



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

## ADA Mediation: Ensuring All Parties' Full Participation

In the summer of 1990, the landmark Americans with Disabilities Act (ADA) was signed into law by President George H. W. Bush. The ADA was passed with the intention of protecting individuals with disabilities from discrimination in a similar context to the Civil Rights Act of 1964. The ADA established that Americans with disabilities have the right to be treated as full and equal participants in society, regardless of physical or cognitive impairments. The ADA originally defined 'disability' as "a physical or mental impairment that substantially limits a major life activity." In 2008, however, the Americans with Disabilities Act Amendments Act (ADAAA) was passed and expanded the definition of 'disability' to include impairments such as epilepsy, diabetes, cerebral palsy, cancer, HIV infection, and bipolar disorder. The ADAAA made it easier for people with disabilities to access proper justice and accommodations. Put simply by a disability rights advocate, "the passage of these two laws further established the personal empowerment of individuals with disabilities."



### Articles in This Issue

(click on article title to navigate to page)

[ADA Mediation: Ensuring All Parties' Full Participation](#)

[Motivational Interviewing: Preparing People for Change \(Book Review\)](#)

[ADR Resource Corner](#)

[Keeping You Informed: A DRS Update](#)

In order to guarantee disabled Americans equitable participation, organizations, companies, and service providers, like mediation centers, are required to provide reasonable accommodations to Americans with disabilities. Breakdowns in communication regarding lawful accommodations are often at the root of conflict in many ADA-related cases; however, clients with disabilities can also be involved in conflicts completely unrelated to their disability. Mediation service providers must be able to mediate ADA-related cases, but they must also be capable of providing accommodations to clients for the actual mediation process. Given the ADA's explicitly

stated language encouraging the use of mediation services for persons with disabilities, Alternative Dispute Resolution (ADR) educators, mediation centers, mediators, and those serving equal justice all have a vested interest in understanding the significance of the ADA, and how to best provide accommodations to the disability community.

Mediation centers must be aware of the service accommodations they are required to provide to clients by law – regardless of whether the conflict is an ADA-related issue. According to the [U.S. Equal Employment Opportunity Commission](#), mediators have an obligation under Title II and Title III of the ADA, and under section 504 of the Rehabilitation Act, to provide auxiliary aids, effective communication, and accessible services to clients with disabilities “unless an undue burden or fundamental alteration of the nature of the mediation program would result.” Essentially, mediators must ensure they are knowledgeable enough to mediate ADA conflicts, in addition to providing services that are welcoming and in line with the requirements of the ADA. Proper accommodations for disabled clients could range from making facilities wheelchair accessible to providing a sign language interpreter. It is important for mediators to understand that the reasonable accommodation obligations required by the ADA are in place simply to ensure individuals the greatest amount of personal control possible and to prevent discrimination. The ADA defines disability discrimination to include “not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability . . . unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business.”

Lucy Beadnell, Director of Advocacy at [The Arc of Northern Virginia](#), a disability empowerment organization, explains that mediation, regardless of a conflict’s context, “allows more opportunities for the person with a disability to speak directly about their thoughts and concerns instead of working through a lawyer and hoping their wishes are interpreted correctly.” There are varying degrees of sensitivities surrounding one’s disability. If a client is willing to share, mediators must make every effort to understand a client’s disability in addition to what the client specifically feels is needed in order to be fully accommodated during the mediation process itself. Because of the diverse needs of the disability community, mediation providers are encouraged to bring in disability community leaders to discuss cultural sensitivity and competency. Cultural awareness specialists can help mediation organizations and individuals recognize personal bias, identify a provider’s potential accommodation short falls, and provide numerous other disability related insights. When asked how to best serve clients, Beadnell simply responded, “mediators are setting mediations up for failure if they have not put in work ahead of time to try and understand someone’s disability and what it means to have that disability.”

Speaking at a [Northern Virginia Mediation Service](#) (NVMS) disability and mediation training session in February, Christopher Nance, a master’s candidate from George Mason University’s School for Conflict Analysis and Resolution, emphasized the importance of understanding the exact needs of a client with a disability before beginning the mediation process. In essence, mediation providers must be prepared to facilitate a range of cases involving many possible scenarios related to an individual’s disability, such as discriminatory hiring practices, workplace accommodations and communication issues, housing disputes, or familial conflicts. Alternatively, other cases may not involve ADA issues but may call for providing a specific accommodation to a client in order to ensure his or her equitable participation in the mediation, such as allowing for breaks, providing an interpreter, or allowing them to have an additional person present.

Nance has worked with numerous schools, teachers and administrations, counselors, friends, and other community providers to educate about how to properly serve and empower individuals with disabilities. According to Nance, the ADA prohibits service providers from asking about an individual's specific disability; therefore, maintaining sensitivity when inquiring about a person's accommodation needs is the first step to creating a comfortable environment. For example, clients with disabilities that require a person to assist them may feel a greater sense of personal control if more empowering terms are used, such as "aid" instead of "advocate." Nance pointed out that the term "advocate" can often be interpreted by clients as a representative voice, similar to a lawyer, whereas the term "aid" maintains the empowering nature of the mediation with option of self-determined assistance.

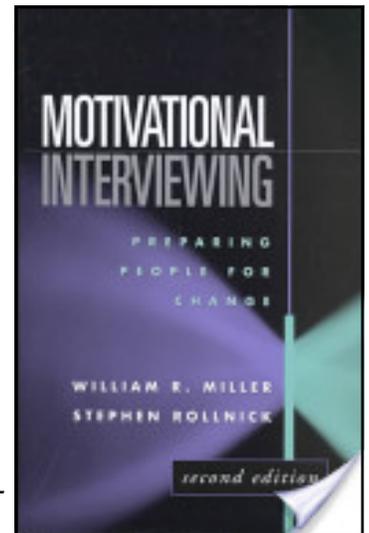
In the end, mediation providers must prepare for a diverse array of clients, especially when developing outreach and trainings specific to those with disabilities. Mediation services providers should offer trainings that explore the exact accommodation requirements stated in relevant disability laws. There are numerous local, state, and federal laws in place that affect Americans with disabilities. Trainers and mediators must be familiar with and understand these legal frameworks which play a vital role in the establishment of the proper context for a mediation. The Institute for ADA Mediation [highlights the importance](#) of sensitivity training and the formation of ethical standards. Mediation service providers should reach out to local disability rights organizations, individual advocates, and ADA attorneys to find trainers and disability experts. The ADA Mediation Standards Work Group, housed by the Kukin Program for Conflict Resolution at the Benjamin N. Cardozo School of Law, has published helpful resources such as the "[ADA Mediation Guidelines](#)" for mediation organizations hoping to best serve ADA-related cases. Mediators can also reach out to a national organization such as the [National Disability Rights Network](#) to inquire about locating qualified disability experts. Another good resource to help direct mediators is the "[Questions and Answers for Mediation Providers: Mediation and the Americans with Disabilities Act \(ADA\)](#)" report, published jointly by the United States Equal Employment Opportunity Commission, the National Council on Disability, and the U.S. Department of Justice. Through the use of personal testimonies, comprehensive review of the law, and insights into cultural understanding, disability mediation trainings should allow mediators to feel confident in their ability to determine client capacity and to best create a balance of power.

According to ADR blogger Paul S. Miller, mediation "can provide justice for many who would otherwise be without recourse." Conflict knows no boundaries, and mediators must be confidently equipped to help diverse people and cultures resolve conflict. Individuals with disabilities deserve and are entitled to competent and productive mediation services. Taking the time to ensure a fair and balanced mediation that maintains integrity for all parties involved must be of the utmost importance for the mediation community. Ultimately, when well-developed training programs and compassionate mediation skills are a priority, the disability community is served with truly equitable justice. Perhaps Ms. Beadnell said it best: "We all share far more in common than we realize – never forget that at the end of the day, we are all people first. All people want to be loved, respected, and heard."

*Contributed by Adam D. Swanson, Communications Fellow,  
Northern Virginia Mediation Service, Fairfax, Virginia*

**“MOTIVATIONAL INTERVIEWING  
Preparing People for Change,”  
William R. Miller & Stephen Rollnick,  
2<sup>nd</sup> ed. Apr 2002 , The Guilford Press.**

(Please note: A 3<sup>rd</sup> ed. will be released on October 23, 2012 with a slight sub-title change: “Helping People Change.”)



In my experience, mediators find it fun and inspiring to gather in small groups to exchange ideas about both the practical and the philosophical implications of our roles as third party neutrals.

Often, depending on how *pure* we interpret the role of the mediator, we wonder if we are as impartial, neutral, unbiased, objective as we *should* be. In fact, many of us worry that even by the questions we choose to ask, the comments we choose to pick up on, and the factual data we choose to share, we are showing a bias, a direction toward which we think the parties *should* move.

For those of us who feel such angst, “Motivational Interviewing,” by William R. Miller and Stephen Rollnick, confirms our concerns in two ways. It validates the client-centered approach, which is at the heart of mediation. And, it *emphasizes* and *expands* on the mandate to help clients move toward the changes *they* want to make – *with the least possible third party intrusion*.

“MI” was originally written for the substance abuse and addictions community in the 90s. This second edition (2002) acknowledges that motivational interviewing (MI) was adapted by an even broader range of practitioners since the 90s: mental health professionals, the medical community, and the judicial system. When the third edition is published in October, it will be interesting to note that MI has again been adapted by an ever-widening circle of professionals and target groups including social workers, teens, nurses, and diabetics.

Though the typical MI application is one client and one clinician, I suggest it’s a small leap to adapt the process to two disputants and one or two mediators. *This is the book’s unique value to us.*

Miller and Rollnick stress that “MI” is a “method of communication rather than a set of techniques.” Substituting mediator for clinician, it is our job to not only help our clients identify the changes they want to make (*the pieces of the agreement*) but to build on each option they offer---even if it’s a mere “kernel” of an idea on which we can expand. At the same time, we have to make it clear that we have no stake in the outcome. As Dr. Phil would say, “we don’t have a dog in that fight.”

MI warns that one of the greatest challenges is to “roll with the client’s resistance to change” (a behavior which the authors say is normal and to be expected). It’s our job to help them explore and resolve ambivalence or confidence issues by using affirmations, empathy, and open-ended questions to reflect back to them the “change talk” they have articulated: the changes, goals, and wishes *they have touched upon*.

"MI's" content is nicely balanced between explaining the research and the principles which provide the foundation for practicing and implementing the method, as well as eleven chapters contributed by practitioners who have applied the model in a variety of disciplines and with individuals, groups, couples, and adolescents.

According to the authors, to facilitate change, we must demonstrate a clear understanding of the "MI spirit" from the very first session:

- ✓ Collaborate with clients so *their* ideas influence the session;
- ✓ Evoke *clients'* reasons for wanting to change the status quo and encourage *them* to suggest possibilities as to how they could make the change happen;
- ✓ Support the clients' autonomy so they are clear that all changes and decisions are theirs and are under their control. (In mediation, of course, agreements not reached may default to a courtroom decision but that, in itself, is a piece of the reality that clients must include in their decision.)
- ✓ Empathize with clients to demonstrate a sincere understanding of their points of view---not just for what has been said but for what the clinician intuits the client may intend but hasn't yet verbalized.
- ✓ Direct clients toward the target behavior they have expressed an interest in pursuing.

Aside from these behaviors, MI's guiding principles emphasize two underlying factors which are important enough to repeat: clients either *want* to change some situation or they *must*, in order to avoid an unpleasant consequence. *At the same time, they are resistant to change.*

For example, when mediating a divorce agreement, there is typically the spouse who asked for the divorce and the spouse who is resistant to it. It follows then, that the client who is hurt and angry may well not want to contribute toward an agreement that disbands the marriage and the family. We demonstrate our ability "to roll with resistance" by simply acknowledging and empathizing with this client. At the same time, we must listen carefully for the smallest nugget of "change talk" so we have a verbalization to tag on to.

To that end, our open-ended questions need to elicit information from clients about what they need to change and why; which of their strengths and weaknesses they feel will help or hinder the change they want to make; and what it might take for them to feel ready to make the commitment to change.

These "change talk" conversations sound like they could be very effective in divorce or family mediation where questions like "What are the worst things that might happen if you don't arrive at an agreement?" "When things were better between you, how did you resolve your differences?" "How might it affect the children if you do (or don't) agree on a course of action?" "You mentioned that it's important to you to be a good parent. How does thinking the way you're thinking now accomplish (or not accomplish) that?" (It's important that our tone of voice and body language support our non-judgmental, open-ended questioning.)

As you can see, “MI” is very compatible with mediation. The main difference is the *degree of emphasis* which the authors bring to the communication process. If we don’t want *any* kind of bias to ease its way into our facilitating client-directed change, you may want to consider following these guidelines:

- ✓ listen for understanding (not debate or challenge);
- ✓ affirm our appreciation of what they are going through;
- ✓ reflect on the words they have spoken by repeating or rephrasing them with the goal of gathering more information; and
- ✓ lead them back to “change talk” by helping them envision a better future, based on *their* definition of what their better future might look like.



When we tag on to what our clients say and offer them the support they ask for, how can we not empower them to be all that they can be?

And – when we need a little empowering ourselves, it might help us to remember this thought from Henri J. M. Nouwen’s, “In Memoriam” as quoted in “MI”: “*Anyone who willingly enters into the pain of a stranger is truly a remarkable person.*”

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To learn more about motivational interviewing, you may want to enter the phrase on google and be amazed at all of the entries. There are also many short interviews with the authors, roleplays, and relevant blurbs on “motivational interviewing and youtube.” You may be interested in an article posted recently on mediate.com, entitled "[Narrative Mediation: An Exercise in Question Asking](#)" by Angela Nagao and Norman R. Page.

*Diane Wiltjer, former Virginia certified mediator, is a frequent book reviewer for Resolutions and now resides in Pinehurst, NC. She invites your questions and comments about motivational interviewing at [dianewiltjer@aol.com](mailto:dianewiltjer@aol.com).*

# ADR Resource Corner



~ Published Articles by Virginia Certified Mediators ~

## **Susan Oberman, [Confidentiality in Mediation: An Application of the Right to Privacy](#)**

This article by Susan Oberman, certified mediator with Common Ground Negotiation Services in Charlottesville, Virginia, appeared in the Ohio State Journal on Dispute Resolution, No. 3, 2012 issue. Ms. Oberman's article can be downloaded from her web site, which is linked in the article title above. See also a [Just Court ADR](#) blog post by Heather Scheiwe Kulp of Resolution Systems Institute.

## **Kimberly Fauss, [Why Apologize?](#)**

The above-titled article, penned by collaborative family law attorney and mediator Kimberly Fauss of Richmond, appeared in the Spring 2012 issue of *Virginia ADR*, the newsletter of The Virginia Alternative Dispute Resolution Joint Committee. You may link to Ms. Fauss's New Growth Ventures, LLC website through the title above to download her article. [Note: A plenary session on apology is planned for the Tuesday schedule of the VMN Fall Conference.]

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## **[Virginia Mediation Network Fall 2012 Conference](#)**

The Fall 2012 VMN Conference will be held at Wintergreen Resort on September 30 through October 2. The theme is "Skill-Building, Diagnostic Tools, Mentoring, and Ethics for the Advanced (and Newer) Mediator: Enhancing our Growth and Awareness." Be watching on the VMN website linked above for registration information as it becomes available.

## **An Easy-to-Download and Easy-to-Print Version of Resolutions**

*Resolutions* newsletters are posted to the website in a PDF format with graphics and page backgrounds. You may request that an easy-to-print, no-frills version of the newsletter be emailed to you by contacting Melanie Rinehults at [mrinehults@courts.state.va.us](mailto:mrinehults@courts.state.va.us).

## **Training Calendar**

For information on certified training or conferences, check out our [Mediation Conference Schedule](#) or the [ADR Training Calendar](#). Continuing Mediation Education (CME) classes appropriate for recertification are listed under Specialized Training on the ADR Training Calendar. You may want to bookmark the above links for easy reference.

## **[Virginia Association 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  
[avcr@shentel.net](mailto:avcr@shentel.net)

### **[Better Agreements, Inc.](#)**

305 Washington Street, SW  
Blacksburg, VA 24060  
866-832-5093  
T'aiya Shiner, Executive Director  
[info@betteragreements.org](mailto:info@betteragreements.org)

### **[Conflict Resolution Center](#)**

4504 Starkey Road, Suite 120  
Roanoke, VA 24018  
540-342-2063  
Eddy Smart, Executive Director  
[director@conflictrresolutioncenter.us](mailto:director@conflictrresolutioncenter.us)

### **[Fairfield Center](#)**

165 S. Main Street, Suite A  
Harrisonburg, VA 22801  
540-434-0059  
Timothy Ruebke, Executive Director  
[tim@fairfieldcenter.org](mailto:tim@fairfieldcenter.org)

### **[Mediation Center of Charlottesville](#)**

P.O. Box 133  
Charlottesville, VA 22902  
434-977-2926  
Leigh Trippe, Executive Director  
[mcc@mediationville.org](mailto:mcc@mediationville.org)

### **[Northern Virginia Mediation Service](#)**

4041 University Drive, Suite 101  
Fairfax, VA 22030  
703-865-7272  
Megan Johnston, Executive Director  
[info@nvms.us](mailto:info@nvms.us)

### **[Peaceful Alternatives Community Mediation Services](#)**

P.O. Box 1169  
Amherst, VA 244521  
434-929-8227  
Carolyn Fitzpatrick, Executive Director  
[info@peaceful-alternatives.com](mailto:info@peaceful-alternatives.com)

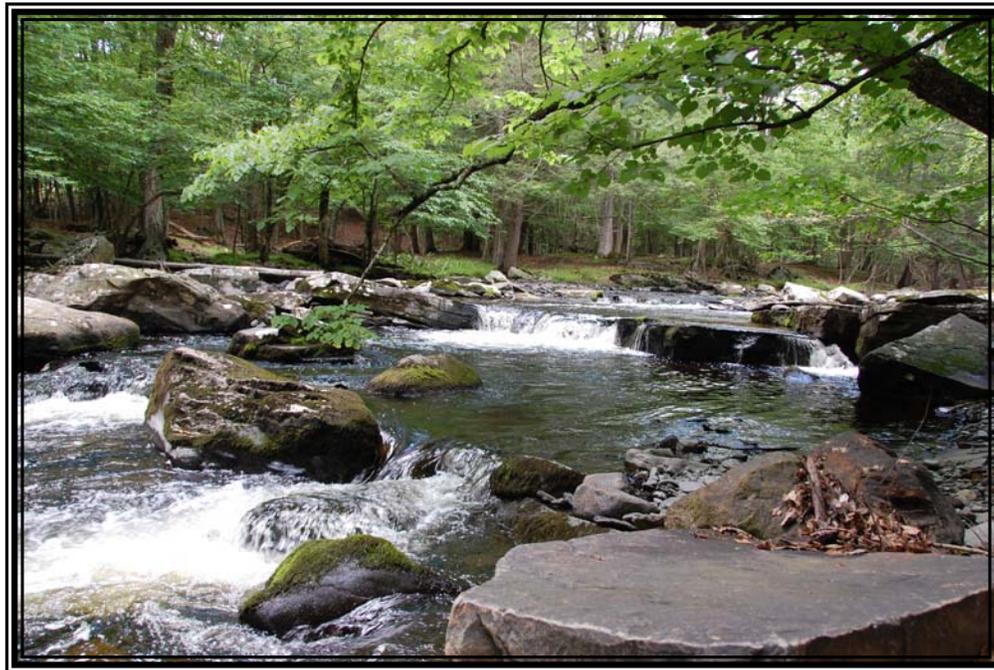
### **[Piedmont Dispute Resolution Center](#)**

P. O. Box 809  
Warrenton, VA 20188  
540-347-6650  
Lawrie Parker, Executive Director  
[pdrc@verizon.net](mailto:pdrc@verizon.net)

# KEEPING YOU INFORMED

## ~ A DRS UPDATE ~

Greetings from the Staff at  
Dispute Resolution Services



**Hope You're Enjoying a Spectacular Summer 2012!**

### Recertification Due for Many Mediators

Mandy has begun reviewing applications for mediator recertification as over half Virginia's court-certified mediators are due October 31, 2012. The earlier you send in your application, the more likely we will be able to process it by October 31. The effective recertification date of all applications approved by October 31 will be November 1, 2012.

Please do not submit your Application for Mediator Recertification until you have completed all training and mediation requirements. If your application is found upon initial review to be incomplete, we will send you an email requesting the missing information or documentation.

Please see the [current application forms and instructions for recertification](#), including an explanation regarding extensions if you find you will be unable to meet all requirements by the deadline.

## Welcome Aboard to Our Newest Court-Certified Mediators!

Kelly Blessing – Added J&DR  
Shadé Brown – GDC  
Pamela Clark – Added CCF  
Cheryl Foreman – GDC  
Robert Freyer – GDC  
Hon. Jerome Friedman – CCC  
Meryem Grammick – Added J&DR  
Nancy Greenwald – GDC  
Natalie Hedlund – J&DR  
Christopher Heying – Added GDC  
Brian Hirsch – CCF  
Ammeral Johnson – GDC  
Melanie Kordis – GDC  
Renee Kostick-Reynolds – GDC  
Paquita Nellum-Pitt – GDC and J&DR  
Stacy Reeder-Decker – GDC  
Jenna Rowen – J&DR  
Moné Rowan-Ardura – Added CCF  
Courtney Warner – J&DR  
Linda Watson – J&DR



## Congratulations to Our Newest Mentors!

Donna Atol – GDC and J&DR  
Donna Gallagher – GDC and J&DR  
Aaron Hagmaier – GDC and J&DR  
Susan Read – GDC, J&DR and CCC  
Shirley Trobaugh – J&DR

## 2012-13 Mediation Coordinators Gather in Richmond for Training

DRS awarded contracts for the new fiscal year to 29 mediation coordinators who serve 116 courts, including 44 General District Courts and 72 J&DR Courts. On July 20, coordinators gathered in Richmond for the purpose of reviewing and considering duties, procedures and ethics. It was a valuable time for networking, as ideas, challenges, and collective experiences were shared among the coordinators and DRS staff. We are proud of the work our coordinators accomplish for the courts and the difference they make in building and coordinating efficient mediation programs to serve court users in resolving their conflicts. Thank you to the many coordinators who participated and made the program a great success!