

Resolutions



a quarterly update on dispute resolution

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Department of Dispute Resolution Services
Office of the Executive Secretary

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DRS Explores Quality Assurance Initiatives

Mediation in Virginia has developed rapidly since the creation of the Department of Dispute Resolution Services in 1991 within the Office of the Executive Secretary of the Supreme Court of Virginia. In an effort to ensure the quality and competency of mediators that provide services in court-referred matters, the Judicial Council adopted Guidelines for the Training and Certification of Court Referred Mediators, Guidelines for the Certification of Mediation Training Programs, Standards of Ethics, Grievance Procedures, and Client Evaluations. For mediators providing services in the Juvenile and Domestic Relations District Court and Circuit Court, additional training and mentoring requirements were established in 2000 to ensure that mediators have more specific training and experience necessary to provide services in cases referred from these respective levels of court. An integral part of the mediator certification process includes a mentoring component which enables a trainee to both observe and co-mediate several cases with a more experienced mentor mediator. To further the goal of the Department of Dispute Resolution Services to support the continued development of a diverse and highly competent mediation community, a periodic review of the mediator training and certification requirements is necessary.

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Family Mediation

There are approximately 415 J&DR District Court certified mediators in Virginia. In fiscal year 2004-2005, over 9000 custody, visitation and support mediations were conducted pursuant to Virginia Code section 20-124.4. Party satisfaction with the mediation process is well over 90% and the agreement rate is, on average, 80-85%. While family mediation has been tremendously successful, over the past several months some concerns have been expressed regarding the ability of mediators to accurately complete the child support guidelines and a few Juvenile and Domestic Relations District Court judges have been hesitant to refer such matters to mediators.

A Family Mediation Committee (see committee membership on page 2) has been formed to examine issues related to enhancing the competency of family mediators, especially in the

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**Department of Dispute
Resolution Services
Family Mediation
Committee**

Alice G. Burlinson, Esquire
Roanoke, VA

F. Karen Collier
Virginia Beach, VA

Deborah M. Costello, Esquire
Richmond, VA

Morna P. Ellis, Esquire
Richmond, VA

Dotty Larson
Manassas, VA

Carol A. McCue
Richmond, VA

James Q. Pope, Esquire
Arlington, VA

Carolyn P. Pritchard
Amherst, VA

**Department of Dispute
Resolution Services
Mentoring Committee**

Thomas "Jack" Baker
Norfolk, VA

Francis E. Clarke
Colonial Heights, VA

Kathey J. Foskett
Manassas, VA

Maria M. Hyson
Warrenton, VA

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area of child support. Several ideas have been proposed including: the development of a test (on basic family law and child support calculations) as part of the initial certification process as well as for the recertification of mediators; annual training sponsored by DRS on family law updates; and the development of comprehensive resource materials on custody, visitation, child support and spousal support that may be used as a reference tool by mediators.

The committee is considering written comments in response to a questionnaire mailed to all certified mediators in November for feedback on these ideas for enhancing the competency of family mediators. Over the next several months, the committee will begin exploring the development of test questions on basic family law issues covered in the 20-hour Family Mediation course and common child support scenarios. In addition, resource

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The Mediator Questionnaire was mailed to all 415 mediators currently certified to receive J&DR court referrals. To date 66 (16%) completed surveys have been received.

As to the level of proficiency at calculating child support, 24 (36%) consider themselves very competent, 26 (41%) competent, 10 (15%) always need to review first and 5 (8%) did not answer.

Asked if a test should be administered for those desiring re-certification, 40 (61%) said yes, 19 (28%) said no, 6 (9%) were undecided, and 1 (2%) did not respond. The majority favored some kind of proficiency test for recertification. Most respondents who said yes noted as a rationale that a test might increase or contribute to a higher level of competency in the mediator pool. Comments in opposition were that some people just don't test well; a test meant more bureaucracy; and that there is little correlation between passing a test and being a good mediator.

Testing for initial certification received a higher positive response with 48 (73%), while 13 (20%) were opposed. Three (5%) were undecided and 1 (2%) did not address the question.

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James R. Meditz
Arlington, VA

Robert W. Scott, Esquire
Fairfax Station, VA

Norval (John) D. Settle, Esq.
Arlington, VA

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Fifty-nine (89%) respondents welcomed an annual training program by DRS for family law updates. Only 6 (9%) felt it was not needed and 1 (2%) did not respond to the question.

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materials and a training agenda for a statewide child support review and family law update conference will be developed.

Mentoring

Virginia is only one of a handful of states that has formalized mentorship as a primary component of the mediator certification process. The mentor plays an integral role in the development of a cadre of skilled mediators. Mentors are expected to provide guidance to prospective mediators as they hone their skills and learn the craft during the mentoring period. The Department of Dispute Resolution Services relies heavily on the written comments and observations provided by mentors on the Mentee Evaluation Form in approving new mediator applications.

A Mentoring Committee (see committee membership on page 2) has been formed to review the mentoring process. At the Spring 2005 Virginia Mediation Network Conference, attendees participating in a special workshop on mentoring indicated several concerns regarding the current mentoring process including: the need for additional training for mentors, particularly on how to provide constructive feedback; the ethics of approving a trainee merely because fees are received in return for mentoring services; the inconsistent quality of mentoring; the need for information-sharing between mentors to ensure that trainees obtain the experience they need to improve their skills; and the need to require trainees to work with multiple mentors to observe different styles of mediation.

The Mentoring Committee is addressing these concerns by considering additional training for mentors, revising the Mentee Evaluation Form, and developing a Mentee Portfolio. The Portfolio will be designed to provide each mentor with information on the mentee's skill areas that require further attention as well as suggestions regarding the trainee's goals for the next mediation. This portfolio should inform the briefing/debriefing sessions of each co-mediation (the second through fifth co-mediation), thereby enhancing the mentoring relationship and bringing continuity to the mentorship process.

Practitioner competency and continuing skill development is essential to maintaining the confidence of the bench, the bar, and the public in the value and efficacy of alternative dispute resolution. The Office of the Executive Secretary, Department of Dispute Resolution Services, will continue its efforts to ensure that a cadre of well-trained mediators are available to serve the needs of the courts and the citizens of Virginia. For further information, please contact Geetha Ravindra at gravindra@courts.state.va.us

(See page 7 for results of Mentor Questionnaire)

The State of Mediation in the Republic of Armenia

When the Soviet Union collapsed in 1991, the republics were left to their own devices to form the type of state they desired. The Republic of Armenia (RoA) chose the path toward democracy and a consumer-based economy. The state is still on the road to achieving both, albeit slower than many citizens of the country had hoped.

Armenia harkens back over 2000 years and is one of the ancient civilizations. Its Christian roots can be traced to 301 A.D., when it was the first state in the world to declare that its people would henceforth espouse the Christian faith. There are still active churches in existence that are older than many countries, to include the United States.

Armenian history is a story of strong leadership from top down; i.e. kings, princes, and dictators. Located in lands desired by powerful invading forces (Arabs, Persians, Mongols, and Ottomans), the Christian Armenian state battled against covetous non-Christian hordes that succeeded in reducing its holdings to a state equivalent in size to the state of Maryland. In all of its history, only once did the state flirt with democracy prior to the fall of the Soviet Union, and that was during the short-lived first republic of 1918-1920 that was swallowed up by the Soviet monolith. The historical and cultural inheritance has made bottom up contributions to decision-making a relatively new concept, starting

anew with the fall of the Soviet Union in 1991. Thus, in Armenia, mediation with the contentious parties deciding the outcome of the issue, with the process being orchestrated by a non-decision making facilitator, is not totally understood, appreciated or written into law. Last year, I introduced the concept in the state university, but it is currently still in a very fledgling state of maturation.



Unlike many of the new countries, Armenia has a fairly large and vibrant Diaspora that developed in the aftermath of the 1915 genocide perpetrated by the government of the crumbling Ottoman Empire. In 1991, the late Dr. Rafael Marterossian, Vice Rector of International Affairs, and Dr. Ludmila Haratunian, Head and Professor of the Department of Sociology at Yerevan State University

(YSU), the state university, visited George Mason University (GMU) in Fairfax, Virginia. The purpose was to establish official affiliations with U.S. universities, which they eventually succeeded in doing with GMU in 1995.

At the time, I was working on my Ph.D. in Conflict Analysis and Resolution (CR) at the Institute for Conflict Analysis and Resolution (ICAR) at GMU. The visitors from YSU invited Dr. Christopher Mitchell, Dr. Dennis Sandole and me to Armenia to teach an introductory course in

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CR to students and to discuss CR with interested professors. Since I completed the first professional visit, I have made yearly trips to YSU during the Fall Semester each year to teach courses in CR to undergraduates in the Department of Sociology.

In 1999, YSU, the Department of Sociology and I established a course of studies for undergraduates, MA and Ph.D. degrees in CR studies; the first such curriculum expansion in CR studies in the Caucasus region. With funds provided by an American benefactor, and with the cooperation of YSU, a Center for Regional Integration and Conflict Resolution (CRICR) was established in the library at YSU and has been functioning as the place for holding meetings and classes on CR. The Center also has an extensive library with CR texts and materials that are available for students to conduct research. Alternative Dispute Resolution (ADR) has, in the meantime, become one of the major attractions of CR studies.

With the encouragement and support of Dr. Haratunian, I developed a course to introduce civil mediation to the students in CR in the 2003 Fall Semester using the Virginia State process as the model. One year later, in the Fall Semester 2004, I taught the introductory class to approximately 40 undergraduate and six graduate students. Discussion in Armenia about ADR had increased with the U.S. Agency for International Development solicitation for a contract to study "Promotion of Alternative Dispute Resolution in Armenia." The Advanced Social Technologies NGO won the USAID sponsored study and I was consulted by the researchers as an "expert" in the field. One of my Ph.D. graduate students, Elen Kerobyan, decided to pursue the issue of mediation as her dissertation topic and be-

gan extensive research that is ongoing.

The current law in Armenia relative to arbitration is misleading when translated into English. A literal translation into English reads, "Law on Mediation Courts and Mediation Proceedings." There is no Armenian word for arbitration so they used the closest word to it and that is "mediation." Since Armenia was under the influence and dictates of Moscow for close to 65 years, most Armenians use the Russian equivalent to arbitration. Reading the current RoA arbitration laws could be confusing as there are mediation goals mixed in. The arbiter/mediator is encouraged to attempt to get the contentious parties to agree to a solution. However, there the similarities with the mediation process in Virginia stop. If agreement cannot be reached, the third party makes a decision.

The guidance and the qualifications of "mediators/arbitrators" in Armenia are vague. For instance, the guidance for qualification is that the third party is supposed to have "sufficient knowledge or working experience" but nothing spells out what this means. There is no formal structure for certification, not even the hint of minimal education or what it should be.

Yet, in Armenia there are many professional and business class people who see a vacuum in the absence of official recognition of Virginia-type civil mediation. They also are aware that changes will be slow. It is not just a matter of getting true civil mediation written into law. There is also a necessity for a cultural change; one where the decision on how to solve a conflict by the disputing parties becomes an accepted practice that could replace a top down decision. The vice-rector of the state university and key professors are convinced that the place to start is at the academic level.

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They have welcomed inclusion of a course on civil-mediation patterned after Virginia in their departments. One of our mutual efforts was writing a handbook in Armenian and English on civil mediation that could be used to assist in developing a syllabus. They are currently pondering how to best approach certification requirements and getting civil mediation and certification requirements written into law.

The efforts to establish civil mediation in Armenia are not completed. There is still much work to be done. Meanwhile, the state university and the professors have invited me back again in April 2006. At that time, they wish to bring me up to date on how far they have progressed and would like us to evaluate the course of studies they developed in tune with Armenia's needs and wants. Thus, we find Virginia reaching out across the ocean to the Caucasus region to help usher in a brand of democracy that many Virginians may take for granted.

As I am a member of the Advisory Commission on Armenia formed by Virginia's Governor Mark Warner, extending a helping hand to Armenia has been a pleasure. It has been personally gratifying and the experiences have strengthened my own grasp on the value and indeed the necessity of civil mediation as a crucial complement to the legal system in any democratic society.

Submitted by Moorad Mooradian, Ph.D., Virginia Court-Certified Circuit Court-Civil Mediator

The Book Review Corner

Lickson, Charles P. and Robert B. Maddux.* *Negotiation Basics: Win-Win Strategies for Everyone*. Boston, MA: A Crisp Fifty-Minute™ Series Book, 102pp, Thomson Course Technology, 2005. \$13.95 Publisher information: 1-800-442-7477 and www.courseilt.com. *[This book is a revision of *Successful Negotiation*, authored by the late Robert B. Maddux, to whom Dr. Lickson dedicates this edition.]

Negotiation Basics is just one of the many excellent titles in the Crisp Fifty-Minute™ Series and it is the fifth book Charles P. Lickson, J.D., Ph.D., has written for this publisher. It is brief, well-written and substantive.

The book's central theme, collaborative problem-solving, is presented in a straightforward, conversational style. At first glance, the content might appear too basic to the seasoned professional. Yet, a careful reading of the author's effective juxtaposition of ideas, questions, case studies, and exercises leads me to believe that all readers will benefit from this book in direct proportion to how much time they spend connecting the content to their level of experience.

"A wise man will make more opportunities than he finds." B. Francis Bacon

While *Negotiation Basics* could be a quick read, we would cheat ourselves if we didn't take the publisher's advice - to read with a pencil. The various questions and exercises posed by Dr. Lickson give us a rare chance to reflect on where we are now, today, in our

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The Mentor Questionnaire was mailed to all 313 currently certified mentors. To date 55 (18%) completed surveys have been received.

Forty-five (82%) respondents agreed that continuing mentor training should be a requirement for maintaining certification. Nine (16%) opposed the idea; one (2%) did not answer the question.

Forty (72%) liked the idea of a mentee portfolio, while 7 (13%) saw no value in it, 7 (13%) were unsure, and 1 (2%) had no response.

A majority 29 (53%), approved the revocation of mentor status. Several noted that the mentor should be given notice and an opportunity to improve their performance before losing mentor status. Slightly more than one-third, 20 (36%), disapproved, primarily because they thought the basis of the revocation would be subjective rather than objective. There were 5 (9%) respondents who were undecided and 1 (2%) who did not answer.

Capping mentor fees was not a popular proposal. Eighteen (33%) endorsed it, but 24 (44%) opposed it. Five (9%) were undecided and 8 (14%) declined to answer.

Even fewer favored a mentoring pro bono requirement, with only 11 (20%) answering affirmatively. Over half, 31 (56%), said no. Six (11%) were undecided and 7 (13%) declined to answer.

To the question, "How often have you suggested that a mentee do more than 5 mediations?", only 23 quantified their answer. Fourteen (25%) said never and 9 (16%) said 1-3 times. Nineteen (35%) did not address the question. The rest covered a range: rarely, a few, often and frequently were each cited once. Several was cited twice. Always was also cited twice and four respondents said almost always.

Restorative Justice Association of Virginia Hosts Conference



Approximately 100 participants attended the Second Annual Restorative Justice Association of Virginia Conference, "Practical Uses for Restorative Justice Conferencing," on December 5 in Charlottesville. Restorative justice encompasses processes that address victims' harms and needs, hold offenders accountable to put right those harms and involve victims, offenders and communities in the process. Dr. Howard Zehr, an internationally known practitioner, researcher, and author of [*Changing Lenses: A New Focus for Crime and Justice*](#), was the keynote speaker. Dr. Zehr's address provided the context for the conference, discussing the principles of restorative justice, current applications of restora-

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tive justice, and its future prospects. He identified the five needs of victims (safety, answers, an opportunity to tell their story, empowerment, and vindication) as well as the need for practitioners to tell both “butterfly and bullfrog” (restorative justice success and failure) stories. He emphasized that the offender must be held accountable for the crime and noted that restorative justice conferencing may be useful in cases with issues of domestic violence, power imbalances, and patterned behavior.

The conference workshops blended both theory and practice so that participants who were not actively facilitating restorative justice conferences came away with a sense of how restorative justice would work in their setting or complement their skills as mediators. Attendees included mediators, criminal justice personnel (juvenile probation officers, school resource officers, police officers, court intake), and school personnel. Participants had an opportunity to network with the members of the Restorative Justice Association of Virginia (RJAV) board as well as those involved in restorative justice research.

During the luncheon, Karol (last name withheld), the victim of a juvenile crime, shared her story involving grand theft auto and her need to meet with the offenders to resolve her feelings of victimization and violation. Karol’s sense of humor and perspective as well as a desire to participate in restorative justice conferencing enabled her to cope with the crime and its aftermath. Her support for restorative justice was a direct outgrowth of her positive and negative experiences of the justice system.

The first “Howard Zehr Restorative Justice Award” in recognition of outstanding contributions to restorative justice in Virginia was presented to Professor Zehr also during the luncheon.

The day-long conference provided an opportunity for practitioners to enhance their skills and for those new to restorative justice to explore its application in a variety of settings and programs. The “RJ Conference Preparation Skills” workshop provided attendees with in-depth understanding of the necessity for extensive preparation prior to conferencing with the victim and offender. Lawrie Parker, the workshop presenter, posed an essential question to participants, “What do you do when the offender denies responsibility?” Adequate preparation time enables the facilitator to determine the appropriateness of conferencing. Offenders’ thinking errors and victim needs were also examined. Attendees had an opportunity to role play both victim and offender.

Presenters shared current research on juvenile and adult sex offenders and the implementation of a restorative justice program for juvenile sex offenders in Loudoun County during the session “Possibilities & Concerns in Applying Restorative Justice Conferencing in Juvenile & Adult Sexual Offense Cases.” Key components identified as essential for a restorative justice sex offense program were accountability, community, competency, and balance. Other sessions included “Victim Impact Classes for Juvenile Offenders,”

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Coalition of Community Mediation Centers



Community Mediation Center-Hrsnbg.

165 S. Main Street, Suite A
Harrisonburg, VA 22801
540-434-0059

Suzanne Daughety, Executive Director

Community Mediation Center of Danville and Pittsylvania County

490 Piney Forest Road
Danville, VA 24540
434-797-3981

Bob Phillips, Executive Director

Conflict Resolution Center

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

Christine Poulson, Executive Director

The Dispute Resolution Center

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

Nancy Chenault—Mediation Coordinator

Community Mediation Center-SEVA

586 Virginian Drive
Norfolk, VA 23505
757-480-2777

Robert Glover, Executive Director

Community Mediation Ctr-Charlottesville

1025 Park Street
Charlottesville, VA 22902
434-977-2926

Camille Cooper, Executive Director

Northern Virginia Mediation Service

4260 Chain Bridge Road, Suite A-2
Fairfax, VA 22030
703-993-3656

David Michael, Executive Director

Peaceful Alternatives

Community Mediation Services

P.O. Box 1169
Amherst, VA 244521
434-929-8227

Carolyn Pritchard, Executive Director

Piedmont Dispute Resolution Center

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

Lawrie Parker, Executive Director

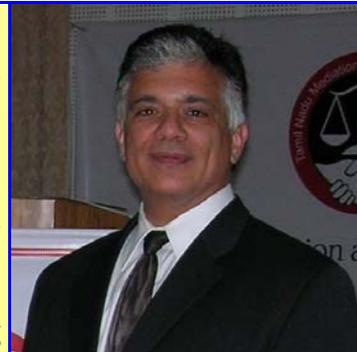
The Rappahannock Mediation Center

601 Caroline Street, Suite 310
Fredericksburg, VA 22404
540-372-7740

Ron McLean, Executive Director

Mediation Center Appoints New Executive Director

Congratulations to the Northern Virginia Mediation Service in Fairfax on its appointment of David E. Michael to serve as Executive Director. David most recently served as founder and principal consultant with Consensusworks, promoting the use of collaborative processes to foster effective organizations, designing mediation programs and alternative



dispute resolution (ADR) systems, training and mentoring mediators, and delivering customized learning programs in conflict management skills. David has provided technical assistance in judicial reform, rule of law, and governance initiatives abroad and has worked with judges, lawyers, journalists, and other public and private community leaders in the United States as well as in Europe, Asia, Africa, and South America.

Mr. Michael previously served as the director of the Multi-Door Dispute Resolution Division of the Superior Court of the District of Columbia, an internationally recognized model for multi-door courthouse ADR, delivering effective ADR in over 7,000 cases annually. Multi-Door provides ADR in civil, landlord-tenant, small claims, tax, probate, workplace, family, community, and child protection cases.

David formerly served as President of the Virginia Mediation Network and was a partner with the consulting group *Conflict ReSolutions*, of Fairfax, Virginia. He has served as a mediator with community mediation centers and court-based programs, and practiced law with the federal government and in a mid-sized Washington, DC firm. David received his *Bachelor of Arts* degree in Political Science from the University of Connecticut, and a *Juris Doctor* degree from New York Law School.

David is a member of the Association for Conflict Resolution, the American Bar Association Section of Dispute Resolution, the National Association for Court Management, and the Virginia Mediation Network. He is a frequent speaker at national conferences about ADR design and assuring program integrity. We extend a welcome aboard to David at NVMS.

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personal and professional development.

In fact, the questions posed for our self-evaluation are so germane to conflict resolution, in general, and to negotiation, specifically, that they could only have been asked by someone with his concentrated and rich background as a former attorney and long-time arbitrator, mediator, facilitator, and trainer. By urging us to think through our reactions in selected conflict-related situations (How we feel? What we think? How we act?), the author has given us the opportunity to discover attitudes and biases that may or may not be working in our or our clients' best interests.

Lickson has produced a book which is larger than the sum of its parts. Five short sections plus appendices, references, and resources deliver everything they promise ---and more.

The learning objectives are clearly delineated: (1) to explore negotiation opportunities and approaches (2) to understand the steps necessary for negotiations to work effectively (3) to learn negotiation strategies and tactics for success (4) to understand negotiation skills using the case study method and (5) to find resources for further information on and support for negotiation.

Perhaps the book's sub-title, *Win-Win Strategies for Everyone*, foretells the wide readership this book deserves. Whether we are simply trying to negotiate our way through day-to-day life or whether we are honing our ability to think outside the box in order to help our clients find workable solutions to their conflicts, this book has something to offer everyone.

Since Dr. Lickson reviews the basic principles and perspectives which guide interest-based negotiations, attorneys who have made paradigm shifts from adversarial to collaborative, problem-solving approaches, could gain new insights from sections such as "Negotiation: Attitudes and Approaches" and "Negotiation Styles."

Savvy professionals guiding their clients through the negotiation stage could benefit from keeping this book tucked away in their briefcase. When discussions seem to be leading nowhere, a quick break to review "Strategies and Tactics" or "Ten Critical Mistakes to Avoid" just might suggest new alternatives to steer the negotiations in a positive direction.

Regardless of our experience level, we know that what happens during the negotiation stage is crucial to the outcome between parties-in-conflict. In some cases, it will even affect their future relationship. As conflict resolution professionals, it is our responsibility to help the parties we work with develop a satisfactory work product ~ their solution to their conflict. To this end, *Negotiation Basics* can help us serve as a teaching resource to our clients.

Educators who appreciate well-developed instructional materials will find the book's objectives, outlines, summaries, case studies and other learning tools a true time-saver. [It

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Mediation in the Portsmouth Circuit Court: An Efficient, User-Friendly System Poised for Expansion

In April 2003, after several months' planning, the Portsmouth Circuit Court implemented its mediation program. This program was unique in several respects. First, in an effort to gain the support of both the litigant consumers and their attorneys, the program was initially limited in scope to 1) appeals and removals from the Portsmouth General District Court, 2) *pendente lite* motions, and 3) cases brought on the Court's or the parties' joint motion. Secondly, all mediation sessions are held in the courthouse, which allows for greater continuity and respect for the mediation process. Thirdly, mediation sessions are scheduled in two-hour increments (parties may request additional sessions or time that day if desired). Since the program's inception, over 160 civil matters and 110 *pendente lite* motions have been mediated, of which over 60% have been completely resolved. See chart A on page 13. Many other matters have benefited from mediation by narrowing the issues in dispute significantly and/or assisting the Court and counsel in determining how best to proceed.

How It Works

Civil appeals and removals from the General District Court are heard by appointment on Wednesdays at 9:00 a.m., 11:00 a.m., 1:00 p.m., and 3:00 p.m. Appointments are scheduled by the Circuit Court Clerk's office when a case is removed or an appeal is noted by the issuance of a Referral Order signed by Judge Dean Sword. A certified mediator is assigned by Kristi Rind, MAS' mediation coordinator, from the roster of certified me-

diators, and parties (and counsel) in these matters attend an orientation session that consists of a brief introduction about the mediation process followed by the option to continue to mediate or to object pursuant to statute. If the parties elect to mediate, as most do, then mediation begins immediately. See sample letters, Order, and Procedures B on pages 14-16. If an agreement is reached, an Order is filed with the court, and the case is dismissed from the docket. If the parties do not reach an agreement (or if the case is only partially resolved), the matter is placed back on the docket to be heard by a judge.

Pendente lite cases are heard on Fridays at 10:00 a.m. These cases follow the same process as the civil appeals with approximately a 75% success rate. See sample letters, Order, and Procedures C on pages 17-19. From top to bottom, the program reflects a commitment to simplicity, continuity, the parties' and their counsel's satisfaction, and minimizing Court involvement and paperwork.

What They're Saying about It

In a letter to the Supreme Court of Virginia regarding the program, Judge Sword stated:

"I wish to take this opportunity to express our satisfaction with the various mediation services currently provided to this court through your department.

Since we began offering

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mediation in April of this year, the court has found that we are able to resolve a large number of cases appealed from the General District Court quickly and to the satisfaction of the litigants, many of whom appear *pro se*.

Our mediation program has also taken the heavy burden of pendente lite motions in divorce cases away from the judges in a large number of cases.

The judges of this circuit have become believers in the mediation process and in the use of this process for the future.”

Comments from parties to the process are likewise salutary, ranging from “this was the first time I felt like anyone took an interest in my claim” to that of an attorney who observed that “this is the civilized way to practice law.” Mediators, too, have enjoyed the Portsmouth program’s format. Jim Allen, a veteran of Virginia Beach and Portsmouth’s programs, observed that “it is a real incentive to the mediator to have such a high degree of court support and predictability in scheduling. I really enjoy mediating in the Portsmouth Circuit Court.”

Expansion

Beginning January 1, 2006, the Program will be expanded and augmented in two respects: First, an additional day of mediations per week will be included to handle the volume of regular Circuit Court matters being referred to mediation. More complex cases, both civil and family, will be scheduled on Mondays at 10:00 a.m. and 2:00 p.m. Such cases may involve multiple parties, counsel, or more complex issues that require additional time and re-

sources to mediate appropriately and will be selected by the Program Coordinator in conjunction with the Chief Judge.

Second, as to all contested divorce cases, the Court has determined that parties who opt out of mediation should be referred to a Settlement Conference with a retired Judge pursuant to Rule 1:19 of the Rules of the Supreme Court of Virginia. *See letter D on page 20.* Thus, all litigants in family cases will be given the choice and opportunity to work toward a resolution of their dispute in either forum.

Given the success of this program thus far, a strong argument could be made that all cases should be handled this way, reflective of the trend nationwide.

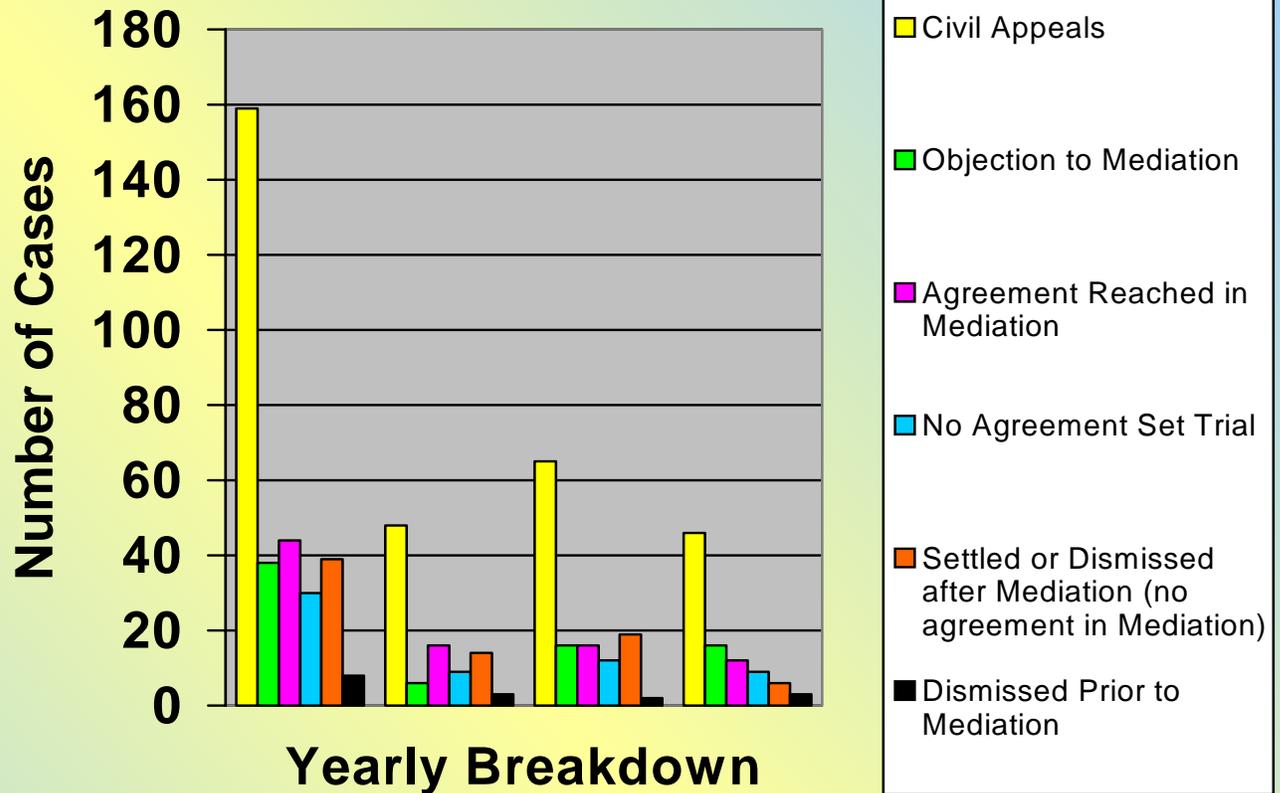


*Submitted by
Paul L. Warren
President, Mediation &
Arbitration Services
Program Coordinator*

*Mr. Warren has served as a mediator and/or arbitrator in hundreds of cases since the early 1990s and has handled both private litigation and court-appointed matters. He was certified as a mediator by the Superior Court of the District of Columbia in 1991, and is currently certified in both civil and family mediation at the General District Court and Circuit Court levels in Virginia. In addition, he has been given Mentor Status by the Supreme Court of Virginia. Since 1998, Mr. Warren has served as an adjunct faculty member at Old Dominion University, where he teaches argumentative and professional writing and currently serves as Director of ODU’s Certificate Program in Conflict Management. In addition, Mr. Warren has authored *The Commercial Mediator’s Handbook* along with numerous related articles on ADR.*

Chart A

Mediation Report 4-1-03 to 9-23-05



* = partial year (4-1-03 to 12-31-03)

** = partial year (1-1-05 to 9-23-05)

Year	Total Appeals	Objection to Mediation	Agreement Reached in Mediation	No Agreement Trial Date Set	Dismissed or Settled after Mediation (no agreement in mediation)	Dismissed Prior to Mediation
2003*	48	6	16	9	14	3
2004	65	16	16	12	19	2
2005**	46	16	12	9	6	3

B—Civil DocumentsCivil Appeal – initial letter to counsel

DATE

ATTORNEY'S NAME AND ADDRESS

RE: STYLE OF CASE AND NUMBER

Dear Counsel:

Enclosed please find an order entered by the court referring the above captioned matter for mediation.

To help expedite the process we request that you contact Mediation and Arbitration Services at (757) 274-0046 immediately.

The court encourages the use of this service and we hope that you will advise your client to participate in this process.

Very truly yours,

JUDGE'S NAME

Civil Appeal Matter – initial letter to unrepresented party

DATE

LITIGANTS' NAMES
AND ADDRESSES**RE: STYLE OF CASE AND NUMBER**

Dear Litigants:

Enclosed please find an order entered by the court referring the above captioned matter for mediation.

If you do not yet have an attorney and plan to employ one, you should be sure to provide a copy of this order to counsel at your initial conference.

If you plan to proceed without counsel you should appear at court as noticed in the attached order, prepared to proceed.

Prior to the mediation date, you may be contacted by the mediator, however should you have a question you should contact Mediation and Arbitration Services at (757) 274-0046.

The court strongly believes that mediation offers an opportunity to resolve your problem quickly and without having a court-imposed solution that may not be to your liking.

Very truly yours,

JUDGE'S NAME

(Continued from Page 8)



“Introduction to Restorative Justice,” and “Restorative Justice as a Tool for Community Empowerment.”

Vickie Shoap, President of the RJAV and Restorative Justice Coordinator in Prince William County, indicated that based on the evaluations, 99% of the participants were satisfied with the conference. Plans are already underway for the next conference. For more information on Restorative Justice, please contact Vickie Shoap at vshoap@pwcgov.org or visit the RJAV web site at www.rjav.org.

B—Civil DocumentsCivil Appeal – Order for Referral for Mediation

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH

NAME

Plaintiff

vs.

Law No. _____

NAME,

Defendant.

ORDER

The court has determined that this matter currently pending before the court is appropriate for referral to a dispute resolution proceeding pursuant to Virginia Code Section § 8.01-576.5. It is hereby ORDERED that:

- (1) Pursuant to Virginia Code Section § 8.01-576.5, this matter is referred to a dispute resolution orientation session, for which there shall be no cost to the parties. The orientation session is to be arranged by Mediation & Arbitration Services of Virginia, LLC, 500 East Main Street, Suite 830, Norfolk, Virginia 23510, Telephone (757) 274-0046, who will appoint a Certified Mediator.
- (2) The said orientation shall be conducted at Portsmouth Circuit Court, 601 Crawford Street, Portsmouth, Virginia, in the Mediation Room located on the second floor of the courthouse.
- (3) The date and time for the orientation session shall be _____ at _____ .m. with the mediation session immediately following.
- (4) Such further proceedings following this referral shall be determined by the court as to date and time and pending receipt of the mediators report further proceedings are stayed.

The court shall be informed, in writing, if the dispute is resolved prior to the above date or if a continuance is required to pursue a further dispute resolution proceeding. Otherwise, the parties shall appear at the date and time set out herein.

The names and addresses of the respective parties are:

(Plaintiff)

NAME

ADDRESS

NOT REPRESENTED BY COUNSEL (OR REPRESENTED BY COUNSEL)

(Defendant)

NAME

ADDRESS

NOT REPRESENTED BY COUNSEL (OR REPRESENTED BY COUNSEL)

PLEASE NOTE THAT YOUR FAILURE TO APPEAR FOR THE MEDIATION HEARING, NOT OBJECTING TO THE MEDIATION PROCESS OR REQUESTING A CONTINUANCE OF THE MEDIATION HEARING MAY RESULT IN A DEFAULT JUDGEMENT BEING ENTERED AGAINST YOU.

It is so ORDERED.

ENTER: DATE

Judge

PROCEDURES FOR REFERRAL TO A DISPUTE RESOLUTION PROCEEDING

1. If any party objects to this Order of Referral, a written statement signed by such party must be filed with this court within fourteen (14) days after the entry of this order. The statement must indicate that the dispute resolution process has been explained to the party and that he or she objects to the court's Order of Referral. **Copy of said objection must also be faxed to Judge Sword's Secretary, at (757) 399-1555 so that proper notice of objection can be received.**
2. If no objection is filed to the order within fourteen (14) days, and the parties do not accept referral to a particular neutral or program offered by the Court, the parties and their attorneys are directed to select a neutral to conduct the orientation session.
3. Referral to the dispute resolution orientation session has no impact on the docketing procedures followed by this court and this case either has been or will be set for trial in accordance with normal docketing procedures.
4. Attorneys for any party may be present at the dispute resolution orientation session.
5. After the orientation session, further participation in a dispute resolution proceeding shall be by consent of all parties. The decision to proceed shall be made at the close of the orientation session or no more than ten (10) days after the orientation session.
6. If the parties chose to proceed with mediation or some other alternative dispute resolution mechanism, they may proceed with a neutral who conducted the orientation session or select another neutral. A Searchable Directory of Certified Mediators is available for this purpose on the court's website at www.courts.state.va.us by clicking under "People" on "Mediators Directory". The parties and their attorneys have seven days to agree upon a neutral or dispute resolution program on the list. If they cannot agree, they may request that the Court select a neutral or dispute resolution program from the list. The Court shall make such referral on the basis of a fair and equitable rotation, in accordance with the statute.
7. Any payment for the services of a mediator or other neutral following the no-cost orientation session shall be made by the parties. All costs and fees associated with the services shall be disclosed to the parties prior to the services being provided.
7. Upon request of a party, the Court shall make available a list of neutrals or dispute resolution programs that will provide services at no cost to the parties pursuant to a contract with the Office of the Executive Secretary.
9. Regardless of the method of resolution selected by the parties, the case will proceed along the same time line as if the referral to the dispute resolution proceeding had never occurred. Thus, if the parties elect to proceed with mediation, they may be required to request that the Court grant a continuance to allow them to complete the mediation process.

C—Pendente lite documentsPendente Lite: Initial letter to Attorney

DATE

ATTORNEY NAME AND ADDRESS

Re: CASE NAME AND NUMBER

Dear Counselor:

Enclosed please find an order entered by the court referring the above captioned pendente lite matter for mediation.

To help expedite the process we request that you contact Mediation and Arbitration Services at (757) 274-0046 immediately.

If you oppose mediation, you must do so in writing and also notify the Docket Control Clerk of the Portsmouth Circuit Court twenty-four (24) hours prior to the scheduled date.

The court encourages the use of this service and we hope that you will advise your client to participate in this process.

Very truly yours,

JUDGE'S NAME

Enclosures

Pendente Lite: Initial Letter to Unrepresented Party

DATE

NAME AND ADDRESS

Re: CASE NAME AND NUMBER

Dear _____:

Enclosed please find an order entered by the court referring your pendente lite matter for mediation.

If you do not yet have an attorney and plan to employ one, you should be sure to provide a copy of this order to counsel at your initial conference.

If you plan to proceed without counsel you should appear at court as noticed in the attached order, prepared to proceed.

Prior to the mediation date, you may be contacted by the mediator, however should you have a question you should contact Mediation and Arbitration Services at (757) 274-0046. If you oppose mediation you must do so in writing and notify the Docket Control Clerk of the Portsmouth Circuit Court twenty-four (24) hours prior to the scheduled date.

The court strongly believes that mediation offers an opportunity to resolve your problem quickly and without having a court imposed solution that may not be to your liking.

Very truly yours,

JUDGE'S NAME

(Continued from Page 10)

is relevant to note that the publisher has created a 25-item test that will measure the student's comprehension of the material contained in the book. If interested, see publisher information.]

Finally, who among us, newcomers or seasoned, couldn't benefit from some opportunities to check in with ourselves from time to time? As we accumulate new experiences...memories...theories of what works and what doesn't work in our professional and personal lives, we have the chance to be enriched by thought-provoking questions, such

(Continued on Page 20)

C—Pendente lite documents*Pendente Lite: Order of Referral for Mediation*

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH

NAME

Plaintiff

vs.

CHANCERY NO. _____

NAME

Defendant

O R D E R

The court has determined that this matter motion currently pending before the court is appropriate for referral to a dispute resolution proceeding pursuant to Virginia Code Section § 8.01-576.5. It is hereby ORDERED that:

- (1) Pursuant to Virginia Code Section § 8.01-576.5, this matter is referred to a dispute resolution orientation session, for which there shall be no cost to the parties. The orientation session is to be arranged by Mediation & Arbitration Services of Virginia, LLC, 500 East Main Street, Suite 830, Norfolk, Virginia 23510, Telephone (757) 274-0046, who will appoint a Certified Mediator.
- (2) The said orientation shall be conducted at Portsmouth Circuit Court, 601 Crawford Street, Portsmouth, Virginia, at such room as posted at the courthouse.
- (3) The date and time shall be _____ at _____m.
- (4) Such further proceedings following this referral shall be determined by the court as to date and time and pending receipt of the mediators report further proceedings are stayed.

The court shall be informed, in writing, if the dispute is resolved prior to the above date or if a continuance is required to pursue a further dispute resolution proceeding. Otherwise, the parties shall appear at the date and time set out herein.

The names and addresses of the respective parties are:

(Plaintiff) NAME

Represented by Counsel (OR NOT REPRESENTED BY COUNSEL)*ATTORNEY NAME AND ADDRESS OF JUST PARTY NAME IF NO ATTORNEY*

(Defendant) NAME

Represented by Counsel (OR NOT REPRESENTED BY COUNSEL)*ATTORNEY NAME AND ADDRESS OF JUST PARTY NAME IF NO**ATTORNEY*

It is so ORDERED.

ENTER: DATE

Dean W. Sword, Jr., Judge

PROCEDURES FOR REFERRAL TO A DISPUTE RESOLUTION PROCEEDING

1. If any party objects to this Order of Referral, a written statement signed by such party must be filed with this court within twenty-four hours prior to the date scheduled for the orientation session. A copy of said objection must also be provided to the Docket Control Clerk, who can be reached at (757) 393-5373. The statement must indicate that the dispute resolution process has been explained to the party and that he or she objects to the court's Order of Referral.
2. If no objection is filed to the order within the time stated in paragraph 1, and the parties do not accept referral to a particular neutral or program offered by the Court, the parties and their attorneys are directed to select a neutral to conduct the orientation session.
3. Referral to the dispute resolution orientation session has no impact on the docketing procedures followed by this court and this case either has been or will be set for trial in accordance with normal docketing procedures.
4. Attorneys for any party may be present at the dispute orientation session.
5. After the orientation session, further participation in a dispute resolution proceeding shall be by consent of all parties. The decision to proceed shall be made at the close of the orientation session or no more than ten (10) days after the orientation session.
6. If the parties chose to proceed with mediation or some other alternative dispute resolution mechanism, they may proceed with a neutral who conducted the orientation session or select another neutral. A Searchable Directory of Certified Mediators is available for this purpose on the court's website at www.courts.state.va.us by clicking under "People" on "Mediators Directory". The parties and their attorneys have seven days to agree upon a neutral or dispute resolution program on the list. If they cannot agree, they may request that the Court select a neutral or dispute resolution program from the list. The Court shall make such referral on the basis of a fair and equitable rotation, in accordance with the statute.
7. Any payment for the services of a mediator or other neutral following the no-cost orientation session shall be made by the parties. All costs and fees associated with the services shall be disclosed to the parties prior to the services being provided.
7. Upon request of a party, the Court shall make available a list of neutrals or dispute resolution programs that will provide services at no cost to the parties pursuant to a contract with the Office of the Executive Secretary.
9. Regardless of the method of resolution selected by the parties, the case will proceed along the same time line as if the referral to the dispute resolution proceeding had never occurred. Thus, if the parties elect to proceed with mediation, they may be required to request that the Court grant a continuance to allow them to complete the mediation process.

D—Settlement Conference Letter

DATE

ATTORNEY'S NAMES AND ADDRESSES

In re: MATTER AND CASE NUMBER

Counsel:

The Portsmouth Circuit Court is now assigning contested divorce cases to individual Judges. I am writing to advise you that the above-styled matter has been assigned to me. The Court has determined that this matter is appropriate for referral to a dispute resolution proceeding, pursuant to Virginia Code Section 8.01.576.5. If any party objects to this Order of Referral, a written statement, signed by such party, must be filed with this court (with a copy to my Chambers) within fourteen (14) days after the entry of this Order, and a copy must be forwarded to Mediation and Arbitration Services of Virginia, LLC, 500 East Main Street, Suite 830, Norfolk, Virginia 23510. If either party objects to mediation, then this matter will be referred to a Settlement Conference with a retired Judge, pursuant to Rule 1:19 of the Rules of the Virginia Supreme Court. Should you have any questions, please feel free to call my assistant, Mary Bishop, at 393-8635.

With best regards, I am

Very truly yours,

JUDGE'S NAME
NAME OF COURT

(Continued from Page 17)

as “Are You Missing Opportunities for Negotiation?”, “What is Your Attitude Toward Negotiation?” and “My Personal Action Plan.”

By writing *Negotiation Basics: Win-Win Strategies for Everyone*, Dr. Lickson has given readers the tools they will need to negotiate their way through day-to-day life and to guide their clients through the all-important negotiation stage of their dispute. The author says it best, “By following the simple steps in this book and learning the basics of interest-based (win-win) bargaining described here, you can get what you need without giving in or risking harm to delicate relationships.”

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

