Workers’ Compensation Commission ADR Program

The Virginia Workers’ Compensation Commission (VWC) is charged with administering the Workers’ Compensation Act (Virginia Code Section 65.2). It enforces the Act by requiring covered employers (generally those who have three or more employees) to carry workers’ compensation insurance; maintaining official records of awards for employees who sustain covered injuries or occupational diseases; and adjudicating disputes between injured workers and their employers/insurance carriers. See www.workcomp.virginia.gov.

The VWC’s Judicial Division includes twenty-three Deputy Commissioners who hold hearings across the Commonwealth. Mini bench trials, these hearings involve taking sworn testimony so that the Deputy Commissioner can determine whether or not the injured worker is entitled to the benefits sought. Written opinions issued by the Deputy Commissioners can be appealed to the Full Commission, which consists of three Commissioners appointed by the General Assembly, and then on to the Court of Appeals of Virginia.

Mediation and ADR have a dynamic life in the VWC. From the late 1990’s the Commission offered mediation. Initially, mediation took the form of an in-person mediation to resolve an entire claim, with claimant accepting a lump sum of money in exchange for releasing any rights to current or future benefits, including the lifetime medical benefits which accompany any award of compensation. Still offered by the Commission, this form of mediation is referred to as “Full and Final Mediation.”

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Keeping You Informed: DRS Update
In November 2012 the VWC undertook a pilot project in Alternative Dispute Resolution. For three months cases with discrete, defined issues were referred to the project. Issue facilitation or issue mediation was offered by phone, in an attempt to make ADR convenient and affordable. 95% of the referrals resulted in resolution of some or all of the issues in controversy.

Mediators at the Commission, who have met certification requirements as set forth by the Judicial Council of Virginia, facilitate parties’ discussion, provide guidance through the process in identifying each party’s interests, and assist the parties in determining creative solutions for possible settlements. Many of these mediators are Deputy Commissioners, who mediate claims that are not on their hearing dockets. These Deputy Commissioners are knowledgeable not only about the intricacies of the Workers’ Compensation Act, but also about the interrelationship between Workers’ Compensation and Medicare, Medicaid, and other benefits to which an injured worker might be entitled, such as long or short term disability. There is no cost when a worker’s compensation mediator serves as the neutral third party.

The ADR Department schedules mediation sessions and provides facilitation services upon the request of the parties or upon referral from a Deputy Commissioner. In 2012 the ADR Department conducted 213 ADR sessions; in 2013 the ADR Department conducted 410 sessions, an increase of 93%. In 2013, issue mediations and facilitations resulted in resolution of all or some of the issues in 91.5% of those claims. Issues commonly referred to ADR include COLA, average weekly wage, mileage, return to work, vocational rehabilitation, medical bills, wage loss and medical treatment.

As the number of ADR events has increased inside the Commission, there has arisen a need for private mediators to assist in the increasing demand for mediation. Because of the specialized subject matter, few private mediators hold themselves out as competent to mediate workers’ compensation claims. Mediators who are interested in establishing a workers’ compensation mediation practice might seek education in workers’ compensation.

Success does not come overnight but is built over time and the Commission is building success stories daily. A claimant recently put it in writing best: “Thank you for your professional and kind demeanor during the recent mediation. I was quite anxious initially, but your courteous manner put me at ease.” There was resolution in this case and both sides walked away feeling that a good decision was made, and they made it!

For more information on the Virginia Workers’ Compensation ADR program, please feel free to contact Deputy Commissioner-ADR, Deborah W. Blevins or Al Bridger, Program Manager.

Submitted by Al Bridger

Al has worked with and assisted in the training of hundreds of mediators in Virginia since 1993. He served as the Executive Director of the Dispute Resolution Center in Richmond and left the field temporarily after running the Office of Consumer Affairs Dispute Resolution Program. He has returned as Program Manager of the new and developing ADR Department at the Virginia’s Workers’ Compensation Commission.
Virginia Center for Restorative Justice

to Provide RJ Training Nationally

The Virginia Center for Restorative Justice (VCRJ), located in Richmond, Virginia, has sub-contracted with the US Department of Labor and Big Brothers Big Sisters of America (BBBSA) to provide restorative justice (RJ) training to 10 local BBBS organizations around the country. BBBSA received a $5 million grant to provide one-to-one mentoring services to 1,000 teens and young adults through the BBBSA’s Youth Workforce Opportunity Initiative (YWOI). The YWOI goal is to help at-risk youth who live in high-crime/high-poverty areas graduate from high school or earn an industry recognized certificate. The grant comes from the U.S. Department of Labor’s Workforce Investment Act (WIA) program.

Judy Clarke, the Executive Director of VCRJ, will train and provide technical assistance to the BBBSA affiliate staff who in turn will work with the program participants. It is believed that exposure to RJ principles and practices will help these at-risk youth become more employable. Judy said the organization looks forward to sharing its knowledge of evidenced based restorative practices and how to integrate those practices with the juvenile court, the community and the local BBBSA organizations. “We believe in the power of mentoring and restorative justice to improve outcomes for court-involved youth as they assume responsibility for the harm, the needs that arose as a result of that harm and the obligation to make things right.”

VCRJ was organized as a faith-based, 501 – (c) (3) in Richmond, VA in August of 2010. The organization is operated by an all-volunteer Board of Directors, experienced Restorative Justice Facilitators and the Executive Director. Now in its fourth year of operation, its intent is to expand its program and begin to offer training to community members, Court-Certified Mediators and Lawyers. Restorative justice is a victim-initiated process which may be offered to those who have entered the criminal justice process or those who want to avoid prosecution and take the restorative justice route. It is particularly effective with juveniles who are involved with the court both pre and post adjudication.

VCRC provides the following restorative programs:

Family Group Conference (Victim-Offender Conference)

The conference is a process whereby a restorative justice facilitator brings together the person who was harmed with the person who did the harm, their families, and supporters. Each participant listens with respect and without interruption while the other tells his story. The victim gets answers to his questions about the wrongdoing. The offender accepts responsibility for the harm created and understands how his wrongdoing has affected the victim. A plan for repairing the harm is drafted and signed by all participants. A copy of the plan is sent back to the referring source, (i.e., Pastor, School Officer, Juvenile Court Intake Officer, or Judge) and follow-up will continue until the plan is complete.
(continued from page 3)

**Circles**

Circles are used in many different settings such as school, juvenile detention center, juvenile court, jail and/or prison. Wherever there is conflict, this is a respected process for dealing with conflict. The three primary stakeholders are 1) a person who caused harm; 2) a person who was harmed; and 3) the community, all of whom participate in the process. The Restorative Justice Facilitator creates a safe space for the participants to tell their stories. Story telling is healing and the Circle is often referred to as a sacred space. The power behind the Circle is that the offender accepts responsibility for the harm and power is returned to those most affected by the crime. It focuses not just on problem solving but on healing for all.

**Values Program**

People in conflict often need to be reminded of the values they were taught as a child. Perhaps they were not taught values and the idea of living a principled life is new. Participants in the five-week Values Program learn how to use these five tools: Trust, Honesty, Respect, Empathy and Forgiveness. They learn that these tools help to build character.

**Restorative Justice Training**

Restorative Justice Training includes workshops designed to teach participants how to provide restorative justice practices: circles, family group conferences and the values program. The VCRJ approach to such training views restorative justice as encompassing every aspect of the way we choose to live our lives. VCRJ training is focused on answering the question: What is restorative justice and how can one practice a restorative lifestyle?

For more information, please see the VCRJ web site: [www.VCRJ.org](http://www.VCRJ.org) or contact Judy Clarke at judy.clarke@vcrj.org or 804-313-9596.

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**Child Support Guidelines Changed July 1**

Changes to Virginia Code §20-108.2, the child support guidelines, were approved by the legislature, signed by the governor, and were effective July 1, 2014. §20-108.2 has changed in three ways: the basic monthly obligation amounts have changed, judges are given more discretion in deviating from the presumptive minimum when the payor meets certain income requirements, and courts will split out of pocket medical expenses based on income shares from $0 instead of $250. Nothing else has changed. Definitions of income, day, etc. are still the same, and support is calculated the same way. This change should not have a drastic impact on how mediators talk about and mediate child support. In courts that allow it, mediators have already been deviating from the presumptive minimum and writing agreements where parties share out of pocket medical expenses in a variety of ways.

**Mediators using CivilWare or VADER need to ensure their software is updated to reflect the changes. Any mediators using Support Solver should not use it after June 30.** That website was created by a third party in the mid-early 2000's, and there is no known plan to update it. An updated DC-631 is available online.

Jim Smith, a Virginia certified mediator and volunteer with the Piedmont Dispute Resolution Center (PDRC) in Warrenton, received one of seven 2014 Governor’s Volunteerism and Community Service Awards at a ceremony at the Governor’s Mansion in April. Lawrie Parker, PDRC’s Executive Director, said PDRC is “very proud of Jim and excited that the Governor’s office recognizes the importance of mediation in the Commonwealth.”

On the evening of April 10, 2014, the PDRC staff and DRS’s Sally Campbell accompanied Jim to the award reception and ceremony. A crowd of enthusiastic supporters packed the first floor of the Mansion, celebrating with delightful food and drink. Governor McAuliffe presented seven awards, one from each of seven categories. To heavy applause, Jim accepted the Outstanding Senior Volunteer Award from the Governor.

The awards reception pamphlet explained that “[i]n partnership with the Office on Volunteerism and Community Service at the Virginia Department of Social Services, the Governor’s Advisory Board on Service and Volunteerism is charged by the Governor with saluting Virginians who have significantly contributed to the life and welfare of the Commonwealth and its citizens." The Advisory Board selected recipients for four group achievement awards and three outstanding individual awards based on age. The Board chose Jim from nominees from across the state for the Outstanding Senior Volunteer Award.

Jim has dedicated his retirement years to working with families. He mediates court-referred custody, visitation and support issues in several J&DR courts. He puts in at least forty hours each week and travels approximately 20,500 miles each year to mediate, meeting with families where and when they are available. Jim is a foster parent himself and has a heart for children who are often caught in the middle of family conflict. He has been a JDR certified mediator since 2008.

Jim graduated from the University of Michigan with a bachelor’s degree in nuclear engineering. He served in the Navy on submarines for five years. He reports that he “taught high school math for nine weeks but was fired when I could not control the class (no crowd control).” Jim worked for 26 years as a computer scientist at a Navy lab testing submarine software. During that time, he earned a Master’s degree in computer science. After retiring as a federal Department of Defense employee in 2006, he attended UVA Law School, graduating in 2009 and passing the Bar exam. Jim is an active member of the bar, but except for drawing a few wills, he has chosen to spend his time serving families as a mediator.

Congratulations to Jim for winning this award and serving as a role model for making a positive difference in the lives of others!
Virginia Certified Mediator Pamela Trotter
Chosen as Higginbotham Fellow

In December 2013, DRS notified certified mediators that the American Arbitration Association was seeking applicants nationally for its 2014 AAA Higginbotham Fellows Program. Virginia certified mediator Pamela Trotter applied and was chosen as one of the 15 fellowship recipients!

The one-year Fellows Program is an unpaid Fellowship that is open to up and coming diverse lawyers, neutrals and other ADR practitioners who have demonstrated an interest in and commitment to alternative dispute resolution. The AAA named the program in honor of Judge A. Leon Higginbotham Jr., one of the country’s most prominent African-American judges and a highly respected legal scholar and civil rights advocate.

Pamela Trotter is a court-certified mediator and mentor and one of about 2,500 participants worldwide to complete training in Negotiation, Leadership and Conflict Management offered by the Program on Negotiation at Harvard Law School. In addition to mediation, Pamm is a real estate broker and licensed real estate instructor with over ten years of experience. She is also a hospital volunteer, working with cancer patients in the "Look Good, Feel Better" program sponsored by the American Cancer Society.

As to her interest in ADR, Pamm explained, "I developed an interest in alternative dispute resolution shortly after I developed my real estate brokerage. I knew it would be an effective way to handle real estate disputes. I really enjoyed learning about ADR so I decided to get court certification in mediation and [to pursue] mentorship. Mediation works."

The Fellows Program invited Pamm to San Francisco in May to engage with leading ADR practitioners for an intensive week of training, seminars and networking opportunities. During her term as a Fellow, she will be granted mentoring opportunities and will attend AAA educational programs and events in various cities.

The AAA selects Fellows based on the promise they demonstrate to become future ADR leaders. Congratulations to Pamm for this honor!
VACC Gets Executive Director, Continues Legislative and Public Education Efforts

Christine Poulsom’s title has been changed from VACC Coordinator to VACC Executive Director to signify the enhanced role she will play in promoting community-based dispute resolution throughout Virginia. She has joined the VMN task force investigating the issue of mediator compensation for court-referred cases and will coordinate VACC’s legislative agenda. VACC’s legislative agenda currently entails continuing to build relationships with state legislators and state agencies to determine how the resources of Virginia’s community-based dispute resolution centers can be expanded to allow for increased service provision, particularly to Virginians who earn low to moderate incomes.

VACC will continue to use some earnings from the Community Peacebuilding license plate to provide public education about mediation. Recently, VACC had “Keep Calm and Call a Mediator” shirts produced, which were ordered by mediators all around the country. To order a shirt, please contact Christine at info@vaccr.org or 1-888-VAPEACE ext. * (press star) and ask her to let you know before the next order is placed.

Apple Valley Mediation Network Appoints New Director

Apple Valley Mediation Network, Inc. is pleased to announce the appointment of its new Executive Director, Victoria L. Squier. Victoria takes over from Apple Valley’s founder and Executive Director of 20 years, Ed Wilkins, who retired at the end of May.

Victoria Squier has been mediating since 1991. She served as Chief of Adjudication, Mediation, and Discrimination Complaints for the Bureau of Mines, U.S. Department of Interior; and as Bureau Dispute Resolution Manager for the National Park Service, U.S. Department of the Interior; and is a certified Federal Mediator. She has had extensive training from the Harvard-MIT Project on Negotiation, the American Bar Association Dispute Resolution Section, and the Atlanta Center for Justice, and has Federal Mediation training and arbitration training.

Victoria conducted numerous mediations of workplace complaints, discrimination complaints, and land use issues for the Department of the Interior from 1993 to 2009, and conducted mediations for the Rappahannock Mediation Center in 1990 and 1991. She was a member of SPIDR and Federal Dispute Resolution, where she presented at conferences, and a member of ABA Dispute Resolution Section.

Associated with Apple Valley since 1997, Victoria served as a board member for three years. In 2013 she graduated from Eastern Mennonite Seminary with a Masters of Divinity and work towards the Theology of Peacebuilding certificate. She is a United Methodist Minister. Apple Valley is an Extension Ministry of the Virginia Conference of the United Methodist Church, as a peace and justice ministry.
Links to ADR-Related Resources

Virginia certified mediator Rachel Virk's article, published in the Winter 2013 Family Law Section newsletter, is entitled, "Thoughts on Third Party Assisted Negotiation and the High Pressure Settlement of Disputes." The article appears on pages 3 through 6.

This brief animated video was created by Katy Davis of the Royal Society for the Encouragement of the Arts. Empathy from a mediator has the potential to lead to an important shift in a party's perspective. RSA Shorts - The Power of Empathy

SPLIT - A Film for Kids of Divorce (and their Parents)
"SPLIT is a deeply personal film that explores the effects of divorce on children. The film features twelve children aged 6-12, who explore the often frightening and always life altering separation of their parents." A trailer of the film and DVD purchase is available on the website.

Mediate.com article discussing options after the closure of LA Superior Court ADR programs: Crisis in the Courts: Making a Virtue Out of Necessity

Article in the Virginia Lawyers Weekly: "Don't wait for trouble to seek ADR" by Nancy Crotti (VLW subscribers will be able to log in and read the article)
Booklist from the ABA DR Annual Meeting in Miami

Critical patience and pedagogy – examining the role of patience and observation in dispute resolution and dealmaking -- trainers take note (follow up to Miami conference)

Virginia mediator John Settle’s article, "Mediation Tips and Techniques: Helping Parties Move Ahead and Overcome Roadblocks," was published in the American Bar Association's Tort, Trial and Insurance Practice Section's periodical, The Brief (Winter 2014, Vol 43, No 2). ABA members will be able to sign in to read the article.

Mediation Webinars
View various ADR webinars at www.ADRHub.com. Click on "ADRHub webinars" on the banner. Some presentations provide for the download of PowerPoint slides.

How to Order Brochures
The following mediation brochures can be ordered in packets of 50 by emailing Greg Charles in the OES Purchasing Office at gcharles@courts.state.va.us. Include in the email the number of packets of 50 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. Programs 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 may 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 or 804-371-6064.

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 DRS. The classes under "Specialized Training" are appropriate for recertification.

Mediation Conferences Calendar