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RESOLUTIONS

OFFICE OF THE EXECUTIVE SECRETARY

*Department of Judicial Services
Division of Dispute Resolution*

100 North Ninth Street
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Statewide Measure of Filings in Mediation

Hey JDR mediators! DRS needs your help to quantify mediation's value to the court system.

Historically mediators' work has been measured by "case" – which includes all the issues for a particular family. But courts' work is measured by individual "filings" – a single issue for a child/adult. Without the same unit of measurement, we cannot quantify mediation's value to the court. Therefore we need to know how many JDR *filings* are referred, mediated, and resolved through mediation. Then we can compare it to the work courts do.

If Virginia is successful in this effort, it may be the first large-scale quantification of mediation's benefit to a court system. It also may be important to efforts in the state to increase funding for mediation.

DRS is asking JDR court mediators across the state to gather and report "filings per mediation" data for **two months (October and November 2015)** through a survey instrument DRS developed. Our goal is to use the survey data to determine how many JDR filings are referred to, mediated, and resolved through mediation.

Articles in This Issue

To navigate, use page arrows or bookmark titles)

Statewide Measure of Filings in Mediation

Recent Ethical Quagmires

Staying the Course: My Year as a Higginbotham Fellow

Changing Hats: Making the Transition to the Mediator Role

Courts Limit Additions to Parent Education Provider Rosters

Three Great Conferences on Divorce Settlements

Keeping You Informed: A DRS Update

Community Mediation Center News

The survey also asks for legal representation and GAL data from mediated cases. This data will further quantify mediation's savings to the court and measure its ongoing contribution to access to justice for self-represented litigants.

Obviously, JDR mediators will be collecting new information. Therefore, during the two month survey period, JDR mediators will not need to collect and enter data into the MIS system.

DRS will send a link with instructions to all JDR mediators at the beginning of September. This will allow mediators an opportunity to test run the survey and contact us with any questions. We cannot emphasize enough the need for full support from all JDR mediators. Data quality depends on your participation. Thank you.

Recent Ethical Quagmires



We often hear from mediators who are curious about the ethical issues that create problems. They want to know what ethical pitfalls to avoid in their practices. This article is a brief summary of some concerns seen in the past year. They were raised through complaints, evaluation forms, and dissatisfied citizens' calls. We hope beyond satisfying curiosity, this information will be helpful to mediators as they engage in on-going self-assessments.

Voluntariness of Mediation¹

It is important parties understand they do not have to mediate. The only thing they are ordered to complete in court-referred cases is an orientation session. Mediators should reach an understanding with the parties about the voluntariness of mediation and their ability to decline or terminate mediation at any time without repercussions. Parties should also understand that due to confidentiality constraints, the mediator may not share parties' conduct and demeanor with the court.

Professional Information²

Information is an important component for decision making. DRS encourages mediators to provide helpful information, including statutes, to parties. However, it is important that mediators provide information only, not advice; **that it is correct information**; and that it is delivered in a way that doesn't interfere with mediator impartiality or infringe on party self-determination.

The best way to do this is to discuss the utility of professional information during the Introduction stage of the mediation and give parties the option of considering it during the mediation.

¹ Virginia Code § 8.01-576.5; Ethics Section D.2.c.

² Ethics Section F.2. & 3.

Self-determination³

Mediators need not agree with or like parties' agreements. Mediators need only "reality test" agreements, help parties understand how their agreements affect them, and help them determine if the agreements meet their needs in the best way possible given the circumstances. Parties should enter agreements freely without coercion. Parties may agree to something a judge would not order, as long as the agreement isn't illegal or contrary to public policy.

As with professional information, it's helpful to describe reality testing in the Introduction stage of mediation. Mediators should let parties know part of their role is to help parties assess a potential agreement, which might include asking difficult questions. Facilitative mediators rely heavily on questioning skills to reality test. Questioning allows parties to come to their own conclusions and encourages them to think critically about their situation. Mediators should avoid directive or leading questions that might put too much pressure on the parties to make a particular decision.

Public Confidence in the Mediation Process⁴

Mediators should be honest, transparent, and should take responsibility for their mistakes. Mediators who conduct a poor quality process, practice poor skills, disrespect parties, are unprofessional, or act unethically cast a pall on mediation in the Commonwealth.

Impartiality⁵

Reality testing, providing professional information, and over or under controlling the agenda and conversation topics are events that affect party perception of partiality. Parties who don't feel heard, or don't feel they're able to talk about what is important to them, can believe the mediator is biased against them.

Discussing the utility of professional information and reality testing during the Introduction stage, and obtaining party buy-in, tend to prevent party perceptions of partiality. Doing so allows the mediator to introduce the concepts before hearing the issues, with no knowledge of how information or reality testing might help or hinder either party. The mediator can conclude the discussion with, "Is it okay with you if I let you know when information exists that might be helpful?" Parties are likely to say "yes," giving permission for the mediator to bring it up later. Letting the parties decide whether to accept professional information spares a mediator the appearance of assisting one party and thwarting the other. When reality testing, the mediator can remind parties part of his or her role is to help parties think critically about their agreement. The agreement needs to not only work to get them out of the room today, but work for the future as well.

Orientation Session⁶

Courts do not refer parties to mediation. They refer parties to a free orientation session. **All mediators in court-referred cases must conduct an orientation session that includes screening for appropriateness.** Nothing the judge or court says about mediation, or any paper screening done before a referral, rises to the level of an orientation session. Mediation cannot begin until the orientation session is complete. Mediators in court-referred cases may not bill for the orientation or include the time on invoicing.

³ Ethics Section E.2. & Section I.1. & 3.

⁴ Ethics Section K.5.

⁵ Ethics Section G.1. & 2.

⁶ Va. Code §§ 8.01-576.5 & 8.01-576.4.

Screening for Appropriateness⁷

Certified mediators **must screen every case** for appropriateness of mediation regardless of subject matter or referral source. **The onus for screening is always on mediators.** They are responsible for ensuring the case is properly screened. **Judges do not screen cases for appropriateness of mediation.**

Agreement to Mediate⁸

A written Agreement to Mediate form is mandatory at the start of a mediation. Ethics require 3 items in the Agreement to Mediate: 1) a general statement about the mediator's style and approach to mediation; 2) the statutory language relating to confidentiality; and 3) mandatory reporting requirements. Ethics also require additional information be provided to the parties at the start of the mediation. Putting all this information in the Agreement to Mediate ensures mediators fulfill their ethical obligations and provides written verification. The Agreement to Mediate on DRS's website includes everything mediators are ethically obligated to share with parties. Link: http://www.courts.state.va.us/courtadmin/aoc/djs/programs/drs/mediation/forms/agreement_mediate.pdf.

Confidentiality⁹

Everything in mediation is confidential except for allegations of child abuse and some other statutory exceptions. Generally, mediators may not share information gained in mediation with anyone besides the parties involved in the mediation, unless parties sign a written waiver. Mediators may not share the content of the mediation or parties' conduct or demeanor with parties' boyfriends, girlfriends, wives, husbands, moms, dads, bosses, commanding officers, etc.

Evaluation of Mediation Session(s) and Mediator(s) - [Form ADR-1002]¹⁰

Link: <http://www.courts.state.va.us/courtadmin/aoc/djs/programs/drs/mediation/forms/adr1002.pdf>

All certified mediators in all court-referred cases must provide DRS's evaluation form to parties for their completion and must submit these forms to DRS. DRS could deny recertification to mediators who do not engage in this practice.



⁷ Va. Code § 8.01-576.4.; Ethics Section C

⁸ Ethics Section D.1.b. & Section H.1.

⁹ VA Code §§ 8.01-576.9, 8.01-756.10, 8.01-581.22, & 8.01-581.24; Ethics Section H.1. & H.4.

¹⁰ Guidelines for the Certification and Training of Court-Referred Mediators Section G.3.; Application for Mediator Recertification [Form ADR-1003]

Staying the Course

My Year as a Higginbotham Fellow

I was so excited when I got the news that I was selected as a 2014 AAA Higginbotham Fellow. I likened it to my high school days when I got the lead role in the school play or when I made the varsity cheer-leading squad. Only this wasn't high school. This was an opportunity that could change the course of my alternative dispute resolution career. Some of my peers asked "exactly what is a Higginbotham Fellow and what does it have to do with the AAA auto club?" AAA is short for the American Arbitration Association. AAA designed a fellowship program that offers resources to ADR or alternative dispute resolution professionals for a one year term. Participants can take advantage of a multitude of educational resources including classes, seminars and networking sessions. It's a rare opportunity to learn from and network with some of the best in the business. The fellowship is a diverse program named for Judge Aloysius Leo Higginbotham, Jr., a renowned African-American civil rights advocate and legal scholar. I am honored to be a Higginbotham Fellow and I'm delighted to have been selected from a national group of stellar applicants.



Pamela D. Trotter
2014 Higginbotham Fellow

The first thing on the agenda was a weeklong trip to the AAA annual conference in San Francisco. I truly enjoyed the conference and meeting the other fellowship recipients. I made some good contacts and more importantly, some new friends. All fellows were invited to the AAA Director's Discussion Session and a Board Strategy Session. The annual luncheon allowed me to connect with people who offered excellent ADR advice. I relished the opportunity to mingle with experts from all over the world. Undoubtedly, I wouldn't have met them without being a part of this program.

As a Higginbotham fellow I received intense arbitrator and mediator training at no cost. The training involved interactive role playing exercises with constructive feedback. Role playing allowed me to experience all roles involved. I had the opportunity to role play as a mediator, arbitrator and a party to the mediation. This allowed me to empathize with each participant and practice what I learned in class.

Arbitration training covered the following topics: "Arbitrator's Role and Authority," "Preparing for and Conducting a Preliminary Hearing," "Managing Evidentiary Hearing Issues," "Writing the Award and Post Hearing Issues," "Discovery Issues in Arbitration" and so much more. Mediation training allowed me to review and sharpen my mediator and settlement writing skills. Training included: "Facilitating Communication," "Issues Identification and Setting the Mediation Conference Agenda," "Applying Settlement Building Techniques," "Moving Beyond Obstacles to Settlement," "Ethical Dimensions of Mediator Influence" and more. It was challenging, fun and absolutely invigorating! I loved every minute of it!

The fellowship also included a mentorship. I selected a division and geographical region; then a mentor was assigned to match my choices. I chose to focus on the construction division because of my background in the real estate industry. I started working in real estate and new construction in 1990. Since then I've worked with several aspects of real estate. Currently, I own and operate a real estate brokerage firm. I also have an instructor's license to teach real estate courses, MLS software classes, new construction training and new agent training. My goal is to mediate and arbitrate more real estate and new construction disputes or conflicts.

My mentor was a prominent attorney in the Washington, D.C. area specializing in construction issues. He provided guidance by sharing ideas for marketing and branding. I love working on court cases and private cases so my first question was "How do I gain more private real estate related cases?" He suggested that I join more professional organizations for real estate and construction. This would make me more visible to my "niche group." Another suggestion was to seek public speaking opportunities within these organizations to help build my brand, add to my credibility and increase my client base. Writing for real estate and construction publications was also suggested. He even referred me to a local attorney that he personally worked with as a contact for more guidance. It was priceless to have someone with a wealth of ADR knowledge and experience available to answer questions and provide guidance. It was like having my own personal ADR coach for one year. I remember thinking it just doesn't get any better than this! I was thrilled to have this option to continue to learn and grow. I knew this would be an exceptional opportunity! What I didn't know, was that a storm was brewing. A storm was coming that would alter my life for good.

That storm was cancer. I was diagnosed with breast cancer shortly after the conference. My fellowship activities were interrupted due to my diagnosis, surgery and treatment. However, I wasn't about to give in to this disease. I wasn't scared, sad or angry. I felt a sense of nothingness that I had never known before. The fellowship became my focal point, my fuel, my new motivation. Time was of the essence! I had to get to Washington, D.C. before the fellowship ended!

Even though we didn't get a chance to work on actual cases together, I enjoyed meeting and consulting with my mentor. I gained valuable insight from his vast experience with construction mediation. He offered insight on many topics including how to conduct myself among certain personality types and learning to speak the "lingo" or language often used in construction arbitration and mediation. Additionally, classes and webinars were offered by AAA in various metropolitan locations each month. I simply selected a class, verified the credit and went to class. Classes and webinars included: "Essential Mediation Skills for the New Mediator," "Advanced Mediator Training," "Managing the Dynamics of a Multi-Party Case," "The Extent or Limit of Mediator Influence to Effect Settlement" and more. I continued with the fellowship and worked local cases. I behaved as though I never had cancer. God allowed me to stay the course. My new goal was to stay as normal as possible for as long as possible and with God's grace, I did.

I learned a lot over the past year both professionally and personally. My prognosis is good. Looking back, I believe that feeling of "nothingness" was God's way of protecting me from thoughts of fear and doubt. He gave me courage and a quiet peace. I found a strength I never knew I would need. Instead of dwelling on the negative, He gave me something positive to focus on. He gave me the AAA Higginbotham Fellowship and for that I am eternally grateful.

Submitted by Pamela D. Trotter of Excel Mediation Services in Virginia Beach. Pamela is a Virginia Certified General District Court and Juvenile & Domestic Relations Court Mediator and a Mediator Mentor.

Changing Hats: Making the Transition to the Mediator Role

The word “transition” implies a process of change. In my role as a mediation mentor, I have observed many talented individuals transition from their already established professional roles to the one of a mediator. Along the way, I have observed some common challenges, all of which I remember experiencing myself while learning to wear my mediator hat.

The field of organizational psychology recognizes several factors that lead to one’s professional identity, including responsibilities, common language, behavioral and ethical standards, and role perception. Understanding how one’s current professional identity (attorney, therapist, administrator, teacher, etc.) differs from that of a mediator can greatly facilitate this transition process.

The responsibilities attached to one’s job, for example, might involve supervising others, making the final decision when difference of opinions exists, providing legal advice, or diagnosing an emotional issue, none of which apply in the mediation session. As mediators, our responsibilities include covering the agreement to mediate thoroughly, conducting domestic violence screening in family cases, assessing the appropriateness of mediation throughout the process, and facilitating dialogue, to name a few.

The common language attached to one’s job might involve legal terms, medical terms, and close-ended questions, while mediators should use open-ended questions and mirror participants’ choice of words whenever possible, both when paraphrasing and drafting an agreement.

The behavioral and ethical standards attached to one’s job might include the requirement of a specific degree, appropriate use of social media, and socialization constraints. As certified mediators, we must follow the Commonwealth of Virginia’s Standards of Ethics and Professional Responsibility for Certified Mediators, and therefore need to become closely familiar with its content.

Finally, one’s professional identity might include the role of leader, decision-maker, authority figure, healer, or expert. However, as mediators, we should primarily be viewed as fair, neutral, efficient, competent, and organized.

Making the transition to the mediator role can be a rewarding yet challenging process. The more awareness one has regarding his/her current professional identity, including how it differs from the mediator role, the better for all involved. The closer we follow the mediation process, remain a neutral third party, refrain from imposing solutions, and maintain self-awareness, the better we can serve others. One of the rewarding aspects of mentoring those seeking their mediation certification is to witness gifted individuals develop their mediator identity, and, in the process, learn to wear a fabulous new professional hat.

Submitted by Andréa Palmisano, MA, Certified General District and J&DR Mediator, Mediation Mentor, Mediation Trainer and Adjunct Faculty Member at Tidewater Community College



Courts Limit Additions to Parent Education Provider Rosters

In 2000, Virginia Code Sections 16.1-278.15 and 20-103 were amended to require parties in contested child custody, support or visitation cases to attend a 4-hour Parent Education (PE) seminar conducted by a qualified person or organization approved by the court. Individuals were trained to become qualified providers and were listed on the Virginia Judicial System Web site.

As the program grew, some court rosters exceeded the number of providers needed to serve the referred parents. Some experienced providers, who had been conducting PE seminars for years, no longer had enough attendees and discontinued their classes. Other providers conducted the seminars with fewer than four participants, reducing the effectiveness of the interactive seminar experience.

In order to remedy this, early in 2015 Dispute Resolution Services (DRS) suggested over-served courts discontinue approving new providers. For courts relying on few or no local providers, DRS suggested they approve only new providers who would conduct seminars locally. Most judges agreed with these recommendations.

This new approach to managing PE provider rosters should serve the best interests of PE seminar attendees and providers, and the courts.

Three Great Conferences on Divorce Settlements

There is a revolution going on in the field of divorce settlements, and the two national organizations that have taken the lead in this development are each meeting in the Greater Washington Area in mid-October. This is a terrific opportunity for family mediators and collaborative professionals, but also for attorneys in conventional family law practice who want to consider some new ideas from highly experienced and creative professionals.

The first of these is the Academy of Professional Family Mediators, which is taking the lead in creating the new (and long overdue) credential of "professional family mediator." APFM is an organization of some of the most experienced divorce mediators in the country. The program includes Chip Rose, Dianne Neumann, Stacey Langenbahr, Marilyn McKnight, Steve Erickson, Bob Bordett and John Fiske. Suburban Maryland is well represented by Carl Schneider from Kensington and Eileen Coen from Bethesda, and Northern Virginia by Brian Hirsch and myself. The conference will be at the Reston Sheraton from October 22-25. The program is found at <http://www.apfmnet.org/pg72.cfm>.

The International Academy of Collaborative Professionals meets at the Renaissance Hotel in D.C. from October 15-18. Speakers from our area include Barbara Burr, Lisa Herrick, Kate Scharff and Kimberly Fauss. The program is found at <https://www.collaborativepractice.com/professional/trainings-events/iacp-networking-and-educational-forum.aspx>. Just as the APFM program is a "must" for divorce mediators who want to consider themselves "professionals" as mediators, the IACP program is essential for collaborative professionals.

The Virginia Mediation Network is another important organization in the settlement revolution. Its Fall Conference will be at the T.C. Williams School of Law of the University of Richmond from October 16-18. The keynote speaker is Professor Greg Mitchell of the University of Virginia Law School. The program includes John Settle, Danny Burk, Jeannette Twomey from our area, as well as Brian Hirsch and myself. It's found at <http://us9.campaign-archive1.com/?u=151686b8f01c2306aba8bcf85&id=8d61ac9e3f&e=b56805a3d3>.

Keeping You Informed: A DRS Update



VMN Mediation Compensation Task Force

Virginia Mediation Network and Virginia Association for Community Conflict Resolution are working on legislative options for increasing mediator compensation. The statewide survey described on the front page of this newsletter may assist with their efforts.

Recertification Reminder

Approximately half of our certified mediators are due for recertification on October 31, 2015. Emails were sent in July to those due in 2015. If you are uncertain when you are next due, please contact our office for confirmation.

The forms and instructions for recertification can be found in a large white box about half way down the [Mediation Forms Page](#) of our Web site. Please wait to submit your recertification application until all requirements have been met. The instructions include how to request an extension of time to complete your recertification requirements.

Mediation Training Opportunities

Please consult the [ADR Training Calendar](#) for core and continuing education courses across the State.

There are three mediation training conferences in October that provide opportunities for professional growth and mediator continuing education hours that can be used toward your recertification. Look for links with details about registration and the workshops on the [Mediation Conference Calendar](#).

Fiscal Year 2015-16 Mediation Contracts Awarded

[Mediation Coordinator Contractors by Locality](#)

[Mediation Coordinator Contractors by Organization](#)

[Mediation Services Contractors by Locality](#)

Professional Liability Insurance

The Virginia Mediation Network Web site includes information for members about liability insurance for Mediators: [Complete Equity Markets, Inc.](#)

Community Mediation Center News

Piedmont Dispute Resolution Center



A Community Masterpeace

Spreading the word about mediation and the Center is at the forefront at Piedmont Dispute Resolution Center (PDRC). Recently staff and mediators participated in First Friday in Warrenton with a unique display.

The theme of the evening, during which Main Street was blocked for a community party, was *Bucket List Busting*. Non-profits were charged with coming up with things people would like to check off their bucket list. PDRC had local artist Palmer Smith sketch a dove on a large foam board. Staff member Meryem Grammick drew doves on a second foam board.



Passersby were encouraged to color in the dove(s) under the theme *Create a Community Masterpeace*. It was a big hit among young and old alike. The project is not yet finished and the Center continues to encourage participation in other venues.

Virginia Association of Community Conflict Resolution

ReSOLUTIONS, inc.

505 North Main Street, Suite 105
Woodstock, Virginia 22664
540-459-8799

Renee Hudnall, Acting Executive Director
avcr@shentel.net

Better Agreements, Inc.

305 Washington Street, SW
Blacksburg, VA 24060
866-832-5093

T'aiya Shiner, Executive Director
info@betteragreements.org

CMG Foundation

9100 Arboretum Parkway, Suite 190
Richmond, VA 23236
804-254-2664

Morna Ellis, Executive Director
mellis@cmg-foundation.org

Conflict Resolution Center

541 Luck Avenue, Suite 308
Roanoke, VA 24018
540-342-2063

Margaret Beazley, Acting Executive Director
director@conflictresolutioncenter.us

Fairfield Center

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

Timothy Ruebke, Executive Director
tim@fairfieldcenter.org

Mediation Center of Charlottesville

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

Van Parker, Executive Director
mcc@mediationville.org

Northern Virginia Mediation Service

9653 Fairfax Boulevard, Suite 203
Fairfax, VA 22031
703-865-7272

Megan Johnston, Executive Director
info@nvms.us

Peaceful Alternatives

Community Mediation Services

P.O. Box 1169
Amherst, VA 244521
540-929-8227

Carolyn Fitzpatrick, Executive Director
info@peaceful-alternatives.com

Piedmont Dispute Resolution Center

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

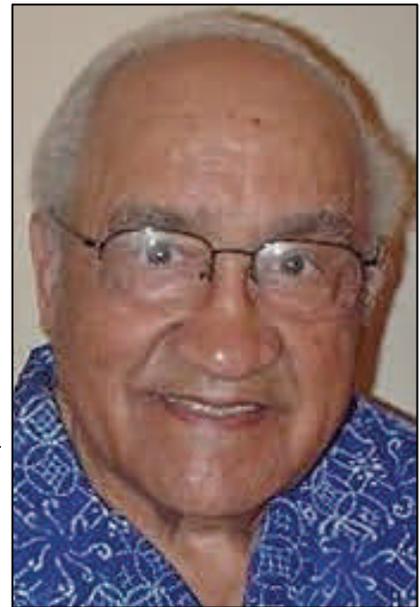
Lawrie Parker, Executive Director
pdrc@verizon.net

A Tribute to Bill Barr

Piedmont Dispute Resolution Center lost a valuable advocate and volunteer when William (Bill) Barr passed away on April 25th at the age of 90.

Mr. Barr worked in Washington, D.C. government for many years in child welfare, juvenile justice and as an administrator of human services programs. He was a nationally recognized consultant in juvenile justice programs. He became involved with PDRC in 2002 when he was asked to portray a business manager in Virginia Mediation Network's mediation video, *Mediation the Alternative*.

Well into his 80s, until his health declined, Mr. Barr was a restorative justice volunteer and general district court mediator. The Center and community benefited immensely from his expertise, wisdom and selfless giving of his time. Mr. Barr's kindness, generosity and gentleness will continue to inspire us at PDRC.



Wine Social Celebration

PDRC hosted a social in July at a local winery to celebrate its 25th year of service to the community. Attending the event were honored guests and friends including retired Culpeper County Administrator Frank Bossio, longtime PDRC Board member and mediator Sonja Addison and many others instrumental to the growth of mediation and restorative justice in the community. Guests enjoyed a silent auction, delicious hors d'oeuvres and wine, and music by THEYCALLMEPIANO.

Center Receives Victim Service Award

PDRC's Restorative Justice Program received a Victim Service Award from the Fauquier County Commonwealth's Attorney Office.

The award was given during a luncheon observing National Crime Victims' Rights Week in April. In presenting the award to Executive Director Lawrie Parker, the master of ceremonies said the Center "is a true reflection of the theme engaging communities/empowering victims, serving as a local partner and critical to meeting victims' needs within the administration of justice."



reSOLUTIONS, inc.

Apple Valley Mediation Network, Inc. recently changed its name to reSOLUTIONS, inc. and moved its offices to 505 North Main Street, Suite 105 in Woodstock, Virginia. A new Center logo was created, including the tag line "Peaceful Collaborations." Its new mission statement is "Cohesive collaborations in our families and our communities" and the new vision statement, "Our vision is family and community wholeness." The Center is currently working on new goals.



Fairfield Center

Fairfield Center has played an integral role in a community collaborative effort to establish the Harrisonburg Police Department's new restorative justice program. As stated in the Eastern Mennonite University news article reprinted below, "The idea began several years ago, when Sue Prail with the Fairfield Center first proposed it to the HPD. Prail directs restorative justice services at the Harrisonburg nonprofit, which has been offering them in the community for nearly 20 years."

View the WHSV TV3 News coverage of the press conference aired on March 19, 2015: [Harrisonburg Unveils Restorative Justice System](#). You will find links from the TV3 Web page to additional information about the restorative justice process and a list of members of the Harrisonburg Restorative Justice Steering Committee.

Sincere thanks goes to Eastern Mennonite University for its generous permission to reprint the following article, written by Andrew Jenner and posted to its *EMU news* Web page on March 19, 2015.

Harrisonburg police and community members join hands in offering restorative justice option



Carl Stauffer, co-director of the Zehr Institute for Restorative Justice at EMU's Center for Justice and Peacebuilding, speaks about the Harrisonburg Police Department's new restorative justice program, the first of its kind in Virginia. Stauffer is a member of the steering committee, which includes restorative justice practitioners from the community and James Madison University, as well as representatives from area law firms and the office of the Commonwealth's attorney. (Photo by Jon Styer)

If one particular young man in Harrisonburg had stolen from his employer a few months earlier, he might have found himself standing before a judge, facing a possible jail sentence. Thanks to a new restorative justice program with the [Harrisonburg Police Department \(HPD\)](#), however, this young thief instead found himself facing his employer to talk about what he'd done and how he could patch things up.

"I can't imagine a better first case," said [Josh Bacon](#), the facilitator who led the meeting between the two men. "This person could have been charged with a felony."

Instead, the offender and his employer were able to speak frankly about their needs, agree on a restitution plan and reconcile the matter in a mutually beneficial way outside of the criminal justice system. The new program, the first of its kind in Virginia and more than two years in the creation, was announced at a press conference today [March 19, 2015] in Harrisonburg. Emphasizing the collaborative partnership, HPD Chief Stephen Monticelli stood alongside members of the steering committee, including representatives of local law practices and the Commonwealth's attorney, the [Fairfield Center](#), and restorative justice practitioners from Eastern Mennonite University (EMU) and James Madison University (JMU).

Among those endorsing the program and expressing support were Marsha Garst, Rockingham County Commonwealth's attorney, EMU president Loren Swartendruher and JMU president Jonathan Alger.

Garst, who spoke of her reputation for being "hard" on crime, said that restorative justice should not be misinterpreted as being "soft on crime." The victim-offender meeting is a difficult and emotionally challenging task for both parties, she added, but the process offers the offender the possibility of moving back into a positive role in our community.

"We kind of get to the point where we believe that the criminal justice system is the only thing that's going to work," said HPD Lt. Kurt Boshart, a 26-year veteran of the force who led the initiative from within his department. "It's exciting to see where this program could go. I can foresee it catching on pretty quickly."

Backed by veteran officer



Marsha Garst, Commonwealth's attorney, spoke in support of the program.

(Photo by Jon Styer)

The idea began several years ago, when Sue Prail with the Fairfield Center first proposed it to the HPD. Prail directs restorative justice services at the Harrisonburg nonprofit, which has been offering them in the community for nearly 20 years.

Eventually, a broader advisory group began meeting with Boshart to plan the program in more detail. In addition to Prail, the group included Fairfield Center Executive Director Tim Ruebke and Bacon – an associate dean of students at James Madison University who has overseen wide implementation of restorative justice practices on that campus. Also participating have been [Carl Stauffer](#), co-director of the [Zehr Institute for Restorative Justice](#) at EMU's [Center for Justice and Peacebuilding](#) (from which Prail and Ruebke hold master's degrees, and where Bacon has also taken graduate-level coursework) as well as defense attorneys, a representative from local prosecutor's office and other community representatives.

More effective, affordable possibility

While change can be a slow process within the protocol-bound world of law enforcement, Boshart said reaction to the new program within the HPD has been generally positive. So far, five officers have taken a restorative justice training. By this summer, he hopes that most or all of the department's 94 sworn officers will be trained to identify specific crimes or conflicts that might be best handled through a restorative approach that focuses on victims' needs and holds offenders accountable to meeting them.

One of the larger challenges facing the new program is communicating the fact that restorative justice emphasizes offender accountability, and isn't simply a get-off-easy approach to criminal justice. Boshart said that as people learn more about restorative justice concepts, they understand how it can offer police more effective and affordable ways of dealing with some crimes than the traditional criminal justice system.

"For us to turn our head from that is a disservice to our community," he said.

While the program remains a work in progress, its broad parameters have been established by the advisory group. After police officers refer cases, a committee from the advisory group will screen them to ensure they're appropriate for the program. Depending on a case's specifics, facilitation would be handled either by the Fairfield Center or staff from Bacon's office at James Madison University.

One of the main benefits of restorative justice is the way in which it humanizes both victim and offender, giving each a better understanding of how and why one hurt the other. Prail points out that under the new HPD program, officers who refer cases for restorative justice will participate in the group conference and benefit from this humanizing process as well.

"Nobody calls the police and says, 'Hey, we're having a great time,'" said Boshart.

Improved relationships for all

Instead, officers generally show up when things have gone wrong and often interact with people during their not-finest moments. By being a part of the restorative justice conference, he hopes officers will be able to see these same people in better light. At the same time, people whose interactions with law enforcement are often negative will have new opportunity to develop better relationships with police officers.

For now, these conferences will be led on a volunteer basis by trained facilitators like Bacon, Prail or others from EMU. If the caseload grows beyond volunteers' capacities, the program may need to find new sources of funding. At this point, however, all involved are concentrating on laying the foundation for a successful, sustainable program.

"Part of the idea is to go slowly enough that the program is organic to this area, and so that there's confidence in the community that this is a good program," said Ruebke.

As that happens, and as the caseload grows, figuring out funding "can be a good problem to have later," added Boshart.

Off to good start

Later will come later; for now, the new program is off to a remarkable start. During the conference for the first case, the offender told the employer he'd stolen from about the desperate circumstances in his life that had encouraged him to steal.

The employer, in turn, talked about how he'd once found himself in a very similar situation. After he committed a similar crime, though, there wasn't this sort of alternative. He was convicted of a felony, served time in jail, and after getting his life back in order, didn't want his employee going down the same path. They agreed on a plan for restitution. The employee was paired with a mentor. The employer volunteered to become a mentor for someone else in the community.

"This process allowed for the victim and the perpetrator to come together and tell their stories, said Bacon. "None of this would have happened if it just went through the normal criminal process. I was just blown away ... It's why I love doing restorative justice." In his opening remarks at the press conference, Bacon credited EMU's [Howard Zehr](#) – who is known internationally as the "grandfather of restorative justice" (and who will be honored at a May 23 event) – for mentoring Bacon when he took courses at EMU and began implementing restorative justice practices at JMU.



Josh Bacon, associate dean of students at JMU, talks about facilitating the first case referred to Harrisonburg Police Department's new restorative justice program. Behind him are other members of the program's steering committee: (from left) Aaron L. Cook, attorney; chief deputy Christopher Bean, Rockingham County Commonwealth's attorney office; attorney P. Marshall Yoder; Carl Stauffer; Hillary Wing-Richards, counselor; Sue Prail and Tim Ruebke, Fairfield Center; and Lieutenant Kurt Boshart, HPD.

(Photo by Jon Styer)

Story by Andrew Jenner