

Check Out Our New Searchable Mediator Directory!

The Office of the Executive Secretary is pleased to announce the creation of a new searchable, electronic *Directory of Court-Certified Mediators*. Many hours of research and development over the past year between the Department of Judicial Information Technology and the Department of Dispute Resolution Services have culminated in the new electronic *Directory*. You may access the *Directory* by clicking on the following link to our website:

http://www.courts.state.va.us/drs/searchable_mediator_directory.html

The *Directory* allows you to select from among various criteria, such as education, ADR training and experience, subject matter, language proficiency, expertise, etc., to narrow your search for a mediator who meets your specific requirements. This will be useful to judges and clerks of court as well as to organizations and citizens and/or their attorneys, wishing to locate a mediator to assist them in resolving a particular type of dispute.

In looking for a mediator, you may select as many search criteria as you like or as few as you like. The fewer criteria you select, the greater the number of mediators who will match your search. It is recommended that you begin initially by identifying only one to three of your most important criteria. Depending on the number of mediators listed as meeting these criteria, you may press the BACK button and either narrow or expand your search.

Upon receiving your search results, you may then click on the name of any or all mediators identified in order to view a more detailed profile on that mediator. Please note that all court-certified mediators with active status (having been recertified in a timely fashion) will be included in the *Directory* database; however, complete profile criteria will only be available for those mediators who have submitted a Mediator Profile Form in the newly revised format.

If you are a certified mediator, please click on the web link above and locate your mediator record in the *Directory*. Please verify that all information listed is accurate and complete. If information is missing under certain search categories, please submit a completed Mediator Profile Form. The form is available on our website at www.courts.state.va.us/ by clicking first on "Mediation", then on "Mediator Forms." It is the mediator's responsibility to inform the Department of Dispute Resolution Services (DRS) of any changes in your contact information and to submit an updated Mediator Profile Form with your Application for Recertification every two years. If you believe your mediator record in the *Directory* is inaccurate or incomplete and you have submitted an updated profile form, please contact the DRS office. If you have a web site that you would like to appear with your profile in the searchable directory, please notify DRS and a link to that site will be provided.

The *Directory* has been designed to be “user friendly” and contains instructions regarding the mediator search procedure. Also provided is an explanation of the various levels of mediator certification and the types of cases that might be mediated at each level. In the past, the only way one could view an individual mediator’s profile form was to search through the printed Directory of Court-Certified Mediators distributed annually to the clerks’ offices. Now that valuable information is accessible with the click of a mouse. The previous on-line *Directory* offered only one search feature in that you could click on a particular judicial circuit on a map of Virginia to view all certified mediators who have identified themselves to be available to mediate in that locality.

Search categories for the new Directory include name or first letter of a name of the mediator, type(s) of certification held, mentor status, education/licensure, other court-related positions held, number of dispute resolution training hours completed, number of mediations conducted, number of years of experience in dispute resolution, types of dispute resolution services provided, hours available, languages in which the mediator is proficient, types of disputes in which mediator has specialized training and experience, the judicial circuits served, customary hourly fee, and whether the mediator has been approved by DRS as a mediation trainer.

The Office of the Executive Secretary is very excited to see this search capability become a reality, and it is our hope that the process of selecting a qualified mediator will be simplified through the use of the Directory.

24th Judicial District Institutionalizes Mediation in Juvenile & Domestic Relations District Courts

In January 2003, Judge Kenneth Farrar, Chief Judge of the 24th District Juvenile & Domestic Relations District Court, initiated the formation of a committee, including Judges, Court Service Unit and Child Support Enforcement personnel, Clerks of the Court, and the 24th District Mediation Coordinator, to review the utilization of mediation within the 24th District. The committee's objective was for all the courts within the 24th District to reach a consensus on the method and timing of referral of cases to mediation, the case types appropriate for referral, and the guidelines for clear mediation agreements in order to maximize the effective use of mediation.

A roundtable discussion with **all** of the Judges and Clerks in the 24th District was held on July 1, 2003 from 12:30 – 5:30 p.m. at the newly renovated Department of Social Services building in downtown Lynchburg City. The focus of the meeting was to review, discuss, and develop uniform mediation referral procedures for the 24th Judicial District Juvenile and Domestic Relations District Courts. Judge Kenneth Farrar, Judge William Light, Heather Lyman, Judge Philip Wallace, Rhonda Gardner, Judge Lawrence Janow, Pamela Staton, Judge Ellen White, Dawn Williams, Bob Wade, Carolyn Pritchard, and Geetha Ravindra were present. Geetha Ravindra and Carolyn Pritchard co-facilitated the discussion. At the conclusion of the meeting, through a collaborative effort, the Judges and Clerks along with the Mediation Coordinator had reached a consensus on mediation procedures.

To ensure the successful execution of the newly established procedures and mediation agreement writing expectations, training of the local certified mediators was necessary. On August 25, 2003, Chief Judge Kenneth Farrar, Judge Ellen White, and Carolyn Pritchard held a four-hour training for the mediators that presently accept family cases within the 24th Judicial District. The workshop was held in the Lynchburg City Hall building from 1:00 – 5:00 p.m. to review the new procedures and mediation agreement forms. This workshop both informed the mediators of the many changes in procedures and provided them with an opportunity to personally ask the Judges questions about the new mediation agreement forms.

A second workshop was held September 8, 2003 for the certified mediators at Peaceful Alternatives Community Mediation Services, from 2:00-4:00 p.m. to practice child support scenarios and become more familiar with the new child support requirements and forms.

Another mediator workshop took place on September 9, 2003 at Peaceful Alternatives Community Mediation Services from 12:00 – 4:00 p.m. This was an advanced workshop that provided additional opportunities to practice completing the new forms, provided role-play in juvenile offense cases, and further tested the comprehension of the

mediators' understanding of the new procedures, variances in the types of referrals, and competency in developing the mediation agreements.

We look forward to increased use of mediation throughout the 24th Judicial District and appreciate the concerted efforts of the judges, clerks and mediators to ensure the successful expansion of mediation in Virginia.

Submitted by Carolyn P. Pritchard, 24th Judicial District Screener/Coordinator

ADR Resource Corner Book Review

Picker, Bennett G. *Mediation Practice Guide: A Handbook for Resolving Business Disputes*, Second Edition Revised and Expanded. Published by the American Bar Association, Section of Dispute Resolution, Washington, D.C., 2003. 222pp. \$39 (\$32 for members of ABA Section of Dispute Resolution). 312-988-5522.

I once read, “The good things people say make us smile. The not-so-good things should make us think.”

Those are only two of the many good reasons to read Bennett Picker’s *Mediation Practice Guide*. As an attorney who has focused on mediation and mediation advocacy for fifteen years, the author’s knowledge of and enthusiasm for mediation is inspiring.

How can we not smile when he shares his optimistic observations that “The world of ADR, unbounded by strict rules of litigation, is limited only by one’s imagination,” or “Lawyers are undertaking exciting new assignments which place a premium on creative lawyering.”

At the same time, it is bound to make us think as Picker describes reality as he sees it. His traditional law background gives him a clear understanding of the challenges that some lawyers face – especially those attorneys who, in this changing world of conflict resolution and management, have not yet broadened their mind set to include alternative dispute resolution as a valid – and often preferable – approach to help their clients reach their objectives. “First and foremost,” he writes, “there is a need to change our traditional approach to resolving disputes, even a need to change our basic attitudes. We need to redefine the very meaning of what it is to ‘win’.”

Picker wrote this step-by-step handbook to help lawyers and their clients better understand mediation and how it has become a “powerful tool to resolve business and other disputes early, cost-effectively, and fairly.” He writes, “Each case requires a fresh new approach, an understanding of the client’s business and objectives and far more communication with the client.”

The first 124 pages describe the mediation process from the various perspectives of the participants: attorneys, clients, stakeholders, and mediator. The author offers guidelines to determine if mediation is the appropriate option to best serve a client’s goals. He outlines the steps and how to implement them to encourage the success of the process. Checklists, charts, and a conversational tone make this book easy to read. Its completeness assures the reader that the author has given an in-depth overview of the process. No details are overlooked.

The final 98 pages provide a variety of resources, some of them unique. This is especially true of the “ADR Suitability Screen,” which requires analyzing a client’s case and

answering thirty-seven (37) significant questions. Other helpful information includes sample mission statements; various mediation rules and procedures documents from a variety of organizations; a list of ADR websites; and an index. Aside from being a handy tool to find reference material quickly, the index is complete and could serve as an outline for designing an in-house ADR program, a training course, or for writing a proposal.

There is no question that this guide delivers even more than it promises. Its ten chapters and twelve appendices give readers the tools they need to thoroughly understand mediation and the roles of the various participants. It more than covers the three issues Picker considers “key” to mediation: (1) how to determine if mediation is an appropriate strategy for a specific dispute; (2) how to prepare for a successful mediation and, (3) how to advocate for mediation by putting aside a ‘we-they’ mind set and by committing one’s self to finding the creative solutions that come from a collaborative approach.

The strengths of this book far outweigh any criticism. Yet, I would be remiss if I did not mention that there were two or three “stop and think” moments when I wished the author would not have written what I was reading. First, I wish the author would have spoken to a broader audience by acknowledging that mediators can be non-attorneys. (I realize this observation may not be fair since on page one of the Preface, Picker clearly states that the guide is intended as a primer to help “lawyers and clients” navigate the landscape of mediation.) I often felt like I was eavesdropping on a conversation not meant for me. Yet, on the plus side, I also felt that I was privy to inside information. If knowledge is power, Picker’s comments can help us better understand how we – whether we are non-attorney mediators, attorney mediators, or traditional counsel – can maximize our effectiveness as we work toward the common goal of better serving our clients.

Another “stop and think” moment may occur for facilitative mediators who eschew an evaluative mediation style. When Picker makes process comments such as “Counsel can suggest that the merits of the client’s positions are so strong that any skilled mediator would no doubt validate this opinion,” some readers may flinch. Yet, in this case, it’s fair to note that the author had foreshadowed comments such as this by acknowledging in the chapter, “The Role of the Mediator,” that there is an ongoing debate in the mediation community about the pro’s and con’s of the various mediator styles. He sums it up by saying “Effective mediators generally have flexibility and will use varying degrees of both styles” if that’s what it takes to give the process a chance to succeed.

Finally, Picker often refers to mediation as a “non-binding process.” Although he would invariably follow this statement with a phrase acknowledging that the desired outcome of a successful mediation is a “binding, enforceable agreement,” I found it disconcerting that a reader scanning the material might miss that crucial point.

In the first chapter of his handbook, “Mediation and the Landscape of ADR,” Picker writes that he would like to see the word “**appropriate**” replace “**alternative**” in the phrase “alternative dispute resolution.” He believes that the word “appropriate” better describes a dispute resolution culture that recognizes *the need to consider the client’s objectives in every case and to develop a strategy designed to accomplish those objectives*. [Emphasis added by

reviewer.]

In my opinion, that statement was one of the most powerful and far-reaching concepts in the entire book.

In the last chapter of the book, “The Future of Mediation – New Challenges and Opportunities,” he throws the gauntlet to attorneys, law firms, law schools, business clients, and the ADR and mediation community by outlining our individual tasks and challenges. He reminds us that “...in most business disputes, clients now seek solutions that focus as much upon the underlying interests as upon truth and rights....”

So, how do we get there from here? I suggest a good place to begin is to read *Mediation Practice Guide*; then analyze our own attitudes, thoughts, and behaviors; then ask ourselves some tough questions: What **does** it mean to ‘win’? Do we practice creative mediation or do we simply facilitate a ‘one size fits all’ process? According to Picker, if we make a commitment to **appropriate** dispute resolution, we add value to our clients and to our profession. That’s enough to make us smile.

Diane Wiltjer is a certified mediator and mentor in Virginia. She is a former officer on the Board of Directors of the Virginia Mediation Network and formerly served as a mediator and mentor for the Northern Virginia Mediation Service. She was in private practice in Great Falls, Virginia, before her recent move to Pinehurst, North Carolina. She can be reached at DianeWiltjer@aol.com.

Mediation Contracts Awarded for 2003-2004 Fiscal Year

Effective July 1, 2003, forty-five contracts were awarded to mediation centers and private providers for mediation services in court-referred cases. We anticipate mediating approximately 2,100 general district court cases, 240 non-custody, visitation and support juvenile & domestic relations district court cases, and 400 circuit court cases under contracts during the fiscal year. For a list of current contractors, please click on the link to our web site provided below.

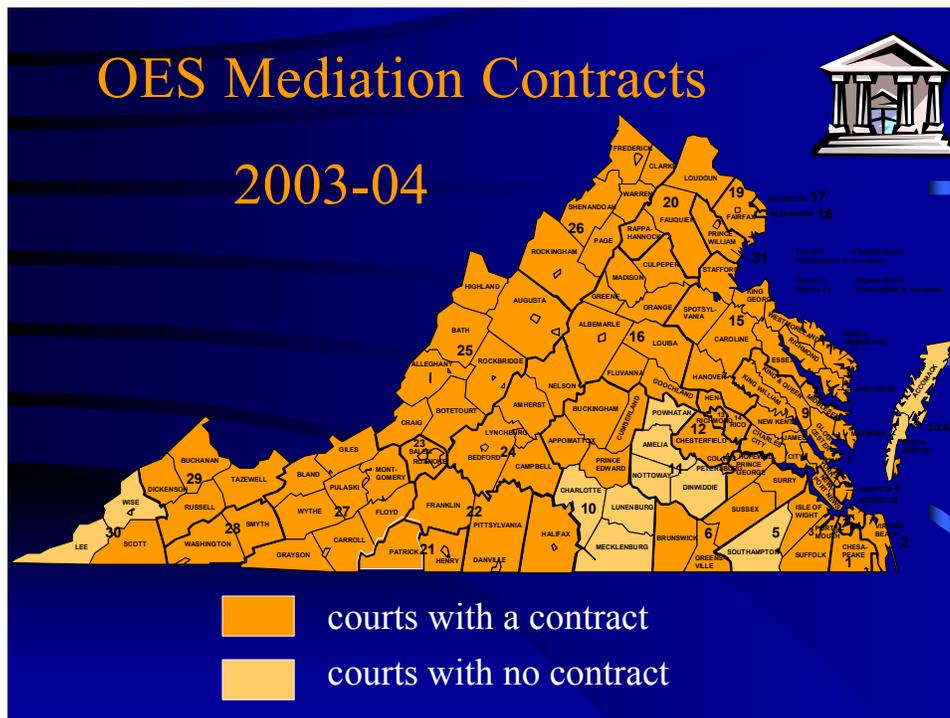
http://www.courts.state.va.us/drs/mediation_contractors.PDF

If you are a prospective court-certified mediator seeking mentors to assist you in completing your case observations and co-mediations, the contractors on this list are available to provide mentoring services.

Also awarded were twenty-two contracts to provide mediation coordinator services to 58 general district courts, 47 juvenile & domestic relations district courts, and 53 circuit courts in Virginia. To view a list of these contractors, please click on the link below.

http://www.courts.state.va.us/drs/coordinator_contracts.pdf

The following map of Virginia depicts the courts served under the 2003-2004 contracts for mediation services. Those colored in the darker gold have mediation contracts and those in the lighter shade are not presently served under contract.



Raising the Bar for Mediation

The success of court-referred mediation in Virginia communities is tied to the understanding and acceptance of mediation by our judges and members of the Bar. This article is intended to provide a practical approach to informing the Bar and the broader community of court officers and service providers about mediation and the positive impact our services can have on our communities. The approach is modeled after a program developed last year designed to raise awareness and practice in the area of domestic violence issues with the Bar, court clerks and judges. In my area, the five-county Northern Neck of Virginia, the program was very well received by the Bar, and over one-half of the members of the regional bar association attended.

In a nutshell, this approach illustrates a method of informing the largest number of people in the shortest amount of time, in an enjoyable environment. Among the benefits are low cost, high participation, small investment of time (other than by the organizers), and increased awareness, communication and community of practice. I've laid out the approach in steps.

- 1. Determine sponsors, discuss the idea and get commitments.** I recommend co-sponsors to achieve the broadest possible buy-in. Possible sponsors are the local or regional bar association, local mediation centers, universities or community colleges that offer or would like to offer ADR training, mediation screeners/coordinators, family law or legal aid offices, counseling centers using mediation, and attorney/mediator practitioners.
- 2. Determine who is in your area.** Research which mediation practitioners, judges referring mediations, mediation friendly court clerks and court services officers, attorney/mediators and others are in your area. Discuss the idea with them or with select representatives, and obtain their commitment to participate and/or support the event. This will assist you in planning and promoting the event.
- 3. Contact the local bar association.** Determine the dates and times of their upcoming meetings. Establish a relationship with one or more of the officers or the person who handles the administration for the association. Discuss the possibility of offering a mediation training (with CLE credit whenever possible) at an upcoming meeting. Many bar associations welcome that sort of proactive input if you can guarantee the quality of the presentation. If there is no interest in your offer for the meeting itself, set a time one to two hours prior to or immediately following a bar meeting for the presentation. Inform your contacts and the bar association that you and the sponsors will be holding your training at a time and place that encourages the maximum participation from the members of the bar. If the meeting will happen as part of the bar association meeting, the association will usually take care of the space arrangements. If you will not be part of the meeting, attempt to secure the same or a nearby meeting space for the same date and for the time slot needed before or after the meeting. The bar association will likely be happy to work with you on this.

4. Publicity. The easiest method is to ask the bar association if it is willing to include a letter or flier for your event with one or more upcoming mailings. If the bar association is including your presentation in its regular meeting, it will most likely take care of the publicity working with you. If not, and if your letter or flier doesn't increase postage, it may be willing to insert your information in a scheduled mailing. Be sensitive to the time and effort required to prepare a mailing, and make your insert as mail ready as possible by folding or otherwise preparing the mailing in advance. Also make certain to cover or offer to cover the expenses of the flier or letter. Make certain to include an RSVP with a "no later than" date, and provide either a phone number or an e-mail address for their reply. This is particularly important to assist with planning if you are offering food.

Once the location, date and time are established, it is recommended that the organizers personally phone or visit the judges, clerks, court services officers and other key court personnel to invite them to participate. You may also find it useful to make phone calls to key members of the bar to ask for their participation and to ask them to invite other attorneys who might be interested. It will be useful to take a straw poll during these calls to determine the subjects of interest to members of the bar so that these can be incorporated in planning with the panelists. Ideally, you can prepare a list of questions from the bar and distribute them to the panelists prior to the event to assist with best use of time and to ensure that key interests are addressed. You may want to send a reminder letter or make phone calls in the week prior to your event to personalize the event and encourage attendance. A sample letter/flier can be obtained from the Department of Dispute Resolution Services or the author if desired.

5. The Panel. I recommend putting together a panel that will be well-informed, broad-based and interesting. An ideal panel might include one person specialized in family mediation (preferably one who also teaches the Co-Parenting course), one specialized in community or business mediation, a substitute judge who is also a certified mediator, a screener/coordinator (when possible this person might be the same as one of the mediators), a court clerk who is a proponent of mediation, and Geetha Ravindra from DRS. Other panelists might include a representative of the Virginia Mediation Network or other association of mediators in your area, and one or two clients who have benefited from court-referred mediation programs in your area. This last type of participant was extremely important in raising awareness in the parallel program on domestic violence on which these recommendations are based. Due to time limitations, a panel of between three and five persons is ideal. In making the selection, consider these factors: reputation and expertise of each panelist, mediation growth needs and possibilities in your region, a balance between family and general mediation, and the ability to address challenges and questions posed in advance by members of the bar. It is important to obtain the commitment of the panelists as early as possible and check in with them periodically prior to the event. You may want to have one or more backup panelists in the event that one cannot fulfill on the commitment.

6. Keynote Presenter, Emcee, Format and Substance of Event. Depending on time and structure of the event, you will want to have someone who will introduce and facilitate the event as well as a keynote speaker to set the tone and begin the discussion. If you have applied for or obtained CLE credit, your program will need to follow the approved format and content. If CLE is not an issue, you can follow the desire of the group and possibly have the panelists prepare some remarks for their area of expertise and interest, followed by questions and answers from the participants. I recommend having a keynote presenter for fifteen to twenty minutes, providing a background on court mediation, developments in Virginia and in the region or locality, and setting the framework for or providing initial answers to the topics of interest to the group. This can be followed by shorter presentations by one or more panelists. I would recommend at this point having one or two clients who have received assistance from court-referred mediation give brief statements or testimonials about the value of the services received. These individuals do not need to be panelists. It is imperative to allow the bar to interact with the panelists for a significant percentage of the time through questions and answers. These may be taken from the floor by the facilitator and/or put on paper and passed in to the facilitator for the panelists. Make certain to end the event on time. This is particularly true if it is held prior to a bar association meeting to allow people to transition into the meeting or to the next location.

7. CLE Credit. Members of the bar will appreciate your efforts even more if you are able to offer them CLE credit for their participation. Information on obtaining CLE credits for your program can be obtained from the MCLE office: (804)775-0577, or at www.vsb.org/ This office requests that you allow four to six weeks for approval of the CLE credits. If you have to do the publicity before you receive the approval, you can mention that CLE credit is pending but not guaranteed, to let the participants know that they may receive credit.

8. Funding and Food. If the bar association invites you to participate in a regular meeting, these needs may be met or may not be necessary or desirable. If you are having the event prior to or following a regular bar association meeting, you may find it useful to host a breakfast, lunch or coffee event to increase participation and enjoyment of the event. Again, doing a straw poll of key bar association members or officers should give you ideas for timing and what has worked in the past for this sort of event. If you choose carefully and, depending on the minimum size of your group, you should be able to provide either box lunches/breakfasts, a buffet, snacks and coffee/tea for under \$6 per head. You may be able to find one or more sponsors to fund this event from among practitioners or community members or organizations committed to promoting mediation. In the model domestic violence program, one sponsor paid the bill for a great luncheon hosted at a local deli where the participants and panelists were served pre-selected lunches in an enjoyable environment during the presentation prior to the regular bar association meeting. Even in this model, the cost per person was approximately \$6 - \$7, but prior planning based on a minimum number of participants is key. Also, you are likely to have last minute additions, so plan accordingly for space and food/refreshments so that no one has to be turned away.

9. Follow Up. It is useful to provide at a minimum the URL for the Department of Dispute Resolution Services and key phone numbers for more information on mediation in Virginia and at the local and regional level. If you distribute the information on any private mediator or mediation center you should include all certified mediators and mediation centers in the area in this material. Other than this, additional follow-up is optional and may include taking additional questions in writing and facilitating their reply either to the bar association or to the particular person requesting the information. Make certain that the members of the bar have the name(s) of the local mediation Screeners/Coordinators in addition to the Supreme Court information. You may wish to provide the web address for *Resolutions* and lists and links to upcoming training courses to encourage participants to pursue additional education regardless of whether they desire to become certified.

General guidelines:

A) Inclusiveness is key. Weighed against any budget and space restraints, it is recommended that the event be open to as many persons in the target groups as possible. If you are having a breakfast or luncheon meeting and there is not sufficient funding, consider asking extra persons to pay for their own lunch, or invite them to participate without the meal.

B) Application to other professional groups. These guidelines and steps can be easily adapted to any other professional group or association for which mediation may be important by working with the state or local representatives of that group.

C) The Supreme Court's Department of Dispute Resolution Services or the author can provide further information and sample letters or documents if and as needed by the mediation community upon request. Requests to the author can be addressed to:
Rawlings@RawlingsConsulting.com

Submitted by Michael W. Rawlings, J.D., Mediator, Facilitator, Trainer and Coach

Sentencing Alternatives = Family Enrichment

In June of 2003, the Williamsburg-James City County Circuit Court established a new mediation program to serve defendant fathers and their dependent families. This is a collaborative effort of the James City County Division of Social Services, the Circuit Court, Adult Probation and Parole and the Center for Conflict Conciliation. (The CFCC is a community-based, not-for-profit conflict resolution program.) Judge Samuel T. Powell's goal in this innovative approach to sentencing is to provide a connection between fathers and their children. It is his hope that this will reduce the likelihood that the children will continue the multi-generational cycle of incarceration in families. The planning for this program began October of 2002 with meetings between Judge Powell and County administrative staff. On January 30, 2003, representatives from approximately 25 human service agencies attended an overview presentation hosted by Judge Powell. Agencies were asked to support the program and the families they serve through cooperative collaboration. Funding for this program is provided through a grant from the James City County Revenue Maximization Program administered by the James City County Division of Social Services.

The SAFE process begins with a referral from the adult probation case manager following the trial. Fathers convicted of non-violent felonies, between the ages of 18 and 24, with minor children are eligible to participate. The Center for Conflict Conciliation contacts the mother (or caregiver) of the children and conducts a mediation orientation. At the orientation, the parties are made aware of the terms and conditions of this alternative to incarceration. If the referral is an appropriate case for mediation and both parties agree to participate, the mediation process begins. A parenting plan is developed and reviewed by counsel. The plan is then provided to the probation officer for presentation to the court at the father's hearing for sentencing.

SAFE is not an easy alternative to incarceration. Both parties are required to complete intensive parenting education programs. In addition, the father is required to maintain employment, pay child support, have regular visitation, participate in medical and school appointments, and provide health insurance for his children. The parent education component focuses on responsible parenthood through skill building and improved communication. Fathers attend a 12-week "Foundations of Fatherhood" class and both parents are required to complete an 8-week "Effective Parenting" class. The Adult Probation Department incorporates these requirements into the fathers' rules of probation and monitors their progress and compliance with the program.

SAFE provides positive outcomes for the entire family. It offers fathers the opportunity to remain in the community and active in their children's lives. Research has shown that felons are less likely to re-offend if they have strong community ties through personal/family relationships. Mothers receive child support and have the participation of the father in rearing their children, and children grow up with two parents. Children who live absent their fathers are, on average, at least two to three times more likely to be poor, to use drugs, to experience educational, health, emotional and behavioral problems, to be victims of child abuse, and to engage in criminal behavior than those who live with their fathers. (Father Facts, Horn and

Sylvester, National Fatherhood Initiative, 2002.)

In addition to providing the mediation services, the Center for Conflict Conciliation collaborates with other community partners to provide case management services for families that will connect them to resources in the community. Involvement with the family is expected to last about six months. The program has had two referrals since June. Future plans are to expand the program to mothers as well. For additional information, contact Iris Street, (757) 259-3152 or Diane Gilbert, (757) 229-3593.

Submitted by Iris Street of the James City County Department of Social Services and Diane Gilbert of the Center for Conflict Conciliation, both court-certified mediators.