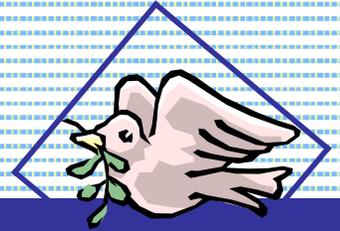


Resolutions



a quarterly update on dispute resolution

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Governor Kaine Issues Proclamation Recognizing March as Mediation Month in Virginia



Aaron Larrimore, Special Assistant for Constituent Services, Governor Kaine's Office

On Wednesday, March 1, 2006, Aaron Larrimore, Special Assistant for Constituent Services (pictured to the left) of the Governor's Office read a March is Mediation Month Proclamation at the Bell Tower on the Capitol Grounds in Richmond. Below is the text of that proclamation. Our thanks to mediators Patricia Morrison and Claudia Farr of the Virginia Department of Employment Dispute Resolution for once again requesting the proclamation. Also pictured is a group of supporters in attendance at the ceremony.

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 profession of mediation has helped to create a better environment in which people and groups are able to truly listen to each other and develop a deeper understanding of each other; and

WHEREAS, mediation professionals use their skills in a variety of different settings and situations as they help parties reach cooperative agreements and encourage them to utilize mutual problem solving; and

WHEREAS, mediation principles and philosophies have been emulated during collaborative problem solving among individuals, agencies and communities; and

WHEREAS, those aforementioned principles and philosophies result in a renewed effort for doing business with respect, common sense, and accentuating the positive in every transaction and relationship; and



Interested citizens on hand for the reading of the Governor's Mediation Month Proclamation

WHEREAS, seeking common ground is more worthy a goal than achieving victory during the process of problem solving; and

WHEREAS, the needs of individuals and groups are more completely met when mediation participants become committed to taking ownership in the

On The Inside

March as Mediation Month—1

U.S. Supreme Court Ruling—4

Natural Disaster Mediation from Three Vantage Points—5

Water Quality Mediation—11

Threats & Crime: Confidentiality Exceptions—12

Community Mediation Ctrs—15

Resource Corner—15

Training Outside the Classroom—Peer Consultation Groups—16

Judicial Support for Confidentiality of Mediation Sessions—18

Virginia Solutions: Common Ground for Commonwealth—19

(Continued on page 2)

(Continued from page 1)

process of creating agreements while also striving to build consensus; and

WHEREAS, mediation can continue to play a crucial role in the traditions and changes that enrich the Commonwealth of Virginia; where multiculturalism, interdependence of people and organizations, and global competition mandate that productive negotiations and solutions are of the utmost priority;

NOW, THEREFORE, I, Timothy M. Kaine, do hereby recognize March 2006 as **MEDIATION MONTH** in the **COMMONWEALTH OF VIRGINIA**, and I call this observance to the attention of all our citizens.

Peaceful Alternatives Community Mediation Services hosted the Amherst County Chamber of Commerce, Business After-Hours March is Mediation Month evening event on March 16, 2006. Representatives from 21 local businesses attended and joined in celebrating the Center's eighth year in Amherst County. Heavy hors d'oeuvres, pastries, refreshments, complimentary chair massages, and door prizes were enjoyed by those who attended.

In preparation for this event, the center prepared their walls with photos of all the affiliate mediators, board members and office staff. Tables with displays and hand-out materials summarized services and various programs



offered at the Center, such as Co-Parenting classes for separated parents, Conflict Solutions for Families workshops, Anger Management classes,

comprehensive juvenile service assessments and mentoring for juveniles identified in need of such services. A Power-Point presentation ran throughout the event on a conference wall, highlighting and crediting all businesses that partnered with PACMS and donated wonderful prizes.

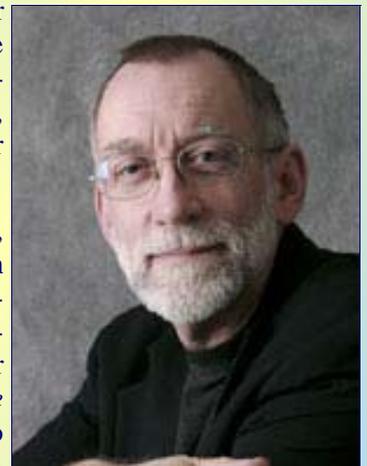
PACMS prepared a Press Release for the local paper, and three of the local radio stations ran free spots for the Center the last three weeks of the month.

Apple Valley Mediation Network hosted a special program in the Shenandoah County Library in Edinburg on March 20th where they offered mediation materials and an informational display, showed the mediation info-disk prepared by the Virginia Mediation Network, and had trained mediators on hand to answer questions. The library purchased several books on mediation for the occasion.

The community was also invited to attend AVMN's public annual meeting on March 27th, also held at the Shenandoah County Library. Professor Howard Zehr (pictured), internationally known expert on conflict resolution and co-director of the Center for Justice and Peacebuilding at Eastern Mennonite University, was their featured speaker for the event.

A news article, featuring an interview with AVMN Executive Director, Ed Wilkins, and mediator Rosemary Wallinger appeared in the *Bryce Mountain Courier*. To read the article in its entirety, go to <http://www.shenandoah.com/stories/?headlineID=8252>.

AVMN is a non-profit organization founded in 1994, offering mediation services in Shenandoah, Page and Warren Counties. AVMN provides restorative justice conferencing, and Mr. Wilkins is one of 25 Virginia mediators trained in agriculture and USDA issues. For more information, visit the Center's website at www.avmn.org.



Community Mediation Center of Southeastern Virginia in Norfolk celebrated March is Mediation Month in a variety of ways, and submitted the following summary, especially highlighting their work with the community's youth.

The Community Mediation Center Youth Program is dedicated to providing our young citizens with conflict resolution and violence prevention skills that better enable them to face the challenges of today's society and fully

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(Continued from Page 2)

achieve their personal and professional potential. Peer mediation helps teens contribute to their community and develop meaningful relationships.

Conflict Resolution and Peer Mediation teaches kids that it is possible to develop positive and powerful relationships with others, instead of violent and coercive ones. Meaningful relationships are based on honesty and clear communication—not on power !!

Peer Mediation trainers become positive role models in the lives of kids who often don't have a trusted adult to lean on. The ability to trust is essential for kids to develop in a healthy manner.

Peer Mediation training emphasizes the positive aspects of kids – their ability to make good choices, their capacity to empathize with their peers and their desire to live in an environment where conflict is dealt with in a peaceful manner, instead of using violence.

Peer Mediation training teaches kids not to be simple observers in life, but actual contributors who can truly make a difference in the world! Therefore, peer mediation training offers kids an opportunity to become an active member of society!

To celebrate Mediation Month this March, the Youth Conflict Resolution program scheduled workshops across Hampton Roads. Peer mediation training, usually 18 hours, is hosted by schools and after-school sites, such as parks and recreation departments. Peer mediation training was continued this March at Madison Career Center and Granby High School. Other programs renewed or began for the first time at Portsmouth Court Services Unit,



Graduates of peer mediation training gather at a Youth for Peace Conference

Virginia Beach Court Services Unit, and Open Campus.

In addition to youth conflict resolution programs, the Center sent regular e-blasts about Mediation Month celebrations to our Community Mediation Center friends and volunteers, hosted a mediation-a-thon, mediated at least two courts every weekday, plus offered free presentations to raise awareness of mediation services and training to reach certification in Virginia.

For more information about upcoming events at the Community Mediation Center in Norfolk, contact Amanda Burbage at 757-480-2777, ext. 204, or AmandaB@ConflictCrushers.org.

Visit the Center online at www.ConflictCrushers.org, where you can view their Mediation Month e-blasts and read the full article about teenager John Gentry of the Madison Career Center/Alternative School who is the co-recipient of the Center's Youth Peacemaker Award. John is pictured below with Andrea Palmisano, the Center's Youth Programs Director.



Commonwealth Mediation Group in Richmond submitted this summary of a program in which they have been involved.

We all know the story: Three pigs build three houses – one of straw, one of sticks, and one of bricks. A destructive wolf comes along, destroys two houses, has trouble with the third, and somehow ends up in a kettle of water. But

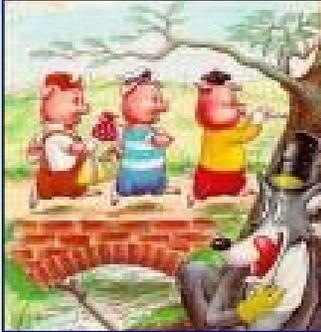
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consider this: What would have happened if the Three Pigs went to mediation?

In honor of Governor Timothy Kaine's Proclamation declaring March as "Mediation Month in Virginia," a unique program is being offered by the Joint Alternative Dispute Resolution Committee of the Virginia State Bar-Virginia State Bar Association that uses this age-old childhood tale of the Three Pigs to teach children about a more collaborative and constructive way to resolve conflicts through the use of the mediation process.

Law students from the Marshall-Wythe School of Law at the College of William and Mary, the T.C. Williams School of Law at the University of Richmond, and the Regent Law School at Regent University are presenting this program to elementary schools in Richmond, Williamsburg, and Hampton Roads. The program features "The Three Little Pigs Go to Mediation", a newly animated rendition, produced by the Department of Veteran Affairs' Office of Resolution



Management. In this version, the Wise Old Owl helps the Three Little Pigs, and the Big Bad Wolf learns that huffing and puffing is not the only way to resolve a problem. Through mediation, the Three Pigs and the Wolf understand the problems from each party's perspective and generate options to reach a solution that meets everyone's needs and interests. As a result, everyone truly lives "happily ever after."

Viola Baskerville, Secretary of Administration for the Commonwealth of Virginia, attended the first presentation in Richmond at A.V. Norrell Elementary School on March 24. There, she helped present a skit of the traditional Three Pigs story and spoke with Kindergarten students about the benefits of creative conflict resolution.

For more information or to discuss future programs, please contact: Morna Ellis, Commonwealth Mediation Group (Richmond) at (804) 254-2664 or Tazewell Hubbard, Conflict Management Associates (Hampton Roads & Williamsburg) at (757) 627-6120.

U.S. Supreme Court Ruling Supports Key Arbitration Doctrine

The U. S. Supreme Court recently considered the question of whether a court or an arbitrator should determine a claim that a contract containing an arbitration clause is void for illegality. In *Buckeye Check Cashing Inc. v. John Cardegna* (No. 04-1264) the Court ruled that arbitrators, not the court, would consider all challenges to a contract containing an arbitration clause, declining to make an exception to that rule for contracts that are alleged to be illegal or void from the start. "We reaffirm today that, regardless of whether the challenge is brought in federal or state court, a challenge to the validity of a contract as a whole, and not specifically to the arbitration clause, must go to the arbitrator," the ruling stated. Any challenge to a contract is for the arbitrator to decide in the first instance, the Court affirmed.



The Court's ruling strengthens judicial support for arbitration agreements. The complete text of the decision can be accessed on the U. S. Supreme Court website <http://www.supremecourtus.gov/>.

An Opportunity to Be of Service

Editor's Note: Conflict resolution has become a critical component in the process of dealing with the series of natural disasters that have struck recently both in our country and abroad. Urmila Subramanyam, a graduate student who served as an intern in our department, has written an article for this issue on this subject. We asked Rob Scott, a Virginia certified mediator and FEMA Disaster ADR Attorney, to share his perspective as creator and administrator of an ADR program to reach out to those who are coming together to assist the victims of Hurricane Katrina. Lastly, we asked Carolyn Pritchard, also a Virginia certified mediator, to share her personal reflections regarding her deployment to

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Alabama and Louisiana as a FEMA Disaster Assistance Employee. What a wonderful opportunity to use ADR skills to make a difference in the lives of others.

Mediation Efforts in Natural Disaster Areas

Hurricane Katrina. The Asia Tsunami. The Earthquake in Kashmir. All devastating, destructive, and crippling natural disasters that still have parts of the world reeling from their effects. Residents of places that have been hit by hurricanes and earthquakes have a great number of conflicts ranging from personal to structural confronting them in the wake of such disaster. They are dealing with issues between themselves and their family members, neighbors, and the local government.

Natural disasters have increased it seems in the past year and a half. Beginning with the tsunami that hit several countries in Asia at the end of 2004, to the hurricane in New Orleans and surrounding areas in late August 2005, and the Kashmir earthquake of October 2005, the world has seen its fair share of what such catastrophic events can do to people.



Lives Disrupted—Photo by Greg Henshall/FEMA

Amidst all the devastation, the field of conflict resolution, and especially mediation, has played an important role in beginning the process of getting people to address their conflicts surrounding these natural disasters. Whether these conflicts are interpersonal or at the micro level, such as between a disaster victim and an insurance adjuster, or at a more macro level where victims from natural disasters are dealing with the system as a whole, getting people to a mediation setting has proven to be an effective way of not only confronting the issues at hand, but also dealing with the several underlying issues from which conflicts may have stemmed.

The Asia tsunami was one of the most horrific natural disasters to hit in recent memory, and its after-effects are still being felt today, over a year later. Needless to say, conflict was rampant in the areas hit by the tsunami, which included the countries of India, Indonesia, Sri Lanka, and Thailand. Conflict resolution specialists, including academics and mediators continue to do research and intervention work in assisting with the issues that have arisen as a result of the tsunami.

There are many conflicts that are still prevalent in the tsunami-hit areas, including those that arise as a result of certain basic human needs that are still not being met. People are in conflict with their neighbors and communities over re-building of houses and who should get what resources. They are also in conflict with aid workers who want to do the right thing, but inadvertently cause problems by the unequal distribution of supplies, food, and other staples. In addition, conflicts arise when residents do not feel as though their government is adequately responding to the needs of its citizens. As a result, resentment builds and conflict escalates from the local to national levels.

To address some of the conflicts that arise in natural disaster areas, especially those due to the Asia tsunami, Nancy Lutkehaus, an associate professor of anthropology at the University of Southern California set up a project entitled “Cultural Mediation As an Aid to Reconstruction” which will use cultural mediation techniques to “reduce miscommunication between survivors, aid organizations, and government agencies.” As a result of this work, done in collaboration with the University of Papua New Guinea, USC hopes to create a model for cultural mediation for use in future natural disasters.

Although the work that USC is doing is taking place primarily in Asia, the results of the work will no doubt help mediation efforts in the United States. As one clearly knows by now, the U.S. is no stranger to natural disasters, and Hurricane Katrina, which severely damaged parts of Louisiana, Mississippi and Alabama, still continues to affect the citizens of those states, as well as the thousands who are still displaced because of it.

Mediation has proven to be a creative and effective way to begin to resolve some of the conflicts that have resulted from the Hurricane. Mediators have helped settle insurance claims for damage and new mediation centers have been set up for this purpose. Conflicts over type of damage -wind or water- and the cost of repair were also prevalent in

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the aftermath of Hurricane Katrina, and mediation has helped bring victims of the Hurricane, as well as insurance adjusters, to help settle these types of issues.

“It’s quick and easy compared to the judicial system,” said Jim Donelon, an attorney with the Louisiana Department of Insurance, in an interview with news channel two in Baton Rouge, Louisiana.

In addition to insurance-based types of conflicts that mediators are involved in, there have been many other issues that have had to be dealt with. Mediators from around the country came to hurricane-stricken areas to help with the onslaught of conflicts, within agencies, as well as to help survivors with conflicts that resulted from the disaster. One of these mediators is Carolyn Pritchard, of Amherst, Virginia, who was hired to work with the Federal Assistance Management Agency (FEMA) as a Conflict Resolution Specialist within the Agency.

After being re-deployed to Montgomery, AL in November 2005, she was later deployed to Baton Rouge, LA to assist with disaster relief efforts there in December. Pritchard was in Louisiana for 35 days, during which time she provided FEMA employees with dispute resolution services. Some of her responsibilities were program development at her location, program implementation, training for employees (conflict resolution skills, ADR awareness, and communication skill trainings), as well as dispute resolution services requested by the parties (conciliation, coaching, information gathering or mediation) within FEMA.

Many of the issues Pritchard dealt with in her capacity as a Conflict Resolution Specialist focused around FEMA employees and many of the pressures and conflicts they were facing. Her work was crucial in that the organizations and agencies that came to the South in the wake of Hurricane Katrina often had to deal with their own internal conflicts before they could help anyone on the outside.

“The one concern that I heard more than any other was that ‘employees felt the need for additional training so they could better perform the jobs to which they were assigned,’” Pritchard said. She also said this factor led to a host of other conflicts, including employers giving unclear directions, too much work being expected of employees, as well as wasted work hours and high turnover.



Cameron Elementary School’s Gymnasium after Hurricane Rita in SW Louisiana.
Photo by Robert Kaufmann/FEMA

While Pritchard’s work was in the capacity of helping FEMA employees deal with conflicts within the agency, she also was able to get a first-hand view of the conflicts that arose as a result of the Hurricane.

She said, “Many [those affected by the hurricane] are placed in transitional housing in locations very unfamiliar to them, in close proximity to many other victims, have no income because their place of employment no longer exists, etc. So it is not difficult to fathom that there would be escalations of feelings that are not always harmonious.”

Also, the added issue of community mediation centers being shut down, and without the ability to rebuild these centers, many conflicts that could have been resolved through mediation never took place. It is up to the cities affected by the hurricane, as well as its citizens, to begin looking into the possibility of rebuilding and reopening mediation centers in disaster-stricken areas.

Mediation has the potential to resolve conflicts in natural disaster areas effectively, efficiently, and with lasting results. Although natural disasters will never cease to exist, with proper problem-solving techniques, and programs that promote mediation as a way of helping deal with the many conflicts that arise, perhaps the affects of the disaster may not be as long-lasting as some of the devastation we have seen recently.

*Submitted by Urmila Subramanyam
Graduate Student, Institute for Conflict Analysis and Resolution*



Cruise ships docked in New Orleans provide housing for local victims of Hurricane Katrina.
Photo by Robert Kaufmann/FEMA

Disasters Create New Applications for Mediator Skills

Shortly before Hurricane Katrina hit the gulf coast last year, I was hired by FEMA to help develop a new cadre of 25 mediators to conduct conflict resolution processes at disaster operation sites. Since Katrina, I've been continuously playing catch up around a number of issues, including: hiring mediators, deploying mediators to disaster sites, supporting mediators in the field, designing a system that works in a constantly shifting environment, developing policies, procedures and guidance for the program and designing a training that will ultimately prepare new and continuing mediators for their work at disaster sites – something we're finding different from typical mediation. There have been a number of challenges and surprises along the way and I'd like to share some of those with you.

Hiring. There were – and continue to be – quite a number of challenges related to hiring. When I was interviewed for the position, I made the mistake of saying “I think I can reach almost every mediator in the country and generate a couple hundred resumes.” Unfortunately, I did reach almost every mediator – including many in other countries. Within hours of my announcement, our phones, faxes and email boxes started to back up and those back-ups continued for about 6 weeks.

I'm still not sure how many resumes we received – I have stacks and stacks of them around my office. I think we received about 2,000 applications for about 1,000 people – meaning that some people submitted 2, 3, 4 or even 5 copies of their materials. Three copies (fax, email and mail) were pretty typical. It was a total of about 12,000 pages to review. The worst part about this is that it meant I couldn't do a lot of the things I wanted to do: have someone respond to everyone who applied, carefully sort the resumes, make a quick selection of 25 people and have a short training program before deploying to the field.

Before the application closing date had passed, I was told to “just hire and deploy some mediators *right now*.” That forced me to cancel my plans to hire all 25 at once, provide a training and then deploy as needed. So I went through the resumes and found about nine people I knew would be excellent. However, only three of those agreed to come on board. I quickly realized from these early conversations that many applicants didn't have a

(Continued on page 8)

A Crossroads Decision ~Personal Reflections~

Why does a person leave the comforts of home in an effort to help others? What does a person experience on the first deployment when working in an Area Field Office or Joint Field Office with FEMA and the Department of Homeland Securities (DHS)? These are just a couple of the questions that I have been asked since I returned from Louisiana in January 2006.

I vividly remember what was going through my mind when I responded that I was interested in joining the newly formed DHS 23rd Cadre. I felt it was time for me to give something back to others that were less fortunate, and I felt excited that I would be in a position to do this while developing a conflict resolution program for FEMA employees. I also remember thinking that this experience would be good for Peaceful Alternatives Community Mediation Services because the staff is very capable of overseeing the current services and programs, and my absence would provide them with a management opportunity to utilize their leadership skills. My absence would only be for a short while, I thought, and I would surely gain new skills along the way that I could share with others when I returned to the mediation center in Virginia.

I prepared the staff and affiliate mediators for my departure, made arrangements for future communication between the center and/or mediators, and wrapped up cases in which I was serving as the mediator that were in different stages of progress. All of the above preparations took about six weeks. Then I packed my travel bags and anxiously awaited the call from the deployment office. My bags were packed, and I might add tightly packed, for nearly three weeks before I received the deployment call on the eve of November 8, 2005. I would be arriving at the Joint Field Office (JFO) in Montgomery, Alabama the morning of November 10, 2005 to begin my services with the 23rd FEMA Cadre.

Once I was off the plane in Montgomery, it took me nearly two hours to locate the Joint Field Office. There were few visible signs on the road to inform me where the government work site was located. I must have gone up and down the road for about two miles each way at least four times looking for the physical location listed on a sheet of paper or any building that resembled a military base building. But most building numbers were not displayed on the business buildings and nothing resembled the site that I had envisioned. Finally I resorted to asking

(Continued on page 8)

(Continued from page 7)

clear understanding of the job or the kind of commitment we were asking for – and when I clarified things, they found it was something they couldn't pursue. That initial ratio of about 2:1 against pursuing the job held true among all the applicants I contacted in every subsequent round.

Those first three mediators included Carolyn Pritchard, director of the Peaceful Alternatives Community Mediation Center in Amherst, VA; Linda Baron, former director of the National Association for Community Mediation; and Sandi Adams, former DOJ Cuban refugee crisis mediator and former director of the Woodbury College Mediation Training Program and their Dispute Resolution Center. To date, I've hired 17 additional mediators in five rounds of hiring and plan to hire five more in the final round (all from the original 1,000 applications).

Deploying & Supporting Mediators. Once the decision is made to hire a "Disaster Assistance Employee" (DAE) for the ADR cadre, it still takes 3-5 weeks to get them officially hired and deployable. I deployed first to the hardest hit areas in the Gulf area: Louisiana (Baton Rouge), Mississippi and Alabama. Later I deployed mediators to Pensacola and New Orleans. Again, there were lots of challenges in getting them deployed. Every disaster site is managed by a "Federal Coordinating Official" or FCO, and no mediator could be deployed without the express request of the FCO. That meant lots of conversations with key command staff to explain what the heck these people had to contribute to the response and recovery. Subsequently, I've heard several stories like this: "When I first heard about the idea of deploying members of the ADR cadre, I was highly skeptical, to put it mildly. Now, I'm a true believer."

Once deployed, though, the care and feeding of mediators is a big job. Lots of questions have to get answered about how to get deployed, pay for travel, find the disaster operation, check in, get paid, make contacts, provide services and help clients. In most cases the first to deploy were the first to ever deploy to that disaster and the first ADR cadre member ever seen by anyone there. As a newbie myself, I rarely had a ready answer to the ques-

(Continued on page 9)

(Continued from page 7)

someone at a nearby post office and was told it was the old vacant warehouse building, the one that I had passed four or five times as I had traveled up and down the road.

After parking in the parking lot, my next obstacle was figuring out how to enter the building. There was no entrance labeled as an entrance, just a lot of doors covered with opaque paper obstructing the view inside. I went back to my car and waited for a few minutes until another car pulled into the parking lot. I continued to sit in my car and watch where that driver entered the building. At last... I could report to the Federal Coordinating Officer (FCO) of the JFO. I remember thinking, if I had this much trouble finding and getting into the facility, this might be a more difficult assignment than I had expected.

Once I entered the facility, my eyes scanned a very large open

area about two stories high, wires hanging from the ceiling everywhere, rough uneven concrete floor and a maze of cubicle panels that seem to have no distinct or logical layout. I was immediately searched from one end to the other as soon as I entered the facility because I had set the alarms off with the steel trim on my boots. I remember thinking that I was very glad that I had not taken anything other than my car keys and wallet in the building with me. After the pat down and electronic search, I was led to the Administration section of the building where I would begin my entry process. Administration told me that I had been approved for a computer, cell phone and spectra link phone (phone for inside facility) and this had been written on a pink slip before I arrived.

My next ushering was to the badge station where I had a very unbecoming mug shot taken for an identification badge. My identification badge had to be worn at ALL times while in the facility. I was shown my cubicle area, about 5 feet deep and 8 feet long, and told I should go get my supplies next. I gazed upon one 6-foot long folding table with scratches and dents in various places across the top surface that was to serve as my main piece of office furniture inside my cubicle.

Next I traipsed to the supply area where I was issued my equipment from the pink slip and told whatever

(Continued on page 9)



Katrina disaster victim finds her daughter's teddy bear in the rubble. Photo by Marvin Nauman/FEMA

(Continued from page 8)

tions I received. That meant lots of phone calls and emails between us and lots of trips from my desk into my boss's office.

Policies, Procedures, Guidance & Training.

Importantly, even though I refer to supporting the mediators, I was also supported by the mediators in doing my job. Probably my most frequent response to a question was something like "I don't have a clue; let me know when you get the answer so I can share it with others." In addition to trying to invent their own jobs in the image described by my boss and me, I also asked Carolyn, Sandi and Linda to document what they were doing as they went along. This documentation, together with every question I had found an answer to, became the basis of our first "ADR Cadre Manual" (version 1.0) and that was given to all the other cadre members to prepare for deployment and to use to guide their work on deployment when their time came. It's also the basis of our ongoing efforts to develop an annual training program for new and continuing cadre members. We're planning to bring everyone together in April for a 4day pilot training. Several of the trainers will be these same people who were the first to deploy and who helped develop our program.

Since the beginning of this year, we've created or collected almost 700 documents to support our work including agreement to mediate and confidentiality acknowledgement forms and guidance documents on confidentiality, dealing with illegal activity and taking notes – all of which have Federal law ramifications. We've had to build a database to track our cases that's available to any cadre member deployed to any disaster in the country. So far we've recorded about 275 cases over five disaster operations.

System Design & New Applications. Our prime mission for this program is to provide workplace conflict resolution so that our disaster workforce could focus 110% on their disaster mission and not have their attention sidetracked by interpersonal conflict. Working in a disaster environment for long hours each day for 30-45 days without a break is highly stressful. It's not unexpected that this could lead to conflicts and that conflict resolution could be a useful tool for people. The surprising thing for me has been the difference in conflict resolution approaches between providing after-the-fact mediation and being embedded in the environment: Our mediators are doing relatively little 'mediation.'

First, the mediators are doing a lot more one-on-one activity with clients. Being consulted by clients to get information about conflict resolution strategies; coaching

(Continued on page 10)

(Continued from page 8)

you do... *do not lose the equipment and do not lose the pink slip.* Then I was told that I could go get any supplies that I felt I needed from the various tables around the area that were supporting file and desk supplies, copy paper, notebooks, etc. I chose a few of the obvious supplies that I felt I would need immediately and then took my issued equipment back to my cubicle area.

I was beginning to feel a little wiser because I found my cubicle on the first attempt after picking up the issued equipment. But between you and me, I had picked an object in the ceiling area that I knew was directly overhead my area and I just wandered around the various hallways made between the cubicle panels walking with purpose like I knew where I was going until I was under that chosen spot. Wow, this area was going to be my office for quite awhile and it looked nothing like the one that I had left at the center.



Carolyn Pritchard and Linda Baron, ADR Cadre Members

Quickly it had become obvious to me that everyone at an AFO has their own list of priorities to accomplish and most have short timeframes to complete their tasks. Therefore, there was little time to talk to other employees, whether to get to know what he/she did within the organization or to ask questions so I could learn the protocol for various situations that arose. It took me about three days to begin to feel that I was where I belonged and that I had learned enough about the organizational structure and each of the branches to provide services.

Working in an environment such as this requires strong communication skills because the employees range from very young to beyond retirement age and have come from all professional backgrounds. Time management techniques are extremely helpful because organizational priorities shift like the wind and there is no one watching

(Continued on page 10)

(Continued from page 9)

clients on ways they might approach others to resolve or avoid conflict or achieve a mutually agreeable outcome on their own; using their listening skills to help clients vent and hear how and what they are saying; or using problem-solving skills to help clients identify and evaluate options they can take on their own to resolve the situation. Often this is the end of the process: the client vents and is done; the client is afraid of being fired so does some problem solving and is never heard from again; the client gets some ideas about how to approach the situation with their boss or co-worker and solve the problem on their own. Was there a mediation? No. Was there an ‘agreement?’ No. Was there a conflict resolution specialist helping someone resolve things at the earliest point using conflict resolution skills? Yes.

Second, our ADR cadre members are doing more informal conciliation. Conciliation might look like this: The mediator is approached by Client A. They talk. Then together they walk over to Client B and talk. Then they all three walk over to someone from Admin to get some infor-



Third, our ADR cadre members are doing more ombuds-like work. They are helping clients get information they need or getting in touch with the right person to solve their problem. They’re using their time, knowledge and contacts to help troubleshoot system blockages. For example: Client screws up direct deposit form. Pay is ‘lost’ somewhere – perhaps deposited into the wrong account. Client fixes problem and gets paid correctly for all subsequent paychecks but first paycheck is still lost. All efforts to resolve issue have failed. ADR cadre member calls me. I tell ADR cadre member to call someone else and let me know who they called in case this comes up again ☺. ADR cadre member works the system until Client gets paid.

Another ombuds-like activity is noting patterns of system failure or structural sources of conflict that might be resolved through policy or procedural changes. By collecting these and making sure they get reported (stripped of identifying information) appropriately, system improvements may be made.

This is why I referenced “new applications” in the title. It seems that when you embed mediators in the workplace, they can help resolve problems early and avoid the costs and complexities of escalation and, while they continue to use their mediator skills, they do less formal, structured mediation.

Submitted by Rob Scott, FEMA Disaster ADR Attorney. All of the thoughts and opinions expressed in this article are those of the author and not of the Federal Emergency Management Agency (FEMA).

[For additional FEMA Katrina photos, see <http://www.photolibrary.fema.gov/>]

(Continued from page 9)

you to help keep you on task. The ability to produce your work product unassisted by others is absolutely essential since all branches could use more employees to complete their *own* tasks.

The greatest surprise that I had while deployed was the small number of formal mediations I scheduled. My expectation had been that most situations would be resolved with people sitting around a table in a private location sharing their needs until both were satisfied with the outcome. In reality, many issues were addressed and often resolved in the hallways or break area or when only one party was in my office area at a time. I gained a tremendous amount of knowledge from this experience from the standpoint that, as a mediator, I will not minimize the overall effectiveness of listening to others when they have no one else to talk with about their situation; brainstorming with only one other person in an effort to generate a list of potential options; or gathering information for another so he/she can make an informed decision on how to proceed in a given situation. I appreciate the tremendous empowerment it provides a person when they are encouraged to decide the process that best suits their needs for resolution.

Submitted by Carolyn P. Pritchard, Executive Director, Peaceful Alternatives Community Mediation Services

mation about policy or procedure,. Then they throw their hands up in the air and agree it’s all a big misunderstanding and go back to work. Not much time from initial upset to resolution – not much time for locking into positions; not much time for hurtful things to be said; not much time for secondary conflict (conflict about conflict) to block early resolution.

Water Quality Mediation Update

In April 2005, the Virginia Department of Forestry began a pilot mediation program for the resolution of Water Quality Enforcement Program Silvicultural disputes. It has been nearly one year now, and John Carroll, the Deputy State Forester, and Matt Poirot, the Water Quality Program Manager, have had some interesting experiences with the pilot program.

By way of overview regarding this innovative environmental mediation initiative, cases included in this program involved Water Quality Enforcement Law violations resulting in a notice of non-compliance and a resulting special order. Defendants were given the option of participating in mediation prior to adjudication in a Formal hearing. One unique element of the program is that the Department of Forestry is the “aggrieved” in these disputes. Another is that the long list of potential defendants (loggers, logging interests, forest products companies and interests, land owners, etc.) could be at odds with one another and far from presenting a harmonious “side” in these complex multi-party mediations.



Initial goals for the pilot program were to change defendant behavior (i.e. foster compliance with the Water Quality Enforcement Law), to reduce repeat offenses, and to experiment with and evaluate the utility of mediation for such violations.

During the pilot period from April 2005 through January 2006, six mediations were conducted (two additional mediations were scheduled and cancelled due to a default by a logger in a prior settlement agreement). While these numbers are small, they are consistent with expectations. The average mediation lasted one-and-one-half to two hours; the longest and first mediation lasted six hours. While all six mediations resulted in agreement, three of those settlement agreements have been defaulted upon and have gone into Formal Hearing as a result (clearly an unexpected occurrence that will warrant further attention). Exit evaluations indicated high satisfaction with the mediation experience from all parties.

Typical terms of agreement from these mediations included some of the following:

- Development of a pre-harvest plan on the next three logging sites
- Participation in additional training or certification through the Virginia SHARP Logger Program

- Correction of the instant Silvicultural water quality problem (usually within 14 days)
- Reduction in statutory amount of monetary penalty to approximately one-day worth of penalty
- Reduction of fines conditional upon 12 months free from additional Special Orders or Emergency Special Orders

If such terms of agreement were carried out, Forestry would clearly be meeting its mediation program goals of increased compliance with the law and a reduction in repeat offenses.

The most unexpected lesson learned from the pilot period is how important it is for all parties to consider the impact of defaulting on the settlement agreement. Matt Poirot participated in all of these mediations as an agency representative and noted that “everything seems to go fairly smoothly during the mediation session, with settlement agreements being fairly easily reached. I try to emphasize the importance of the Settlement Agreements and what will happen if the Settlement Agreement is not completed. But for whatever reason, the loggers with whom we are dealing seem to forget about the agreement the minute they walk out the door. We have had to send reminders to the parties and that sort of thing.” Tanya Denckla Cobb (Institute for Environmental Mediation) and Merri Hanson (Peninsula Mediation & ADR), ADR coaches for the project, have agreed to continue to assist Department of Forestry in process improvement with an aim toward increasing settlement agreement validity and compliance.

Next steps in the development of an ongoing Water Quality Mediation Program will involve:

- Finding ways to increase compliance with terms of Settlement
- Developing a case screening mechanism designed to assess case and participant appropriateness.

Poirot says that the best surprise in Forestry’s mediation experiment has been the opportunity to work with the exceptional caliber of people who are on the roster of mediators. “All of the individuals who have had an opportunity to participate are real professionals and are truly excited about the mediation process.”

Submitted by Merri L. Hanson, Mediator

Threats and Crime: Two Perplexing Exceptions to Mediation Confidentiality



Mediators are sometimes confounded by their responsibility to maintain confidences in two situations in the mediation process: when a party makes a threat of harm or when there is discussion of criminal activity. While these situations are rare, mediators need to appreciate their responsibilities both so that they can act properly and so that they can explain confidentiality properly to disputants.

This brief article aims to demystify the Virginia rules on confidentiality as to communications of threats or criminal conduct. It will approach each situation by describing four possible responses: 1) the mediator has a *duty* to disclose the communication; 2) the mediator must disclose the communication only *if* the mediator is called to testify in a legal proceeding; 3) the mediator, in his/her own discretion, *may* disclose the communication as the mediator sees fit; or 4) the mediator should not disclose the communication.

Mediators describe their process as a confidential one. Virginia law requires that “a mediator shall not disclose information exchanged or observations regarding the conduct and demeanor of the parties and their counsel during the mediation, unless the parties otherwise agree.”¹ The statute also declares that communications in mediation are “confidential” and may not be disclosed in any judicial proceeding, unless one of the nine enumerated exceptions apply.² The presumption, then, is that communications in mediation will not be disclosed outside of the process.

A. Threats of harm

1. *Duty to disclose.*

In some situations, the mediator may have a legal duty to disclose information obtained in the mediation session. Certified mediators are mandatory reporters of child abuse.³ If a party gives the certified mediator reason to believe that a child is being abused, then the mediator would have a duty to report the matter immediately to the local department of social services. In such a case, the laws relating to child abuse trump mediation confidentiality.

It is arguable that the adult protective services statutes could require that mental health professionals, who are providing mediation as part of their professional services, must report abuse of elderly or incapacitated adults.⁴ However, unlike the child abuse statute, the adult protective services statute does *not* expressly require all certified mediators to report such abuse.

There are no other Virginia statutes that specifically *require* mediators to report threats of harm. Courts in some other states have ruled that a mental health professional, whose patient makes a threat against a third party, must warn the potential victim of the threat.⁵ However, Virginia courts have declined to impose such a duty to warn victims, unless the professional actually “takes charge” of a patient.⁶ Mediators do not take charge of disputants and therefore presumably have no legal duty to warn a victim of a disputant’s threat.

2. *Testimony in proceedings.*

While the Virginia statutes prohibit disclosure of mediation communications in discovery or in any judicial or administrative proceeding, there are a number of exceptions. One such exception is “where a threat to inflict bodily injury is made.”⁷ If the mediator were called as a witness at trial, his/her testimony about a disputant’s threat to inflict bodily injury would be admissible. Note that the statutory exception is narrow; it only applies to threats to inflict “bodily injury” – not psychological harm or harm to property or reputation.

(Continued on page 13)

(Continued from page 12)

3. *Discretionary disclosure.*

Faced with information that a disputant is threatening another individual, the mediator may feel morally impelled to disclose the threat to the other individual or to the court or other authorities. The Virginia statutory scheme does not expressly authorize this course of conduct; the exception to confidentiality, described in A.2. above, technically only applies in discovery or judicial or administrative proceedings.

Mediators typically resolve this problem by using an Agreement to Mediate that permits the mediator to disclose such threats. When the parties sign the agreement, they are consenting to the subsequent disclosure. The exception can be written in a way that gives the mediator sufficient discretion to decide whether the threat should be disclosed. The most appropriate way to preserve such flexibility is to use language in the Agreement to Mediate that the “mediator may disclose threats” (discretionary) – rather than the “mediator shall disclose threats” (mandatory). The Agreement to Mediate can also be written to expand the types of threats that may be divulged beyond just threats of bodily injury to persons (e.g., self-inflicted injury by the party making the statement, psychological harm or property damage).

4. *Maintain confidences.*

Of course, people make all kinds of statements in mediation and not all threats are serious ones. Emotional venting sometimes causes people to say things that they don’t really mean. The confidentiality of the process encourages disputants to be candid with each other, without fear that everything they say will come back to haunt them. In most instances, the mediator, by seeking to clarify what the disputant is saying and meaning, may discover that the statement is not really so “threatening” and that there is no need to disclose the statement to anyone. The author’s own experience and an informal survey of several mediation centers around the Commonwealth lead to the conclusion that threats in mediation are fairly rare. Indeed, by using an Agreement to Mediate that permits disclosure of threats and by reminding disputants that such threats may not be confidential, the mediator may actually deter the parties from making such threats during the mediation process.



B. Discussions of criminal conduct.

1. *Duty to disclose.*

Aside from the duty to report child abuse (A.1., above), there are no Virginia statutes that require mediators to disclose past criminal activity or future criminal conduct that a disputant describes in mediation.

Since mediators often have other professional affiliations, the rules of another profession may impose a duty to report criminal activity. For example, if the mediator is also a lawyer and acquires reliable information that another attorney has committed a crime (or ethical violation) that raises a substantial question about the other attorney’s “honesty, trustworthiness or fitness to practice law,” the lawyer-mediator is supposed to report this to the appropriate professional authority, i.e., the Virginia State Bar.⁸ Recognizing the conflict between this duty to report and the confidentiality of mediation, the Bar rule states that a lawyer serving as a mediator, who learns about such misconduct, must “attempt to obtain the parties’ written agreement to waive confidentiality and permit disclosure of such information to the appropriate professional authority.”⁹

2. *Testimony in proceedings.*

There is an exception to confidentiality in discovery or in any judicial or administrative proceeding for a communication that is “intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime.”¹⁰ This narrow exception does not remove confidentiality from communications about *past* crimes, as such a broad exception might well have a chilling effect on mediation discussion.

This statutory exception seems to be aimed at permitting testimony that a disputant may have misused mediation “to further the commission of a crime, rather than lifting the confidentiality protection more broadly to any discussion of

(Continued on page 14)

(Continued from page 13)

crimes.”¹¹ An illustration of how this exception would work is a New Jersey case in which the court allowed testimony about “a mediation of sorts” among gangsters when “the boys from New Jersey” were called in to settle a controversy between rival groups.¹²

There is also an exception allowing testimony “where communications are sought or offered to prove or disprove a claim or complaint of misconduct ... against a party’s legal representative based on conduct occurring during a mediation.”¹³

3. *Discretionary disclosure.*

The statutes do not expressly authorize a mediator to disclose past or future criminal conduct. Typically, mediators do not include language in their Agreements to Mediate that expand the exception beyond that prescribed in the Virginia statutes. This seems appropriate, since the mediator’s role is not that of a law enforcement officer.

4. *Maintaining confidentiality.*

Discussion of crimes, therefore, seems presumptively covered by confidentiality under the statutes. Mediators, of course, cannot and should not guarantee that such discussions would remain confidential. Indeed, there have been a number of cases in other states in which either the prosecution or the defendant has sought to obtain evidence about criminal activity discussed in mediation and the courts have split as to whether such evidence is protected by confidentiality.¹⁴ So far in Virginia, however, there have been no court decisions on this issue.

Submitted by Samuel Jackson, a mediator and attorney in McLean, Virginia.

Endnotes

¹ Virginia Code § 8.01-581.24 relates to mediations that have not been court-referred. The Dispute Resolution Proceedings statute has similar language. Va. Code § 8.01-576.9.

² The language of the two statutes is identical here. Va. Code §§ 8.01-581.22 and 8.01-576.10.

³ Virginia Code § 63.2-1509A(10) includes “mediators eligible to receive court referrals pursuant to § 8.01-576.8,” as mandatory reporters.

⁴ Virginia Code § 63.2-1606 requires persons reporting of abuse, neglect or exploitation of adults over the age of sixty or incapacitated persons as defined in § 63.2-1603 by the following professionals acting in their professional capacity: persons licensed, certified, or registered by health regulatory boards listed in §§ 54.1-2503 (with the exception of persons licensed by the Board of Veterinary Medicine); mental health services provider as defined in §§ 54.1-2400.1; certified emergency medical services personnel; guardians or conservators of an adult; any law-enforcement officers; and certain others who care for elderly or incapacitated persons.

⁵ E.g., Tarasoff v. Regents of University of California, 17 Cal. 3d 425, 551 P.2d 334, 131 Cal. Rptr. 14 (1976) (where a psychotherapist was informed by his patient of an intent to kill his former girlfriend, the therapist had a duty to take whatever steps were reasonably necessary, including warning a potential victim).

⁶ E.g., Nasser v. Parker, 249 Va. 172, 455 S.E.2d 502 (1995).

⁷ Virginia Code §§ 8.01-581.22(iv) and 8.01-576.10(iv).

⁸ Rule 8.3(a) Virginia State Bar Rules of Professional Conduct.

⁹ Rule 8.3(c) Virginia State Bar Rules of Professional Conduct.

¹⁰ Virginia Code §§ 8.01-581.22(v) and § 8.01-576.10(v).

¹¹ Quoting the Uniform Mediation Act, § 5, Reporter’s Note 2. (emphasis added). The Virginia statute tracks the U.M.A.’s language.

¹² Described in Sarah R. Cole, et al, *Mediation: Law, Policy and Practice* §9.10 (2nd ed. 2001).

¹³ Virginia Code §§ 8.01-581.22(vii) and 8.01-576.10(vii).

¹⁴ E.g., State v. Williams, 184 N.J. 432, 877 A.2d 1258 (2005) (confidentiality prevents defendant from presenting evidence that, during mediation, victim admitted that he wielded a shovel at defendant); Rinaker v. Superior Court, 74 Cal. Rptr. 2d 464 (Cal. Ct. App. 1998) (victim’s statement in mediation that he did not see his attacker was admissible in court because accused’s constitutional right to confront witnesses trumped mediation confidentiality).

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The Resource Corner ~ Book Review ~



The Handbook of Dispute Resolution (Publication of the Program on Negotiation at Harvard University) Jossey-Bass Publishers 2005 publication
Hardback 546 pages
Michael Moffitt and Robert Bordone, editors

This is not the first Handbook or solid reference book on dispute resolution, but it may be the best compilation of thirty years of practice, research and experience. It is not easy to blend the writings of thirty-five authors, many of them lawyers, into a readable text. Yes, this is a text that basically covers the current waterfront in ADR. The editors have offered law school students, mediators, courts and corporate HR folks an interesting, but not too deep or technical, resource for either reading or reference. It is noteworthy that the short preface on the growing field of dispute prevention and resolution history is followed by eight chapter or 125 pages on "Understanding Disputants." Seeking first to understand relationships, emotions, enemies, gender and culture is a great first step. The relationship 'dynamics' and the 'bone chips to dinosaurs' chapters are, as are most, especially good. This is followed by a summary of the more technical tools or techniques courts, schools and corporations now look to as the first step in resolving conflicts. Not until the middle of the book are the separate chapters on negotiation, arbitration and mediation even introduced.

Each chapter ends with a helpful list of a dozen or more footnotes or references. The up-to-date nature of this reference tool is reflected in the chapter on "on line" dispute resolution using newly developed software. Who would have thought we might use computer software, have ombudsman programs in many arenas or mediate same sex divorces when the first ADR Handbook was published less than a generation ago? The chapter on school or youth dispute resolution offers up-to-date information on the 'peaceable' classroom and the 'peaceable' school initiatives. Mark Umbreit, the foremost criminal justice expert on restorative justice, shares current information on victim-offender programs.

While not a book to read from cover to cover, it is a book worthy of scrutiny by any lawyer or experienced mediator. It is a helpful guide for those in the local courts who seek to follow our Carrico Commission and State Supreme Court guidance on diversion and the use of ADR whenever possible. Only the chapter on ethics, a scant eight pages, could have been expanded. Most chapters are both well written and full of case examples or stories that are interesting. Most chapters go into just enough detail to adequately cover the assigned topic, without excessive detail. To say that any text is interesting is quite a compliment. This book may be worthy of addition to the professional library maintained by your firm or community mediation center.

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Training Outside the Classroom Peer Consultation Groups

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Advanced mediation training isn't found only in classrooms. Programs in Virginia and California use a less formal approach—peer consultation groups—to improve mediator practice skills, deepen conceptual knowledge and enhance self-awareness. The groups are built on the idea that mediators will develop greater professional competence by deliberately reflecting on what happens in their cases.¹

In a recent article in this magazine, Craig McEwen challenged mediators to build “active communities of practice” to cultivate a deeper sense of professionalism.² Peer consultation groups that engage practitioners in ongoing reflection about the values, principles and challenges of mediation are an important aspect of building such communities.

Virginia's peer consultation groups

Since 2003, Virginia's major mediation organizations, The Virginia Mediation Network and the Virginia Association for Community Conflict Resolution, have co-sponsored Mediator Peer Consultation (MPC) groups at six locations throughout the state. Community mediation centers serve as the program's delivery system. Small groups of mediators meet three to four times a year with a trained facilitator who guides a two-hour discussion of critical moments—turning points—voluntarily shared from actual cases.

MPC is not storytelling, but a focused examination of what was going on with the parties and the mediator, what the mediator did or did not do and why. By accessing the collective knowledge of their peers and getting feedback, mediators begin to recognize their own assumptions and routines and consider new approaches.

More than 140 mediators have participated in the Virginia program, which provides continuing education credit in the state's mediator certification process. Results, measured through surveys and interviews, have indicated great satisfaction with this method of advanced training. In the words of one mediator: “It really fills a niche. It has restored my enthusiasm for the practice.”

California's advanced practice groups

The ADR Program of the U.S. District Court for the Northern District of California operates a similar program. Since January 2004, the Northern District has sponsored five ongoing Advanced Mediation Practice Groups. Each group consists of six to twelve mediators who meet for two hours once a month. All of the groups are facilitated by the court's ADR Program Counsel, who is an experienced mediator and mediation trainer. Upon joining a group, mediators commit to participate for at least six months.

The practice groups provide a forum for mediators to learn from each other by reflecting on the actual experiences they are having in mediation. The goals of the practice groups include: providing a deeper learning experience than “one shot” continuing education programs can provide; combating isolation; promoting collegiality among mediators; developing enhanced mediation skills; applying negotiation and mediation theory to the issues confronted; and promoting a reflective approach to mediation practice.

Although peer consultation as an element of continuing training is nothing new—variations on the concept are found in medicine, psychology, coaching, and higher education—it does not appear to have been widely adopted in the media-

(Continued on page 17)

(Continued from page 16)

tion field.³ Yet learning from one's peers is a simple, straightforward concept with rich rewards, as the Virginia and California experiences are demonstrating. Mediators who regularly meet face-to-face develop a familiarity that makes it more comfortable for them to discuss ethical dilemmas and problems that arise in daily practice.

No one size fits all

Like mediation itself, peer consultation groups do not lend themselves to a one-size-fits-all approach. Programs should demonstrate variety and experimentation. For example, the Virginia and California programs take different approaches to several key issues.

Nature of group process. Virginia's MPC project adopted a standardized, well structured model used in all of the groups across the state. Participants arrive with a critical moment that they want to share. This is a point at which the direction, focus or tone of an actual mediation changed. A trained facilitator oversees the discussion, giving individuals time to share critical moments and giving their colleagues time to offer feedback and alternative approaches. Participants pledge to maintain confidentiality with regard to what they hear about cases and about a mediator's performance.

California's process is somewhat more fluid. Three groups primarily use a case study method in which mediators take turns presenting a recent case they mediated. A short case summary is ordinarily distributed before the meeting, along with the presenter's identification of issues for consideration. The two remaining groups choose an issue for discussion rather than starting with a case, but with the understanding that the conversation will be animated by real situations that have occurred in the participants' practices. Whenever possible, a short reading addressing some aspect of mediation theory related to the issues is distributed either in advance of the meeting or following the discussion.

Sometimes the discussion focuses on skills and techniques and sometimes on relating theory to practice. Most rewarding, however, is the effort to identify what was happening for the mediator in order to build a sense of self-awareness that goes beyond an intellectual understanding of skills or theories. At their best, the groups strive to help participants become more attuned to the personal qualities of a mediator which distinguish real mastery from merely competent performance.

Facilitator's role. Virginia's MPC facilitators are trained to ask questions that elicit reflection and insight into the relationship between theory and practice. The facilitator's challenge is to function primarily as a "process person," resisting the temptation to dominate the group as an expert or trainer. The best facilitators are those with experience and insight, who can effectively summarize and synthesize what is shared.

In the California program, the facilitator's role is not as limited to process. The facilitator guides the discussion and serves as a resource, especially with regard to linking theory and practice; but, as in the Virginia program, the facilitator tries not to dominate or intervene as the "expert" too frequently. As a general practice, the facilitator asks questions rather than offering suggestions about alternative approaches.

Group composition and meeting frequency. In California, the same group meets on an ongoing basis, and this continuity is key to developing trust and rapport. Within each group there are diverse experience levels. While at first some experienced mediators expressed reluctance to be placed in groups with less experienced mediators, almost all participants report that the energy, enthusiasm and fresh perspectives of the newer mediators help the veterans. Participants within each group also have varied subject matter backgrounds, providing diverse perspectives on the problems presented.

In Virginia, veteran and novice mediators with different styles and subject matter expertise make up MPC groups. Facilitators make an effort to "democratize" the groups by limiting introductions to first names. Program coordinators reconstitute the groups at each session to keep dynamics fresh. They use listserves and Web sites to advertise and offer a simple meal to attract participation after work hours.

Sharing lessons learned. Both programs are considering ways to share insights gained in the sessions with a wider audience while maintaining the confidentiality of the group process. Current plans in Virginia are to publish a quarterly

(Continued on page 18)

(Continued from page 17)

electronic newsletter that highlights major topics of discussion and offers guidance in the form of references to specific articles and texts. The California program identifies themes from the group sessions that will be covered in other educational programs.

Evaluation. The California program surveyed participants after the first round of six meetings and is about to survey them again. Feedback was uniformly excellent. Participants noted the importance of the “open and safe environment” and how the focus on real situations from cases the participants were handling led to a “higher level of understanding.”

Virginia’s MPC Program surveys participants after each session to find out what they learned, what they value about the program and what they would like to change. All said they would participate again—and more than 95% reported that they had gained insight into how to practice and improve their mediation strategies.

Neither program has yet devised a way to track the extent to which participation in a peer consultation group affects actual mediator performance in their cases. But it is clear that those participating believe the groups are having a positive impact on their work as mediators.

Michael Lang and Alison Taylor suggest that “mediators may have settled for less than their full potential” by merely replicating skills taught in training programs.³ Peer consultation looks like a sustainable method for advanced training that is readily available to court programs, state certification programs, community mediation centers and groups of private practitioners. It provides a way to guide mediators toward greater competence and self-awareness, and places substantial responsibility for quality control where it probably belongs – in the hands of the practitioners.

Endnotes

- ¹ MICHAEL LANG & ALISON TAYLOR, *THE MAKING OF A MEDIATOR: DEVELOPING ARTISTRY IN PRACTICE*, Jossey-Bass (2000); DANIEL BOWLING & DAVID HOFFMAN, *BRINGING PEACE INTO THE ROOM*, Jossey-Bass (2003).
- ² Craig McEwen, *Giving Meaning to Mediator Professionalism*, *DISP. RESOL. MAG.* 3, Spring 2005.
- ³ More than ten years ago, a *Mediation Quarterly* article described the value of a peer support group in a family law mediation practice: Edward Blumstein and Patricia Wisch, *Who Nurtures the Nurturer? A Model of a Peer Support Group*, 9 *MEDIATION Q.* 207 (Spring 1992).

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Judicial Support for the Confidentiality of Mediation Sessions

A New Jersey Superior Court Appellate Division ruling (*Lehr v. Afflitto*, N. J. Super. App. Div. January 19, 2006) affirms the confidentiality of mediation sessions. “The issue of the confidentiality of mediation proceedings is a matter of great public and systemic importance....Underpinning the success of mediation in our court system is the assurance that what is said and done during the mediation process will remain confidential, unless there is an express waiver by all parties or unless the need for disclosure is so great that it substantially outweighs the need for confidentiality.”

The parties and counsel participated in mediation in 2003. The mediator sent a letter to counsel outlining areas of agreement reached during mediation by the parties and the areas still to be resolved. The mediator’s letter was incorporated into the judgment of divorce. The defendant successfully appealed this decision. The case was remanded for a

(Continued on page 19)

(Continued from page 18)

Harrington hearing in 2004. During the trial, the mediator testified about the mediation process, confidentiality, and the property settlement agreement. The mediator stated that his letter was not a binding settlement between the parties. The trial court ordered the mediator's letter be incorporated into the judgment of divorce. The defendant then appealed on the basis of the confidentiality of the mediation session. The Superior Court ruled "the trial court erred in permitting the mediator to testify...during the plenary hearing." The "confidentiality restrictions that govern mediation sessions... should have been honored." In addition, the court ruled "the credible evidence adduced at the hearing does not support the trial court's conclusion that the parties had reached an agreement and settlement of the issues...." The trial court's decision was reversed and the matter remanded for trial.

The Court noted that both the New Jersey Court Rules and the Uniform Mediation Act support the "underlying principles of public policy" in support of the confidentiality of the mediation process.

Virginia Solutions: Common Ground for the Commonwealth

Virginia Solutions, a state-wide initiative for community collaboration and consensus building, recently completed two pilot projects. The University of Virginia's Institute for Environmental Negotiation (IEN) initiated Virginia Solutions in the fall of 2004 in partnership with the Virginia Association for Community Conflict Resolution (VACCR), with guidance from an advisory committee composed of representatives of state agencies and non-profit and private sectors. Virginia Solutions aims to provide an easy, cost-effective mechanism for communities to initiate a collaborative approach to any given community issue. Frank Dukes, IEN Director said, "We're proud of the progress we've made in getting Virginia Solutions off the ground."

Three key features of the Virginia Solutions process distinguish it from the standard multi-party mediation process. First, the Solutions process is strictly community-based and addresses issues or projects being faced in a specific community. In this community-based context, a respected community member with high visibility and credibility may be appointed as convener when the process is initiated. This convener works with the facilitators and the local and state government and citizens to help bring together a multi-party Solutions Team. Second, the end result of the Solutions process is slightly different than a typical multi-party mediated agreement. The stakeholder Solutions Team creates an integrated action plan and signs a Declaration of Cooperation in which the parties identify their respective responsibilities for implementation of the action plan. Consequently, the final result of the Solutions Team work is not an agreement that signifies the end of the Team's work together, but rather an agreement on how the Team will continue to work together throughout the duration of the project or issue. Third, the Solutions Team approach is generally very focused, comprising an average of only three to five meetings over the space of four to eight months. While many multi-party

stakeholder processes may span one or more years, particularly those dealing with complex policy issues, the Virginia Solutions approach is short in duration. This Solutions process can be used at the front end, middle, or even end of a multi-year project; it can be used to get a project off to a good start or to get an ongoing project over an unanticipated hump or impasse; it can represent the totality of organized formal stakeholder interaction or it can be a small piece of a larger stakeholder involvement process.

Funded in part by grants from the Laura J. Musser Fund and the Policy Consensus Initiative, two Virginia Solutions pilot projects were undertaken by the Piedmont Dispute Resolution Center (PDRC) in Fauquier County and the Community Mediation Center (CMC) of South-eastern Virginia.

The first pilot project was initiated to develop a Riparian Easement Program in Fauquier County. Fauquier County is an agricultural community in a suburbanizing part of Virginia that defines its cultural heritage by its open lands and rural landscape. The State's concern and mandates to improve water quality and County efforts to retain its agricultural heritage often evoke conflict. To address concerns over water quality and pressures facing farmers, the Fauquier Riparian Easement Program (FREP) was conceived. The Virginia Solutions process brought stakeholders together to begin working out the details of FREP, a program to utilize land preservation tax credits for riparian buffer easements to invest in the future of agriculture production in Fauquier County while working to improve water quality of impaired streams. The PDRC established a four-person facilitation team who worked with Fauquier County staff to convene a Solutions Teams and identify an appropriate community convener. In response to their request, the Secretary of Natural Resources formally appointed Harry Atherton as official convener,

(Continued on page 20)

(Continued from page 19)

an elected Supervisor and farmer who would work to help the Solutions Team develop consensus. The Solutions Team, comprised of 22 representatives of different community and state interests, met four times in the summer and fall of 2005, and signed a Declaration of Cooperation (DOC) in November 2005. As a consequence of this agreement, a \$96,000 water quality grant application has been submitted to the Virginia Department of Conservation and Recreation to further develop and launch the Riparian Easement Program. The grant aims to fund a full-time position to develop and implement a self-sustaining, countywide Riparian Buffer Easement Program. The Solutions Team will continue to meet as additional funding becomes available. The DOC was a central component of the water quality grant as it demonstrated the commitment of a wide range of partners to the program, and it is anticipated that the DOC will provide continuing benefits to the County.

Overall, the FREP process represents a successful example of how Virginia Solutions can be used to help a community work collaboratively to address a complex, controversial issue. One Solutions Team member called Virginia Solutions a “very efficient vehicle for consensus building.” Another Solutions Team member reported that the process was very helpful in “taking a very fluid and complicated concept and developing it into a workable document [the Declaration of Cooperation] that was supported by all of the stakeholders.”

The second pilot project was initiated to address wastewater treatment problems on Virginia's Eastern Shore. Virginia is struggling to meet mandates to improve the water quality in the Chesapeake Bay, and a primary contributor to unmet water quality goals is nonpoint source pollution, specifically nitrogen and phosphorous loading. Communities on Virginia's Eastern Shore have unique wastewater treatment needs in that they must provide adequate wastewater treatment capacity for community residents, monitor and address failing septic systems of rural residents, ensure safe drinking water, and also promote improved water quality in the Chesapeake Bay and adjacent waters. The CMC of Southeastern Virginia is working to assist the citizens of the Eastern Shore by planning and conducting a collaborative process that will look at current and future wastewater treatment needs while addressing water quality issues in the Chesapeake Bay, seaside, local creeks and the ground aquifer.

This project encountered considerably different and greater challenges, largely because the issue of waste-

water treatment on the Eastern Shore involves more than one political jurisdiction and because the issues had not yet “ripened” or coalesced sufficiently for the local governments and other stakeholders to have already decided on a collaborative approach. As a consequence, while using the traditional skills of convening and facilitating, the CMC approach was more exploratory and educational.

Much of the CMC's work during the summer of 2005 was “behind the scenes:” talking with different stakeholders about the issues and options for a potential collaborative effort. The CMC facilitated a stakeholder meeting in Nassawadox, Virginia, in which the range of issues at stake was explored. From this, the CMC developed a planning team that met to guide the development of Phase II of this project. The planning team decided that a first step would be to hold a two-day Wastewater Educational Forum, bringing together 50 key government, non-profit and business stakeholders. The Forum will provide an opportunity for participants to learn about new technologies and current and future needs, as well as to develop a shared vision and specific joint action plan to address shared wastewater issues on the Eastern Shore. The CMC is currently working to find funding for this next phase of the Solutions process, and has submitted proposals for funding to the Chesapeake License Plate Fund and the VA Department of Conservation and Recreation to move this project forward.

In this project, while the Virginia Solutions process is being adapted to meet the needs of the community and its issues, the process will retain key features of using a stakeholder Solutions Team, official community convener, and the development of a collaborative strategic plan. It is hoped that this process will improve wastewater treatment problems, improve local and Chesapeake Bay water quality, and serve as a model for how other localities may resolve similar problems.

Based on the success and learnings from these two pilots, additional Virginia Solutions projects are in the pipeline. One current project in Loudoun County, while not officially designated as a Virginia Solutions project, is using the Solutions Team approach to develop a declaration of cooperation and strategic plan for the county's watershed planning effort. A Virginia Solutions project may be initiated by calling IEN, whose staff will assess the suitability of the project for a Virginia Solutions approach and, when possible, identify a local community-based facilitation team through the local community mediation center and/or its private providers.

If you are interested in learning more about Virginia Solutions, you may contact IEN's Tanya Denckla Cobb at tanyadc@virginia.edu, Frank Dukes at FrankDukes@virginia.edu, or Christine Gyovai at christineg@virginia.edu, or by phone at 434-924-1970.