.wikipedia.org/wiki/Psychotherapy/>.

b. Elements of Counseling.

Counseling is often broken into type by the institution providing the counseling. The two most common types are pastoral, or church and religious based, and secular counseling. The two types of counseling concern themselves with different philosophical methodologies with many of the same basic elements. They are generally referred to as:³²

1. Building rapport and understanding
2. Gathering data
3. Finding out the problem
4. Establishing personal involvement
5. Giving hope
6. Giving homework
7. Terminating the counseling³³

While most of these techniques, or tools, require special training within the professional education and certification program of counselors or psychoanalysts, there are several which can be used by Unit Commissioners in an informal intervention or intercession process, and are used by businesses during training or probation of new employees as a “best practice.” Among these are: use of common language, use of active listening, and application of reflective statements.

Common language is a technique professional counselors or business coaches use to get clients to be more comfortable with them, and share their feelings, and can be used by Unit Commissioners. Counselors refrain from using technical terms that distance them from their client, and make them sound arrogant or pompous, and choose, instead, the same words

³² For general understanding purposes I have combined pastoral and secular counseling techniques for purposes of illustrating the commonality between the two.

³³ Dr. Edward Watke, Jr., *Key Elements In Counseling*, (2000), Revival In the Home Ministries, Inc.

that clients use to express their problems. For example, if a client uses the phrase "messed up" instead of "troubled" to describe his relationship with his father, the counselor might ask, "What makes that relationship 'messed up?'" This creates a sense of understanding or shows that the counselor is making an effort to understand the client as a person.

Active listening is a centerpiece of business and corporate training, and Scouting. A Commissioner, can learn more from what their unit leaders say and do rather than from giving advice. If a Commissioner or counselor shows that he or she always pays attention, the leader will be more willing to discuss problems within the unit. We can use techniques like maintaining soft eye contact, nodding appropriately, and using short phrases like "Oh, wow" and "I see" to express understanding. We can also avoid appearing as if we are passing judgment through words or expressions.

Making reflective statements is another technique to help the interviewee express more of his true feelings. Typically, the Commissioner or counselor picks a moment to stop and go over some of the opinions the Scouter has shared. Business coaches don't just reflect the words; they reflect the thoughts, as well. For instance, a reflective statement might sound like, "So, what you're saying is that your boss leaving you alone with a new client, and not returning made you feel abandoned," provided that "abandoned" is the word the client used. This can also convey a sense of understanding, which can encourage the leader to answer more questions. Timing is crucial with this technique. It can't be done after every sentence, or the coach could risk interrupting an important thought.³⁴

³⁴ Rhonda Tremaine, eHow Contributor, *Psychological Counseling Techniques*, (2009), at http://www.ehow.com/list_7162754_psychological-counseling-techniques.html.

c. Suggested Appropriate Training Level for Commissioner Application

The Commissioner needs to be thoroughly trained in the three mentoring, or counseling, techniques of common language, active listening, and making reflective statements. This kind of training is best given in small pieces over time. First, the Commissioner needs their basic training module and their Bachelor's degree at the College of Commissioner Science. It is important that they understand the signs of a faltering unit, or leader, and recognize when they need to be of assistance to the unit. After this time, to apply the techniques of common language, active listening, and making reflective statements effectively, the Unit Commissioner should make plans to attend the week long course, *Wood Badge for the 21st Century*³⁵. This course is designed to give all Scouters the techniques to be successful leaders and includes the application of these three mentoring³⁶ and intervention techniques. These are taught as "best practices" in many corporations as well as at *Wood Badge*, and would give the Commissioner the practiced basic mentoring skills to perform, with additional training, an intervention or intercession.

VII. Mentoring as an Informal and Preemptive Method of Dispute Resolution

a. Description of Mentoring.

Mentoring is either a formal or informal relationship between two people so that one of them can become familiar with a new position. These two are a new person (the protégé), and either an experienced individual in the same position or someone senior to the protégé

³⁵ *Woodbadge for the 21st Century* is an advanced training program of the Boy Scouts of America, designed by the National Council and taught uniformly across the United States. It is closely modeled on business training programs and uses many of the same "best practices" as trained corporate leaders, and certified and licensed professionals. It does not, however purport to allow a graduate to practice in a certified position.

³⁶ The term mentor can be substituted with either the term "tutor," or "coach," per the Miriam Webster College Dictionary. See footnote 16.

(the mentor). The mentor, or coach, can be someone from inside the protégé's chain of supervision, but may make the new leader more comfortable if they are from outside the chain of supervision. Mentoring has been identified as an important influence in professional development in both the public and private sector. Competition for talent in the workplace creates challenges within an organization, not only to recruit new talent, but to retain talent. Benefits of mentoring include increased employee performance, retention, commitment to the organization and knowledge sharing.³⁷ In Scouting, mentoring by adults should only be used with adults.. Training and coaching of youth should remain well within the two deep rule of Scouting's Youth Protection Policies.³⁸



Many companies and government organizations run formal mentoring programs. Formal mentoring programs have: structure, oversight, and clear and specific organizational goals. Companies and government agencies implement mentoring programs for different reasons. Some of them include: to help new employees settle into the company, to create a knowledge-sharing environment, to develop critical corporate or interpersonal skills, to help accelerate a career, and to improve company or agency retention.

There are times when informal mentoring is more effective than formal mentoring. It is usually a coworker relationship and can occur at any time during an individual's career. Informal mentoring can be initiated by either the protégé or the mentor. The relationship can

³⁷ United States Office of Personnel Management, Training and Development Policy, Mentoring, at <http://www.opm.gov/hrd/lead/mentoring.aspx>.

³⁸ See Tennessee Code Annotated Section 40-39-202, subsection 4; Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004, describes involvement with counseling, tutoring, coaching and, by inference of definition, mentoring. (Appendix Section XVI)

be initiated when: a senior level employee wants to provide the younger employee with career advice on their current job or career goals. A junior employee can also seek out a senior level employee so that they develop a working relationship, or a supervisor can recommend a specific employee as a mentor to the protégé.³⁹ This last point resembles a coworker intervention or intercession in many ways, especially when an individual is experiencing difficulties in their position

b. Elements of Mentoring.

Communication is crucial in assuring a successful mentoring program. A good marketing strategy will effectively advertise the program and help recruit mentors and protégés, specifically in Scouting, Unit Commissioners. According to the United States Office of Personnel Management, one of the biggest challenges of a mentoring program within a company is recruiting mentors.⁴⁰ Often, employees who could be potential mentors do not understand the value of participating in a mentoring program. To solve this problem, an agency's marketing strategy often showcases benefits to both mentors and protégés. Unit Commissioners are the ready-made mentors for leaders and units in the Boy Scouts of America.

Protégés or leaders should be matched with mentors from outside their office or unit. Following this strategy, Unit Commissioners should also be from outside the unit they are mentoring. Some protégés or leaders may prefer to be matched with their supervisor's superior or another senior manager in their chain of command; however, matching a protégé with a mentor within the same chain of command may cause conflict within the business office or Scouting unit. As with all programs, whether in business or service, sometimes mentoring relationships do not work. In such cases, the program manager, such as the District Commissioner should intervene and explore whether the mentoring relationship should be revised or terminated. In these cases

³⁹ *Ibid.*

⁴⁰United States Office of Personnel Management, Best Practices: Mentoring, Washington, D.C.,(2008).

there should be a process in place to amicably terminate the relationship and match the protégé with another, more suitable, mentor. A fresh viewpoint can often change a situation for the protégé or the mentor.⁴¹

An instruction guide for mentors and protégés should include basic instructions for the mentor to keep them on task and refresh their memories from time to time. We have these in our various Scouting publications that illustrate the goals for delivering appropriate service to leaders and units.

To assist mentors and protégés, or Unit Commissioners and their District Commissioners, in their discussions of unit needs, the program (Scouting professional) coordinator, when working with the Commissioner service, can suggest periodic topics to discuss during their mentor and leader's (protégé's) meetings. Some suggested topics are:

1. Managing conflict within the unit;
2. Scouting Position progression;
3. Networking;
4. Influencing others;
5. Managing politics in the unit and organization;
6. Newest trends in technology;
7. Time management;
8. Work/life balance; and
9. Leadership development.⁴²

An additional element can be added to the Mentoring program to increase learning speed and integrate the Scouting unit leader or new employee into the company quickly, "shadowing."⁴³

⁴¹ Kirkpatrick, Donald L., ASTD Handbook for Workplace Learning Professionals, "Section VI: Measuring and Evaluating Impact," (2008).

⁴² United States Office of Personnel Management, Best Practices: Mentoring, Washington, D.C.,(2008).

Shadowing is one of the most common of all training techniques for new employees in a corporate environment. Job shadowing involves spending a period of time with a longer tenured employee, or in Scouting's, a leader, observing everything that he or she does that is related to the position. This allows the new leader a chance to get a sense of what is involved in performing the tasks associated with the position he or she has undertaken.

Job shadowing can commence at one of two points in the training process. One of the most common is to assign the new employee or leader to an established leader or employee on the first day. The new leader or employee may spend one to fifteen days or Scout activities and meetings, following the routine of the leader or employee, learning general position responsibilities, observing how the tasks are carried out, and obtaining insight into methods that allow for efficient handling of the position. Another option is to implement the job shadowing after a period of orientation in a classroom training setting. Applied this way the new hire will have a theoretical background into the workings of the Scout unit or company.

Position shadowing has advantages in the Scouting environment. First, the new leader may feel intimidated about performing tasks for the first time. By allowing the new leader to shadow an experienced leader, the confidence of the new leader may be increased, and disputes which could arise in the future, due to inexperience, may be preempted. Position shadowing allows the new leader to see Scouting methods in action. This can help flesh out some of the scenarios that were outlined in training. A third benefit of job shadowing is that the new leader often has a chance to begin building rapport with other leaders. Acceptance into the unit leadership can often help the new leader focus on learning the best ways to get

⁴³ Defined by the Miriam Webster Collegiate Dictionary, Eleventh Edition, page 1142, at definition 2(6)(b), as "to accompany and observe, especially in a professional setting."

things done within the unit, rather than being apprehensive about fitting into the unit's culture, or feeling they need to make themselves known, and thus causing conflict in the unit.⁴⁴

c. Suggested Appropriate Training Level for Commissioner Application

Complete basic training for a Unit Commissioner is necessary. By complete basic training I believe we should include basic training for all of the major Scouting levels. The Unit Commissioner should seek out opportunities to attend and complete: Cub Scout leader basic, Boy Scout leader basic, Varsity leader basic, and Venturing leader basic, in addition to such supplemental training as BALOO, Outdoor Leader Skills, and Powder Horn. Once done the Commissioner should be well equipped to interact with unit leaders and assist them in structuring a unit mentoring program. I recognize that the full training I recommend can be a financial burden on the Unit Commissioner and their families. There are several solutions for this. Unit Commissioners could specialize in program areas. I note that our Council has a number of Commissioners that prefer to work with Cub Scouts, Boy Scouts or Venturing Crews. Another solution is for Districts to sponsor their Unit Commissioners at training without cost to the Unit Commissioner.

VIII. Intervention Or Intercession As An Informal Method For Dispute Resolution

a. Description of Intercession and Intervention.

Intervention or intercession refers to methods used to offer immediate short-term help to Scouting units and individuals in the unit who experience an event that produces emotional, mental, physical, and behavioral distress or problems within the Scout unit. A crisis and or difficulty can refer to any situation in which the individual feels a sudden loss of his or her

⁴⁴ *What Is Job Shadowing?*. (2008), at <http://www.wisegeek.com/what-is-job-shadowing.html>.

ability to use effective problem-solving and coping skills. A number of events within the Pack, Troop or Crew can be considered a unit difficulty or crisis such as:

- failure to meet goals, loss of members in the unit,
- change in leadership,
- conflicts between parents and leaders,
- conflicts between or among leaders themselves,
- conflicts between leaders and the charter partner.
- the death of a leader or parent close to the boys, or
- the loss of a charter partner due to natural disaster, or
- the violation of a Youth Protection policy.

An intervention or intercession has several goals. Among these are to reduce tensions and to help individuals return to their level of functioning before the crisis or difficulty. Often



the form of the intercession is more of a friendly conversation, listening and providing a shoulder to lean on. Often this is all that is needed to diffuse a low level crisis.

Functioning may be improved in a unit by developing new leadership and coping skills or by using training to eliminate less effective ways of leading the unit. This way, the individual is better equipped to cope with future difficulties. An intercession or

intervention aims to assist the individual in recovering from the crisis or difficulty and to prevent serious long-term problems from developing within the unit.⁴⁵

b. Elements of Intercessions and Interventions

Intervention in a unit should always be conducted in a supportive manner. The intervention is often a private one on one conversation without interruptions. Intercession is when the Commissioner simultaneously works with two or more individuals, each one at a time, toward resolution of an issue. The length of time for the Commissioner's intervention in the unit may range from one night to multiple sessions over many weeks. Commissioner intervention is not sufficient for units with long-standing problems. These units should be referred to the professional staff for appropriate action.

The Unit Commissioner's conversation with the unit leader may vary in length from 20 minutes per individual to several hours

depending on how serious the Unit Commissioner feels the discussion is. Intervention or intercession is appropriate for Scouts of any age, youth and adult leaders as well. Anyone can need guidance or someone who will believe them. It can take place in a range of settings depending on the availability of the participant or participants.



If youth are involved there should always be adherence to the two deep rule to insure the safety of the youth and adults participating in the intercession or intervention.⁴⁶ The setting

⁴⁵*Crisis and or difficulty intervention - children, functioning, therapy, adults, withdrawal*, (2009), at [http://www.minddisorders.com/Br-Del/Crisis and or difficulty-intervention.html](http://www.minddisorders.com/Br-Del/Crisis%20and%20or%20difficulty-intervention.html).

⁴⁶ *Youth Protection Training, Administration of Commissioner Services*, Boy Scouts of America, 61 and, *Commissioner Fieldbook for Unit Services*, Section 11, 36.

may be a Scout meeting or other activity, as long as the participants feel at ease and the Commissioner can communicate quietly and calmly.⁴⁷ Every attempt to reduce the highly charged atmosphere that can happen with a youth intervention must be made so that it is in no way confrontational.⁴⁸

A typical intervention or intercession progresses through several phases. It begins with



the Commissioner talking to the parties involved, analyzing what has happened in the unit as a result, and the individual leader's or leaders' responses to it. Most unit difficulties are administrative in nature, and may not be complicated for the Commissioner, but on occasion can be leader or youth dispute centered. When this

occurs there are certain common patterns of response to the unit crises.

An individual's reaction to a unit centered crisis, particularly if it is severe or the individuals consider it severe, can include intense momentary reactions, and intense emotional reactions (fear, anger, guilt, grief), mental reactions (difficulty concentrating, confusion), physical reactions (headaches, dizziness, fatigue, stomach problems), and behavioral reactions (sleep and appetite problems, isolation, restlessness). Commissioners' finding

⁴⁷ Christina, Gleason, *Basic Concepts in Crisis and or difficulty Theory: Overview of Crisis and or difficulty Intervention & Characteristics of Crisis and or difficulty Events*, at <http://www.suite101.com/content/basic-concepts-in-crisis-and-or-difficulty-theory-a51122>, (2008).

⁴⁸ "Two adults staring down a youth is likely to lead to the youth feeling 'ganged up' on and closing down the discussion. While two deep is required, it should be carefully handled so the second adult is outside the room or otherwise not giving the impression of a "panel" that is grilling the youth. Try as best as possible to make it seem like a one on one mentoring "heart-to-heart" chat, with a second adult nearby but in a non-threatening position." Comments from, *Michael Weinzimer, Assistant District Commissioner, James E. West District, Middle Tennessee Council, BSA, March 28, 2011.*

conduct of such a severe nature should consult with the Scout Executive immediately, especially if there has been aggressive behavior exhibited or the Commissioner fears that the individual involved may harm himself or others.

It is helpful if the individual talking to the Commissioner can identify with the



Commissioner through Scouting or life

experiences similar to those happening to the

person talking to the Commissioner. It helps that

someone else knows that he or she is having

normal reactions to an abnormal situation. The

individual should also be told that the responses

are temporary. Although there is not a specific

time that a person or unit can expect to recover

from a crisis, an individual can help recovery by

engaging in coping and problem-solving skills.⁴⁹ The Commissioner can discuss the leader's

strengths, coping skills, and social support networks within the unit.⁵⁰ The Commissioner

should be prepared to consult with Council professionals if he or she feels the leader, youth or parent needs professional counseling services.

c. Suggested Appropriate Training Level for Commissioner Application

There is a needed training and educational component to intervention and intercession.

The Commissioner should understand that there are different responses to unit difficulties and

that the members of the unit as well as the leader being interviewed may also have some

reaction to the unit's abnormal situation. Due to the sensibilities of individuals who could be

⁴⁹ Christina Gleason, *Ten Steps of Crisis and or difficulty Intervention: A General Model of Intervention and Crisis and or difficulty Counseling*, at <http://www.suite101.com/content/ten-steps-of-crisis-and-or-difficulty-intervention-a568961>, (2007).

⁵⁰ *Crisis and or difficulty Intervention*, *Encyclopedia of Mental Disorders*, at <http://www.minddisorders.com>.

interviewed by the Commissioner, the Commissioner should be beyond the basic training level and have completed a special course on the intervention and intercession process in their Bachelor of Commissioner Science degree at a minimum (or higher) in the College of Commissioner Science, and on generic listening and participation techniques used by all of the ADR processes prior to undertaking an intercession or intervention. Until that time, friendly conversations with unit leaders, and close communication with their Assistant District Commissioner and District Commissioner for assistance should be maintained as the primary tool for the newer Commissioner.

Training for the Commissioner should address helping the individual understand the crisis and or difficulty and their response to it as well as becoming aware of and expressing feelings, such as anger and guilt. A major focus of training may be exploring coping strategies. With the Commissioner trained to promote strategies that the individual previously used but that have been forgotten, they can together, deal with the current crisis and or difficulty. The Commissioner may be trained to enhance or bolster a leaders skill levels, and to assist the leader, parent, or youth leader in developing new skills.

Commissioners may be trained to thoroughly understand the basis of problems and the desired ideal Scouting changes, considering alternatives for solving the problem, discussing the pros and cons of alternative solutions, selecting a solution, and developing a plan to try it out, and evaluating the outcome.

In the final phase of intervention or intercession, the Commissioner will review changes the individual made in order to point out that it is possible to cope with difficult Scouting events. Continued use of the effective coping strategies that reduced the problems experienced by the unit will be encouraged. Also, the Commissioner should provide ongoing assistance in making realistic plans for the future of the unit, particularly in terms of dealing

with similar potential future unit crises. Checking in with the individual on a continuing basis during unit visitation should be encouraged.

IX. Conciliation and Negotiation as Formal Tools of Dispute Resolution

a. Description of Conciliation and Negotiation.

In negotiation and conciliation, participation is voluntary and there is no third party who facilitates the resolution process or imposes a resolution. A third party like a chaplain or organizational ombudsperson or social worker or a skilled friend may be coaching one or both of the parties behind the scene. Conciliation is a less formal form of arbitration and consists of



two opponents directly communicating with one another, often face to face. This process does not require the existence of any prior agreement. Any party can request the other party to appoint a conciliator. One conciliator is preferred but two or three are also allowed. In case of multiple conciliators, all must act jointly. If a party rejects an offer to conciliate, there can be no conciliation. This process is normally used before a court action and is a highly formalized action involving one or more attorneys or judges. They participate only after training in law and in the specialties of mediation and arbitration.⁵¹

⁵¹ See the more extensive discussions of Mediation and Arbitration which follow.

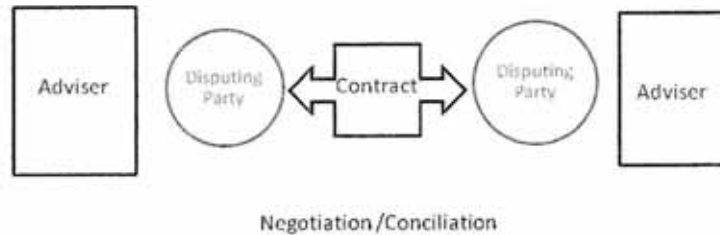
b. Elements of Negotiation and Conciliation

Parties submit statements to the conciliator, the person behind the scenes, describing the general nature of the dispute and the points at issue. Each party sends a copy of their statement to the other. The conciliator may request further details, may ask to meet the parties, or communicate

with the parties orally or in writing. Parties may even submit suggestions for the

settlement of the

dispute to the conciliator. When it appears to the conciliator that elements of settlement exist, he may draw up the terms of settlement and send it to the parties for their acceptance. If both the parties sign the settlement document, it is final and binding on both.⁵²



c. Suggested Appropriate Training Level for Commissioner Application

This is one of the three formalized levels which requires complete professional training and professional licensing before a board of competent legal jurisdiction or a paraprofessional association such as the American Arbitration Association. As a result, I do not recommend that any Unit Commissioner become involved in an action requiring Negotiation and Conciliation unless they are actually a licensed attorney. To do so could cause liability to accrue on a personal level and to the Boy Scouts of America.

⁵² *Alternative dispute resolution*, Wikipedia, the free encyclopedia, (2007), at http://en.wikipedia.org/wiki/Alternative_dispute_resolution.

X. Mediation as a Formal Tool of Dispute Resolution

a. Description of Mediation

Mediation is a method of resolving conflict just prior to court action. To be successful there must be two parties who have identifiable and conflicting points of dispute as to the appropriate course of action in some activity. The real points of dispute or issues must concern at least two courses of action, neither of which would be prohibited, either legally or morally. In these types of cases, mediation as conflict resolution is appropriate when a decision regarding a single course of action must be made. Finally, in order for mediation to be appropriate, the opposing parties must be people of integrity and sound mind who are willing to negotiate.



The goal of mediation as conflict resolution is not for the mediator⁵³ to find a solution and make the disputing parties abide by it, but to get the disputing parties to work together to find a solution that they can live with. The assumption is that neither party will be completely satisfied with the resolution, but they will be able to agree to and accept the ultimate resolution.

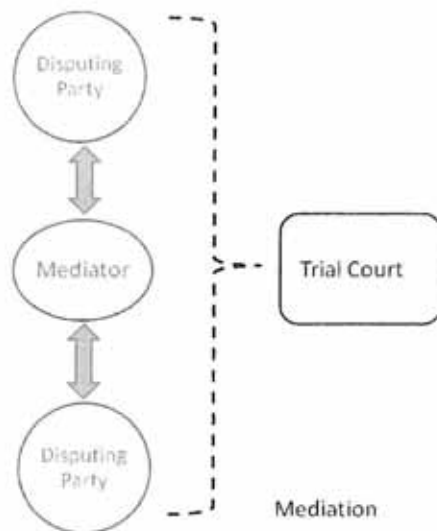
In order for the process to work, the mediator must be impartial. Before the process even begins, the mediator should establish ground rules pertaining to how the parties to the dispute will conduct themselves with regard to civility and respect, and all parties must understand and agree to the ground rules. In the event that negotiations should get heated and there is a need to restore order, the mediator should refer back to the ground rules and remind

⁵³ Mediator, a neutral third person who helps disputing parties to reach agreement through the mediation process. The mediator has no authority to impose a decision on the parties. Black's Law Dictionary, 6th Edition, West Group, Westlaw Publishing, New York, New York, 981.

the participants that they agreed to abide by them. While this seems to be close to an intervention or intercession, the mediation ends in a formalized agreement or contract which has along with the agreement, all of the legal rights and remedies a contract would have.⁵⁴ It is possible, however, to set up an intercession to approximate some of the essential elements of mediation, with the elimination of a formalized agreement at the end of the process.

b. Elements of Mediation.

There are four essential elements of mediation that can be employed either separately



or in a progression in a legal environment. These four are, listen to and validate all parties, summarize and mirror their responses, force the parties to reflect on the disagreement, force brainstorming, and make the parties feel less divided as time goes on.

When meeting with the disputing parties, the mediator should always begin by inviting the party perceived to be the “least powerful” or most

disadvantaged to tell their story to determine how the mediator can help. The mediator should verbally promise this party that they will be given the mediator’s complete attention. The mediator can show his interest through body language and eye contact while listening to those speaking. This should be repeated for the other disputing party, with equal attention given to both of them.⁵⁵

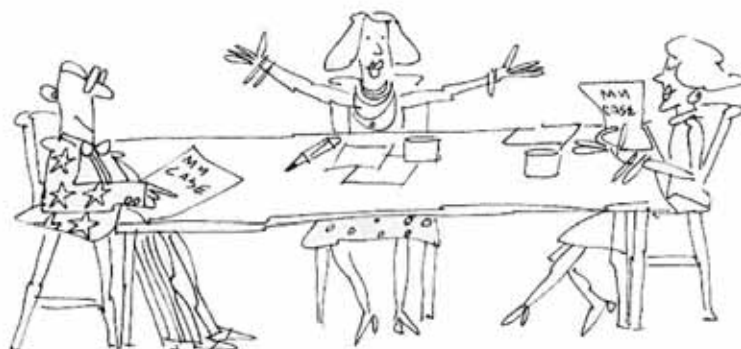
Once the mediator is familiar with both “sides of the story,” he or she should identify common ground between them and summarize the points of agreement within the views of

⁵⁴ Barry Goldman, J.D., *The Essential Elements of Mediation as Conflict Resolution*, Adapted and revised from “Applying Mediation Techniques to Ethics Consultations,” New York, New York, (2007).

⁵⁵ Element one: Listen to and Validate All Parties.

the disputing parties. Once the points of agreement have been identified and articulated, the mediator should have one of the parties tell the other why they disagree with their perspective. The mediator summarizes the point of disagreement and then asks the first party if that is what they said. The mediator then expresses the point of disagreement to the other party and asks them what they understand by what they have heard, until the party expressing the concern is satisfied that the other understands it. The process should be repeated for each disputing party.⁵⁶

When both parties understand the other's complaints, the mediator can begin to move them off of their extreme positions and more toward a middle position where they may be



able to reach some agreement. It is vital to the process, however, that this middle position is reached through each party's own reflective efforts. The mediator should ask each party separately

if they have considered all the implications of their position, like, costs, burdens, long term commitments, and values. The mediator should be careful not to say too much and not directly respond to questions that eliminate the need for each party to reflect and think through the issue for themselves. The goal of this process is to get the disputing parties to reason through the issues without any imposition of outside influence, policies or programs. This process will be easier if the mediator begins with the smaller issues and points of disagreement before addressing the more significant ones.⁵⁷

⁵⁶ Element two: Summarize and Mirror.

⁵⁷ Element three: Force Reflection.

Finally, the mediator should bring the parties back together and have them re-state what they now see as “the problem.” At this point, the mediator should take a more active role in the conversation, implicitly guiding the parties to view the situation, rather than each other, as the problem. Once this is achieved, the mediator should direct the parties in a process of working together and brainstorming about the most advantageous solution. Each party may not get exactly what they wanted, but they will have reached a decision that, hopefully, they can live with.⁵⁸

c. Suggested Appropriate Training Level for Commissioner Application.

This is another of the three formalized levels which requires complete professional training and professional licensing before a board of competent legal jurisdiction or through a paraprofessional organization such as the American Arbitration Association. As a result, I do not recommend that any Unit Commissioner become involved in an action requiring mediation unless they are actually a licensed attorney. To do so could cause liability to accrue on a personal level and to the Boy Scouts of America. It can be noted, that mediation does, however, use counseling techniques that can apply to intervention, and intercessions. Interventions as well as intercessions can also be similar to mediations except for the face to face contact and legally binding outcome.

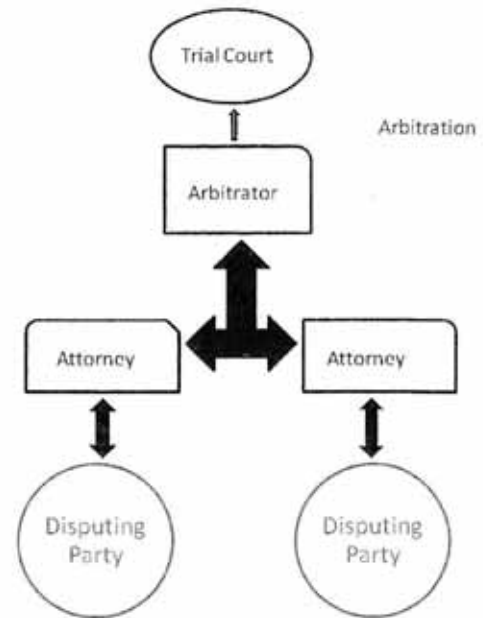
XI. Arbitration as a Formal Tool of Dispute Resolution

a. Description of Arbitration

Arbitration is, essentially, a mini trial. In general, arbitration is a process of dispute resolution in which a neutral third party, the arbitrator renders a decision, much like a judgment resulting from a trial, after a hearing at which both parties have an opportunity to

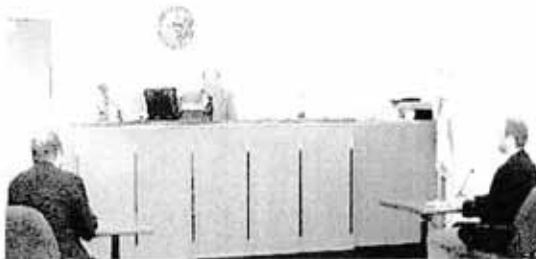
⁵⁸ Element Four: Convergence and Brainstorming.

be heard. In many cases arbitration is so similar to trial that each side presents expert witnesses for examination with the opposing party entitled to cross examination privileges. Where arbitration is voluntary, the disputing parties select the arbitrator who has the power to impose the binding decision referred to previously. Arbitration is used in place of a hearing in court. It is intended to avoid the formalities, delays, the expense and vexation of ordinary litigation.⁵⁹ Arbitration services are often provided through the auspices of the American Arbitration Association. Arbitrations are generally appealable to the trial court in each state or federal jurisdiction.



b. Elements of Arbitration

For an arbitration to take place; the intention to arbitrate must be clear. The agreement to arbitrate must show a clear intention for both parties to refer their disputes to this process.



The wording of the original agreement should be as unambiguous as possible. The agreement to arbitrate should establish a clear method of arbitration. There is nothing worse than an

arbitration agreement which refers to rules which do not exist. Parties should always ensure that the rules of arbitration, for example, those of the International Chamber of Commerce Rules or the rules of the American Arbitration Association, that they intend to adopt are

⁵⁹ *Wauregan Mills, Inc. v. Textile Workers Union of America, A.F.L.C.I.O.*, 21 Conn Supp. 134, 146 A. 2d 592, 595.

current, and that it is not some mixture of rules from different rule making bodies. If the Rules of arbitration do not exist, the arbitration will be difficult to govern and appeal. While the site of arbitration and the venue of arbitration are different, it is important for parties to firmly establish each at the beginning of the agreement.

Parties should make it clear what exactly they intend to arbitrate. It is not mandatory for "all disputes" under the contract to be arbitrated. Parties can confine the types of disputes they wish to arbitrate. For example, it can be stated that disputes on interpretation of the terms of the contract can be referred to a court of original jurisdiction, but all disputes on the performance of the contract obligations are to be referred to arbitration. When there is a good arbitration agreement, it can be said that half of the battle is already won. A well drafted agreement will cut down the possible number of disputes. From there on, it's a matter of dealing with the dispute on its merits.⁶⁰

c. Suggested Appropriate Training Level for Commissioner Application

This is another of the three formalized levels which requires complete professional training and professional licensing before a board of competent legal jurisdiction or through a paraprofessional organization such as the American Arbitration Association. As a



result, I do not recommend that any Unit Commissioner become involved in an action requiring arbitration unless they are actually a licensed attorney or otherwise certified to do so. To participate without the proper credentials could cause liability to accrue on a personal

⁶⁰David Goodwyne, *Understanding the essentials of a valid arbitration agreement*, at <http://www.helium.com/items/1868231-arbitration-agreement-arbitration>, (2002).

level and to the Boy Scouts of America. It must be noted that arbitration does not, like mediation or negotiation, use counseling techniques that can apply to intervention, and intercessions. Arbitration is a pure creature of law, and legal procedure.

XII. Summary and Conclusions Concerning the Method Appropriate for Commissioner Alternative Dispute Resolution.

The first question I expect to receive after discussing the main points of this paper with someone would be, "So, what is the real difference? We have all of these forms of dispute resolution that sound close to one another, use the same or similar skill sets, and seem to depend on ordinary business best practices that are also used in counseling, as well as *Wood Badge*?" I would probably fall back on an answer I use with my students when history or science repeats itself, "It's all the same, just different." The methodologies and their applications, when used, seem the same. The skills are often exactly the same. The principles of liability and the statutory requirements that could be violated are the difference. The cure for the difference is in keeping the principles simple, within the Scouting skill set for all Unit Commissioners at all experience levels, and calling it something appropriate so that no Unit Commissioner ever has to face personal liability for over extending him or herself into what could be an explosive situation. In other words we are, "Redefining the Basic Unit Commissioner Training Module Known as "Counseling" Into Correctly Defined Basic Components of Alternative Dispute Resolution (ADR)," the most appropriate of which for the Commissioner service under all circumstances are the informal models of: mentoring, intervention and intercession. We should actually refer to the training as "Intervention" or "Intercession rather than "Counseling."

The legal forms of negotiation and conciliation, or mediation, appear to be close to the informal forms of intervention or intercession in the use of a counseling skill set for common information exchange such as, listening skills, and decision making. The forms of negotiation and conciliation actually have no one to guide the process. This means the aggrieved parties are face to face in a possibly antagonistic and explosive setting. Specialized statutes and legal strategies give negotiation and conciliation its basis for restricting liability to those facing one another. There would be no protection for a Unit Commissioner. These, therefore, are not appropriate formats for the Unit Commissioner to use in dispute resolution in Scouting Units.

Mediation ends in a formalized agreement or contract which has along with the agreement, all of the attendant legal rights and remedies.⁶¹ The mediator directs the process. This individual has a defined role at law or within the social sciences as therapy. It is possible, however, to set up an intercession to approximate some of the essential elements of mediation, with the elimination of a formalized agreement at the end of the process.

If then, the Commissioner Service is to provide some guidance to unit leaders, either singularly or in groups, how clear should we make the instructions given the Commissioner at basic training, or at subsequent levels of training? I believe that we should provide some specific instruction on the generic skills necessary for identifying units in difficulty or leaders in crisis at Unit Commissioner Basic Training, and stop there. Urging the new Unit Commissioner to discuss situations he or she sees within units at their District's Commissioner's meetings should allow an Assistant District Commissioner, as a mentor, with experience and training to step in and direct an intervention or intercession while the

⁶¹ Barry Goldman, J.D., *The Essential Elements of Mediation as Conflict Resolution*, Adapted and revised from "Applying Mediation Techniques to Ethics Consultations," New York, New York, (2007).

new Commissioner attends to observe and maintain the rapport they have established with the unit.

To apply the techniques of shadowing, common language, active listening, and making reflective statements effectively, the Unit Commissioner should make plans to attend the week long course, *Wood Badge for the 21st Century*⁶². These are taught as “best practices” in many corporations and would give the Commissioner the practiced basic counseling skills to perform intervention and intercession, and act as a mentor to a unit leader. *Wood Badge* can be attended after the Unit Commissioner has earned her or his Arrowhead Honor Award, perhaps in their Bachelor of Commissioner Science degree year, in the College of Commissioner Science. Until that time, friendly conversations with unit leaders, and close communication with their Assistant District Commissioner and District Commissioner for assistance should be maintained as the primary tool for the newer Commissioner.

How do we tell a Commissioner that his level of expertise has been exceeded by the situation in which he or she finds themselves if we are not clear on what dispute resolution skills they should attempt to use? Referring them back to their basic training modules, their experience with their units, and continuing training through the College of Commissioner Science should give the Unit Commissioner sufficient insight for self reflection on their skill level. Periodically, the District Commissioner can conduct a reflection during Commissioner’s meetings, designed to keep the Unit Commissioners in the district evaluating the state of their intervention and intercession skills. The District Commissioner is ultimately

⁶² *Woodbadge for the 21st Century* is an advanced training program of the Boy Scouts of America, designed by the National Council and taught uniformly across the United States. It is closely modeled on business training programs and uses many of the same “best practices” as trained corporate leaders, and certified and licensed professionals. It does not, however purport to allow a graduate to practice in a certified position.

responsible, both in theory and practice, for the levels of training and activity of their Commissioners. Reflections conducted by the District Commissioner should key the District Commissioner into the need each Commissioner has for training or guidance within their units of responsibility.

Should we expand training on working with unit leaders to multiple trainings rather than try to cram all of what they should know into an abbreviated twenty minute training one or two times during the first year or two of service? The use of Basic Unit Commissioner Training followed by the College of Commissioner Sciences training series and the inclusion of *Wood Badge* after the Bachelor of Commissioner Science, and courses developed by the College of Commissioner Science for continuing education should be pursued to expand and refresh the Unit Commissioner on the skill sets necessary for interacting with at risk units, at risk leaders, and at risk youth.

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XIV. Appendix

Slide Outline for:

Forms of Dispute Resolution

With Dennis P. McNamee

Assistant Council Commissioner for the Central Area

Learning Objectives

At the end of this module, the student will:

1. Be able to identify the formal and informal methods of dispute resolution,
2. Understand the differences between the formal and informal methods of dispute resolution
3. Have a basic understanding of the elements of each method.
4. Know the three basic elements of counseling used by business, non profit organizations, and scouting without a need for professional licensing, and
5. Know where training is available in Scouting for advancing knowledge in dispute resolution.

Forms of Dispute Resolution

- In Scouting, particularly in Unit Commissioner Basic training, the term “counseling” is often used interchangeably or as a “mash-up” with forms of dispute resolution. That is with the:
 - Three formal types of dispute resolution, and
 - Two informal types of dispute resolution.
 - The informal preemptive form of mentoring.
- Each type, however, has a different meaning and differing format while using some of the same methods.

The three formal types of dispute resolution.

- Conciliation (reactive)–
- Mediation (reactive) -
- Arbitration (reactive)-

The three informal types of dispute resolution

- Mentoring - preemptive
- Intervention (reactive), and
- Intercession (reactive)
-

Counseling As A Tool For Professionals In Formal Dispute Resolution Ψ

Definition of Professional Counseling

- Counseling is the consultation with a professionally credentialed psychotherapist for the treatment of mental and emotional disorders using psychological methods.
- Counseling may be performed by practitioners with a number of different qualifications, including psychiatry, clinical psychology, clinical social work, counseling psychology, mental health counseling, clinical or psychiatric social work, marriage and family therapy, and others.
- It may be legally regulated.

Elements of Counseling for the Specialized professional

- Building rapport and understanding
- Gathering data
- Finding out the problem
- Establishing personal involvement
- Giving hope
- Giving homework
- Terminating the counseling

Common Elements Of Counseling For "Best Practices" Use By Unit Commissioners

Elements of counseling for use by Business and Unit Commissioners in Interventions and Intercessions

- Common Language
- Active Listening
- Making Reflective Statements

• *What is common language?*

- Common language is a technique professional counselors use to get clients to be more comfortable and share their feelings,
- For example, if a client uses the phrase "messed up" instead of "troubled" to describe his relationship with his father, the counselor might ask, "What makes that relationship 'messed up?'" This creates a sense of commonality and understanding or shows that the counselor is making an effort to understand the client at his level.

What is active listening?

- Commissioners, can learn more from what their leaders say and do rather than from constantly interjecting advice.
- If a Commissioner or counselor shows that he or she always pays attention the leader-interviewee will be more willing to be forthcoming with information and feelings.
- Techniques include maintaining soft eye contact, nodding appropriately, and using short phrases like "Oh, wow" and "I see" to express understanding.
- Finally, a counselor should always avoid appearing as if she or he is passing judgment through his or her words or expressions.

What are reflective statements?

- Typically, the Commissioner or counselor picks a moment to stop and go over some of the thoughts the client has shared.
- A reflective statement might sound like, "So, what you're saying is that your mother leaving you at the park and not returning made you feel abandoned.", provided that "abandoned" is the word the client used. This can also convey a sense of understanding, which can prompt the leader to readily answer more difficult questions.
- It can't be done after every sentence, or the counselor could risk interrupting an important train of thought.

Defining Formal Types Of Dispute Resolution

To arrive at an appropriate method, or methods, for use by Unit Commissioners.

Defining Conciliation

- Conciliation is defined as the adjustment and settlement of a dispute in a friendly and *nonantagonistic* manner.
- Conciliation is sometimes known as "Negotiation."

Elements of Conciliation

- Parties submit statements to the conciliator, the person behind the scenes, describing the general nature of the dispute and the points at issue.
- Each party sends a copy of their statement to the other. The conciliator may request further details, may ask to meet the parties, or communicate with the parties orally or in writing.
- When it appears to the conciliator that elements of settlement exist, he may draw up the terms of settlement and send it to the parties for their acceptance.
- If both the parties sign the settlement document, it shall be final and binding on both.

Defining Mediation

- Mediation is the process of submission and consideration of offers back and forth between disputing parties until an acceptable offer is made and approved by both parties.

Elements of Mediation

- There are four essential elements of mediation that can be employed either separately or in a progression in a legal environment. These four are:
 - listen to and validate all parties,
 - summarize and mirror,
 - force reflection, and
 - converge and force brainstorming.

Arbitration

- Arbitration is defined as a process of dispute resolution similar to a mini trial in which witnesses are examined and a judgment is rendered which binds the parties.

Elements of Arbitration

- There must be a *contract* including a clause for arbitration.
- The agreement to arbitrate must show a *clear intention* for both parties to refer their disputes to arbitration. The wording of the original agreement should be as unambiguous as possible.
- The agreement to arbitrate should establish a *clear method* of arbitration.
- Parties should make it clear *what* they intend to arbitrate.

Commonality among the formal types of dispute resolution

- All three use some elements of counseling as tools to achieve an agreement at the end of the process.
- These three formal methods of dispute resolution are used as substitutes for legal action.

- All three formal methods require complete professional training and professional licensing before a board of competent legal jurisdiction or a paraprofessional association such as the American Arbitration Association

Defining the Informal Types of Dispute Resolution

Defining Mentoring

- Mentoring is tutoring or coaching.
- Should be used with the adult leadership staff only.

Elements of Mentoring

- Is a preemptive methodology.
- Pairs experienced with new or inexperienced individuals to share experience and culture.
- Provides for education and sharing of information on:
 - Managing conflict within the unit;
 - Networking;
 - Managing politics in the unit and organization;
 - Time management;
 - Work/life balance; and
 - Leadership development.

Defining Intervention

- An intervention is to work with a person or Scouting unit on an immediate or short term basis with the goal of helping individuals or Scouting units to return to their level of functioning before the crisis or difficulty. Often the form of the intervention is more of a friendly conversation, listening and providing a shoulder to lean on.

Elements of Intervention

- A typical intervention or intercession progresses through several phases.
- It begins with the Commissioner talking to the parties involved, analyzing what has happened in the unit as a result, and the individual leader's or leaders' responses to it.
- Most unit difficulties are administrative in nature, and may not be complicated for the Commissioner, but on occasion can be leader or youth dispute centered.
- When this occurs there are certain common patterns of response to the unit crises.

Defining Intercession

- Intercession is a method in which an individual such as a coworker or Unit Commissioner intervenes between two or more parties with a view to reconciling differences between those parties.
- Intercessions are short term or immediate actions.

Elements of Intercession

- The Commissioner simultaneously works with two or more individuals, each one at a time, toward resolution of an issue.

- It is a back and forth type of discussion with the parties often separated physically or temporally from each other
- The length of time for the Commissioner's intervention in the unit may range from one night to multiple sessions over many weeks
- Discussion session length may range from 20 minutes per individual to two or more hours.

Commonalities between Intervention and Intercession

- Uses three of the basic counseling elements.
- Can obtain training from the BSA or local mental health centers that use volunteer coordinators.
- An individual or Commissioner can help with unit or leader recovery by engaging in coping and problem-solving skills.
- As long as a volunteer receives the necessary training, they are network supportable.

Education For Unit Commissioners In Appropriate Dispute Resolution Skills

Continuing Educational Goals

- All Unit Commissioner basic training modules should help a commissioner recognize "at risk" units or individuals.
- Commissioners should continue their training through the College of Commissioner Science, especially if training on the basic practices of Intervention and Intercession is included.
- The Commissioner should attend *Wood Badge for the 21st Century* to receive an understanding of, and practice the skills of common language, active listening, and reflective statements.

XV. Appendix 2: Tennessee Code Annotated Section 63-11-203
Practice of Psychologist.

63-11-203. Practice of psychologist. —

(a) (1) “Practice of psychologist” means the observation, description, evaluation, interpretation and modification of human behavior by the application of psychological principles, methods and procedures for the purpose of preventing or eliminating symptomatic, maladaptive or undesired behavior and of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health and mental health.

(2) (A) “Practice of psychologist” includes, but is not limited to:

(i) Psychological testing and the evaluation or assessment of personal characteristics, such as intelligence, personality, abilities, interests, aptitudes and neuropsychological functioning;

(ii) Counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback and behavior analysis and therapy;

(iii) Psychological diagnosis and treatment of mental, emotional and nervous disorders or disabilities, alcoholism and substance abuse, disorders of habit or conduct, as well as of the psychological aspects of physical illness, accident, injury or disability;

(iv) Case management and utilization review of psychological services; and

(v) Psychoeducational evaluation, therapy, remediation and consultation.

(B) Psychological services may be rendered to individuals, families, groups and the public.

(3) “Practice of psychologist” is construed within the meaning of this definition without regard to whether payment is received for services rendered.

(b) A person represents that person to be a psychologist if that person uses any title or description of services incorporating the words “psychology,” “psychological” or “psychologist,” if such person possesses expert qualification in any area of psychology or if that person offers to the public or renders to individuals or to groups of individuals services defined as the practice of psychology in this chapter.

[Acts 1953, ch. 169, § 2 (Williams, § 7082.2); T.C.A. (orig. ed.), § 63-1107; Acts 1992, ch. 991, § 1.]

XVI. Appendix 3: Tennessee Code Annotated ; Title 40 Criminal Procedure, Chapter 39 Sexual Offender Registration and Monitoring; Part 2 --Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004.

TENNESSEE CODE ANNOTATED

*** CURRENT THROUGH THE 2009 REGULAR SESSION ***

Title 40 Criminal Procedure
Chapter 39 Sexual Offender Registration and Monitoring
Part 2 --Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and
Tracking Act of 2004

40-39-201. Short title -- Legislative findings.

(a) This part shall be known as and may be cited as the "Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004."

(b) The general assembly finds and declares that:

(1) Repeat sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children are violent sexual offenders who present an extreme threat to the public safety. Sexual offenders pose a high risk of engaging in further offenses after release from incarceration or commitment, and protection of the public from these offenders is of paramount public interest;

(2) It is a compelling and necessary public interest that the public have information concerning persons convicted of sexual offenses collected pursuant to this part, to allow members of the public to adequately protect themselves and their children from these persons;

(3) Persons convicted of these sexual offenses have a reduced expectation of privacy because of the public's interest in public safety;

(4) In balancing the sexual offender's and violent sexual offender's due process and other rights against the interests of public security, the general assembly finds that releasing information about offenders under the circumstances specified in this part will further the primary governmental interest of protecting vulnerable populations from potential harm;

(5) The registration of offenders, utilizing complete and accurate information, along with the public release of specified information concerning offenders, will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems that deal with these offenders;

(6) To protect the safety and general welfare of the people of this state, it is necessary to provide for continued registration of offenders and for the public release of specified information regarding offenders. This policy of authorizing the release of necessary and relevant information about offenders to members of the general public is a means of assuring public protection and shall not be construed as punitive;

(7) The offender is subject to specified terms and conditions that are implemented at sentencing, or, at the time of release from incarceration, that require that those who are financially able must pay specified administrative costs to the appropriate registering agency, which shall retain one hundred dollars (\$100) of these costs for the administration of this part and shall be reserved for the

XVII. Dennis P, McNamee, J.D.

and

Attorney at Law

Biography

Dennis McNamee has been an adjunct faculty member at Fisk University since January 2004. His subjects include: applied calculus, applied statistics, macroeconomics, econometrics, and business law and ethics. Prior to joining Fisk University he was a non-tenure track member of the faculty of the College of the Arts and Science, Department of Economics and Business Administration at Vanderbilt University for six years.

As an attorney, Dennis is licensed in Tennessee, Ohio and before the United States Supreme Court. He has practiced as the general counsel and administrative law judge of the Tennessee Regulatory Authority, the body that regulates utilities in the State of Tennessee and as a utility socioeconomic and financial analyst for the State of Ohio. He has eight years in banking performing legal, investment and financial duties in probate, trust, investments and fiduciary taxation departments for SunTrust Bank in Tennessee, and the Huntington Trust Company and National City Bank in Ohio.

Dennis' academic credentials include a Juris Doctor from the Capital University Law School in Columbus, Ohio. His senior thesis seminar topic was, Terrorism in Northern Ireland, The Peace Process Through Law. He also has a Master of Science Degree from The Ohio State University with concentrations in economics, finance, and statistics. His Master's thesis was a financial and statistical evaluation of the rate base for the fees charged electric power utilities by the Ohio Power Siting Board. His Bachelor of Arts is also from The Ohio State University.

Dennis served in the United States Army from 1970 to 1985 as a member of the active and reserve components, rising from the rank of Private to Captain. His major volunteer interest is in the Boy Scouts of America where he has a forty year career as a Scout that began when he received his Bobcat pin as a boy in 1959. He has served as an adult Scout Leader in positions from Cub Scout Den Leader to the Assistant Council Commissioner responsible for one-third of the scouts in the thirty

seven counties served by the Middle Tennessee Council of the Boy Scouts of America. He is also the Omega Lambda Chapter adviser for the service fraternity, Alpha Phi Omega, at Fisk University.

He has been married to Cynthia Sigler for twenty three years, and has two teenage children, Quinn and Maeve. Quinn is an Eagle Scout with his Venturing Silver Award, and Maeve is a Girl Scout Silver Award holder with her Venturing Silver Award. Maeve is in the project phase of her Girl Scout Gold award.