

Resolutions

a quarterly update on dispute resolution

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Department of Dispute Resolution Services
Office of the Executive Secretary, Supreme Court of Virginia

June 2000

New Funding for Custody, Visitation and Support Mediation

It has been a longstanding vision of the Office of the Executive Secretary (OES) to provide all courts around the State access to no cost mediation services for all case types. While this is truly an ambitious goal, it has been partially met through legislation that was passed during the 2000 General Assembly session.

Over the last few years, the General Assembly has allocated \$200,000 towards mediation services. With these funds, OES has entered into fifty-two contracts with mediation providers around the State to mediate a limited number of cases referred by all levels of court. These contracts have enabled parties to not have to pay for mediation services, in the same way that judicial services are free of cost. This is critical, as there are a

large number of litigants who cannot afford to pay for mediation services and who would choose not to try mediation if there were a fee associated with it. These contracts have been insufficient to meet the increasing demand for mediation

Thomas K. Norment, states that the fee of a court-certified mediator appointed in any custody, visitation, or support case shall be \$100 per court appointment and shall be paid by the Commonwealth from the funds appropriated for payment of

This new legislation . . . marks a turning point in the continued development and expansion of court-annexed mediation.

services. Many contractors finish their cases within a few months of the contract year and must either offer pro bono services or sliding scale fee services. Over the last couple of years particularly, it has become clear that the contracts have been inadequate to provide continued access to mediation for litigants.

appointments made pursuant to subsection B of 16.1-267. The Bill passed the 2000 General Assembly, was signed by the Governor, and will go into effect July 1, 2000.

This new legislation is the most exciting event in the field of dispute resolution in Virginia since the passage of the dispute resolution proceedings statute in 1993. It marks a turning point in the continued development and expansion of court-annexed mediation. With this Bill, there is **no limit** on the number of custody, visitation, and support cases that can be referred to mediation. Certified mediators will be compensated for their services in all court-referred custody, visitation and support cases. Most importantly, courts will be able to rely upon the availability of continuous mediation services for litigants in all custody, visitation, and support matters.

An information packet was recently sent to all certified mediators explaining in detail the

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www.courts.state.va.us

Maintaining Control of a Project Even When Problems Arise

The construction industry has professionally monitored itself over centuries of construction projects. Whenever a problem arises, those in charge of managing and designing projects quickly modify future documentation to protect owners from a repeat of errors or shortfalls. As technology has increased to investigate product failures or limitations, tighter specifications are drafted and made a part of each new construction project. All of this is an attempt to control the destiny of the project during its development, and to protect the people involved in its creation as well as the users of the facilities.

One major shortfall, which affects most construction projects, is how to resolve conflicts in regard to defective applications, the interpretation of specifications, scope issues and other possible conflicts, both during the construction period and after the project has been completed. Yes, industry associations have developed standard contracts that delineate the use of mediation as an alternative to litigation and, if that fails, the use of the arbitration process; but does this standard language really address this crucial issue as thoroughly as it could? Engineers no longer just specify "foundation to be concrete". They are very specific in stipulating the mix formula and each component of the mix, how much water is to be added and when, at what temperatures it can be poured, how long it needs to be cured before use, how to seal or finish it, how it is to be placed, how attachments or

implants are to be applied, what admixtures are acceptable and on and on.

Each project is "unique" and involves special construction methods, means and components. Time frames and time constraints for each project vary. Contractors vary and are typically unknown to the owner and design team as the plans and specifications are being drafted. Design and management

The process to resolve conflict needs to be analyzed as thoroughly as the foundation has been for each and every project.

professionals involved in the project perhaps differ in philosophies and management styles when issues or conflicts arise. Jurisdictions of each project have different rules and regulations that can influence the resolution of disputes. A standard conflict resolution clause may be as insufficient as a general specification ("foundation to be concrete") to address specific issues and conflicts that are almost inevitable in every construction project. The process to resolve conflicts needs to be analyzed as thoroughly as the foundation has been for each and every project. There exists an array of resolution processes and service providers that can be customized to suit a particular project. The most commonly used methods of resolution in the construction industry are Dispute Review Boards, Mediation, Arbitration and Litigation.

Litigation is a very valid process when legal issues arise, but has proven to be too costly and too time consuming to be used to resolve

typical civil or contract issues in the construction industry. The American Institute of Architects standard contract calls for mediation first and then the use of arbitration, if the mediation fails to result in settlement. There are many things to consider though, before accepting this basic concept as the panacea of conflict resolution. When analyzing how disputes should be resolved on a particular project, many facets need to be considered. These questions can be answered and quite wisely with some research and investigation into each project and its unique requirements. This

inquiry cannot be treated lightly, as the decision or answer to each of these questions can and will affect the quality, timing and success of each project.


The required research basically boils down to an investigation of which process or combination of processes is most appropriate for each particular project, which tribunal has the relevant rules and guidelines and a well-suited panel of mediators or arbitrators and which of the above-mentioned criteria is applicable to a particular project. Tribunals and associations vary in their qualifications to perform conflict resolution processes for construction-oriented disputes. Some are staffed only with individuals from the judicial system who may tend to deal with the issues and conflicts from a 'legal' perspective and not based on the facts of the dispute or industry standards. Some have neutrals from the construction industry such as general contractors, architects, engineers and construction attorneys. Some allow the parties to select the mediator or arbitrator and others make the

Maintaining Control

selection for the parties. Some dispute resolution providers are staffed with part-time neutrals and others with full-time trained professionals. Specifying the wrong tribunal can be as critical to the project's success as the selection of a 'mix' for the foundation concrete.

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Mediation, Arbitration and the use of Dispute Review Boards can assist the owners and contractors to minimize their frustrations when resolving conflicts. If no process is stipulated, the resolution of a conflict automatically defaults to litigation. Litigation is far too adversarial for the construction environment, and experience demonstrates that resorting to lawsuits to settle construction disputes has many disadvantages. The four main drawbacks are (1) the cost of litigation, (2) delays in obtaining final court decisions, (3) general lack of understanding by judges and juries of the construction process, and (4) business disruptions and time consumed by key people in the organizations involved in disputes. The net result is that all too often only the lawyers, consultants and expert witnesses benefit from the lengthy court actions and the destiny of the project is out of the owner's 

We Welcome



to our DRS family!

Donna has served as Executive Assistant to Robert M. Baldwin, Executive Secretary of the Supreme Court of Virginia, for the past four years. After her recent marriage, Donna made the decision to work part-time and our Department is now the excited beneficiary of that plan. She will be assisting several days each week and we

Pilot School Mediation Project Held by Joint ADR Committee of VBA/VSBA

About a year ago, the Joint Committee on Alternative Dispute Resolution of the Virginia State Bar and the Virginia Bar Associations considered the question, **“What can we do for Law Day 2000 that’s different from other school programs put on by the Bar every May?”** We decided to aim high and get kids to engage in mediation at an adult level.

The Committee hoped to get students to accept mediation as part of the cultural landscape and to understand why it can yield better results than the traditional adversarial approach. We guessed that eighth graders were old enough to understand real world disputes and had not yet attained the adolescent cynicism that would make them difficult to reach. Henrico and Chesterfield County school officials enthusiastically embraced these notions, and we set out to create a realistic mediation experience.

On Saturday, April 29, 2000, fifty eighth graders drawn from the twenty middle schools in the two counties gathered at James River High School in Chesterfield for an all-day seminar. In the morning, Joint Committee members Kevin McCray, a litigator from Garrisonville, Virginia, and Deborah Russell, a litigator from McGuire, Woods in Richmond, arbitrated a personal injury case: A sixteen-year old runs a red light hitting a seventeen-year old star athlete. The case focused on whether the accident aggravated the athlete’s pre-existing stress fracture,

preventing a professional career. Testimony by a pediatrician was inconclusive.

Immediately following, Bob Garrity of Charlottesville mediated the same dispute. Volunteer professionals who are members of the Virginia Mediation Network role-played the two teen-agers and their parents. Whereas damages had been speculative in the arbitration, the parties in mediation arrived at solutions that both parties were satisfied with that would never have been possible in arbitration or in court. Our eighth graders understood this.

After an hour of training before lunch, the students did their own mediations under the eye of our VMN professionals. Everyone got to mediate a case. The first case was relatively simple, involving the failure to return a borrowed math book. The second was factually complicated and involved the legal issues of fraud, misrepresentation, and contractual meeting of the minds in the trading of a collector’s item. The kids very quickly picked up on the mediation skills of listening and asking questions that helped the parties craft creative solutions.

The kids produced outstanding results. Not only did they deal with the facts we gave them like pros, they wanted to know more than we had given them about the various factual possibilities. We were told that next year we should try it with seventh graders. We were very pleased with the positive outcome of the project and look forward with anticipation to Law Day 2001.





New Funding for Custody, Visitation and Support Mediation

(Continued from Page 1)

procedures for receiving case referrals pursuant to Senate Bill 127. In short, only Juvenile and Domestic Relations District Court and Circuit Court-Family mediators are eligible to receive court referrals pursuant to Virginia Code Section 20-124.4. All mediators received in their packets a salmon-colored Court Certified Mediator Form to complete if they wish to receive court referrals in custody, visitation and support matters and if they agree to provide services at a rate of \$100 per appointment. It must be noted that "appointment" does not mean session or meeting. "Appointment" means in this context "court appointment." Thus, a mediator will receive \$100 for the mediation of an entire case, which may involve more than one petition related to the same family. Mediators will be given the option of indicating on the Form that they wish to receive referrals through a Center or other mediation organization.


The Court-Certified Mediator Form must be sent by interested mediators to all the Juvenile and Domestic Relations District Courts and Circuit Courts the mediator wishes to serve. These courts must then compile a list of all interested mediators using the Court-Certified Mediator Forms. Judges may choose to hold a meeting with all interested mediators in order to obtain additional information regarding the mediators' training and experience, as well as to clarify court expectations and procedures.

Judges will be encouraged to refer all appropriate contested custody, visitation and support petitions, as well as motions to amend, to a dispute resolution evaluation session.

There is no requirement of indigence to be eligible to receive mediation services through Virginia Code Section 20-142.4. The clerk's office will screen for characteristics that may make a case inappropriate for mediation, such as the existence of a protective order. The clerk's office will complete an Order of Referral and Mediator Appointment Form in cases that are appropriate for referral. The Form provides a space for the mediator's name to be filled in. The clerk's office will select a mediator from the list of interested mediators using a fair and equitable rotation method. The mediator selected will receive a copy of the Order of Referral, the petition, and an invoice form. It will be the responsibility of the mediator to schedule the dispute resolution evaluation session within 14 calendar days of issuance of the Order. Where the parties do not have a phone number, the responsibility falls to them to contact the mediator. Following the free evaluation session, the mediator will offer the parties the opportunity to select a mediator of their choice, noting that there may be a fee for those services. If the parties choose to stay with the appointed mediator, the mediation will be conducted free of charge.

Upon completion of the mediation, the mediator will complete a Report at the bottom of the Order of Referral indicating whether or not an agreement was reached and attach a copy of the Agreement if one is developed. The mediator shall also submit an invoice to the clerk's office for payment. The mediator must provide the parties a Client Evaluation Form at the conclusion of the mediation and submit those evaluations directly to the Office of the Executive Secretary.

In addition to Senate Bill

127, the General Assembly approved a budget amendment for \$250,000 for contracts with mediation providers around the state for fiscal year 2000-2001 and \$500,000 for fiscal year 2001-2002. This funding, added to the already existing \$200,000, provides the Office of the Executive Secretary (OES) the opportunity to do exciting things. First, the funds will enable OES to enter into more contracts with providers such as Community Mediation Centers to provide services to the courts. As Senate Bill 127 provides funding for family cases, this additional money will allow OES to focus more attention on the General District and Circuit Courts which have used mediation less frequently over the past few years. The OES is excited about the upcoming expansion and growth of mediation services through this legislation. 

IMPORTANT REMINDERS

Recertification Applications are due by June 30, 2000 for over 400 mediators. Prompt submission is appreciated.



If you wish to update your Mediator Profile Form, they will be accepted until **September 1st** for inclusion in the 2000-2001 **Directory of Court-Certified Mediators**. If you need a blank Profile Form, please contact our office.



To request a copy of the Model Parent Education Curriculum and a Study of Related Custody and Visitation Issues, you may call 804-786-6984 and request House Document #26 from the 1999 General Assembly Session.

Featuring . . .
New Community
Mediation Center
Formed in
Lynchburg

The Center for Peaceful Alternatives, a private, non-profit organization that offers mediation and conferencing, opened their doors to members of the community in October of 1999. The Center is located downtown two minutes from the Lynchburg Juvenile and Domestic Relations District Court and is easily accessible for other community members. The lower level location of the Center in the Tarkington Building is convenient and situated on the City's bus line. The Alliance for Families and Children, a regional, non-profit United Way member agency founded in 1909, also offers many fine family programs in this building such as Teen-Parent Programs, Abstinence Alliance of Central Virginia, Children in the Middle Program, Child Abuse and Prevention, Anger Management Programs, and Ways to Work Program.

Carolyn Pritchard, Director, is a Virginia Court-Certified Mediator who provides service to Lynchburg City, as well as Amherst, Nelson and Campbell Counties. The majority of the Center's referrals have originated from court backgrounds, but the word is steadily moving out into the local communities. One of the immediate objectives for the Center is to utilize their facility in a manner that nurtures mediations or conferences. This offers the general community the availability to a variety of trained facilitators. The first two steps of the strategic plan for reaching this goal have included marketing the offered services to the communities and gaining affiliation with other Virginia private, non-profit mediation centers. The Director is also forming a list of other certified mediators who wish to be associated with the Center.

The Center has the never-ending search for funding like all new mediation centers experience in their first few years. The Center presently has a Director, a Board of Directors, Certified Mediators on a Master List eligible for referrals, Liberty University Intern, and six Mentees working with the Director to complete eligibility requirements for Virginia court certification. The Center recently began to offer ADR training to members of the community.

Attempts to form an advisory committee and a funding committee will be next on the agenda. If you are interested in becoming a committee member, if you are a facilitator wishing association with the Center, or if you wish information on future training, you may contact the Director. To request literature, inquire about committees, or send any additional information that would be helpful to the Center, please see contact information in the adjacent listing among the Coalition of Community Mediation Centers.



Coalition of Community



Mediation Centers

The Center for Peaceful Alternatives

2600 Memorial Avenue, Suite 201
Lynchburg, VA 24501
804-846-1052, ext. 253
Carolyn Pritchard, Director

Community Mediation Center

36 Southgate Court, Suite 102
Harrisonburg, VA 22801
540-434-0059
Suzanne Daughety, Director

Community Mediation Center of Danville and Pittsylvania County

2601 North Main Street
Danville, VA 24540
804-836-0888
Bob Phillips, Director

Conflict Resolution Center

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

The Dispute Resolution Center

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

Dispute Settlement Center

586 Virginian Drive
Norfolk, VA 23505
757-480-2777
Robert Glover, Director

The Mediation Center at FOCUS

1508 Grady Avenue
Charlottesville, VA 22903
804-977-2926
Carolyn Miller, Director

Northern Virginia Mediation Service

4260 Chain Bridge Road, Suite A2
Fairfax, VA 22030
703-993-3656
Rob Scott, Director

Piedmont Dispute Resolution Center

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

ADR Training Calendar

PLEASE NOTE that some of the following courses have not yet been submitted to the Supreme Court of Virginia for certification under the new Guidelines for the Certification of Training Programs, which became effective January 1, 2000. When registering for a course that is required for certification as a mediator, it is your responsibility to verify with the trainer that the course has been newly certified.

20-Hour General

June 19-21, 2000

Dispute Resolution Center
Richmond, 804-343-7355

June 20-21, 2000

Mediate-Tech, Inc.
Front Royal, 540-636-8900

June 21-23, 2000

Mediation Center at FOCUS
Charlottesville, 804-977-2926

June 26-30, 2000

Dispute Settlement Center
Norfolk, 757-480-2777

July 5-7, 2000

Northern Virginia Mediation Service
Fairfax, 703-993-3656

July 10-14, 2000

(w/VA Judicial & Gen. Mentorship)
Mediation Center of Hampton Roads
Norfolk, 757-624-6666

July 19-21, 2000

FSR Associates
Charlottesville, 540-434-4258

August 3-5, 2000

Northern Virginia Mediation Service
Fairfax, 703-993-3656

September 13-15

Northern Virginia Mediation Service
Fairfax, 703-993-3656

September 18-20

Conflict Management Associates
Hampton, 757-627-6120

September 19-23, 2000

(40-hr. general - not certified by OES)
Key Bridge Foundation
Washington, DC, 202-274-1823

September 20-22, 2000

FSR Associates
Charlottesville, 540-434-4258

September 21-23, 2000

Community Mediation Center
Harrisonburg, 540-434-0059

September 21-23, 2000

(w/ VA Judicial & Gen. Mentorship)
Mediation Center of Hampton Roads
Norfolk, 757-624-6666

September 26, 28, & 30 and

October 3 & 5, 2000

University of Richmond
Richmond, 804-289-8133

October 2-6, 2000

Dispute Settlement Center
Norfolk, 757-780-2777

October 5-7, 2000

Dispute Resolution Center
Richmond, 804-343-7355

20-Hour Family

July 18-20, 2000

Dispute Resolution Center
Richmond, 804-343-7355

August 8-10, 2000

FSR Associates
Charlottesville, 540-434-4258

August 10-12, 2000

Agreements Unlimited
Marion, 540-783-7015

October 17, 19, 21, 24, & 26, 2000

University of Richmond
Richmond, 804-289-8133

October 19-21, 2000

Mediation Center of Hampton Roads
Norfolk, 757-624-6666

October 25-27, 2000

Dispute Resolution Center
Richmond, 804-343-7355

October 30 - November 3, 2000

Dispute Settlement Center

40-Hour Family

July 10-14, 2000

Community Mediation Center
Harrisonburg, 540-434-0059

July 24-28, 2000

Northern Virginia Mediation Service
Fairfax, 703-993-3656

September 16-18 & 30 & November 1, 2000

(AFM Approved)
Conflict Management Associates
Hampton, 757-627-6120

4-Hour Virginia Judicial

July 11, 2000

Dispute Settlement Center
Norfolk, 757-480-2777

July 20, 2000

Mediation Center at FOCUS
Charlottesville, 804-977-2926

July 21, 2000

FSR Associates
Charlottesville, 540-434-4258

July 22, 2000

Northern Virginia Mediation Service
Fairfax, 703-993-3656

July 29, 2000

Community Mediation Center
Harrisonburg, 540-434-0059

September 22, 2000

FSR Associates
Charlottesville, 540-434-4258

September 23, 2000

Community Mediation Center
Harrisonburg, 540-434-0059

September 23, 2000

Northern Virginia Mediation Service
Fairfax, 703-993-3656

October 12, 2000
University of Richmond
Richmond, 804-289-8133

October 25, 2000
Mediation Center of Hampton Roads
Norfolk, 757-624-6666

8-Hour Domestic Abuse

July 21, 2000
Dispute Resolution Center
Richmond, 804-343-7355

July 28, 2000
Community Mediation Center
Harrisonburg, 540-434-0059

August 11, 2000
FSR Associates
Charlottesville, 540-434-4258

September 16, 2000
Agreements Unlimited
Marion, 540-783-7015

September 25, 2000
Northern Virginia Mediation Service
Fairfax, 703-993-3656

October 28, 2000
Mediation Center of Hampton Roads
Norfolk, 757-624-6666

8-Hr. General Observation

June 20, 2000
FSR Mediation Services
Charlottesville, 540-434-4258

July 10, 2000
Dispute Resolution Center
Richmond, 804-343-7355

July 20-21, 2000
Northern Virginia Mediation Service
Fairfax, 703-993-3656

August 2, 2000
FSR Associates
Charlottesville, 540-434-4258

September 21-22, 2000
Federal Workplace Mediation
Northern Virginia Mediation Service
Fairfax, 703-993-3656

October 14, 2000
University of Richmond
Richmond, 804-289-8133

October 31, 2000
Dispute Resolution Center
Richmond, 804-343-7355

8-Hr. Family Observation

August 1, 2000
Dispute Resolution Center
Richmond, 804-343-7355

September 8-9, 2000
Northern Virginia Mediation Service
Fairfax, 703-993-3656

October 30, 2000
Dispute Resolution Center
Richmond, 804-343-7355

20-Hr. Circuit Court-Civil

June 22-23, 2000
Mediate-Tech, Inc.
Front Royal, VA 540-636-8900

June 26-28, 2000
Conflict Management Associates
Hampton, 757-627-6120

June 28-30, 2000
Dispute Resolution Center
Richmond, 804-343-7355

August 17-18, 2000
Mediation Center of Hampton Roads
Norfolk, 757-624-6666

October 19-21, 2000
Community Mediation Center
Harrisonburg, 540-434-0059

12-Hr. Circuit Court-Family

June 16-17, 2000
Dispute Settlement Center
Norfolk, 757-480-2777

August 7-8, 2000
Conflict Management Associates
Hampton, 757-627-6120

Mediator Ethics

June 15, 2000
Ethics in Mediation: A Samoan Circle
Dispute Settlement Center
Norfolk, 757-480-2777

July 10, 2000
ADR & Ethics for Attorneys
Northern Virginia Mediation Service
Fairfax, 703-993-3656

Mentoring Others

June 21, 2000
Northern Virginia Mediation Service
Fairfax, 703-993-3656

Specialized Training

The following trainings in particular are meant to assist you in meeting the continuing education requirements for mediator recertification. These courses as well as workshops at training conferences are a wonderful opportunity for your own personal . . .



Professional (a calling requiring specialized knowledge and often long, intensive and on-going academic preparation)

Development (the process of growing, becoming more effective and more proficient by acquiring additional knowledge or skill and stretching to take on additional challenges).

★ **Let's Keep On Learning!!**

Specialized Training

June 16, 2000

Advanced Family Mediation
Community Mediation Center
Harrisonburg, 540-434-0059

June 16-17, 2000

Mediating Division of Marital Property
Northern Virginia Mediation Service
Fairfax, 703-993-3656

June 23, 2000

Advanced General Mediation
Community Mediation Center
Harrisonburg, 540-434-0059

June 23-24, 2000

Transformative Mediation
Northern Virginia Mediation Service
Fairfax, 703-993-3656

June 27, 2000

Advanced Family (Non-Divorce)
Dispute Resolution Center
Richmond, 804-343-7355

June 28, 2000

Mediating Adult Guardianship & Probate
Key Bridge Foundation
Washington, DC, 202-274-1823

June 28-29, 2000

Peer Mediation/Conflict Resolution
for Schools
FSR Mediation Services
Charlottesville, 540-434-4258

July 13-14, 2000

Negotiation Skills
Northern Virginia Mediation Service
Fairfax, 703-993-3656

July 28, 2000

Alcohol and Substance Abuse
Key Bridge Foundation
Washington, DC, 202-274-1823

August 10, 2000

Mediating EEO & Workplace Disputes
Dispute Settlement Center
Norfolk, 757-480-2777

August 22, 2000

Child and Spousal Support
Dispute Settlement Center
Norfolk, 757-480-2777

September 8-9, 2000

Arbitration Training
Dispute Resolution Center
Richmond, 804-343-7355

September 11, 2000

Careers in Mediation (Free)
Northern Virginia Mediation Service
Fairfax, 703-993-3656

September 18, 2000

Alternative Dispute Resolution
Northern Virginia Mediation Service
Fairfax, 703-993-3656

September 20, 2000

E-Mail and Telephone Mediation
Northern Virginia Mediation Service
Fairfax, 703-993-3656

September 21, 2000

Cultural Awareness and Diversity
FSR Associates
Charlottesville, 540-434-4258

September 28-29, 2000

Multi-Party Mediation
Dispute Resolution Center
Richmond, 804-343-7355

September 29, 2000

Designing Federal Labor/Management
Partnership Plans
Northern Virginia Mediation Service
Fairfax, 703-993-3656

October 11, 2000

Managing Angry Parties in Mediation
University of Richmond
Richmond, 804-289-8133

October 11-12, 2000

Peer Mediation and Conflict Resolution
for Schools
FSR Associates
Charlottesville, 540-434-4258

October 11-13, 2000

Victim/Offender Mediation/Conferencing
Community Mediation Center

Harrisonburg, 540-434-0059

October 13, 2000

Mediating ADA Title I Disputes
Key Bridge Foundation
Washington, DC, 202-274-1823

October 14, 2000

Mediating ADA Title III Disputes
Key Bridge Foundation
Washington, DC 202-274-1823

October 14, 2000

Considering Culture in the Mediation
Process
Northern Virginia Mediation Service
Fairfax, 703-993-3656

October 20, 2000

Mediating Special Education Disputes
Key Bridge Foundation
Washington, DC 202-274-1823

October 21, 2000

Mediating Complex & Multi-Party Civil
Cases (may count as partial credit toward
Circuit Court-Civil certification)
Northern Virginia Mediation Service
Fairfax, 703-993-3656

October 23, 2000

Preparing Memoranda & Agreements
Northern Virginia Mediation Service
Fairfax, 703-993-3656

October 24, 2000

Conflict Resolution for Managers and
Administrators
Northern Virginia Mediation Service
Fairfax, 703-993-3656

October 25, 2000

Mediating EEO and Workplace Disputes
Northern Virginia Mediation Service
Fairfax, 703-993-3656

October 28, 2000

Mediating Intra-Family Conflicts
Northern Virginia Mediation Service
Fairfax, 703-993-3656

Attention All Trainers:
Deadline to Submit New Training
Calendar Dates is August 1, 2000.

~ Include September through December 2000 ~



Trapping the Data

A recent report released jointly by the Supreme Courts of Ohio and Maine has found that mediation programs are an effective way for families to solve legal conflicts. According to the report, a majority of both attorneys and clients perceive mediation programs as very fair, mediators as neutral and settlement agreements as evenly balanced. This project was funded by a grant from the State Justice Institute.

The report, called "Trapping the Data", assesses a project developed to provide a statewide database of information related to court-connected family mediation. The courts intend to use the database not only to help effectively operate and evaluate these programs, but also as a basis for an article about lessons learned from the project.


"This report is crucial because it supports what many people in the legal community already feel; that mediation is an extremely effective and appropriate way to handle family conflicts," said C. Eileen Pruett, Coordinator, Dispute Resolution Programs for the Ohio Supreme Court.

The report examined mediation efforts in 943 cases, covering thirteen courts in Maine and six courts in Ohio between 1996 and 1998. The cases included divorce, child custody, visitation and support. The report's findings were based on a questionnaire that had been filled out by more than 2,000 people, including mediators, attorneys and clients in Maine and Ohio.

Court officers intend to use the data to determine how different factors might influence both the process and the outcome of various cases. The study examined education and experience of mediators, clients' assessment of mediators and mediation, attorneys' assessment of mediation and whether participation was voluntary or mandatory.

In general, both clients and attorneys reported that they were satisfied with the process. 78 percent of clients in Ohio and 61 percent of clients in Maine commented that mediation helped them to better understand the other party's point of view. In addition, almost half said they thought that family mediation significantly improved their children's situation. The response to mediation was equally positive whether it was mandatory or voluntary. The report also found that women, minorities and people with lower levels of education and income responded particularly well to mediation. In addition, clients were impressed by how they were treated by the mediator. Clients favored mediators who encouraged them to express their feelings and frequently summarized their opinions.

The report found that mediation to resolve family disputes proved successful in both states, although Ohio and Maine differ greatly in both size and composition of population. Ohio participants tended to be slightly more enthusiastic than Maine participants about mediation, but only 154 mediated cases were assessed in Ohio, in contrast to 789 in Maine.

For further information, please contact C. Eileen Pruett, Coordinator, Dispute Resolution Programs, Supreme Court of Ohio, 614-752-4700, or Diane Kenty, Director, Maine Administration Office of the Courts, 207-442-0227. 

Virginia Natural Resources Leadership

Through a partnership effort of the University of Virginia's Institute for Environmental Negotiation, the Virginia Tech Center for Economic Education, and the Virginia Department of Forestry, the Virginia Natural Resources Leadership Institute (VNRLI) has recently been formed.

Beginning in September 2000, the VNRLI will comprise six seminars held through the year in different locations in Virginia. Topics will include leadership and conflict resolution skills, processes that can be used for building consensus, exploration of specific environmental issues in Virginia today, and much more.

This is an opportunity for leaders involved with different aspects of natural resources to unite to learn principles and proactive strategies to help communities resolve natural resource and environmental conflicts.

Patterned after its "sister" institutes in four other states, VNRLI is seeking applications from persons involved with various aspects of natural resource management from the public, private and nonprofit/community sectors. The class will be limited to 30 persons, drawn in roughly equal numbers from these different sectors to ensure that different perspectives are represented. Cost for the year-long course is \$1,600, excluding travel and lodging.

For applications, visit the following website: <http://www.virginia.edu>



Resource Corner



DIFFICULT CONVERSATIONS: *How to Discuss What Matters Most* - Written by Douglas Stone, Bruce Patton, Sheila Heen of the Harvard Negotiation Project; 234 pages + Appendices; Viking; \$24.95

If you've been looking for a way to maximize the storytelling stage of mediation, *Difficult Conversations -- How to Discuss What Matters Most* can help you. Though this book was written for a general audience, with only occasional references to neutrals, it is easy to adapt the ideas to how we might use them in mediations. In fact, one of the book's strengths is that *one* reading can benefit us in our *many* personal and professional roles.

"There is no such thing as a diplomatic hand grenade," write the authors. And yet, when we invite parties to a dispute--often a husband and wife in the throes of separation or divorce--to share their story or tell us what brought them to the table, it's likely that what they say is not going to affirm the self-esteem of the other party. "Coated with sugar, thrown hard or soft, a hand grenade is still going to do damage," they warn.

So, does that mean it's best to omit the storytelling stage? Absolutely not. According to the authors, "difficult conversations don't just *involve* feelings, they are at their very core *about* feelings."

If that's the case, how do we balance the need for parties to talk about the past, with all the inherent hurt and anger, and yet lay a foundation for the future? The authors say we begin by recognizing that every difficult conversation is really three conversations that two people need to have: What happened? How do I feel about what happened? How does what happened affect my self-identity and sense of well-being?


As mediators, our task is to create a structure and an order so that the pieces of each party's story are presented in a way that can move the parties from a sense of futility to a feeling of validation.

The key to using this *Difficult Conversation's* strategy successfully is the words we use to invite each party to share their story. We ask them "to describe the problem as the *difference* between your stories." In other words, we might say, "John, will you describe the *differences*, as you see them, between the way you and Mary perceive what has happened to bring you to this point?" By asking the

question in this way, we model that both viewpoints are a legitimate part of the storytelling process. We imply that both viewpoints are equally valid. I find this concept both subtle and profound. The authors use the analogy of a shopping cart where each party tosses in their selection (their facts, their feelings) and neither of their differences (conflicting feelings) cancel the other's out. "What's important," they write, "is to get these strong and perhaps conflicting emotions into the conversational cart."


This is a powerful book, packed with charts, checklists, outlines and helpful concepts. The authors end the book with the saying "Life is just one damn thing after another." It is, of course. And now you have the skills to handle it." I agree on both accounts.



Diane Wiltjer is a Virginia Court-Certified Mediator, Mentor, and Trainer located in Great Falls, VA. To read more about *Difficult Conversations*, you may access [www.penguininputnam.com/difficult conversations](http://www.penguininputnam.com/difficult_conversations). 

U.S. Department of Justice Competitive Grant Announced

Across the country, new and innovative programs are being developed with criminal justice and other service providers working in partnership to improve communities and the quality of life for people who live and work in them. In many communities, these partners include local conflict resolution and community mediation programs.

The U.S. Department of Justice has issued a Competitive Grant Announcement for **Awards for Planning and Implementing Strategies in Community Prosecution**. Community prosecution is a strategy to address crime, in which prosecutors work in partnership with other local stakeholders - including neighborhood residents, faith-based organizations, law enforcement, and social service providers - to solve problems affecting the quality of life in communities. The purpose of the grant is to allow **prosecutors** to plan, implement, or enhance their community prosecution efforts with those local partners. If you are operating an applicable conflict resolution program, you may wish to contact your local prosecutor, usually a county or district attorney, and encourage them to apply for this grant. Department of Justice contact is Cliff Keenan, Counsel for Community Prosecution, Office of Justice Programs (202-616-7429 or by e-mail at keenanc@ojp.usdoj.gov). **Submission deadline is June 30, 2000.** 

Readers' Response



Question:

Can a law firm that hires a lawyer, who previously attempted to mediate resolution of a dispute, later represent the defendant in that dispute?

Answer:

In a recent court case, *Doe v. Bruton Parish Church*, multiple unnamed plaintiffs sued the Bruton Parish Church, the Episcopal Church and several individuals, alleging that the plaintiffs' children were molested at the church by day care workers. The litigants met to mediate their case, but the mediation ended after just one session when it became apparent that the parties were unable to resolve their differences.

Several months after the mediation, the mediator was hired by Mays & Valentine, the law firm representing the church defendants. In their motion to disqualify the firm, the plaintiffs contended that the mediator had been exposed to privileged information in his capacity as a mediator and he had agreed to maintain confidentiality of the information. Plaintiffs were concerned, not that he would intentionally violate their trust, but that his employment at the firm might lead to inadvertent disclosures of confidential information to his co-workers. Therefore, plaintiffs argued that the mediator should be disqualified from representing the defendants and his disqualification should be imputed to his new employer. Judge Norman Olitsky of the Virginia Circuit Court agreed with the plaintiffs' concerns. Finding a "continuing danger" that O'Brien might unintentionally transmit confidential information to attorneys at Mays & Valentine, the court disqualified the firm from representing any of the parties to the suit.

New Question:

If a mediator serves as an instructor for a parent education class, can he or she subsequently mediate a case involving attendees of the parent class?

You are invited to respond.

Please send your response to: Readers' Response, c/o **Resolutions**,
Office of the Executive Secretary, Department of Dispute Resolution
Services, 100 North Ninth Street, Richmond, Virginia 23219.

Resolutions

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*Contributions of articles or information
are always welcome.*

Conferences

- June 15-16 Center for Alternative Dispute Resolution
12th Annual Conference - "Managing Conflict
in the Workplace and Beyond"
Bowie State University, Wiseman Centre
Bowie, Maryland (Pre-Conference June 14)
(301) 464-7238
- July 6-12 American Bar Association Annual Meeting,
Section of Dispute Resolution Programs and
Meetings (July 7-9)
New York, New York
(781) 674-2663 www.abanet.org/dispute
- July 11-15 Academy of Family Mediators' Annual
Conference - "Values in Mediation"
Hilton, Salt Lake City, Utah
(800) 532-3344 or www.mediators.org
- Sept. 14-16 Society For Professionals in Dispute Resolu-
tion - 2000 Annual Conference: "Opening the
Way to a Civil Society: Creating a Culture of
Community and Dialogue"
Albuquerque, New Mexico
(202) 667-9700 www.spidr.org
- Nov. 12-14 Virginia Mediation Network Fall Training
Conference; Williamsburg Marriott; accept-
ing presentation proposals; 804-285-2780

Resolutions

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