

A Benchmarking Study – March 2004

## Maryland Business Perspectives on Conflict Resolution

By Robert Fleishman, Esq., Chair, MACRO's Business Initiative

**“ADR avoids class action lawsuits against my organization.”**

**“People are our most important asset . . . We seek to resolve differences in an honest, straightforward way, recognizing individual rights to hold different opinions.”**



courtesy of Robert Fleishman

These are just two comments culled from a statewide survey of 444 Maryland businesses on the use of alternative dispute resolution (ADR) in their organizations. This ambitious study, a joint project of MACRO and the Maryland Chamber of Commerce, was the first of its kind in Maryland. It was designed to serve as a benchmark to encourage businesses to use ADR and to assist them in assessing the effectiveness of future ADR efforts.

The survey was distributed to all Maryland private employers with more than 1,000 employees and to a random sample of Maryland businesses with fewer than 500 employees. In addition, the study reflects a review of ADR program literature and research as well as interviews with officials from business, government and ADR associations. One significant finding of the study is that many Maryland businesses, at this time, have a “low level of familiarity or sophistication about dispute resolution processes.”

Key findings regarding external conflicts include:

1. Businesses that use ADR for external conflicts cite the desire to save time and money as the most important reasons for choosing an alternative dispute resolution method.
2. 35 percent of respondents reported that ADR training and education is provided to legal staff.
3. 30 percent reported that ADR is “extensively” or “frequently” explored prior to filing suit and that ADR is extensively or frequently explored after a suit has been filed.
4. 13 percent reported that ADR training and education is provided to non-legal staff.

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Rachel Wohl,  
Executive Director

## Rachel's Notes

### "I don't think we're in Kansas anymore, Toto."

I've been thinking lately about cycles and impermanence. In the past month, my mother-in-law, who was a remarkable woman, died, and my son, who's a real character, became a "Bar Mitzvah" (a son of good deeds). She had been a real anchor for me, and now that anchor is gone. He had been my baby boy, and now he's a young man. I feel like I've been riding an emotional roller-coaster.

Everyone knows that everything changes; nothing is fixed in time. We all go through cycles of sorrow and joy, and of birth, growth, maturity and passing. So, why is it still so painful and so amazing? And, by now you may be wondering, what, if anything, does this have to do with MACRO? Well, it's not easy to articulate, but it has to do with the changes that have taken place in Maryland, and the need to have MACRO focus its work to help bring about more widespread changes.

At a recent conference put on by MACRO's Family Conflict Resolution Initiative, Pam Ortiz, the Director of Family Administration at the Administrative Office of the Courts, used a witty Wizard of Oz analogy in her presentation. Pam talked about Dorothy, the Scarecrow, the Tin Man and the Lion, as a family with problems. She compared Glenda, the Good Witch of the North, to the courts, which set the family on the yellow brick road to mediation. Glenda knew she could have intervened and used her magic (or the court its authority) to hand the family a solution, but she believed it would be better for them to journey in search of their own solution.

So the family goes "off to see the Wizard" whom they expect will give them the perfect solution to their problems. When they arrive in Oz, of course, they are terribly disappointed to learn that the Wizard is just a man with no magical powers. Still, the Wizard, like a good mediator, helps the family members find their own solutions within themselves.

Pam's analogy started me imagining MACRO on the yellow brick road, looking for solutions to bring down the barriers that remain against achieving a more empowered, civil and peaceful society. Can't you just see the MACRO staff skipping merrily down the road, arms linked, and being met by "resistance and ignorance and fear, oh my . . . . resistance and ignorance and fear, oh my."

As we've journeyed with many of you over the past several years, we've found that the further down the road we've gone, the less resistance and ignorance and fear we've encountered. In fact, we're now way

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## Defining the Super Mediator: A Different Approach



courtesy of Brian Polkinghorn

For the last 20 years there have been people in the alternative dispute resolution field who have developed and labeled the practice of mediation to fit their own professional, ideological and political goals. From these early developments, a generally recognized set of labels for

mediation has evolved, including transformative, evaluative and facilitative mediation. Each one of these labels has its own underlying philosophy through which to view the utility and practice of mediation.

Generally speaking, transformative mediation provides us with a framework whereby mediators help parties recognize and appreciate each other. The relationship and emotions of the parties are clearly a central focus, while the outcome, as is frequently measured in terms of a written agreement, may not be as important.

The evaluative mediation style, on the other hand, generally shifts focus to assisting the parties in coming to an agreement. Evaluative mediators often provide possible options and potential outcomes, critique parties' positions, or ask about their best and worse case scenarios.

Finally, there is the facilitative style. This type of mediation tends to focus largely on process control issues such as maintaining ground rules, focusing the parties on specific steps and keeping the pace of the process moving. This style of mediation tends to fit the general description of the mediator as the "guardian of the process."

So far, I have simply tried to describe the three main styles of mediation. However, I have a real

concern about such labels and about where the debate on the types of mediation is taking us. Starting a few years ago, I sidestepped the debate and began to ask experienced mediators what they actually do in mediation. From this informal research I have developed a new category of mediators. I call them "super mediators".

Super mediators are those folks who have maintained a healthy balance between their practice and ongoing education by staying abreast of current research and absorbing new models into their work.

Super mediators don't call themselves "evaluative" "transformative" or "facilitative" and generally tend to base a good deal of their intervention strategy on the needs of the participants. In doing so, super mediators say they readily shift their conduct at various points throughout the process. More important, they readily borrow from the stockpile of skills claimed

by the transformative, evaluative and facilitative schools of thought to attend to relationship issues, emotional concerns, and the substance of the dispute, but always with an emphasis on helping parties meet a variety of needs.

Super mediators use all the tools they can and look for practical results. There is a great deal of flexibility in mediation and this should be the starting point for further discussion rather than debating which is the better style. We could make a great contribution to the field by agreeing not to be limited to one mediator style.

If we could agree to consider the effectiveness of all the strategies available to us as interveners, then we could work to expand our mediator "toolbox" and could focus on using the very best strategy in each particular mediator situation.



Supermanhomepage.com,  
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## MACRO-sponsored Training on Facilitation of Public Policy Disputes

# Climbing the Tree of Knowledge and Trust

By Lisa Cameron, Mediator, Ombuds, Alternative Dispute Resolution Services

"We must listen to public opinion. We must shed our notion that we can counter environmental trends with scientific debate. We must accept that perception and emotion play a large role in shaping our society's attitudes. Therefore, we must become better at listening . . . and then better at educating."

Constantine Nicandros,  
President of Conoco Corporation

In February 2004, MACRO hosted a three-day training in Annapolis on Multi-Party Public Policy Facilitation in order to strengthen and expand Maryland's multi-party facilitator pool. In addition, by including a demonstration project, MACRO hoped to encourage government agencies to utilize public policy facilitation for public policy disputes.

When I learned that I was one of the mediators selected to participate, I was excited at the chance to learn new skills and advance my craft. "I can climb a tree with many limbs," I thought. My excitement, however changed to apprehension during my very first role play. The discomfort I felt was similar to the feeling I get when I'm not sure if I should jump down from one of the lower branches of a tree and possibly injure myself, or shimmy down the trunk knowing I'll sustain a few scrapes.

I had anticipated exchanging ideas with mediators who represented a wide spectrum of educational experiences, backgrounds and disciplines. I expected the process of mediation to remain the same, no matter how many mediators were involved. I neglected to recognize that it was as important for me to collaborate with my fellow mediator as it

was for the parties to collaborate on solving their problems. In a nutshell, it became evident that my co-mediator and I had forgotten the most significant step—creating the plan.

Had my counterpart and I done some planning, we would have realized that we had incredibly divergent viewpoints. A well-respected attorney and mediator, my co-mediator's desire was to take the parties on a "stroll down memory lane" to get them into a sentimental mood and create an atmosphere for resolution. I, on the other hand, saw the potential for a fast-forward resolution by asking the parties to consider what their lives would be like if they had to continue their relationship. Each of our strategies was valid, but because we had not prepared our thoughts collectively, we went in two directions. With my confidence diminished, I wondered whether I was the one mediator left out on a limb, still hoping to climb to new heights.

Not until the second day of training did I start to see the forest from the trees. Focusing on the convening and conflict assessment piece, our instructors, Michael Lewis and Linda Singer of ADR Associates in Washington, D.C., helped us better understand the importance of consensus building by first, identifying potential stakeholders and then determining the appropriate questions to ask those interviewed. By increasing my awareness of the convening process in a multi-party dispute and exploring potential obstacles inherent to working with large groups of people, the seeds to rebuilding my confidence had been planted. More important, I was learning to trust the actions of my co-facilitators.



Linda Singer



Michael Lewis



cont. on p. 9

courtesy of  
ADR Assoc.

## Coming Soon to a Courthouse Near You: Statewide Court ADR Evaluation

By Leonard J. Howie, III, Esq., MACRO's Director of ADR Program Evaluations

After two years of work, the MACRO Court ADR Initiative members achieved a real milestone on March 25<sup>th</sup>. They neared finalization of the design for an exciting project: a comprehensive evaluation program to allow courts to measure the effectiveness of ADR programs throughout the state.



Leonard J. Howie III

Concluding a collaborative effort that included input from smaller working groups, consultants, and MACRO staff, the full court initiative group came to agreement on the goals, objectives, indicators, and many tools that will be used to measure the effectiveness of ADR programs. This initiative is co-

chaired by the Hon. Daniel M. Long, Chair of the Conference of Circuit Court Judges; and James Nolan, past president of the Maryland State Bar Association, and includes court personnel from around the state.

Reaching agreement on the goals for the evaluation system was the group's initial task. The goals were finalized after extensive discussion and debate of the following question:

**"What are the most meaningful outcomes that an effective ADR program would produce – from the perspectives of all of our primary stakeholders?"**

With that idea as a guide, a goals and objectives working group examined the question from the perspective of judges, court administrators, litigants, attorneys, ADR practitioners, and ADR program coordinators. The working group, as well as the larger body of initiative members, understood that goals refer to outcomes that courts and ADR practitioners can influence. For example, while it is certainly

laudable to have as a goal to "improve the spirit of cooperation among Maryland's citizenry," that would not be within the "job description" of any state employee. Therefore, our sights were appropriately set, and the following goals were established:

1. ADR programs improve the public's trust and confidence in Maryland's judicial system.
2. ADR Programs benefit Maryland courts by making the most efficient use of judicial resources.
3. Maryland's court and court-related ADR programs are managed to promote quality and success.

The next critical step in the process was to develop objectives that, when achieved, would indicate that these goals are being met. This discussion generated significant disagreement, since the objectives needed to be part of fundamental activities that every ADR program could pursue. The initiative members recognized that ADR coordinators may not need to pursue all of the objectives to manage effectively their respective programs. Instead, the intent was to create a comprehensive list of objectives from which every program could draw. It is this common set of objectives that distinguishes our efforts in Maryland from evaluation initiatives in court systems around the nation.

### Goals and Objectives for Maryland's Court ADR Evaluation Project

1. Improve the public's trust and confidence in Maryland's judicial system.
  - a. To create an environment where parties believe that ADR processes within the judicial system are fair, efficient, and effective,

E-Marketing for Mediators

## List Your Practice On Line

Finding a good mediator, arbitrator or facilitator is no easy task for potential clients. How can they go about verifying the practitioner's training, experience, and familiarity with the type of problem at hand? Are the results of the numerous search engines reliable or are they merely the result of practitioners investing a few cents in advertising? And, what kinds of questions should potential users ask to determine which ADR practitioner is right for them?

With all these questions buzzing through a distressed client's mind, it is essential that practitioners find the appropriate directory in which to list their services. It must be a directory that supports practitioners' credibility and provides effective publicity. Fortunately, we who practice in Maryland need not spend hours searching for



ways to be listed nor spend a fortune. With the new online ADR directory, practitioners who meet the minimum requirements may be listed in any or all of five categories **for free**. The five categories are mediator, arbitrator, settlement conference facilitator, large group dispute resolution facilitator and ADR trainer.

Associated with the Peoples Law Library, a legal information self-help website, the website receives 22,000 visits per month and serves as an excellent opportunity to provide a full-profile for your practice. Recent new features resulting from feedback include: the option of printing a profile after it is entered; listings of out-of-state practitioners who work in Maryland; and an extended time period (three hours) to enter your profile. This directory is a collaborative effort by the Center for Dispute Resolution at the University of Maryland, Maryland Legal Assistance Network and MACRO. Visit [www.MD-MEDIATE.org](http://www.MD-MEDIATE.org) to view the directory and to enter your data.

Party time . . .

## MQA Committee Celebrates Success

The Mediator Quality Assurance Committee members along with MQA consultant, Charlie Pou, celebrated the culmination of four years' work with a picnic June 13<sup>th</sup> at the Knoxville, MD farm of committee member Roger Wolf. With the creation of an overall plan, and the initiation of the Maryland Mediator Excellence Council, the MQA committee completed its work. In discussing the project, Charlie Pou said, "The collaborative, comprehensive process of the MQA committee has built a broad sense of ownership and enthusiasm throughout the state that should ensure long-lasting success."

Elly Cleaver, ACR representative, added, "What started out as a one-year project quickly developed into a much longer and more intriguing

process, the results of which will have an enduring impact on the quality of mediation in Maryland."

Stanley Rodbell, from MCDR, commented, "I saw my role as that of gadfly. I had the impression my sometimes discordant views were accepted with more than tolerance, and for that I am grateful. I think we were able to produce work worthy of our long efforts." At press time, MACRO was searching for a contractual staff member to work with the task groups and staff the Mediator Excellence Council for the next phase of the project. The online directory [see above] will serve to document mediators' participation in the program.

For copies of Charlie Pou's final report on the work of the MQA Committee, or other information about this project, contact MACRO at 410-841-2260.



## ADR in Business, (cont. from p. 1)

5. 11 percent indicated that corporate ADR policy statements are often applied to resolve external conflicts and disputes within their organizations.

Key findings regarding workplace conflicts issues include:

1. A majority of the respondents agreed that cost and time savings are important considerations in assessing the benefits of using conflict resolution processes to resolve internal disputes.
2. 52 percent reported they apply formal grievance procedures extensively or frequently to resolve workplace conflicts.
3. 52 percent reported that there is at least one person who serves as an internal, independent and confidential neutral in their organization.
4. 26 percent reported that there is a sincere and visible championship of ADR by senior management.
5. 29 percent reported that dispute resolution training and education is provided to managers.

One interesting finding of the study is that ADR training is often focused first on the legal staff. However, it is important to note that managers and staff are the ones who often have the greatest exposure to conflicts in the early stages and may be the best sources for referrals to ADR processes. ADR training for non-legal staff is found to be helpful by many companies. In addition, some businesses have set up Ombuds offices which can handle employee conflicts at early stages and prevent them from escalating.

The study finds that, "Most businesses are familiar with arbitration, and as the Maryland courts refer more business cases to mediation, familiarity with mediation is growing. . . . As ADR use continues to grow in Maryland's courts, it is only a matter of time before the benefits of non-traditional



dispute resolution processes are validated locally, and are examined, adopted, and systematized within Maryland's business community."

A recent *Baltimore Business Journal* article on the study quotes former Baltimore City Circuit Court Judge Paul A. Dorf commenting on the project, "Companies have to realize that this [ADR] is a cheaper, faster and less traumatic way to resolve a dispute than going to Court." He urged MACRO to acquaint Maryland's business community with the report's findings and with the benefits of a wider use of ADR.

The report was designed and prepared in large part by Leonard Howie, III, Esq., MACRO's ADR Program Evaluations Director. The business initiative now plans to share the results with its Speakers' Bureau, Chambers of Commerce and other business organizations and to use the study to focus better the efforts of the Business Initiative.

Anyone interested in receiving the full report, or in hosting a presentation on it, may contact MACRO at 410-841-2260.

## Congratulations to:

The Montgomery County Office of Human Resources, The Municipal and County Government Employee Organization (MCGEO) and UFCW Local 1994 for receiving an Achievement Award from the National Association of Counties (NACo) for their Pre-Discipline Settlement Conference Program.

The May 2003 issue of MACROSCOPE contained an article by Gino Renne, President, UFCW/MCGEO Local 1994 about the settlement conference panel program for employee grievances in Montgomery County. We are happy to report that NACo chose that program as the recipient of a special achievement award.

A Bridge over Troubled Waters:

## Court-Related Family Mediation Conference

By The Hon. Kathleen O'Ferrall Friedman

Court-related family mediation in Maryland is meeting the challenge of families in conflict and meeting it well. This was the consensus at the conference, "A Bridge Over Troubled Waters: Meeting the Challenge in Court-Related Family Mediation," sponsored jointly by MICPEL, Macro's Family ADR Initiative, and the Administrative Office of the Courts' Department of Family Administration on May 4, 2004 at Shady Grove, MD. The University of Baltimore School of Law, the University of Maryland School of Law, and the ADR section of the Maryland State Bar Association helped develop the conference, which included court personnel, attorneys, and mediators.

Chief Judge Robert M. Bell, Chair of MACRO's Board; Louise Phipps Senft, Chair of MACRO's Family Initiative; and Rachel Wohl, MACRO's Executive Director all made welcoming remarks and discussed the importance of family mediation in Maryland. Pamela Cardullo Ortiz, Executive Director of the Department of Family Administration, began the conference by describing the tremendous growth in the range of ADR programs operated by Maryland courts over the last several years.

"Court programs really have fostered mediation in the state," she reported.

Also on stage for a discussion of "The State of ADR in Maryland Family Courts" were family law practitioner Bonnie J. Butler, Esq.; mediator Robert C. Ketcham, Esq.; and me, representing the judiciary. The panel addressed questions related to the difference between judicial mediation and traditional mediation, current attitudes of lawyers toward mediation, and the variety of jurisdictions providing ADR.



L-R: Nicole Davis, Rob Ketcham, Carolyn Talcott

Panelist agreed that most family lawyers have a positive attitude toward mediation, encourage their clients to participate and prepare them for the experience. Discussion continued on local variations in programs and policies

and time limitations that effect the dynamics and methods of mediation, that allows the parties to set their own goals and control the process, perhaps even before a suit is filed.

During the morning and afternoon breakout sessions participants further explored issues brought up in the opening session. The morning discussions involved the role of the attorney in the mediation process, designing child access agreements, and gender balanced mediation. In the session I attended on the role of the lawyer, the presenters engaged the participants in lively exchanges regarding tips for lawyers and ethical considerations. Time did not allow full exploration of one of the thorniest questions posed by a participant, "What is the appropriate response to a client who wishes to enter into a settlement that contains one or more terms that the lawyer does not believe is in the client's best interest?" This question



L-R: Madie Ferere; Elena Blum; Denise M. Thomas



## Conference, cont. from p. 8

raises complex issues and requires considerable thought. Next time?

In the afternoon, there were two series of breakout sessions offering three sessions each. These sessions provided the opportunity for participants to learn about drafting effective agreements and family law basics; to hear a view from the bench; to identify ways of fostering culturally-responsive courts; and to manage family violence and mediation with high-conflict families. During the session dealing with high conflict families, participants squirmed in their seats when challenged by the presenter to set aside traditional mediation rules—Do Not Swear, Yell, Interrupt, React—in order to help the parties communicate and create more understanding between them. In my view, this important lesson on dealing with intensity carries a warning: It takes a special person with good instincts to harness the energy of high-conflict people effectively so that the mediation session does not escalate into a fistfight or worse.

The conference demonstrated that those in the field are dedicated to providing quality ADR and searching out the best practices. It was an exhilarating day, which holds great promise for families and children in Maryland.



Mediators Carl Schneider, John Spiegel and Aza Butler.



Pamela Cardullo Ortiz, Exec. Dir., Dept. of Family Admin, AOC

## Tree of Knowledge and Trust, cont. from p. 4

Creating an environment of trust among disputing parties can be an enormous undertaking, but it is the *maintenance* of that trust which presents a greater challenge—especially where the public is involved. Remaining attentive and informed as to the needs of the parties is crucial—that's a given. But how is this accomplished?

Getting the parties to work on setting ground rules for the conduct of a public facilitation is central to the preparation of the facilitation. During the convening phase of the process, the attention is given to assessing the interests and motivations of the parties. Once ground rules have been established, the trust developed between the facilitators and the parties is more likely to remain intact.

When we look upon the mighty oak and revere its grandeur, do we take into account the vast underground network of roots that support, nurture and allow this majestic tree to survive? In the same way, for the public policy facilitation process to work, the facilitator must firmly plant the tree and strengthen the root system as a beginning part of the process. Getting the right parties to the table, establishing trust, setting ground rules, determining the right questions to ask, setting appropriate goals—all of these are important stabilizers in order for us to climb the tree and taste the fruits of resolution.



Making Sense for Maryland Agriculture

## Dept. of Ag. Promotes Mediation among Farmers, Communities

By Toby Treem, Mediation Coordinator, Md. Dept of Agriculture

Issue #5

10

July 2004

Imagine that you are a Maryland farmer on the Eastern Shore. Your family has grown produce for the past three generations and you are continuing with the tradition. A developer recently bought the farm next to yours and built a new community of single family houses. Some of your new neighbors are very unhappy with the smells and sounds from your farm. They have no clue as to how a farm operates and what it takes to put food in the grocery stores. They have lodged complaints about you to the health department and local elected officials.

You assert the protections of the county "right to farm" law and are ready to go to court to protect your rights. You feel that you were there first and that the newcomers should have done their research before moving next to a farm. As the complaints continue, you find that the continuing conflict is causing stress on your family and on your farm operation. You contact the MD Dept of Agriculture (MDA) and are referred to their FARM SENSE mediation program. You decide to try to mediate this conflict with your new neighbors.

### Farm Crisis

In the mid-1980's, U.S. agriculture faced a financial crisis. Farmers, particularly in the mid-west, encountered bankruptcies and foreclosures resulting in increased stress, family disruption, and even suicide. To address this situation, the U. S. Department of Agriculture (USDA) took progressive steps and instituted an agricultural mediation program. Since 1999, the MDA has offered agricultural mediation services through its state-certified program, *FARM SENSE: Farm, Agricultural,*

*and Rural Mediation—Solid Efforts to Negotiate Solutions Effectively.*

Maryland has a unique and diverse agricultural community which includes seafood, livestock, dairy, equine, nursery, processing plants and traditional agronomy and produce operations. Persons involved in these, and other operations, face potential conflicts from federal and state government regulations regarding environmental, health and neighbor concerns.

### Services Available

Today, Maryland agricultural producers, producer creditors and persons affected by USDA decisions can all receive conflict resolution services through FARM SENSE. Services offered through this program include mediation, facilitation, and training. Cases that involve financial issues can also incorporate support services such as financial planning and education.

While the FARM SENSE is administered by the MDA, mediators come from a variety of backgrounds: some are full-time practitioners, others work in agriculture. By offering mediation and other services, FARM SENSE helps to resolve disputes. In many instances, the grower or client sits down and talks with a government representative for the first time. Several mediations have resulted in the reevaluation of procedures and the development of continued working relationships. Additionally, FARM SENSE handles disputes such as water diversion, neighbor complaints, family issues involving the future of the farm, and repayment of loans.



Toby Treem poses by cow statue in front of MD Dept. of Ag.

courtesy Toby Treem

## Maryland Agriculture, cont. from p. 10

Conflict prevention efforts by FARM SENSE include a MACRO grant project to facilitate farmer and migrant worker issues on the lower Eastern Shore and a recent partnership with the University of Maryland Cooperative Extension on another MACRO grant to provide conflict skills training.

Over the past year, the number of mediations has increased, a trend that is expected to continue, in part because of the increasing interactions between agricultural operations and neighborhoods. Any Maryland citizen or organization, agricultural producer or federal or state representative can contact FARM SENSE for conflict resolution services.



For more information about FARM SENSE, contact Toby Treem at 410-841-5770.

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## Rachel's Notes, cont. from p. 2

past the wicked witches, flying monkeys, and talking trees. We've reached a much more hospitable landscape, and are finding more and more people with us on the road, and we have also found people who are beckoning us to go further down the road. But we sure haven't arrived in Oz yet.

We need the Wizard's help. And of course, we find that the Wizard is really all of us. He (or she) is the peacemakers, business people, ADR practitioners, judges and lawyers, community and faith community members, government officials and workers, law enforcers, teachers and students, and family members. The Wizard is everyone who cares about human connection, and cares about treating others with respect, sensitivity and understanding.

At MACRO, we're in the process of looking at where we are on the road, and given the changes that have taken place in Maryland, asking how we can best use our resources to make a real difference. At this point in our cycle as an organization, we've met many of our goals, are still in the process of meeting some, and have many that remain unmet. To help us with this task, we are using a group thinking process, called sociocratic decision making, to look into our hearts and minds, in order to draft a new vision for MACRO's future (see article, page 12).

How can we use a fresh vision to break through the resistance, ignorance and fear that remains? How do we support more of the great work that is going on now across the state, in a manner that creates a tipping point for that work to have a mass impact on society? As MACRO and its Advisory Board members grapple with these and other big questions, we'll be coming to all of you Wizards to hear your answers and learn about your visions. With your help, we can create a future in Maryland that will be more than just a fantastic dream. Please help us see to it that there really is "no place like home."



## A Model for Group Collaboration and Facilitation

# Making Decisions by Consent, not Consensus

When Kristina Foehrkolb joined the MACRO office recently as the new administrative assistant, she was puzzled about the unusual way the office made its policy decisions, such as the goals and priorities for the coming year's initiatives.

She was told the office had started using the decision making method last year and that it was imported from the Netherlands. She noted that when the office has a policy-setting roundtable, different members of the office, including Rachel, take turns leading the meeting. They follow a specific process to present and consider each policy proposal. When a proposal seems settled, the meeting leader holds a "consent round," asking each person in turn whether they have any paramount objection to the proposal and, if so, why. If there is an objection, the roundtable leader has the participants focus on it, then modifies the proposal, and tries another consent round.

Rachel explained to Kristina that the office was now governing itself "*sociocratically*" – as opposed to *democratically* or *autocratically*. She explained that MACRO staff interact with their own office society, in Latin a "socios." "Demos" refers to the mass of people who mostly don't know each other socially, and "auto" refers to one person—the boss.

Having a boss make all the daily final decisions may be useful, but if that is the only decision-making structure you use, conflicts can smolder, people get ignored, and it's hard for the office to work in harmony. Roundtables bring to the surface conflicts that can be dealt with. The process develops everyone's best thinking and takes less time than traditional methods. It is a deeper process than traditional participative management.

"But," Kristina asked, "doesn't that mean that you give up some of your power?"

"Not at all," Rachel replied. "We don't make policies that any of us can't consent to, and what's more powerful than working with people who are willingly aligned with you?"

Kristina decided to get more training and attended a recent workshop I gave in Ellicott City on the Sociocratic circle model of organization. She relayed the essence of the above story to me as she explained why she wanted to learn more.

### Models

I became fascinated with the sociocratic model when I encountered it several years ago on a business trip to Amsterdam. I had noticed that many present day organizations have employees who are not enfranchised in their organizations' daily governance. I had been wondering how to create an effective business organization of enfranchised "citizens," people who have a meaningful voice in governing their workplace. Sociocracy solves this problem and seems to me to be a timely addition to American business: it extends basic equality, a core American value, to our working lives.

In addition to the basic strategies for decision-making summarized above, businesses and organizations that run sociocratically use many dynamic concepts and forms. They set up project aims and feedback mechanisms, as well as organizational circles overlaid on the traditional hierarchical structure. However, MACRO and other organizations report success in using just the consent principle when choosing chairpersons or when making important decisions.

The consent principle has some subtle but important differences from consensus, including the concepts of one's "range of tolerance" and "reasoned objections." Those



## Attorney General John Ashcroft Reaffirms Need for ADR

U. S. Attorney General John Ashcroft has told federal officials that the use of alternative dispute resolution processes remains as important as ever in light of the ongoing war against terrorism and the consequential need to maximize limited resources.

In a letter delivered to the federal government's Interagency Alternative Dispute Resolution Working Group last week in D.C., Ashcroft said the September 11 attacks have forced the administration to refocus and to devote additional resources to homeland security.

"The demands and competing needs for finances and resources have rarely been as great as they are today," he said. "The effective and successful use of ADR is making a significant contribution to that effort. Every ADR proceeding that reduces time or litigation costs, or narrows issues, or averts future complaints enables us to conserve our limited resources which must accomplish so much."

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"Every ADR proceeding that reduces time or litigation costs, or narrows issues, or averts future complaints enables us to conserve our limited resources which must accomplish so much."

## Making Decisions by Consent, cont. from previous page

differences make sociocratic processes practical in a business context.

I have found that people who understand conflict resolution techniques are particularly skillful in using the model since the sociocratic format seems to uncover any organizational conflicts that may be hampering the overall work. Once "on the table," conflicts can be dealt with, and then the decision-making can continue. Thus, the model helps bring modern conflict resolution methods into the basic organizational governance process.

I presented the model to MACRO about a year ago, and I've been happy that they're finding it useful. Sociocracy is being used in Holland, in some other European countries, and in Brazil by a variety of businesses and organizations, from schools to building and manufacturing firms, to oil companies, to police and even for a Buddhist monastery. So far, it has been introduced in the United States to planned communities, nonprofit organizations and a few commercial firms. MACRO will be presenting a pre-conference seminar on the model at the Association for Conflict Resolution's annual conference in the fall.

## Court Evaluation System Design Nears Completion, cont. from p. 5

- b. To educate parties that ADR processes can reduce litigation,
  - c. To promote ADR so that members of the Bar integrate ADR processes into their practices
2. Make the most efficient use of judicial resources
- a. To use ADR processes within the case management system as a means of reducing delays in accordance with the time standards adopted by the Judicial Conference
  - b. To use ADR program outcomes to formalize the process of capturing the dispositions of cases
  - c. To incorporate ADR processes in contested proceedings where appropriate
  - d. To integrate ADR programs into the court system as a valued process in case management
3. ADR programs are managed to promote quality and success
- a. To create an effective case screening and referral process
  - b. To develop effective orientation programs for ADR practitioners
  - c. To encourage ADR practitioners to be invested in the case resolution process
  - d. To provide ADR practitioners meaningful and timely feedback that can be used to recommend areas of skills enhancement
  - e. To coordinate ADR programs so that reliable and timely data is provided by a court information system

Measurement tools take the form of party, attorney, and ADR practitioner surveys; an ADR program coordinator's checklist; and a list of data processing and analytical tasks for the MACRO staff.

An external database consultant will be retained to develop the actual intake system that each court and court-related ADR program can use to capture the desired information. The consultant will be tasked with developing a system that is as "low maintenance" as possible.

The project took a giant leap forward when several coordinators volunteered their programs to be test sites for this new process. With the data and experience that will be gathered over the summer, we anticipate that full implementation will be possible by winter 2004. It has been a pleasure for me to work on behalf of MACRO to assist in the development of a system that will help ADR programs meet a comprehensive set of goals that were collaboratively developed. Due to the invaluable support from Initiative members, the Maryland Court ADR Evaluation System is only a few short months away.



upcoming

Second Maryland Mediators Convention

Friday, December 3, 2004

University of Maryland Conference Center

## New Research Supports Increased Use of ADR in Family Cases

By Rachel Wohl, MACRO's Executive Director

An empirical study released in April 2004, by the Women's Law Center of Maryland confirmed that cases resolved by mediation or other negotiated agreements are less likely to result in subsequent litigation than cases resolved by judicial intervention. The study recommends increased use of ADR in family cases.

The study examined in detail a random sample of custody and divorce cases filed in Maryland in 1999.

The sample shows that agreements *reached by the parties* in pre-complaint settlement, mediation and pretrial settlement had less subsequent litigation than those cases decided by judicial intervention. Cases decided by the court, or settled at court on the day-of-trial, returned for subsequent litigation at least twice as often as those cases where the parties reached their own agreements.

In cases where joint legal and physical custody had been resolved by the courts, the parties returned for modifications more than three times as often. These findings add to national research, which shows that parties are more likely to adhere to their own mediated agreements than they are to court-ordered resolutions.

The use of mediation in family cases has increased substantially since 1999. Of the 1,867 cases in this study, only 191 were mediated. Of these mediated cases, 38 involved allegations of domestic violence, which is disturbing since Maryland Rules clearly prohibit referring domestic violence cases to mediation. Our hope is

that subsequent research will show a higher ratio of cases going to mediation and better success at screening out domestic violence cases.

MACRO applauds the Women's Law Center of Maryland for its research and recommendations. For more information or a copy of the study, call the Women's Law Center at 410-321-8761.



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