

MEDIATION AND LEGAL ASSISTANCE

LARISA ZAITSEVA,

Tyumen State University (Tyumen, Russia),

SVETLANA RACHEVA,

Tyumen State University (Tyumen, Russia)

The development of alternative dispute resolution procedures raises a number of new problems and questions for jurisprudence and legal practice. Many of these are closely related to the implementation of mediation procedures. Significant attention has been paid in the legal literature to the need for mediators' legal education. Nowadays a professional lawyer usually performs the functions of a mediator. Nevertheless, in some countries the competence of mediators can be limited. In fact, such persons may be prohibited from providing any legal assistance to the parties. A direct prohibition of this kind exists in Russian legislation. To what degree is this prohibition realistic and reasonable? Different countries enjoy different approaches to the possibility of providing disputing parties with a mediator's legal assistance in addressing issues requiring legal advice or in the drafting of legal documents. Different approaches to this issue have appeared for various reasons. The absence of consensus is caused by a contradiction between the principle of mediator neutrality in the conflict resolution process and the goals of dispute settlement in which a legally competent intermediary is involved. To ensure the effectiveness of the mediation process, legislators should seek out more flexible ways of regulating procedure.

Mandatory regulation itself contradicts the spirit of 'semi-formal' alternative (extrajudicial) methods for conflict resolution. As such, the presence of direct prohibitions or severe restrictions may not only become challenging in the performance of law but such peremptory norms can also make mediation unattractive and ineffective for some particular types of dispute, such as labor disputes. The principle of preserving a mediator's neutrality is possible if exercised within the framework of a balanced approach to reasonable limits and discretionary rules for the provision of certain types of legal assistance to disputing parties.

The present article aims to consider the possibilities and limitations on a mediator's ability to provide particular types of legal assistance where the guarantee of non-discrimination between disputing parties' interests is presupposed.

Key words: alternative dispute resolution (ADR); mediation; legal assistance.

1. Introduction

The Federal Law 'On Alternative Procedures of Dispute Resolution with the Participation of a Mediator (Mediation Procedure)'¹ [hereinafter Mediation Act] was passed in the Russian Federation in 2010. It formed a new stage of development in alternative methods for dispute resolution in our country. The start of applying mediation procedures has given rise to new questions. The search for answers to these questions provides a new perspective on the place of alternative procedures within the system of protecting citizen's civil rights and freedoms.

In a broad sense mediation can be understood as a sort of negotiation technique when the efforts of contracting parties are organized and coordinated by an independent intermediary. 'Mediation' is a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.²

A mediator is often considered to be a person engaged exclusively in creating an environment for negotiation. There is a direct prohibition in Russian legislation on a mediator's provision of legal assistance to disputing parties. In practice, the validity and feasibility of such a strict prohibition is questionable. The impossibility of a mediator applying their legal knowledge in the course of a settlement procedure can render the negotiation process ineffective, and sometimes puts the legitimacy of the parties' final agreement into question. In this respect, the correlation between the service to be provided by a mediator and the provision of legal assistance needs special consideration.

2. Requirements for a Mediator

The Mediation Act presupposes that the activity of a mediator can be carried out both by a professional and nonprofessional. Only a university graduate above twenty

¹ Федеральный закон от 27 июля 2010 г. № 193-ФЗ «Об альтернативной процедуре урегулирования споров с участием посредника (процедуре медиации)» [Federal'nyi zakon ot 27 iyulya 2010 g. No. 193-FZ 'Ob al'ternativnoi protsedure uregulirovaniya sporov s uchastiem posrednika (protsedure mediatsii)'] [Federal Law of 27 July No. 193-FZ on the Alternative Procedure of Dispute Adjustment with the Assistance of Mediator (Mediation Procedure)].

² Uniform Mediation Act 2001 (USA).

five who has an additional education in the area of mediation procedure can carry out professional mediation activity. Only such professional mediators are entitled to conduct mediation of disputes transferred to a court or arbitral tribunal before the mediation procedure begins. Mediation on a non-professional basis can be carried out by those over the age of eighteen, having full legal capacity and no criminal record. No additional education or special training is required for this purpose in Russia.

There are different approaches to this issue in other countries. For instance, in several states of the USA³ rules have been established that require mediators to undergo a certified training program. Moreover, the need for mediator licensing has also been discussed.⁴

In Italy too, a mediator is not required to have a degree in law, though they must attend theoretical and practical training courses.⁵ Even in Italy, however, not all experts agree with this approach.

Nowadays professional lawyers and psychologists often act as mediators in the Russian Federation. Representatives of these professions were the first to show an interest in the possibilities of mediation techniques for settling legal controversies and interpersonal conflicts. In the USA, as well as in Russia, dispute over the professional affiliation of mediators took place, though in the USA it was solely concerned with the extent to which a mediator needed to be a lawyer.⁶

3. Prohibition for a Mediator to Provide Legal Aid

In carrying out professional mediation activities, a lawyer may find the question of limits upon the use of their legal competencies arising.

According to Art. 15(6) of the Mediation Act, a mediator may not provide the parties with legal assistance. Nevertheless, a mediator does help the parties to settle the conflict between them. Here, an attempt will be made to understand to what degree this latter form of assistance varies from the legal form.

Legal assistance means the provision of professional and organized assistance to a subject of the law in order that they may fulfill their legal possibilities. It is provided in order to find a way out of a problem and to fulfill the individual interests of a client to the maximum.

³ See for details, Frederick E. Woods, *Legal Issues in the New Methods of Dispute Resolution*, in *Attorneys General and New Methods of Dispute Resolution 32* (Michael G. Cochrane, ed.) (ABA 1990).

⁴ See for details, Newton R. Russell, *Mediation: The Need and a Plan for Voluntary Certification*, 30 *USF L. Rev.* 613 (1995–1996).

⁵ See for details, Francesca Cuomo Ulloa, *Chi vuol esser mediatore? Competenze e responsabilità del nuovo mediatore civile e commerciale*, in *La mediazione civile alla luce della direttiva 2008/52/CE 69–77* (Firenze University Press 2011).

⁶ See for details, Richard P. Sher, *Mediation*, 41(2) *The St. Louis Bar J.* 2 (1994); Carrie J. Menkel-Meadow, *Is Mediation the Practice of Law?*, 14(5) *Alternatives to the High Cost of Litigation* 60 (1996).

In its widest sense, legal assistance maybe understood as any legal help to implement the rights, freedoms and legal interests of a client.

The procedures of mediation and legal assistance provision are brought together by their essence – that is, the provision of organized *assistance* to fulfill the legal possibilities of a subject of law. The purpose of these procedures – to solve a problem and successfully satisfy individual interests – is also a factor of their similarity. According to the Federal Law ‘On Free Legal Aid Provision in the Russian Federation,’⁷ [hereinafter FL No. 324-FZ] the following activities are considered to be among those constituting free legal aid:

- 1) legal advice in oral and written forms;
- 2) drafting of statements, complaints, petitions and other legal documents;
- 3) representation of a client’s interests in courts, or before state and municipal bodies and organizations.

This list is open in nature. Its main principle is that any type of legal assistance is possible if not prohibited by law.

We may presume that every kind of legal assistance including paid legal assistance can be represented by the same types of activity.

As a practicing mediator and a practicing lawyer, therefore, one must ask oneself the question: ‘To what degree is the prohibition on mediators providing legal aid reasonable and achievable (at least, as regards the aid mentioned in FL No. 324-FZ)?’

Let’s consider the root of the above mentioned hesitations on the examples of particular situations.

4. Is It Provision of Legal Information or Giving Legal Advice?

It can be difficult for a professional lawyer-mediator who has heard the arguments of the disputing parties to keep him or herself from saying: ‘I know how to solve this problem.’ After all, mediation is the process that helps disputing parties to find a mutually acceptable way of resolving problems *on their own, individually*. As such, mediators should only create acceptable conditions for negotiation and help both parties to realize their inner interests to formulate their proposals. However, are we to understand the position of a mediator simply as that of a ‘silent’ supernumerary who is merely responsible for the maintenance of civilized dialogue between disputing parties? Should a mediator not influence the decision of the parties appealing to the law? Let us refer to an example.

The mediation process for a labor dispute is coming to an end. The parties have arranged to sign an agreement on the dissolution of the labor contract at issue as

⁷ Федеральный закон от 21 ноября 2011 г. № 324-ФЗ «О бесплатной юридической помощи в Российской Федерации» [Federal’nyi zakon ot 21 noyabrya 2011 g. No. 324-FZ ‘O besplatnoi yuridicheskoi pomoshchi v Rossiiskoi Federatsii’ [Federal Law of 21 November 2011 No. 324-FZ on a Free Legal Aid in the Russian Federation]].

a meditated settlement. Some pay-outs in favor of the employee are prescribed in this agreement. Disability allowance is among them. The employer had not been against this pay-out from the outset of the conflict as it is provided for by the Social Insurance Fund of the Russian Federation from the fourth day of disability. However, during the final phase of the mediated agreement the mediator notices that the amount of the allowance has not been calculated correctly. The parties do not want to 'broaden their horizons' regarding the rules for determining allowances and react to the suggestion that they might do so without enthusiasm. Both the employer and the employee consider themselves to be highly experienced accountants specializing in the pay roll of wages. At the same time, the mediator knows that the calculation is incorrect. Should they say nothing? Indeed, in such a case, incorrectly charged allowance may not be accepted by the Social Insurance Fund if the amount of the pay-out is greater than that determined by law. Alternatively, the right of the employee to receive the allowance determined by law will be violated if the pay-out is smaller than that amount.

The most important thing is that the lawyer-mediator cannot allow the disputing parties to make a partially illegal agreement. It is easy to suppose that the mediator in such a case would in fact feel obliged to break the legal prohibition. Thus, the lawyer-mediator knows the law and follows the principle of legality in their everyday life. They remind the parties that the corresponding legal norm of the Federal Law 'On the Compulsory Social Insurance against Temporal Disability due to Maternity' clarifies the essence of this principle of legality and the rules of its application in a particular case. Here, it turns out that the mediator has practically given a piece of legal advice orally.

Nevertheless, we can appeal to the logic of Recommendation No. R (98)1 of the Council of Europe Ministers Committee on family mediation issues dated the 21 January 1998. In sect. 3 of this Recommendation it is stated that 'the mediator may provide legal information but may not give legal advice.'⁸ This, however, raises another question: 'What is the difference between the provision of legal information and giving legal advice?' Or should we simply understand it as an ordinary statement without any interpretation of its possibilities for the implementation of rights?

In Council of Europe Committee of Ministers Recommendation Rec (2002)10 on mediation in civil cases dated 18 September 2002, one finds no prohibition on a mediator giving legal advice. At the same time, according to sect. 6, mediators should 'inform the parties of the effect of the agreements reached and of the steps which have to be taken by one or both parties to enforce the agreement.'⁹ Is it therefore possible that such information is not legal in nature? And that recommendations on 'the steps which have to be taken by one or both parties to enforce the agreement' do not constitute legal advice?

⁸ Rec (98) 1E on family mediation (1998).

⁹ Rec (2002) 10 on mediation in civil matters (2002).

In s. 10 of the USA's Commercial Mediation Rules it is stated that a mediator has the right to provide the parties with oral and written recommendations on the resolution of their dispute.¹⁰ Whether these recommendations are of a legal nature or not is not specified.

It should be noted that in the USA, alternative dispute resolution methods, are developing in a dynamic way, which presupposes that scientific research in this area is actively carried out. In the United States, instruments of informal justice have been used for a long time in separate areas of law, such as family or labor law.¹¹ American researchers have identified a so-called 'mediator's weighted settlement of the dispute.' Within the framework of this procedure, a neutral mediator settles the conflict or offers the parties a solution to the conflict. In such cases, the mediator's function turns out to be more significant in comparison with the situation in which he simply facilitates the negotiating process.¹²

5. Mediator's Assessment of Negotiation Perspectives

Another situation in which the actions of a mediator could be characterized as legal advice is in consultations with disputing parties on the termination of a mediation procedure, including the provision of legal justifications for the advisability of the disputing parties turning to, for example, an arbitration court to resolve a dispute. Nevertheless, under pt. 3.2 ('Fairness of the process') of the European Code of Conduct for Mediators, a mediator must inform the parties and may, if they believe it to be reasonable, terminate the mediation process if '... a settlement is being reached that for the mediator appears unenforceable or illegal, having regard to the circumstances of the case and the competence of the mediator for making such an assessment.'¹³ As such, the mediator first evaluates the mediation in terms of its legal legitimacy and secondly informs the parties of his legal assessment of the proposed settlement. Thirdly, the mediator undertakes a legally significant action on the basis of his own assessment of the legal legitimacy of both parties' actions (*i.e.* terminates the process).

A practicing mediator specializing in labor disputes also invariably faces another delicate situation. Whilst having a private discussion with an employee party to a dispute it may become clear that this party is convinced of the rightness of their cause but is wholly inexperienced in civil procedure law. For example, an employee

¹⁰ Commercial Mediation Rules 1984 (AAA).

¹¹ Carrie J. Menkel-Meadow, *The NLRA's Legacy: Collective or Individual Dispute Resolution or Not?*, 26 ABA Journal of Labor & Employment Law 249–66 (2011).

¹² Lela P. Love, *The Top Ten Reasons Why Mediators Should Not Evaluate*, 24 Florida State L. Rev. 937 (1997).

¹³ European Code of Conduct for Mediators (Self-Regulation of Mediation: A European Code of Conduct, Brussels, July 2004).

may have no understanding of the fact that he himself must prove the circumstances to which he refers. Here, a mediator acting as 'devil's advocate' may adopt the litigious perspective envisaged by the employee. But what shall be done in such a case if it is impossible for the employee to agree upon the settlement with the employer due to their unwillingness to compromise reasonably? At the same time, a mediator must recognize that the employee's expectations of the judicial perspective on the matter are, as a rule, unrealistic. Should a mediator explain to the employee the main principles of civil procedure and the peculiarities of presenting evidence in such a matter? Following the formal interpretation of the Mediation Act they should not. However, a mediator will certainly ask questions such as: 'Do you know that you should be able to prove these circumstances to the court? Do you have any documents to confirm your statements?' Unfortunately, these questions cannot substitute a direct explanation of the procedural rules pertaining to the presentation of evidence. An employee's poor legal competence can mean that even a clear hint is unlikely to be properly understood, and the mediator would thus not be able to create an environment for fruitful discussion.

At the same time, a mediator must take into account the fact that they cannot express opinions on the potential perspective of a judge were the dispute to be examined in court. This is firstly because such an opinion would only be the mediator's own individual point of view. Secondly, estimations of this type could violate the principle of impartiality and the need for equal treatment of both parties. Nevertheless, the authors believe that this is not why the Economic Procedure Code of the Republic of Belarus, dated the 15 December 1998 introduced the prohibition on mediators concluding on perspectives of case resolution in the court.¹⁴

However, a mediator can suggest that the parties calculate legal costs payable and time potentially spent in court if they do not resolve their disagreement.¹⁵

Notably, legal provisions regarding a mediator's ability to provide legal assistance are different in some countries. For example, the Austrian Mediation Act (Law on Mediation in Civil Law Matters, Art. 16(3)) states that 'in case of necessity a mediator may provide the parties with legal advice especially from a lawyer's point of view when it is essential for the whole mediation process.'¹⁶ Russia might also learn from the People's Mediation Law of the People's Republic of China, dated the 28 August 2010 (Art. 22), which states that 'people's intermediaries' have the right to 'explain corresponding laws.'¹⁷

¹⁴ Economic Procedural Code of the Republic of Belarus (1998).

¹⁵ Henry Brown & Arthur Marriott, *ADR Principles and Practice* 143 (Sweet and Maxwell 1993).

¹⁶ Austrian Mediation Act (Law on Mediation in Civil Law Matters) (2003).

¹⁷ The People's Mediation Law of the People's Republic of China (2010).

6. Mediator Assistance in Drafting Legal Documents

With regard to the provision of legal assistance by way of drafting statements, complaints, petitions and other legal documents, the following is discernible: mediators certainly do not draft statements, complaints or petitions; however, the situation as regards 'other types of legal documents' is quite different and much more complicated. It goes without saying that when a mediator begins their work they offer both parties the ability to sign an agreement on carrying out the mediation process. Does this agreement have a legal status? Should we treat this agreement as a legal document? The authors believe that the answers to these questions is 'yes.' This is because this document both generates legal consequences and lays down the rules of performance for the parties. So who should draft this agreement? Definitely a mediator. Furthermore such a document cannot be a typical agreement because the parties have the right to establish their own procedure under Art. 11 of the Mediation Act.

The next question that arises is who should draft the final mediation agreement? How often can the parties formulate and execute such an agreement with their own powers? This question is likely to be somewhat rhetorical. Perhaps one should advise them to see a lawyer. However, there are two new obstacles to such an 'ideal' solution. First of all, mediation is supposed to be a cheap process for dispute resolution and drafting in another lawyer can make mediation even more expensive than expected litigation costs. Secondly, the introduction of a new person into mediation proceedings can break an agreement already reached but yet to be executed. A practicing mediator knows that the appearance of an advocate who is continually focused on winning at any cost can disturb 'a fragile peace' and destroy the balance of interests created by a mediator. Taking these factors into consideration, mediator-lawyers can provide legal help to both parties in executing the agreement using their legal competence as effectively as possible.

A final mediation settlement in a labor dispute can differ greatly from a classic settlement agreement in a lawsuit. Such settlement can either entail an extra agreement to a labor contract or an order made by the employer in accordance with the employee's application. Predictably, employers running mainly small- to medium-sized businesses use mediation services in these circumstances. As a rule, such employers do not have a lawyer or a highly qualified personnel officer on their staff. Therefore, when a settlement is likely to be reached in labor dispute negotiations, the parties ask a mediator to advise on the form of the future settlement. Under a literal interpretation of law a mediator should refuse such a request! But was is the main purpose their request? The parties had hoped for real help in their dispute resolution. Indeed, the mediator has organized the negotiations, helped to realize the parties inner interests and to reach a mutually beneficial settlement, albeit an oral one. So what is then to be done? It is quite natural that the mediator also draws up a final document.

The above mentioned Austrian Mediation Act (Law on Mediation in Civil Law Matters) states that a mediator shall 'in writing record the result of the mediation as well as the steps necessary for the implementation' on the request of the parties (Art. 17(2)).

Moreover, it must be remembered that the mediator is also involved in the written recording of the results of the mediation from the point of ensuring that it complies with the law. It is evident that the parties are responsible for the decision they have made. However, can a mediator-lawyer keep away from the problem of ensuring the resulting agreement's accordance with the law? We can answer this question referring to legislation in a number of other countries. For example, the Law on Mediation (Law No. 134-XVI) of the Republic of Moldova on mediation, dated the 14 June 2007, contains the following proposition (Art. 8): 'when mediation culminates with conciliation resulting in settlement it is necessary to do everything possible to exclude from it any content that contradicts the law and morals.' If the legal competence of a mediator is inadequate (Art. 29) he has the right to 'ask for the decision of an expert without specifying the parties.'¹⁸

7. The Possibility Conflict of Interest and Professional Ethics Issues

It is clear that a mediator cannot act for a citizen or represent their interests in the courts, or before state or municipal bodies and organizations. A mediator cannot represent the interests of any party in a listed organization or body in respect of the dispute he is resolving. This matter is in full harmony with the principles of confidentiality, impartiality and the independence of the mediator (Art. 3 of the Mediation Act). However, does it mean that a mediator cannot act as a lawyer and represent the parties' interests in other disputes after the mediation procedure is complete?

The answer to this question is ambiguous. Indeed, it becomes even more interesting where the disputing parties chose a mediator (before any court proceedings) who has already provided legal services to one of the parties to the dispute, including representing their interests before state bodies, and where this fact is well-known to both sides and the mediator himself has not concealed it. Here, the mediator may have authority from both sides, who only this mediator to help them in resolving their conflict, and his previous cooperation with one of the parties may have been unrelated to the present dispute. In such a scenario one is led to ask, what would dominate? The principles of voluntarism and cooperation or the principles of impartiality and objectivity of a mediator? In such a situation the ability

¹⁸ Закон Республики Молдова от 14 июня 2007 г. № 134-XVI «О медиации» [*Zakon Respubliki Moldova ot 14 iyunya 2007 g. No. 134-XVI 'O mediatsii'* [Law of the Republic of Moldova on Mediation (adopted on July 14, 2007 No 134-XVI)]]].

of the mediator to adhere to latter principle could be questioned, though nobody would be able to prove the true absence of neutrality and impartiality.

In the USA the norms of conduct for mediators include rules on conflict of interest, which require that they be revealed by the mediator. After disclosure, if all parties agree, the mediator may then proceed with the mediation.¹⁹

Problems of compliance with professional ethics, the principle of impartiality, and preventing conflicts of interest are discussed in professional literature, but more often concerning situations closely connected with advocacy and notarial functions. Some aspects of this discussion may be helpful in justifying the possibility of mediators providing legal assistance to parties without infringing on principle.

Herve Claire in his work 'Notaries and mediation,' points out that 'the role of a notary is to be the lawyer who is acting for the business but not for his client. Recommendations shall be provided by notary in the common interests of both parties: the seller and the buyer, the creditor and the borrower, all heirs in the case of inheritance, different participants in the economic society.'²⁰ Nevertheless, one should underline the fact that a notary in foreign countries acts both as a lawyer and a mediator.

In this way, it turns out that a mediator does in practice provide some types of legal aid. Moreover, many lawyers nowadays express the opinion that a mediator should be a professional lawyer who has passed practical training in mediation in order to make the results of mediation procedures more efficient and to prevent them from contradicting the law. However, this view represents another extreme. In the opinion of the authors, everything depends on the circumstances of the dispute in question. Indeed, it appears that the participation of a mediator-psychologist would be more insightful and effective in a family mediation.

The necessity that a practitioner be acknowledged as a specialist who is legally qualified to provide legal assistance (professional or qualified) requires such a person to have a professional legal education confirmed by a corresponding diploma. Why should the right to provide legal assistance not then be granted to mediators who have received a legal education? We believe that the only serious obstacle to this is the principle of impartiality and the independence of the lawyer. Taking into consideration the spirit of the law and the methodology of mediation procedures, mediators may not be allowed to provide unilateral aid (including legal assistance). It is obvious that a mediator is strictly prohibited from providing legal help to one of the parties to a dispute *with a view to giving a more favorable outcome to this side in the dispute*. However, why should a mediator not inform both parties about legal norms

¹⁹ American Bar Association & American Arbitration Association & Association for Conflict Resolution, *Model Standards of Conduct for Mediators* (2005), <http://www.mediate.com/articles/model_standards_of_conflict.cfm> (accessed June 18, 2014).

²⁰ Herve Claire, *Notaries and Mediation*, <http://mosmediator.narod.ru/publikatsii/erve_kler_notariat_i_mediatsiya> (accessed September 2013).

that are relevant to the issue at hand, for instance, the probable legal consequences of their actions? It is important to note that such a mediator should inform but not give his own interpretation or anticipation of the law. Why should a mediator behave as if their help has nothing to do with legal aid when they help clients to draft a mediation agreement? Here, a mediator-lawyer's legal knowledge as well as their professional experience, is overlooked during the period of mediation.

8. Conclusion

To conclude, when a legislator takes on the responsibility of resolving 'informal' ADR issues, they are recommended to remember that where the mediation process is transformed into a 'semi-formal' one – that is, partially resolved because a significant part of the remaining procedure is beyond state control – they cannot ensure an absolute implementation of any procedural prohibitions imposed. As mediation is characterized by a high degree of privacy, an expectation of the fulfillment of prohibition-like norms seems unrealistic.

It seems that the statutory ban on the provision of legal assistance by a mediator in its present day form is redundant. In this respect, it is probably important to determine quite clearly that:

1) a mediator is not allowed to provide legal aid to any disputing party, which is aimed at resolving the conflict with an outcome that is more favorable for one of the parties to the dispute;

2) if they are in possession of a university education, a mediator is entitled to:

– inform both parties about compliance with legal regulations regarding the dispute at hand and about the application of such regulations, including judicial practice;

– help with drafting an agreement to a conduct mediation process resulting in a mediation settlement.

It should be clearly specified in the law that 'consultative or any other kind of aid' cannot be provided by a mediator (Art. 15(6) of the Mediation Act) because the process of mediation is a type of aid in itself. At the same time, a mediator should inform the participating parties about relevant principles and the order of the procedure, as well as answer questions on this topic.

It should also be noted that the use of mediation to resolve certain disputes may have peculiar features, as in the above mentioned examples relating to labor disputes. In this regard, special rules for mediation to resolve labor disputes should be established in labor legislation as exceptions to the general rules relating to mediation. The adoption of the Law on Mediation in Russia has resulted in changes to the Civil Procedure Code, but has not led to the necessary amendments on this point in the Labor Code.

References

American Bar Association & American Arbitration Association & Association for Conflict Resolution, *Model Standards of Conduct for Mediators* (2005), <http://www.mediate.com/articles/model_standards_of_conflict.cfm> (accessed June 18, 2014).

Brown, Henry, & Marriott, Arthur. *ADR Principles and Practice* 143 (Sweet and Maxwell 1993).

Claire, Herve. *Notaries and Mediation*, <http://mosmediator.narod.ru/publikatsii/erve_kler_notariat_i_mediatsiya> (accessed September 2013).

Cuomo Ulloa, Francesca. *Chi vuol esser mediatore? Competenze e responsabilità del nuovo mediatore civile e commerciale*, in *La mediazione civile alla luce della direttiva 2008/52/CE 69–77* (Firenze University Press 2011).

Love, Lela P. *The Top Ten Reasons Why Mediators Should Not Evaluate*, 24 Florida State L. Rev. 937 (1997).

Menkel-Meadow, Carrie J. *The NLRA's Legacy: Collective or Individual Dispute Resolution or Not?*, 26 ABA Journal of Labor & Employment Law 249–66 (2011).

Russell, Newton R. *Mediation: The Need and a Plan for Voluntary Certification*, 30 USF L. Rev. 613 (1995–1996).

Sher, Richard P. *Mediation*, 41(2) The St. Louis Bar J. 2 (1994); Carrie J. Menkel-Meadow, *Is Mediation the Practice of Law?*, 14(5) Alternatives to the High Cost of Litigation 60 (1996).

Woods, Frederick E. *Legal Issues in the New Methods of Dispute Resolution*, in *Attorneys General and New Methods of Dispute Resolution* 32 (Michael G. Cochrane, ed.) (ABA 1990).

Information about the authors

Larisa Zaitseva (Tyumen, Russia) – PhD in Law, Associate Professor, Head of the Department of Labor Law and Entrepreneurship of Tyumen State University (38 Lenin str., Tyumen, 625400, Russia; e-mail: larisa_zaitseva72@mail.ru).

Svetlana Racheva (Tyumen, Russia) – Associate Professor of Foreign Languages and Intercultural Professional Communication Department for Law and Economics of Tyumen State University, PhD in Education, LL.M. (38 Lenin str., Tyumen, 625400, Russia; e-mail: racheva71@mail.ru).