

Resolutions

a quarterly update on dispute resolution

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March is Mediation Month in Virginia

Once again, Governor Warner signed an official proclamation, recognizing March as Mediation Month in the Commonwealth. There were a number of special projects undertaken to bring the alternative dispute resolution process of mediation to the forefront in March.

For example, on Monday, March 7, 2005, the [Fairfax County Board of Supervisors](#) formally proclaimed March to be Alternative Dispute Resolution Month for Fairfax County. The Fairfax County ADR Office hosted the presentation and reception that followed, which recognized those promoting and providing mediation in Fairfax County. Two Fairfax County mediators, Swaim Pessaud and Jim Pope, were honored at this ceremony, as each has contributed much time and effort to assist Fairfax County employees in resolving disputes using mediation. Each was presented with a plaque, acknowledging the valuable role of volunteers who offer their services to their neighbors, fellow students and co-workers. Attendees included members of Northern Virginia Mediation Service (NVMS), members of the ADR Section of the Virginia Bar, community mediators, as well as county employees who mediate through the Fairfax County ADR Office.



From left to right: **William Spencer** (Director, Fairfax County Office of Equity Programs and mediator), **Lara Reduque** (mediator), **Kinsey Miller** (NVMS), **Erika Alston** (NVMS), **Elizabeth Lowrey** (mediator), **Swaim Pessaud** (mediator), **Jim Pope** (mediator), **Gerald Connolly** (Chairman, Fairfax County Board of Supervisors), **Marge Bleiweis** (FCPS Conflict Resolution Specialist), **Rob Scott** (Director, NVMS), **Angela Mojica Madrid** (mediator), **Loretta Vardy** (mediator), **Al Santiago** (mediator), and **Ifeyinwa Ugokwe** (mediator)

In recognition of “March is Mediation Month”, members of the [Virginia Alternative Dispute Resolution Joint Committee of the Virginia State Bar and Virginia Bar Association](#) volunteered their service in numerous local courts to provide information on mediation services that are available through the court. This also served as an opportunity to remind attorneys of their ethical duty to consider ADR with their clients in every case. Additionally, the VMN Info-Disc “*Mediation, the Alternative*” was shared with the Bar and the public.

“*Mediation: Addressing Senior Issues through Shared Decision-Making*” was presented in two locations. Spring Arbor Assisted Living facility provided the venue for the program which was well attended both by residents and other professionals. This session generated lively conversation and discussion around the practical concerns of many of the seniors in attendance. All were interested in learning that options to the traditional legal process were available. Of particular interest, especially in light of the recent Schiavo case, was the potential value of using mediation to address family communication issues.

During the session, hosted by River Run Senior Assisted Living in Northern Virginia, the participants discussed issues ranging from dealing with unruly or unsafe neighbors to dealing with property management to estate planning and medical care issues. The participants were particularly interested in establishing an ombudsman to mediate recurring issues with neighbors and the property management. Everyone agreed that legislation mandating ombudsmen in senior residences may be appropriate.

The Virginia ADR Joint Committee, in collaboration with VA CLE and the Virginia Mediation Network, will present “*Skills, Strategies, and Ethics for Lawyers Representing Clients in Mediation*” at the Richmond Marriott on May 12th and at the Tyson’s Corner Westpark Hotel on May 13th. Additional information and registration is available online at www.vacle.org.

Also, in recognition of Virginia Mediation Month and to increase awareness of mediation and alternative dispute resolution, the [Piedmont Dispute Resolution Center \(PDRC\)](#) is sponsoring a *Words Not Weapons In 30-Seconds Video Contest*, during the months of March and April.

The contest is open to individual youth and youth groups in schools, churches and social or service clubs, ages 13 to 21, who live in Fauquier, Culpeper, Rappahannock, Madison and Orange Counties. Contestants are challenged to convey on video in thirty seconds the value, benefit and importance of talking out and resolving everyday conflicts.

PDRC, a Piedmont United Way agency, will promote the winning videos on its website and to television stations for use as a public service announcement (PSA). In addition, the first-place winner will receive a \$1,000 cash prize; second prize if \$500; and third prize, \$250.

The deadline for entries is April 30th and winners will be announced in May. For additional information, you may contact PDRC Executive Director, Lawrie Parker, at 540-347-6650 or by email at pdrc@verizon.net.



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:

MEDIATION MONTH

WHEREAS, the use of mediation and alternative dispute resolution (ADR) has empowered citizens, businesses, communities and government to resolve conflict collaboratively and to build consensus; and

WHEREAS, the Department of Dispute Resolution Services of the Office of the Executive Secretary of the Supreme Court of Virginia supports mediation and other alternatives to adjudication in assistance to the courts; and

WHEREAS, the Virginia Administrative Dispute Resolution Interagency Advisory Council, in partnership with a wide range of state agencies and institutions, and with the expert assistance of public and private volunteer dispute resolution professionals, recently launched a number of ADR pilot projects within the Executive Branch to heighten efficiencies, enhance results and minimize costs in state government; and

WHEREAS, organizations and institutions such as the

Virginia Mediation Network;
Virginia Chapter of the Association for Conflict Resolution;
Virginia Association for Community Conflict Resolution;
Restorative Justice Association of Virginia;
Institute for Conflict Analysis and Resolution at George Mason University;
Institute for Environmental Negotiation at the University of Virginia; and the
Virginia Alternative Dispute Resolution Joint Committee
of the Virginia State Bar and Virginia Bar Association

provide resources to promote the use of mediation, ADR, and restorative justice processes, and to enhance the public's understanding of these tools for the resolution of conflict, thereby improving the quality of life for citizens of this Commonwealth;

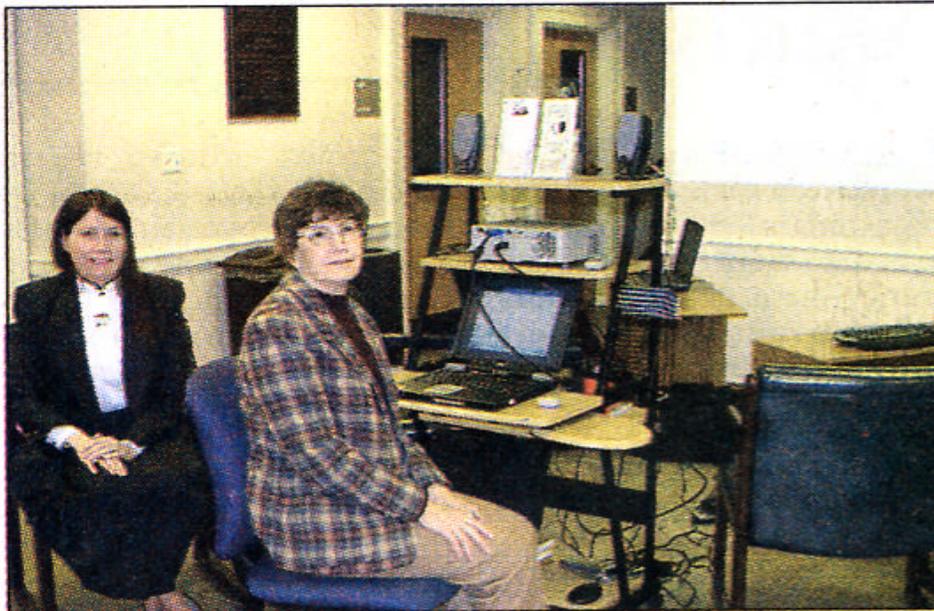
NOW THEREFORE, I, Mark R. Warner, do hereby recognize March 2005 as **MEDIATION MONTH** in the **COMMONWEALTH OF VIRGINIA**, and I call this observance to the attention of all our citizens.



Mark R. Warner
Governor

Anita A. Rinker
Secretary of the Commonwealth

We are pleased that Governor Warner continues to recognize the positive value of mediation as an alternative to resolving disputes for the citizens of Virginia. Below is an article that appeared in the March 17, 2005 issue of the *Warren Sentinel* regarding the mediation information booth provided in Warren County as a part of the project sponsored by the ADR Joint Committee, as described on page one of this issue.



WARREN SENTNEL PHOTO / ROGER BIANCHINI

Linda Selover and Helen Brinkman were on hand this week at the Mediation information booth at the Warren County Courthouse, where they will set up again next week. The booth will be in the second floor lobby on Monday, March 21, and in the first floor lobby on Tuesday, March 22.

Mediators host booth

In recognition of "March is Mediation Month," the Virginia Alternative Dispute Resolution (ADR) Joint Committee is sponsoring Mediation Information Booths at the Warren County Court House this week and next.

A member of the Joint ADR Committee will be available to answer questions and provide information on the Mediation process.

Resolving conflict through Mediation and other forms of Alternative Dispute Resolution promotes mutually agreeable outcomes, preserves relationships and enhances collaborative efforts.

Warren County is served by seven mediators, certified by the state Supreme Court. They report that 80 percent of those who use their services resolve their disputes without going to court.

Virginia Agricultural Mediation Program

Virginia State University is involved in ongoing activities in preparation for the implementation of the Virginia Agricultural Mediation Program (VAMP).

The VAMP has been certified by the United States Department of Agriculture (USDA), as the mediation service provider for the state of Virginia. State Mediation programs are developed to assist agricultural producers, their creditors, and other persons directly affected by the actions of the USDA to resolve disputes, thereby reducing the participant's cost associated with administrative appeals, litigation, and bankruptcy.

Through mediation, a trained, impartial person (mediator) helps participants review their conflicts, identify options, and agree on solutions. The VAMP will give farmers and producers a confidential way to resolve disputes involving farm loans; farm programs, including conservation programs; wetland determinations; rural housing; rural water loan programs; grazing on national forest system lands; pesticides and other issues determined by the Secretary of Agriculture. The program, authorized by the Agricultural Credit Act of 1987, is administered by USDA's Farm Service Agency (FSA). Mediation services may include financial advisory and counseling services (as appropriate) performed by a person other than a State mediation program mediator to prepare parties to a dispute prior to mediation.

Persons disputing USDA actions that directly affect them are offered the opportunity to request mediation services as part of the Department's informal appeals process. However, parties must request mediation before an appeals hearing is held with USDA's National Appeals Division.

The VAMP has selected twenty-five mediators, certified by the Judicial Council of Virginia, to mediate cases for its program. The mediators will receive an additional forty hours of Agricultural related training in preparation for the program's start-up in early summer. For more information, you may contact Wanda J. Johnson, Project Coordinator, at (804) 524-5470.

Submitted by Wanda Johns Johnson, Coordinator of the Virginia Agricultural Mediation Program, Virginia State University, Petersburg, Virginia. Ms. Johnson earned her bachelors degree in Plant & Soil Science/Horticulture from Virginia State University, and her master's degree in Human Resource Development from American International College.

Virginia Department of Forestry Develops Water Quality Mediation Pilot Program

In September 2004, the Virginia Department of Forestry began working with Tanya Denkla Cobb (Institute for Environmental Mediation) and Merri Hanson (Peninsula Mediation & ADR) to develop a pilot mediation program to resolve water quality enforcement violations. This endeavor was undertaken to fulfill the Department of Forestry's obligation under the Virginia Administrative Dispute Resolution Act to implement alternative dispute resolution procedures to resolve disputes as the earliest possible level where practicable. While there are

numerous environmental mediation programs focusing on everything from riparian easements to endangered species, Virginia's Water Quality Mediation Program appears to be unique in the country.

The Deputy State Forester, John Carroll and Department of Forestry's Water Quality Program Manager, Matt Poirot wanted to design an interest-based process that could be used within the existing water quality enforcement structure to more quickly bring about compliance with the law, while also encouraging long-term change in the behavior of logging interests in Virginia. Forestry opted to adopt a facilitative model for mediating these Silva culture disputes after a letter of non-compliance with a special order has been issued in which a logger/landowner/operator (the list of respondents is extensive) is found to be in violation. Respondents will be notified of the mediation option when they are notified that a date has been set for a special hearing. The mediation will occur prior to the date of the special hearing if all respondents agree to participate. Participation will be at no cost to the respondents during the pilot period. DOF agrees to cover the cost of the mediation up front; the parties may agree to apportion cost of the mediation otherwise as part of their settlement agreement.

There are a number of features about this pilot mediation program that make it unique. First, the Department of Forestry is the "aggrieved" party, and the citizens are the respondents. The Department of Forestry also has broad discretion over the imposition and collection of fines that it can enact under the Water Quality Enforcement Law. In other words, the "aggrieved" party has much to offer to the respondents in the way of options for resolution—reduced fines, waived fines, additional time to bring logging plans into compliance with the law, and education to ensure compliance with the law on future logging operations. Again, Forestry's number-one goal in the mediation is to change behavior; they aren't interested in becoming law enforcement agents. The opportunities for mutual gain could be rich!

The Department of Forestry, Tanya Denkla Cobb, and Merri Hanson provided program training for a group of 32 circuit-civil certified mediators on February 25, 2005 at the Ivy Creek Natural Area Education Room in Charlottesville, Virginia. Mediators throughout the state were given an opportunity to apply for roster consideration by demonstrating that they were currently circuit-civil mediation certified and had some combination of multi-party mediation experience, natural resources experience, and/or restorative justice mediation experience. Participation in the training was required for placement on the roster for the pilot period. Department of Forestry has complete control over how they use these mediator resources; i.e. they have no obligation to rotate mediation assignments and can select mediators to suit its needs.

The Virginia Department of Forestry now has a roster of qualified mediators throughout the Commonwealth to utilize in its pilot mediation program. Plans are in the works to conduct a scientifically valid evaluation of the program during the pilot period, which began April 1, 2005 and will conclude January 1, 2006. The number of mediations is expected to be minimal during this period, but Forestry hopes to take what they learn from this experience and plan for the use of mediation and other forms of alternative dispute resolution procedures in early stages of the Water Quality Enforcement Process and elsewhere in Forestry.

Contributed by Merri L. Hanson, Peninsula Mediation & ADR

Motions Conciliation a Success in Fairfax JDR Court

Since 1997, the Fairfax Bar Association's Motions Conciliation Program has provided *pro bono* conciliators – trained and experienced litigators – to help parties resolve motions disputes pending on the motion's docket of the Fairfax County Circuit Court. In 2002, the program expanded its services by offering motions conciliators in Fairfax's Juvenile & Domestic Relations (JDR) Court, where it has proven quite successful.

The idea for offering conciliation services in JDR Court came from Fairfax attorney Joyce Schargorodski after a long day that she had in that court. "The motion in my case was number 39 on a docket of 39 cases – and the judge did not take lunch and I was not heard until 3:30 pm," said Schargorodski. "I said to myself, wouldn't it be great if there were motions conciliators in this court?" She took the idea to the Fairfax Bar Conciliation Subcommittee, on which she had served for many years (and later chaired). The Subcommittee encouraged her to explore the possibility of offering its services to the JDR Court.

Schargorodski met with Judge Teena Grodner, who was enthusiastic about the idea and who agreed to discuss it with her fellow judges at the Fairfax JDR Court's next conference. With the Court's approval, members of the Conciliation Subcommittee and the Fairfax Bar Association's Juvenile Court Committee collaborated in studying how this ADR process might be employed in JDR Court.

To ensure the success of the program, Juvenile & Domestic Relations Court Judges initially approved 29 seasoned family practitioners to serve as conciliators. Attorneys were trained in 2002 and 2004 at special CLE programs, coordinated by Schargorodski and Reston attorney Jay Myerson.

Conciliation services were first offered in Fairfax JDR court in February, 2002. Every Wednesday, at least one conciliator is available at the courthouse to help attorneys and *pro se* parties resolve or narrow motions scheduled to be heard that day. As in Circuit Court, the JDR conciliation effort has helped reduce dockets and to resolve disputes more quickly and more amicably.

For example, during the nine-month period from July, 2004 through March, 2005, conciliators handled 260 cases in both Circuit and JDR courts. Over 47% of these motions disputes were completely resolved by conciliators; in another 27% of the cases, the conciliators helped the parties significantly narrow the issues

"Key to the success of the program has been the support of the judges and the willingness of many attorneys to volunteer their time to serve as conciliators," says Myerson, who now chairs the program. Not surprisingly, a constant challenge to the success of the program lies in securing and scheduling volunteers on motions days. The Fairfax program has used a part-time coordinator, who has been compensated for several years through a generous grant from the Virginia Law Foundation.

In 2003, the Conciliation Program received a Community & Educational Outreach Award from the National Association of Bar Executives.

The Prince William County Bar Association is contemplating a pilot motions conciliation program for that county's Juvenile and Domestic Relations Court. At a meeting in Manassas on April 20, 2005, Judge Grodner of the Fairfax County Juvenile & Domestic Relations Court and attorneys Schargorodski, Myerson and Sam Jackson discussed the practical and ethical aspects of motions conciliation with members of the Prince William bar and bench.

[The original version of this article, written by Sam Jackson, appeared originally in the Spring 2005 issue of *Virginia ADR*, the Newsletter of the Virginia ADR Joint Committee and is reprinted by permission. It was updated for *Resolutions* by the author.]

Fauquier Neutral Case Evaluation Program

[The Fauquier County Circuit Court's Neutral Case Evaluation (NCE) Program is a successful ADR program in a small but growing community. It was modeled after Fairfax County Circuit Court's NCE program, which has been a mainstay of civil practice there since 1993. Fauquier's NCE program was initiated in 1999-2000 by the Piedmont Dispute Resolution Center, a local community mediation center, and had the support of then-Circuit Court Judge W. Shore Robertson and the Fauquier Bar Association. Initial funding was provided by the Virginia Law Foundation. The program is now operated through the court. The following article appeared in the Fauquier Times-Democrat on December 15, 2004, and is reprinted with permission. Ed.]

By Alexandra Bogdanovic (Times-Democrat Staff Writer)

In what is becoming an increasingly litigious society, many local attorneys are working to ensure that civil cases are resolved before they go to trial – saving everyone a lot of time and money.

“Most cases referred to me have never gone to trial,” said Warrenton attorney Paul A. Morrison, a participant in the Neutral Case Evaluation program. “(Most) of them are settled in my office.”

In all, Morrison said he's handled about 15-20 cases since he became an evaluator in the dispute resolution program almost five years ago. Some of them have been easier to resolve than others, he added.

“(My role) as evaluator is to give an objective opinion and to do what I can to move the parties towards a middle ground,” he said. “Most lawyers are prepared for a settlement conference, but when they're unprepared it can be difficult. I had one (conference) that lasted about six hours.”

Morrison is among more than 20 lawyers who volunteer their time to serve as evaluators in the program, which is offered through the Fauquier County Circuit Court.

According to a brochure, all volunteers are “senior attorneys, familiar with Fauquier County juries, who assess the strengths and weaknesses of a case, identify areas of agreement and render a non-binding opinion based on the merits.”

“We try to select attorneys with a wealth of experience,” said [then] program coordinator Jeanette Irby.

In order to become evaluators, attorneys must attend a day-long training seminar. Two training sessions have been held in the last three years, Irby said. Another will probably be held [in 2005].

According to Irby, the Neutral Case Evaluation program started at the Piedmont Dispute Resolution Center in Warrenton, but the Circuit Court has been managing it for about three years. Since then, the number of volunteers and cases have both increased, she added.

“We handle more than 100 cases per year,” she said. “More than 70% of the cases that go to an evaluator are settled.”

A “wide range” of civil cases is referred to NCE, according to the brochure. These include personal injury cases, slip and fall cases, car accidents, spousal or child support and medical malpractice.

Cases in which parties have “an ongoing relationship that lasts beyond the issues of the case,” or those in which “the cost of litigation outweighs the probability of recovery, are also referred.

“The complexity of the case is not an issue,” Irby said.

Initially, a judge determines whether a case is eligible to be referred to the program, she explained. If both parties and counsel are interested in proceeding, an “orientation session” is held about two or three months prior to trial. If they then agree to have a “confidential settlement conference,” Irby assigns the case to an NCE attorney evaluator.

Evaluators are selected based on their specialty and availability.

“Evaluators will generally take a case as long as there is no conflict (of interest),” Irby said.

Once the evaluator has assessed the matter, the case proceeds to the settlement conference, she added. The conference is generally held about 30 days prior to trial.

“I think we have had outstanding success with the program. It benefits the state, the litigants, everyone,” said Fauquier County Circuit Court Judge Jeffrey W. Parker. “It couldn’t continue to exist without the dedicated service of the lawyers who do this for free. The Fauquier County Bar Association deserves a whole lot of credit.”

Those who would like more information about the NCE program can call (540) 428-2210.

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