

Resolutions



a quarterly update on dispute resolution

Department of Dispute Resolution Services
Office of the Executive Secretary

Volume 13, Issue 3

August 2005

Court-Annexed Mediation Center Established In the High Court of Madras

For the last several decades, India's court system has suffered from an overwhelming backlog of cases. An average civil case takes approximately 10-20 years to be adjudicated. The Chief Justice of the High Court of Madras estimates that there are approximately 25 million cases pending in the courts in the State of Tamil Nadu, which would take 347 years to adjudicate



*Geetha Ravindra and David Michael with Attorneys
Aparna Vasu and Sriram Panchu, founders of ICMDR*

On The Inside

**Court-Annexed Mediation
Center Established in High
Court of Madras—Page 1**

**Collaborative Practice: A
Multi-Disciplinary Approach
to ADR—Page 2**

**Fairfax County Schools
Peer Mediation and Conflict
Resolution Program—Page 7**

ADR Conferences—Page 8

**2005-06 Mediation Contracts
Awarded—Page 9**

Virginia Mediation—Page 10

**ABA Adopts Model Standards
of Conduct—Page 14**

NJ Confidentiality—Page 14

with current resources. In 1996, leaders in India's legal community recognized that, in order to assist the courts with more efficient case management, mediation would have to be integrated as a dispute resolution option in appropriate civil and commercial matters.

In 2002, Section 89 of the Civil Procedure Code was passed, authorizing the referral of cases to mediation or conciliation. Then, in May 2003, the Law Commission sponsored a national Conference including key attorneys, judges, and dispute resolution professionals to discuss the implementation of Section 89, similar to the 1976 Pound

(Continued on page 3)

Meet the DRS Staff



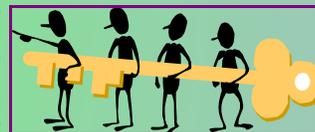
Geetha Ravindra, Director

Geetha received her law degree from the University of North Carolina at Chapel Hill in 1992. She has been Director of DRS since 1996. Her roles include responsibility for the development and oversight of court-connected ADR programs in Virginia; the certification of mediators and mediation training programs; providing technical assistance to the courts on ADR issues; seeking and managing grant and budgetary funding; promoting ADR in the courts and community; providing ADR training and education to the Bar, public, and judiciary; and developing legislative initiatives to support ADR.

Geetha is an active member of the Court ADR Section of the Assn. for Conflict Resolution (ACR), the Virginia State Bar-Virginia Bar Assn. Committee on ADR, the Virginia State Bar Resolution of Fee Disputes Committee, and several American Bar Assn. Court ADR committees. She has provided ADR training abroad and has published numerous articles on the subject of court-connected mediation and the unauthorized practice of law.

Collaborative Practice: A Multi-Disciplinary Approach to Alternative Dispute Resolution

Have you ever encountered a case that just wouldn't work in mediation because the needs and circumstances of the parties weren't quite suited to a dispute resolution process facilitated by a third-party neutral?



Collaborative practice is an emerging method of dispute resolution that seeks to address these types of cases, and it may be another tool you want to have in your ADR toolbox.

Every mediator brings a unique background to mediation. Whether you come to the field as an accountant, a social worker, an attorney, a psychologist, a physician, a labor relations specialist, a teacher, or a counselor, you bring that knowledge and skillset to the mediation process. Acting as a third-party neutral, however, you may not apply the skills of your profession of origin. You may find that the parties and the process could benefit from services you could provide in your other professional capacity, but you are not able to provide those services. As a mediator, you may be able to help the parties recognize the benefits of seeking the help of another professional, but that generally takes place outside of the mediation process and the service provider may or may not understand the goals of mediation, so they may or may not actually aid the parties in reaching their own solution.

This is where collaborative practice may be useful. Conceived in the 1980s by Minnesota attorney Stu Webb, collaborative practice is a multidisciplinary team approach to dispute resolution.

It is characterized by commitment by all parties to avoid litigation, agreement by the professionals involved not to participate in litigation should one or more of the parties decide to pursue litigation, and complete voluntary disclosure of all relevant information to the team.

(Continued on page 5)



Cheryl Gray Ball
ADR Coordinator

Cheryl is the newest addition to the DRS staff, beginning her employment August 29, 2005. Cheryl comes to us from the Virginia Department of Education where she has worked as an education specialist since 1988. Holding a B.A. from the University of Virginia and an M.A. from Stanford University in English and American Literature, she is also a certified family mediator.

Cheryl will serve part-time in supporting various DRS functions, such as reviewing applications for mediator certification and recertification, research for special projects, grant writing, and reviewing mediation training courses.

The other half of her time, she will function as Program Support Specialist, working with Court of Appeals Judge Rosemarie Anunziata to develop curriculum for the Journey to Justice program in the public school system.

We welcome Cheryl to DRS!

Madras High Court *(Continued from page 1)*

Conference on Public Dissatisfaction with the Court System which led to the development of organized court-annexed ADR and the multi-door concept in the United States. The Law Commission's Conference created a great deal of momentum and interest in mediation, and led to the development of mediation pilot projects in the cities of Bombay, Calcutta and Ahmedabad.

In the state of Tamil Nadu, interest in institutionalizing mediation first began in 2002 when the Indian Center for Mediation and Dispute Resolution (ICMDR) was established. Geetha Ravindra, Director of the Department of Dispute Resolution Services, was invited to Chennai (formerly called Madras) to provide mediation skills training for a group of 25 former judges and attorneys who would become the Center's first mediators. Despite its best efforts at educating the Bar and public regarding the benefits of mediation, there were no referrals to ICMDR. This resistance to mediation changed rapidly when a new Chief Justice of the High Court of Madras was appointed in March 2005.

The Honorable Markandey Katju, Chief Judge of the High Court of Madras, is a strong advocate for mediation.



Geetha Ravindra and David Michael with the Honorable Markandey Katju, Chief Justice of the High Court of Madras

(Continued on page 4)



Melanie Rinehults
Administrative Assistant

Melanie has been with DRS for seven years. She earned an Associate of Arts degree from Northeastern Christian Junior College in Villanova, PA and continued her business administration education at Pepperdine University in California.

Her responsibilities at DRS are primarily supporting the certified mediator community; the dissemination of information regarding mediation to the courts, public, and mediators; gathering and analysis of financial and statistical data regarding court-referred mediations; preparing the quarterly issues of **Resolutions** newsletter; updating directories, forms and information on the court website; and designing and maintaining databases for mediators, settlement conference, parent education providers and mediation training courses.

Madras High Court *(Continued from page 3)*

In discussions with Chief Judge Katju, he expressed great frustration with the High Court's significant caseload and is very concerned that the public is resorting to extra judicial measures to resolve conflict, namely self-help and criminal behavior. Attorneys Sriram Panchu and Aparna Vasu, founders of ICMDR, approached the Chief Justice about considering the formal integration of mediation into the court's procedures to relieve the pressure on the court's docket. As a result of a series of productive meetings with the Chief Justice and court staff, the Tamil Nadu Mediation and Conciliation Centre was inaugurated on April 9, 2005 as the first court-connected mediation program of the High Court of Madras. The Centre is located at the entrance to the High Court, providing it great visibility and access to litigants.



Trainers working with breakout groups

The Chief Justice invited Geetha Ravindra to return to Chennai the week of June 20 – 26, 2005 to provide presentations to the High Court Judges on the benefits of integrating mediation into the court's procedures and case management/policy issues related to court-connected mediation, as well as to the Bar on the mediation process and the role of the attorney representing clients in mediation. In addition, the staff of the Tamil Nadu Mediation and Conciliation Center requested a refresher mediation skills training for the participants trained in 2002 as well as a 20-hour mediation skills training for a select group of 40 attorneys and former judges. David Michael, former

(Continued on page 5)



Deborah Powell Miller
Administrative Assistant

Deborah joined DRS in January 2005 in a part-time capacity. She earned a Bachelor of Fine Arts at VCU and is currently working toward an Associates degree in Legal Assisting from J. Sargeant Reynolds Community College.

During her 18 hours each week, Deborah is responsible for the processing of mediation and grant contract invoices, data entry of client evaluations, and processing of mediator certification and recertification applications. She also assists with handling the many telephone and email inquiries received by the department daily and works on research projects as requested.

Deborah also works part-time for a local mediation services provider and is working toward her certification as a mediator.

We are happy to have Deborah aboard in DRS!

Madras High Court *(Continued from page 4)*

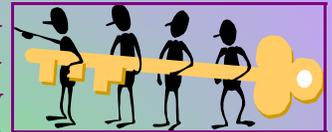
Director of the D.C. Superior Court Multi-Door Dispute Resolution Program and international consultant, trainer and founder of Consensusworks, joined Geetha as a co-trainer. The Council for State Governments funded the weeklong series of training programs.

Approximately 40 judges attended the formal Orientation and Presentation to the High Court Judges of Madras. The session ended with a series of questions and answers and interest, and excitement about the introduction of mediation as a court-connected dispute resolution option was evident. Some 80 senior members of the Bar attended the seminar on the Role of the Attorney in the Mediation Process. A very lively question and answer session followed demonstrating an understanding of the value of mediation and openness to the mediation process. A 20-hour mediation skills training was provided to approximately 40 members of the Bar. The participants included a retired Attorney General and retired Solicitor General. The participants demonstrated a high level of engagement and interest about the mediation process.

(Continued on page 13)

Collaborative Practice *(Continued from page 2)*

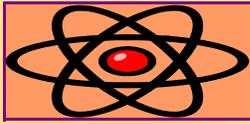
The role of the parties, as in mediation, is to fashion their own solution. The role of the multidisciplinary team is to support and facilitate the parties in that process. This differs from mediation in that the team members are not necessarily neutral and they function within their disciplines (i.e. the psychologist is functioning as a psychologist, the attorney is functioning as an attorney, the child specialist functions in that role, etc.). The key, however, is that all team members, including the attorneys and the parties themselves, are focused on and committed to resolving the disagreement without litigation.



The parties may learn about collaborative practice through any of the team members or through members of the community who are aware of the practice, such as clergy members, hospital staff or administrative workers. Once the parties choose to use the collaborative method,

(Continued on page 6)

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

John Settle, Acting 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

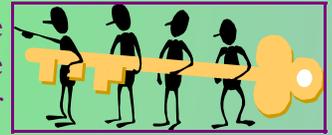
Lawrie Parker, Executive Director

The Rappahannock Mediation Center

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

Ron McLean, Executive Director

Collaborative Practice (Continued from page 5)



the team forms based on the nature of the dispute and the needs of the parties. In a typical divorce case, for example, each party would be represented by a collaborative attorney. Other members of the team may include counselors or coaches who train the parties to communicate effectively for the purposes of reaching an acceptable solution. A child specialist may also be involved or perhaps a financial professional. All of these people may be part of the conference sessions as needed, or they may be consulted separately if necessary.

The team works through a series of joint conferences (four-way conferences) that involve the parties and their collaborative attorneys. Other professionals on the team necessary to support the parties may be included in the joint conferences or may meet with both parties outside of the four-way conference. All of the professionals are specifically trained in collaborative practice to promote and facilitate the parties in reaching their own agreement.

While divorce has been the most active area in which the collaborative approach has been practiced, its use is spreading into intra-family disputes, elder law, medical malpractice, construction law, education law and many other areas. It is an alternative for mediators to know about for cases that may need more support than traditional mediation provides, and it offers mediators the opportunity to wear their previous hat in an alternative dispute resolution process.

If you are interested in more information about collaborative practice, including being advised of upcoming training sessions, please contact Morna Ellis at Commonwealth Mediation Group, mpe@cmgmediates.com, the International Academy of Collaborative Practitioners (IACP) at <http://www.collaborativepractice.com> or Collaborative Family Law Society, a society of independent family lawyers and other professionals serving Maryland, Washington, DC and Virginia at <http://www.co-divorce.com>.

Contributed by:

Morna P. Ellis, MEd., J.D., Director of Commonwealth Mediation Group, Richmond, Virginia

Linda Shin, 3rd year, T.C. Williams School of Law, University of Richmond

Fairfax County Public Schools Benefit From Peer Mediation and Conflict Resolution Program

The FCPS Conflict Resolution and Peer Mediation Program is a preventive program helping diffuse problems between students and teaching students skills in communication and problem solving. Trained school staff train students in conflict resolution and mediation skills. 93 schools have peer mediation programs. Many elementary schools select a core group of mediators who receive training in meetings with the school counselor over a period of many weeks. Some middle and high schools offer this as a class. Other schools train mediators in an after-school program. Trained student mediators, with the supervision of the adult coordinator, are then called upon to mediate disputes for fellow students.

Schools are also encouraged to teach conflict resolution skills to all students. This is done by teaching skills during classroom guidance lessons, using class meetings and integrating conflict resolution into classroom organization and lessons.

To support the work of school staff in running peer mediation programs, The Safe and Drug Free Youth section, FCPS, has a conflict resolution specialist working with school programs. Staff is trained in basic and advanced mediation skills through in-service trainings offered multiple times during the year. Curriculum materials for high school and middle school have been developed and are used in class programs. Many other schools use a variety of commercially available materials. Staff in-service programs and assistance are offered to schools throughout the year.

Further support for programs is offered through the student mediation conference. This past year, the high school conference was on November 23rd. The elementary conference was on March 15th and the middle school conference was on March 16th. Over 2000 staff and students from Northern Virginia and DC attended. Support for the conference comes not only from the school system, but also from Safe and Drug Free Schools community grants, George Mason University, Institute for Conflict Resolution and Analysis, Northern Virginia Mediation Service, and many professional mediators in the community. The conference highlights the importance of mediation programs and also gives student mediators an opportunity to enhance their skills. High school mediators, working with skilled mediators from the community, have an opportunity to facilitate workshops for elementary and middle school students. At the high school conference, mediators get a chance to network with mediators from other schools and extend their expertise. The students come from over 100 schools in the Northern Virginia area. The conference is held at George Mason University.

This past June, eight mediators from Fairfax County traveled to Haifa and Ramallah to work with Israeli and Palestinian counselors. They were able to share mediation programs currently in our schools and work with them to hopefully develop similar programs in their schools

For information on the program in Fairfax County Public Schools, contact Marge Bleiweis, Safe and Drug Free Youth Section, Office of Student Services, Devonshire Center. Call 703-876-5247 or email at: Marjorie.bleiweis@fcps.edu.

Submitted by Marjorie Bleiweis

Recertification Reminders

If you are one of 446 court-certified mediators due for recertification



October 31, 2005, please look over the following reminders:

- ◆ Include an updated Mediator Profile Form.
- ◆ There is NO fee required.
- ◆ For GDC/CCC, you need to document 5 general mediations or 15 hours plus 8 hours of advanced general mediation training.
- ◆ For JDR/CCF, you need to document 5 family mediations or 15 hours plus 8 hours of advanced family mediation training.
- ◆ Whether you need 8 hours or 16 hours of training, it must include 2 hours of mediation-specific ethics training.
- ◆ All training is to be mediation specific. Classes taken for another profession will not be accepted unless they cover mediation-skills-related topics.
- ◆ If you don't complete all requirements before 10/31/05, please submit your application by the deadline with documentation of what you have completed to date.
- ◆ Forms and an updated training calendar are available on our website.

Mediation Conferences

August 25-27, 2005

14th Annual Conference for Mediators and Arbitrators; The Florida Dispute Resolution Center; Rosen Center, Orlando FL, (850) 921-2910

September 16-17, 2005

NAFCM Regional Training Institute: Developing and Managing Community Mediation Centers; University of Baltimore, Baltimore, MD; 202-667-9700; lbaron@nafcm.org

September 28-October 1, 2005

ACR Fifth Annual Conference; Conflict Resolution in a Changing World: Building the Practice and Fostering Hope Hilton Hotel, Minneapolis, MI; 703-685-4130

October 6-7, 2005

4th Annual National Institute on Advanced Mediation and Advocacy Skills Training; Sheraton Hotel Towers and Washington Convention Center, Seattle, WA; www.abanet.org/cle/programs/n05mst1.html

October 23-25, 2005

19th Annual Virginia Mediation Network Fall Training Conference; Omni Hotel, Charlottesville, VA; 804-254-2664; www.vamediation.org

October 24-28, 2005

Victim Offender Mediation Association Conference; Holiday Inn – Historic District Philadelphia, PA; 717-859-1151; LSA@mcc.org

November 9-11, 2005

Emerging Issues in Mediation Conference; University of Wisconsin-Madison; Concourse Hotel, Madison, WI; 608-263-4431; <http://www.dcs.wisc.edu/pda/hhi/mediation/conference.htm>

December 5, 2005

RJAV – Restorative Justice Association of Virginia 2005 Conference; Holiday Inn, Charlottesville, VA; 703-792-4073

April 4-6, 2006

8th Annual Section of Dispute Resolution Conference Atlanta, GA; dispute@abanet.org; 202-662-1680

2004-05 Fiscal Year Mediation Statistics

\$1.5 million expended on mediation in 2004-05 — a steady increase over the decade

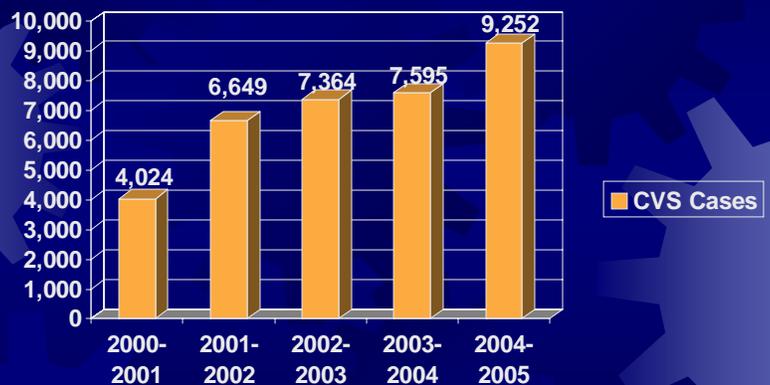
Top Ten J&DR Courts Referring Custody, Visitation & Support (CVS) Cases to Mediation in 2004-05

- Virginia Beach—1205
- Chesapeake—652
- Richmond—428
- Norfolk—424
- Prince William—409
- Portsmouth—393
- Chesterfield—380
- Hopewell—342
- Newport News—334
- Prince George—303

Court-Referred Mediation Funding



Custody, Visitation & Support Mediations Conducted



Top Ten Courts Referring Non-CVS J&DR Cases in 2004-05

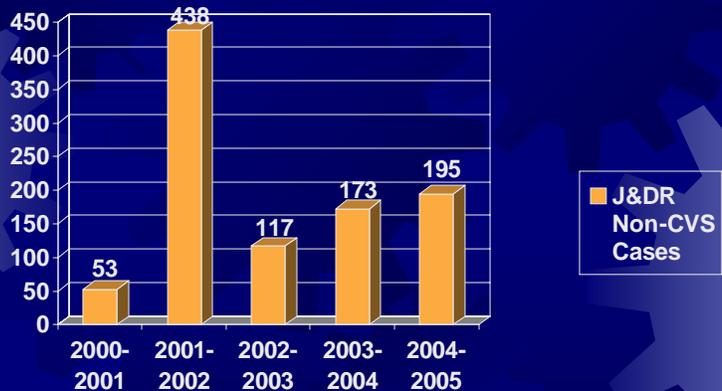
- Petersburg—47
- Prince Edward—20
- Halifax—19
- James City/Wmsbg-18
- Rockbridge—18
- Amherst—17
- Henrico—8
- Rockingham/Hsnbg-7
- Hampton—7
- Fauquier—5

Top Ten General District Courts Referring Cases to Mediation in 2004-05

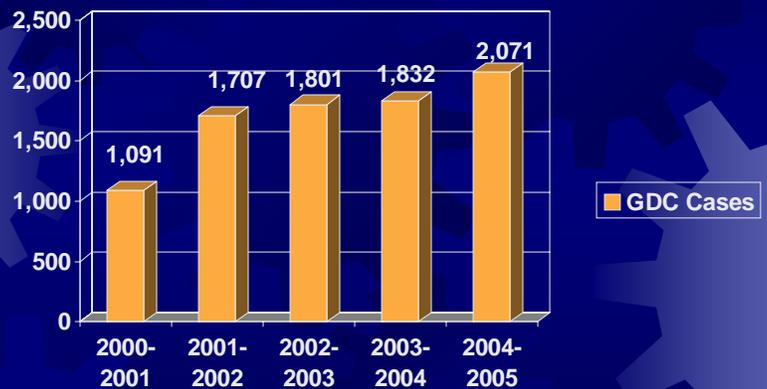
- Virginia Beach—257
- Prince William—208
- Roanoke City—149
- Chesapeake—140
- Alexandria—129
- Bedford—113
- Fauquier—78
- Lynchburg—74
- Loudoun—69
- Newport News—62

These cases include issues of truancy, restorative justice, assault, dependency mediation, CHINS, and property destruction.

J&DR Non-CVS Mediations



General District Court Mediations Under Contracts



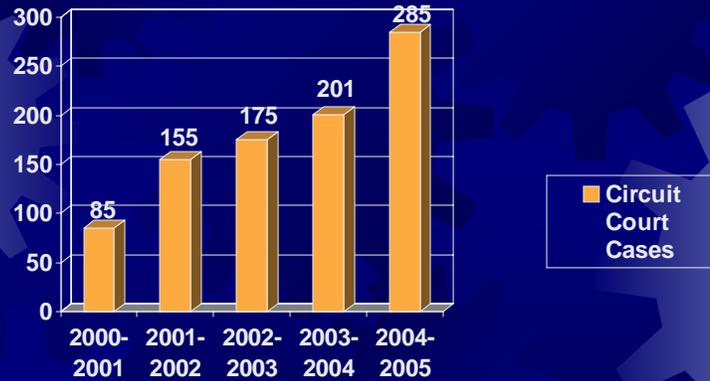
Top Twelve Circuit Courts Referring Cases to Mediation in 2004-05

- Chesterfield—57
- Portsmouth—47
- Stafford—29
- Norfolk—18
- Rockingham/Hsnbg-14
- Culpeper—14
- Virginia Beach—10
- Fluvanna—10
- Charlottesville—9
- Roanoke City—8
- Hampton—8
- James City/Wmsbg-8

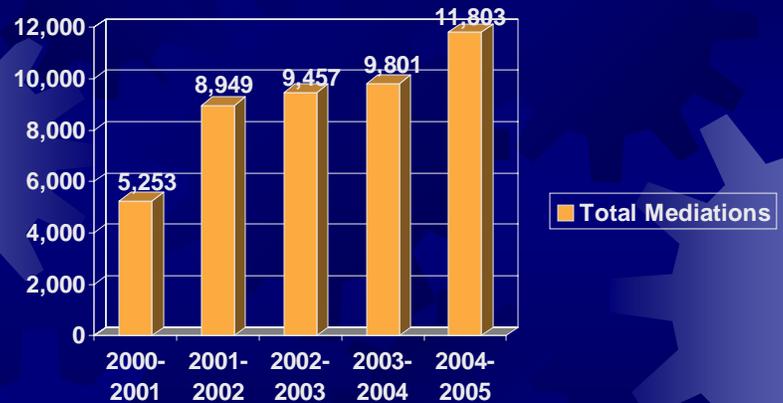
Top Ten Courts Referring Cases to Mediation in 2004-05

- Virginia Beach—267
- Prince William—209
- Roanoke City—157
- Chesapeake—140
- Alexandria—129
- Bedford—117
- Chesterfield—96
- Fauquier—89
- Petersburg—86
- Lynchburg—75

Circuit Court Mediations



Total Mediations Funded



(Continued from page 5)

The large size of the class reflects the level of interest in mediation training among members of the Bar. The course concluded with a lovely closing ceremony in which select members of the 20-hour training and three High Court Judges who serve on the Committee overseeing the work of the Centre, made eloquent speeches on the value of mediation and their appreciation for the week of training programs.

The Tamil Nadu Mediation and Conciliation Centre has a great likelihood of success as it enjoys the strong support of the Chief Justice of the High Court of Madras. The visibility and leadership of the Chief Justice will likely lead to a large number of case referrals. The day after the session for the High Court Judges, seven cases were referred to the Centre. The Centre is also building significant credibility



Hon. Mr. Justice M. Karpagavinayagam and Hon. Mr. Justice C. Nagappan present Geetha with an appreciation gift.



David and Geetha at the Tamil Nadu Centre for Mediation and Dispute Resolution, inaugurated by Honorable Y. K. Sabharwal, Justice of the Supreme Court of India

among the High Court Judges and members of the Bar, in large part

due to the commitment of the Chief Justice and several key leaders in the Bar. Members of the Bar who completed the refresher and basic mediation trainings demonstrate significant support for the project and will likely serve as the core group of mediators to provide services to the

courts. Media exposure has successfully enhanced the visibility of the project. During the week of June 19-26, a press conference, interviews, and informal conversations have resulted in multiple articles in leading South Indian newspapers. The Chief Justice's long-term goals of establishing a Mediator Training Institute in Chennai and the Tamil Nadu Mediation and Conciliation Centre serving as a



Geetha and David presented a refresher course for the former judges and attorneys Geetha had trained in 2002. Not all 25 trainees are pictured.

model court-annexed mediation program for other courts in the country to emulate are certainly within reach. In time, India's courts will find that mediation not only relieves the pressure on the court's dockets, but produces better and more lasting agreements, provides greater access to justice and enhances litigant satisfaction with the court system.

Model Standards of Conduct for Mediators Adopted by the ABA House of Delegates



On August 9, 2005, the American Bar Association House of Delegates, meeting in Chicago, unanimously adopted the Model Standards of Conduct for Mediators. The original document, drafted by representatives of the ABA Section of Dispute Resolution along with representatives from the American Arbitration Association and the Society of Professionals in Dispute Resolution, in 1999, has stood well the test of time.



The new round of improvements, created by a six-person drafting committee with two representatives from the ABA Section of Dispute Resolution and two each from AAA and ACR, took three years to complete. The revised standards expand guidance on disclosure, impartiality and confidentiality and they provide detail for mediators in the areas of fee arrangements and advertising.

To access the Standards, go to the ABA Section of Dispute Resolution website at:
<http://www.abanet.org/dispute/home.html>.

New Jersey Supreme Court Upholds Mediation Confidentiality

In its July 28, 2005 opinion in State of New Jersey v. Carl Williams (No. A-61-04), the New Jersey Supreme Court became the first state to apply the Uniform Mediation Act's balancing test, which states that mediation communications should remain confidential unless that protection is substantially outweighed by the need for evidence. The case involved a defendant in a criminal case who sought a mediator's testimony on a claim of self defense. The victim in the criminal case had also been involved with the defendant in a mediation and allegedly admitted in front of the mediator that he (the victim) had picked up a shovel before the defendant picked up the machete that cut the victim. Obviously, the mediator's testimony could have been helpful and important to the defense. The trial court refused to allow the testimony of the mediator based on the State's complementary Dispute Resolution Program Rule 1:40-4 (c), which provides that "[n]o mediator may participate in any subsequent hearing or trial of the mediated matter or appear as witness or counsel for any person in the same or any related matter." The appeals court upheld the exclusion of the mediator's testimony. By the time the case was briefed and argued to the Supreme Court, the Uniform Mediation Act had been signed into law in New Jersey.

The Supreme Court agreed with ADR practitioners and the State that the UMA should be used to determine whether the testimony should be allowed. The UMA gives mediators, parties, and non-party participants the right to refuse to disclose and prevent others from disclosing mediation communications in future proceedings. However, the privilege may be pierced if a court determines in a criminal proceeding that the need for the evidence "substantially outweighs the interest in protecting confidentiality" and the evidence is not otherwise available. The court noted the importance of protecting the confidentiality of mediation communications and determined that information regarding what transpired during the fight was available from other witnesses. The court concluded that, "In light of the importance of preserving the role of mediation as a forum for dispute resolution, we conclude that defendant's need for the mediator's testimony does not outweigh the interest in protection mediation confidentiality." The Court's decision provides tremendous support for the preservation of mediation confidentiality.