



SUPREME COURT OF
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RESOLUTIONS

OFFICE OF THE EXECUTIVE SECRETARY

*Department of Judicial Services
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Federal Emergency Management Agency Deploys ADR Cadre to Assist in Workplace Conflict Resolution

In 2005, just after Hurricane Katrina, the Federal Emergency Management Agency (FEMA) established an Alternative Dispute Resolution (ADR) "cadre." The ADR Cadre consists of about 20 employees experienced in mediation, facilitation and training. They are called ADR Advisors, and they are deployed to assignments in FEMA disaster field offices following the declaration of a major disaster by the President. Their primary focus is on workplace conflict resolution. Secondly, they may also assist program offices if needed to enhance the delivery of disaster services. Over the past three years, we've learned a lot about the kinds of work required of the ADR Cadre, the model we're using, and what kinds of skills the people we hire need to have.

ADR in FEMA Field Offices. In 2005 and 2006, most of the work of the ADR Cadre was done at Hurricane Katrina and Rita field offices in Florida, Alabama, Mississippi and Louisiana. Since 2008 however, ADR has been deployed to more and more field offices throughout the country. Workplace ADR is still our primary focus but we're increasingly being asked to do other work as well. Here's what we've learned:

Outreach is still needed. Many employees are now familiar with ADR and have come to expect that an ADR advisor will be deployed to their field office. Still, with more than 8,500 employees assigned to disasters, there are a lot of people who are unfamiliar with ADR. It's not unusual to find people who only learn about ADR when they need it. In one 2008 situation, a woman called me in Washington, DC to inquire about ADR. She was working in Baton Rouge, LA, a place that has had an ADR Advisor almost continuously since late 2005. Yet the woman did not know that ADR was available in her building! Not having any prior need for ADR, she just had not retained the knowledge that it was available locally. So, even after almost 3½ years, we still need to do outreach to let people know ADR is available and what it can and cannot do for them.

ADR can't go it alone. We have learned that we were right when planning the cadre to focus a lot of our efforts on making sure we integrated well with other departments in the field office. Key among these are Equal Employment Opportunity (EEO), Training, the Chief of Staff's office and human resources. EEO is important because, according to EEOC statistics, 75% of cases filed with EEO are relationship conflicts rather than issues of discrimination. Those are just the situations that ADR is present to address. The Training office is critical because ADR Advisors are asked to do a lot of training for particular groups and it turns out it's a good way for people to meet the ADR Advisor on an informal basis. The chief of staff and human resources have been key contacts for referrals for situations they cannot address directly.

Most employees want to handle it themselves. Not surprisingly perhaps, most employees want to handle disputes and difficult relationship issues themselves. They do not want to involve a mediator. It's not that they don't trust mediation. It's just more important for them to be seen as capable of handling their own problems themselves.

Fifty percent of all the contacts ADR gets – and that’s close to 500 per year - come from employees who just need to vent with the ADR Advisor or get some form of conflict coaching on how to handle a situation. About 40% of contacts are from managers, supervisors or team leads. Often, they are looking for someone with whom to bounce ideas around before they take action to handle a situation. Other times, they ask ADR to interview their team, if that team seems to have relationship issues that reduce its effectiveness, to make an assessment about what is happening and how to address it.

Typical and not-so-typical issues in the workplace. The issues that come to ADR in FEMA field offices are usually pretty typical of issues found in any workplace ADR program. These include issues related to compensation and promotion, job assignments and work roles, management style, behavior in the workplace, leave, absence and tardiness, team member disputes, loud radios and food smells, language or treatment perceived as disrespectful, etc. Not so typical of other workplaces are issues related to disaster deployments, such as “being released” and rotating team leads.

Field offices are necessarily temporary and that means that everyone will be going home sooner or later. When an employee is sent home they are “released” or “demobilized.” Sometimes an employee feels that he or she was selected for a reduction in force unfairly. Other times, the employee needs assistance to identify or negotiate a new position in another work group. Sometimes employees are released because of conflicts with their supervisor and ADR can help the parties directly address those conflicts.

An employee in the disaster workforce is often one person on a team of similarly skilled employees. These employees may be deployed to the same disasters and work together often. Sometimes one is appointed a team lead on one disaster and then later deployed to another disaster where he or she is a team member with a former team member now his or her team lead. This means that relationship issues and conflicts can cycle around from disaster to disaster.

Program offices now regularly use ADR. As more and more field staff have come into contact with ADR, they have learned that the ADR Advisors typically have a range of skills that can be used, not necessarily in dispute resolution, but in all kinds of decision-making processes. Here are some examples

- One program unit anticipated a series of complicated meetings with state agency applicants. They consulted with ADR Advisors over a five-month period about how to plan and structure the meetings to ensure full participation and how to deliver the message. ADR Advisors attended some of the meetings in an advisory role. One applicant representative said he was “glad to see ADR at the table” since that “indicated they were taking the issue seriously.”
- As part of the National Response Framework, several Emergency Support Functions (ESF) have been identified. These are teams of agencies and nonprofits and the assets they can bring to bear on a problem that can be activated whenever needed, especially for larger disasters. One of these is the Long Term Community Recovery ESF. This group needed to plan a series of public visioning meetings with stakeholder groups from the local community so that the community could be involved in long-range planning for how to rebuild the community following a large disaster. They worked with ADR Advisors for several months to design the process, plan the meetings, train team leaders and facilitate some of the meetings. Now ADR is starting to be a part of several state Long Term Community Recovery teams.
- During the Hurricane Katrina response, FEMA employees from every region were deployed to work together. One unit quickly discovered that employees from each region were working under slightly different standard operating procedures and that this was interfering with their ability to get the job done. They convened representatives from each region to meet and reconcile the different procedures into one SOP for all regions. ADR facilitated that meeting – managing the discussion and keeping the participants on task so they could focus on resolving the substantive issues.

- At a staging area, staff were working day and night to clean and refurbish mobile homes so they could be recycled for families in need. Site management wanted to speed up the process and reduce the backlog so recycled homes could be delivered more quickly. Workers refurbishing the homes were working as hard as they could but the facility was in a big steel building without air conditioning. Temperatures inside the mobile homes were reaching 108 degrees. ADR was consulted and facilitated discussions among the appropriate parties to address concerns and solve the problem.
- During a flood disaster, the FEMA Coordinating Officer called in ADR to make an assessment of a work unit that was not working well. The ADR Advisor interviewed a few of the staff and quickly discovered that the problem was caused by tangled lines of authority and reporting among the state, FEMA, and contract employees. The ADR Advisor prepared a PowerPoint slide that visually described the situation. Command staff saw the problem immediately and implemented corrective action.
- During one disaster response, a local community member came to the Joint Field Office (JFO) to complain. Before the nature of her complaint could be identified and she could be referred to the appropriate office, voices were raised and the situation was starting to escalate into an “incident.” One of the security officers called in the ADR Advisor who quickly calmed things down and was able to persuade the visitor to sit down and discuss the situation. The individual’s concerns were (i) her treatment by security; and (ii) FEMA’s handling of her application for benefits. Acting as a mediator, the ADR Advisor worked with the visitor and the security officer to resolve the issues between them. The ADR Advisor then provided the visitor with contact information for an Individual Assistance representative to help her to determine the status of her application for benefits. What could have become an incident was quickly and quietly reduced to a series of problem solving activities.

The embedded mediator model. I’ve been surprised to learn that one form of ombudsman practice comes closest to the model we are using for the FEMA ADR Cadre. That form is called the organizational or university model. It’s used by a number of universities and government agencies including most of the campuses of the University of California and by the M.D. Anderson Cancer Center at the University of Texas, for example.

Typically the organizational ombudsman model, like the FEMA ADR Cadre, provides the following services: listening and problem solving, providing information and options, conflict coaching, mediation, facilitation, shuttle diplomacy and assisting clients to find the right office within the Agency that can best deal with their problem. Important characteristics of the model include independence of the neutral (they have no conflicting collateral duties or lines of authority; neutrality and impartiality; confidentiality and informality) and that the office cannot accept notice for the Agency and cannot open or process complaints or testify in formal or legal proceedings. And, in contrast to the classical model of ombudsman, the university model prohibits conducting investigations, issuing reports or findings of fact, or creating formal processes to resolve issues. And, in practice, this model requires a high degree of cooperation and collaboration with other key offices in the organization such as the EEO office, HR and training.

Cadre Training. Cadre members are brought into the cadre with a fairly broad and fully developed skill set in conflict resolution, mediation, facilitation and related skills. The cadre has thus far had two annual training programs. At these, we have conducted both a skills training and looked at best practices and lessons learned from our experiences in the field. The first year we brought in a trainer from Georgetown University who conducted training in one model of conflict coaching. Like other kinds of workplace coaching, conflict coaching involves using questions to assist the party to examine his situation and identify and then evaluate several possible courses of action to resolve the situation. The second year we brought in a training in Appreciative Inquiry. That program focused on using questions and designing group processes to help groups look, not at their problems and how to fix them, but at what dream they have for their group and what steps they could take to achieve that.

ADR Advisor Qualifications & Requirements. When we first started hiring for the cadre, we thought we would need people primarily with mediation skills. Now we're seeing that the range of skills needed is much larger than that. When recruiting now, we look for people with experience in a range of types of mediation cases so that when they are performing as ADR Advisors, they have the knowledge and flexibility to handle the array of conflicts they will experience at FEMA. Secondly we look to see if they have experience in community mediation and/or working in a large organization. Each FEMA disaster operation is, in a sense, a community and many of the conflicts that happen between co-workers are similar in nature to those that occur between neighbors. On the other hand, FEMA is a large organization. Providing ADR in such an organization is much different from coming into an organization from outside to provide a single day of mediation. There are organizational procedures and lines of authority and all sorts of factors that have to be taken into account in every dispute resolution effort.

Importantly, we're finding that ADR Advisors at FEMA are increasingly called upon to do training in all sorts of conflict resolution and communication skills topics and to be able to work with groups to identify their weak points and enhance their strengths so they can function better and have better relationships while doing it.

Next steps. In the near term, we are looking at going to ever more disasters and looking and acting more and more like professional emergency responders. For example, currently we have four people deployed to Hurricane Ike in Texas. Our cadre looks and acts in many ways just like any other task group in the disaster operation. We report to Planning how many ADR Advisors we expect to have deployed over the next three months; we have a team lead at the main office (the Joint Field Office or JFO) and two additional ADR Advisors at each of the other Area Field Offices; we have a fourth ADR Advisor deployed directly to support a special unit (ESF-14 Long Term Community Recovery); and we'll keep the lead ADR in place for as long as we can and rotate others in and out to keep some continuity.

In the long term, we'll have the challenge of doing more and more program work while retaining our focus and identity strictly embedded in assisting FEMA employees and managers with workplace issues.

Contributed by Rob Scott, who is an attorney in FEMA's Office of Chief Counsel where he serves as the ADR Cadre Manager. Prior to joining FEMA, Rob served as the Executive Director of the Northern Virginia Mediation Service in Fairfax, VA from 1994-2005. He also serves on the Advisory Board for the Institute for Conflict Analysis & Resolution at George Mason University.

As described by Rob Scott in this article, FEMA administrators coordinate an amazing number of employees, volunteers, and federal, state and local agencies each time they cover a disaster. Below are several photographs taken from FEMA's online photo library to give you some idea what an incredible effort this must be! For more pictures, visit:

<http://www.photolibrary.fema.gov/photolibrary/index.jsp>



President Bush joins FEMA administrators for video teleconference with Federal Partners, FEMA regions and states.
FEMA Photographer: Bill Koplitz



Joint Operations briefing at Alamo Command Center in San Antonio, TX in preparation for Hurricane Gustav's land fall. FEMA Photographer: Patsy Lynch

Representatives from San Antonio area hospitals, EMS and ambulance services at Regional Medical Operations Center prepare for Hurricane Ike. FEMA Photographer: Jocelyn Augustino



FEMA staff keeps up with continuous flow of applicants for assistance at Disaster Recovery Center on Ellington Air National Guard Base. FEMA Photographer: Greg Henshall



Houston brings in hundreds of officers from other Texas cities to assist with evacuation during Hurricane Ike. FEMA Photographer: Leif Skoogfors



Members of FEMA Strike Team 46 arrive at reception center for evacuees and staging area for buses and supplies. FEMA Photographer: Jocelyn Augustino



KEEPING YOU INFORMED

- A DRS Update -

Greetings from Dispute Resolution Services. We have a few things going on here that we want to be sure you know about.

Spring VMN Conference

Paul DeLosh, Director of the Department of Judicial Services here at the Office of the Executive Secretary and our boss, will be speaking Sunday evening, March 7, at the Spring VMN conference in Richmond. His presentation will be from 6:15 to 6:45, just prior to the ethics program. We hope to see many of you there!



DRS Staff from left: Deborah Miller, Nancy Siford, Sally Campbell, and Melanie Rinehults

Electronic Deposit Service Available to Court Mediators

In an effort to expedite the speed and efficiency of the reimbursement process of approved mediator compensation and to reduce the expense involved in processing manual payments, a direct deposit service is available to all vendors who register through the Virginia Electronic Data Interchange. You may sign up for this service at the following website:

http://www.doa.virginia.gov/General_Accounting/EDI/EDI_Main.cfm

Upon accessing this site, go to the "Trading Partner Information" subtitle and click on "Trading Partner EDI Agreement and Enrollment Form for Vendors." You will be routed to a PDF form for you to complete and mail. Once registered, you will receive e-mail notices indicating the date and amount of deposit that is being made to your designated bank account, along with a trace record number for you to track this transaction.

Please note that, when you are on the above-linked EDI site, in the third paragraph under "Overview", you can click on a link to view the EDI Guide. On pages 13-14 of that Guide, you will see what information is included in the "remittance data" that is sent to the REDI Virginia website for you to view. You will be able to see invoice (DC-40 and OES contract) numbers and dates to make it easy to match up cases with payments.

Clerks Training and Visits with Courts and Coordinators

Every year in March, the Department of Judicial Services sponsors one-day district court clerks "regional" conferences around the state. This year, DRS will be presenting a two-hour training to all the General District and Juvenile and Domestic Relations Courts clerks. We are delighted to have this opportunity to work with the clerks and address their questions regarding mediation program models, increasing efficiencies in their courts, etc. In conjunction with these trainings, which will be held on Tuesdays and Thursdays for three weeks across the state, Sally and Nancy will make court visits and coordinator visits (and provide mediation ethics trainings – see below).

We have not finalized the schedule for these visits, so if you have a particular judge you'd like us to meet, or are a coordinator and would like time with us, please call and perhaps we can work the visit into our schedule. Last fall during visits with courts and coordinators, in addition to our promoting increased use of ADR, we benefited from helpful feedback and ideas. We hope for more of that interaction as we visit courts and coordinators this year.



DRS Offering Ethics Training

Many of you have seen our emails offering to provide 2-hour ethics trainings around the state wherever a sponsor and at least 10 attendees are available. This particular ethics program got started last fall when the Central Virginia Mediation Network asked us to do a two-hour ethics training at their September meeting. Nancy and Sally put together an interactive program that was well received by CVMN. In December we provided the training in Roanoke at the Conflict Resolution Center. Since then, we've received numerous requests and now have many programs scheduled around the state in March. We're happy that March is Mediation Month, but with our intense training schedule it might be Mediation Madness Month for us!!! Please contact our office if you or your organization would like to sponsor a training – which we will schedule well after March!

DRS Attacks the Paper Crush

Anyone visiting our snug quarters at OES cannot have missed our pack of edgy, overgrown file drawers housing and protecting all of your certified mediator files, but also making maneuvering around here an adventure. The answer to our ever-increasing “paper crush” of physical files arrived late last year in the form of a very large scanner and electronic storage technology, which you might recognize as the electronic storage and retrieval system the circuit courts use for their land records. We developed an indexing scheme, and Deborah and Melanie have doggedly sorted file paperwork and scanned and scanned and scanned. It's a vast undertaking, but will be well worth the effort in the long run. The electronic storage is virtually limitless, and with the physical files gone we'll be able to breath easier in our space.

As Melanie described in “Getting on Board in the Electronic Age” in the December 2008 Resolutions, due to the change to the electronic storage and retrieval system, we are being selective about the documents we scan and keep, so it is important that you keep copies of your certification submissions (especially supporting documentation) for your records, as we will not be keeping copies here. Also as Melanie suggested to conserve paper and mailing expense, for future recertifications please submit only enough case and training evidence to meet minimum requirements.

RFPs for 2009-2010 Contract Year

We noted last year that we would seek a method to relieve DRS from the intensive workload associated with the General District Court mediation services RFP/contract process. At this time, however, we have not found a suitable replacement mechanism for payment for the mediation services that also complies with state procurement requirements. Therefore, we will again post RFPs in late March for this and other mediation and coordination services. Responsive proposals will be due about a month later in April. We will be sending out emails with all the details when the RFPs are posted on the website. Please be sure to keep your email address updated in the DRS office so you don't miss out on important emails.

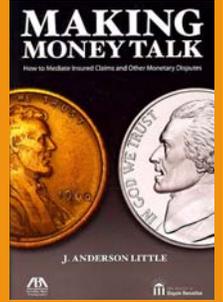
DRS Staff Titles Change

Sally and Nancy's titles have changed. Instead of Dispute Resolution Services Coordinator, Sally is now Dispute Resolution Services Manager, and instead of ADR Specialist, Nancy is now Dispute Resolution Services Programs Coordinator. We hope these new titles will better describe our roles here at the Office of the Executive Secretary.



The Resource Corner ~ Book Review ~

“Making Money Talk: How to Mediate Insured Claims and Other Monetary Disputes,”
J. Anderson Little. 269pp. ABA Section of Dispute Resolution, American Bar Association, 2007.
www.ababooks.org or www.amazon.com or wherever books are sold.



J. Anderson Little’s “Making Money Talk: How to Mediate Insured Claims and Other Monetary Disputes” is a fascinating read whether or not we mediate insured claims.

As the author so aptly notes, “Even the most intensely personal of interpersonal disputes can have the sound, feel or flavor of money negotiations.” I agree. Who among us family mediators has not participated in a divorce mediation where one partner did not want the divorce and used money as a weapon to thwart the other party? Likewise, in the workplace. Who among us has not experienced complainants holding fast to “the principle of it,” believing that only money could right the wrong they suffered?

Accustomed as we may be to reading well-written books in the ADR field—and certainly there are many of them—this book stands out for several important reasons: the wealth of accomplishments, experience and training the author brings to his topic; the thoroughness with which he addresses his subject; and the style, tone, and formatting he uses to create a thought-provoking reading experience.

A complete listing of Andy Little’s credentials would take far more space than is available. Interested readers are invited to go to the North Carolina Academy of Superior Court Mediators web site for detailed information. His formal education includes a Master of Divinity degree; a degree in law; and more than 180 hours of mediation training.

In 1992, he ended a 17-year trial lawyer career to mediate full time. In the same year, he led the North Carolina Bar Association’s efforts to incorporate mediation into its courts and convened the first settlement conference under the state’s newly created court-ordered mediation mandate. At the time this book went to press, he had

mediated more than 4000 cases, mostly in the civil trial court arena. He is certified as a Superior Court and Family/Financial Mediator; he has contributed to the formulation of Standards of Conduct for Mediators; and he has served as a volunteer mediator in neighborhood and family disputes. He is the president and lead trainer of Mediation, Inc. in Chapel Hill, NC.

As he began to mediate full time, mostly in the civil trial court arena, he shares with us that his understanding of the mediation process “collided with the realities of traditional bargaining.” Like most of us, he was trained in the problem-solving model of the mediation process so it was frustrating for him to discover that “claims for money start with positional bargaining, end with positional bargaining, and resist our efforts to re-frame them into problem-solving experiences.”

This realization led him to develop tools, strategies and techniques that are compatible with ethical mediation conduct and, at the same time, address the unique realities of traditional (positional) bargaining in civil trial court mediations (or in other cases where monetary negotiations play a primary role.)

“Making Money Talk” describes his journey as he encountered problems and created solutions along the way. He offers these experiences to those of us who want to better understand the dynamics of money negotiations in order to better serve our clients. Here are a few of the many, many definitions, explanations, and suggestions he offers throughout the book:

- Recognize that lawyers perform a valuable role in mediation by helping clients value and understand the realities of their case. (Little reminds us of the efficacy of Fisher & Ury’s BATNA strategy, as described in “Getting to Yes.”)
- Re-think any preconceptions about who “the client” is. (The mediator’s clients are the disputants and their legal advisers as well as any other relevant professionals.)

- Accept that parties to position-based bargaining tend to withhold information. They are not interested in joint sessions; they don't want to collaborate to identify needs, lest they disclose what they perceive to be their bargaining edge. (Mediators must heed the parties' "strategic decisions" about whether or not to disclose information. This is not to say mediators can't offer suggestions—as an option—to the parties, not as a directive.)
- Mediators can assist parties in three valuable ways: Facilitate the flow of information; facilitate case/risk analysis; facilitate movement. (Note the operative word is "facilitate" not "direct.")
- Consider William Glasser's "control theory" to focus a party's attention on forming thoughtful proposals rather than focusing on the inadequacy of the other party's proposals. (This technique empowers disputants to focus on what they alone have the power to control.)
- Help parties reach their best numbers by helping them formulate thoughtful movement from position to position. Brainstorming and a "reframing summary" which helps the disputant see his comments in the larger context of the dispute are two techniques which can generate movement. (The author stresses that a mediator can facilitate money negotiations without knowing the disputants' bottom line; in fact, it's better to not know so they don't feel locked into what they've stated.)

Typically, a book's style, tone, and formatting are not remarkable enough to mention in a review. "Making Money Talk" is an exception. Written for mediators who may or may not be attorneys, the author's style is conversational and easy to read. His personal anecdotes increase the sense that he's addressing the reader as a colleague, saying, "Let me tell you what I did when that happened to me."

The formatting features of the book significantly aid readability and retention. A descriptive table of contents and a comprehensive, cross-referenced index adds to the ease of finding specific topics. This easily turns the book into a quick reference tool. Most of the chapters begin with a synopsis and end with a summary. Shaded boxes emphasize certain thoughts and end notes make it easy to research more about articles or books he mentions. For example, the following summary box appears on page 223:

Using the tools of the mediator:

questions, brainstorming, summarizing, reframing, observations, and suggestions.

I seek first to develop understanding:

of the case, the people, their relationships, their goals and needs, their problems, their resources, and the life and outcome they desire.

Out of which may grow:

solutions, settlements, personal growth, connectedness, and moral development.

An appendix consisting of proposals and counter proposals from more than 100 mediated settlement conferences is fascinating to study. As the author points out, these bid sheets illustrate the reality that it can be difficult and frustrating for all concerned---disputants, attorneys, and mediators---to settle a case through traditional bargaining. Yet, they also prove the possibility that cases can settle---even when the initial dollar values placed on the cases are far, far apart and the movement toward a mutually acceptable number is painfully slow.

One of the early reviewers of "Making Money Talk" noted, "This book is a gift to both new and experienced mediators." I agree and I up the ante. I think it's two gifts: it's a gift of instruction in a field many of us know little about. And, it's a mind-stretching gift. It gives us the chance to see positive possibilities in concepts we may not have been willing to consider before reading how they can be effective in the right circumstances. For instance, upon my initial reading of this book, I was jarred by the idea of not requiring full disclosure (though I certainly understand it's impossible to enforce) and by the idea of separate sessions being a given (not an option) in the traditional negotiation process.

Not to worry, however. J. Anderson Little says a lot when he writes this short summary: "Good mediation is present whenever mediators properly understand the parties and the nature of the dispute and work to employ processes and techniques that are facilitative rather than directive."

Submitted by Diane Wiltjer, who served as a certified mediator and mentor in Virginia for more than ten years. She now lives in Pinehurst, NC and can be reached at DianeWiltjer@aol.com.

Parent Education Classes Provide A Valuable Pre-Mediation Resource

Family mediators should be aware of Parent Education classes, a valuable pre-mediation resource available to parties in contested child custody, visitation and support cases. Parent Education classes can prepare parents to thoughtfully develop more effective parenting plans and help them focus on the needs of their children rather than their conflict with each other.

Since 2001, parties involved in contested custody, visitation, and support cases have been required to attend a four-hour parenting seminar. The seminar (see Virginia Code Sections 16.1-278.15 and 20-103) addresses the effects of separation or divorce on children, parenting responsibilities, options for conflict resolution, and financial responsibilities.

Because the seminar helps parties understand how separation and divorce affects children and gives parties a greater awareness of options for resolving family disputes, the statutes encourage parties to take the parenting seminar prior to mediating. The law states that, "Whenever possible, before participating in mediation or alternative dispute resolution to address custody, visitation or support, each party shall have attended the educational seminar or other like program." Participants, judges, clerks and mediators have reported that the parenting seminars have contributed to a reduction in parental conflict and an enhanced focus on the needs and welfare of their children. These factors can, and often do, contribute to fewer cases litigated and an increase in successful mediations.

The seminars (or classes) are conducted by a variety of professionals, including licensed mental health professionals, certified family mediators, licensed clinical social workers, attorneys, and educators. Providers of these parent education seminars are available in every judicial circuit. To locate providers in your area, go to <http://www.courts.state.va.us/parented/list.html> and click on a judicial circuit on the map to see the providers in that circuit.

For more information or to learn how to be trained to provide the seminars, contact DRS's Parent Education Coordinator, Ann Warshauer, at awarshauer@courts.state.va.us. There will be a free Training the Trainer session for parent education providers from 8:00 to 4:00 on April 15, 2009 at the Supreme Court. For information on the training or to receive a registration form, contact Ann Warshauer or Melanie Rinehults.

Virginia Mediator Published in Law Journal

Susan Oberman of Common Ground Negotiation Services is a certified family mediator in Charlottesville. Ms. Oberman's article entitled "Style v. Model: Why Quibble?" was published recently in the Pepperdine Dispute Resolution Law Journal, Volume IX, Number 1, published by Pepperdine University in Malibu, California. More information regarding the author can be found at her web site: <http://www.commongroundnegotiation.com/index.htm>

While a subscription is required to access the Pepperdine Dispute Resolution Law Journal, Ms. Oberman has offered to email an electronic draft of her article upon request. Her website includes a link to her email address.





A Life That Inspires Cheryl Watson Smith

Many women today face the challenge of juggling a career with the responsibilities of family. Few have the added challenge of raising children with special needs – but that is just what Cheryl Watson Smith does, successfully, graciously, positively, tenaciously, energetically, persistently, ceaselessly.

Cheryl, who has her own law practice, has been a certified mediator since 1995. She has always been a faithful volunteer of the Conflict Resolution Center, mediating cases and participating as a trainer. As an early advocate of mediation, Cheryl often encouraged her own legal clients to attempt to resolve their disputes through mediation, referring them to other mediators or the CRC. The sign outside of her office door advertises mediation services as well as legal services.

Additionally, Cheryl has been instrumental in bringing the Collaborative Team Process to Southwest Virginia. Collaborative Practice is an alternative dispute resolution process, in which both parties to the dispute contract with trained Collaborative lawyers, trained mental health specialists and trained financial specialists, to be a settlement team and only spend their time and resources working toward an acceptable resolution. Besides being a founding member of both the Virginia Collaborative Professionals and the Collaborative Professionals of Roanoke, Cheryl is also a member of the International Academy of Collaborative Professionals and serves as Membership Chair of the Virginia Collaborative Professionals Council.

Cheryl juggled these career responsibilities along with caring for a healthy, happy, energetic daughter and son.

On Saturday, October 1, 2005, life changed abruptly for Cheryl when a family trip to King's Dominion ended in a devastating accident, leaving two adults and one child dead, Cheryl severely injured, her then 7-year old son, Conner, in a coma, and her then 9-year old daughter, Caitlin, partially paralyzed from the waist down.

In tribute to Cheryl's reputation and the esteem with which she is held among members of the legal community, several attorneys jumped in and covered cases for Cheryl as she recovered. A fund was established to assist with recovery and medical expenses. Cheryl's office staff, who are family to Cheryl, not only worked to keep the office open during this time of personal tragedy for them, but also kept friends and family up to date with progress reports of Cheryl and her children. Various fund raisers were held bringing capacity crowds of friends, fellow attorneys and mediators, other professional peers, fellow church members, schoolmates of Caitlin and Conner, and other concerned people from the community. Cheryl's family has been invaluable in supporting her emotionally, as well as helping to transport the children to their various therapies and doctors' appointments.

Such a personal tragedy slowed Cheryl down – momentarily. In between therapies and doctor appointments, she tries to practice a little family law. However, Cheryl has made the choice to exchange the practice of divorce litigation for the practice of Collaborative Family Law. She is a major advocate for the more peaceful processes of collaborative team practice and mediation.

Despite her responsibilities and her unbelievable schedule, she has maintained mediation certifications for General District Court, Juvenile and Domestic Relations District Court, Circuit Court-Civil and Circuit-Family. Cheryl is like a gift that keeps on giving, as amazingly, she continues to make time to volunteer as a mediator as well as a trainer for the CRC.

The doctors caring for Cheryl and her children warned that, "this is a marathon and not a sprint." Cheryl's days sound just like a marathon. Most days are spent helping Connor with dressing, toileting, brushing teeth, sitting up to eat, cleaning up after eating, getting his coat on, walking him to the car and assisting him in, then strapping him in, delivering him to school, laughing, redirecting sibling bickering and answering questions all the way to school, picking him up from school, going to therapies or doctor appointments, loading and unloading him, finding someone to play Pocket Tanks with him, assisting with his dinner, practicing spelling words, reading a little, bathing, brushing teeth and tucking into bed, checking on him during the night (putting him back in bed when he falls out) and starting over a few hours later.

Cheryl researches educational and physical therapy options for Conner and then with the tenacity of a bulldog pursues avenues that will allow Conner to participate in those programs. This has required that she become somewhat of an expert in the area of traumatic brain injuries, identifying associated medical, therapeutic, educational, and equipment needs, locating possible solutions, and then lobbying and advocating for Conner's participation. Often, the programs that meet Conner's needs involve frequent, and many times lengthy, trips to Charlottesville.

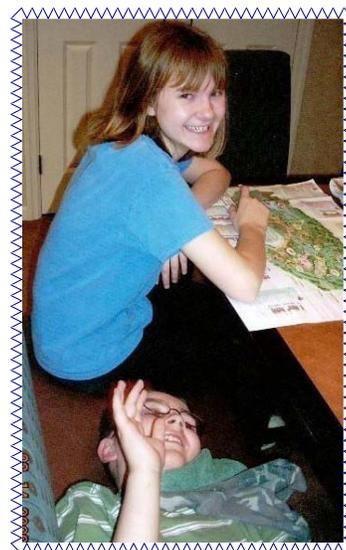
Though trying to avoid the spotlight, Caitlin still requires her mom's newly developed skills. Because of a pronounced limp that causes a host of aches, pains and frequent falls she visits the orthopedic doctors for check-ups and periodically requires therapy. She is a spirited girl who, like her mother, won't slow down and by the grace of God, is walking and running.

When her friends praise her for her ceaseless efforts for her children, and for never complaining about the accident and the resulting injuries, Cheryl simply says, "It has nothing to do with what I'm doing. My biggest challenge is keeping out of God's way so He can use me according to His plan rather than my own." Cheryl walks the walk and is an incredible example to us all.



Cheryl Watson Smith

Submitted by Chriss Davies-Ross, Family and-Civil Certified Mediator and Mentor from Roanoke



Caitlyn & Connor Smith

Electronic Transmission of Mentoring Forms

Mentors, you may be interested in a way to apply digital signatures to your Verification of Observation, Mentee Evaluation, and Portfolio forms so you can then send the completed forms to your mentees via email rather than surface mail. Jeannette Twomey has been employing this time-saving method for quite a while now and finds it much more efficient. Our sincere thanks to Jeannette for sharing this wonderful idea with DRS! Now if you are not a computer whiz, don't assume you won't be able to manage the instructions below. They are simple and easy to follow.

If you already have Adobe Acrobat software that allows you to convert Microsoft Word documents into PDF files, you already have the capability to take advantage of this idea. If you do not, DRS has located a free program you can download to create your PDF files from completed, signed forms. If you need software, go to the following link:

<http://www.cutepdf.com/Products/CutePDF/writer.asp>

As the instructions indicate, you will also need to download a conversion software. Just click on the link on the left labeled "Free Converter" to download Ghostscript. It's quick and easy.

Next click on the link on the left labeled "Free Download" to get the Cute PDF Writer software. Just follow the simple wizard prompts to install.

There may be other free software products available for download. DRS has no formal relationship with the company distributing the above-described product and makes no guarantees about this product. Once you have the necessary PDF software on your computer, you will be ready to create a digital signature as a "picture" (.jpg file) that can be inserted into your document. To do this, follow these easy steps:

STEP 1: Write your signature on paper the old-fashioned way.

STEP 2: Scan that document into your computer and give the document a .jpg file name. This produces a digital image of your signature. Another option, if you don't have access to a scanner, would be to take a close-up photograph of your signature on paper. With either method, you will need to crop the image to isolate just your signature and re-save the signature file.

STEP 3: When you have completed your Microsoft Word mentoring form and you are ready to affix your signature, place your cursor on the signature line, select "Insert" on the Toolbar; choose "Picture" from the drop-down list; choose "From File." Find your digital signature from the file structure that you are shown and click on it to insert it in your document. You may have to make it smaller or larger by dragging the corner of the "box" it's in. You will also want to delete portions of the signature line to bring the date line back to the same line as your signature.

STEP 4: Now that Cute PDF Writer is installed, it shows up as a printer on your computer. Once your signature has been added to your Word document, click on "Print" on your File menu (DO NOT select "Print to file" option). Choose Cute PDF Writer as your printer option. You will get a Save As dialog box that allows you to save as a .pdf document. It's all ready to email to your Mentee as a read-only attachment.



Community Mediation Center News

Rappahannock Mediation Center

Regretfully, the Dispute Resolution Services office received a letter in mid-December from Linda Toppin, President of the Board of Directors for the Rappahannock Mediation Center, in which the following news was shared:

“I am truly saddened to announce the difficult decision the Board members of the Rappahannock Mediation Center (RMC) have made concerning the dissolution of RMC. RMC will officially close its doors on February 28, 2009. However, we will suspend our services as of December 31, 2008 to allow for necessary administrative close-out.

We would like to express our gratitude to our funders, supporters, friends and community for the outstanding work done over the past 19 years. RMC could not have existed without you, and while the Center must close its doors the work done by RMC will be seen for years to come.”

We at the Office of the Executive Secretary would like to express our appreciation to the RMC staff members and volunteer mediators for the dedicated service you have rendered to citizens of the courts in the Fredericksburg area over the years. Who can possibly assess the far-reaching impact you have had on the lives of those families and individuals you have come alongside to help in the resolution of their conflicts? We wish success to all the RMC mediators who have invested their time and talents in the field of alternative dispute resolution in Virginia.

Mediation Center of Charlottesville

The Mediation Center of Charlottesville announced recently it has changed the name of the organization. Formerly known as Community Mediation Center of Charlottesville, the Center’s web site can be found at <http://www.mediationville.org/>. The basic contact information remains unchanged.



VA Assn. of Community Conflict Resolution

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Better Agreements, Inc.

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866-832-5093

T'aiya Shiner, Executive Director

Community Mediation Center of Danville and Pittsylvania County

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Danville, VA 24540
434-797-3981

Bob Phillips, Executive Director

Community Mediation Center Harrisonburg

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Megan Johnston, Interim Executive Director

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Mediation Center of Charlottesville

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Cyndy Martin, Executive Director

Piedmont Dispute Resolution Center Bids Farewell to Maria Hyson

Mediation Month is bittersweet for the Piedmont Dispute Resolution Center (PDRC) in Warrenton this year. With her impending March 31st retirement, the Center will be saying goodbye to its longtime mediation services director, Maria Hyson, while celebrating her contributions and accomplishments.

The Fauquier County Bar Association will be conferring its prestigious Administration of Justice Award to Maria at its annual dinner later this month. The Center will be hosting an open house on March 31st.

The prominence of mediation throughout the Piedmont region can be attributed to two things: a change of public attitudes about conflict resolution and Maria. It can be argued that the change in public attitudes is directly related to Maria's steadfast dedication and professionalism.



Maria received her Supreme Court of Virginia mediation certification in 1996 and has been Director of Mediation Services for the Piedmont Dispute Resolution Center since 1998. In that year, the Center doubled its mediation cases, from 140 in 1997 to 283. At that time, the Center was serving only three courts, the Fauquier Juvenile and Domestic Relations Court and the Culpeper and Fauquier General District Courts.

Today, with Maria at the helm, the Center receives over 800 mediation referrals annually from five counties and 10 court systems. In addition, an increasing number of people who are not court-involved are seeking mediation services. They learn about the Center's professional mediation services through satisfied clients or their attorneys.

Maria is responsible for the Center's overall mediation program. This includes scheduling and conducting mediation orientations and sessions, maintaining a highly skilled cadre of mediators, and ongoing communication with the courts, government agencies and the public. In the latter capacity, Maria has helped develop mediation hybrids, such as Child Dependency Mediation, which works with juvenile courts, departments of social services (DSS) and parents and other family members whose children are under the auspices of DSS.

What she enjoys most as a family mediator is "helping people understand that their children come first and that how they interact with each other has a profound effect on the lives of their children."

Her acclaimed work in mentoring newly trained mediators was recognized by the Supreme Court of Virginia's Division of Dispute Resolution Services when she was asked to join its committee to revamp mediator mentoring guidelines. She traveled throughout the state, assisting the division in training mediators to be mentors. "It's very satisfying to watch new mediators mature in their negotiation skills and artfulness," Maria says.

Originally from New York City, Maria moved to Virginia in 1975. She received her undergraduate degree from Mount Saint Vincent College and worked in child welfare for the New York City Department of Social Services. She also worked for IBM as a systems programmer and analyst. Maria is an active volunteer at the Fauquier Hospital. Maria and her husband, Frank, have two grown sons and a granddaughter.

*Submitted by Lawrie Parker, Executive Director
Piedmont Dispute Resolution Center*

Circuit Court Mediation Program Changes

By Sally P. Campbell

Beginning July 1, 2008, the Office of the Executive Secretary of the Supreme Court of Virginia (“OES”) implemented changes to the circuit court mediation program. The changes include aligning the program with the court-referred dispute resolution statutes by moving from a free-to-parties system to a party-pay system in which the parties choose their own mediator, and supporting circuit court mediation with online information and forms comparable to those of the Judicial Settlement Conference Program (“JSC”).

From 1997 to 2007, OES engaged in a Request for Proposals and contract process with certified mediators to provide circuit court level mediations at no cost to the parties. When a circuit court judge referred a case to an orientation session for mediation under the free-to-parties system, the case was assigned to a mediator holding a contract with OES. If more than one mediator held a contract in that locality, the case was assigned a mediator from the list of contract mediators by fair and equitable rotation. Since 2000, contract mediators received \$200 per circuit court mediation. Given the complex nature of circuit court cases, this rate was significantly higher than the \$90 per case contract rate for General District Court (“GD”) mediations and the \$100 paid for Juvenile and Domestic Relations District Court (“JDR”) custody, visitation and support cases.

Compared to other ADR programs implemented by OES, the circuit court mediation program did not achieve a high level of use. During fiscal year 2006-07, 280 circuit court cases were mediated at no cost to the parties under the program. During fiscal year 2007-08, the number of cases declined to 251. Meanwhile, in 2007-08, there were 2070 cases mediated at the GD level and 9860 cases mediated at the JDR level.

A significant number of the circuit court mediations were appeals of general district court civil cases and pendent lite matters. According to invoices for payment filed with OES, mediation time spent on these cases was often one to two hours. Other mediations involved complex cases requiring substantially more hours of work. In these time-consuming cases the flat fee of \$200 could be seen as a disincentive to take the case, and some mediators were beginning to decline to participate in the program due to the limited pay. The relatively low number of circuit court cases and the flat fee for varying hours of work prompted OES to consider changes to the circuit court program that would foster parties’ awareness and use of mediation at that court level and improve the compensation for the mediators.

Unlike the circuit court mediation program, the JSC, an ADR program created by OES in 2003 for circuit court cases, has grown significantly. The judicial settlement conference is not mediation but does incorporate mediation concepts. It is free to the parties and is conducted by a retired circuit court judge trained in settlement conference techniques, who has no trial authority over the case. The program allows the parties to select their settlement conference judge from a list of trained judges. Judges are paid at the rate of \$200 per day, the same rate they receive when recalled to the bench.

Approximately 60% of JSC cases referred successfully reach an agreement either during or soon after the conference. According to exit surveys, the Program enjoys a high approval rate. Attorneys indicate that having an ADR neutral with legal experience and subject matter expertise, and the ability to provide case evaluation when requested as well as settlement assistance, is helpful to settlement of the case. In the fiscal year 07-08, there were 855 circuit court cases referred to JSC. The JSC Program has its own webpages on the Virginia Judicial System website, including referral procedure information, order of referral form and other forms and checklists, and a list of participating retired judges. Parties and courts apparently find the online information useful and user-friendly, as users seldom call back once OES refers them to the website.

Unlike the JSC Program, the circuit court mediation program did not have program information available on the website and parties were not free to choose their own mediator. Not all areas of the state had contract mediators available to provide the free-to-parties circuit court mediations, so not all citizens had access to the program. Many courts and mediators focused solely on providing mediations at no cost to parties and not on seeking compensation by the parties for the valuable mediation services as provided by statute. The underlying statutory scheme allows referrals to free orientation sessions, but once the parties voluntarily choose to mediate, the statute leaves it to the parties to select their mediator and work out the compensation for the mediation services. OES became concerned that the free-to-parties concept, which was integral to the introduction of mediation in Virginia, after a time overshadowed the underlying concepts identified in the statutes. Nonetheless, in spite of providing free mediations (and in recent years perhaps due to increased use of the JSC) the circuit court mediation program did not achieve a high level of use.

Changes Undertaken

With the goal of improving the utilization of mediation at the circuit court level, OES developed recommendations for changes to the program. A collateral goal was to prevent any changes from imposing additional work on the courts. The recommended changes grew out of numerous considerations for improving the program. Georgia and Florida have party-pay programs at the court of record level, so precedent existed for a party-pay system. A return to Virginia's statutory scheme promoting party-pay deserved consideration.

In light of the JSC experience, it was thought that parties and their attorneys would be more interested in mediation if they could choose their mediator based on the criteria important to them -- such as fees, training, subject matter expertise, background, experience, recommendation of friends -- instead of being assigned a mediator whose skills and background might not match their needs. Again cueing from the JSC, creating specific webpages for circuit court mediation information, with procedures, forms, and a list of available mediators from which the parties would choose, would facilitate better awareness and understanding of the court-referred mediation process.

Empowering mediators to charge their own fees would generate financial incentive for them to actively promote mediation at the circuit court level, whereas the limited pay might have been a disincentive for some to do so in the past. The opportunity to set their own fees might also induce non-certified mediators, of whom technically no mediation training or ethics standards adherence is required, to become certified in order to participate in the court referral process.

After recommending changes to the circuit court judges and weighing their feedback, OES made the decision to go forward with a new procedure for circuit court mediations. As of July 1, 2008, the procedures for circuit court referrals to a mediation orientation session adhere to the court-referred dispute resolution statutes and allow parties to choose their own certified mediator. Along with this change, the program moved from a free-to-parties system to a party-pay system. However, in the mediation of matters involving custody, visitation and/or support only, parties will continue to have the option of free mediation services pursuant to Va. Code Section 20-124.4. JDR certified or Circuit Court-Family certified mediators are paid \$100 to mediate these cases.

There are many benefits to the party-pay system. Parties and their attorneys are free to choose a certified mediator based on the parties' criteria. Under the party-pay system, participating certified mediators set their own fees. Mediators might charge on a sliding fee scale based upon the income of the parties. The party-pay program should attract certified mediators to serve circuit courts in all areas of the state. The new webpages assist courts and parties in the ease of referrals and in understanding the court-referral process.

Circuit court certified mediators wishing to participate must complete a request form (Certified Mediator's Request to be Included on Circuit Court Mediator Eligibility List) and send it to the Dispute Resolution Services office at OES. Eligibility requirements and detailed instructions for this process are located on the Circuit Court webpages under the "Mediator Information" heading.

OES anticipates that allowing parties to choose their mediator and allowing mediators to set their own fees will lead to better utilization of mediation at the circuit court level. In turn, increased utilization of mediation will ease court docket congestion. The changes recognize the unique value of mediation services and the need to compensate mediators adequately for their good work.

Governor Kaine Proclaims **March 2009 as Mediation Month**

The Office of the Executive Secretary is pleased to announce that, once again this year, Governor Timothy Kaine has recognized the month of March as “Mediation Month” in the Commonwealth of Virginia. The language of the Proclamation is as follows:

Mediation Month

WHEREAS, the Virginia Mediation Network, the Virginia Chapter of the Association for Conflict Resolution, the Restorative Justice Association of Virginia, and the Virginia Association for Community Conflict Resolution are professional entities that promote the advancement of dispute resolution services available to citizens, families, businesses and government bodies; and

WHEREAS, with the continuing efforts of the Virginia Administrative Dispute Resolution Act Interagency Advisory Council, public bodies of the Commonwealth are demonstrating a growing commitment to innovation in problem-solving and the application of creative dispute resolution options when faced with complex issues and disputes; and

WHEREAS, the Virginia Alternative Dispute Resolution Joint Committee, a joint committee of the Virginia State Bar and the Virginia Bar Association, supports education of the Bench, the Bar, law students, and the public on the advantages of appropriate dispute resolution options and encourages collaborative practice; and

WHEREAS, the Attorney-Client Fee Dispute Committee of the Virginia State Bar supports the use of mediation or arbitration to resolve fee disputes between attorneys and clients; and

WHEREAS, mediation practices and skills are being applied in the workplace by leaders, managers and supervisors who have embraced the power and efficiency of open communication and collaborative problem-solving; and

WHEREAS, mediators and other dispute resolution practitioners, through their significant expertise in helping stakeholders find durable solutions to important issues, have demonstrated the value of the field of alternative dispute resolution; and

WHEREAS, mediation, and the principles and practices that it embodies, can be a critical tool for peacemaking between individuals, groups, units, neighborhoods or countries, and the Commonwealth of Virginia continues to be a national leader in those efforts; and

NOW, THEREFORE, I, Timothy M. Kaine, do hereby recognize March 2009 as **MEDIATION MONTH** in the **COMMONWEALTH OF VIRGINIA**, and I call this observance to the attention of all our citizens.

The Community Mediation Centers and the mediation community at large annually sponsor various special events as a way to celebrate the mediation profession and to draw attention in their communities to the significant positive impact alternative dispute resolution (ADR) is having in Virginia. Many lives each year are influenced as an array of ADR processes are employed to aid in the peaceful resolution of civil and family disputes.