

RESOLUTIONS



a quarterly update on dispute resolution



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Child Dependency Mediation Training

Child dependency mediation provides a non-adversarial setting to assist and encourage parties to reach a fully informed and mutually acceptable resolution of desired goals. This type of mediation retains the “best interest of the child” focus. This mediation allows parties to participate in a structured conversation regarding issues versus resolving these issues in the adversarial courtroom setting. These issues may include any or all of the following: the health and developmental progress of your children; parenting techniques; custody

and visitation; assessments; and recommended family services.

Recommendations made



Dotty Larson (right) chats with Judge Janice Wellington, workshop speaker (light blue) and Geetha Ravindra (left) during the mediation training session.

by the social worker, guardian ad litem, or others will be considered and agreed upon by all parties. These cases focus on children who are the subject of any of the following petitions: abuse or neglect, approval of an entrustment agreement or for relief of custody, foster care review, permanency planning or termination of parental rights. The mediation is voluntary. A party may choose to discontinue at any

time and then have the case heard by a judge. Any agreement signed in mediation must be reviewed, approved, and then incorporated into a resulting order by the judge.

In the 2001-2002 fiscal year, the Office of the Executive Secretary of the Supreme Court of Virginia funded three pilot programs in the City of Alexandria, Fairfax County and the city of Lynchburg Juvenile and Domestic Relations district courts. Lynchburg mediated seven cases. Seventy-one percent of these cases reached a full or partial agreement. One hundred percent of surveyed participants indicated that they would use mediation again and ninety-three percent would recommend mediation to others. Fairfax provided mediation to ten families. Eighty percent of these cases reached full or partial agreement. Fairfax was able to offer a multi-cultural mediator pool. One parent requested a mediator of the same race

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(Continued from page 1) Child Dependency and Fairfax was able to accommodate the request. Alexandria mediated eleven cases. Sixty-four percent of these cases reached full or partial agreement.

In December 2005 the Office of the Executive Secretary through the Court Improvement program and the Department of Dispute Resolution Services collaborated to create a training program with the intent of training more family mediators to work in the child dependency area. The utilization of child dependency mediation in Virginia is one of the objectives of the Program Improvement Plan of the Virginia Department of Social Services resulting from the 2003 Child and Family Services Review. Dr. Gregory Firestone was retained as primary speaker. Dr. Firestone is a practicing mediator, mediation trainer, licensed psychologist and dispute resolution system consultant. He lectures nationally and internationally and has served as primary trainer for numerous family and dependency mediation certification courses.

Virginia certified mediators were requested to submit an application form and a letter of support from their local Juvenile and Domestic Relations District Court Judge. The training was funded by CIP and included the cost of the faculty, materials, hotel and meal ex-



Dr. Gregory Firestone serves as the Director of Conflict Resolution Collaborative at the University of South Florida.

penses and an agreement to fund five mediations for graduating mediators at \$200.00 per case. Approximately 60 mediators applied and 22 mediators were chosen representing 16 jurisdictions. These family mediators were chosen based on their experience, their location diversity and their own cultural diversity. The local judge from the jurisdiction of the chosen mediators had to agree to attend the fourth and last day of training along with a team of local representatives. In addition, the team attended a dinner the night of the third day, where an introduction to child dependency mediation was provided. The team consisted of essential personnel necessary to support and promote an understanding of this pilot program as an alternative to the adversarial process.

The program itself consisted of instruction and role-

plays. Dr. Gregory Firestone conducted the majority of the training. Lelia Hopper, Director of the Court Improvement Program, who presented an overview of Virginia's child dependency law, enhanced his materials. Harriet Russell McCollum, Past Director of the Virginia Commission on Family Violence, presented on the dynamics of abuse and neglect and the needs of children in the dependency court. Judge Wellington, Prince William County Juvenile and Domestic Relations District Court, addressed cultural and racial



Tim Ruebke (left) and Karen Asaro (center) take on the role of mediators during a group role play with workshop participants.

issues. Geetha Ravindra, Director of Dispute Resolution Services provided the program overview, program materials, and mediation instruction and education throughout the entire training.

Role-plays were developed by CIP staff with collaboration of certified mediators who were currently facilitating child dependency mediations in various stages

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of the court proceedings. Also, the Department of Social Services, a respected psychologist and CASA were consulted in the formation of supporting documents. Five role-plays were developed with the supporting court paperwork, psychological, CASA reports, and DSS information. The first role-play was a demonstration mediated by Dr. Greg Firestone. Non-mediators played the client roles and actual attorneys played their professional role. Then the mediators performed 3 role-plays: at the predisposition stage, the disposition of a CHIN (supervision) case and the foster care review where a termination of parental rights petition had been filed. The fourth day of training provided the mediators the opportunity to teach their local teams the mediation process. Each team member was assigned a "role" and participated in a role-play emphasizing a concurrent planning fact pattern.

All mediators completed the training. The Office of the Executive Secretary gave each mediator a contract to provide services in the child dependency area. CIP agreed to fund five mediations at \$200.00 each for each of the mediators. Dispute Resolution Services is currently developing a mediation database to review the results of this statewide initiative.

Article submitted by: Linda Scott, Attorney,
Court Improvement Program

Mentoring Process Revised With Emphasis On Quality Assurance

The Mentoring Committee is nearing the successful completion of its major task, revisions to the mentoring process. This undertaking was described in the December 2005 issue of *Resolutions*. The Committee has developed new Mentoring Guidelines and redesigned the training course for Mentors. The mediation community was asked periodically to review drafts of these guidelines and offered suggestions for the Committee's consideration. The final document reflects the knowledge and experience of a significant portion of the mediation community in Virginia.

The revised Mentorship Guidelines ensure: 1) that prospective mediators receive meaningful learning opportunities during the mentorship process and gain valuable insights and experience; 2) that Mentors better understand and fulfill their role as a guide and evaluator during the mentorship process; 3) that information regarding the mentee's skills which require additional work is shared between Mentors to provide continuity in the learning experience of the mentee and an opportunity to foster growth and increased competency with each successive mediation; and 4) that the Mentors' feedback and recommendation for certification is substantiated by supporting documentation.

In light of significant revisions to the mentoring process, the Mentoring Committee concluded that the training required to become a Mentor should be increased from two to four hours. The new four-hour training will be required of all Mentors, even those already approved as Mentors, effective January 1, 2007. The Dispute Resolution Services Office will offer four free Mentor training workshops to existing Mentors and those seeking to become Mentors. This training will count towards general re-certification credit.

The first scheduled training will be held as part of the Virginia Mediation Network (VMN) Fall Conference on September 17, 2006 in Charlottesville. Mediators should register for the September training through the VMN website at <http://www.vamediation.org/>. Additional training will be offered in various locations throughout the state in the fall. The dates and locations of the additional training will be posted on the ADR calendar (http://www.courts.state.va.us/drs/resolutions/adr_training_calendar_current.pdf) in August. A memorandum about the new Mentorship Guidelines and training requirements and a registration form will be sent, also in August, to all current Mentors with the dates and locations of the training.

Mentors who have not completed the new four-hour training program will not be allowed to mentor individuals seeking certification after January 1, 2007. Approved trainers of the current two-hour "Mentoring Others" course must develop a new four-hour course similar in structure and content to the DRS training programs offered in Fall 2006. All Mentors must use the new mentorship forms after January 1, 2007. The complete Mentorship Guidelines and the mentorship forms will be posted on the website at the conclusion of the Fall 2006 training workshops.

Ethical Scenarios For Attorneys-Mediators And Those Who Work With Them

On March 28, 2006, the Standing Committee on Legal Ethics of the Virginia State Bar issued a proposed advisory opinion – Legal Ethics Opinion 1826 – in response to a posed hypothetical scenario. In the hypothetical, two attorneys who are the only partners in a law firm simultaneously serve as contract mediators for a mediation firm that includes both attorney and non-attorney mediators. One of the attorneys in the law firm also serves as the mediation firm’s director.

The committee was asked:

- 1) Whether either of the attorneys may represent clients who appeared before other mediators in the mediation firm;
- 2) Whether this presents a conflict of interest, and if so, whether disclosure to the clients of the attorney’s role in the mediation firm would cure the conflict; and
- 3) Whether a screen is needed between the two attorneys?

Legal Ethics Opinion 1826 identified the following Virginia Rules of Professional Conduct as pertinent to the inquiry:

- o Rule 1.7
- o Rule 1.10(a)
- o Rule 2.10(e)

Additionally, Virginia Code § 8.01-581.22 and –581.24 were cited as imposing certain standards and duties applicable to the hypothetical scenario.

Besides providing guidance for the scenario’s limited scope, the responding opinion addressed broader issues suggested by the scenario. In an effort to assist the ADR community, this article will answer questions that may be applicable to situations similar to those presented in the hypothetical.

Can an attorney who served as a mediator to a party provide legal representation to the same party in the same dispute?

Short answer: No.

An attorney is barred from providing legal representation to a mediation party where the attorney served as the mediator in the same dispute. Rule 2.10(e) creates a conflict of interest for subsequent representation of either mediation party. This is an incurable conflict.

Can an attorney whose law firm associate served as a mediator to a party provide legal representation to the same party in the same dispute?

Short answer: Yes, if the client consents.

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A conflict of interest is also created when one attorney seeks to provide legal representation to a mediation party where another attorney in the same law firm served as the mediator in the same dispute. Rule 1.10(a) imputes a conflict of interest under Rule 2.10(e) from any attorney in a law firm to another. But this is not an incurable conflict. Unlike Rule 2.10, Rule 1.10 provides a curative provision. Rule 1.10(c) allows a client to consent to representation under the conditions stated in Rule 1.7 (b). According to the Legal Ethics Opinion 1826, one step in curing the conflict is disclosing to the client the attorney's role in the mediation firm. Creating a screen between lawyers regarding a case may be an appropriate strategy for obtaining client consent.

Can an attorney provide legal representation in the same dispute to a mediation party referred by a mediator who is in the same mediation firm as the attorney, but not in the same law firm?

Short answer: Yes, but there are certain concerns associated with this arrangement.

Because an attorney in this situation does not have a conflict of interest under either Rule 2.10(e) or 1.10(a), the attorney is free to represent the client. However, Legal Ethics Opinion 1826 recommends that the attorney should look at whether any "personal interest" in the mediation firm may materially limit such representation. If it does, Rule 1.7 states that a concurrent conflict of interest exists. Examples of things to consider would be:

- The financial arrangement with the mediation firm,
- The nature of the relationship with fellow mediators,
- Language in any contract between the mediation firm and its customers, and
- Any pertinent legal authority

For instance, Virginia Code Section 8.01-581.22 ensures the confidentiality of all memoranda, work product, and other material contained in the mediator's case file, as well as any communications made in the course of or in connection with the controversy being mediated. Thus, adequate security measures should be implemented to avoid the unauthorized access to or disclosure of information protected under the statute unless all the parties to the mediation have waived confidentiality. Therefore, creating a screen between lawyers regarding a case may be an appropriate strategy for obtaining client consent.

Because of the limited scope of the hypothetical scenario, Legal Ethics Opinion 1826 is unable to provide specific guidance on issues regarding ancillary businesses and referrals. What it does do is cite a number of other legal ethics opinions issued by the Standing Committee on Legal Ethics of the Virginia State Bar that provide guidance for attorneys who own ancillary businesses. And it also advises any attorneys in this hypothetical arrangement to look to Rule 7.3(d) in determining whether any referral issues between the mediation firm and law firm create a conflict.

About the authors

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Farewell From Executive Director Bob Glover



I write you today with both great sadness and joy. My wife, Linda Smith, and I are preparing to move to Morocco for the next 27 months. We have joined the Peace Corps as this is our mid-life adventure. We depart from JFK to Casablanca on September 11th.

Since 1995 I have been involved with the Community Mediation Center (CMC) first as a volunteer mediator and then for the past 8-1/2 years as the director. I love my job, the Center's staff and volunteer mediators, our varied clients, our teen mediators, and all of the Center's friends, donors, customers and supporters.

Nonetheless, Linda and I have a window of opportunity as our two young adult children are finishing college, we still have our good health, and we have no grandchildren. Moreover, the Center has an incredibly wonderful and talented staff, truly committed volunteers, a solid and ably led board and literally hundreds of friends, customers and supporters across Hampton Roads.

July has been a unique month in that I received two letters from the President of the United States. The first congratulated me for 30 years of military service in the Army and Army Reserves, and the second welcomed Linda and me to the Peace Corps. Clearly, this is the right time for a transition.

Karen Richards, who has been with the Center since 1993 will serve as the CMC's Interim Director. The board, long-time volunteers and the staff have developed a solid transition plan. I know you will provide your full support for Karen and the staff in the months and years ahead.

As for Linda and I, we will live with a Moroccan host family for 3 months, dusting off our rusty French while learning Arabic and hopefully much about the local culture and cuisine. Then, we will spend the next two years living and trying to fit in with our local community and project site (yet to be determined). Once we relocate to our new community we will both work in small business development and advising – primarily with local co-ops and artisan associations. We will also have opportunities for additional projects – possibly in conflict resolution. We will be gone until December, 2008, not long really, as George Bush will still be our President.

So, mark your calendar for August 22nd (early evening) where we bid farewell and celebrate the impact and future of community mediation in Hampton Roads. Look for details coming in the mail soon. I hope to have a chance to talk with all of you during the coming weeks.

Sincerely,

Bob Glover

Editor's note: The following article appeared in the newsletter of the CMC –SEVA recently and it will be of interest to those readers familiar with the Norfolk Center and its long time Executive Director Bob Glover.

We wish Bob and Linda success and enjoyment as they are off on this new adventure.

Family and Child Support Mediation Training A Success

Approximately 260 mediators across the state participated in four day-long child support training workshops offered by the Dispute Resolution Services Office as part of the mediator quality assurance initiative begun in 2005. This undertaking was described in the December 2005 issue of *Resolutions*. The successful workshops were the result of the combined efforts and talents of mediators across the state and generous donations of meeting space by the George Mason University School of Law, Roanoke Higher Education Center, Regent University School of Law, and the University of Richmond School of Law. Grant funding provided by the Department of Social Services was instrumental in the development and success of these child support training workshops.



Workshop participants eagerly review training materials.

The training included an overview of pre-mediation considerations, statutory revisions effective July 1, 2006 and practice sessions on child and spousal support calculations. As part of the Family Mediation Committee's task, a Resource Manual was developed and provided to all participants in the workshops. The manual was designed to be a ready reference for family mediators and contains an extensive Appendix of materials, which should be updated annually by mediators. The Power-Point presentation from the workshop will be available on the Dispute Resolution Services Office website under the "mediation" link.

Evaluations of the training were completed by 211 of the 260 participants. Feedback was overwhelmingly positive. Most participants requested more time to practice support calculations and more time for discussion of child support mediation scenarios. Future training suggestions included military issues, diversity issues in mediation, best practices in mediation, and self-employment issues. Several participants requested that the training become an annual event. A sincere thank you is extended to the mediators for their contribution to the professional development of the mediation community in Virginia.

Thank you!

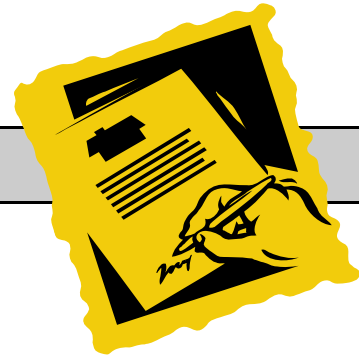
Family Mediation Committee Members/Training Facilitators:

Alice Burlinson, Karen Collier, Deborah Costello, Morna Ellis, Dotty Larson, Carol McCue, Jim Pope, Carolyn Pritchard

Training Facilitators:

Laura Aeschbacher, Rita Argenbright, Susan Bartlett, John Birch, Linda Cataldo, Chris Eichmann, Bertie Farrell, Sara Foote, Kathey Foskett, Merri Hanson, Patty Lacks, Gladys Lee, Elizabeth Lindsay, Ervin Mast, Jackie Mitchell, Cathi Moore, Reham Nasr, Diane Poljacik, Nona Puckett, Deanna Revay, Karen Richards, Judy Rubin, Bud Schoolar, Joyce Sexton, Loretta Vardy

2006-07 Mediation Contracts Awarded

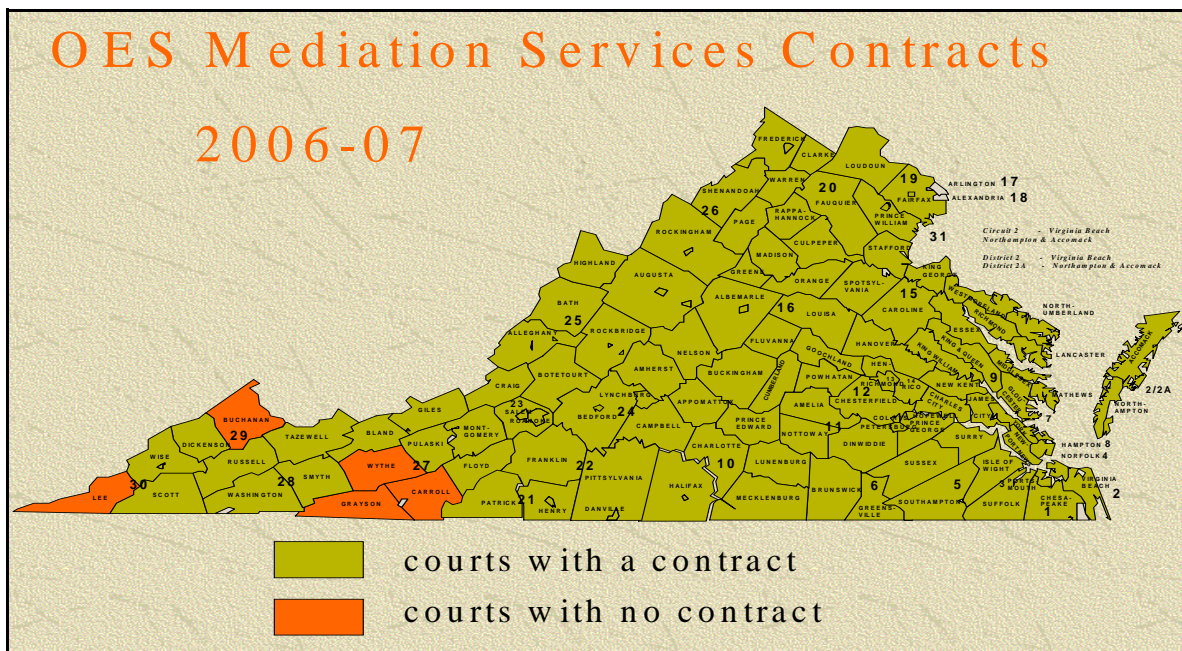


Following a review of proposals received in response to the Requests for Proposals issued by the Office of the Executive Secretary, contracts have been awarded for both mediation coordinators and for mediation services.

For the 2006-07 fiscal year, there were 26 coordinator contracts awarded. Those coordinators will serve a total of 230 Virginia courts in 108 localities that fall into 29 of the 31 judicial circuits. Mediation services contracts were awarded to 52 contractors serving all 31 circuits.

In the winter issue of *Resolutions*, we will present an overview of the 2005-06 mediation contracts, capturing statistics regarding total cases mediated at each level of court, total dollars spent for coordinators, mediation services contract cases, custody, visitation and support mediation cases, and judicial settlement conference cases. You will be able to see which courts utilized ADR services at the highest volume and see the overall growth of mediation in Virginia over the past several years.

Below is a map indicating the courts that are served by the 2006-07 mediation services contract providers. A list of contractors will be posted to the mediation page of the court website (www.courts.state.va.us) and will be mailed to all court clerks' offices and judges to assist them in referring appropriate cases to mediators who through their contracts can provide free mediation services to court users.



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Ron McLean, Executive Director

PRESS RELEASE

Welcome Rebekah Carswell!



Rebekah Carswell has been named the new Executive Director of the Conflict Resolution Center (CRC) after an extensive search. She replaces Christine Poulson, who recently moved to Staunton.

Rebekah graduated from Juniata College in Huntingdon, Pennsylvania with a Bachelor of Arts in Peace and Conflict Studies and Anthropology, and has completed coursework at the University of Ulster, Northern Ireland. Her senior thesis was based on funded research she conducted in 2000 while studying in Northern Ireland. Following graduation, Rebekah spent two years in Mubi, Nigeria through Brethren Volunteer Service, teaching English, Literature, and Music in the Secondary School and Communication, Conflict Studies and Peace Studies in the Bible College.

After returning to the United States, Rebekah began work at the Community Mediation Center in Harrisonburg, Virginia. As a Case Manager, her responsibilities included training interns, coordinating mediations, conducting intakes, and attending local courts. She also led workshops and worked with fundraising and special events. Rebekah was serving as Office Manager when she left the Community Mediation Center to take a job with Rosetta Stone as a Lead Sales Support Supervisor where she worked until she and her husband, Paul, relocated to Roanoke.

Rebekah is a group facilitator, mediates general, family and truancy cases, and is an experienced trainer. She conducts workshops on communication, conflict resolution, workplace disputes and a wide variety of other topics to local, statewide, and national organizations. In addition, she has helped to train and establish Peer Mediation programs in several school districts. Rebekah brings many talents and skills to the Conflict Resolution Center in Roanoke, Virginia.

Child Protection Training Opportunity

The Family Court of the District of Columbia and the Multi-Door Dispute Resolution Division of the D.C. Superior Court have announced their fall Child Protection Mediation volunteer mediator training. Applications are currently being accepted for mid-August 2006 interviews.

The actual 52.5-hour training will take place in September. For additional information, you may contact Shavon Brooks at 202-879-0439.

2006 Child Support Legislative Changes For Family Mediators

WHO: The General Assembly passed three pieces of legislation that have significant impact on the work of family mediators in Virginia.

WHEN: All of these changes were effective July 1, 2006 and unlike legislative changes in most years, these have raised some questions about what they mean for parties to mediation and how family mediators should implement these changes in their work.

WHAT: The changes involve the content of child support orders, how arrearages are paid when the youngest child named in an order emancipates and a simplification of the deviation factors in § 20-108.1.

The first change amends § 20-60.3 which sets out the content of court-ordered support orders. To see the language which was deleted (see strike through) and what was added (see italics) to the statute see the language in Paragraph 6 at <http://leg1.state.va.us/cgi-bin/legp504.exe?061+ful+CHAP0869+pdf>.

The new language was added to clarify that all obligations for support should be stated as a monthly obligation and the court should say what date the order is effective. If the order is the result of an initial petition for support, the effective date shall be the date of filing of the petition. If the order is the result of a request for a modification, the effective date may be the date of service of the motion on the responding (non-requesting) party. The first payment is due the first of the month following the hearing and a calculation must be done to determine the obligation for the first partial month and any full months between the partial month and the date the first payment is due. Payments can continue to be made according to the frequency with which the obligor is paid.

The second change further amended § 20-60.3 to add a provision to court orders that if arrearages in child support exist at the time the youngest child covered by the order emancipates, the arrears will be paid at the total amount of the order in effect at that time. See <http://leg1.state.va.us/cgi-bin/legp504.exe?061+ful+CHAP0720>. For example, if at the time the youngest child emancipates, there is an order for \$400 per month in current support, the arrears will be paid at the rate of \$400 per month. If the order is for \$400 per month in current and \$100 per month toward arrears, the arrears shall be paid at the rate of \$500 per month.

The third change amended the deviation factors in § 20-108.1. This was done to simplify and update the deviation factors, eliminate duplication and conflict with some child support elements which had been added to the guideline in § 20-108.2 and to be sure the deviation factors were all tied directly to the children and not the parents or family. The language, what was added as well as what was deleted, can be viewed at <http://leg1.state.va.us/cgi-bin/legp504.exe?061+ful+CHAP0785+pdf>.

One of the changes the court may now consider is the cost of visitation. Additionally, the court may consider the good faith of the change in a party's employment and the reasonableness of the employment decision. This effectively overrules the 1991 *Antonelli* case from the Virginia Supreme Court which held that the financial affect of a parent's change in employment, regardless of the decision and the outcome, should not be borne by the parent's child or children. Now if the decision was made in good faith and with reasonableness, a parent may be able to obtain relief under the imputed income

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deviation factor. The other changes remove deviations not related directly to children and clarify that the children are the focus of the deviations, not the family.

HOW: How does this affect our work as family mediators in Virginia? Well, as with all mediations, parties can agree to what works for them but we must be mindful of what the law requires and what the courts may or may not consider if the parties do not reach an agreement and the matter goes to court.

Here are some ideas that you may want to consider when conducting a child support mediation in the future.

1. Find out when the petition for support was filed or when the motion for a modification was served on the responding party. The parties don't have to use these dates as a starting point for their child support order but you should be aware of these dates. Knowing what a court would do with these dates may be helpful to the parties.
2. In your agreements, be sure to state the obligation in a monthly amount. This does not mean it has to be paid monthly but it should be stated in monthly terms. That is what the guidelines contemplate and this change in the statute expects that.
3. The obligation can be paid in whatever frequency the parties agree but it is usually paid with the same frequency the obligor is paid by his or her employer. For example, if an order is for \$433 per month but the obligor is paid weekly, the obligation could be paid weekly in the amount of \$100 per week.
4. Share with parties the new requirement for payment of arrearages if any exist at the time of emancipation of the youngest child covered by the order. This change is to provide for arrearages to be paid off as quickly as possible, at a rate the obligor has been required to pay support while the children were minors.
5. Ask some questions about possible deviations and you may want to explore the reason for any job changes and resulting change in income. Was the job change reasonable and made in good faith? Do the parties agree on this? This change is a departure from the last 15 years in Virginia. If the parties cannot agree, perhaps the court needs to make the determination.
6. If you have any questions about this, please don't hesitate to contact me at alice.burlinson@dss.virginia.gov or at 540-776-2779. Additionally, there will be a workshop on these new legislative changes at the VMN conference in Charlottesville next month.

Submitted by Alice G. Burlinson,
Regional Special Counsel
Virginia Division of Child Support Enforcement