

Resolutions

a quarterly update on dispute resolution

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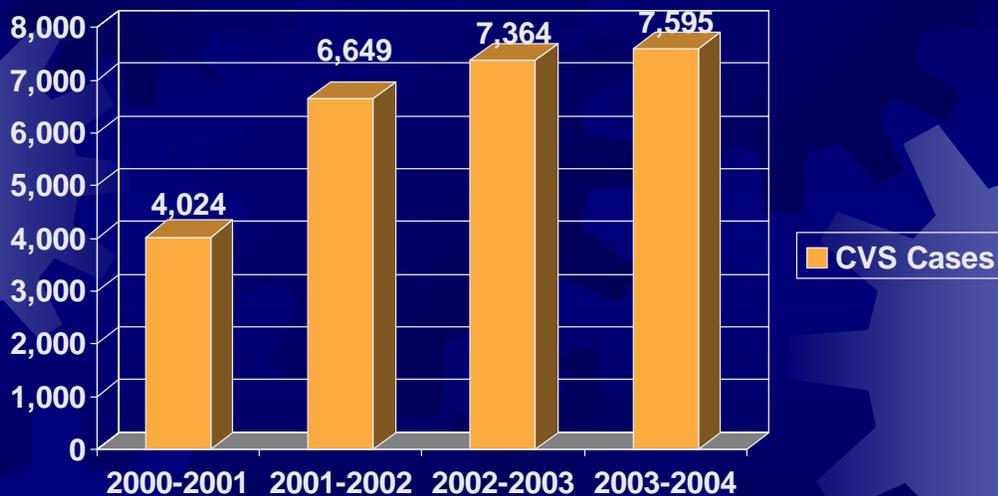
Department of Dispute Resolution Services

October 2004

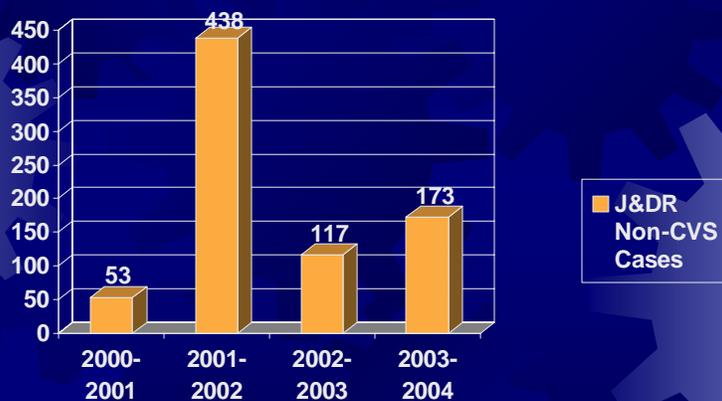
Summary of Court-Referred Mediations From Fiscal Year 2000-2001 through Fiscal Year 2003-2004

The following graphs depict the growth of court-referred mediation in Virginia over the past four fiscal years, both in terms of overall funding and in terms of number of cases at each level of court. This includes both mediations done under contract with the Office of the Executive Secretary and custody, visitation and support mediations.

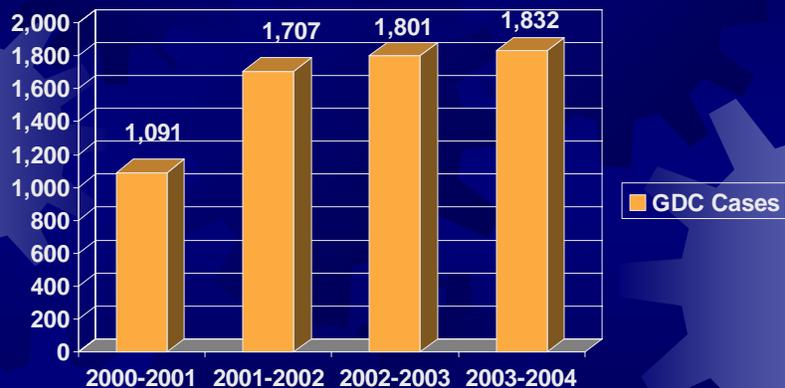
Custody, Visitation & Support Mediations Conducted



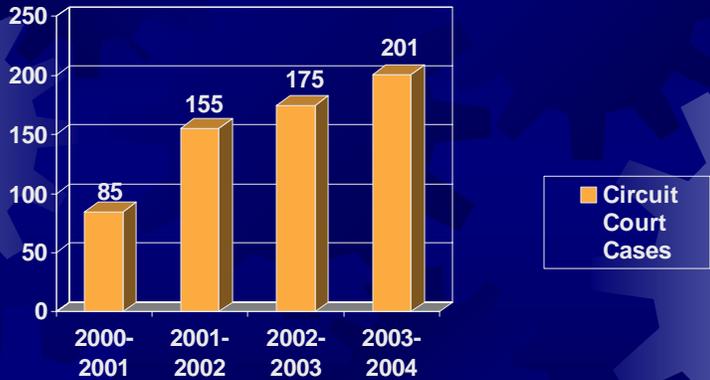
J&DR Non-CVS Mediations



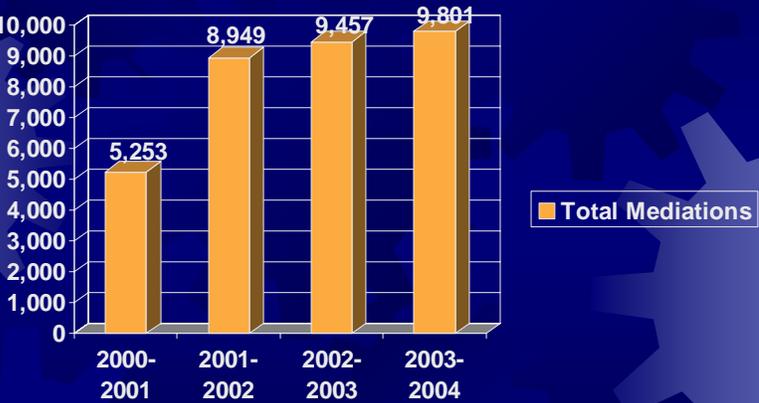
General District Court Mediations Under Contracts



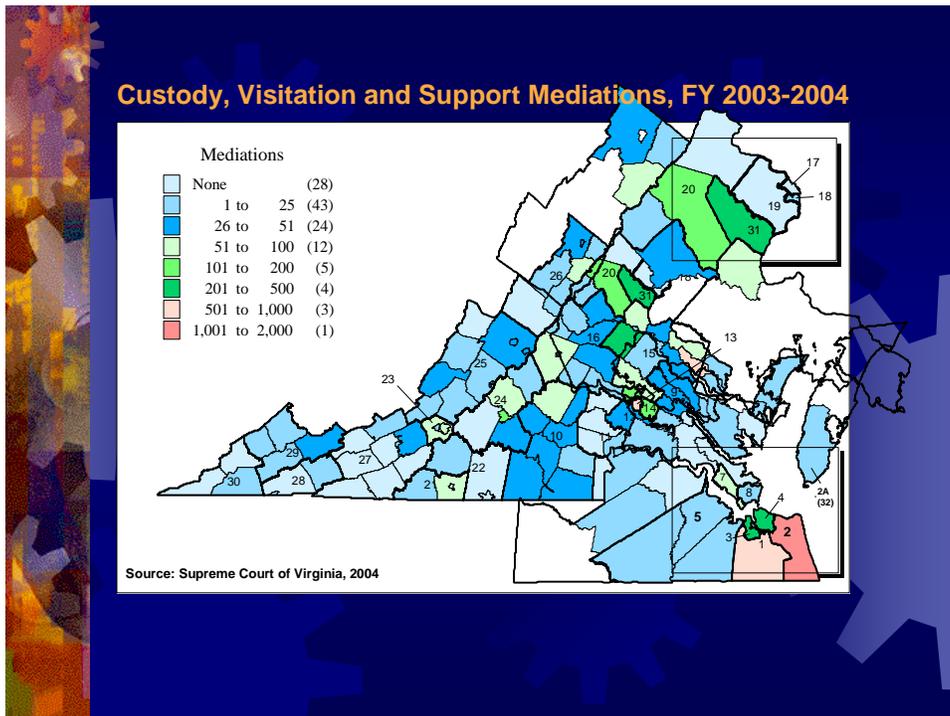
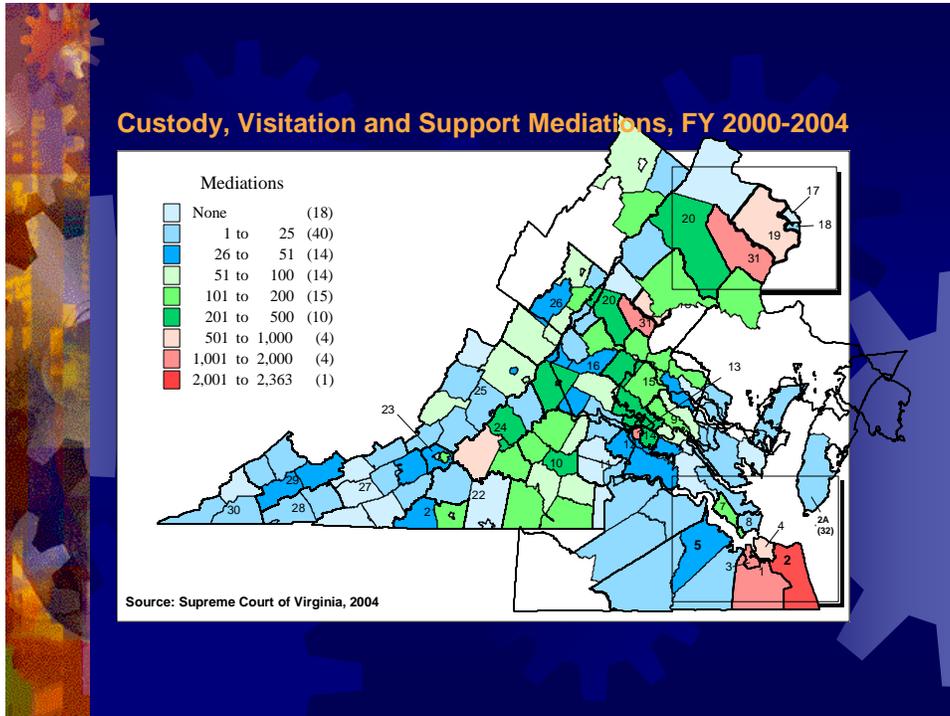
Circuit Court Mediations



Total Mediations Funded



The following map depicts the numbers of custody, visitation and support (CVS) cases conducted in each judicial circuit between 2000 and 2004. The second map shows the numbers of CVS cases by judicial circuit for just the fiscal year 2003-04.



Restorative Justice Association of Virginia Sponsors Symposium in December 2004

The Restorative Justice Association of Virginia is sponsoring a [Restorative Justice Symposium](#) on December 6-7, 2004 at the Sheraton Richmond West Hotel. This Conference is made possible through funding from a Juvenile Accountability Block Grant from the Virginia Department of Criminal Justice Services. The Conference is free of cost and a complimentary continental breakfast and lunch will be provided.

The first day of the Conference will provide an overview of restorative justice principles and programs. The plenary speaker, Dennis Maloney, is former Director of Deschutes County Department of Community Justice of Oregon. His book on probation is the most widely distributed journal in the history of the National Council of Juvenile and Family Court Judges. Nearly 30 states have revamped their entire juvenile justice system based on his writings on the Balanced Approach to Juvenile Justice. The Conference will include a juvenile accountability conference demonstration. Mary Achilles, Victim Advocate for the State of Pennsylvania, will be the luncheon speaker. The afternoon session will include workshops you may choose from including the role of juvenile justice professionals in restorative justice and research and evaluation of current restorative justice programs in Virginia. Day two of the Conference is for those individuals seeking training to become a restorative justice facilitator. Click on the link above for additional details and a registration form.

California Supreme Court Ruling Protects Confidentiality

A recent article in the online *ABA Journal & Report* discusses a California Supreme Court decision that a broad array of evidence used in mediation proceedings can be kept confidential. Mediators throughout the country will be interested to take a close look at the holding. To read the article and find a link to the opinion, click on the following link.

<http://www.abanet.org/journal/ereport/jy23mediate.html>

California's Courts and Alternative Dispute Resolution

California's report on the progress of its Early Mediation Pilot Program confirms what mediators have known for years: mediation saves the courts time and money.

Established under a statutory mandate allowing early referrals to mediation, the Early Mediation Pilot Program consists of three mandatory programs in Fresno, Los Angeles, and San Diego Superior Courts as well as two voluntary programs in Contra Costa and Sonoma Superior Courts. After a required 30-month study of these programs, the Judicial Council of California observed the impact of the programs on the following: trial rate, the time to disposition, litigants' satisfaction with the dispute resolution process, the litigant's costs, and the court's workload.

These impacts are described below. In short, the impact has been significant and present across all programs.

Mediation referrals and settlements. These aspects varied depending on the voluntary or mandatory nature of the program, but expectedly so. Mandatory programs generated high referral rates with lower settlement rates than that of voluntary programs, which generally had lower referral rates. Still, similarities between the programs suggest that this disparity can be fixed with incentives and a more customer-sensitive referral system.

Trial rates. The pilot programs in San Diego and Los Angeles reduced the trial rate significantly by 24 to 30 percent. This saved San Diego and Los Angeles 521 (\$1.6 million) and 670 (\$2 million) trial days per year, respectively.

Disposition time. All the programs shortened the disposition time, usually around the occurrence of the mediation process. Still, more careful case assessment proved crucial as unsettled mediation cases actually increased disposition times.

Litigant satisfaction. Attorney satisfaction of the courts' services improved in all the pilot programs by 10-15 percent. This improvement remained even when cases did not reach an agreement in mediation.

Litigant costs. Despite different patterns across programs, overall, attorneys estimated that the programs significantly saved litigants \$49,409,385 and 250,229 attorney hours.

Court workload. Each program saved the courts time and energy, including reductions in motions, pre-trial events, and judge days. Further evidence suggests fewer compliance problems as well as fewer new proceedings after disposition.

Voluntary v. Mandatory programs. Comparing the mandatory pilot program of Los Angeles to its voluntary mediation programs, the Judicial Council found more court-related benefits under the mandatory program. These included lower trial rates, disposition time, and court workload. Still the explanation for these differences may be due to the referral rates and timing of case management conferences typically attributed to mandatory mediation programs.

While the study lacks input from the actual citizens being served by this program, it clearly demonstrates the substantial cost-effectiveness of these five mediation programs. Whether voluntary or mandatory, all five programs contributed to savings in the court system of time, energy, and money. Clearly, mediation has proved effective as a docket-saving tool, encouraging other states to follow in suit.

This full report can be accessed at www.courtinfo.ca.gov/reference/documents/empprept.pdf

Prepared by: Faith A. Alejandro, DRS Intern

Chesterfield Circuit Court Mediation Program

Effective December 1, 2003, all civil litigants in Chesterfield Circuit Court, whether arriving by appeal from a District Court or initiating a case in the Circuit Court, are required to certify their interest in participating in mediation. All appeals from Juvenile Court on matters relating to custody, visitation and/or support and all divorce cases with contested custody, visitation, and/or child support are referred automatically by "Order of Referral" to a mediation orientation session. All other family and civil matters require the execution of a *Mediation Orientation Certification* by plaintiff's and defendant's counsel or by parties if pro se.

The *Mediation Certification Form* requires that Counsel certify to the court that they have discussed with their client the availability of mediation and also indicate the client's willingness to participate (or not) in mediation. A copy of the *Mediation Certification Form* is provided to counsel by the Court. Plaintiff's counsel is required to complete and submit the *Mediation Certification Form* within 14 days of the date of opposing party's responsive pleadings; defendant's counsel is required to complete and submit to the court the *Mediation Certification Form* within the same time period. Pro se parties will also be required to complete and return the mediation certification form to the court. If one party indicates a willingness to mediate, the court refers the case to a mediation orientation session. The Court may also on its own motion enter an *Order of Referral*.

Commonwealth Mediation Group (CMG) is the coordinator for this mediation program and conducts the mediation orientation session. During the orientation session, a neutral provides information regarding dispute resolution options, screens for factors that may make the case inappropriate for mediation, and assists the parties and counsel in determining if their case is suitable for mediation. Parties and counsel then determine whether to continue with the mediation process or not. Under statute, no charge may be made for the mediation orientation session.

Participation in the program is not mandatory; parties may "opt out" of the program by complying with the provisions of Va. Code Sec. 8.01-576.6, whereby a written objection is filed within fourteen days after the Order of Referral, stating that the mediation process has been explained to the party and the party objects to the referral.

During the orientation, it is explained to parties and to counsel that mediation services may be available at no cost through current funding that is available through the Supreme Court. Alternatively, parties may choose to pay for mediation services either with CMG or another mediation provider.

While the program was implemented in December 2003, referrals to mediation did not start to be received until late-February 2004. (This is understandable since the referral will be made 14 days after filing of responsive pleadings.) The referral process was slow to start which also allowed both CMG and the Court to address initial logistical issues such as transfer of case information in an effective manner. Jay Dixon, Court Administrator, processes the Mediation Certification Forms upon receipt by the Court and sends a copy of the Order of Referral to Counsel and CMG. Upon receipt of the Order of Referral, CMG attempts to make contact with

counsel, or parties if pro se. During the initial 5 months, this contract was a very time-consuming process since most attorneys and their staff had many questions about the process.

A substantial amount of time was also spent by CMG trying to coordinate the scheduling of the mediation orientation session. This process has now been refined to be more efficient. After receipt of the Order of Referral, CMG sends counsel a letter explaining the process and also a form requesting available dates. This form may be emailed, mailed or faxed back to CMG. We have found counsel to be very receptive and responsive to this change in procedure.

Initially, it appeared that there was some resistance to the program, possibly due to lack of full understanding of the requirements. During the last two months, we have seen an increase in acceptance and use of the mediation process. More attorneys automatically expect the case to be referred to mediation, some even call before the order of Referral has been issued. Many have expressed that they like the program and find it beneficial. Those that file an objection to the mediation process tend to do so routinely on all of their cases.

Scheduling the orientation sessions often takes a substantial amount of time and may not be held for several months depending upon availability of counsel/parties. We are, however, seeing an increase in the number of cases where counsel are scheduling the orientation earlier with the knowledge that the case may not be ready for mediation. During the orientation, counsel/parties have the opportunity to identify and agree upon the scope of discovery and set projected deadlines and date for mediation. We have also seen an increase in the number of attorneys who are willing to proceed with mediation either immediately following or soon after the orientation session.

Chesterfield Circuit Court

Cases referred	105
Objections filed	29
Cases settled prior to mediation date	19
Orientation to be scheduled	16
Orientation scheduled	13
Orientation completed (mediation pending)	8
Orientation completed (no mediation pending)	1
Cases mediated	19
Agreement reached	14
No Agreement	2
Ongoing	3
Of cases mediated:	7 were family 12 were civil

For more information on the Chesterfield Circuit Court mediation program, please contact Morna Ellis at 804-254-2664.

*Contributed by Morna Ellis, President
Commonwealth Mediation Group, Inc.
Richmond, Virginia*

Assisted Negotiation Valued In Special Education Matters

The Virginia State Special Education Mediation Services program exists to provide assistance to parents and school administrators in negotiating issues with regard to the provision of special education services to children. The caseload steadily increases each year and is recognized for many reasons to be highly effective in this specialized area of ADR.

Special education issues tend to be highly emotionally charged because the stakes are high when they directly affect a student's growth and development. There are complex issues, such as those of personal identity, value systems, life-changing outcomes, resources available, legal requirements, professional opinion, parental preferences, and determination of eligibility. Mediation is most effective when it is sought and employed as early as possible.

The chief task at this point for the State Special Education Mediation Service lies in expanding public awareness of the program. Arthur K. Stewart, coordinator of the program, wrote an article published in the VCASE Newsletter online, entitled *Mediators Negotiate and Negotiators Mediate*. You can read the article in full by clicking on the link below:

<http://www.directionservice.org/pdf/stewart1.pdf>

Virginia Solutions: Common Ground for the Commonwealth

A new initiative for community collaboration and consensus building, known as Virginia Solutions, is being launched by the University of Virginia's Institute for Environmental Negotiation (IEN) with the support of the Virginia Association for Community Conflict Resolution (VACCR) as well as others representing the private mediation community, public agencies, the business sector, and nonprofit organizations. Virginia Solutions aims to provide an easy, cost-effective mechanism for communities to initiate a collaborative approach to any given community issue.

Now approaching its 25-year celebration, IEN observed that the need for collaborative problem solving in Virginia's communities is increasing. Challenges facing our communities are increasing in both number and complexity. Too often, efforts to address these problems fail because individuals and agencies are working in isolation from one another. Public officials and civic-minded community members find few forums that bring people together to seek common and higher ground; indeed, the formal structure of public hearings and judicial and administrative appeals often exacerbates rather than resolves conflict. Utilizing a collaborative approach to

resolve local issues offers the opportunity to garner full community support, as well as timely, integrated, cost-effective implementation of solutions.

Over the past five years, IEN and VACCR have worked together to increase capacity throughout the state for collaborative approaches to address community issues. This effort has been known as *Community Solutions* and has involved training, outreach, and education to communities served by community mediation centers. Now, building on this strong foundation, *Virginia Solutions* will offer an easy, consistent and recognized framework for collaborative approaches to be initiated in any Virginia community, anywhere in the Commonwealth. The Virginia Solutions framework draws on the experience of similar efforts by other states to bring state, local and private resources together more effectively to foster *integrated solutions* to community challenges. In addition, Virginia Solutions also draws on the learning and knowledge from members of a new national program, the Community Solutions Partnership, which aims to create mechanisms for ongoing engagement of government, nonprofits, businesses and communities in solving community issues.

A key feature of the Virginia Solutions process that distinguishes it from the standard multi-party mediation process is that a respected convener with high visibility will be appointed as the process is initiated. This convener will work with local and state government, citizens, and facilitators to help bring together a multi-party Solutions Team. The Solutions Team will create an integrated action plan and sign a Declaration of Cooperation in which the parties identify their respective responsibilities for implementation of the action plan.

Virginia Solutions is still in its early stages of development. IEN anticipates receiving a start-up grant of \$5,000 from the Policy Consensus Initiative, a national capacity building organization out of Portland, Oregon, and is pursuing grant support for launching Virginia Solutions with two pilot projects, one in Tidewater and the other in Fauquier County. VACCR is also seeking a small grant for Virginia Solutions. In the long-term, each Virginia Solutions project would be expected to meet its own costs through project-specific funding involving a combination of private and public resources.

A broad range of partners is already participating in a Planning Group to discuss the shape and format for the Virginia Solutions process, and more partners are anticipated over time. If you are interested in learning more about Virginia Solutions, you may contact IEN's Tanya Denckla Cobb at tanyadc@virginia.edu or Frank Dukes at FrankDukes@virginia.edu.

By Tanya Denckla Cobb, Senior Associate, IEN

The 911 Victims Compensation Fund Hearings Amalgamated ADR*

Within eleven days after the tragedies of September 11, 2001 (hereinafter “911” or “911 events”), the United States Congress enacted the Air Transportation Safety and System Stabilization Act (“ATTSSSA”) (pub. L. No. 107-42, 115 Stat. 236-41, 2001), which established the September 11 Victims Compensation Fund (“VCF”), creating an exclusive federal cause of action but limiting the air carriers’ liability for the victims who decided to litigate their claims, and providing for a no-fault quasi arbitration/mediation procedure for the resolution of the claim of those victims who chose not to litigate. In ATTSSSA, the liability of the airlines was limited to the amount of liability insurance in effect on September 11, a substantial amount of \$1.6 billion per accident (determined by the insurers to be “four” occurrences under the insurance contracts- total 6.4 billion dollars). However, this amount was inadequate to cover all of the potential claims of the World Trade Center, but it probably was enough to cover the Pentagon and Pennsylvania occurrences. The total exposure of the insurers for 911 was estimated to be about 50-60 billion dollars (WSJ2875379).

One of the catalysts for the rapid Congressional action on the ATTSSSA legislation was the financial threat to the economic stability of the nation’s air transportation system, and the liability insurance capacity of the insurance companies for other types of losses, in addition to the 911 tragedy (i.e. hurricanes, floods, fires, auto claims, property damage, etc.). Therefore, in order to protect some of the other insurances infrastructure, transportation entities and insurance companies, Congress passed the Aviation Transportation Security Act (Security Act) on November 19, 2001 (Pub. law No. 107-71, 115 Stat 597) expanding the liability limitation to other entities, airports, manufacturers, etc. and also increasing the scope of possible damage recovery for the 911 victims, by permitting lawsuits against terrorists and terrorist nations, without waiving the right to make claims to the VCF. It was an important element of ATTSSSA that, if a victim filed a lawsuit, the 911 Fund arbitration/mediation process was not available; but the victim/family would not know the amount of the VCF award before having to abandon the litigation option.

There was other legislation such as the “Patriot Act” (Uniting and Strengthening America by Providing Adequate Tools to Intercept and Obstruct Terrorism, Pub. 6. 107-56, 115 Stat 272 (2001), which provided some terrorism investigation guidelines, and also defined “terrorism” for purposes of triggering certain government involvement in the application of liability insurance funding. The Federal Government, as ultimately provided in the Terrorism Risk Protection Act and the National Terrorism Reinsurance Fund Act, that the Federal Government would provide reinsurance up to 90% of claims arising from terrorism after 911, and the liability limitation referenced in ATTSSSA was extended to the aviation security companies in the Homeland Security Act of 2002.

The foregoing brief summary of some of the legislation enacted as a result of the 911 events provides a backdrop to the review and consideration of the proceedings by the 911 VCF and the victims’ motivations with respect to the claims arising from 911, and also as an overlay to what appears to be a “Federal” involvement in any claims by victims of possible future terrorist activity (perish the thought but nevertheless prepare). The reason for ATTSSSA in

connection with 911 events may well be perpetrated into future events because the need for economic protection of various national infrastructures may still be required, as well as the avoidance of litigation and congestion in the court systems. Since the Federal Government is now the reinsurance underwriter for terrorism insurance, it would be interested in keeping claims out of the Tort aspect of the Federal judicial system.

So what is the take on the success and evaluation of the 911 Fund? The regulations developed by Special Master Ken Feinberg established procedures which provided a no-fault compensation program for economic and non-economic loss by the victims and their families, which was calculated from pre-determined economic matrixes based on family size, family loss, and family needs, but adjusted downward by collateral source payments from life insurance companies, employee pension funds, etc, i.e. the maximum matrix calculation was based on a victim earning \$231,000 per year, survived by a wife and two children- (approximately \$4M); lower income and fewer dependents receive a lower matrix award. Although higher income victims (earning \$600K to \$2 M annually) claims were considered separately, the highest death award was approximately \$8M. Victims could submit their claims with supporting data to receive an award, and then ask for an appeal hearing if they were dissatisfied (Track A); or request a hearing *de novo*, obtain an award, and appeal if dissatisfied (Track B). The time to file a claim with the 911 VCF expired on December 22, 2003, and all claims were resolved on or before June 15, 2004. Although final statistics are still being processed, there were 7,400 claims filed with the VCF, 5,558 were resolved, approximately 1,842 were rejected or withdrawn (not within the WTC area, no injury with 72/96 hours of 911, pre-existing, etc.). There were 5,558 awards rendered for death and personal injury claims. The average death award after offsets was \$1,877,084 and ranged from \$250,000 to \$7,500,000. The personal injury awards ranged from \$500 to \$8,700,000. There were 2,880 death claim awards and 2,678 personal injury claim awards. There were a total of 3,526 Hearings (1,668 Track A and 1,858 Track B) with award letters issued in those cases. Initially, the Department of Justice appointed a dozen Hearing Officers, including the writer, to assist the Special Master with these hearings; and before the last rush of cases there were approximately 50 Hearing Officers involved in the process.

These rough early statistics suggest that, although many of the 911 Victims accepted the initial awards, there were a high percentage of claims where the initial victim/family considered the award unsatisfactory, resulting in a hearing or an appeal (3,526 out of 7,400 or 47.6 percent). In some cases, there were pre-hearing discussions with the claimants, by the Special Master and/or the Hearing Officers, which took the forum of a quasi mediation to resolve not only economic issues, but also the amounts of collateral offsets, intra-family disputes as to who could/should claim the award, significant other/same sex partner claims, etc., thereby streamlining the process. And the adjustment of matrix awards, and even awards after hearing, took the form of mediated settlements in order to attempt to reach closure of many cases. This was a necessary step because the Special Master's regulations were challenged in the New York Federal Courts, and although the Special Master was upheld, the concept of future challenges remains, particularly with respect to the inadequacy of the awards by the families of high - income victims.

It is relevant that there were only 350 lawsuits filed in the New York U.S. District Court for the Southern District of New York, the exclusive venue for lawsuits established by

ATTSSSA. Many of those claimants exercised their option and ultimately dismissed their lawsuits and filed claims with the 911 Victims Fund, but some of the lawsuits were duplicative, being filed by different family members (or different attorneys). Of those cases filed, 114 were airline passenger claims, and the remainder were ground damage, ground death and ground personal injury cases (many later filed with the 911 Fund). The theories of recovery against the airlines included negligence in failing to check the terrorists who boarded, and the airports' and security companies' failures in security checks of the terrorists; the aircraft manufacturers, and World Trade Center architect and engineers and contractors were also named as defendants for design defects (i.e. easy cockpit door access, fire resistant, building structure, etc.). However, less than 100 unduplicated lawsuits remain in the New York court and it is anticipated that most if not all of those will be settled.

The reason why this writer believes these cases will be settled is that the cost of defense will exceed by far what might be paid in settlements, and the defendants may wish to avoid continual adverse publicity while the litigation proceeds. Perhaps even more relevant is the difficulty for these parties to obtain factual information by documents and deposition discovery of what actually occurred on the security issue on the 911 flights because the Airport Security Company information is precluded from disclosure as Sensitive Security Information ("SSI"), 49 CFR Part 1520. This preclusion from disclosure pertains to information that the Transportation Security Administration ("TSA") determines might reveal a systematic vulnerability of the aviation security system or constitutes a threat to transportation. If the TSA prohibits disclosure, it becomes SSI information, 49 USC § 40119, and although that determination can be reviewed by a Federal Court of Appeals, 49 USC § 46110 (2004), it is doubtful in the current environment of possible terrorist threats that much if any of the information needed to pursue a lawsuit for 911 claims will be released. Therefore, the attorneys for the victims face a significant risk in pursuing a case to trial because they may not be able to obtain the necessary evidence to prove that one or more of the defendants was actually negligent since the doctrine of *res ipsa loquitur* (the thing speaks for itself) has been forsaken long ago in cases of this kind. But should a judge determine that the defendants must produce the SSI information, or risk a finding of adverse inference that if produced it would be against the defendant's interests, counsel for the defendants then would have to participate in the dilemma faced by the victims - the uncertainty that claims/defenses could be established.

This discussion leaves several unresolved questions, and suggests some hindsight analysis. Given the governmental interests in protecting the Nation's transportation system, there will probably be a similar victims fund processes established for resolution of claims arising out of any future terrorist activity. Given the difficulty in litigating claims from a terrorist-based disaster because of the "SSI" rules, few lawsuits might be successful, and the no-fault compensation process of a victims fund will again be an attractive alternative. However, in light of what appears to be a high number of challenges or dissatisfaction with initial awards in the 911 Fund proceedings, perhaps an initial pre-hearing mediation process might be developed to dispose of the cases with less adversarial issues, or provide an appeals process which also utilizes mediation principles (similar to many of the U.S. Courts of appeal). In effect, some of the awards in 911 on behalf of higher income victims were ultimately reached by a quasi mediation process, so that in the future some guidelines toward that process might be included in the statute or the regulations. Finally, a better "informed choice" between litigation and

proceeding within the compensation fund would be for the Fund to disclose the presumed award before the victim/family had to choose between litigation and the fund procedures.

In the writer's experience in another life defending complex multi-district claims arising out of major aircraft tragedies, there were always a few victims who never would agree to a settlement, despite the amounts involved, because they were angry for the loss of their loved ones and wanted to establish the responsibility of a wrongdoer in litigation. One of the gaps in the 911 Fund model is that there is no responsibility established for the disaster since it is a no-fault system, (although ATTSSSA does contain a subrogation clause). This unsatisfied need for establishing responsibility and closure may complicate the future Fund process suggesting the use of mediation concepts to dispose of the more adamant claimants.

Nevertheless, the 911 Victims Compensation Fund must be considered a successful process because it disposed of over 97% of the possible death claims, and 61% of the personal injury claims; indeed for the low-income/middle-income victims and families it was fair, relatively rapid and tax free, so that their financial needs could be addressed, it permitted the airline and insurance industries to function in a difficult situation, and avoided an enormous congestion in the judicial system. Although the higher income victims/families may have some disagreement with the amount of the partially reduced awards, (which for example were below expectations based on historical aviation disaster awards), given the difficulties in obtaining SSI data with which to pursue a lawsuit, the 911 Fund awards provided substantial relief to those families as well. For this reason, the 911 Victims Compensation Fund model may be a viable alternative to litigation for future terrorism claims, and with some minor tinkering could be fair and effective. Indeed, this model might be adjusted to address other types of disaster claims, although the limitations of liability, the caps on insurance exposure, and the SSI prohibitions probably would not be present, so that the litigation alternative would remain an attractive alternative.

Submitted by Carroll E. Dubuc

Carroll E. Dubuc is an attorney, President of Carroll E. Dubuc & Associates in Fairfax, Virginia, and served as a Department of Justice Hearing Officer for the 911 Victim's Compensation Fund. He is also a mediator and arbitrator, certified in the Virginia court system, Circuit Civil and Circuit Family, who works on court-referred and private mediations. He has also served as Executive Director of Aviation Mediation & Arbitration Providers, L.L.C., an organization that provided mediation/arbitration services to the aviation industry. He has arbitrated for the National Association of Securities Dealers, the New York Stock Exchange, the National Arbitration Forum, Attorneys Arbitration Services Inc., and the American Arbitration Association. For more than 35 years, Mr. Dubuc's major specialty was litigation, having acted as lead trial counsel in numerous well-publicized national and international aviation accident and product liability cases, including complex multiparty national litigation. He is presently Chair of the Defense Research Institute ADR Committee, a member of the Board of Directors of the Virginia Mediation Network, the Counsel for the Virginia Bars Joint ADR Committee, former Chair of the Federation of Defense & Corporate Counsel ADR section, former Chair of the International Association of Defense Counsel ADR Committee, and a member of the Bars of New

York, the District of Columbia, Virginia, the Fairfax and Arlington Bar Associations, the United States Supreme Court, and numerous U.S. Courts of Appeals. Mr. Dubuc can be reached by email at Dubucpc@vacoxmail.com.

**An article with expanded legal concepts will also appear in the Virginia Bar Joint ADR Committee publication.*

Parent Educators Symposium **Held September 15, 2004 at the Supreme Court of Virginia**

For more than sixty-five parent education providers throughout the State, The Parent Educators Symposium was a day to share information, hear judges' comments and compliments on successful parenting seminars, and learn some techniques for reaching adult learners more effectively.

The symposium was made possible through an Access and Visitation Grant from the Department of Social Services and the Office of the Executive Secretary, Department of Dispute Resolution Services, Supreme Court of Virginia. Geetha Ravindra, Director of Dispute Resolution Services, was the keynote speaker. She provided a time line of parent education law in Virginia. Focusing on the various changes in the law since enactment, her remarks covered everything from the appointment of the Advisory Committee charged with developing a model curriculum to the cost of programs and data collection from evaluations from judges.



Geetha Ravindra of the Department of
Dispute Resolution Services Presents the Keynote Address

The symposium coordinators and trainers were: Ann Warshauer, certified mediator, trainer/facilitator in the Family and Services Involvement section of Fairfax County Schools; Eileen Rodden, certified mediator/mentor and parent education instructor/trainer Williamsburg-

James City County and King William/King and Queen Counties; and Nancy Siford, certified mediator, trainer and parent education instructor.

The purpose of the symposium was to provide a forum for parent educators throughout the Commonwealth to discuss their successes and challenges in parent education for this population in transition from one home to two homes. The training was the first opportunity for educators to get together to share information and training techniques and to identify and work on challenges they face.



Trainer Ann Warshauer

Ann Warshauer, who sat on the Advisory Committee for the development of a model curriculum, presented the core elements required of educators under the law. Especially valuable was a review of the court process by Eileen Rodden. It gave providers a greater insight into the procedures that parents follow from petition to order of referral to mediation and parent education seminars. Ms. Rodden also served as facilitator for the judges' panel.

The co-trainers surprised the audience with a proclamation from Governor Mark Warner, recognizing September 15, 2004 as "Parent Education Day" in Virginia. The full language of the proclamation will appear at the end of this article.



Eileen Rodden Presents Proclamation to Judge Fairbanks



Left to Right: Judge George C. Fairbanks, IV, Judge Sharon Breeden-Will, Mr. Robert Owen, Geetha Ravindra, and Judge Gayl Branum-Carr were presented with their own copies of the Governor's Proclamation for "Parent Education Day".

Following the morning session, the attendees enjoyed the interaction with a panel of Juvenile and Domestic Relations District Court judges: Judge George C. Fairbanks, IV (City of Williamsburg and Counties of James City, King William and King and Queen); Judge Gayl Branum Carr (Fairfax County Chief Judge); and Judge Sharon Breeden-Will (Henrico County).



Trainer Nancy Siford Teaching Through an Interactive Exercise

Nancy Siford presented the adult learning styles portion of the day's training. After addressing the types of learners, Nancy used an interactive exercise to depict how well, or poorly, adults retain and understand information they hear versus material they see or sense.

The day closed with participants' completion of the exit survey. Results show that everyone would like to have more training programs at least annually to bring parent education providers together for continuing education. For more information on the symposium or issues around mandated parent education in custody, visitation and support cases, contact: Ann Warshauer (703) 277-2667; Eileen Rodden (757) 229-3593; or Nancy Siford (804) 752-6006.

On the following page is the text of Governor Mark Warner's Parent Education Day Proclamation.

Submitted by Eileen Rodden

CERTIFICATE of RECOGNITION

By virtue of the authority vested by the Constitution in the Governor of the Commonwealth of Virginia, there is hereby officially recognized:

PARENT EDUCATION DAY

WHEREAS, September is National Very Important Parents Month, the goal of which is to provide practitioners who work with families a “jump start” for giving parents a much-needed recognition for their very important role of raising children; and

WHEREAS, The Code of Virginia, as amended, Section 20.103 and Section 16.1-278.15 requires parents in contested custody, visitation and child support cases brought before the courts to attend a four-hour parent education seminar; and

WHEREAS, the 1999 session of the General Assembly of Virginia pursuant to House Joint Resolution 591 authorized the Office of the Executive Secretary of the Supreme Court of Virginia to convene and Advisory Committee charged with the development of a model curriculum for Parent Education Seminars; and

WHEREAS, the Advisory Committee served for one year and formulated, “A Model Parent Education Curriculum” stating goals, objectives and program content designed to provide vital educational resources to parents; and

WHEREAS, there are programs and organizations in each judicial circuit in the Commonwealth that provide such educational seminars; and

WHEREAS, the Commonwealth recognizes that effective communication and collaboration between parents benefits children and family units;

NOW, THEREFORE, I, Mark R. Warner, do hereby recognize September 15, 2004 as **PARENT EDUCATION DAY** in the **COMMONWEALTH OF VIRGINIA**, and I call this observance to the attention of all our citizens.

Mark R. Warner
Governor

Anita A. Rimler
Secretary of the Commonwealth

Book Review

Book: Situational Mediation: Sensible Conflict Resolution
Oliver Ross, Esq., Issues Press, 2003, paperback, 297 pages, ISBN 1-930461-02-X
\$35.00

Just what is situational mediation; and is it, as the title implies, better than what we already know of? The author starts this layman's book on page one with a brief commentary on evaluative, transformative and collaborative styles of mediation. He then outlines some of his goals. The goals may or may not have been met. Experienced mediators may find a few good ideas and many realistic first-hand dialogues of actual mediations. And the layman may learn more about mediation by wading through the *dialogue* and then *commentary* style of writing.

But, just what is situational mediation? It appears to be 'whatever works.' The author, an experienced lawyer and mediator, uses a first-person style of writing. His mediation style includes an attempt to bond with the disputing parties and includes much more personal self-disclosure than many mediators would ever deem appropriate. In fact, readers of the book might not even need to know of the author's divorce and life struggles. The book includes only two major segments: divorce-family mediation and workplace mediation. It also includes an unnecessary and incomplete third segment on 'anger and other emotions.'

Most unique is the metaphoric use of the airplane flight to characterize the stages of most mediations. Have you ever thought of the intake stage as preflight? Or, would you characterize the story telling and brainstorming or problem solving stages as the stages of taking off, acceleration or cruising? And have you ever thought of the agreement writing stage as the landing of your mediation?

The book concludes with a collection of forms or documents that are commonly used in any community mediation center or practice. The agreement to mediate forms and a few others are helpful illustrative documents for someone with no knowledge of mediation. This book may be in your public library. It may be of interest, but it probably will not be found on the shelves of many trained Virginia mediators.

Submitted by Eric Assur who can be reached at eassur@arlingtonva.us

Community Mediation Center Website Links

Several of Virginia's Community Mediation Centers have made us aware of their websites where we can stay abreast of mediation news. You may wish to check them out for yourself. If other centers wish to have their sites added to this link page, please let us know.

Community Mediation Center of Southeastern Virginia (Norfolk)
<http://groups.hamptonroads.com/DSC/>

Dispute Resolution Center (Richmond)
<http://www.richmond.bbb.org/complaints/>

Community Mediation Center of Harrisonburg
<http://www.cmcmediation.com/>

Conflict Resolution Center (Roanoke)
<http://www.rev.net/~crc/>

Community Mediation Center of Charlottesville
<http://www.mediationville.org/>

Piedmont Dispute Resolution Center (Warrenton)
<http://www.pdrc.info/>

Northern Virginia Mediation Service (Fairfax)
<http://www.gmu.edu/departments/nvms/>

Peaceful Alternatives Community Mediation Center (Lynchburg)
<http://www.peaceful-alternatives.com/>