

OES Pilots Judicial Settlement Conference Program

In an effort to expand dispute resolution options for litigants, the judicial system is piloting a Judicial Settlement Conference program for Circuit Court cases. Although the Judicial Settlement Conference has been available to Circuit Courts for many years pursuant to Supreme Court Rule 1:19, many courts have not utilized this due to insufficient time and resources. The Norfolk Circuit Court has however, for the past few years, brought retired Circuit Court Judges in to conduct settlement conferences in complex cases. The Norfolk program has been very successful in settling cases that would take multiple days to try and in reducing the court's docket.

On November 6-7, 14 retired Circuit Court Judges were trained in mediation and settlement conference skills. U.S. Magistrate Judge Karen Klein from North Dakota and U.S. Magistrate Judge William Cassady from Alabama conducted the 16-hour training which was held at the Supreme Court Building in Richmond. Both judges provide similar training through the Federal Judicial Center to Federal Magistrate and District Court judges around the country. Sam Jackson, attorney, mediator and trainer from McLean and Paul Warren, attorney, mediator and trainer from Norfolk assisted as role-play observers.

These 14 judges will be available to all Circuit Courts to provide settlement conference services. Parties referred to settlement conference may select from this list of judges a judge to handle their matter. The judges' services will be free to the parties. While the retired judges conducting settlement conferences would be compensated in the same fashion as when recalled to active status, and technically in recalled status, they would have no trial authority with regard to a given case, but merely would assist the parties in assessing their case and possibly reaching settlement. In addition, the retired judge shall maintain confidentiality with respect to the settlement conference proceedings and shall only report to the referring court the terms of the agreement, if authorized by the parties, or the fact that no agreement was reached.

Hopefully, this program will open new options for the circuit courts and litigants. The lawyers and parties should appreciate the benefit of having an experienced judge with significant expertise facilitate the settlement of their case. Furthermore, they will retain more ability to control and craft a settlement, which is acceptable to them or, if not, proceed to trial. This will also be an excellent process for reducing docket congestion while ensuring the prospects of a quality outcome. Finally, this program should offer retired judges an additional opportunity to stay active, to use the skills developed as a judge, and to develop new skills in facilitating settlements. After a reasonable period, an evaluation of this pilot project will be conducted to determine whether it should be implemented on a permanent basis.

Virginia Certified Mediators Provide Quality Services In Court-Referred Custody, Visitation and Support Cases

At the conclusion of the 2003 General Assembly session, Delegate Clifford Athey requested the Office of the Executive Secretary to provide information summarizing the average income of parties served pursuant to Virginia Code Section 20-124.4. In fiscal year 2002-2003, approximately 7000 custody, visitation and support mediations were conducted. Starting in February of this year, the certified family mediators were asked to obtain information on the salary range and family size of the parties they served. From February to October, over 1800 client evaluations were submitted to OES with this information.

Data regarding salary range, family size, agreement rates, and party satisfaction with the process were entered into an ACCESS database. We found that the average income of parties served pursuant to Virginia Code Section 20-124.4 is \$20,000 - \$22,000 and the average family size is 3. Over 95% of the parties liked the mediation process and over 87% of the cases reached agreement on some or all issues.

There are over 1000 certified mediators in Virginia. Approximately 578 of these mediators have Juvenile and Domestic Relations District Court certification, qualifying them to provide custody, visitation and support mediation. Our records indicate that 280 of the Juvenile and Domestic Relations District Court mediators in Virginia provide services under Va. Code Section 20-124.4. Of these 280 mediators, 81% hold a Bachelors Degree, 46% hold a Masters Degree, 29% hold Doctorate level education, and 24% are attorneys. 41% of these mediators have over 200 hours of family mediation related training, 25% have 100-199 hours of mediation training, 25% have 60-99 hours of training, and 8% have 40-59 hours of training. In short, 66% of the mediators have over 100 hours of training and 91% have over 60 hours of training.

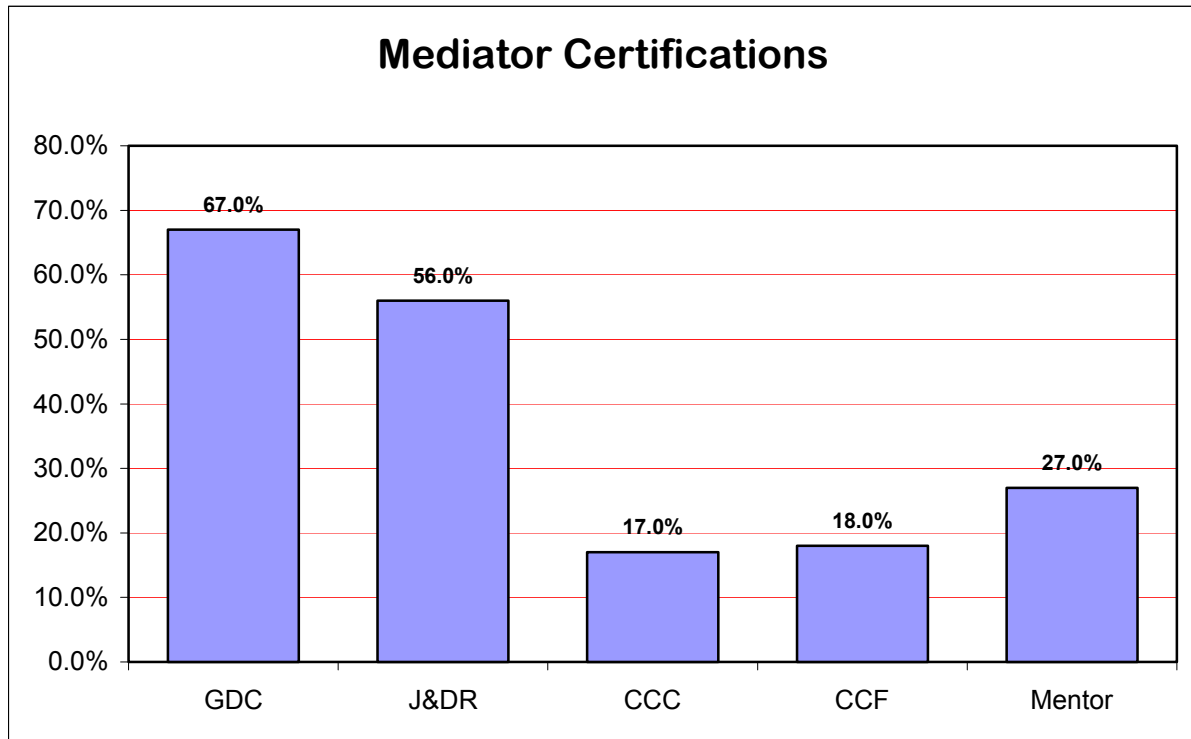
The average years of experience of these providers is significant. 35% of these mediators have over 10 years of experience, 29% have 6-10 years of experience, and 21% has 3-5 years of experience. In short, 64% have over 6 years of experience and 85% have over 3 years of experience. 15% of the mediators have 0-2 years of experience. Among the mediators in this 15% category, 20 hold Bachelors Degrees, 6 hold Masters Degrees, 4 hold Juris Doctors, and 1 has a PhD.

In terms of the numbers of mediations conducted, 57% of these mediators have conducted over 100 mediations, 19% have conducted 50-100 mediations, 8% have conducted 30-49 mediations and 12% have conducted 10-29. In short, 76% of the mediators providing custody, visitation and support mediation have done over 50 mediations.

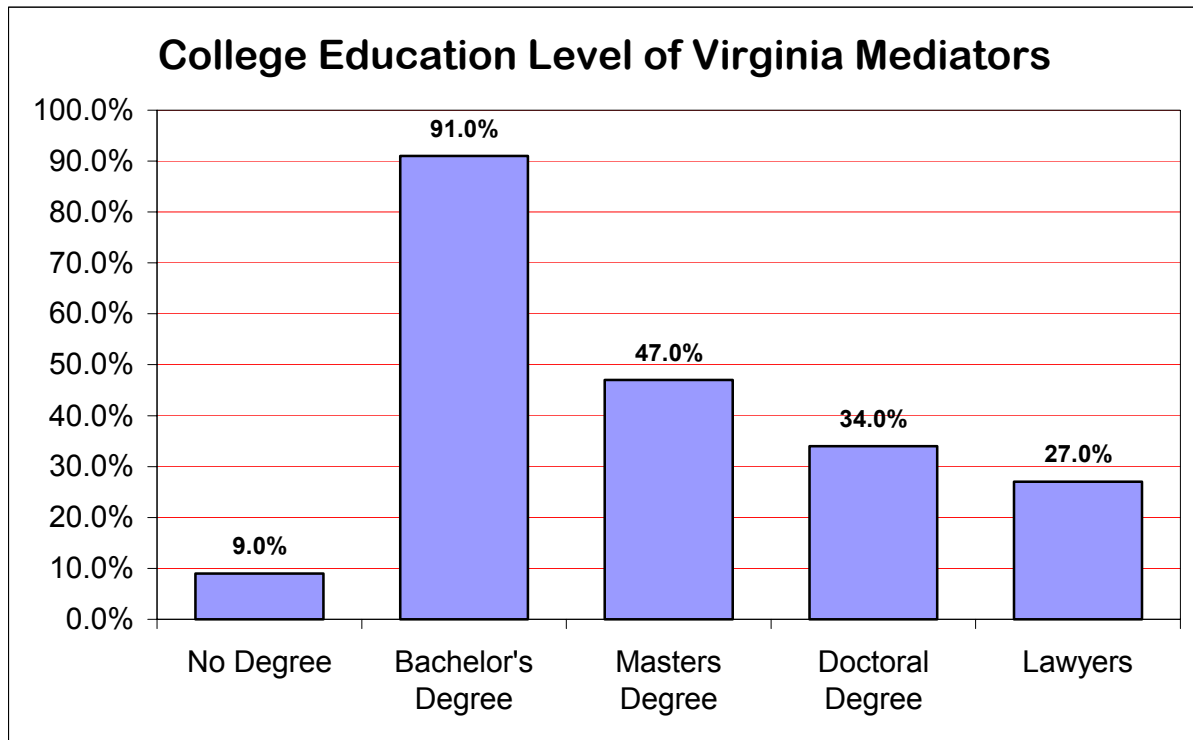
In summary, as the data indicates, the Virginia citizens served by Section 20-124.4 would otherwise not be able to afford access to private mediation services. Through Va. Code Section 20-124.4 the General Assembly has made available access to a dispute resolution option that is extremely well suited for domestic relations cases. The mediators providing services pursuant to Section 20-124.4 are highly educated, well-trained individuals that enjoy providing services to the community.

Who Are Our Court-Certified Mediators?

We are asked from time to time what percentages of our mediators hold various levels of certification. The following chart depicts the response to that question. 67% hold General District Court certification, 56% J&DR certification, 17% Circuit Court-Civil, and 18% Circuit Court-Family. Seventy-nine mediators (8%) currently hold all four levels of certification. We have 331 mediators with Mentor Status (27%).



The education levels attained by our certified mediators is notable. As the following chart reveals, 91% hold a bachelor's degree, 47% a masters degree, and 34% doctoral degrees. Of the 1,039 mediators currently certified, 27% of them are lawyers. Among the 9% having no earned bachelor's degree, most have extensive backgrounds and experience such as in private industry, the military, government organizations, and the medical and legal fields. We believe this speaks well of the professional quality of the mediator population serving the courts.



New for 2004 - Mediator Peer Consultation

Mediators enjoy talking about their cases! And, starting in January, 2004, they'll have a way to do just that - on a regular basis. The Virginia Mediation Network and the Virginia Association for Community Conflict Resolution are launching the first statewide Mediator Peer Consultation (MPC) project to help mediators capture the educational value of their cases and enrich their skills.

In the project's first year, mediators can choose to meet with a group of 6-8 other mediators on a quarterly basis for two hours, at any of five designated community mediation centers throughout the state, to share "critical moments". These are times when a mediator sees an opportunity to intervene - to ask a question, remain silent, invite a caucus, or employ a technique that may help the parties achieve their desired outcome. These small group discussion sessions are designed to be informal and affirming, inviting participants to examine what happened in their cases and why. Each center will have facilitators who are trained to keep the conversation focused on expanding knowledge of mediation theory and intervention techniques.

MPC relies on the premise that everyone will learn what he/she needs to learn, given the opportunity for reflection, constructive feedback, and a nurturing environment. Mediators certified by the Judicial Council of Virginia can receive up to four hours of either family or general continuing education credit for participating in MPC sessions.

The idea of mediators meeting in small groups for case discussion is not new. For several years, this was an active initiative of the Academy of Family Mediators. In a recent book, The Making of a Mediator (Jossey-Bass, 2000), authors Michael Lang and Alison Taylor emphasize the value of peer consultation. They believe that it, along with personal journaling and coaching, should be more than an occasional, optional activity. Rather, it should be routinely imbedded in the fabric of the profession. Lang's and Taylor's observation is that mediators learn and grow best if they set aside time for deliberate reflection on the interactions and underlying theories of their cases. VACCR and VMN are making it easier for mediators in Virginia to access this opportunity for professional development.

The following community mediation centers will offer Mediator Peer Consultation (MPC) to interested mediators in 2004:

DSC Community Mediation Center (Norfolk) bobg@infionline.net (757) 480-2777

April 13

Sept. 2

Dec. 2

Conflict Resolution Center (Roanoke) conflict.resolution@education.edu (540) 342-2063

Feb. 3

April 22

Oct. 21

Dec. 9

Northern Virginia Mediation Service nvms@gmu.edu (703) 993-3656

Feb. 11

May 6

Sept. 9

Nov. 3

Dispute Resolution Center (Richmond) dshocklev@richmond.bbb.org (804) 343-7355

Feb. 18

June 22

Aug. 26

Nov. 18

Peaceful Alternatives Community Mediation Center (Lynchburg)

carolyn.pritchard@peaceful-alternatives.com (434-929-8227)

March 11

Sept. 20

Piedmont Dispute Resolution Center (Warrenton) pdrc@earthlink.net (540) 347-6650

March 16

June 24

October 19

Individual community mediation centers will publicize MPC in their region and provide sign-up information.

For further information, please contact Jeannette Twomey, MPC Project Manager, at vatwomey@erols.com and 703-757-7364.

Mediator Recertification Guidelines Revised

A provision has been added to the requirements for mediator recertification in the [Guidelines for the Training and Certification of Court-Referred Mediators](#). Mediators participating in an approved peer mediation consultation program may receive up to four hours of general CME credit for attendance at such sessions.

A second change to the recertification requirements grants up to four hours of general or family CME credit to mediators who provide either advanced general or family mediation skills training or present an advanced CLE seminar related to the subject of mediation. Evidence of providing such training, information on the length of the training, the number of times the training was offered during the recertification period as well as the number of hours spent in preparation for the course must be provided.

Profile Forms for Searchable Mediator Directory

If you have not yet taken a look at the new searchable mediator directory on the court system's website, please take a moment to do so.

http://www.courts.state.va.us/drs/searchable_mediator_directory.html

If you are a mediator, please note that the information provided on your Mediator Profile Form is entered in the mediator database maintained by the Office of the Executive Secretary, and this same information appears in the searchable mediator directory on the court website. Even without a profile form, the information provided in your Application for Mediator Certification and in subsequent Applications for Mediator Recertification is entered in the mediator database and that same information is supplied to the Internet directory.

If you do not wish to be included in the Internet directory of certified mediators, please notify the Department of Dispute Resolution Services in writing. Without such a request, you will automatically be included in the Internet directory. If you choose not to be included in the

directory, you will still be on the mediator mailing list and be counted as a court-certified mediator.

In looking at your profile in the new searchable directory, if you find that your record is incomplete, please take the time to download a [Mediator Profile Form](#), complete it, and email, fax or mail it to the DRS office. If you discover any errors or if changes need to be made to your profile in the directory, please contact the DRS office.

Civil Mediation Program in the 12th Judicial Circuit Court: Chesterfield Circuit Court

On November 12, 2003 the Chesterfield County Bar Association announced a new mediation program for the Circuit Court of Chesterfield. For approximately three years, a group has been meeting to discuss, design and implement a mediation program in the Chesterfield Circuit Court. This group has included Judge Cleo Powell, James Dixon (Court Administrator), Judy Worthington and Mary Craze (Clerk's Office), Steve Hall (Chesterfield County Bar Association), Geetha Ravindra (Office of Executive Secretary Supreme Court of Virginia), and Morna Ellis (Commonwealth Mediation Group).

While several circuit courts in the state have mediation programs in place, notably Virginia Beach, Portsmouth, and Fairfax, the Chesterfield Circuit Court model differs in that it will encourage the consideration of mediation as a dispute resolution option in every case through the use of a *Mediation Orientation Certification Form*.

Effective December 1, 2003, all civil litigants in Chesterfield Circuit Court, whether arriving by appeal from a District Court or initiating a suit in the Circuit Court, will be required to complete the *Mediation Orientation Certification Form* and indicate their interest in participating in a mediation orientation session. All appeals from Juvenile Court on matters relating to custody, visitation and/or support and all divorce cases with contested custody, visitation and/or child support will be referred automatically by "Order of Referral" to a mediation orientation session. All other family and civil matters will require the execution of a *Mediation Orientation Certification* by plaintiff's and defendant's counsel or by parties if pro se.

The *Mediation Orientation Certification Form* requires that Counsel certify to the court that they have discussed with their client the availability of mediation and also indicate the client's willingness to participate in or opt out of an orientation session. A copy of the *Mediation Orientation Certification Form* will be provided to counsel by the Court. Plaintiff's counsel shall be required to complete and submit the *Mediation Orientation Certification Form* within 14 days of the date of opposing party's responsive pleadings; defendant's counsel will complete and submit to the court the *Mediation Orientation Certification Form* within the same time period. Pro se parties will also be required to complete and return the form to the court.

If at least one party indicates a willingness to mediate, the court will refer the case to a mediation orientation session. The Court may also on its own motion enter an Order of Referral

to a dispute resolution orientation session. Commonwealth Mediation Group will serve as coordinator for the mediation program and will conduct the mediation orientation session free of cost to the parties. The orientation session will be scheduled within 14 days of issuance of the Order of Referral to Mediation Orientation. During the orientation session, a neutral will provide information regarding dispute resolution options, screen for factors that may make the case inappropriate for mediation, and assist the parties in determining if their case is suitable for mediation. Parties may then determine whether to continue with the mediation process or not. Mediation services may be available at no charge to the parties when conducted by a mediator who has a [contract with the Office of the Executive Secretary](#). Participation in the program is not mandatory; parties may “opt out” of the program by complying with the provisions of Va. Code Sec. 8.01-576.6, whereby a written objection is filed within fourteen days after the Order of Referral is issued, stating that the mediation process has been explained to the party, and the party objects to the referral.

Counsel may attend the mediation orientation session and any mediation session(s). All cases will continue on the docket and be assigned a trial date. If parties reach an agreement through mediation the case will be dismissed.

While the Bench, the Bar, the Court Administration, the Clerk’s Office and the Coordinator have spent a substantial amount of time in planning and designing the mediation program, we anticipate that minor changes may be made to the program to ensure it meets the needs of the Court, parties and counsel. The Supreme Court of Virginia and the Virginia State Bar will monitor this new program, and, if it is successful, there may be an effort to introduce the model statewide. Comments and questions about the program are welcome. Please contact Morna Ellis, Commonwealth Mediation Group at (804) 254 –2664 or mpe@cmgmediates.com.

(Submitted by Morna P. Ellis, Commonwealth Mediation Group, and Steve Hall, Chesterfield County Bar Association.)

MEDIATION ORIENTATION CERTIFICATION

Style of Case: _____ v. _____

Case No.: _____ Date issued: _____

Mediation is a process by which a mediator, an impartial third party, assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution. The Virginia State Bar supports the use of mediation and the Supreme Court of Virginia has made funds available for the use of mediators in the Circuit Court of Chesterfield County. The judges of the Chesterfield County Circuit Court also encourage mediation as an alternative to litigation, or during litigation as an alternative dispute resolution mechanism.

Pursuant to the provisions of Virginia Code §8.01-576.5 the Court, on its own motion or on motion of one of the parties, may refer any contested civil matter to a dispute resolution orientation session. In order for the Court to ascertain whether the parties will consider mediation of the dispute at some time during the litigation, the following procedures apply to all new civil filings. If one party agrees, this matter will be referred to the resolution orientation session.

In civil cases where the plaintiff is represented by counsel, plaintiff's counsel shall certify the client's willingness to participate in a mediation orientation session by completing **Section A.** below and filing this **Mediation Orientation Certification** form with the Clerk of Circuit Court within 14 days of the date opposing party's responsive pleadings are filed with the Court. Defendant's counsel will then be contacted by the Court. In civil cases where the plaintiff is not represented by counsel, the plaintiff shall certify his/her intent by completing **Section B.** below and returning this form to the Clerk of Court within the same time period (i.e., 14 days from opposing party's filing of responsive pleadings/answer.) **Defendant will be contacted by the Court.**

Mediation does not excuse the parties from appearing at docket call to set a trial date. **The services of the mediator may be at no cost to the parties.**

SECTION A. I, as counsel for the plaintiff/defendant, have discussed the availability of mediation with my client. My client **WILL / WILL NOT** agree to a mediation orientation session at this time.

(Circle one)

Signed: _____ Date: _____
(Counsel for Plaintiff/Defendant)

Address: _____ (Street Address) _____ (City, State, Zip Code)

SECTION B. I, the plaintiff/defendant, am currently not represented by counsel. I have read the above information, and I **WILL / WILL NOT** agree to a mediation orientation session at this time.

(Circle one)

Signed: _____ Date: _____
(Plaintiff/Defendant)

Address: _____ (Street Address) _____ (City, State, Zip Code)

**American Bar Association Sponsors
Section of Dispute Resolution Spring Conference in
New York, NY, April 15-17, 2004**

Make sure this premier dispute resolution event is on your spring calendar. Last year the Section's Spring meeting in San Antonio, Texas was a tremendous success attracting over 1,000 participants in spite of the fact that the Iraq war began simultaneously with the dispute resolution conference. This spring we will again provide a very high quality and phenomenal range of programming opportunities. The Annual Spring Conference is an essential gathering place for dispute resolution leaders, providers, consumers, scholars, students, from small firms, universities, large law firms, corporations, accounting offices, psychologists' offices, and others that comprise the wonderful world of dispute resolution.

Subject matter tracks this year will include: Arbitration, Community and Peer Mediation, Communication, Construction ADR, Corporate/Business ADR, Court-Connected ADR, Employment and Labor ADR, Ethics, Family, Government ADR, Environment & Public Policy, Intellectual Property and Technology, International, Practice Development and Management, and Technology.

For detailed information about the more than 120 programs being offered or to register for the conference, browse to <http://www.abanet.org/dispute/> or contact the staff at (202) 662-1680.

Save the Dates!!!

Court ADR Mini-Conference - April 15, 2004 New York City

Section of Dispute Resolution Annual Spring Conference - April 15-17, 2004 New York City

For Conference Information, Click: <http://www.abanet.org/dispute/conference/6th/home.html>

(Submitted by Daniel Taggart, Resource Center Coordinator for the ABA Section of Dispute Resolution in Washington, DC)

**Greater Peninsula Women's Bar Association
Sponsors Mediation CLE Program**

On November 6, 2003, the Greater Peninsula Women's Bar Association, which comprises the 7th, 8th and 9th Judicial Circuits, sponsored a CLE program in Newport News emphasizing the benefits of mediation. A panel of five district court judges discussed how mediation is impacting their courts in a positive manner. The panel included Judge Patrick of the Hampton General District Court, Judge Renne of the York County General District Court, Judge Fairbanks of the Williamsburg and James City County Juvenile and Domestic Relations Court and Judges Foster and Kline of the Newport News Juvenile and Domestic Relations Court.

Judges Patrick and Renne discussed how the mediation process is helping to relieve large dockets in general district court. The process is making litigants happy because they often reach a resolution to their particular conflict on the first day they appear in court. In Hampton, Judge Patrick offers litigants the mediation option at the initial call of the docket in the morning. The litigants then meet with the mediator at the courthouse. In the event the matter is not resolved in mediation, the judge will hear the case that afternoon. If the matter does result in a mediated agreement, the agreement is entered as an Order and the case is dismissed. Judge Renne sits in York County and also rides a circuit, which includes Prince William County and King and Queen County. In his circuit, the litigants appear on the initial return date and are given a trial date. Generally, contested cases are not heard on the return date. However, litigants are given the option of meeting with a mediator, if both parties agree. These matters can often be resolved in a mediation session on the return date. The litigants who reach a mediated agreement do not need to return on their trial date and do not miss additional time from work and family.

Attorneys who attended the CLE program learned that the mediation process is a win-win situation for clients with cases in general district court. The judges also emphasized that the positive results in general district court can be repeated in circuit court cases. The three juvenile court judges on the panel discussed the benefits of mediation in custody, support and visitation cases. It was immediately evident that the process in the juvenile and domestic relations court differs from that utilized in general district court, but is equally beneficial. Judge Fairbanks has a system in place which strongly promotes mediation. Judges Foster and Kline are working with their clerk's office and local mediators to implement a comparable system in Newport News. The process begins with the filing of a petition for custody, support or visitation. The litigants are directed to attend a group orientation session. In that session, they learn the benefits of mediating these issues and then voluntarily decide whether to proceed to a session with an individual mediator. The judges made it clear that those litigants who opt for mediation often reach agreement and help to significantly reduce the huge docket in the J&DR courts. It was also emphasized that the mediation process is not solely for unrepresented litigants. It is beneficial for attorneys to encourage their clients to participate in the mediation process because the agreements reached between the parties tend to reflect realistic support, custody and visitation plans. The fact that the parties have agreed to the plans makes compliance high.

Written materials, including a comprehensive outline written by Ms. Geetha Ravindra, were provided to all program participants. The highlight of the program was a powerpoint show presented by Judge Fairbanks. His "jazz" presentation resulted in a lively question and answer session at the conclusion of the program. The attorneys and judges who attended the program left with an excellent impression of how mediation can be an effective tool for clients and litigants.

(Submitted by Nanci Reaves, Esquire, of the Mediation Center of the Middle Peninsula in Cardinal, Virginia. Ms. Reaves has been a court-certified mediator since 2001 and serves as a mentor.)