

Chief Judge Bell joins MACRO in Celebrating Ten Years of ADR Growth in Maryland

By Lou Gieszl, Deputy Executive Director, MACRO



photo by Jason Clark

L-R: Richard Scott, Maryland Dept. of Education,
Chief Judge Robert M. Bell, Craig Distelhorst,
private Anne Arundel County mediator.

On May 12, we at MACRO had the delight of honoring Chief Judge Robert M. Bell of the Maryland Court of Appeals while celebrating the 10th anniversary of the formation of the Maryland Alternative Dispute Resolution (ADR) Commission. “We in Maryland are so fortunate to have Judge Bell at the helm of our courts; he is a true champion who sees ADR as part of a broader access to justice vision,” said Rachel A. Wohl, Esq., executive director of MACRO.

The event marked the 10th anniversary of the ADR Commission, a diverse, high-powered, multidisciplinary group created by Judge Bell in 1998, and which he actively chaired from 1998-2001. Working collaboratively with hundreds of Marylanders, the 40-member commission developed and began implementing a consensus-based practical action plan to advance the appropriate use of mediation and conflict resolution in courts, communities, criminal and juvenile justice programs, state and local government agencies, schools and universities, and businesses statewide.

The ADR Commission published an award-winning practical action plan titled *Join the Resolution* in December 1999, documenting a statewide consensus and charting a course to create a new culture of conflict resolution in Maryland. The final chapter called for the creation of a permanent state office of dispute resolution—MACRO—to carry out the commission’s vision.

inside

ADR in Civil Cases.....	4
Curtis Bay Dialogues	10
Tale of Two Mediations.....	17

cont on 9

Anniversaries, Accomplishments and Challenges

ADR's Next 10 Years

Issue 11

2

October 2008

Anniversaries, like the ADR Commission's 10-year anniversary that we celebrated recently, seem like good markers for taking stock of where we've been and where we're going. The year 2018 seems to be in the distant future, but time is so slippery that another 10 years will probably be here before we turn around.

Court ADR Successes

In 1998, we were afraid that the bench and bar would not embrace ADR and would resist efforts to advance ADR services in the courts. As it has unfolded, the resistance we feared became, instead, momentum. While there continues to be room to expand the use of ADR in the courts, over the past 10 years we have seen exponential growth of civil, criminal, and family court ADR programs. There has been a proliferation of specialized ADR programs such as those resolving CINA, TPR, probate, business and technology, medical malpractice, and peace order cases. There has also been a real transition in the thinking of the legal community. Today, the majority of

lawyers have come to understand the benefits of using ADR in appropriate cases, and many see the value of using skilled mediators who understand interpersonal dynamics and address the emotional needs of their clients in addition to their economic needs.

Community Mediation

Ten years ago, we were worried that community mediation centers might not survive, and their work would be devalued. While some centers still face financial difficulties, the scene is vastly different today. Instead of a handful of centers doing very few mediations and scrambling each month to keep the utilities turned on, there are now 17 robust centers actively serving most of the state. Many centers are getting referrals from the District Court, state's attorney's offices, schools and other organizations. Community Mediation Maryland, an association of the community mediation centers, recently celebrated its 10-year anniversary. Community mediation in Maryland has become a model countrywide, and we will be hosting a national community mediation conference here next



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MACROSCOPE

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Rachel Wohl, Executive Director

summer in conjunction with the Center for ADR's annual conference in June.

Advancing ADR

We were also concerned about advancing other forms of ADR. For example, we worried that community conferencing might not survive. However, community conferencing also has flourished. It has been put to excellent use, especially in working with juvenile offenders and as an alternative to suspension from school. We have a strong center in Baltimore, which recently celebrated its 10-year anniversary, as well. We've also seen a rise in the use of consensus building processes, ombuds programs and workplace mediation in government agencies. Courts make good use of settlement conferences as well as mediation, and many Maryland schools now have peer mediation programs and teach good conflict resolution skills, some supported by a partnership between the Maryland State Department of Education, the Center for Dispute Resolution at the University of Maryland and MACRO.

Mediators Working Together

Another issue in 1998 was the concern about the fragmentation of the mediation community. Today in Maryland (unlike many other states), mediators of all stripes work together in a generally respectful manner. The Maryland Mediators Convention—to be held on Dec. 5—and the fast growing collaboratively governed Maryland Program for Mediator Excellence (MPME) are real demonstrations of a cohesive mediation community.

Public Awareness Challenges Ahead

These have been a good 10 years in many ways, and yet there are still some old concerns, as well as some new challenges looming ahead. Public awareness is one tenacious issue. Despite MACRO's many efforts (including posters, bus signs and DVDs) and the efforts of many others, mediation is still not a household word and ADR still isn't the first alternative people seek when they have a conflict. It will be a challenge for all of us to create a truly well informed public in Maryland by 2018.

Evaluation

While we have made a lot of progress, data collection and evaluation also continue to present challenges. They are time-consuming, can be very costly, and tend to be done differently by ADR programs around the state. MACRO is poised to begin a three-year pilot program in the Circuit Courts for Baltimore and Worcester counties and Baltimore City, and in the District Court ADR Office. We have collaboratively developed a Web-based data collection and analysis system to help court ADR program coordinators do real-time assessment, improvement and reporting for their ADR programs. We hope that this system will have useful applications within—and beyond—the courthouse and move Maryland into the national forefront on this issue.

As to the challenges ahead, I highly recommend reading the American Bar Association Dispute Resolution Section's 15-year anniversary Spring and Summer 2008 double edition of *Dispute Resolution Magazine*. Several articles thoughtfully consider where the conflict resolution field is headed.

In his article "The Future of ADR," David Hoffman, former ABA Dispute Resolution Section president and Massachusetts mediator, discusses the future of ADR and spirituality. He sees a potential

ADR in Civil Cases

By Joy Keller, Civil Mediation Administrator, Circuit Court for Baltimore County, and
Ronna K. Jablow, Civil Mediation Program Coordinator, Circuit Court for Baltimore City

Issue 11

4

October 2008

Two small business owners who had worked together for many years as a contractor and subcontractor for cleaning services had a falling-out over money owed for change-orders that had accumulated over an extensive period of time. They refused to work together any longer. The subcontractor retained an attorney and sued the contractor. The court ordered the case to mediation. Towing several boxes of documents apiece along with their attorneys, each side claimed that they were right as evidenced by thousands of pages of invoices and faxes. Interestingly, however, the mediator noticed that when the parties initially sat down at the table, one asked about the health of the other's mother.

The attorneys in this case were certain that no settlement was possible. However, after the parties started talking to each other, they soon expressed regret at the loss of their relationship and resolved to continue working together. They then fairly quickly agreed on an amount to settle the dispute and to dismiss the court case.

The attorneys were quite shocked at this outcome, as neither had any idea that their clients had an interest in continuing to work together. The parties left the mediation very satisfied, along with many unopened boxes of documents.

This is just one of the many examples of a successful mediation. Mediation programs in

Maryland's Circuit Courts provide opportunities for parties, with their attorneys, to sit down and participate in resolving their case. Mediation is ordered in numerous civil court cases at an early stage of the litigation process. An order for mediation is sent to the parties and attorneys after an answer is filed. Within 30 days from the date of the order, if the parties do not decide to opt out of the court ordered mediation, they must contact the mediator. The deadline for scheduling the mediation is usually approximately 30 days prior to the discovery deadline.

More than half of the Circuit Court cases that are mediated settle at mediation. For certain types of cases, including worker's compensation cases, the settlement rate is closer to 60 percent. Since cases are often mediated before discovery is complete, the number of discovery motions filed with the court is reduced, which saves parties money on attorney fees and conserves court resources.

One of the challenges of court mediation programs is getting "buy in" from the attorneys to go to mediation. At the beginning of a case, an attorney is generally not thinking about settlement; some feel that their case could be perceived as weak by the other side if they suggest settlement options.



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Nick White, ADR Program Evaluations Director
Ramona Buck, Public Policy Director
Cheryl Jamison, Quality Assistance Director
Alecia Parker, Budget and Grants Director



Additionally in the Circuit Courts, settlement conferences are scheduled in most cases as another form of ADR. Retired judges at the courthouse usually conduct settlement conferences. Conferences are scheduled at multiple time slots throughout the day, and the judge will often have more than one case at a time. Some judges conduct the settlement conference by “shuttle diplomacy” with the parties, while others work with both parties in the room at the same time to try to settle areas of disagreement. In the Circuit Courts for Baltimore City and Howard County, about 25 percent of cases settle at the settlement conferences. In Baltimore County, about 65 percent of cases settle at the settlement conferences.

In order to be approved as a Circuit Court mediator, applicants must meet the requirements of Title 17 of the *Maryland Rules of Civil Procedure*. Mediators submit an application which can be found at www.marylandmacro.org under “For Mediators: Application Forms,” to each court where the applicant requests to be designated as a mediator. Approval by the court does not necessarily mean that a mediator will be referred cases. In Baltimore City, subject matter knowledge is required to be designated for all types of assigned cases. For worker’s compensation cases in Baltimore City, Baltimore County and Howard County, mediators are required to have knowledge or

experience in worker's compensation law.

In Baltimore City, Baltimore County and Howard County, the courts order two hours of mediation in civil cases at a rate of \$200 per hour. For business and technology cases and for medical malpractice, the rate is \$250 per hour. In all cases, if agreed prior to the mediation and if the parties agree to mediate for longer than two hours, the parties and mediator can agree to a different hourly rate for any time beyond the initial two hours.

Most Circuit Courts support a civil mediation and/or a settlement program. As in the initial example, it is an opportunity, perhaps the only one, for the parties to take control of resolving their dispute. Since the mediation process is designed to occur at an early stage of litigation, parties can discuss resolution before they become embroiled in a costly and time-consuming court battle.

Joy Keller has been DCM Coordinator and Civil Mediation Administrator at the Circuit Court for Baltimore County since 2003. Ronna K. Jablow has been the Civil Mediation Program Coordinator at the Circuit Court for Baltimore City since October, 2007. Both have also served as mediators for community and court cases.

October Events

Conflict Resolution Day

Thursday, October 16, 2008

For information on events around the country, go to the Association for Conflict Resolution Website: www.acrnet.org/crday.

Maryland ADR Roster Manager Event

Thursday, Oct. 23 3-7 p.m.

Oregon Ridge Park

Making the Case for Facilitated Collaborative Processes

By Bernard A. Penner, Assistant Attorney General, Maryland Environmental Service

When citizens are up in arms concerning changes in their neighborhoods, or whenever advocacy groups and government agencies are at odds, facilitated collaborative processes can be helpful in laying the groundwork for ongoing communication between diverse interests. In my time working at the Maryland Department of the Environment, complex multi-party facilitations helped to achieve general consensus on the direction that certain contentious issues should take. In ongoing situations where diverse interest groups find themselves regularly engaged with each other over various issues, I have noted that follow up from the initial collaborative process is vitally important.

Experience suggests that in a community collaborative process involving one or more government agencies, the neutral facilitator is responsible for assuring that accountability and follow-up are part of the ultimate agreement. I am not suggesting that the facilitator should be involved in follow-up after the agreement has been concluded, but, rather, that the facilitator should make sure that the written agreement clearly spells out who is responsible for implementation.

Accountability protects the public perception that community conflict resolution really can work. The viability of the facilitation process is compromised if it acquires a reputation in disenfranchised communities as a mere public relations delaying tactic.

When community conflict involves government agencies, the rep-

resentatives of those agencies often have only limited authority. While community participants are usually willing to spend time and energy expressing their concerns, their faith in the facilitated agreement is not an unlimited commodity. Agreements that are not sufficiently specific about who is accountable for what actions within specific time periods run the risk of becoming unenforceable. While the government representatives participating in the process may have consented to the agreement in good faith, circumstances and public priorities, not to mention budgets, change. Through no one individual's fault, the agreement is rendered irrelevant by a shift in the agency's agenda.

As facilitators, we can put the occasional disappointment in context, especially in areas where much of the funding for collaborative processes is provided by government grants. The impracticability or delay of a promised outcome does not diminish our overarching confidence in the process itself. I fear that some community groups do not share our faith. Every community conflict I have ever observed has had participants who brought some doubt, cynicism, and mistrust to the table. A facilitated process, well-handled, goes a long way towards overcoming negative resistance. On the other hand, if that agreement is subsequently dismissed, or left to drift in the haze of bureaucratic inertia, much of the honestly earned good will and positive perception of the process can be undone with a careless word or single stroke of pen.

My point is that taking the long view of facilitating community resolutions suggests that a greater emphasis must be placed on accountability



Volunteers Create Baltimore County Community Mediation Program

By David Zoll, Co-Chair, Advisory Board of the Baltimore County Community Mediation Center

An enthusiastic group of Baltimore County residents are volunteering to build a new community mediation program in Baltimore County. Led by Community Mediation Maryland (CMM), and Executive Director Lorig Charkoudian, these volunteers are organized into an advisory board, which has begun planning the organizational structure of the program. It is identifying available mediators and meeting sites, reaching out to potential partners, and eventually will select an executive director.

We started at the grassroots level, using many community group mailing lists to identify those who could spread publicity for the informational meetings, held throughout the county in April and May. These efforts resulted in an excellent and diverse group of people. Initial participants on the advisory board include representatives from the Baltimore County Department of Juvenile Services, the Baltimore County Department of Social Services, the Community Conferencing Project, the Legal Aid Bureau, Inc., and Towson University. Many other entities could be listed as committed partners, but they are still in the process of defining the scope of their relationship.

As co-chair of the new Baltimore County Community Mediation Advisory Board, I am honored to join those who have already made Maryland's community mediation program one of the best in the United States (so says a University of Virginia study).

How did I become connected with mediation in Maryland? Fact is stranger than fiction—mediation began for me in the early 1990s with the Harvard



David and Robin Zoll

short course, followed by numerous others. One of my early dates with my now-wife was the Harvard course! That experience started us on our way to co-mediating court-appointed cases, which we continue today. Then, before I retired, I commuted to Washington, D.C., and my wife drove me to the train on her way to work, past the Greenmount Avenue office of the city program with its 'Community Mediation' sign. I would see it and think, "I better find out what that is all about." Eventually, I did. And "so began a wonderful relationship!" When I learned that a new Baltimore County community mediation program was being considered, the challenge to help became a passion.

I have come to think of community mediation in a larger context. Our landing on the moon was, scientifically, a giant leap for mankind—it expanded the frontiers of civilization. But helping our fellow humans learn small steps of conflict resolution expands the quality of civilization within those frontiers.

Please join us if you are interested in any aspect of this effort. Contact either of the advisory board co-chairs: Jennifer Langdon, jangdon@towson.edu, (410) 704-2928; or David Zoll, davidzoll@Verizon.net, (443) 255-6067.

David Zoll was Vice President and General Counsel of the American Chemistry Council for 25 years. Formerly, he was AntiTrust Attorney for the FTC as well as holding other positions.

MACRO Welcomes New Staff Members

MACRO is happy to welcome new staff members Julie Linkins, Felicia Watkins, and Nick White.

Julie Linkins comes to MACRO as the court ADR resources director. She previously lived in Fredericksburg, Va., and worked for the FBI as a communication instructor. Linkins graduated from Georgetown University Law Center, where she used many opportunities to expand her knowledge of ADR. In her career at the FBI, Linkins worked with national and international police executives to help them in preparing to testify in court procedures. She has also worked with many diverse groups on special projects, courses, and events. Linkins is available to help design, develop, and monitor new and existing Circuit Court ADR programs. She is working with Nick White and others to gather information on the value of court ADR programs. Linkins is currently living with relatives in northern Virginia while she scopes out the Maryland scene.

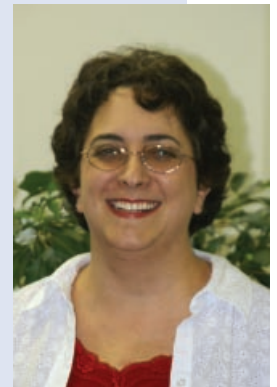


photo by
Jonathan Rosenthal

Felicia Watkins joins MACRO as ADR resources coordinator. In this new position, Watkins works to support many MACRO projects such as updating the Consumers' Guide, gathering statistical support for ADR programs in Maryland's courts, and helping plan the Maryland Mediators Convention. She comes to us from Grayson, Ga., and recently completed her master's degree in conflict management at Kennesaw State University. She also has a bachelor's degree in mass communication. Watkins has production experience working on two nationally televised late-night talk shows, "BET News" and "BET Tonight," and has worked as a public relations manager for an events planning company. She also was a registered mediator with the Georgia Office of Dispute Resolution. Felicia is currently living with relatives in Capital Heights.



photo by
Ramona Buck

Nick White, MACRO's new ADR program evaluations director, comes to us from Kalamazoo, Mich. He is collaborating with MACRO staff and other Maryland practitioners to better understand the strengths of our work and determine potential areas for growth. White, who is a mediator, is completing his doctorate in conflict analysis and environmental policy from the University of Michigan. His doctoral research has focused on the institutionalization of ADR. White gathered information about state ADR programs in the United States and has discovered, among other things, that there are more similarities than differences. White settled in Annapolis because he loves the fact that in some ways, Annapolis still has a small town "feel." He is looking forward to Maryland's mild winters.

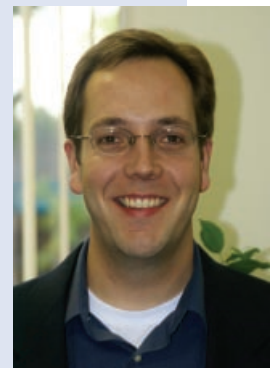


photo by
Jonathan Rosenthal

Facilitated Collaboration, from 6

when an agreement involves multiple parties with unequal authority. This requires skillful balance on the part of the facilitator who, on the one hand jeopardizes his or her neutrality if he or she remains involved after the agreement has been reached, but on the other hand risks damaging the credibility and efficacy of the process if the agreement is not enforceable.

Of course, it is the participants who have to live with the agreement. Therefore it is the participants and not the neutral facilitators who have a legitimate stake in the agreement's successful implementation. At the end of the day, when all participants are tired and the room has that "Let's quit while we're ahead feeling," that is the moment that demands all the facilitator's craft and talent to hold the participants' patience and flesh out who will be responsible to hold the parties accountable. The facilitator's responsibility is to the process. That responsibility does not end until the necessary details of future implementation and accountability have been aired and collaboratively considered. Only then is the process complete and the neutral facilitation done.

Bernard Penner, currently at the Maryland Environmental Service, was previously Enforcement Coordinator at the Maryland Department of the Environment. He started his career at the Attorney General's Office in 1983.

10 Years of ADR, from 1

The event in May offered a chance to reflect on the extraordinary progress that has been made within the past 10 years, including:

- Major expansions in court-based ADR services;
- Innovative community-based mediation programs thriving statewide;
- Increased use of mediation and community conferencing in criminal and juvenile matters;
- Growing use of collaborative processes in government;
- Development of conflict management programs at the school and university levels; and
- Creation of the Maryland Program for Mediator Excellence, a statewide framework helping mediators of all skill levels improve their practice and exercise leadership.

Although he noted that more progress is still to be made, Judge Bell said, "It's only through the dedication, hard work and perseverance of our ADR proponents and providers that we have been able to make such progress. We in the Judiciary do an exceptional job of handling those cases that really ought to be in court, and we owe a debt of gratitude to our skilled community of conflict resolvers who step in to assist with the many other disputes that are more appropriately resolved through mediation and collaboration."



Curtis Bay Energy Dialogues

By Mary Skelton Roberts, Senior Mediator

Land-use conflicts are sometimes portrayed as follows: Government land-use regulators are shown leaving a meeting, pockets bulging with cash; while the corporate reps, with horns and tail ablaze, laugh heartily at the deal that's just been struck. In the distance is a black cloud, raining soot onto the community as citizens huddle together, clutching their throats, barely able to breathe. This type of vision often serves as the backdrop for discussions of state permitting processes regarding industrial facilities.

The reality is often far more complex, as it was in the case of the Brooklyn-Curtis Bay community, a U-shaped peninsula in the southern portion of the City of Baltimore. Bordering the Patapsco River and its Middle Branch on the north and east and the 1919 Baltimore City Limits on the south and west, the area is about 4½ square miles with a population of approximately 23,000.¹

Early German and eastern European immigrants settled in the Brooklyn-Curtis Bay community to work for industries like the South Baltimore Car Wheel Company. Today, industries in and near the Curtis Bay-Brooklyn communities include a chemical manufacturer, an asphalt plant, a rendering facility, and Curtis Bay Energy (CBE), the largest medical waste treatment plant in Maryland.

In 2005, the Maryland Department of the Environment (MDE) began the task of reissuing two permits to Curtis Bay Energy. The company incinerates medical waste, such as needles and surgical materials, from about two thirds of the medical facilities in Maryland. At the time of the proposed

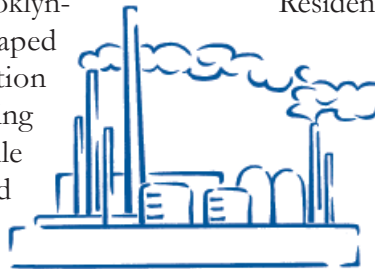
re-issuance of the permits (a permit to construct and a permit to operate) the facility was under new management after many turbulent years of non-compliance with air emission standards.² Given the long history of non-compliance by this facility, MDE expected significant controversy. Therefore the agency, with the help of a MACRO grant, decided to convene facilitated dialogues with the public prior to the formal public involvement process. In January 2006, I was hired as facilitator and began a six-month dialogue process with participants.

Within two months of the completion of the dialogue process, MDE held its formal public hearing. Residents had been so successfully engaged during the process that only two people attended the hearing. Later that year, the draft permit to construct and permit to operate were released for public comment and there has been little opposition to those permits.

Why did things work out so smoothly given that the Curtis Bay Energy permits were initially viewed as highly controversial? There were four reasons:

1. The parties were committed to dialogue.

From the beginning, all the participants were committed to engage each other respectfully in dialogue. MDE staff was represented at the highest levels by Angelo Bianco, MDE deputy director; Karen Irons, manager of the Air and Radiation Management Administration (ARMA); and William Paul, division chief of the Air Quality Permits Program, who had been instrumental in drafting the first air emission standards for Maryland. At the community level, there were several representatives, including Carol Eshelman, of the Brooklyn and Curtis Bay Coalition; Linda Bardo of Community of Curtis Bay Association; and Kathleen Hogan of Concerned Citizens for a



Better Brooklyn. And, from Curtis Bay Energy, Steven Groenke, Barnett Carroll and Samuel Himmelroch participated.

2. The process focused on the parties' interests.

The residents of Curtis Bay and Brooklyn communities, Curtis Bay Energy, and the Maryland Department of Environment each had significant concerns and interests with respect to the permitting process. For example:

- Residents were concerned that the re-issuance of the air permits was due to CBE's interest in expanding operations. They were also concerned about future operations and MDE oversight at the facility, given several recent changes in ownership.
- MDE was interested in discussing specific sections of the CBE permit and reviewing some of the changes due to the federal regulations.
- Curtis Bay Energy's interests were to answer specific questions related to the plant, highlight some of the technological advances at the facility, and strengthen relationships with residents.

The dialogues focused on the interests indicated. There were also opportunities for residents to discuss their general frustrations with regard to MDE, and, importantly, to highlight issues that fell outside of CBE and air emissions in general, but which were important to them.

3. The process helped establish relationships.

Throughout the process, residents interacted with MDE staff and CBE management. Better relationships developed, which helped ease tensions and mistrust among the parties. At the final meeting, people expressed a high level of trust and connection with the people they had been working with over several months.

4. Shared information reduced misconceptions and surprises.

Misconceptions on all sides were clarified during the dialogue process. For example, citizens

learned that the company was required to request permit renewals from MDE and wasn't seeking expansion. Since there were opportunities to discuss specific components of the permit, there were no "surprises" once the document was formally released for comment.

The Curtis Bay Energy dialogues had all the right elements in place for the project to succeed. Residents were engaged and knowledgeable participants in the process, MDE staff showed a willingness to listen and make changes to the permit where they could, and the CBE management confirmed their real commitment to being good neighbors with residents. These factors, along with a process which was designed to improve communication, led to more informed decision making, better relationships among the stakeholders, and ultimately, two permits which ensure that air emissions at Curtis Bay Energy will meet state and federal regulations for air quality.

Mary Skelton Roberts is founder of MSR Solutions, a negotiation, conflict management and leadership development practice. She has mediated public policy disputes internationally for the past 18 years.

1. Source: Brooklyn-Curtis Bay Historical Committee
2. Curtis Bay Energy was initially Medical Waste Associates in 1989. In 1995, it became Phoenix Services, and in 2005 it became Curtis Bay Energy following a change in partnership.



By Cheryl Jamison, Mediator Quality
Assistance Director, MACRO

News from the Tree

The Maryland Program for Mediator Excellence's (MPME) Tree has certainly grown since the last time it appeared in *MACROScope* in February 2007. In the past 18 months the roots have grown deeper; the trunk has more rings, and the branches are a bit fuller. Please forgive me as I try to carry the tree metaphor as far as possible! The tree has not only grown, it has changed shape and is receiving national attention. In February 2007, we reported on the first public sighting of the tree that took place at the four minor league baseball parks in Maryland and a crab feast in Baltimore.

National Spotlight on MPME

Since that time, presentations about the MPME were made at meetings in Maryland and at national conferences by both MACRO staff and members of the Mediator Excellence Council, the governing board for the program. The Colorado Judicial Branch office is developing their own mediator excellence program using mountain peaks as the symbol. The American Bar Association's Alternative Dispute Resolution Section has created a Subcommittee on Mediator Excellence which I chair. The goal of the subcommittee is to help states consider and develop programs to improve the quality of mediation practice and provide high quality mediation services to participants by using Maryland's program as a model.

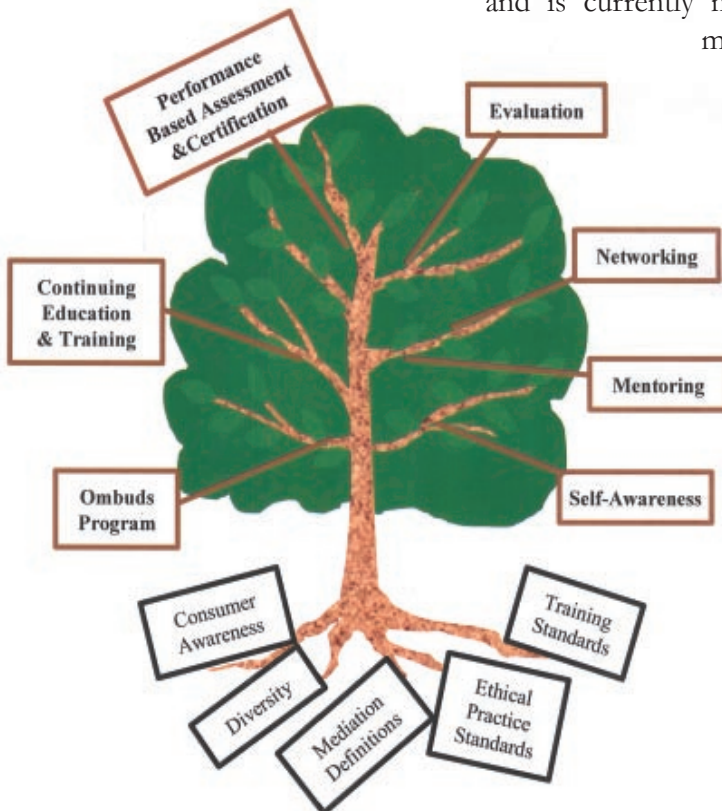
Unique Features

There are several aspects of the program that seem to interest people both in Maryland and throughout the U.S. The first is the collaborative way in which the program was developed and is currently managed. While Maryland is not the first state to focus on mediator excellence, the emphasis on collaboration and achieving consensus makes it unique. A 21-person council governs the MPME, and uses collaboration and consensus building to determine the course of the program.

The voluntary nature of the program also stands out. The premise of the MPME is that mediators understand the importance of continuing improvement and that if provided with opportunities that are relevant both to their experience level and the venue in which they mediate and which are accessible, they will voluntarily participate in advanced training. Mediators who join the MPME make a commitment to continued skills improvement.

Another aspect of the MPME is its breadth, both in its inclusiveness and in the variety of its programs for mediators. Most mediator quality programs are managed by roster managers of particular mediation programs, and necessarily only affect those who mediate for those programs. The MPME covers all mediators, no matter where they practice. So mediators who practice in the courts,

continued on 14



Study Shows Benefits of ADR

Justin Kelly, in a recent issue of *ADR World*, reported on a study done regarding the U.S. Department of Justice's use of alternative dispute resolution processes compared to comparable cases which were litigated. Of the civil cases referred to ADR, 65 percent settled, while only 29 percent of the cases that remained in litigation did so.

Justin Kelly wrote, "However, the study, *Dispute Resolution and the Vanishing Trial: Comparing Federal Government Litigation and ADR Outcomes*, written by Jeffrey Senger and professors Lisa B. Bingham, Tina Nabatchi and Michael Jackman, revealed that only a small number of cases were referred to ADR: 511 cases (3.3 percent) out of 15,288 cases on the litigation docket from 1995 to 1998. The researchers also found a statistically significant difference in the percentage of cases that settled based on whether ADR was voluntary or mandatory: 71 percent settled when ADR was voluntary, while only 50 percent settled when ADR was mandatory."

The study also reported that ADR resulted in time and cost savings, which has been reported often in studies of this kind. Less well known, however, was another finding which indicated that when cases are referred to ADR late in the age of the case, the time needed to resolve the case in ADR is longer than for cases referred earlier. When ADR was used within a 90-day period after cases were filed, they settled within 92 days. However, when ADR was used 91-180 days after the case was filed, it took an average of 190 days to reach settlement.

To read more about this study, look for an article to be published in the *Ohio State Journal on Dispute Resolution* in 2009.



In Memory: Sharon Pickett

Sharon Pickett, writer, editor, mediator and trainer, died Saturday, Aug. 30, at Casey Hospice in Rockville, of cancer. Sharon worked as director of communications for many non-profits before starting her own communication consulting business in 1997. Sharon was a member of the Maryland Council for Dispute Resolution (MCDR) and served for seven years on its Certification Committee. She helped to found ACResolution, the magazine of the Association for Conflict Resolution, and served as its editor for 25 issues. She has co-mediated and co-trained with Carl Schneider and Mediation Matters for the past ten years. She and Carl married in December 2007. We will miss you, Sharon.

- Date launched: 08/06
- Number of members: 410 and growing
- Membership fee: \$0
- Continuing skills opportunities: Countless

MPME, from 12

community mediation centers, schools, government agencies, business, and private practice are all a part of the MPME. The programs—or branches and roots—are also varied in nature. There is mentoring, networking, evaluation, self-awareness, performance based assessments, consumer education, diversity, definitions, ethics, and training standards. It is hard not to find a branch where one could play.

Online Interactive Resource Center Coming Soon

The big news regarding the MPME is the development of an interactive online resource center for member-mediators, non-members and the public. The resource center will provide basic information to the public about mediation and mediation services.

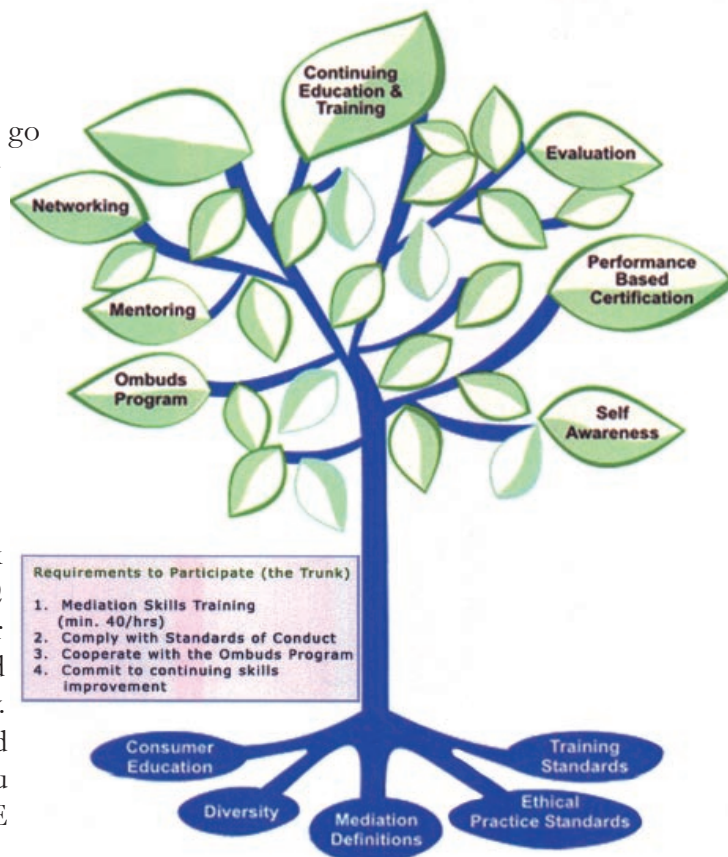
It also has an interactive online directory to help in finding a mediator. There will be an events calendar with information about meetings, conferences, workshops, and other mediation activities. Information about each part of the MPME Tree will be available. MPME members will set up their own accounts on the system allowing them to track their advanced training activities, register for some activities online, and talk to other members via the MPME bulletin board. Future plans include the ability for MPME members to go online to review exit surveys from their own mediations.

Joining is Quick and Easy

To become a member of this unique program, go to MACRO's Web site at www.marylandmacro.org and click on MPME. This will take you to the MPME registration page. Complete the form and send it, along with documentation that you have completed 40 hours of mediation skills training, to MPME, 903 Commerce Road, Annapolis, MD 21401. For more information, call Cheryl L. Jamison, (410)260-3540.

Message to Members

Have you received your member's notebook and card? Are you receiving e-mails from MPME@mdcourts.gov? If you have submitted both your MPME application and training documents and answered 'no' to either question, we need to know. Please send an e-mail to MPME@mdcourts.gov and include your name and daytime number phone. You may be missing valuable information. The new MPME website is mpmeonline.org.



MACRO Unveils a New Enrichment Series for ADR Practitioners

By Felicia Watkins, ADR Resources Coordinator, MACRO

In keeping with its commitment to serve as a resource for the Maryland ADR practitioner community, MACRO has launched two new programs: the ADR Practitioners Lunchtime Teleconferences and a series of interactive lectures called “An Evening With...” Both efforts help educate ADR practitioners on important issues.

Experience ADR Philosophies from Your Desk

The ADR Practitioners Lunchtime Teleconference series showcases local ADR leaders in 90-minute workshops on issues relevant to ADR professionals.

Louise Phipps Senft, mediator, trainer, and facilitator, kicked off this series last April on the Enneagram system. Often coined the “Enneagram of Personality,” this system is an examination of nine distinct personality types, and how these types influence life experiences. Phipps Senft, originator of Baltimore Mediation, has mediated over 3,000 private cases and has trained thousands of professionals nationwide in the transformative model.

John Bickerman, internationally renowned mediator and founder of Bickerman Dispute Resolution, presented the June installment on the topic, “How to Grow Your ADR Practice.” Bickerman has mediated complex environmental, public policy, commercial and construction disputes in more than 40 states.

Future teleconference speakers include Marvin E. Johnson in October and Homer C. La Rue in December. Johnson is founder and executive director of the Center for Alternative Dispute Resolution. He is a nationally recognized mediator, arbitrator and trainer and was named by Mediate.com as one of the “best known and most experienced mediators in the world.” La Rue is an experienced

arbitrator and mediator in numerous employment, labor, and non-labor disputes in both public and private sectors. He is on the faculty of Howard University School of Law and is also a technical advisor and trainer for a Department of Commerce project to develop a regional ADR system in Central and West Africa.

Be “Up Close and Personal” with Nationally Known ADR Leaders

The “An Evening With...” series is held in partnership with the University of Baltimore’s Center for Negotiations and Conflict Management. Robert A. Baruch Bush, co-author of *The Promise of Mediation* and co-founder of the transformative mediation model, kicked off the first installment of the “An Evening With...” series at the University of Baltimore in early July. Jennifer Robinson, co-coordinator for Community Conferencing Project for Baltimore County, was one of many in attendance. “It was great that Bush was the first speaker, and that a leader in the ADR field could be so accessible,” Robinson said. “This was wonderful for the local mediation community.”

On October 22, MACRO will present “An Evening with Larry Susskind,” and on December 16, there will be “An Evening with Pauline Tesler.” Susskind is the founder of the Consensus Building Institute and is a renowned public policy and environmental dispute resolution expert. Tesler is the co-founder of the International Academy of Collaborative Professionals (IACP) and has advanced the trend to practice using collaborative law principles to thousands of lawyers and other

ADR's Next 10 Years, from 3

split between those who think that spirituality is important in conflict resolution and those who do not. He notes that neuroscientists studying meditation's effects on the brain—which can be practiced to gain control of one's own mind without involving any spiritual beliefs—are finding evidence indicating that meditation will “help mediators suspend judgment and attune themselves to the emotions of those with whom they are working.” Hoffman posits that neuroscience may build a bridge between mediators on either side of the spiritual divide.

Credentials

Another issue is mediator certification or credentialing. Hoffman also writes about the need to develop a sophisticated “specialized credentialing system” before legislatures proscribe what it means to be a skilled mediator. He discusses the tensions inherent in developing “rigorous standards” and maintaining “openness to innovation” and to new mediators.

We are grappling with both of these challenges through the MPME's Self-Awareness Task Group and the MPME's Mediator Assessment Program. The work of these groups holds great promise for supporting and advancing high quality mediation. It is conceivable that both could become non-issues by 2018.



Looking to the Future

There are other issues we need to address and support, including online dispute resolution, the promotion of diversity in the field, developing a career path for conflict resolvers, building communities' conflict resolution capacity, and keeping the field fresh rather than rule-bound.

Despite the difficulty of looking ahead, I believe the next 10 years will be good ones. They will certainly be challenging and present us with many opportunities to grow.

New Series, from 15

professionals globally. While in Maryland, her focus will be to address the mediator's role in collaborative law.

The “Evening With...” series has garnered a broad range of interest, and a number of ADR organizations and practitioner groups are signing on as co-sponsors. Contact Cheryl Jamison at MACRO if your organization is interested in becoming an event co-sponsor.

For additional information on upcoming programs, check the MACRO list-serve. If you're not a subscriber, contact Eileen Bannach at Eileen.Bannach@mdcourts.gov.

A Tale of Two Mediations

By Keith L. Seat

Ed. Note: We continue the series on mediation stories, begun in the last issue.

My goal in each mediation is to help the parties receive the maximum benefit from the process. Sometimes achieving this requires a great deal of effort on my part, while at other times it is almost entirely about my simply being present and providing a safe container for the parties' interaction. The two cases I describe below, with details modified to protect confidentiality, demonstrate these differences.

Providing a Safe Container

Two young women were fighting over a man and came to blows that resulted in criminal assault charges being filed against each of them. The Maryland prosecutor offered them a chance to mediate their dispute and they agreed, but entered the mediation full of anger and animosity. After my initial explanations about the mediation process, which were interpreted through an official translator, it quickly emerged that the man was married to one of the women and the boyfriend of the other, with whom he had a baby. It did not take the young women long to realize that the man was playing them against each other by telling them very different things about the status of the other, which had unnecessarily built up animosity between them.

Soon, the women began rapidly talking to each other in an apparently productive conversation that the translator could not keep up with. It seemed clear to me that this was the conversation that they needed to have, and rather than slow their communication to find out what they were saying, I simply watched



their highly animated and occasionally tearful interactions to see whether I needed to step in. When they seemed to be winding down—after a good 30 minutes—I asked them to tell me where they had arrived and what might be helpful to memorialize in writing. Unlike other disputes in the prosecutor's office in which parties often agree to avoid all future contact, in this case the women promised to stay in close communication, and exchanged all of their contact information to ensure that the husband/boyfriend would not get away with inconsistent stories in the future.

Actively Engaging in the Process

An example of a case at the other extreme was a multi-party litigated case alleging defamation. A well-known media person publicly disclosed facts she understood were from a young sports star coming clean about his behavior in using questionable performance enhancers. The dispute arose because the sports star's former girlfriend had provided the information and, even though his name was never mentioned, made sure the public disclosure was noticed by those who could cause the sports star trouble. The star and his parents believed his prospects for future sports scholarships and a big professional career were devastated.

Simply finding a place for the mediation presented the first challenge, as the media person was concerned about the potential for violence. We ultimately met in a courthouse with the media person and the media company's in-house and outside lawyers, their insurer's lawyer, the sports star with his

Tale of Two Mediations, from 17

mother and two lawyers, plus the ex-girlfriend and her parents.

The girlfriend's parents became very anxious when they realized they were the only party present without counsel, which they said they couldn't afford. They took me aside just as we were about to begin, saying they were leaving the mediation. However, I convinced them to stay with assurances that they could listen and see how things progressed without being pressured to enter any agreement or take any action. I also emphasized that they could seek counsel whenever they desired.

The media company lawyer strongly felt that the company had followed all reasonable precautions and that it was itself a victim of the girlfriend's prank. The media company was concerned about setting a dangerous precedent by paying anything for inadvertently causing harm, when it arguably had done nothing wrong. The girlfriend admitted that she had provided the information, but asserted that she was the real victim due to the way the star had mistreated her. Of course, the star and his mother were hugely upset at all they had been through, and their attorneys made clear that any settlement would have to be well into six figures. I discussed the usefulness of mediation in being able to address deeper issues underlying the dispute and emphasized the need for creativity in finding solutions.

Joint Session

The joint session went well, with each party expressing his or her perspective. Importantly,

the media person spoke movingly to the sports star about how concerned and involved she was with young people and how she would never have done anything intentionally to cause harm. She expressed regret, if not outright apology, for the impact of the disclosures on the star.

The media lawyer also explained the context in which the star's behavior was publicly mentioned. After I spoke again about the need for creativity in finding solutions, we went into caucus.

Caucusing

When I talked separately with the plaintiffs, their counsel emphasized that they felt their liability case was strong and placed a high value on damages. On the other hand, the media defendants thought they could easily win the liability case on several defamation elements. In the third room, the girlfriend's parents made clear that

they didn't have any assets and wouldn't put them on the table if they had them. No one was ready to make big concessions or had any creative ideas, but I persevered.

In further talks with plaintiffs' counsel, I found that their understanding of the legal issues was quite different from defendants' counsel, so I proposed a counsel-only discussion of the legal points at issue, and talked both about the need for realism in valuing the case and being open to a package that wasn't simply money.

When next going to see the media defendants, I was surprised to find the girlfriend talking with in-house counsel, as I'd left them in separate rooms. In meeting with the media defendants I



Keith Seat

learned that the media company does have prizes to give away that are sometimes quite significant and that, in principle, they might be able to offer some sort of package. After briefly bringing the girlfriend and her parents up to speed, I convened the meeting of counsel, in which the defendants' lawyers laid out their research and explained why they believed they would win on several element of defamation if the case went to court. The plaintiffs' counsel pushed back and the points were thoroughly discussed.

After a brief stop with the media defendants to see what package they had come up with, I met with the plaintiffs to see what counsel now thought about the liability issues. Then, with the plaintiffs in a more receptive mood, I conveyed the several non-cash options that the defendants were willing to offer, which involved travel, lodging and tickets to a national sporting event or a special cruise, along with some smaller items. The plaintiffs' counsel dismissed the ideas out of hand, but the sports star asked questions about the sporting event. I was sent back to demand lots of real money, but had the sense that plaintiffs might be won over by a sweeter package.



Further separate meetings resulted in the outlines of a settlement based on a package of trips, events and other non-cash value that satisfied the plaintiffs. But just when it seemed we were about to reach agreement, the plaintiffs insisted that the girlfriend must contribute significantly to the settlement. Since the girlfriend's family was unable to contribute financially to the settlement, I noted that the media defendants' in-house counsel had been talking with the girlfriend, and the conversation moved to whether the girlfriend could pay off her contribution by working for the media company. The plaintiffs agreed that would be acceptable as long as they received verification. The girlfriend and her parents were delighted for her to obtain an "internship" as a result of the settlement and later expressed how very pleased they were by the mediation.

Final Joint Session

We all reconvened to finalize the details of the resolution and write up an enforceable agreement. I invited any additional expressions of apology or words about the past, which resulted in a brief conciliatory exchange between the young people. Some additional drama occurred before the litigation was finally dismissed, but the parties all left very satisfied.

Providing the safe container in the first case was among the easiest I have mediated, while the second was one of the most challenging and exhilarating. Both cases demonstrate the power and flexibility of mediation.

Keith L. Seat, J.D., is a full-time mediator, facilitator and arbitrator, with extensive experience mediating business, commercial and workplace disputes. Additional information is available at www.KeithSeat.com.

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