



SUPREME COURT  
OF VIRGINIA

# RESOLUTIONS

OFFICE OF THE EXECUTIVE SECRETARY

*Department of Judicial Services*  
*Division of Dispute Resolution*

100 North Ninth Street  
Richmond, Virginia 23219

## Restorative Justice Applications in Our Community and Yours

Since 2007 Northern Virginia Mediation Service (NVMS) has been at the leading edge of restorative justice (RJ) in Virginia. At the heart of NVMS' RJ activity is a rich, collaborative partnership with Fairfax County reflected in a school-based program now entering its sixth year and accounting for nearly 200 school discipline cases. Success on the school front has led to a comparable program involving the Fairfax County Juvenile and Domestic Relations District Court, now entering its third year and developing interest by the county police department in having police officers more directly involved in the RJ referral process.



For each of these areas, NVMS consults on program delivery and offers Fairfax County a pool of trained and experienced Facilitators to work with various county professionals, the juveniles involved and their families. On a far more limited basis, NVMS has also been enlisted to facilitate RJ processes in the Northern Virginia community.

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Given its RJ commitment and experience, on March 21, 2013, NVMS offered an hour-long, practice-oriented webinar, "Restorative Justice Applications in Our Community and Yours." The webinar was a part of a series at [www.ADRhub.com](http://www.ADRhub.com) managed by the Werner Institute at the Creighton University School of Law and was presented by Dave Deal and Bill Casey, the co-coordinators of the NVMS restorative justice programs, with the assistance of an NVMS intern, MJ Scheer. For those interested in

viewing the March 2013 restorative justice webinar itself, the link is <http://www.adrhub.com/forum/topics/march2013webinar>.

## Core Concepts

**Restorative Justice vs. Retributive Justice.** At the outset, the webinar contrasted restorative justice and retributive justice which ask fundamentally different questions:

Retributive justice asks:

*What rule was broken?*

*Who broke the rule?*

*How should the offender be punished?*

Restorative justice asks instead:

*What harm was done?*

*Who is responsible for causing the harm?*

*How can that harm be repaired?*

Stated another way:

- ◆ Retributive justice equates accountability with punishment, whereas RJ seeks accountability reflected in acknowledging personal behavior and its consequences, repairing harm, and punishment as necessary.
- ◆ Retributive justice is focused sharply on the offender whereas RJ enables the offender, the immediate victim and the community to participate in the process.
- ◆ Retributive justice offers limited opportunities for remorse or making amends whereas RJ offers a strong opportunity for expressions of remorse and concern in the course of repairing harm and preventing future harm while also providing a voice for the victim and others in the community to express their concerns and interests.

**Restorative Justice vs. Mediation.** In a nutshell, RJ and mediation share many similarities. Each is a facilitated process, where participation is voluntary, confidentiality is guarded and the facilitator respects self-determination, unlike a judge or an arbitrator who upon deliberation with the parties makes final decisions. In addition, while most mediation has a facilitative character, some mediation has a transformative character, a quality that often surfaces in the course of restorative justice. Not surprisingly, many core mediation skills (e.g., active listening) are central to the RJ process.

Unlike mediation, however, RJ is a victim-centered process directed at identifying harm that has been caused, repairing that harm and restoring the relationships. While mediators strive for neutrality in an absolute sense, RJ facilitators see themselves as somewhat qualified neutrals, even-handed but especially mindful of the harm presented and especially vigilant about possible re-victimization. Inasmuch as victim and offender labels are often elusive because participants may share some victim and offender roles, the RJ-mediation differences may often amount to the proverbial “distinction without a difference.” Lastly, while some mediations may involve meeting with parties before a joint session, for RJ pre-conferencing with key participants beforehand is essential.

## Restorative Justice Applications

Although the classic RJ model involves a criminal court setting where victim and offender labels are clear, the core values of restorative justice have often driven its practice into other areas, e.g., prisons, community disputes and discipline matters in schools. In this regard, NVMS RJ facilitators have worked on a growing number of juvenile court-diverted matters, a huge number of school matters, and a handful of community matters.

For the juvenile court and school applications, RJ practitioners can expect to encounter some resistance among professionals who may be more accustomed to a traditional justice or even a zero tolerance approach. NVMS' experience with school-based RJ is that, if school administrators are willing to explore RJ as an option that might be useful in appropriate cases, RJ offers myriad benefits:

- ◆ Reduced recidivism;
- ◆ Employing RJ in lieu of suspension can obviate allegations that suspensions are applied in a discriminatory manner; and
- ◆ Employing RJ with the help of external or system-employed facilitators can reduce the time spent by individual school administrators in handling issues.

However, good intentions to establish a program are not enough; whether school-based or court-based, a sound RJ program has many moving parts. NVMS offers sound foundational training, mentorship and continuing education. Inasmuch as many RJ cases involve daytime activity and quick response, NVMS' carefully coordinated pool includes many retired or semi-retired volunteers. NVMS' school or court relationships present security and confidentiality issues and memoranda of understanding crafted to spell out the roles and responsibilities of each partner. Even where an adequate volunteer pool is available, operation of a non-profit organization is hardly cost-free; in its memoranda of understanding NVMS spells out a fair per case rate, which includes a very modest stipend for facilitators and modest revenue for NVMS. Lastly, case histories must be carefully documented with a sharp focus on outcomes and confidentiality assured.



## Lessons Learned

Drawing most heavily on NVMS' school-based RJ program in Fairfax County, some illustrative, key lessons learned were identified:

1. While "victim" and "offender" labels are common in a court setting and idealized descriptions of RJ principles, those labels often do not apply in school discipline settings. Student participants in a discipline event often share aspects of both labels. While attention to the person who has been harmed is at the core of RJ, who wants to be labeled a victim? Likewise, while acknowledgment of one's role in causing harm is at the core of RJ, offender branding is antithetical to the non-punitive character of RJ.
2. Pre-conferences held before the joint conference are critical for success. While pre-conferences with individuals provide an opportunity for understanding the gist of what happened, they are not fact-finding sessions. Instead they are opportunities for developing a trust relationship, identifying issues and significant factors that bear on the incident, averting surprises, and helping the participant get centered via explanation of the process and identifying questions that deserve personal reflection before the joint conference.

3. A two-facilitator model enhances success. A co-facilitator offers a second set of eyes and allows for efficient sharing of process tasks at the pre-conferences and joint conference. By coupling more experienced and less experienced facilitators, co-facilitation is also an ideal pathway for mentoring and skill development.
4. RJ facilitators must adjust their style and language to the student's level of child development. Brain development is underway well through adolescence; middle school kids don't talk like teenagers and most students don't talk like adults. In addition, disciplinary infractions often involve students presenting a wide variety of special education needs, which may necessitate consultation with non-teacher school professionals, perhaps even including them in the RJ conference itself.
5. Case demand is unpredictable and most school referrals are urgent.
6. While RJ practitioners ought to adhere to best practices reflective of core RJ principles, situations vary dramatically from case to case and facilitators need to be comfortable dealing with constraints. For example, urgency may preclude use of co-facilitators; parent work schedules limit their participation; while in-person pre-conferences are best, telephone conversations with parents or other key participants may be the only alternative. To address these "What if. . . ?" questions, NVMS has collaborated with the FCPS in developing a set of Best Practices now included in the FCPS 'Restorative Justice Facilitator Training Manual," copies of which are available on request.

## Restorative Justice Resources

The restorative justice universe is still evolving, especially on the application front, and the resource database is quite rich. For example, NVMS has developed an assortment of materials in the course of its varied restorative justice programming. In addition, copious materials have been developed or collected by organizations like Restorative Justice Online ([www.restorativejustice.org](http://www.restorativejustice.org)) and the International Institute of Restorative Practices ([www.restorativejusticenow.org](http://www.restorativejusticenow.org)). There exist hundreds of RJ programs, mostly juvenile-oriented and often embedded in local community dispute resolution programs, across the nation with states like Virginia, Minnesota, Colorado, Florida, Vermont and North Carolina especially notable. Lastly, several persons have emerged as restorative justice opinion leaders, e.g., Howard Zehr, Professor, Eastern Mennonite University, Harrisonburg, VA, and Mark Umbreit, Professor, School of Social Work and Director of Center for Restorative Justice and Peacemaking, University of Minnesota.

For more information on NVMS' RJ program, visit <http://www.nvms.us/restorative-justice/> or call the NVMS main telephone number at 703-865-7272.

*Submitted by David T. Deal & William C. Casey, co-coordinators of NVMS' multi-faceted restorative justice programs. Dave and Bill are trained, certified and practicing mediators, trained restorative justice facilitators, accomplished mentors and trainers, and have made RJ presentations before myriad community, government and non-government organizations and national conference audiences.*

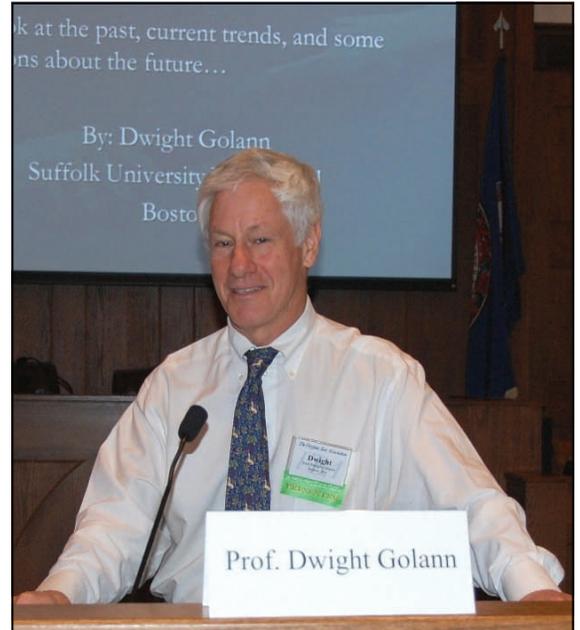
*Special thanks is given to MJ Scheer, a former NVMS intern and currently a law school student at Loyola University of Chicago, for her assistance in developing the webinar.*

## Twentieth Anniversary Celebration of the Dispute Resolution Statutes in Virginia

"Brave New World for Mediation: Skills for Forging the Future," a presentation on October 15th by the Joint Alternative Dispute Resolution Committee of the Virginia Bar Association and Virginia State Bar, celebrated 20 years of dispute resolution statutes in Virginia. Approximately 70 professionals from Virginia's ADR community attended the event at the University of Richmond's beautiful law school. The day also marked the ABA Dispute Resolution Section's third annual celebration of Mediation Week in October.

In her opening remarks, Geetha Ravindra, Chair of the Joint ADR Committee, noted that both the Joint ADR Committee and the ABA Dispute Resolution Section have provided invaluable opportunities for continuing education, networking, and professional development. The Committee has been instrumental in supporting legislation in Virginia that has had an enormous impact on the growth of the field of ADR and the practice of mediation. Virginia Code Sections 8.01-576.4 - .12 enable judges to refer appropriate civil matters to an orientation session after which parties may voluntarily agree to proceed with an ADR process such as mediation.

Ravindra noted that in her 20 years working in the field of ADR, she has seen many positive changes, including increased funding for mediation, greater attorney education and awareness through CLEs, and changes in the attorney rules of professional responsibility promoting consideration of ADR. "I believe that collectively we have made an important and lasting impact on the courts, community, colleges, and the citizens we serve. We also recognize that there continue to be challenges we must face and new frontiers we can explore."



Dwight Golann, Professor of Law at Suffolk University in Boston



Mediator Michael Rawlings provides feedback during Professor Golann's keynote session. (Photo courtesy of the Virginia Bar Association)

Dwight Golann, Professor of Law at Suffolk University in Boston and an active mediator of legal disputes, presented the keynote session, entitled "Changing How We Deal With Disputes: A Look at History and an Analysis of Emerging Trends." Golann has led seminars on mediation and mediation advocacy for courts, the ABA, the European Union, the Peoples' Republic of China, and major law firms and corporations. He has authored numerous books on dispute resolution and was the 2012 recipient of the Lifetime Achievement Award from the American College of Civil Trial Mediators.

Golann described the subtle and significant ways non-binding dispute resolution has changed over the years. When the leading federal judicial body discussed dispute resolution options in the 1980s, mediation occupied a single page near the end of the discussion. Golann noted, "In 1988, when legislators passed the first law funding ADR programs in the federal courts, the only process Congress supported was court-annexed arbitration. Incredibly, the first ADR act did not contain the word 'mediation'; in legislators' mental map, it simply did not exist." Reliance on formal mechanisms was most likely due to familiarity and the assumption that disputes go unresolved if parties are unable to assess the trial value of their cases. This created a focus on adversarial ADR processes instead of negotiation or mediation. Some would argue that there was actually more mediation taking place during this time, but it was not labeled or recognized as such.

To show the change in practice from the 80s, Golann referenced a 2005 study of 49 federal courts that showed approximately 63% of the cases sampled were mediated and another 13% were settled through a multi-option program that includes mediation. He noted by the early years of the 21<sup>st</sup> century, mediation dominated federal, state and private ADR, an indication that lawyers, clients and courts better understand the shortcomings of formal evaluation and the advantages of mediation. Both advocates and parties have become more sophisticated, generally avoiding processes that consist solely of evaluation or require trial-like hearings. The result is an ADR landscape that hardly resembles the view a generation ago.

Golann talked about current trends, including continuing cost pressures as a result of national and global competition, electronic communication, and forces that affect prices and wages. He said, "As a result, companies have been increasingly unwilling to resolve disputes through the traditional court system, and except in special circumstances individuals cannot afford to." Many companies are moving to early dispute resolution processes. Health care institutions are looking at new ways to resolve potential medical malpractice claims. Claims and cases are moving into mediation more quickly in order to avoid drawn-out battles and legal costs. Online dispute resolution can play a useful role in small disputes.



Keynote Session in Law School's Moot Courtroom  
(Photo courtesy of the Virginia Bar Association)

Golann pointed out some troubling trends, like lawyers practicing "mixed mediation," choosing to incorporate various forms of evaluation into the process instead of a facilitative approach. This results in a decline in the use of joint sessions and direct communication between parties, which are important means for creating agreement. Another trend is the greater acceptance of lay mediators in domestic relations and family disputes, while lawyer mediators are often used for civil cases. There seems to be a cultural shift towards discussing issues before plunging into litigation. The landscape for conflict resolution is changing. Complex relationships, new technology and multiculturalism affect the way we handle conflict. What does this mean for future mediation? People with training in mediation skills may not choose to "mediate" but will use those skills effectively to address conflict in other professional roles.

Golann summed up his presentation with this message: "We should think of ourselves less as formal 'mediators' hired to resolve cases, and more as 'conflict consultants.' Our essential role - what the business community would call the 'value proposition' - is that we are exceptionally able to deal with, embrace and modulate conflict. Through our mediative skills we can help strongly opposed, emotional people work together to achieve their goals. And by doing so, we provide a vital service to society."

Following Golann's session, Ravindra touched on Virginia's successes over the past twenty years: "the first Futures Commission Report in which former Chief Justice Carrico empowered the Courts to consider developing an array of dispute resolution options, the creation of the office of Dispute Resolution Services within the Office of the Executive Secretary, the passage of enabling legislation, mediation funding, and the delivery of Advocacy in Mediation CLE programs around the State." She expressed appreciation to the many state agencies and individuals who have collaboratively contributed to the growth of ADR and functioned as change agents.

The Joint ADR Committee honored all past Chairs who were present, for their leadership and contributions to the field. These included (pictured left to right) Karen Keyes, Bruce Wallinger, the Honorable Rosemarie Annunziata, Frank Morrison, Mark Rubin and Sam Jackson. Not pictured was Rip Sullivan.



Attendees were invited to express any ideas for future focus. Anyone else interested in contributing ideas is encouraged to contact any of the members of the Joint ADR Committee listed on its [website](#).

The afternoon program consisted of two sessions related to the skills of inquiry and questioning. Tracey Cairnie of CoreVision, LLC in Fairfax and P. Marshall Yoder, Esq. of Wharton Aldhizer &



Left: Tracey Cairnie & Marshall Yoder  
Right: Frank Morrison & John Settle

Weaver PLC in Harrisonburg presented "The Art of Inquiry: How Your Questions Lead to the Results You See." This session explored what makes inquiry such a vital element of ADR for successful resolution and collaboration. Which question should a mediator ask? Why? When might a different question be more effective? The workshop was highly interactive, with a mix of lecture, role play, demonstrations, and small breakout groups.

Frank Morrison, Esq. of Phillips, Morrison, Johnson & Ferrell in Lynchburg and Norval D. "John" Settle of SETTLEMENT Associates, LLC in Richmond presented the final session, "Ethical Dimensions of Inquiry and Questioning in ADR." The trainers facilitated interactive discussion of several hypotheticals and a round-robin role play of another hypothetical.

The day ended with a reception and a chance to network with other professionals. A sincere thank you is in order to the University of Richmond School of Law for its warm hospitality.

**Note:** ADR in Virginia has been in the spotlight in two recent publications by the Virginia State Bar and the Virginia Bar Association. See links to articles in the DRS Update on page 13 of this issue.



Breakout Groups: Left – Rip Sullivan, John McCammon and Mark Rubin;  
Right – Dick Balnave, Kimberly Emery and Don Vaden



It was a beautiful day for lunch outdoors.



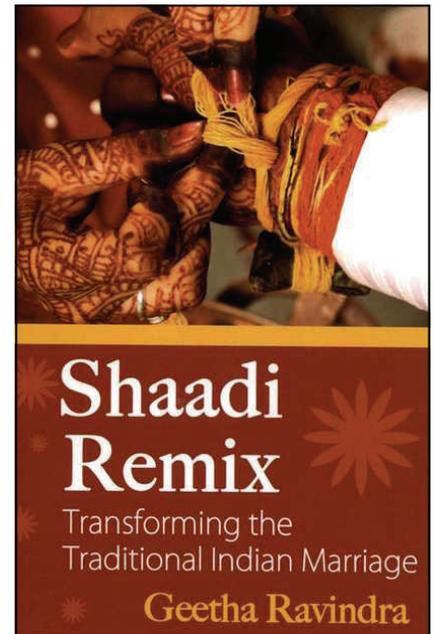
Professor Golann and Geetha Ravindra



## ADR Resource Corner Book Review

*Shaadi Remix: Transforming  
the Traditional Indian Marriage*

Geetha Ravindra, Tucson, Wheat-  
mark, 2013



In *Shaadi Remix: Transforming the Traditional Indian Marriage*, author Geetha Ravindra provides tremendous insight into Indian culture, and specifically, Indian marriage. Despite centuries of success, the traditional Indian view of marriage is considerably less applicable today, and it seems that scores of Indian marriages are now failing – more than ever before. Ravindra’s book explains the prevalence of divorce among Indian couples, and presents several cultural issues that a mediator might see in an Indian marriage case.

Ravindra begins the Introduction with four examples of troubled Indian marriages. In three of the four examples, an Indian-born Indian married an American-born Indian (what the book calls Non-Resident Indians, or NRIs). These NRI-Indian marriages are increasingly typical of what a mediator might see today. Ravindra then lists several reasons for the breakdown of the Indian marriage – (1) the traditional premises grounding arranged marriages no longer serve a meaningful purpose; (2) children are far more autonomous, and no longer implicitly trust their parents’ judgment in finding their partner; (3) there is an increasing acceptance of divorce in both Indian society and abroad; and (4) the decreased reliance of Indian women on their husbands for financial support has created a power shift. Of these theories, the autonomy of today’s Indian children and the power shift resulting from the earning power of today’s educated Indian women both appear to this reviewer to be strongly linked to the downturn in arranged marriages. In an especially poignant statement, Ravindra states that she could “never imagine suggesting that [my children] marry someone I chose after having met for ten minutes, as I was expected to.”

In Chapter 1, Ravindra further outlines the arranged marriage process, including her own arranged marriage to her husband of 22 years. She brings up several cultural points that even those unfamiliar with India have learned – including the caste system, dowries, and astrology – and points out that today’s Indians are increasingly rejecting these traditional and/or outdated systems. Ravindra then describes divorce as an unintended and unfortunate consequence of many forced arranged marriages.

Nevertheless, Indians still clearly cherish the institution of marriage. Chapter 1 includes several pages on the significance of and rituals performed during a Vedic marriage, one of the most important Hindu rites of passage. Mediators working with Indian couples should note that Hindus see marriage as more than a contract – that it is a sacred covenant between husband and wife, in which the gods participate as witnesses, resulting in an unbreakable bond between two souls.

Chapter 2 describes three behavioral characteristics that young Indian women fear they will see in their husbands. Mediators will likely encounter aspects of the Belittler, the Criticizer, or the Controller in their Indian marriage cases. Ravindra points out that some of the Hindu texts include negative stereotypes of Indian women, perhaps providing some justification for poor treatment of wives. Though these stereotypes are obviously not always true, they are important cultural considerations in Indian marriage mediation.

In Chapter 3, Ravindra introduces the “new” Indian marriage as a relationship based on compatibility, rather than parental or societal pressure. She includes several pages of questions that are divided by type – leading versus reflective, for example – as well as by subject matter that can help a young couple assess their compatibility. While examples would have been especially useful in this chapter – primarily to contrast “new” couples to the couples that were introduced in the beginning of the book – it is clear that young men and women of *any* culture would benefit from discussing these questions in order to assess their compatibility with a prospective spouse.

Chapter 4 delves into effective communication tools for spouses by describing active listening, paraphrasing, summarizing, and rephrasing. Ravindra includes several examples and specifically outlines the advantages of these techniques as compared to arguing, minimizing, and giving unsolicited advice. Mediators may especially appreciate the list of what Ravindra terms the “Themes in Unsuccessful Marriages,” as it includes several potential issues that may have contributed to their clients’ troubles.

In Chapter 5, Ravindra introduces the Thomas-Kilmann Conflict Mode Instrument and the distinction between positions and interests, and Chapter 6 details what mediators already know – that mediation is often far better than a protracted divorce proceeding in court. Chapter 6 also includes contact information for two organizations – the South Asian Women’s Empowerment and Resources Alliance (SAWERA), and the Asian Pacific Women’s Center – which could be especially useful in cases where the mediator suspects physical or emotional abuse. SAWERA also provides translation services, which this reviewer believes would be very helpful in cases where one or both parties primarily speak one of India’s 18 official languages or 1600 regional dialects.

It is important to note that while Ravindra focuses primarily on Hindu couples, not all Indians are Hindus. Muslims, Christians, and Sikhs make up a significant portion of India’s population. Mediators working with Hindu couples will of course benefit from the book’s Hinduism-based examples. However, even mediators working with non-Hindu Indians will benefit from the detailed explanations of the cultural and societal issues in Indian marriage and divorce.

With the real-world examples and detailed explanations it provides, *Shaadi Remix* is an excellent resource for mediators who intend to tackle cases involving Indian families. As the divorce rate among Indian couples continues to increase, Indians will turn to the legal system for assistance. One hopes that the couple will follow Ravindra’s advice and choose mediation – the confidential, economical, and least adversarial of their legal options.

*Submitted by Nisha Patel, Esq., a 2011 graduate of the University of Richmond School of Law and a certified J&DR mediator who practices law in Chesterfield, Virginia.*

## Announcing the NVMS Susan Shearouse Scholarship

Northern Virginia Mediation Service is excited to announce a new scholarship fund that will enable committed individuals with financial need to develop and enhance their conflict management skills through training offered by NVMS. Effective mediation, facilitation and communication skills enhance the ability of individuals to improve collaboration, decision-making and safety in communities. The new scholarship will provide skill-building opportunities for up to five individuals per year who would otherwise be unable to afford the training opportunities they seek.

The scholarship honors Susan H. Shearouse's contributions to the conflict management field by providing training scholarships to future practitioners. Susan furthered the expansion of the conflict management field and dispute resolution services in Northern Virginia in 1988 by co-founding Northern Virginia Mediation Service (NVMS), a 501(c)(3) dispute resolution service and training center. She actively provided training, mentorship, support and inspiration to the organization throughout her professional career. The Staff and Board of NVMS developed the Susan Shearouse Scholarship to honor Susan and to further her considerable legacy in developing conflict resolution skills within our communities. The training scholarship additionally supports the mission of NVMS to provide affordable, accessible and appropriate dispute resolution services and education to help people find collaborative approaches to achieve acceptable and enduring outcomes.



Susan Shearouse has given many gifts to the field of conflict management. For more than 25 years she has created opportunities to learn new skills through her training by "walking the path of learning" with the class participants. She offers thoughtful collaboration and consultation with colleagues in the field. Finally, in her work and relationships, Susan takes an approach that injects enthusiasm and humor while respecting the challenges faced by her clients and trainees. Susan has trained more than 5,000 individuals in mediation, facilitation and negotiation skills through NVMS and other providers. She provides her expertise to conflicts in communities and workplaces with a humble and effective approach. She is the author of the book, [Conflict 101: A Manager's Guide to Resolving Problems so Everyone Can Get Back to Work](#), and continues to teach conflict management through its pages.

The Susan Shearouse Scholarship promotes and enhances the skills of individuals to fulfill the goal of effective conflict management in our society. Those of us privileged to gain these skills have a responsibility to contribute by practice and example to the understanding and resolution of issues in our communities. Susan Shearouse and her husband, Tom Colosi, live in Glen Allen, Virginia, where they have shifted their focus from profession to family. For more information on the scholarship, to contribute or to apply, visit <http://www.nvms.us/susan-shearouse-scholarship/>.

*Submitted by Megan Johnston, Executive Director of NVMS in Fairfax, Virginia  
and certified General District Court mediator*



## The Mediation Center of Charlottesville Announces a New Executive Director

The Mediation Center of Charlottesville (MCC) is proud to announce the name of its new executive director. Van Parker assumed the Executive Director post on August 1, 2013. Mr. Parker brings a wealth of non-profit experience to the position and looks forward to working with the MCC team to continue its reputation for providing quality mediation programming to the Charlottesville community.

Prior to accepting the position at the MCC Mr. Parker served as Executive Director or Chief Development Officer for non-profit organizations including Inspirica in Stamford, CT, the Greenwich Land Trust and most recently, the Milford Fine Arts Council, Inc. In addition to his non-profit experience Mr. Parker brings business experience to MCC from his work as senior credit officer and Vice President for Xerox Credit, Inc. and Vice President and Manager with the United States Trust Company of New York.



Van Parker relocated to the Charlottesville area during the past year. His wife, Adrienne, is an executive with Charlottesville's H.G. Caspari, Inc. and they reside in the city of Charlottesville. Mr. Parker has knowledge and passion for the Center's mission that combined with his business acumen will lead the Mediation Center into its next phase of development.

*The mission of the Mediation Center of Charlottesville (MCC) is to provide affordable and accessible dispute resolution services through mediation and education, enabling its clients to transform conflict into an opportunity for growth and change. <http://www.mediationville.org/>*

For more information or to arrange to speak with Mr. Parker please contact Meg Heubeck (540-220-4126 or [mfheubeck@hotmail.com](mailto:mfheubeck@hotmail.com)).

### 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)

#### CMG Foundation

9100 Arboretum Parkway, Suite 190  
Richmond, VA 23236  
804-254-2664  
Morna Ellis, Executive Director  
[mellis@cmg-foundation.org](mailto:mellis@cmg-foundation.org)

#### Conflict Resolution Center

4504 Starkey Road, Suite 120  
Roanoke, VA 24018  
540-342-2063  
Toni Freeman, Acting Executive Director  
[director@conflictresolutioncenter.us](mailto:director@conflictresolutioncenter.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  
Van Parker, 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)

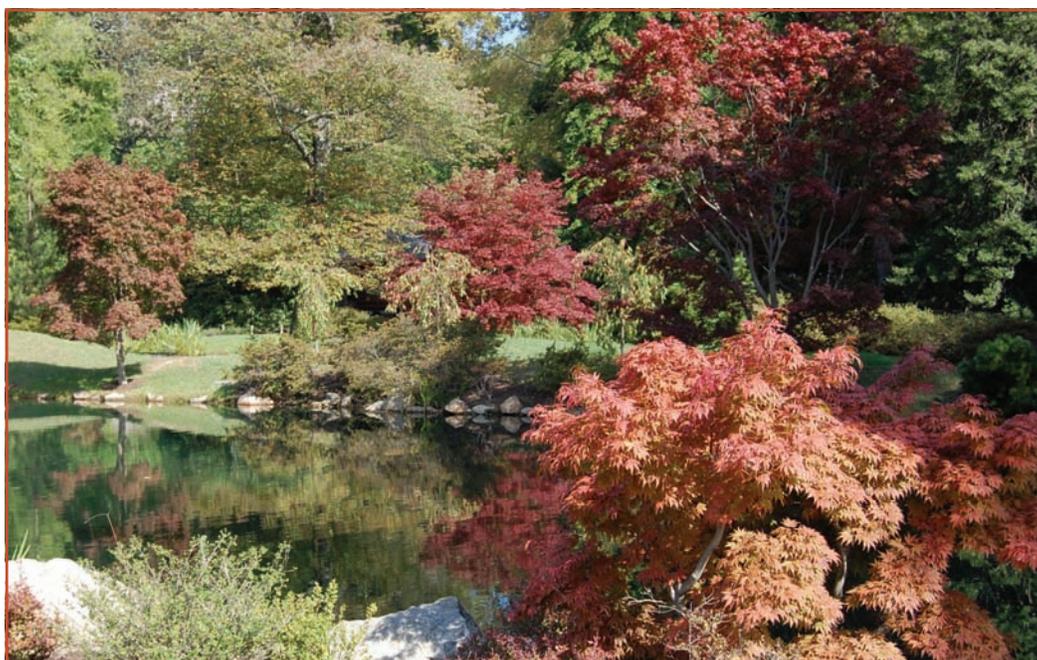
#### Peaceful Alternatives Community Mediation Services

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



**Happy Thanksgiving and we hope you are enjoying the gorgeous Fall season!**

### Links to Recent ADR-Related Articles

The Summer 2013 edition of the Virginia State Bar's Family Law Section newsletter, [Family Law News](#), includes several articles that may be helpful to Virginia family mediators.

"Estate and Probate Statutes Every Family Law Attorney Should Know" (pg. 2)

"New Law Lets Children Live With Kin, Attend School Without Court Orders" (pg. 4)

"What Do You Mean It's Not the Child's Money? College Accounts in Equitable Distribution" (pg. 7)

### Spring 2013 issue of the [VBA Journal](#)

"20<sup>th</sup> Anniversary of Mediation Referral Statutes" by Geetha Ravindra & Larry Hoover (pg. 26)

The October 2013 issue (Special Anniversary Edition) of [Virginia Lawyer](#), the official publication of the Virginia State Bar, includes a series of articles under the heading, "Spotlight on ADR," that begin on page 28. In recognition of the 20-year milestone of the dispute resolution statutes, the articles cover various mediation types and venues in Virginia.

### Mediation Webinars

At [www.ADRHub.com](http://www.ADRHub.com), you can view various ADR webinars. Click on "ADRHub webinars" on the banner. For some presentations, you can even download the PowerPoint slides.

In particular, you may find of interest a webinar presented by Virginia mediator, Maureen Dabbaugh (August 20, 2013), ["Introduction to the Cross Border Family Mediation: Guide to Good Practice Under the Child Abduction Convention."](#)

You can also view the webinar presented by Virginia mediators Dave Deal and Bill Casey, entitled ["Restorative Justice Applications in Our Community and Yours"](#) (see cover article in this issue regarding this program).

## **How to Order Brochures**

The following brochures can be ordered in packets of 50 by emailing Greg Charles in the OES Purchasing Office at [gcharles@courts.state.va.us](mailto:gcharles@courts.state.va.us). He will need to know how many packets of 50 are requested and the person and street mailing address to which the order should be shipped.

*Mediation: A Consumer Guide*

*Mediating Child Support: Things to Know Before You Go*

*Mediating Child Support: A Resource for Attorneys and Mediators*

*Visitation Factors to Consider*

*In the Best Interest of the Child: What Parents Can Do*

## **CME Requests**

Applicants for recertification may request approval by DRS of training or education relevant to mediation practice they receive from organizations such as the Association for Conflict Resolution, the American Bar Association Dispute Resolution Section, appropriate courses sponsored by Virginia Continuing Legal Education, and others to meet the requirements for continuing education.

In order to request CME for these types of trainings, please submit a description of the course and an agenda if available to DRS. Non-live trainings (e.g. videos) will be considered if at least two certified mediators "attend" the training together and confirm one another's attendance. It is best to request CME credit in advance; however, CMEs can be granted retroactively. There is no guarantee that any training will be granted CME.

If you have any questions, please do not hesitate to contact Mandy Sarkissian, [msarkissian@courts.state.va.us](mailto:msarkissian@courts.state.va.us) or 804-371-6064.

## **New Form: CME Proof of Attendance**

ADR-1009, Continuing Mediator Education (CME) Proof of Attendance Form is available on the [Mediation Forms](#) Web page in Word and PDF formats. The form may be used by trainers for approved CME courses in lieu of attendance certificates. Mediators should retain this form to submit with the Application for Mediator Recertification (ADR-1003).

## **ADR Training Calendar**

The training calendar is updated regularly as a service to inform certified mediators and prospective mediators of upcoming training classes approved by the office of Dispute Resolution Services. The classes under "Specialized Training" are appropriate for recertification.

## **Conference Reminder**

November 21-22, 2013: ABA Dispute Resolution Section's 11th Annual Advanced Mediation & Advocacy Skills Institute; Omni Nashville Hotel; Nashville, Tennessee; [Registration Details](#)

## **Child Support - Confidentiality of Guidelines Worksheets - law effective 7/1/13**

This amendment deleted ambiguous statutory language so it is now clear that mediators send child support guidelines worksheets to the court ONLY when agreement is reached in mediation (and not when no agreement is reached).



## Myths of Mentorship

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.

*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 Form 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 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 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/courtadmin/aoc/djs/programs/drs/mediation/forms/home.html>. The correct version of the Mentee Evaluation Form is the first form listed.

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 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 8 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."

8) *Practice child support worksheets or written agreements are okay for certification. The mentee doesn't have to write the agreement sent to the court. **MYTH!!!!***

Child support worksheets and agreements submitted for certification must be completed by the mentee for the parties. The agreement written must be the agreement created to resolve the dispute. If the agreement is not good enough for court, it is not good enough for certification.

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.