



SUPREME COURT OF  
VIRGINIA

# RESOLUTIONS

OFFICE OF THE EXECUTIVE SECRETARY

*Department of Judicial Services  
Division of Dispute Resolution*

100 North 9th Street  
Richmond, Virginia 23219

## What's Unique About Mediating Special Education Issues?

The Virginia Department of Education has offered parents and school administrators an opportunity to resolve special education issues through mediation since September 1999.

Our mediators are prepared to assist parents and school administrators in negotiating any issues regarding a child's eligibility for special education or 504 services or the provision, scope or delivery of those services, at any time a request is jointly made. Governing these considerations is a complex relationship between federal and state law, federal and state regulations, ever changing case law and good educational practice. The federal law, IDEA, requires that mediators must be knowledgeable in laws and regulations relating to the provision of special education and related services.

IDEA spelled out for the first time in 2004 what was always true, but unstated. If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution. Written, signed mediation agreements are enforceable in any state court of competent jurisdiction or in a district court of the United States (34 CFR §300.506). This is similar language to the section referencing the effect of a written agreement in Virginia Code § 8.01-581.25. The basic meaning of this clause does not represent a change in rights, but the fact that it is now explicit can have only a beneficial effect on the perception of the value of mediation and mediated agreements.

Since 1975 with the passing of the first federal special education law, the required deliberative planning process for parents and school staff to employ in coming to a decision about what extra support or specialized instruction a student might need has been consensus. Conflicts may naturally arise from the different roles and perspectives the participants in the planning process have.

What time span do people have in mind who are involved in a planning process for a student? As we know, consensus-based processes are time consuming. However, given their tasks and culture, school personnel are required to work under compressed timeframes. This creates a *structural barrier* to the careful crafting of questions, framing of issues, adopting a new stance and outlook, generating multiple options, and exploring the utility of possible outcomes, all of which mediation supports. Mediation therefore provides some needed flexibility in a highly regulated and time-compressed decision-making process.

With some frequency, attorneys and advocates attend our mediations. When they do not attend, they are often available by telephone and act as advisors regarding any agreement reached. Establishing an ongoing and productive dialogue about the separate roles and purposes for attorneys/advocates and mediators has been an important developmental task over the past several years.

There is always a natural tension between an attorney's training to cut to the chase and get to the bottom line and a mediator's training to allow time and space for important underlying issues to surface. If people are to influence and better understand each other, a negotiation process needs to provide that time. In a productive negotiation, attitudes may change in fundamental ways. The stances taken toward each other by parties may alter, allowing flexibility and possibilities unforeseen at the beginning of the process. The actual ranges of outcomes acceptable to the parties may be modified during a successful negotiation. The assisted negotiation process addresses some basic human needs to be heard and to experience fair treatment. These shifts and opportunities will not occur if there is a rush to settlement.

In these deliberations regarding what constitutes free, appropriate public education, the emotional tone is often highly charged. The stakes are perceived as high because they embody the opportunity *for* and the academic and functional development *of* a student. There has often been a succession of failed meetings before the parties have invited a mediator into their discussions. This negotiation history may cast a long shadow over current mediation efforts. Parties' identities, values and belief systems are often fully engaged and the issues may have become personalized and the framing of them polarized. "Identity-driven conflicts are rooted in the articulation of, and the threats or frustrations to, people's collective needs for dignity, recognition, safety, control, purpose and efficacy.... Negotiation and bargaining too early in a conflict engagement process can make identity conflicts worse (Rothman, 1997)."

As a result, mediators working in these cases need to have a heightened sensitivity to people's circumstances, the hostages protracted conflict takes, and the consequent pain participants may be experiencing. The mediator's initial contacts, tone and word choice are even more crucial than usual. The participants are tender and have heightened concerns about being heard and valued.

Our mediations are often multi-party conferences. This requires some advanced conducting skills of the mediator. Greater energy must be spent on keeping the meeting focused and profitable. The mediator must discern where communities of interest may exist, which may shift from issue to issue. I view the demand on a mediator as similar to guiding a motivational interview, in which each person's stake in the negotiation process must be elicited. This avoids the potential destabilizing contributions that parties unfamiliar or uncomfortable with a negotiation process and its unpredictable outcome might otherwise make. People used to authority-based decisions must be helped to feel comfortable with negotiated results.

The most frequent issues raised in these conferences are the sufficiency of services, the type of services, and the setting where they are carried out. Often the student under discussion has been identified as having autism to some degree.

Because we are dealing with inexperienced negotiators in these circumstances, they may not present unambiguous, recognizable and easily communicated objectives. Mediators can work to elicit people's best thinking but need to caution themselves to avoid being drawn into substituting for a missing role at the table. I trained a mediator who had been a special education advocate. He initially held the view that an advocate's role was more powerful than a mediator's. It took some time and experience for him to realize that the power people invest in a mediator is their *mutual* trust, precisely because the mediator is not an advocate and has no stake in the outcome. This trust allows the mediator to work with great latitude and fluidity in assisting people to better hear, know and understand each other.

I observe experienced mediators regularly and try to coach them on what we identify as the growing edge of their practice and understanding of their craft. We have spent time on dealing with emotional issues, trying to help parties feel more comfortable and effective in what is often a charged atmosphere. Our training time always includes practice issues and information about changes in the law and regulations.

Observing mediators over time, I've come to some conclusions about what makes the best mediators effective. They share a deep and sincere interest in people and exhibit a profound respect and humility in working with them. They conduct a client-centered process rather than a mediator-centered process. They have emotional maturity, and a developed emotional intelligence. They engage and motivate people and encourage them to think in new ways about what they all have in common: the uniqueness and interests of a student.

*Submitted by Art Stewart, Coordinator of Mediation, State Special Education Mediation Services*



## Getting on Board in the Electronic Age

The DRS staff is working diligently to increase time and resource efficiency. Due to the state of the economy, we must communicate electronically with the mediation community, so it is essential that you keep us informed of your current email address and check the mediation web site regularly for important updates. When posting new information or major revisions to documents, an email will be disseminated to mediators, directing you to the appropriate web page.

We have also begun the task of scanning and indexing our mediator files into a searchable electronic system. Some paperwork, such as supporting documentation for recertification applications, will not be scanned. All paper files will be shredded as scanning is completed.

We will also discard recertification application supporting documentation once it is processed, so you will be unable to obtain copies from your DRS file. Therefore, it is important that you keep copies of your submissions to DRS for your records. To conserve paper and mailing expense, please submit only enough case and training evidence for recertification to meet minimum requirements.

The ***Resolutions*** newsletter is also a valuable source of information for the ADR community. Emails are sent to certified mediators as each issue is posted to the web. If you have ideas for articles or wish to contribute a book review you believe would be of interest to mediators, please contact the DRS office.



## Conflict Resolution Center Names New Executive Director

Cherie Hall recently joined the Conflict Resolution Center (CRC) in Roanoke as their Executive Director. Cherie has over twenty years in management experience including retail sales, international trade, and organizational development. Her non-profit background includes service as Director of Development for the Southern Virginia Child Advocacy Center and Director of Operations for the Franklin County Family YMCA.

Using her experience in sales, marketing and graphic design, Cherie hopes to increase community awareness of alternative dispute resolution and spark some excitement regarding the process. "Outside the court system, our center has pretty much been operating as a well-kept secret," said Hall. "I hope to shine a light on all the amazing work our mediators have been doing for the past twenty years and to help educate the community about the life-changing process and value of the services we offer."

Cherie has specific interest in restorative justice processes and is currently pursuing mediator certification with the Supreme Court of Virginia. A Franklin County native, she resides in Rocky Mount with her husband and their two children. She enjoys spending time with family, friends, and pets as well as gardening, hiking, motorcycling and riding ATVs. "I've always been a bit of a tomboy and a daredevil. I'd rather be outside playing and getting dirty than doing just about anything. I'm also fascinated by people. I absolutely love meeting new people, hearing their stories, and sharing information. The field of alternative dispute resolution is a perfect fit for me, especially here at the CRC. This organization has such a rich history and so many success stories. I can't wait to get out there and share them. I am also excited about the opportunity to bring more people to the table and help them write their own stories as well."

### **VA Assn. of Community Conflict Resolution**

#### **Apple Valley Mediation Network**

242 North Main Street, Suite 202  
Woodstock, Virginia 22664  
540-459-8799

Edward F. Wilkins, Executive Director

#### **Community Mediation Center-Charlottesville**

P.O. Box 133  
Charlottesville, VA 22902  
434-977-2926

Cyndy Martin, Executive Director

#### **Community Mediation Center of Danville and Pittsylvania County**

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

Bob Phillips, Executive Director

#### **Community Mediation Center Harrisonburg**

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

Timothy Ruebke, Executive Director

#### **Community Mediation Center - SEVA**

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

Kim Humphrey, Executive Director

#### **Conflict Resolution Center**

4504 Starkey Road, Suite 120  
Roanoke, VA 24018  
540-342-2063

Cherie Hall, Executive Director

#### **The Dispute Resolution Center**

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

Nancy Chenault-Mediation Coordinator

#### **Northern Virginia Mediation Service**

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

Bruce Engelbert, Interim Director

#### **Peaceful Alternatives Community Mediation Services**

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

Carolyn Fitzpatrick, Executive Director

#### **Piedmont Dispute Resolution Center**

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

Lawrie Parker, Executive Director

#### **The Rappahannock Mediation Center**

406 Chatham Square Office Park, Suite 101  
Fredericksburg, VA 22404  
540-372-7740

Cheryl Dillard, Interim Executive Director



## A Life That Inspires Amy B. Barnhart

How can someone so petite, stand so tall and influence so many people in an all too short life? Amy Barnhart did just that with her heart, her sense of fairness, her internal moral compass and strong will.

Amy Barnhart, a bright and feisty lady, grew up in Halifax, Virginia and won an academic scholarship to Radford University where she earned an honors degree in education. She began her 27-year career with Roanoke County Public Schools as a classroom teacher but soon was asked to participate in an honors degree program in guidance at the University of Virginia. From there Amy served as a guidance counselor and later guidance coordinator for what many referred to as “the best junior high school in Roanoke.” She was committed to the students 110% and did whatever was necessary to benefit the children regardless of any bureaucracy or rule.

Amy recognized that good communication and the ability to resolve your own conflicts in a positive way was a life skill. While at Cave Spring Junior High School Amy worked with the Peer Mediation Programs and their sponsors, teaching the two-day class to ensure that the school had a strong Peer Mediation Program. This empowered the students to resolve their own issues, reduced the conflicts in the school and resulted in greater classroom learning. Approximately 50 students worked with Amy as peer mediators. In an effort to support the peer mediation programs in the Roanoke area, she began “Peace Walk,” an annual walk-a-thon allowing peer mediator teams to meet each other and at the same time earn money for their programs. Hundreds of students participated, raising thousands of dollars and earning valuable prizes.

Amy sponsored “Helping Hands” with the PTA at Cave Spring Junior High School which purchased clothes and other needed items for less fortunate students and their families. It was common for Amy to use her personal money to make purchases for these needy students.

Recognizing the difficulty of transitioning to junior high/middle school, Amy began the first Natural Helper program. She selected students who were not always the best students or the most popular students, but those who had special talents or needs. These students “buddied” with a new student, which provided greater opportunity to meet new friends and “learn the ropes” at their new school, building self-confidence in both students. Amy had a knack of seeing the great possibilities in children and worked to encourage them to achieve their best. “Catch them doing something good, and compliment them for it,” was one of her favorite sayings.

Amy served faithfully on the Conflict Resolution Center Board and Executive Committee from the 1990’s until 2002, heading the Education Committee. In 1998 when the life of the Center was uncertain, Amy became determined that it would survive and began to recruit others to become certified mediators along with herself. When classes and mentoring for certification were not available in her area she carpooled to Harrisonburg for training and mentoring. Once certified she was a weekly volunteer mediator for the Conflict Resolution Center in the General District Court and a regular for mediating family and circuit cases at the office. She mentored numerous candidates for mediation, one being Donna Sue Richardson, now a seasoned teacher-guidance counselor and CRC Board member who was one of Amy’s students during her first year teaching.

At their annual meeting in October 2002 the CRC named its scholarship in honor of Amy, the champion of its school programs, to encourage others to use mediation skills in resolving disputes in every aspect of life. Surprised and pleased, it was the highlight of very a special evening.

On December 27, 2002, Amy passed away unexpectedly. At her funeral, the chapel was filled beyond capacity with former students, principals, teachers, lawyers, mediators, friends and family. Three of her fellow mediators from Harrisonburg made the two-hour drive to Roanoke for the service and burial. “She always made me feel like I was her favorite” was a comment repeated by many of her former students and teachers.

While Amy was small in stature, her impact on students and families was gigantic. She is missed daily but we constantly remind ourselves that, in the words of Margaret Mead, “Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it's the only thing that ever has.”

Her spirit and legacy live with us daily.

*Submitted by Margaret Beazley, certified civil and family mediator, mentor, mediation services contractor, former Interim Executive Director of Conflict Resolution Center, member of CRC's Board of Directors, and dear friend of Amy Barnhart.*



**Frank Rogers, President of  
CRC Board of Directors  
presents Amy Barnhart  
with a Resolution**

## What the Parties Have to Say

The two principle ADR options our office oversees in the courts are mediation and judicial settlement conference. In the March issue of *Resolutions*, we shared input from certified mediators sharing why they feel compelled to mediate disputes and describing a success story. In this issue, we thought it might be interesting to take a look at a smattering of comments sent to the DRS office over the years on the evaluation forms completed by parties following the mediation experience and then comments on the exit surveys following judicial settlement conferences.

Naturally, there are comments reflecting disappointment because the mediation did not end in an agreement or frustration and anger because the “other party” was unwilling to bend or to be truthful in the mediation setting. Sometimes, however, comments reflect that the absence of an agreement doesn’t mean the mediation time was wasted. As one party remarked, “*Mediators can only work with those who are willing to see reality. Not having an agreement is not a failure. This process gave me a great relief and a burden was lifted.*” Another comment sums it up well,

*“Mediation has the potential to be successful if both parties are capable of reasoning rationally. Honesty and a willingness to compromise must be present on both sides for an agreement to happen.”*

Many parties acknowledged personal skepticism as they came to the mediation table but noted a change of perception as the session unfolded.

*“I came to mediation with my mind made up that I wouldn’t bend, but the mediator is really good at what he does and helped me see the light. Thank you!”*

*“I didn’t want to stay and talk, but I’m glad I did. This really works – incredible!”*

We loved this one: *“Was pleasantly surprised – really negative about it and worried, but it was not as bad as a root canal!”*

A common theme among the parties was that mediation provided a safe environment where all parties were shown respect. This is a wonderful gift that you as mediators give to each person who comes to you for help.

*“She made it a comfortable environment. I did not feel intimidated and was able to speak freely. This was a much better way to handle our situation than letting someone else decide the fate of our children.”*

*“I was surprised at how much more relaxing this environment is compared to court. This procedure allows you time to think and comment on how you feel so you can leave with more closure.”*





*“The mediator was very professional and treated me with respect. Even though I was the one being sued for back rent, I was treated equally and made to feel I had rights.”*

*“I have a lot of respect for someone who can keep their cool when those around them are arguing.”*

*“Although I was fearful of confronting the issues, the mediator maintained a comfortable environment that made me less anxious.”*

Many expressed their opinions that the mediation process was much preferred over appearing in court before a judge.

*“I feel it helps both parties involved to realize one is not out to get the other, as in court it seems that way. I feel this way each walks away with a more caring insight of the issues at heart.”*

*“Much better than the ‘win or lose’ feeling you get after court.”*

*“This is my first mediation. I wish all states had this process. It saves a lot of time and resolves the issues better than a judge would, who doesn’t have time to really listen to both parties.”*

*“Mediation is a less confrontational approach as compared to litigation. It allows the ‘gray’ areas to be resolved with flexibility.”*

Numerous parties spoke of precious relationships preserved or restored and new hope for tomorrow as a result of mediation.

*“I think mediation helped me to be able to establish a new relationship with my daughter. We were able to come up with solutions that we couldn’t do before.”*

*“The process gave me confidence in being able to return to a good working relationship with issues resolved to a satisfaction we agreed on. Mediation principles could be used more in life’s circumstances.”*

*“Gave me a second chance on the life I would like to have with my wife. I owe the mediators a lot for their help!”*

*“They made us realize that we love each other and our son and we are meant for each other. They also helped us talk our problems out.”*

*“The mediation process was the first time in our marriage that my wife and I honestly discussed subjects that needed to be addressed. Our mediator allowed me to open up and really come to grips with issues that had been buried. He was outstanding and may have saved our marriage!”*

*“I was able to learn something for myself and from my mother. Comfort came from this session.”*

*“We now see that it is time to move on rather than continuing to hurt each other and our son.”*

*“Mediation taught me that if anger is not dealt with in the right manner, it will affect our children for a lifetime and will be carried into their future relationships.”*

*“I feel that this has helped our son understand that talking back, getting angry, and lying doesn’t solve anything and also it has shown us as adults that no one is perfect.”*

*“The fact that the mediation process fosters bonding between people is very valuable.”*

Another much-repeated theme was that of communication. Mediators see time and time again that countless folks are hindered in their happiness and robbed of peace in relationships because they don’t know how to communicate in positive ways that foster mutual trust and respect.

*“For years my child’s father and I were unable to communicate on any level. After one two-hour session, we began communicating eagerly. I would suggest mediation to any couple with communication problems. It helps tremendously.”*

*“Mediation brought to light ways to communicate that I wouldn’t have thought possible because of all the hate involved.”*

*“Came to the conclusion that what was being asked and what was being offered was almost exactly the same, but there was a lack of communication.”*

*“I feel that couples should be required to attend mediation prior to marriage. There would probably be less divorce if people could communicate more effectively with each other. We were unable to do our own mediation because throughout the marriage we had communication problems.”*

*“Before my spouse and I couldn’t look at one another; now we can talk!”*



In family mediations, often the emphasis becomes focusing the parties on what is best for their children. It is amazing how many couples came to realize that before mediation their focus had been turned inward at their own anger and hurt. Mutual love for the child creates common ground.

*“Mediation is something that a lot of young kids our age need to use because this process is only thinking of the child and not about love lost among the parents. This is the way to go.”*

*“Mediation was very helpful because at one time my wife and I were at each other’s throats and the mediator explained it wasn’t about us but about our son.”*

*“I think this session was good and we made a good decision for our son that will make us better parents and make him a better man when he gets older.”*

Many mediation parties commented on new insights and changed perspectives gained through the experience.

*“Mediation caused me to take a look at the motivating circumstances of our differences.”*

*“Very helpful in resolving our issue – which was a misunderstanding by both parties. Gave both parties a chance to tell their sides of the dispute. Issues look a lot different now.”*

*“Very helpful in identifying simple issues through a lot of smoke!”*

*“Was very helpful in me being objective, and trying to put myself in my daughter’s father’s place, which enabled me to be fair.”*

Of the mediation process in general and the outcome of their sessions, parties shared many positive comments.

*“I wish we had gone through this before. It would have alleviated a lot of stress and undue tension. I feel good about the decisions we made here today.”*

*“The extra time by both mediators was commendable. I liked the way they empowered us to come to our own agreement.”*

*“Extremely effective and very approachable mediators. Exceptionally competent. I was impressed.”*

*“It is so much more rewarding when I was able to be present with my wife working out an agreement compared to attorneys working out the agreement without the two of us being present. It’s nice to be heard!”*

*“I prayed that this mediation process would bring my wife, myself and our son closer to becoming a family once more. The decisions we made today have made that happen.”*

*“I am extremely glad this process was ordered. It helped us make decisions for our lives, important ones, calmly, respectfully, and intelligently, in the best interest of our family. We can move on in a positive direction.”*



*“These two mediators along with the help of God performed a miracle in my situation. In the beginning, things were extremely bitter between my husband and me, but with their help our communication improved and we reached an agreement. Even our lawyers never thought we would be able to do it!”*

*“I participated as an attorney for one of the parties and found this far less stressful than negotiating an agreement without the help of a mediator.”*

Interestingly, one character trait that a number of participants noted they really appreciated was their mediator’s sense of humor.

*“I loved the way our mediator laughed – made me relax and feel more determined to patiently work things out even though our problems seemed so hurtful.”*

*“Great mediator, loved her laughter. She was extremely professional, even when my ex and I were acting like kids!!”*

*“Not only was her patience extraordinary under the circumstances, but her sense of humor helped relax an otherwise tense meeting. Job well done!”*

Lastly, parties struggled to convey in words the sincere appreciation they felt for what their mediators had accomplished in their sessions together.

*“I am so impressed with these people and their service. I imagine a great deal of grief (and court cost) is saved by the work of these obviously well-trained and qualified people.”*

*“Very validating, understanding feelings, giving time for introspection. This process was very beneficial and I highly suggest this not just for divorce issues but any type of civil case. God bless you that devote your time to this amazing program!”*

*“This is not enough money to pay our mediator for her time and patience spent on our case. I wish I could do something special for her. Maybe I will hit the lotto one day and I will remember her!”*

*“I wish this awesome mediator could come home and live with us. We would all get along much better and treat each other with love and respect with her help!”*

*“They were both warm and respectful people, using a sense of humor when appropriate, and always patient. I am very grateful to have had these services at an extremely emotional, difficult time in my life. Thank you and God bless.”*

*“I have been very impressed with the quality, patience and compassion of our mediators. I think this is an excellent service and owe much to them. They made the impossible happen!”*

*“I think this process is very helpful and much needed. I’d like to say to both of the mediators that this is a wonderful thing that you all choose to do for others.”*



## Judicial Settlement Conference

Another ADR option in Virginia's courts is Judicial Settlement Conference (JSC), and the Office of Dispute Resolution Services tracks participant satisfaction with the process. All facilitators are retired circuit court judges who have been trained to combine mediation skills and settlement conference techniques. The following comments have been extracted from JSC exit surveys.

*"This is probably the best system that the Supreme Court has devised to resolve matters inexpensively and completely in my 32 years as a practicing attorney."*

*"I continue to believe that the settlement conference program is a great asset in the administration of justice and fairness to all involved. Without question, the knowledge and experience of the settlement judges have made the program a success."*

*"The judge did an amazing job of identifying common ground and steering both parties to a practical solution. Given the difficulty of the issues and the unreasonable expectations of the parties going into mediation, I was very surprised that the case settled on terms fair to everyone."*

*"The judge did a superb job. He was great at recognizing the issues, understanding and communicating the opponent's position in a non-confrontational but persuasive way. I will definitely use this process again."*

*"This process was extremely effective. The demeanor and knowledge of the judge carried tremendous goodwill and weight with my clients."*

*"It was excellent. The judge was fair, helpful, kind. We never thought there would be an agreement in this divorce which had been pending for almost five years. The judge made it happen."*

*"Settlement in the case was nothing short of a miracle. The judge has my sincere gratitude as well as that of my client."*

*"The judge is very dedicated to the settlement process and committed to achieving peaceful resolutions. He is very calm, fair-minded and wise and will take the time to gently guide the litigants toward settlement. He is such an asset to me in my practice, and my clients are so much happier with a settlement they actively participated in. Thank you very much!"*

*"This is one of many settlement conferences in which I have participated and I highly recommend the process; it is wonderful for the "little man" with limited resources to be heard without going broke in the process."*



*"Very good conference with good results. By virtue of having an experienced judge, his opinion carried great weight in reaching full and complete settlement."*

*"Took 3 hours to settle what we could not settle in 6 years!! Excellent process!"*

*"This judge does a great job. He leveraged his time on the bench to offer perspective to the parties that bridged the gap in this case!"*

*“Excellent in procedure and process, forcing the parties to face reality in their negotiations.”*

*“In this particular case, the opposing client needed to ‘have her day in court.’ The judge was very patient and understanding with this litigant and was able to motivate her to shift her focus from past issues and move forward to settlement. These settlement conferences are a wonderful service to the public.”*

*“I doubt the case would have settled without the constructive intervention of the judge. He was a “settling” presence in an emotional environment.”*

*“This was my first use of a settlement conference process. I was extremely, favorably impressed. The prestige of the judge was an important factor in helping the litigants reach compromise.”*

*“The judge was able to help the parties use their common sense when making decisions about emotional issues. He was able to help them to arrive at a decision/settlement after nine years of feuding. He was excellent.”*

*“Once again, it was a great experience. The judge assisted the parties and counsel in achieving complex resolution of their case - despite the fact that at several junctures it appeared the parties were at an impasse. Given the cost that litigation would have necessitated, resolution of this case at the judicial settlement conference was a wonderful outcome for both parties.”*

*“First time I have used a conference. I could not have been more impressed. Shows attorney and client strengths and weaknesses of case. I see the process as particularly helpful where one or both parties have unrealistic expectations.”*

*“Excellent judge and vehicle for resolution of issues. Judicial settlement conferences offer another great tool in the toolbox of alternative dispute resolution.”*

*“Settlement conferences are both time and cost effective. Best solution offered by courts to avoid trial and settle issues. Saves the state a lot of time and money in court expense.”*

We hope you have enjoyed this wide-angle view of ADR in Virginia. The Office of the Executive Secretary is very appreciative of the force of professionals who serve with willing dedication to offer an alternative to conflict resolution within the framework of our courts. As you can see, the results speak for themselves and our citizens are reaping the benefits of your fine work.

**M**ediation...



## VMN Session Expands List of Recommended Reading for Mediators

At the Virginia Mediation Network's recent training conference, attendees added to the reading list originally developed at The Northern Virginia Mediation Service in a session where mediators discussed their favorite books and writings on mediation-related topics. Both discussions focused not only on "how-to" material, but also on fiction, science, biography and other items that people found nourishing and instructive for them *in their roles as mediators*.

Tracey Pilkerton-Cairnie and John Settle, who led both programs, found the cascading effect of the conversation was remarkable – one book idea suggested others, which in turn suggested more. The list below is a living document which Tracey and John hope to grow in future sessions.

The list contains a note about why each item was deemed valuable. Mediators who have other favorites are encouraged to share them by responding here, and we will send the information to Tracey and John so they can add to the list.

***Influencer: The Power to Change Anything***, by **Kerry Patterson et al.** -- understanding how people influence others and create constructive change. There is an accompanying video.

***Bringing Peace Into The Room***, edited by **Daniel Bowling and David Hoffman** -- a collection of provocative and practical essays on all aspects of mediation.

***The Butter Battle Book***, by **Doctor Seuss** – illustrates aspects of competitive human behavior and intolerance.

***Inner Tennis***, by **Timothy Galway** – sports-enhancing performance manual recently reborn as a management text. Covers the idea of a person's "self-talk," especially when things aren't going well.

***Blink: The Power of Thinking Without Thinking*** and ***Tipping Point: How Little Things Can Make A big Difference***, by **Malcolm Gladwell** – two books on how people give meaning to thin slices of behavior, the value of our innate knowledge and intuition, how major changes in society often happen suddenly and unexpectedly, and how ideas grow in acceptance. Among other things, Gladwell examines how behaviors and messages "spread just like viruses" and he discusses a typology of personalities who enable the spread.

***What We Keep***, by **Elizabeth Berg** – novel on an intergenerational dispute involving perceptions and misunderstandings of events between mother and daughters. Story also touches on the power of truth, forgiveness, and understanding.

***Practicing Narrative Mediation – Loosening The Grip Of Conflict***, by **John Winslade and Gerald Monk** – starting from the perspective that people have fundamentally important individual "stories" (narratives) of their lives and experiences, this book provides ways for mediators to think about helping people recognize and transform their own stories and intersect other peoples' stories.

***The Color of Water – A Black Man's Tribute To His White Mother***, by **James McBride** – story of communication dynamics and shifting perceptions experienced by a child of an interracial marriage.

***Difficult Conversations: How to Discuss What Matters Most***, by **Douglas Stone et al.** -- analyzes difficult conversations in terms of three components: learning what happened, developing an understanding of the feelings around the issue, and identifying personal stakes in the outcome. Practical, "how-to" advice.

***Games Girls Play***, by **Caroline Silby** -- less about girls and more about performance enhancement in sports and in life; discusses coping differently with things you can and can't control, communication, and other subjects.

***Ripples from Peace Lake: Essays for Mediators and Peacemakers***, by **Eric Galton** -- provocative short essays from a thoughtful and experienced mediator – “every essay is a delight.”

***A Promise To Ourselves: A Journey Through Fatherhood And Divorce***, by **Alec Baldwin** – a father's long fight over custody and visitation and his perspectives on what he calls the “family law industry.”

***The Happiness Hypothesis***, by **Jonathan Haidt** – a synthesis of psychology, religion, philosophy and sociology, bearing on self-understanding and creation of personal meaning.

***Crucial Conversations***, by **Kerry Patterson et al.** – tools for holding conversations when the stakes are high. Provides a dialogue model for understanding how people react when safety is at risk (flight/fight) and how, once safety is restored, to engage in meaningful dialogue.

***Kiss, Bow, and Shake Hands: How to Do Business in Sixty Countries***, by **Terri Morrison and Wayne Conaway** – deals with cultural difference and the ethics of being sensitive to those differences.

***Who Moved My Cheese***, by **Spenser Johnson** – short book on people's reaction to change and how it is tied to their perceptions and beliefs about the nature of change.

***Language and the Pursuit of Happiness***, by **Chalmers Brothers** – shows how people create meaning through the language they speak and how they listen. Provides tools and techniques for using language more purposefully.

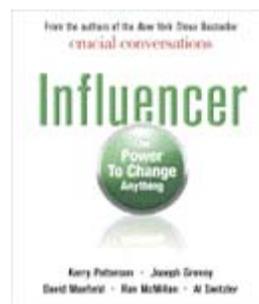
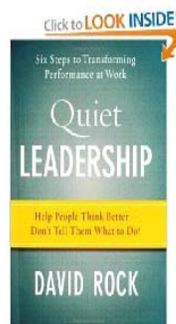
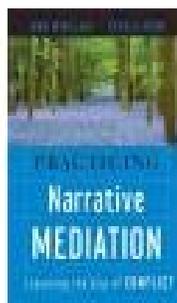
***Becoming a Conflict Competent Leader: How You and Your Organization Can Manage Conflict Effectively***, by **Craig Runde and Tim Flanagan**. How leaders can prevent destructive conflict and foster benefits of constructive and creative debate.

***House of Sand and Fog***, by **Andre DuBus** – what happens when people are locked in their positions and when emotions take over. Great for reflecting on openings that could potentially shift parties from their positions to interests and what happens when people engage in meaningful dialogue.

***Quiet Leadership***, by **David Rock** – contains an excellent chapter on active listening and the importance of being succinct.

***Legislative History of the Administrative Dispute Resolution Act of 1996*** (P.L.104-320). Senate Report 104-245 (3/27/96) to accompany S.1224; House Report 104-597 (5/29/96) to accompany HR 2977; House Conference Report 104-841 (9/25/96) to accompany HR 2977; Congressional Record Volume 142 (1996) – Sept 25, , Sept 27, Sept 30, and Oct 4. Interesting discussion of the intersection of ADR, public policy, and politics.

***Joy Luck Club***, and other books by **Amy Tan** – understanding different stories transcending generational lines, and interfamilial power dynamics.



*The Negotiator's Field book*, edited by **Andrea Schneider & Christopher Honeyman** – a compendium of eighty articles by mediators, academics, researchers and others on all aspects of how people negotiate (in mediation and elsewhere).

*The Power of Nice*, by **Ronald Shapiro & Mark Jankowski** – principles of “win-win” business negotiation, from the perspective of a well-known sports agent.

*Creative Problem Solver's Handbook for Negotiators and Mediators, Volumes 1 & 2*, by **John W. Cooley** – the title says it all.

*Digging to America*, by **Anne Tyler** – all of Tyler's sixteen books are valuable for their display of the subtle nuances of human communication and miscommunication; this one adds the overlay of complex interactions between couples with culturally-mixed marriages and foreign-born adopted children.

*Long Day's Journey into Night*, by **Eugene O'Neill** – a literature classic recommended for its sophisticated examination of the human heart and interactions with others.

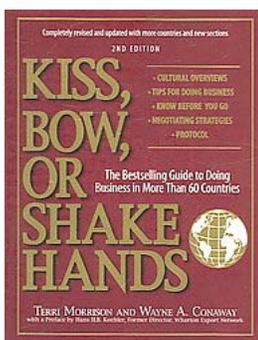
*The Tao of Coaching – Boost Your Effectiveness At Work By Inspiring And Developing Those Around You*, by **Max Landsberg**. Practical coaching principles and techniques to use with your colleagues.

*Emotional Intelligence*, by **Daniel Goleman** – a primer on understanding the important differences between “brainpower” (IQ) and emotional competency and awareness.

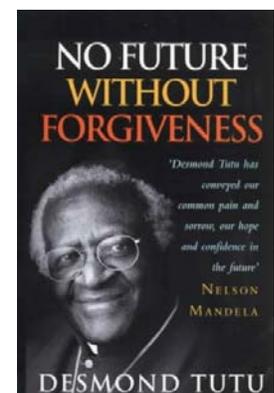
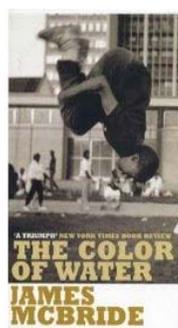
*Bleak House*, by **Charles Dickens** – a classic which displays the damage done by uncontrolled litigation, in addition to an examination of human character.

*Plain Truth*, by **Jodi Picoult** – a novel which explores the difficulties people have in understanding each other across different cultures. Well-drawn and richly-nuanced characters, and also explores how lawyers think.

*He Said, She Said*, and *The Argument Culture: Stopping America's War of Words*, by **Deborah Tannen** – these and other books by Tannen explore many communication issues, including gender differences in communication, the polarizing effect of treating different perspectives as a fight between opposing sides, and communication problems such as, e.g., that others' perceptions of the content and emotional tone of what you say may not match what you thought you were expressing. *See also* books by **Carol Gilligan** on, e.g., different value systems of women and men.



LONG DAY'S  
JOURNEY  
INTO NIGHT  
EUGENE O'NEILL



*No Future Without Forgiveness*, and other books by **Desmond Tutu** which contain valuable lessons on, e.g., creativity in peace-building, listening, and healing.

*The Promise of Mediation*, by **Robert Bush and Joseph Folger** – the 1994 classic which is a basic primer on transformative mediation.

*Getting to Yes* and *Getting Past No -- Fisher's and Ury's* books from the Harvard Project on Negotiation which are central to the “interest-based” approach to resolving conflict.

*On Apology*, by **Aaron Lazare** – a theoretical and practical analysis of apology and how to deal with both the need to get, and to give, acknowledgment.

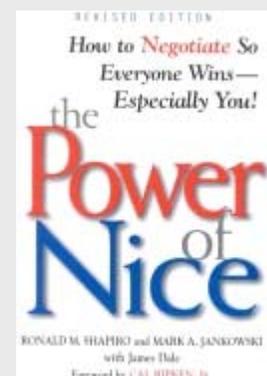
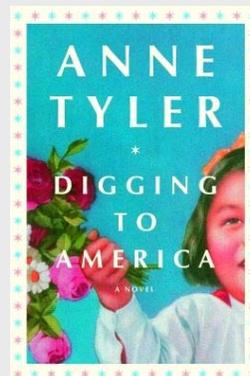
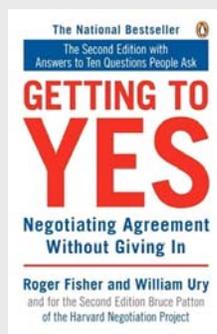
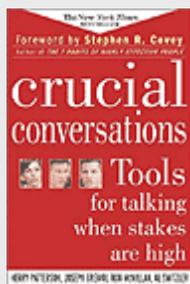
*John Adams*, by **David McCullough** – how “the colossus of independence” struggled with great adversity and challenges to his negotiation skills here and abroad.

*A Long Way Gone: Memoirs of a Boy Soldier*, by **Ishmael Beah** – powerful story of personal adaptation and changing life narratives, by a boy-soldier in Sierra Leone who had to adapt to the horrors of war, and then adapt again to normal life thereafter.

*The Glass Castle: A Memoir*, by **Jeannette Walls** – story of family members’ interaction and personal growth within a dysfunctional family.

*Leadership and Self-Deception: Getting Out of the Box*, by **The Arbinger Institute** – how leaders can get trapped in self-deception and what to do about it.

*The Neurobiology of Trust*, by **Paul Zak**, in the June 2008 edition of *Scientific American* (pp. 88-95) ([www.SciAm.com](http://www.SciAm.com)). Research has identified a hormone that enhances an individual’s propensity to trust a stranger when the latter exhibits non-threatening signals. What are such signals? Just the kinds of things mediators do, and the kinds of behaviors effective managers use to build trust with staff.

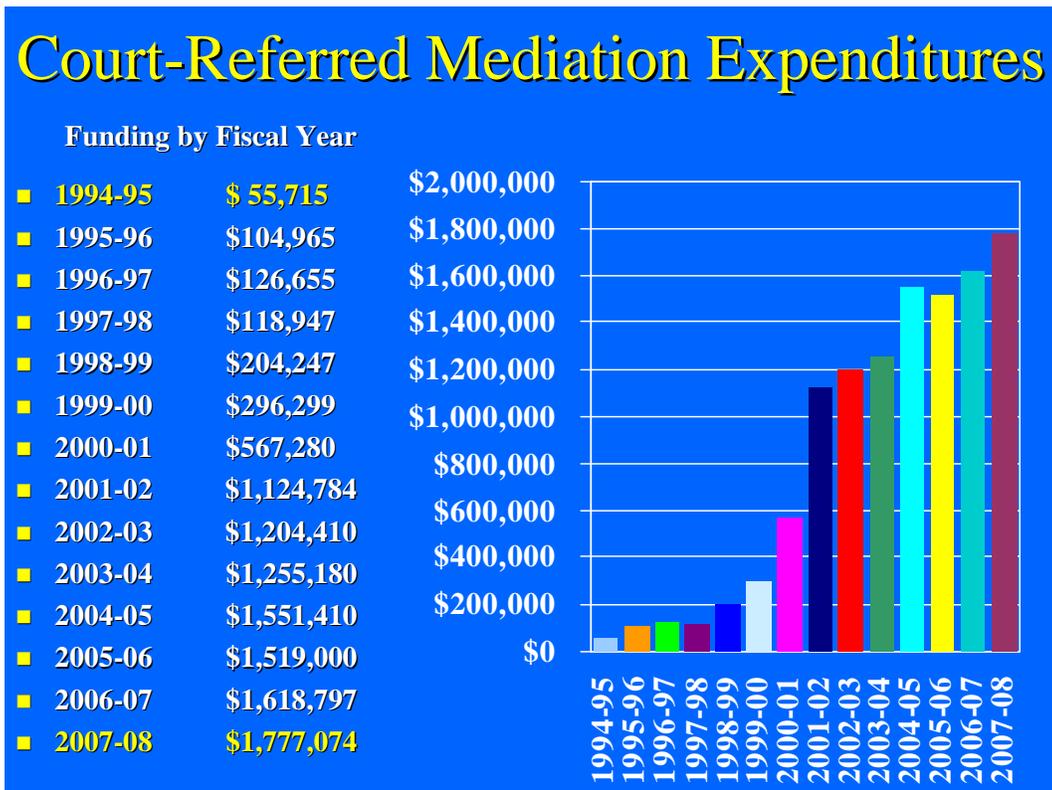


## Summary of Virginia Court-Referred ADR Statistics

For the new fiscal year ranging from July 1, 2008 through June 30, 2009, the Office of the Executive Secretary has once again awarded mediation contracts. Following an in-depth review of proposals received in response to Requests for Proposals, mediation coordinator contracts were awarded to 25 individuals and dispute resolution organizations, collectively providing services to 130 courts in 91 localities. Mediation coordinators are in place in 52 General District Courts and 78 J&DR Courts.

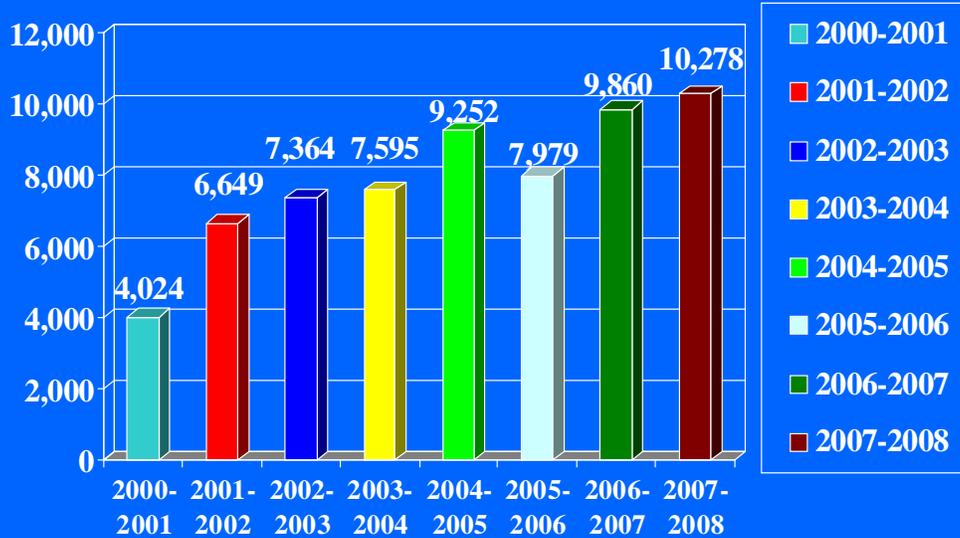
Mediation services contracts were awarded to 45 contractors who are available to serve General District and J&DR courts in 28 of Virginia's 31 judicial circuits. At the J&DR court level, mediation referrals covered by these contracts are for non-custody, visitation and support cases, such as restorative justice conferencing, truancy and child dependency. The many custody, visitation and support mediation referrals continue to be funded separately under the provisions of Virginia Code § 20-124.4. Contracts were not awarded for 2008-09 at the circuit court level, as these services will now fall under the newly implemented Circuit Court Mediation Program.

Below are mediation and judicial settlement conference statistics for the 2007-08 fiscal year. The primary responsibility of the Dispute Resolution Services office is to serve Virginia's courts and her citizens by offering quality ADR services to assist in resolving disputes. We are grateful to the cadre of professionals who have chosen to assist DRS in meeting this critical objective.



## Summary of Virginia Court-Referred ADR Statistics

### Custody, Visitation & Support Mediations Conducted

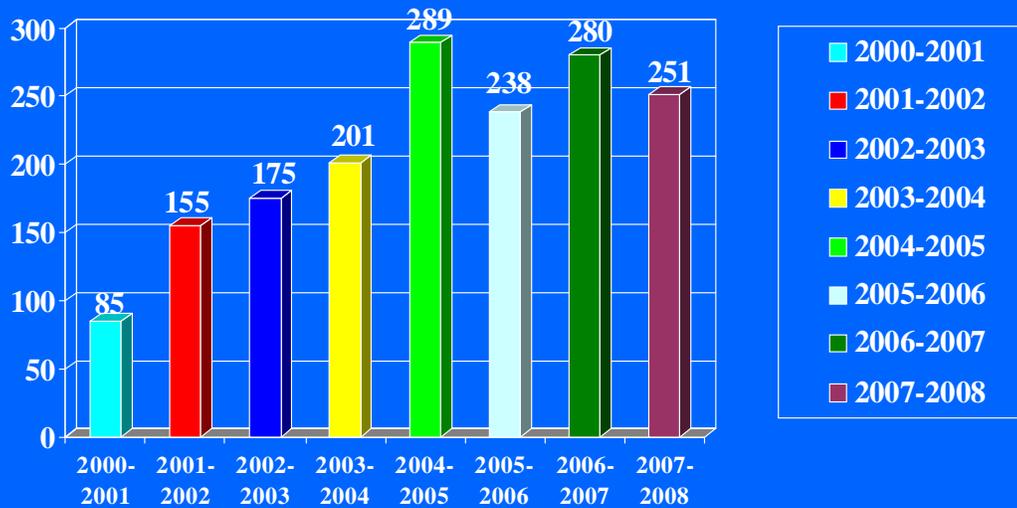


### General District Court Mediations Under Contracts

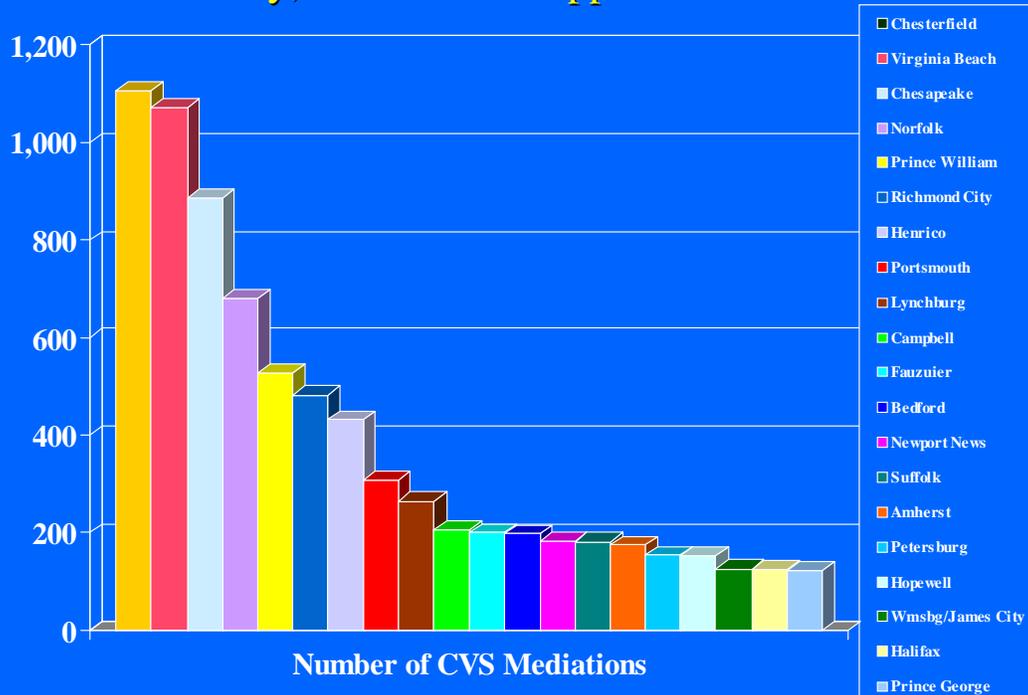


# Summary of Virginia Court-Referred ADR Statistics

## Circuit Court Mediations

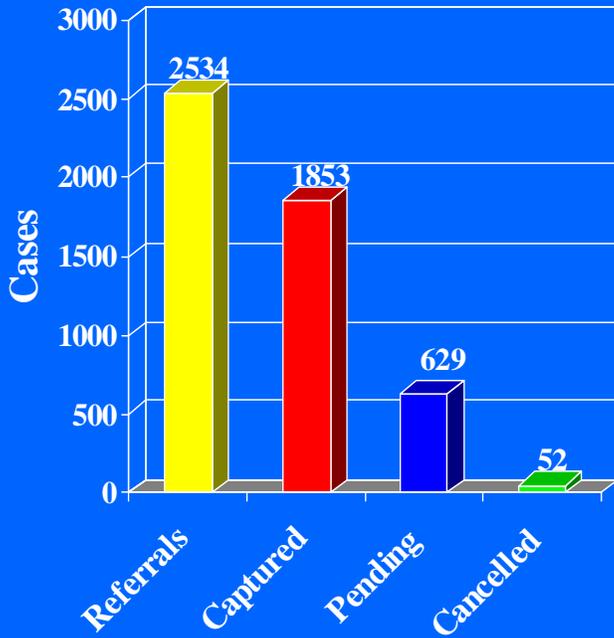


## Top 20 Juvenile Courts – 2007-08 Fiscal Year Custody, Visitation & Support Mediation



# Summary of Virginia Court-Referred ADR Statistics

## Judicial Settlement Conference Referrals



**2,534** cases have been referred to settlement conferences since 11/03.

**52** cases were cancelled before reaching conference.

**1,853** cases have been captured and detailed. These cases constitute the following data.

**629** cases are pending receipt of reports or actual conference.

## Settlement Conference Expenditures



Below is a report showing the number of custody, visitation and support mediations conducted at each Virginia J&DR court since the inception of Virginia Code §20-124.4.

CourtName	00-01	01-02	02-03	03-04	04-05	05-06	06-07	07-08	Total Cases
ACCOMACK	4	4	3	8	100	60	8	118	305
ALBEMARLE	139	103	97	76	64	77	61	91	708
ALEXANDRIA	0	0	1	0	0	0	0	1	2
ALLEGHANY	0	39	46	44	34	38	41	36	278
AMELIA	0	0	0	1	0	0	0	0	1
AMHERST	51	95	91	182	143	245	216	175	1,198
APPOMATTOX	38	79	58	52	52	56	51	61	447
ARLINGTON	0	0	0	2	0	0	0	0	2
AUGUSTA	6	19	31	51	60	48	22	23	260
BATH	0	0	1	3	0	1	0	1	6
BEDFORD	105	241	309	222	238	190	231	198	1,734
BLAND	0	0	0	0	0	0	1	1	2
BOTETOURT	0	11	9	3	15	14	11	5	68
BRISTOL	2	4	1	1	11	7	12	11	49
BRUNSWICK	0	0	0	15	18	22	14	22	91
BUCHANAN	0	3	1	1	18	17	12	12	64
BUCKINGHAM	33	52	67	48	53	47	35	55	390
BUENA VISTA	11	3	5	1	3	0	9	2	34
CAMPBELL	43	51	42	107	79	125	232	206	885
CAROLINE	13	64	24	9	23	19	11	12	175
CARROLL	0	0	0	0	1	1	0	41	43
CHARLES CITY	0	13	16	6	8	9	19	13	84
CHARLOTTE	25	26	42	22	6	7	17	21	166
CHARLOTTESVILLE	87	81	75	41	58	50	47	47	486
CHESAPEAKE	210	253	594	627	652	560	706	886	4,488
CHESTERFIELD	1	2	47	196	380	787	927	1,105	3,445
CLARKE	0	2	1	2	12	8	3	7	35
CLIFTON FORGE	0	0	0	0	0	0	0	0	0
COLONIAL HEIGHTS	0	21	0	1	0	0	25	64	111
CRAIG	0	4	7	4	1	4	5	4	29
CULPEPER	25	81	42	45	79	69	59	61	461
CUMBERLAND	10	50	32	55	52	52	59	41	351
DANVILLE	0	0	0	0	2	0	0	1	3
DICKENSON	0	2	1	0	14	18	24	23	82
DINWIDDIE	0	0	1	0	0	0	0	0	1
EMPORIA	0	0	0	0	0	0	0	0	0
ESSEX	1	7	26	9	12	18	18	24	115
FAIRFAX CITY	0	0	0	0	0	0	0	0	0
FAIRFAX COUNTY	280	280	280	283	284	0	3	1	1,411
FALLS CHURCH	0	0	0	0	0	0	1	0	1
FAUQUIER	102	139	116	114	128	129	162	200	1,090
FLOYD	0	1	0	2	0	1	4	7	15
FLUVANNA	11	18	14	9	17	16	17	31	133

CourtName	00-01	01-02	02-03	03-04	04-05	05-06	06-07	07-08	Total Cases
FRANKLIN	2	1	1	2	0	0	9	4	19
FRANKLIN COUNTY	1	2	2	0	2	12	29	9	57
FREDERICK	18	27	34	27	85	42	72	106	411
FREDERICKSBURG	32	17	15	17	12	13	12	19	137
GALAX	0	0	0	0	0	0	0	14	14
GILES	0	2	5	0	0	0	2	0	9
GLOUCESTER	0	0	2	0	0	0	0	0	2
GOOCHLAND	2	3	3	1	2	0	1	2	14
GRAYSON	0	0	0	0	0	0	0	13	13
GREENE	14	13	10	6	8	11	13	9	84
GREENSVILLE	0	0	1	19	28	19	18	16	101
HALIFAX	43	99	54	156	142	96	160	126	876
HAMPTON	0	1	2	7	7	0	4	0	21
HANOVER	90	122	86	75	109	49	107	77	715
HENRICO	87	202	142	190	222	269	400	432	1,944
HENRY	55	58	64	17	30	32	57	29	342
HIGHLAND	0	0	0	0	0	2	1	0	3
HOPEWELL	7	96	182	281	342	117	166	153	1,344
ISLE OF WIGHT	1	21	24	18	10	67	92	99	332
KING AND QUEEN	22	32	32	23	31	20	45	28	233
KING GEORGE	40	48	29	26	16	14	23	34	230
KING WILLIAM	25	29	47	39	27	37	32	42	278
LANCASTER	0	1	10	9	14	7	8	13	62
LEE	0	1	0	0	0	0	0	0	1
LOUDOUN	0	0	0	0	0	0	0	0	0
LOUISA	13	27	33	18	18	10	7	13	139
LUNENBURG	13	27	17	26	51	41	36	43	254
LYNCHBURG	37	93	123	253	290	317	254	266	1,633
MADISON	1	1	9	3	2	17	11	3	47
MARTINSVILLE	0	0	0	0	0	0	0	0	0
MATHEWS	0	0	0	0	0	0	0	0	0
MECKLENBURG	82	80	38	47	32	24	35	29	367
MIDDLESEX	0	0	0	0	0	0	2	0	2
MONTGOMERY	5	9	35	24	13	65	65	45	261
NELSON	6	6	1	12	44	98	83	83	333
NEW KENT	2	23	31	31	24	28	32	33	204
NEWPORT NEWS	68	55	55	241	334	215	248	182	1,398
NORFOLK	136	420	416	361	424	313	539	681	3,290
NORTHAMPTON	0	4	1	0	3	7	1	29	45
NORTHUMBERLAND	0	6	15	5	8	6	7	12	59
NOTTOWAY	0	0	0	0	0	0	0	0	0
ORANGE	4	9	35	37	48	42	36	69	280
PAGE	14	24	19	67	107	59	98	70	458
PATRICK	7	17	5	0	2	4	1	2	38
PETERSBURG	178	214	197	171	141	78	166	154	1,299
PITTSYLVANIA	0	0	0	1	34	21	34	29	119

CourtName	00-01	01-02	02-03	03-04	04-05	05-06	06-07	07-08	Total Cases
PORTSMOUTH	366	479	470	335	393	308	430	308	3,089
POWHATAN	1	0	0	0	0	0	0	0	1
PRINCE EDWARD	57	100	44	42	76	51	63	59	492
PRINCE GEORGE	1	10	5	27	303	108	152	123	729
PRINCE WILLIAM	293	477	387	335	409	407	486	527	3,321
PULASKI	1	3	0	0	1	12	17	11	45
RADFORD	0	2	3	4	1	2	3	4	19
RAPPAHANNOCK	9	8	4	6	13	9	14	13	76
RICHMOND CITY	346	452	570	461	428	347	431	482	3,517
RICHMOND COUNTY	0	0	0	0	0	5	7	4	16
ROANOKE CITY	3	35	68	86	106	61	68	87	514
ROANOKE COUNTY	4	15	11	6	6	33	34	23	132
ROCKBRIDGE	1	7	5	8	24	28	24	24	121
ROCKINGHAM/HARSBG	6	57	35	37	55	34	44	55	323
RUSSELL	10	16	19	22	18	20	43	17	165
SALEM	1	0	6	4	0	11	3	0	25
SCOTT	0	0	3	6	3	0	0	1	13
SHENANDOAH	0	7	20	29	43	49	27	39	214
SMYTH	3	6	3	9	23	18	17	21	100
SOUTHAMPTON	0	0	4	0	0	0	30	18	52
SPOTSYLVANIA	58	203	237	226	203	163	128	105	1,323
STAFFORD	35	50	65	24	48	31	30	33	316
STAUNTON	3	12	34	24	21	11	9	11	125
SUFFOLK	6	2	2	5	167	179	195	181	737
SURRY	3	1	0	1	45	21	21	28	120
SUSSEX	0	0	2	7	12	16	8	10	55
TAZEWELL	0	0	45	51	38	26	31	40	231
VIRGINIA BEACH	478	824	1,099	1,097	1,205	931	1,271	1,072	7,977
WARREN	11	44	62	62	65	53	84	67	448
WASHINGTON	3	0	0	0	6	9	18	18	54
WAYNESBORO	11	51	41	23	29	16	23	23	217
WESTMORELAND	36	62	85	82	77	57	55	63	517
WMSBRG/JAMES CITY	69	173	149	100	106	81	92	127	897
WINCHESTER	6	14	31	23	48	33	20	33	208
WISE	0	0	0	0	0	0	0	0	0
WYTHE	0	0	0	0	0	1	6	27	34
YORK	1	1	0	1	1	1	7	49	61
<b>Total CVS Cases</b>	<b>4,024</b>	<b>6,649</b>	<b>7,364</b>	<b>7,595</b>	<b>9,252</b>	<b>7,979</b>	<b>9,860</b>	<b>10,278</b>	<b>63,001</b>