



**SUPREME COURT OF
VIRGINIA**

RESOLUTIONS

OFFICE OF THE EXECUTIVE SECRETARY

*Department of Judicial Services
Division of Dispute Resolution*

100 North 9th Street
Richmond, Virginia 23219

JUDICIAL SETTLEMENT CONFERENCE TRAINING SESSION

In an effort to expand dispute resolution options for litigants, the judicial system developed a unique Judicial Settlement Conference program for Circuit Court cases that combines aspects of facilitation with judicial settlement techniques. A Judicial Settlement Conference is a dispute resolution process in which a retired Circuit Court judge, trained in facilitation and settlement techniques, actively guides parties in conflict to a mutually satisfactory resolution. There are currently twenty Judicial Settlement Conference Judges available statewide. The service is available at no cost to parties when referred by the Circuit Court pursuant to Supreme Court Rule 1:19.

A Judicial Settlement Conference Training Session was held on June 6, 2007, at the Supreme Court building for the settlement judges. The training session included a statistical update on the Judicial Settlement Conference program, a panel discussion with select Judicial Settlement Conference Judges, a panel discussion with attorneys and an insurance litigation specialist, and a presentation by Geetha Ravindra addressing procedural issues, client evaluations, judicial ethics, and settlement techniques.

The Judicial Settlement Conference program began in November 2003. To date, there have been approximately 1,733 referrals to the Judicial Settlement Conference Program. The types of cases being heard in settlement conference include: 46% tort/ personal injury, 24% commercial, 23% domestic, and 7% fall into a miscellaneous category. More specifically, auto accidents (32%), divorce (18%), and contracts (11%) comprise the top three types of cases referred to the Judicial Settlement Conference Program.

Sixty-one percent of settlement conference cases successfully reach an agreement during the conference and another three percent reach agreement soon after the conference as a result of the conference.

The average time between referral date and conference date is approximately 3-4 weeks, and the average length of a conference

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is approximately 3.5 hours.

Circuit Courts in the Tidewater area of Virginia (Hampton, Suffolk, Virginia Beach, James City/Williamsburg, Norfolk, Newport News, Isle of Wight, York and Chesapeake Circuit Courts) account for 68% of settlement conference referrals to date, with 21% of all cases being referred by the Hampton Circuit Court. A total of 91% of circuit courts have referred cases to this program.

Data reported from client evaluations received from parties to the settlement conferences or from their counsel indicate that 99% viewed settlement conference as appropriate, 96% viewed the conference as helpful, and 99% reported they would request a settlement conference again and would recommend the process to others.

Ms. Ravindra reported that in light of the effectiveness of the Judicial Settlement Conference Program, more Circuit Courts are taking advantage of this invaluable service offered by the Supreme Court of Virginia. Although some Circuit Court judges are routinely referring all matters to settlement conference, Ms. Ravindra noted that some attorneys have no interest in a settlement process in some cases. She encouraged the clarification of counsel's interest before referring them to the process as that would better ensure a productive settlement conference. Furthermore, she emphasized that the Judicial Settlement Conference Program was intended to allow all the attorneys to select their own settlement conference judge, a unique advantage to this no cost dispute resolution service.

During her presentation, Ms. Ravindra emphasized the following points in the interest of clarifying and promoting the services provided by the Judicial Settlement Conference Program. She noted that some attorneys use the word "mediation" interchangeably with "settlement conference," although the two are separate and distinct services. Ms. Ravindra asked the settlement conference judges to clarify with parties which service they are seeking: mediation or settlement conference. Additionally, Ms. Ravindra asked that the judges clarify their settlement conference approach, whether it be evaluative, facilitative, etc., with the parties and counsel before beginning the settlement conference hearing. Just as clarifying counsel's interest in the settlement conference can ensure a more productive settlement conference, so can addressing the parties' and counsel's understanding and expectations regarding the settlement conference process.

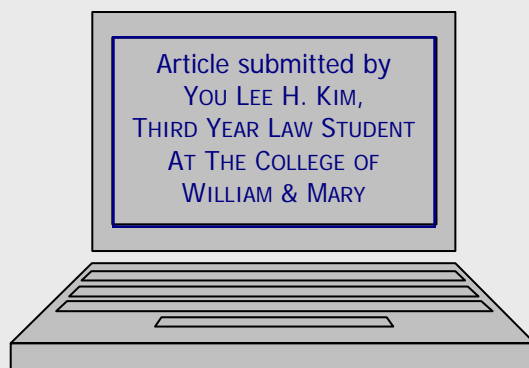
In that vein, the panel of attorneys/litigation specialist conveyed to the judges not only what they sought from the judges during the settlement conferences, but also what they themselves did to prepare for the process. Most importantly, the panel relayed how appreciative they were of the judges and the program. The panel included Mr. Andrew Protogyrou, Mr. Mark Michelsen, and Ms. Sharlene Tenaglia.

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The Judicial Settlement Conference Judges Panel included Judge Walter Ford, Judge Everett Bagnell, and Judge Robert Curran. As veterans of the Judicial Settlement Conference Program, the panelists shared their experiences in conducting settlement conferences and their techniques in reaching agreements. The panelists also answered questions from the other judges at the conference. Though it was evident each judge's settlement conference approach was imbued with his personality, they all agreed that patience and active listening were paramount. All of the judges appreciated the open forum in which they could share and discuss the challenges and the successes they've each experienced as a settlement conference judge.

For more information on the Judicial Settlement Conference program, visit the court's website at: <http://www.courts.state.va.us/jsc/home.html>



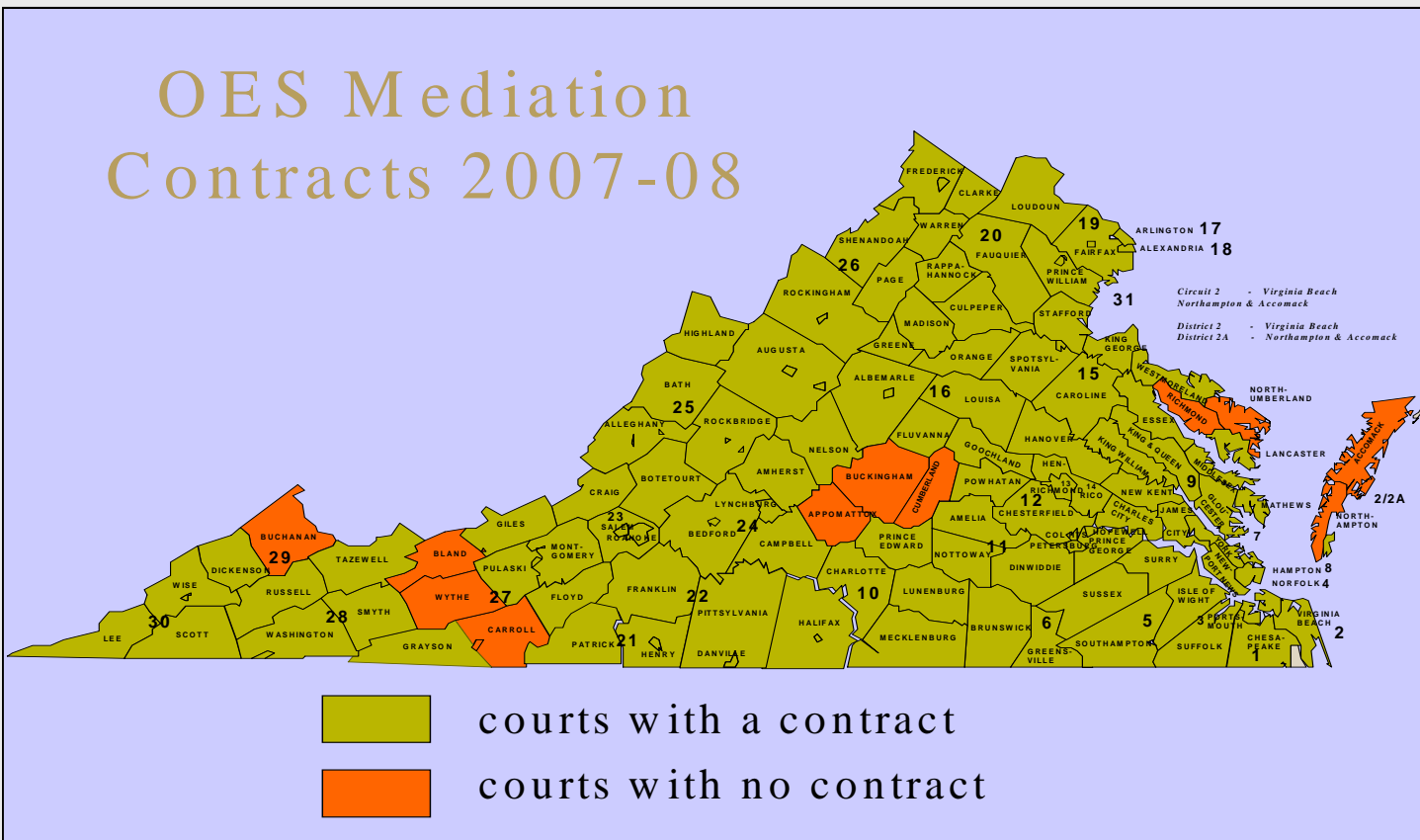
2007-08 Mediation Contracts Awarded

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 2007-08 fiscal year, there were 26 coordinator contracts awarded. Those coordinators will serve a total of 229 Virginia courts in 99 localities that fall into 29 of the 31 judicial circuits. Mediation services contracts were awarded to 49 contractors serving all 31 circuits.

In the next **Resolutions**, we will present an overview of the 2006-07 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 2007-08 mediation services contract providers. A list of contractors has been posted to the mediation page of the court website (www.courts.state.va.us) and was 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.



MYTHS OF MENTORSHIP

On January 1, 2007, new Mentorship Guidelines went into effect to help ensure that applicants seeking mediator certification receive strong mentoring before they mediate court cases independently. The new Guidelines require more of the Mentor as well as the mentee by fostering in depth pre-mediation briefing and post-mediation de-briefing that focus on the development of mediation skills.

Since January, information on Mentee Portfolio and Evaluation Forms has enabled the Dispute Resolution Services office ("DRS") to identify mentorship myths impeding the requirements of the mentorship process. To distinguish myth from reality and facilitate a smooth application process for mentees, DRS seeks to clarify Mentor responsibilities below. Please note the myths are in italics; the reality follows each myth in regular typeface.

1. *The Mentor need not actually co-mediate.* **MYTH!!!!**



If the Mentor observes a mediation where two mentees, or a mentee and a certified mediator co-mediate, that case will not count as a mentored co-mediation. The Mentor must co-mediate with the mentee. The purpose of the mentored co-mediation is to model mediation skills and guide the mentee, which cannot be done without the Mentor at the mediation table.

2. *Complete the Portfolio Form at the end of the co-mediation, just like the Mentee Evaluation Form. Don't do a Portfolio for the first co-mediation (because there isn't a previous case to know what the previous goals were) or for the last co-mediation (because there won't be another co-mediation to which goals would apply).* **MYTH!!!!**



Portfolio forms are required on the mentee's first co-mediation, the last co-mediation, and all the co-mediations in the middle. The only time the portfolio form is not required is for observation cases.

Prior to the co-mediation, during the pre-mediation briefing, the Mentor and mentee should review the portfolio forms from prior co-mediations (if any), identify goals for the mentee's skill development during the current mediation case, and complete

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Section I of the current Mentee Portfolio form with those goals. (If the mediation is more than one session, Section I can be updated for each session as necessary.) At the end of the mediation, the Mentor and mentee complete Sections II and III collaboratively. In Section II the Mentor should assess the mentee's progress on each goal stated in Section I. Based on the post-mediation debriefing, the Mentor should identify specific goals for future skills practice in Section III.

The goals listed for the mentee's skill development in Section I of the Mentee Portfolio form must be specific enough to support learning objectives. Comments such as "mentee wanted to work on child support guidelines and this mediation did not allow us to work on that goal" are not appropriate and do not help the mentee focus on skill development needs. In Section III, comments such as "mentee appears to be ready for mediating" are not specific enough to support learning objectives for the next mediation. The Mentorship Training manual details the requirements for briefing prior to and de-briefing after the co-mediation with the mentee. For an example, during the pre-mediation briefing the Mentor and mentee should determine who will be responsible for which stages of the mediation. The mentee's assigned stages, as well as specific skills such as "improve paraphrasing" and "practice reframing" and "write clear, concise agreement" are examples of what should go in Section I. The idea is to help the mentee focus on skill development needs, practice those skills, and receive constructive feedback. DRS must have the form filled out in a meaningful way, or it is not helpful for certification evaluation purposes.

DRS relies on information provided by Mentors. The Mentorship Guidelines emphasize the importance of the Mentors' role in providing detailed performance based feedback to the certification process. Mentors also provide a valuable service by coaching prospective mediators and by sharing their knowledge and expertise. With recent renewed emphasis on the importance of and expectations for mentorship, DRS is reviewing the Verification of Observation, Mentee Evaluation and Mentee Portfolio forms closely.

Please complete the Portfolio form as described above. This not only facilitates a smooth application process for the mentee; it demonstrates the Mentor's dedication to the mentorship process.

3. *Providing the information requested at the top of the Mentee Evaluation Form isn't important. **MYTH!!!!***



All the information at the top of the first page of the Mentee Evaluation Form is required and DRS must have the information in order for the co-mediation to count toward certification. Please be careful to fill in the number of the co-mediation and

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the length of time spent in the mediation. The case type is also required – if the mentee is applying for two different certification levels at the same time, the case type information is the easiest way for DRS to sort the co-mediations. The nature of the case is required and is particularly important for CCF cases where DRS must know whether Equitable Distribution issues were covered in the mediation. Failure to provide the information requested at the top of the form slows down the application process and raises concerns about the Mentor's understanding of the mentorship requirements.

Please remind the mentee to fill out page 4, the Mentee Feedback section, as DRS must have this information for certification.

Some mentors are still using the old version of page 4 of the Mentee Evaluation Form (the "Mentee Feedback" page). DRS changed the question in the middle of the page from "Does your self-evaluation differ..." to "What is your personal assessment of your mediation skills in this mediation?" Please be sure to use the new page. The updated form is available on the forms webpage of the DRS website. Go to <http://www.courts.state.va.us/drs/forms/home.html>. The correct version of the Mentee Evaluation Form is the second form in the right hand column of forms.

4. *The mentee needs practice on child support, but because he says he will be only co-mediating, he's ready for certification. **MYTH!!!!***



DRS can certify only mentees who are competent to handle child support cases alone. That is what "certification" means. If the mentee cannot competently mediate child support matters, the Mentor must encourage the mentee to study the child support guidelines and practice doing the worksheet. The Mentor must recommend further child support co-mediations and may not recommend certification until the Mentor is satisfied with the mentee's ability to mediate the issue alone. Courts and parties rely on certified JDR mediators to calculate child support correctly. DRS relies on Mentors for assessment of the mentee's child support competency. Child support calculation and agreement writing is an extremely important skill for the certified JDR mediator.

5. *The Mentor doesn't need to check child support worksheet calculations or the child support agreement if the mentee already has JDR certification. **MYTH!!!!***



The Mentor is responsible for the end product of every co-mediation conducted with a mentee. Even in a Circuit Court –Family case with a JDR certified mentee, the Mentor must oversee the child support calculations and agreement writing. Mediators should go over the figures with the parties to help them understand how child support

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calculations work (and thereby double check the calculations). The Mentor should participate in this review, ensure the calculations are correct, and make sure the mentee knows such review with the parties is good mediator practice as well.

6. *If the co-mediation is a private case, it's okay for the mentee to not fully participate because the parties look to the Mentor as their retained mediator.*
MYTH!!!!



If the parties are not comfortable with co-mediators, or if a case is so complex that the mentee should not take a primary role, perhaps that case is not appropriate as a co-mediation with a mentee. For a co-mediation to count toward a mentee's certification, the mentee must be given the opportunity to be actively involved as a mediator, whether the case is private or difficult. Struggling through a difficult case provides prime learning opportunities for the mentee and with the Mentor's encouragement and guidance, it should be a positive experience. On the other hand, if the mentee simply cannot handle the situation, or shows no sign of improvement, the Mentor's comments should reflect that to help DRS understand the mentee's skill level. Please keep in mind that if a case is so complex that the Mentor is not comfortable allowing the mentee to take a primary role, DRS may not be able to count the case as a co-mediation for certification requirements.

7. *Even though this is an observation, the mentee is welcome to participate.*
MYTH!!!!



Please note that the mentee is NOT to participate during observations. The mentee's goal during observations is to observe and learn about the process without the added stress of participating. Page 7 of the Mentorship Training manual clearly states that during observation briefing, the Mentor will "[c]onfirm that the mentee knows he or she is present as an observer only."

DRS relies on information provided by Mentors in determining whether to certify mediator applicants. Mentors provide a valuable service in modeling mediation skills and sharing their knowledge and information with mentees. DRS greatly appreciates Mentors' dedication to the mentorship process, and encourages all Mentors to fill in all forms fully and accurately to facilitate a smooth application process for the mentees. Mentors with questions or concerns are encouraged to contact the DRS office at (804) 786-6455.

Norfolk Mediation Center Working to End Gang Violence

The Community Mediation Center of Southeastern Virginia is currently working with Virginia Beach JDR District Court's Court Service Unit (CSU) as part of an ongoing program to end gang violence. The program is designed to help prevent youth from getting involved with gangs as well as help those already in gangs separate themselves from them. The Community Mediation Center of Southeastern Virginia is the only non-city agency involved in this program.

Youth are referred to the program by probation officers who are concerned about their possible involvement with gangs. The first group of ten young men met weekly in the Spring of 2007 for twelve weeks, while their parents met in a separate room during the same time. Each meeting lasted two hours and covered topics such as communication skills, anger management, brainstorming techniques, personal needs and interests.

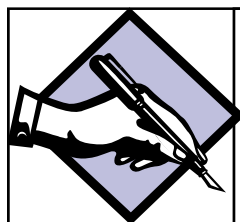
One of the youth facilitators was the Community Mediation Center's Youth Program Director, Andrea Palmisano, along with two other facilitators from the city of Virginia Beach's Department of Human Services.

Additionally, the Community Mediation Center held a workshop in conflict resolution and mediation skills for the Virginia Beach CSU staff in order to enhance everyone's ability to de-escalate any conflicts that might arise during group.

Plans are in the works for the next gang facilitation program starting in the Fall 2007. Additionally, the Community Mediation Center is currently working with the city of Virginia Beach to develop a program for those youth who express an interest in change by offering additional Conflict Resolution and communication skills.

For information about the Community Mediation Center and youth program, please visit their website at www.ConflictCrushers.org.

Resolving Conflicts – Building Relationships – Empowering People



Submitted by

Andrea Palmisano, Youth Program Director
Community Mediation Center
Norfolk, Virginia

CONFLICT COACHING

According to Working Dynamics, a private professional coaching group:

“Studies show that managers typically devote more than a third of their time in dealing with conflict and its consequences. Unmanaged conflict accounts for some 65 percent of work-performance problems, [and the] Center for Creative Leadership [claims that] conflict management is the No. 1 developmental need of managers.” In an effort to better manage professional and personal conflict at the workplace, increasingly businesses, agencies, and individuals are turning to conflict coaches.

WHAT IS CONFLICT COACHING?

The International Coach Federation (ICF), a nonprofit, individual membership organization, defines coaching in the following way:

Coaching is partnering with clients in a thought-provoking and creative process that inspires them to maximize their personal and professional potential.

Coaching is an ongoing relationship which focuses on clients taking action toward the realization of their visions, goals or desires. Coaching uses a process of inquiry and personal discovery to build the client's level of awareness and responsibility and provides the client with structure, support and feedback.

According to the ICF, coaching as a formal profession has existed for only about ten years. For this reason, most states in the United States and most countries do not currently have certification or licensure requirements for coaches. The ICF, which promotes itself as the largest worldwide resource for business and personal coaches with over 12,000 members in 80 countries and 150 chapters in 42 countries, maintains that coaching employs unique skills that may require “unlearning” of skill sets from other professions.” In its endeavor to establish coaching as a “distinct and self-regulating” profession, the ICF has not only developed an industry-wide Code of Ethics, but also the first “universally accepted” accreditation process.

HOW DO I BECOME A COACH?

The ICF has established three tiers of credentials: Associate Certified Coach (ACC), Professional Certified Coach (PCC) and Master Certified Coach (MCC). The following outline sets out the requirements for each ICF coaching credential.

Associate Certified Coach (ACC)

- 60 hours of coach specific training

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- 100 hours of coaching experience with clients
- Satisfactory completion of oral exam
- Agreement to adhere to the Code of Ethics as outlined by the ICF

Professional Certified Coach (PCC)

- 125 hours of coach specific training
- 750 hours of coaching experience with clients
- Satisfactory completion of written and oral exam
- Agreement to adhere to the Code of Ethics as outlined by the ICF
- Continued professional development to renew credential every three years

Master Certified Coach (MCC)

- 200 hours of coach specific training
- 2500 hours of coaching experience with clients
- Satisfactory completion of written and oral exam
- Demonstrated leadership within the profession
- Agreement to adhere to the Code of Ethics as outlined by the ICF
- Continued professional development to renew credential every three years

HOW DO I ACCESS COACHING SERVICES?

ICF asserts that certification by their institution means that coaches have received professional training in coaching skills in alignment with ICF Competencies and its Code of Ethics; coaches have demonstrated proficient understanding and use of ICF coaching competencies; and coaches are accountable to ICF ethics and standards.

If one is interested or in need of a coach, the ICF maintains a Coach Referral Service (CRS), which aims to match individuals with the right coach for their needs. In addition, coaching services are becoming increasingly accessible in Virginia. The following are examples of the various forms that coaching can take in the private and public sectors.

CoreVision, LLC : Conflict Coaching Services

CoreVision, a private organization based in Fairfax, Virginia, provides conflict coaching and training for all individuals in the workplace hierarchy: leaders, executives, managers, supervisors, teams, and employees. As CoreVision coaches are members of the ICF and/or graduates of the Georgetown University Coaching Program, which is accredited by the ICF, CoreVision coaches aim to “partner with [a client] in a thought-provoking and creative process to maximize personal and professional potential.”

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CoreVision promotes customizing coaching strategies for each client's needs, whether that be improving communication skills, enhancing existing skills, or focusing on something else to help the client "get unstuck."

Working Dynamics

Working Dynamics is a private organization based in Richmond, Virginia, that offers coaching intervention in the event of "poorly handled [workplace] conflict." Working Dynamics states that often, a history of poor working relationships triggers the need for a conflict coach. In that event, this group seeks to provide "ongoing feedback and continuous learning . . . to sustain behavioral change." Similarly to CoreVision, Working Dynamics believes that the ultimate goal of coaching is to "improve [the clients'] skills and behaviors, [so that they can meet their individual] professional expectations and goals."

Working Dynamics utilizes a variety of coaching formats in achieving its coaching objectives. The coaching may involve as little as 2-3 sessions of individual or 360-degree assessment or as much as 3-6 months of structured coaching engagements. Working Dynamics states that the contracted, longer coaching engagement is typical. The in-depth process, which involves regular phone or in-person meetings, includes: "assessment, goal setting, action plan development, feedback and coaching, and ongoing progress review and evaluation." For the coaches at Working Dynamics, coaching is a collaborative endeavor and only by committing fully to it can it yield optimum results.

Transportation Security Administration

Conflict coaching is not a tool used solely by private businesses; it has also been incorporated into conflict management systems in public agencies. For example, the Transportation Security Administration (TSA) has instituted a Peer Conflict Coaching Program because it believes that, "[conflict coaches can] provide an internal support system for conflict management." Created by Michael W. Rawlings, JD (as TSA Conflict Management Program Officer) and Cinnie Noble, using her CINERGY model, this pro-

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VA Assn. of Community Conflict Resolution

Apple Valley Mediation Network

242 North Main Street, Suite 202
Woodstock, Virginia 22664
540-459-8799

Edward F. Wilkins, Executive Director

Community Mediation Center-Charlottesville

P.O. Box 133
Charlottesville, VA 22902
434-977-2926

Cyndy Martin, Executive Director

Community Mediation Center of Danville and Pittsylvania County

490 Piney Forest Road
Danville, VA 24540
434-797-3981

Bob Phillips, Executive Director

Community Mediation Center Harrisonburg

165 S. Main Street, Suite A
Harrisonburg, VA 22801
540-434-0059

Timothy Ruebke, Executive Director

Community Mediation Center - SEVA

586 Virginian Drive
Norfolk, VA 23505
757-480-2777

Kim Humphrey, Executive Director

Conflict Resolution Center

P.O. Box 1185
Roanoke, VA 24006
540-342-2063

Rebekah Carswell, Executive Director

The Dispute Resolution Center

701 East Franklin Street, Suite 712
Richmond, VA 23219
804-343-7355

Nancy Chenaault-Mediation Coordinator

Northern Virginia Mediation Service

4260 Chain Bridge Road, Suite A-2
Fairfax, VA 22030
703-993-3656

David Michael, Executive Director

Peaceful Alternatives Community Mediation Services

P.O. Box 1169
Amherst, VA 244521
434-929-8227

Carolyn Pritchard, Executive Director

Piedmont Dispute Resolution Center

P. O. Box 809
Warrenton, VA 20188
540-347-6650

Lawrie Parker, Executive Director

The Rappahannock Mediation Center

406 Chatham Square Office Park, Suite 101
Fredericksburg, VA 22404
540-372-7740

Cheryl Dillard, Interim Executive Director

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gram is now a core component of TSA's Integrated Conflict Management System (ICMS).

Mr. Rawlings presented the following data in his September 2005 paper "Peer Conflict Coaching at the Transportation Security Administration" at the Association for Conflict Resolution Conference.

As of October 2005, 240 candidates have attended the basic conflict coaching workshop. Approximately 98 of those are now qualified to coach their peers at more than 30 sites across TSA. Another 30 are anticipated to become qualified to coach live cases within the coming months, and coaching services are expected to be available at more than 50 TSA sites by early 2006. More than 200 individual cases have now been coached throughout the agency.

In his paper, Mr. Rawlings noted that competency development for the peer coaches was modeled after mediator training guidelines. For the peer coaches, their training includes: 3-day conflict coaching workshops; 3 solo practice coaching sessions; competency sessions with program mentors; co-coaching practice sessions with a peer coach; 6 community of practice conference calls [1 hour conference calls where program leaders cover a general topic of interest and then move to a review and coaching practice]; and later, a 2-day workshop that reviews the programmatic and CINERGY model materials.

As is the case for court-certified mediators, TSA peer coaches must agree to abide by Standards of Ethical Conduct (adopted from those of the ICF) that uphold self-determination, neutrality, and confidentiality. In addition, as in mediation, prior to each coaching session, both the coach and the coachee must sign a Conflict Coaching Agreement, which addresses the elements of the conflict coaching relationship.

George Mason University

Similarly to the TSA, George Mason University has also instituted a peer coaching program. Three years in the making, the first group of peer coaches were trained in March of 2007. The coaches, individuals from both the academic and non-academic departments of the University, are tasked with providing Mason employees a confidential outlet for their concerns, not with handling disciplinary matters. More specifically, the workplace coaches are trained to "clearly identify the [workplace] issue, clarify perceptions, identify options, and prepare a plan of action."

Conclusion

Julia Morelli, a trained coach at George Mason University, states, "Coaching is the art of helping people help themselves." Just as in mediation, self-determination appears to be at the heart of conflict coaching; however, while mediation seeks to bring parties in contention to a neutral place of understanding and agreement, coaching seems to primarily work by building up the confidence and skills of one party, the petitioner. It is this difference that defines coaching. The pure individual attention a client receives from a coach emerges as what is so appealing and arguably beneficial

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about this process. Though coaching is very young, it is clear that many are finding coaching to be a very useful tool in the alternative dispute resolution toolbox.

Contact Information for the Organizations Mentioned in This Article:

International Coach Federation

Website: www.coachfederation.org

E-mail: icfheadquarters@coachfederation.org or call

Phone: 888-423-3131 (toll free), or 1-859-219-3580

CoreVision, LLC : Conflict Coaching Services

Contact: Tracey Pilkerton

E-mail: tpilkerton@corevisionllc.com

Main Phone: 571-321-2015

Address: 4031 University Drive, Ste 200

Fairfax, VA 22030

Working Dynamics

Website: www.workdyn.com

Contact: Susan Gunn

E-mail: sgunn@workdyn.com

Phone: 804-353-9527

Address: P.O. Box 25778

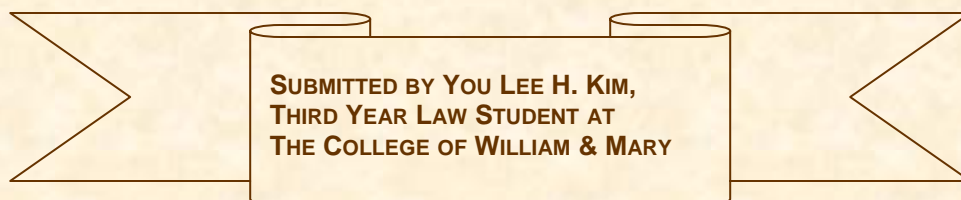
Richmond, Virginia 23260-5778

George Mason University

Contact: Daniel Taggart, Employee Relations Specialist and Administrator of the Program

Phone: 703-993-1275

E-mail: dtaggart@gmu.edu



MIS ENCOURAGING WORDS!!!

It has been a number of years since the introduction of the Mediation Information System, and we would like to take this opportunity to provide you updated, detailed information on "MIS." In order to support and advance the field of alternative dispute resolution, it is critical that we capture comprehensive data regarding the mediation services provided to the courts. This data, once translated into comprehensive reports that describe the value of mediation to the courts, litigants and the state, can be used to support requests for additional funding. In addition, this information may better inform the Judicial Council as policy decisions are made related to alternative dispute resolution in Virginia. The information may also be instructive to the dispute resolution community in Virginia and around the country.

In order to capture relevant data for purposes of creating informational reports, the MIS was developed on the Internet in 2000 by the Department of Information Technology of the Office of the Executive Secretary. The MIS link is located on the main Mediation webpage on the Virginia Judicial System website (see below for detailed instructions). Over the years the entry of data into this system has not been mandatory for many court-referred cases. There has been no requirement that JDR custody, visitation and support cases be entered into the system. There has been no requirement that cases referred but not mediated (but requiring case management time and perhaps an orientation session and domestic violence screening) be entered into the system. Only those with a mediation contract with the Office of the Executive Secretary have been required to enter all cases into MIS. These OES contractors must submit a printout of the MIS data entry sheet with each invoice in order for payment to be processed.

DRS is requesting that mediators enter data from ALL court referred mediations into MIS, whether the case is actually mediated or not and whether the data must be entered to receive payment or not. If the referred case is not mediated and not paid, a mediator still has expended valuable time and effort on the case, and DRS seeks the ability to provide this information on unpaid time, as well as actual mediation statistics, to the legislature and the Judicial Council. The only way to collect the information is for mediators to enter it. The added effort to enter the information into the system may well pay off in the future if it means comprehensive statistics are available to funding authorities. We request your support of our effort to capture information that will ultimately benefit the entire ADR community.

While MIS data entry may not be your favorite thing, it really doesn't take long. Think of it this way. If DRS could show the full volume of cases mediated (and associated court resource savings), wouldn't legislators be more likely to mandate court referral to an orientation session? If DRS could show the full time spent in mediation case management, and the full, unpaid time expended when a referred case turns out to be inappropriate for mediation or the parties decline to mediate, funding authorities may be more likely to consider additional funding. If DRS could

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show the full, unpaid time expended in referred cases where the parties do not show, courts may be more willing to penalize parties for failing to attend. DRS also expects that comprehensive data would show that once parties appear for the orientation session, it usually leads to mediation and many are able to resolve their dispute. If parties never show up, the opportunity for self-determination, modeling for future behavior, and reduction in court space, time, and resources, is lost.

Now that you are excited about the way comprehensive data collection can help promote mediation in Virginia, you're probably anxious to log on to the MIS system. You'll need a username and password, both of which are assigned based on information in your mediator profile. In order to access the system, go to the Supreme Court home page: www.courts.state.va.us. Then click on the "Mediation" link to get to the DRS home page. Next click on the "Mediation Information System" link toward the bottom of the page. At this point the system will prompt you for a User Name and Password.

Your User Name consists of the first two letters of your last name (in capital letters) followed by the last four digits of your social security number. For instance, if your last name is **Smith**, and your social security number is 123-45-6789, then your User Name would be:

SM6789

Notice that the letters are capitalized and that there are no spaces between the letters and numbers.

Your Password consists of your first name (as it is stored in the DRS database)—but all in capital letters. For instance, if your first name is **Carol**, then your Password will be:

CAROL

If your first name (as stored in the DRS database) includes punctuation and/or spaces, your Password will have the same exact punctuation and spaces. For instance, if your first name (as stored in the DRS database) is **C. J. Keith**, then your Password will be, in all capital letters:

C. J. KEITH

In this example, since there is a space between the first period and the J, and another space between the next period and the K, then your Password will have spaces in the same places. If you forget to type in the punctuation or spaces, the system will not let you in.

After typing your User Name and Password, click on the "OK" button. If the system does not let you in, try again—perhaps you mistyped something. If you have any problems or need to know exactly how your name appears in the DRS database, please call Melanie Rinehults at 804-786-6455 for help. Once you have successfully entered your User Name and Password, you will be in the system and may begin answering the questions listed on the form.

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The data sought is straightforward and does not violate the confidentiality requirements protecting mediation. All required data elements must be completed, or you will not be able to submit the information. A few questions are optional and some have a default answer. Even though the system says the "Date Set for Court Hearing" is optional, if no court hearing date has been set, please enter the same date entered in the "Date Concluded" field. If an error is made in entering data, or a question is skipped, the system will identify the problem. An extensive "Help" link is available for assistance in completing the questions asked. A Community Mediation Center or other organization may enter data following court-referred mediations on behalf of volunteers or staff. Please be assured that the purpose of the system is not to track or evaluate the work of individual mediators.

If you are referred a case to mediate, but it does not take place due to a "no show" or scheduling issues, or if it is not appropriate for mediation or the parties decline to mediate, then for the reasons described earlier, please still enter information regarding the case referral. You need not answer the question related to date of first mediation session; simply leave the default value of January 1, 2000. For the question on length of mediation, please check the "0-2" time block. You may also skip the date-concluded question. The default date of January 1, 2000 will remain in the date fields so that your data will be accepted by the system. If you have any questions as you are entering data, please do not hesitate to call the DRS office for information.

A few MIS questions come up periodically that we can address here.

- I. For the "Mediator Fees" fields, the issue is whether the mediator receives a fee, not whether the parties pay a fee. The "Amount of Fee" is the total amount paid, whether by DC-40 or OES contract or the parties. It does not matter whether the mediator and an organization split the fee. The entire fee paid, from any source(s), to any source(s), should be entered in the field.
- II. Also, the question has arisen regarding where the length of time for the orientation session should be entered. As the system currently is designed, there is not a place to enter the amount of time spent in orientation. Do not include it in the "Length of Mediation" field. The new MIS system discussed below will be designed to capture orientation time as a separate field. If and only if an orientation session was conducted, AND no mediation was conducted, then please add the time for the orientation into the "Time Spent in Case Management" field so the data will reflect all the time the mediator spent on the case, but for which the mediator was not paid.
- III. Also, do not include agreement writing time in the "Length of Mediation," even though agreement writing or resolution is obviously a stage of the mediation process. Enter the agreement writing time only in the "Time Spent Writing Agreement" box.
- IV. If you have both a Mediation Services Provider OES contract number and a Coordinator OES contract number, be certain to enter only the Mediation Services Provider contract number in the "Contract Number" field.

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While the data entry is currently mandatory only for OES contractors, automation plans are underway that would include mandatory entry by mediators paid by DC-40 forms for JDR custody, visitation and support cases. Included in the plans is the automated generation of completed OES invoices and DC-40 forms based on the data entered into MIS. Further plans include an automated recertification system, which would use the cases entered into MIS to determine whether the mediator has completed the 5 cases or 15 hours of mediation required for recertification. The recertification system would also track mediation training online and use it in the automated recertification process. For this system to work properly, MIS data entry will be mandatory for all certified mediators accepting court-referred cases. Eventually, though the data entry will be mandatory, we expect the amount of time expended by each mediator at recertification time will be much reduced.

It is our desire that the MIS system be easy to use and understand. As comprehensive data is entered into the system, we anticipate that the reports generated will allow the Office of the Executive Secretary to provide persuasive data to the Judiciary, Bar, and Legislature regarding the effectiveness of mediation. We are hopeful that the planned new MIS system will be more user friendly and that the planned automated recertification system will save mediator time and DRS resources.

Thank you for your support of mediation in Virginia.

Circuit Court of Chesterfield County 2007

Mediation Survey Results

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

The *Mediation 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 (or not) in mediation. A copy of the *Mediation Certification Form* is provided to counsel by the Court. Pro se parties are also required to complete and return the mediation certification form to the court. If one party indicates a willingness to mediate, the court refers 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.

Participation in the program is voluntary. Parties may "opt out" of the dispute resolution orientation session 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 stating that the mediation process has been explained to the party, and the party objects to the referral.

The Chesterfield County Circuit Court's Mediation Orientation Certification process has resulted in a relatively high number of referrals to mediation orientation sessions. Although the Court fully encourages the use of mediation as an alternative dispute resolution method, the Court's process results in additional processing work for both the Court and the attorneys. For this reason, the Court is now in the process of reviewing the Mediation Orientation Certification procedures adopted in 2003.

As a part of this review, the Court distributed a nine-question survey relating to mediation in general and the 2003 Mediation Orientation Certification procedures in particular. The Court requested that only attorneys who had represented a party in a civil case filed in the Circuit Court of Chesterfield County in 2005 and after respond to the survey. Anonymous

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sponses were permitted. In May 2007, the responses were tabulated. In total, twenty-one attorneys were surveyed. What follows are the results of the 2007 Chesterfield County Circuit Court Mediation Survey.

Regarding Mediation Generally:

Of the 21 responses, 15 reported that their clients agreed to attend a mediation orientation session conducted by Commonwealth Mediation Group. Of the 15 whose clients agreed to attend a mediation orientation session, 11 attorneys' clients found the orientation session helpful (4 did not), and 13 of the attorneys' clients went on to use mediation (2 did not). Of the 13 whose clients participated in mediation, 7 attorneys reported that their clients achieved a full settlement, 2 reported that their clients achieved a partial settlement, and 4 reported that no settlement was reached.

Of the 15 who responded their clients attended a mediation orientation session, 10 attorneys responded that they and their clients felt the mediation process was worthwhile, whereas 5 responded that the mediation process was not worthwhile. 7 attorneys reported that they thought the mediation process affected the timing of the final disposition of the case, but 8 attorneys reported that it did not.

Six attorneys reported that their clients did not agree to attend a mediation orientation session conducted by Commonwealth Mediation Group. The reasons for not attending the mediation orientation session were as follows: client not interested in the process (2); client not convinced that the process will result in settlement (1); client concerned about additional costs (1); and client concerned about delay (2).

Some of the attorneys commented that the mediation orientation session referrals were issued too soon in the case, before enough information had been gathered by either side to "conduct [an] effective negotiation." In contrast, a couple of the attorneys stated that their cases settled before the time set for mediation

Regarding the Procedure Used in the Circuit Court of Chesterfield County:

Upon initial case filing, the Clerk's Office sends the mediation orientation certification form to plaintiff's counsel. In many cases, upon filing of a response by the defense, the judge's chambers then sends the certification form to defense counsel. 17 attorneys found this procedure helpful (4 did not). Furthermore, 9 attorneys responded that their, or their "paralegal," filling out and returning the form causes an additional, albeit "minimal," expense for their client (in contrast to the

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12

who responded in the negative).

Typically, cases are referred to a mediation orientation session after the answer is filed but well before trial. 14 attorneys thought cases are referred at an appropriate point in the process. 7 attorneys disagreed and thought that the following were better times for the referral to take place: after discovery had begun, at the completion of discovery, or after initial pleadings had been filed.

In lieu of the procedure currently used in the Circuit Court of Chesterfield County, one possible option would be for the Court to routinely refer certain types of cases to the mediation orientation session. Parties could object to this referral and could request referral in other types of cases. With this option, the Court would no longer send out mediation orientation certificates.

In response, 8 attorneys favored the Court's no longer sending out the certification forms (13 did not favor this option). Moreover, 9 attorneys said they would like to see the Court make routine referrals of certain types of cases (12 would not). Of those who would like to see routine referrals, 8 suggested divorce, custody/visitation, and spousal or child support; 3 suggested motor vehicle accident; 2 suggested other tort; 2 suggested contract; and 3 suggested appeal from general district court.

In surveying the additional comments from some of the attorneys, there appeared to be no consensus as to the usefulness of mediation. While half of the attorneys found mediation beneficial enough that they believed its role in the court should be "expanded," the other half of the attorneys were unimpressed by the court-referred mediation. Those attorneys sought a mediator with legal knowledge and authority, and so preferred other dispute resolution programs, such as the Judicial Settlement Conference Program, or private mediation.

The comments were only one component of the survey, and the numbers appear to reveal that the majority of attorneys (and by extension their clients) are satisfied not only with the mediation process in general, but also, in particular, with the Chesterfield County Circuit Court's Mediation Orientation Certification process. Although the survey results have been released, the Chesterfield County Circuit Court has not yet announced the results of their review of the Mediation Orientation

Submitted by YOU LEE H. KIM, THIRD YEAR LAW STUDENT AT THE COLLEGE OF WILLIAM & MARY

Certification procedure.