

# **MEETING THE CHALLENGE OF MEDIATOR EXCELLENCE**

## **FINAL REPORT OF THE MARYLAND MEDIATOR QUALITY ASSURANCE COMMITTEE**

**May 2004**

### **Executive Summary**

Mediators and many others in the state of Maryland participated in what turned out to be a unique four-year project in which they considered and developed a statewide quality assurance system for mediators. While Maryland is not the first state to have focused on this topic, the emphasis on collaboration, on achieving consensus, and on an integrated approach to quality improvement assistance make Maryland's experience a singular one.

The project was sponsored by the Maryland Mediation and Conflict Resolution Office (MACRO), the state dispute resolution office under the Honorable Robert M. Bell, Chief Judge of the Maryland Court of Appeals. Judge Bell appointed the Maryland ADR Commission in 1998, and at the conclusion of its work, he initiated MACRO to support and promote appropriate conflict resolution uses around the state. Although the ADR Commission had not achieved consensus on how mediator quality should be addressed, it had pledged to continue efforts to achieve consensus on this critical topic.

To follow up on the ADR Commission's commitment, MACRO decided to try to achieve a broad consensus on how to develop a sensible, acceptable QA system that meets the needs both of the practitioner community and the public. To accomplish this, MACRO created a Mediator Quality Assurance Committee (the MQA Committee or the Committee) with representatives from the four major Maryland mediator practitioner groups. Committee members then selected and hired a consultant to carry out research on good practices and critical issues and to guide their work.

The MQA Committee's members explicitly committed themselves to sponsoring a structured data gathering and information exchange process that provided interested persons several real chances to affect the ultimate outcome. They also agreed to seek full consensus among all members of the Committee on an ultimate QA plan that takes into account as many views and reactions as possible.

After involving people from many venues and from a wide geographical range via a series of public meetings and small discussion sessions, the committee developed a draft "quality assistance" plan called the Maryland Program for Mediator Excellence (the MPME). The MPME deemphasizes "pass-fail" barriers and marginally relevant criteria in favor of a system that strongly supports mediators wishing to engage in a variety of developmental activities that enhance their skills and self-awareness over time. Rather than focusing on a "seal of approval" process the purpose of which would be to certify some mediators and deny certification to others, the MQA decided to create a system

that would actually serve mediators across the state by offering them regular opportunities to improve their mediation practice.

Mediators would be able to join the MPME program with a few basic prerequisites, and would then be expected to choose from a variety of options, such as mentorships, observations, case discussions, and the like for continuing personal growth. The prerequisites for membership include an agreement to follow the MPME mediator ethics program and to participate in a statewide grievance/ombuds process.

The Committee anticipates that after the MPME is put into effect, mediators will choose to participate enthusiastically. The Committee also expects that courts, provider organizations and other users of mediation in Maryland will come to recognize the value of the MPME - both as a vehicle for meaningful growth and as a trustworthy indicator of skilled performance.

## **1. Background**

### **A. The challenge in Maryland: Mediator Quality and the Maryland ADR Commission's Practical Action Plan**

In recent years, the Maryland Judiciary's Mediation and Conflict Resolution Office (MACRO, the successor organization to the Maryland ADR Commission), under the leadership of the Honorable Robert M. Bell, Chief Judge of the Maryland Court of Appeals, has supported dramatic increases in the use of mediation across the state. Through MACRO's work, Maryland has attracted national attention as the first state setting out to build a broad consensus on many critical dispute resolution issues.

When the Maryland ADR Commission completed its report *Join the Resolution: The Maryland ADR Commission's Practical Action Plan* in late 1999, consensus had been reached on many topics. On the other hand, the subject of mediator credentialing, or quality assurance, gave rise to persistent, difficult policy and practical differences.

The Commission recognized that, as the use of ADR grows in Maryland, it will be imperative to have an active cadre of skilled ADR practitioners. The Commission highlighted quality assurance as a major priority, and said it was considering ways to promote mentoring, co-mediation, apprenticeships, supervised practice, "skills-based" assessment, and other possible approaches to quality assurance.

The issue of certification for practitioners was a topic of particular concern for the Commission. Having reviewed practitioner certification programs in other states, and having listened to concerns over creating what many feared might be cumbersome regulatory systems and exclusionary practices, the Commission chose not to create a practitioner certification program at that time.

There is currently no required state certification process or QA program for Maryland mediators. The Commission concluded that, in the near term, setting voluntary standards and guidelines was the most logical first step, in light of feedback received at public forums and other considerations. However, the Commission called for giving priority attention to building a broad-based consensus among practitioners around the state to develop a strong quality assurance system that will protect the public and help cultivate a skilled practitioner base.

## **B. The challenge nationwide: Quandaries presented by credentialing and quality assurance**

Diversity of opinion on mediator QA in Maryland reflects the national dialogue on this topic. Strong divisions exist among practitioners, users, and experts in every state as to how to define, measure, and promote quality practice. These differences have occasioned debates that raise a variety of policy, practical, legal, and logistical concerns, such as how best to assess whether practitioners have the skills that can be crucial for a quality outcome, how to assure diversity, how to avoid bureaucracy, and how to avert unanticipated consequences.

These issues arise in part because mediators are asked to play complicated, diverse roles that may vary from program to program or even from case to case. Indeed, some believe strongly that, to discuss mediator quality intelligently, it is critical to define "mediation" first and to do so in a way that acknowledges that there are several different philosophical approaches to mediation, such as facilitative, transformative, or evaluative mediation.

While ADR's growth has led some to argue for competency standards to protect consumers and promote integrity, many knowledgeable people still favor market-based philosophies or balk at the idea that we know enough to measure or predict quality performance. Others disagree, and believe that research is beginning to show the attributes that are important to effective performance in various settings and how those aptitudes are best acquired.

To complicate matters even further, while mediators and researchers have argued and labored over the past 15 years or so to define "what mediators do" and better understand "who does it well, and how," thousands of programs and parties seeking neutrals have had to make day-to-day choices. These include disputing parties or their lawyers, state and federal agencies, or other people establishing rosters or means of "vouching for" the competence and reliability of the mediators they use. Moreover, legislatures, courts, and professional groups in many jurisdictions have taken a variety of more, or less, informed approaches to try to promote mediator quality. Finally, many individuals now represent themselves as "certified to practice mediation" when their background is only a brief mediation training; some even "hang out a shingle" with no training or mediation experience.

Because of these difficulties, no other state has succeeded in developing a broad consensus regarding measures to take to promote mediator quality assurance.

### **C. Maryland's response: Building consensus on a system for promoting quality**

As it has generally done, MACRO decided to try to achieve a broad consensus on what steps to take next in furthering quality mediation in Maryland. MACRO's goal was a sensible, acceptable system that meets the needs both of the practitioner community and the public. To accomplish this, MACRO decided to establish a Maryland Mediator QA Committee comprised of representatives of MACRO and all of the state's major practitioner groups.

## **2. The Mediator Quality Assurance Committee and Its Work**

### **A. Forming and launching the MQA Committee**

MACRO asked Maryland ADR practitioner groups to select representatives for a Mediator Quality Assurance Committee (the MQA Committee or the Committee). The MQA Committee was comprised of representatives of (1) the Maryland Chapter of the Association for Conflict Resolution (ACR); (2) the ADR Section of the Maryland State Bar Association; (3) the Maryland Association of Community Mediation Centers (MACMC); (4) the Maryland Council for Dispute Resolution (MCDR); and (5) MACRO. The members who were selected comprised a broadly representative group drawn from mediators of diverse backgrounds, styles, and areas of practice.

### **B. The MQA Committee's process: An overview**

*Overview of the Committee's activities.* The MQA Committee, with MACRO staff, worked for over two and a half years in a collaborative process involving numerous stages of activity. The Committee began by gathering and reviewing extensive information on mediator credentialing and quality. It (1) held numerous regional meetings to permit mediators, administrators, judges, and users of mediation from across the state to offer ideas and feedback and (2) developed a number of broad tentative conclusions to underpin a proposal. It then worked to develop consensus among all its members on an interim proposal that would be both practically useful and responsive to concerns expressed by affected people. After agreeing on and circulating this proposed concept, the Committee held another set of regional and other targeted sessions to obtain reaction to this proposal. Finally, the Committee settled on a model concept for a Maryland mediator QA system, and brought together scores of representatives to a three-day conference to begin detailed work on implementation of the model.

*The Committee's decision making process.* The MQA Committee sought to do more than merely hold a structured data gathering and information exchange process that would

provide interested persons a chance to offer views. It also agreed that it would engage in something that would go beyond an advisory process in which representatives sought to reach a general agreement on broad recommendations but where no one would be "bound" by the decision.

While not seeking to attain agreement from every possible affected interest or individual mediator within the state, the MQA Committee's members explicitly committed themselves to:

- sponsoring a structured data gathering and information exchange process that provided interested persons several real chances to engage in focused, intensive dialogue on "real world" concerns that should be addressed and to affect the ultimate outcome,
- developing reports, background papers, statements of options and principles, and interim proposals to which interested persons could react,
- ensuring that they spoke effectively for their constituents, and keeping them apprised of developments as the Committee process moved forward, and
- obtaining consensus among all members of the Committee on an ultimate QA plan that takes into account as many views and reactions as possible.

*Committee timeline.* Document 2 in the Appendix sets forth the timeline and structure of the MQA Committee's 2 1/2 years of work.

### **3. Initial Committee Activities: Learning**

#### **A. The Committee retains a consultant**

Shortly after beginning its deliberations, the MQA Committee decided that it would benefit from retaining an independent consultant to assist in building consensus on a proposed QA plan for Maryland. The Committee developed a request for proposals that sought a consultant who would gather information from around the state and from other jurisdictions, analyze potential QA scenarios and their implications for the practice of mediation in Maryland, and assist in building consensus among Committee members and other key stakeholder representatives.

The Committee distributed its RFP widely, and interviewed leading candidates who responded. Based on these interviews, the Committee selected, and MACRO retained, Charles Pou, an experienced public policy mediator and dispute resolution consultant located in Washington, DC. Among other things, Pou had previously acted as a systems design consultant to help many governmental and other entities set up new conflict resolution programs and rosters of neutrals.

## **B. The Committee gathers data from around the state and the nation**

The MQA Committee and its consultant then worked together to design a plan to gather and consider information that would be helpful in developing a sound QA system for Maryland mediators. The Committee directed its consultant to prepare a report that mapped how the field has addressed defining and assuring competent practice by mediators, both in theory and in practice.

During 2001 and 2002, Pou interviewed over 100 experienced academics, administrators, and practitioners from around the country (see the list in Appendix, Document 3, Section X, p. 43). He also reviewed numerous mediation programs in Maryland and elsewhere, and conducted an extensive review of literature relating to mediator quality, ethics, and education (for a partial list, see the materials described in Document 3, Section IX, p. 40). In particular, the consultant sought to identify:

- best thinking as to the knowledge, skills, abilities, and other attributes ("KSAOs") that are important to effective performance, and how those attributes are best acquired;
- the range of methodologies for mediator quality assurance and credentialing being employed in other parts of the country or in other organizations (e.g., performance-based testing, paper credentials, free market);
- who is credentialing (or otherwise managing) mediators and how (e.g., courts, state and federal agencies, community programs, membership organizations);
- how requirements are being imposed (e.g., certification, rosters, association requirements);
- what has been learned about mediators' behavior, clients' needs, and the political realities of quality assurance;
- specific challenges facing the field and the Maryland MQA Committee, such as: defining quality; who should decide who is qualified; the respective roles of training, continuing education, mentoring activities, and other paths to competence; and methods to inculcate and enforce ethical behavior; and
- effective processes for developing acceptable quality systems and standards.

## **C. The data that the Committee gathered: The consultant's report**

Pou's report -- presented to the Committee in draft in March 2002 and released in final form in June 2003 (see Document 3 in the Appendix) -- sought to summarize what has been done to define, measure, and promote mediator competency, to explore the landscape of activities relating to competent practice, and to discuss some key policy, ethical, and practical issues. The report and an accompanying chart (Document 4 in the

Appendix) also summarized recent developments in mediator QA, and offered information as to how approximately 20 representative programs, in Maryland and in other jurisdictions, have sought to maintain quality.

According to the consultant's report, different jurisdictions and ADR programs have taken very diverse paths to promote quality practice by their neutrals.<sup>1</sup> For this reason, the MQA Committee and its consultant found it helpful to arrange QA systems systematically by employing a two-dimensional grid (discussed in greater detail below; see generally Appendix, Document 5) that displays (1) the height of "hurdles" a mediator must meet at the outset to engage in practice and (2) the amount of "maintenance," or continuing educational activities and other support, expected over the long term.

In this framework, a program with a "high hurdle" might require considerable training, experience, and/or observation. A "low hurdle" program may demand only limited training and mediation or co-mediation experience. A "high maintenance" program may require little to become a mediator but would typically call for mediators to enhance their awareness and skills via co-mediation, follow-on training, in-services, coaching, or handling a large number of cases. A "low maintenance" program imposes few mandates on a mediator once s/he has received a credential.

The quadrants of such a grid look like this:

High hurdle/Low maintenance	High hurdle/High maintenance
Low hurdle/Low maintenance	Low hurdle/High maintenance

While occasional "high hurdle" programs (e.g., Family Mediation Canada) were identified that require many hours of training, experience, and/or observation, most authorities appear to have set fairly unexacting standards that do not involve licensing -- typically expecting 20 to 40 hours of training and some mediation experience (seldom more than a few cases). Apart from some community programs, "maintenance" requirements have tended to be modest, with fairly minimal oversight -- tending toward

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<sup>1</sup> The report identified many variables as to which widely divergent strategies have been employed. These included:

- Who credentials?
- Training required for listing or certification?
- Mediation experience required?
- Required observation or performance-based assessment?
- Continuing education required?
- Tiered credentials?
- Mentoring structure for inexperienced mediators or applicants?
- Feedback or continuing discussion opportunities?
- Ethics requirements?
- Grievance process for mediators or complaint process for consumers?
- Accreditation standards or duties for training programs?
- Attention to education of the public?
- Grandfathering procedure?

some commitment to periodic continuing education and adherence to generalized ethical standards.

Selecting any given combination would likely produce differing results. These outcomes are detailed in the consultant's report to the Committee, and summarized in Possible Approaches to Promoting Mediator Quality, Document 5 of the Appendix to this report.

#### **D. The Committee explores the data and reaches some tentative conclusions**

*Initial Committee discussions.* After receiving the report, MQA Committee members spent several meetings discussing its implications, including the potential impact of various possible QA approaches on:

- The credibility, professionalism, diversity, and collegiality of the dispute resolution field in Maryland
- Effective implementation of ethics, consumer protection, and quality standards
- Mediators' knowledge, self-awareness and skills in facilitating communication and promoting appropriate resolutions
- Mediators' responsiveness to the goals of various ADR programs and individual clients' needs
- Mediators' substantive expertise about the cases they handle
- The quality assurance process' perceived fairness, acceptability, and workability

*Committee members' interim conclusions.* Committee members explored the above issues at length, and, notwithstanding their diverse perspectives and philosophies, began to come together on a number of tentative assumptions. Their interim conclusions were that:

- Basic mediation training is vital for effective mediation practice.
- Most credentialing involves some combination of training and experience requirements, occasionally with apprenticeship or mentoring.
- Substantive knowledge may be important in some settings but is not generally determinative of a mediator's abilities or long-term potential.
- Most paper-based "certification" programs can provide some generalized assurance of minimal skills, but do not assure quality and may lead to complacency among some who have attained credentials.

- “Hurdles,” while occasionally useful, have sometimes proved exclusionary.
- Hurdles may not accomplish many of the important goals that can be promoted by continuing learning activities such as advanced mediation training, ethics education, feedback, self-assessment, apprenticeship, co-mediation, continuing education, and feedback processes.

Thus, the MQA Committee – after nearly one year of research, discussion, and tentative internal consensus building – began to see considerable potential value in a system that would provide encouragement, incentives, and a support structure for Maryland mediators to work collaboratively, target developmental needs, and enhance their skills level and mediation's credibility over time.

## **4. The Committee Reaches Out, Round One: Listening**

### **A. The initial round of statewide outreach meetings**

The Committee's next step, after educating itself and beginning to explore several general hypotheses, was to reach out systematically to mediators and other affected interests in Maryland for additional perspectives and input. Before the Committee began to sketch out a proposal, it sponsored sessions targeted specifically at members of MCDR, Maryland ACR, the ADR section of the Bar, and MACMC -- the same groups that had sent representatives to serve on the Committee – as well as at consumers of mediation services. Four additional regional meetings were part of this information-seeking phase. They were all essential to getting a sense of the full range of views and concerns regarding mediator quality among affected persons around the state.

As Chief Judge Robert M. Bell explained in invitation letters to participants in these regional meetings and other forums:

There are a wide range of possibilities under consideration—from expanded training requirements to continuing in-service opportunities, mentoring, certification and complaint procedures—and we need to hear from as many people as possible on what options might work best in each region of the state.

The Salisbury (Eastern Shore) forum in April 2002 was the first of four regional sessions across the state. Other regional forums were held during May 2002 in California (Southern Maryland), Cumberland (Western Maryland), and Columbia (Central Maryland). All forums were widely publicized and open to the public. At each one, MQA Committee members presented the consultant's report and led small discussion groups that examined in detail quality assurance possibilities for Maryland. Questions that attendees discussed included:

- Should there be any sort of credentialing for mediators? What might that look like?
- Should any of the following be recommended or required for mediators in Maryland: Mediation training? Mediation experience? Observation or performance-based assessment? Continuing education? Mentoring? Ethics requirements? Others?
- Is there a place for user feedback (client exit evaluation forms, complaint process, client recommendations on the Web, etc.)?
- Should there be standards or accreditation for mediation training?
- What are other ways to promote high quality mediation in the state of Maryland?

While these discussions did not have the goal of arriving at consensus about the perfect mediator quality assurance system, the MQA Committee members hoped that trends or common assumptions on a model for mediator quality might emerge as they reflected on the input from all the meetings.

The Committee also sponsored a user focus group, which gathered ideas about assuring quality, addressing complaints, and other practical matters from clients who have employed mediators.

## **B. What the Committee heard: Trends in stakeholders' preferred policy options**

At the conclusion of these outreach activities, hundreds of people had provided opinions and feedback that the Committee studied and used to begin designing a proposed plan for mediator quality assurance throughout the state.<sup>2</sup>

A small number of participants disliked the idea of creating any credentialing process; at the other extreme, a few advocated licensing to protect consumers or advance the concept that "Mediation is a profession." More typical, and recurrent, themes that were identified included:

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<sup>2</sup> MACRO staff and the Committee's consultant each prepared memoranda summarizing recurring feedback concerning key QA issues received during the spring 2002 outreach to mediator groups, regional forums, and user focus group. (See Documents 6 and 7 in the Appendix.) While simplifying some notably rich discussions, these synopses encapsulated the broad trends that emerged in these discussions, identified possible resolutions of selected policy issues that appeared to garner the most attention and support, and offered aid for Committee members in analyzing and evaluating feedback from the hundreds of people who participated.

- General advice to "Keep it simple," "Avoid a bureaucratized procedure," "Be inclusive -- include mediators and users as much as possible," and "Think in terms of moving in stages, rather than trying to do everything at once."
- Most attendees saw the greatest value in adopting a tack that protects the public yet allows the continued growth and flexibility of mediation; they tended to prefer a system consistent with the "low hurdle-high maintenance" prototype. Typical of this perspective were the views that "Support is more effective than directions," "Elitism should be avoided," and "Don't set such high hurdles that good mediators get weeded out."
- Widespread enthusiasm existed for moving toward a "guildhall" model in which mediators have regular opportunities to exchange experiences and assist one another with mentoring, education, advice, and feedback.
- While favoring this "guildhall" model conceptually, many also acknowledged the resource, incentive, geographical, and other practical challenges to making it succeed.

Attendees at these outreach sessions expressed highly diverse opinions as to their preferences on employing user feedback, appropriate ethics standards and compliance procedures, complaint handling, grandfathering, and ways to educate users of mediation services most effectively.

## **5. The Committee Develops a Tentative Draft Concept to Promote Mediator Excellence**

### **A. The Committee retreat: Reaching internal agreement on a draft concept**

Once the MQA Committee's initial round of outreach activities concluded, members studied and discussed the feedback they had received and began to flesh out a proposed statewide design.

A key component of this process was a facilitated, day-long retreat in September 2002 at which all of the Committee's members sought to achieve consensus on a proposal setting forth a model for promoting quality mediation in Maryland. At this facilitated retreat, members briefly recapped "Why we're here," "Where we've been," and "Where we're going," and explored intensively a number of priority models for promoting quality mediation in Maryland. After some initial brainstorming as to the utility and feasibility of several QA alternatives, the Committee divided into small groups to discuss critical aspects of specific models and then reconvened to hear reports back that included tentative recommendations. At lunchtime, Committee members were encouraged to talk with one or two other members with whom they disagreed on key substantive issues.

After fleshing out key components of several possible QA models, the Committee discussed the leading possibilities and quickly converged on a single proposal. It involved a voluntary system to promote mediation quality in the state that drew substantially upon the aforementioned “guildhall” model, in lieu of reliance on licensing, certification, or direct regulation.

## **B. Policy goals of the draft concept**

Among the themes that Committee members heard during outreach sessions and sought to take into account in their development of a system for Maryland were these:

- Voluntary means of promoting quality mediation in Maryland are preferable to licensing or mandatory credentialing.
- Mediators' commitment to long-term improvement and education ("quality assistance," "life-long learning") are at least as important as "hurdles" to promote quality.
- The definition of "quality mediation" may not be the same in every context (e.g., differing styles and expectations, mandatory v. voluntary participation, imposed or party-selected mediator, substantive specialization).
- Hurdles should be modest, but "incentives and encouragements to participate" offer a middle way between mandatory certification and wholly voluntary approaches. (e.g., Mediator Registry, educating users, support and advice framework, opportunities for mentoring and targeted discussion).
- All mediators have something to learn about good mediation, and benefit from exposure to a variety of sources.
- Performance-based assessment should have a place in Maryland mediator QA, but probably more as a means of pinpointing possible shortcomings for follow-up attention rather than in a "pass-fail" way.
- Good mediators come from a variety of backgrounds, and many have developed skills through means other than “approved” training. Any effort to address quality that is exclusive, as opposed to inclusive, risks reducing diversity and eliminating potentially excellent mediators.

## **C. The results: A tentative concept for mediator QA**

At the end of their September 2002 retreat, members instructed the consultant and MACRO staff to prepare an initial summary reflecting this consensus and elaborating upon areas of agreement reached during the course of the retreat. The Committee also directed them to circulate it to all members for review and comment within a few days.

After reviewing and discussing a series of drafts of a concept paper encapsulating this “Maryland Program for Mediator Excellence,” the Committee’s membership reached agreement on a four-page document. This concept paper (see Document 8 in the Appendix) is described in detail in section 7, below.

## **6. The Committee Reaches Out, Round Two: Testing the Draft Concept**

### **A. Discussing the draft concept with practitioners and others across the state**

The MQA Committee then held a second round of outreach sessions regarding the draft Maryland Program for Mediator Excellence.

Committee members, MACRO staff, and consultant Charles Pou again traveled around the state to describe the MPME proposal, listen to people’s views, and discuss mediator and public concerns. They held meetings in five different regions of the state between the end of October and mid-December 2002, affording interested people a chance to discuss how best to promote quality mediation practice in Maryland. In preparation, MACRO sent a copy of the Committee’s draft concept paper to all who replied that they would be attending a meeting, or to anyone else who requested it. During this second round of outreach sessions, Committee members met with, and obtained feedback from, several hundred additional people – including numerous members of the judiciary, representatives of the state bar, and mediation practitioners. In these meetings, Committee members made clear that the model was in its beginning stages and would continue to be developed and improved. In addition to seeking specific comments on the draft concept, the Committee also engaged attendees at these sessions in discussions on a number of practical questions that would be involved in implementing this, or indeed any, QA system.<sup>3</sup>

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<sup>3</sup> These included:

- Program Structure and Resources
  - Addressing resource (funds, staff, mentors), logistics, and geographical issues?
  - Location, roles, composition, and decision making process of coordinating group?
  - How would this group's activities be meshed with existing groups?
- Mediators’ Participation in MPME
  - How will the program be structured and marketed to assure that potential users of mediation services know and care about it?
  - What incentives should there be for mediators to join the program?
  - Should there be a Continuing Mediator Education requirement?
  - What evaluation and feedback process should exist?
- Promoting Mediator Quality via Ongoing Learning
  - What incentives should exist to encourage Maryland mediators to engage actively in MPME as mentors, students, or otherwise?
  - How should ongoing learning activity be structured? Does one accumulate accomplishments, and are they tiered in some way?

## **B. Results of Round Two: Confirmation of preferred policy options**

Discussions in the second set of outreach meetings revealed broad-based backing for the Committee's proposed concept of voluntary quality assurance. Feedback (though hardly monolithic) reaffirmed stakeholder reactions during Round One, strongly supported the Committee's tentative approach, and tended to reflect the following themes:

- Administering the System. Although few favored a new governmental agency to credential or promote quality, many who thought that Maryland should have a “unified approach” to QA wanted MACRO, a public-private hybrid, or a consortium of mediator member organizations and related groups to set standards for, and administer, a system.
- Basic Training. Initial training was widely cited as a valuable or even essential, starting point for developing quality, but most people saw little value in setting the bar at a great height.
- Mentoring. Many saw mentoring, co-mediation, or apprenticeship as important, one saying, “We need to help each other learn and grow.” A few advocated tying these to training, while others noted the time and energy burdens on mentors, their limited availability, and difficulties new mediators have in finding them.
- Mediation Experience. Though a few outreach session attendees thought considerable experience should be required of mediators who hold themselves out for employment (“Practice gives skills.”), most favored something more modest. This was partly due to “chicken-egg” concerns about difficulties many have in getting initial experience, partly because of fears over making the QA system too restrictive, and partly because “quality of experience is more important than number of cases.”
- Continuing Education. Some form of continuing mediator education was thought important by virtually all who offered views, though some chafed that “at some point you’ve reached saturation.” Devotees of the guildhall concept in particular saw continuing education as crucial and conceived of it in broader terms than occasional CME programs.

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- How can we assure, or improve, the quality of mediation training without promoting exclusivity or “preferred providers”?
  - Ethics, User Feedback, and Grievances
    - What ethical standards should Maryland mediators follow? Are existing codes adequate? What are the essential components of educating mediators about ethics? Should CME hours include required ethics activity?
    - How could an ombuds or other complaint process operate independently, fairly, impartially, efficiently, and confidentially?
    - Could an ombuds or complaint group issue sanctions or findings?

- Court Support. Courts' willingness to buy into a QA system was seen by many as especially important to its long-term success. Educating judges, attorneys, and other users about mediation's potential, limits, and quality was widely viewed as an important system component, especially for a meaningful system to receive understanding and support from judges, administrators, attorneys, and other key "selectors" or users of mediator services.
- Consumer Access. Consumers' understanding of "quality mediation" was generally seen to be fairly low; many attendees also thought consumers should have access to data on mediators' backgrounds and qualifications, as well as training on questions to ask in selecting mediators.

### **C. Concluding Round Two: Maintain course**

The input received in this second round of outreach tended to ratify the conclusions upon which the Committee's tentative concept was premised, suggesting that the great bulk of stakeholders around the state saw considerable benefit in the approach outlined. In fact, the Committee found no reason to make any changes in the proposed concept when it met and reviewed the results of these sessions.

## **7. The Result: A Maryland Program for Mediator Excellence**

### **A. The MPME concept: Overview and underlying assumptions**

The Committee concept paper outlining the Maryland Program for Mediator Excellence (MPME) proposes a voluntary, multi-faceted strategy to promote quality mediators and mediation. The major goals of the proposal are to help Maryland mediators in all venues to provide high quality mediation services to their clients and the public, and to promote and support each mediator's continuing improvement by providing participating mediators with stimulating choices for continuing learning and improvement along with appropriate recognition for their achievements. In this proposal, the Committee sought a model that individual members believed to be feasible and beneficial and that responded to the concerns expressed and data presented by people from all over the state.

The MPME encompasses a few basic requirements for mediators to participate in the program and, following that, offers many options to encourage continuing development, such as training, mentoring, case discussion, observation and evaluation. Mediators' participation in the MPME would be documented and available to the public. Rather than trying to license or certify mediators, the program would integrate several non-regulatory means for enhancing Maryland mediators' skills and their ability to fulfill clients' needs.

Committee members conceived of the MPME as being like a tree with many branches, providing participating mediators with stimulating choices for continuing learning, experience and improvement. Rather than trying to license or certify mediators, the program integrates several non-regulatory approaches for enhancing Maryland mediators' skills and their ability to fulfill clients' needs.

As envisioned, the program's key elements are a commitment to continuing self-improvement; different options/paths for skill building such as mentoring, case study groups, or performance-based assessment; the development of standards for mediation trainings; an ethics component, including a statewide code of ethics; and mechanisms to obtain consumer feedback and to respond to complaints.

An underlying assumption of the model is that mediators are interested in pursuing excellence in their craft. The Committee posits that mediators will want to participate in the MPME if they are given (a) the opportunity; (b) appropriate and relevant options for differing mediator needs and styles; and (c) appropriate recognition for their achievements.

### **C. Entrance requirements to participate in the MPME program**

Mediators can enter the program by doing the following items. All other activities would be voluntary:

1. Completing a basic mediation training course;
2. Signing a commitment to seek continual self-improvement as a practicing mediator, to follow the Maryland Mediator Ethics Standards, and to participate in the Maryland Mediation Ethics Program's process for resolving client complaints;
3. Agreeing to take 5 to 10 hours of continuing education (broadly defined) annually;
4. Agreeing to provide evaluation forms to their clients upon completion of mediation cases, as well as providing some compilation or report of these forms to the MPME oversight committee to assist in describing, improving, and promoting the field; and
5. Agreeing to participate in a grievance process.

### **D. Additional MPME levels: Promoting mediator quality via ongoing learning**

The keystone of the program is the opportunity for mediators to make choices from a variety of self-advancement options, including the following:

1. Continuing education in mediation skills and other issues critical to quality mediation;
2. An intensive Mediator Leadership Program, modeled on the civic leadership programs in many counties, with the goal of providing advanced study for experienced mediators. Mediators in the program could embark upon an intensive one- or two-year experience for reflection, improvement, and learning. Synergistic partnerships or mentoring relationships with leaders in other fields could be a part of the program. An alumni association could be formed;
3. Performance-based assessment and learning. A pool of trained observers would observe and evaluate sessions or videotapes submitted by mediators, as well as provide observation of role play mediations and discussions with the mediator;
4. Internet services could include a hotline to handle questions concerning practice issues, a calendar of events, and a chat room for discussion of ongoing mediation concerns;
5. Mediator groups formed around practice commonalities would meet regularly to discuss cases, share experience, and enhance knowledge;
6. Statewide, regional, and program-level networks could be developed or enhanced to serve the diverse needs of mediators throughout the state (e.g., programs, feedback from experts, mentoring, and advice sessions);
7. New mediators could be paired with experienced mentors for observation, supervision, co-mediation, consultation, and ongoing feedback.

A variety of certificates of accomplishment will be developed to acknowledge successful achievement in the various aspects of program.

### **E. The Mediator Excellence Council**

To do the work associated with the program, a new Mediator Excellence Council will be created. Representing practitioners as well as the various mediator venues (courts, community, government, etc.), it will:

1. Implement and oversee the components of the Program for Mediator Excellence in Maryland, including the convening of trainers to develop standards for excellence in mediator training;
2. Address resources, logistics, geographical, and other issues affecting Maryland mediators' ability to advance their skills; and

3. Find appropriate partners, including universities, practitioner groups, community mediation centers, administrators, and agencies, to assist in providing the components of the MPME.

#### **F. The ethics component**

The Mediator Excellence Council will develop an ethics program that will include an ombuds process and other related informal ways to address complaints and inquiries involving mediation services in Maryland.

1. The Ethics Program could use the Maryland Circuit Court Standards as a baseline to develop an ethical code appropriate for statewide application. The resulting ethical code will be posted on the Web and be part of the initial agreement for all mediators in the program.
2. A diverse Ombuds Committee will be created. The ombuds function will be operated with independence, impartiality, and confidentiality and will manage initial efforts to review and deal with issues raised by a complaint. This function will be the first step in a variety of resolution possibilities, to include conciliation, mediation, or, eventually, a peer review panel, if needed. Clients will retain all other remedies available.
3. The Ombuds Committee process could include the suggestion of possible programs or training for mediators participating in the program, in connection with significant issues arising from a complaint.
4. The Ethics Program will also offer all Maryland mediators access to ethics education and informal advice on ethics questions arising in their practice.

#### **G. The ADR Practitioner Online Directory: Record keeping and public access to information**

A Maryland online directory of ADR practitioners has recently been initiated. Funded by MACRO, the online directory is a joint project of CDRUM (Center for Dispute Resolution at the University of Maryland) and MLAN (the Maryland Legal Assistance Network). This directory is an expanded version of the previous hard copy directory of ADR practitioners, which the Dispute Resolution Program at the Maryland Law School has produced since 1996. Being listed in the online directory will require a minimal level of training and experience, but mediators without sufficient experience may be listed as pro bono service providers until additional experience is achieved.

The online directory will allow potential clients to access information about mediators online, so that they can make an informed choice in selecting a mediator. Mediators' accomplishments under the MPME program can be documented and kept up to date via the directory. Some Committee members favored building in a means for customers to

feed back into the online directory their reactions to their mediation experiences or even to their mediators.

With the online directory, users can search for mediators by geographic region, or by mediator specialty area. The directory will also allow mediators to find other mediators in their particular interest or geographic area. Mediators in the online directory can include a variety of information about their backgrounds, training and experience. This can be updated regularly to acknowledge those who take advantage of opportunities in the MPME system.

Although the online directory is a separate project from the MPME, it can provide a record keeping function. Mediators could choose to be part of the MPME program without being listed in the directory, as long as they meet MPME requirements. Likewise, mediators may be listed in the directory without being part of the MPME.

## **8. The Committee Reaches Out, Round Three: Involving Stakeholders in the Design of the MPME**

### **A. A Future Search Conference: *Building a Revolutionary Future -- Mediator Excellence in Maryland***

Following Round Two of outreach activity, members of the MQA Committee were satisfied that most mediators and others around the state supported the MPME concept overwhelmingly, even if not unanimously. In response to the great interest shown by participants in participating closely in the design, the Committee decided to employ a Future Search process to allow representative individuals to examine the concept in greater detail, identify people who would be actively committed to making real the new QA system, and move promptly into the implementation phase. The Committee met several times between December 2002 and June 2003 to plan this conference, which it titled *Building a Revolutionary Future: Mediator Excellence in Maryland*.

### **B. An overview of the Future Search process**

The Future Search process is a planning meeting that enables a group to quickly determine its capability for action. Future Search brings people with diverse backgrounds and perspectives -- including those with resources, expertise, formal authority, and need -- into one room in a single, structured conversation. Future Search meeting design stems from theories and principles tested in many cultures for the past 50 years. It relies on mutual learning among stakeholders and seeks to act as a catalyst for cooperative action and follow-up that often continue for months or years afterward. Future searches have been held in many parts of the world.

Core principles of Future Search meetings included:

- Get the "whole system" in the room.
- Invite a significant cross-section of all parties with a stake in the outcome.
- Explore the "whole elephant" before seeking to fix any part. Get everyone talking about the same world.
- Think globally, act locally.
- Put common ground and future focus front and center while treating problems and conflicts as information, not action items.
- Encourage self-management and responsibility for action by participants before, during, and after the future search.

### **C. Setting up the mediator quality Future Search meeting**

In July 2003, MACRO and the MQA Committee brought together 64 people in a Future Search meeting in Easton, Maryland to focus on the task of beginning to implement the MPME concept across the state. The three-day process was facilitated by a Future Search team led by consultant Sandra Janoff of Philadelphia.

To plan this Future Search conference, the MQA Committee had begun by conducting an intensive process aimed at filling 8 seats at each of 8 tables allotted to Future Search participants. It selected participants via a rigorous procedure intended to balance the interests of practitioners, ADR organizations, consumers, and other affected entities. This created a representative group of stakeholders that included as many perspectives and demographic categories as possible, including customers and other consumers of mediation services.

In selecting the 64 participants, the Committee attempted to assure that each nominating organization was well represented, and to take into account participants' experience, ethnicity, gender, geography, full-time/part-time activity, subject area, and age. The Committee also sought to assure that the following groups were adequately represented:

- Mediators with varying styles and philosophies (e.g., facilitative, transformative, evaluative)
- Caucus or no-caucus mediators
- Solo or co-mediator

The Committee filled the eight Future Search tables, as follows:

- MACRO
- Mediation trainers and educators
- Community mediation centers

- Family private practitioners
- Non-family private practitioners
- Practitioners in organizational settings and roster managers
- ADR users and hosts
- Customers

A small number of selected out-of-state experts were also included among the 64 participants, though the vast bulk of participants were from Maryland. The agenda and participant list for the Future Search conference are set forth in the Appendix, Documents 9 and 10.

#### **D. Conducting the Future Search process**

The conference was held in Easton on July 10-12, 2003. The meeting took 16 hours, starting on a Thursday afternoon, going all day Friday, and ending Saturday afternoon.

During this time, participants told stories about their past, present, and desired future, and explored options to discover common ground. They moved back and forth between their own stakeholder groups, mixed eight-person groups that included one from each category of stakeholder, and plenary discussions involving the full circle of 64.

#### **E. Recent and future activities to implement the Future Search meeting's results**

*Planning groups and action plans.* As the Future Search discussions moved forward, attendees began to develop concrete action plans. The sessions produced some exceptional ideas for enhancing and building upon the MQA Committee's MPME concept, as well as a strong commitment among many neutrals, customers, and administrators to take leadership or other roles in pursuing the follow-up initiatives.

Conference attendees identified common ground on twelve topics, listed below, and discussed a number of key points concerning each topic. One participant agreed to take responsibility to convene a small group for each area of common ground; in each group, participants developed an "action plan" -- i.e., a statement defining their task area and identifying steps for follow-on action. The action plans are included as an annex to the Future Search conference report (see pages 27-35 of Document 11 in the Appendix). Group members who discussed MPME implementation are listed on page 21 of that report, with group leaders listed in italics.

The planning groups that met during the conference, and agreed to continue meeting afterward, were as follows:

1. Coordinating Entity and Possible Funding for MPME
2. Definitions
3. Ethics Standards and Support
4. Grievance Process
5. Training

6. Mentoring
7. Certification
8. Consumers/Consumer Education
9. Self-Reflective Practice and Discussion
10. Web Activities
11. Mediator Evaluation

*The Future Search conference's results and follow-up.* These task forces held numerous meetings over the following six months, and began to refine and carry out their initial action plans. At the close of the Future Search conference, MACRO Executive Director Rachel Wohl announced the intention to have all attendees reassemble in six months time to report back on their progress and chart a course to long-term implementation.

When over 50 of the July 2003 Future Search participants reconvened in Easton on January 30, 2004, representatives of each group reported on and discussed their activities. (The written reports reflecting this work are compiled in the Appendix, Document 12.) These reports and their recommendations evidenced an exceptional level of effort and buy-in. Their substance was as follows:

Coordinating Entity/Funding Task Force. This task force suggested housing and "incubating" the MPME program within MACRO, rather than creating a new entity at this time.

MACRO would establish a representative "Mediator Excellence Council." This entity would nurture the new MPME; address priority, resource, and growth issues; hire a Mediation Quality Assurance Coordinator; establish a system of funding and incentives to allow the program to begin operation; and periodically evaluate MPME's structure and effectiveness. This Council would reach decisions by consensus and in collaboration with the wider stakeholder community. Several of the task forces established at the 2003 Future Search conference would continue their work under the Council's leadership.

A tentative schedule calls for forming this Council at once and holding its initial meeting in the spring of 2004, sponsoring regional forums to explain the MPME program, hiring the QA Coordinator, and making task groups operational. Another statewide forum would be held in October 2004 to update interested persons on progress and seek continuing input.

Definitions Task Force. The definitions group has prepared a detailed draft list of mediator behaviors and descriptions of these behaviors to help define and develop a typology of the philosophies or approaches that different Maryland mediators use. The group finalized this list in a questionnaire that asks whether mediators use particular skills often, sometimes, rarely, or never. These questionnaires were distributed at the January 30<sup>th</sup> Future Search follow-up meeting. They are intended to help MPME work groups (e.g., training, certification, grievances) to begin assessing current approaches and to determine how to represent and deal with different "schools" as MPMW moves forward.

Ethics Standards and Support Task Force. The ethics group advocated mandatory basic ethics training for all mediators, with additional free, tiered ethics education required as mediators move to the higher "branches" of the MPME tree. The task force saw a need to create a number of support mechanisms to assist mediators, including web sites, list serves, a mediator hot line with volunteer duty officers who would be responsible for taking hotline calls and providing assistance, and regional "ethics guildhall" meetings affording mediators chances to discuss and think about difficult ethical issues.

The group expressed little interest in drafting new, complex codes of conduct, but plans to assess codes already in place in Maryland and some other jurisdictions and make small adjustments if appropriate. It saw a critical need for mediators and parties to discuss ethical standards and procedures at the outset of a mediation; failure to do this, and to adhere to what mediator and parties have agreed on, would constitute an ethical breach. A Mediator Pledge will be drafted to help parties and mediators understand in advance the standards to which the mediator adheres.

Grievance Process Task Force. This task force proposed establishing a Maryland Mediator Complaint and Grievance Process. It would promote quality mediation practice and increase consumer confidence by responding to consumer complaints about their mediation experience and taking appropriate measures.

The group's report explores the grievance process's integrity, structure, operation, remedies, and implementation. The process would include an Advisory Council of knowledgeable, committed mediators who represent the different types/orientations of mediation practice; they would assess a complaint and determine what is needed, including possibly a collaborative option for a complainant and mediator prior to any more formal proceedings. It would enable complainant and mediator to deal with each other face-to-face and offer a "restorative" option encouraging mutual understanding. If a restorative process is not chosen by the Advisory Council in a given case, then punitive or other measures might be taken as a remedy or deterrent.

Action steps for the near term include expanding the task force; sending questionnaires to court and other mediation program managers regarding any complaint programs currently in use; speaking with those who have dealt with complaints in a "restorative" way (possibly including the Catholic Archdiocese and Episcopal Diocese) to identify sound processes; doing added research on other professional groups' processes and best practices; speaking with ombudsmen and DR programs elsewhere that deal with similar problems; and discussing thorny implementation questions with longstanding mediation practitioners.

Training Task Force. This group saw its goal as providing for effective, high quality basic and advanced training, standards, and skills in an effort to educate mediators on an on-going basis. It identified these core topics:

- Trainer Standards and Standards for Training Programs;
- Curriculum & Content (The "What");

- Training Participation, Practice and Certificates (The “How”); and
- Grievance Process/Feedback Process for Trainers.

The training group's initial output proposes both minimum requirements and ideal recommendations for a basic 40-hour mediation course, including curriculum components, number of instructors and coached, use of role plays, trainee evaluation, ethics education. It plans to contact other trainers and potential members to involve them in future activities.

Mentoring Task Force. This task force recommended an action plan for creating a new statewide mentoring program to allow and encouraging new and experienced mediators to work together toward greater excellence. The program will provide a variety of learning experiences for both mentors and mentees.

The group has already researched mentoring activities in Maryland and some other states, determined the basic outline of the mentoring program, prepared several detailed forms and agreements to get the program going, and developed a detailed implementation timeline. It has identified three locations in Maryland to serve as pilots for the new mentoring program (Maryland Human Relations Commission; a District Court, location to be determined; and the Montgomery County Community Mediation Center). It will identify a part-time Mentoring Coordinator who will oversee and serve as central contact person for the mentoring program; find and orient initial mentors and mentees; and complete and evaluate the pilot program within one year.

Certification Task Force. The certification group advocated creation of a voluntary, performance-based, statewide mediator certification program. It identified several “big questions” and is reviewing possible responses to them. In addition, it identified several important program components and ideas for further consideration and discussion. The certification process would be performance-based and involve development of personal improvement plans that will direct mediators into other appropriate components of the MPME system.

The certification program would be a branch of the "MPME tree" and would constitute one of many things MPME participants could employ to improve and to market themselves. The task force's report (see Appendix, Document 12) discusses funding, outlines how to deal with implementation questions, and explores how to connect with and learn from the current performance-based certification process operated by MCDR. It notes that MCDR is willing to lend its expertise, technical assistance, and training to get the program started.

Consumer Task Force. This group drafted a tri-fold *Consumer Guide to Preparing for Mediation*, a handout that can be used by courts, community mediation programs, government agency-sponsored mediation programs and, possibly, private mediators. The brochure would explain mediation, let consumers know how to get the most out of the experience, and answer some frequently asked questions.

This task force also discussed what roles consumers can play in assuring quality mediation, including surveys; it will review selected survey forms as a way consumers

can provide feedback about their experiences. The group also discussed calling consumer forums in different parts of the state and setting up a system for using consumer feedback.

Self-Reflective Practice and Discussion Task Force. This task force set as its mission providing Maryland mediators with opportunities and resources to grow professionally through self-reflection and the use of discussion groups. By using volunteers, practitioner groups, and other resources, it hopes to schedule discussions in regional forums around the state.

The task force drafted an e-mail to be sent to leaders of Maryland mediator groups asking them to encourage formation of committees to organize practitioner discussion groups and materials. A number of possible facilities around Maryland for holding these discussions were identified. A diverse committee drawn from representatives of each practitioner group, region, and approach to practice would develop an information packet on self-reflective practice, develop flyers and other methods to announce discussion group activities, and identify effective discussion leaders.

Web Activities Task Force. As described above (pp. 18-19), the Maryland online directory of ADR practitioners has begun operation as a joint project of CDRUM (Center for Dispute Resolution at the University of Maryland) and MLAN (the Maryland Legal Assistance Network). Directory information will serve as a key component of a number of other MPME initiatives, including those involving consumer education, ethics, and grievances.

Mediator Evaluation Task Force. The evaluation group has begun development of a baseline feedback and assessment document for use by a variety of mediation programs in Maryland. Such a form would effectuate the MPME requirement that participants agree to provide evaluation forms to their clients, as well as provide a basis for compilation or reporting to the MQA Council to assist it in understanding, improving, and promoting the field.

*Discussion at the follow-up meeting.* Once they had had a chance to hear and reflect on each of the task groups' activities, attendees at the January follow-up session examined in detail their hopes, concerns, and implementation expectations. While some participants evinced greater enthusiasm than others, nearly all were impressed by the quality of the task forces' achievements to date.

Several themes surfaced:

- The emerging MPME represents a unique, exciting approach to a difficult professional challenge.
- Many difficult choices remain, and as usual, "the devil may be in the details" involved in working out several tasks and coordinating the task groups' various activities.
- Creating incentives to participate and doing outreach to explain MPME's goals and methods will be necessary to achieve the participation, volunteer efforts, and consumer use that are critical to MPME's long range success.

- Finding adequate resources to accomplish these varied goals will be difficult, but not impossible.
- Putting MPME into practice will require balancing a variety of competing interests and tendencies (e.g., bureaucracy and flexibility, "in's" and "out's", inclusivity and consensus/real-time decision making). To take one example, several raised concerns that the performance-based certification process should be a challenging tool for continuing skills improvement that is (simultaneously) neither "watered down" nor a pass-fail barrier to participation and growth.
- Ethics standards should be simple. They should offer general guidance that meshes with MPME's enhanced focus on an Ethics Pledge, ethics education, and support, rather than detailed rules providing answers all stylistic approaches and substantive contingencies.
- Promoting flexibility and recognizing the value of a dynamic, diverse mediator community should be an important part of the MPME implementation process. As one participant observed, "If Rembrandt had set the standard, Picasso would not have met it."
- While parts of the discussion on implementing MPME revealed some frustration and fear among a good number of attendees, MPME's objective is well-founded, achievable, and well worth the effort and uncertainty that will be involved.

*Next steps in implementing the MPME design.* Attendees agreed to tweak the task force structure, adopt specific goals, continue working to achieve them, and reconvene in another six months to assess the results. The following goals were generally seen as paramount for the next implementation phase:

#### Coordinating Entity Task Force

- Conduct Public Forums to roll-out and refine the Mediator Excellence Program
- Work with the new MQA Coordinator to nurture and grow the system

#### Definitions Task Force

- Disseminate practice techniques survey widely
- Evaluate survey and determine appropriate definitions/standards of practice for different mediation approaches

#### Ethics Task Force

- Determine statewide ethical standards, overall, and with regard to different types of mediation
- Begin developing ethics support system for mediators
- Interact with other groups to create ethics education and related activities promoting ethical awareness among MPME members

#### Grievance Task Force

- Form Ombuds committee

- Put process in place for advertising and taking in complaints
- Form links to continuing training and mentorship efforts

#### Training Standards Task Force

- Convene all mediation trainers in Maryland to collaboratively develop appropriate mediation training standards
- Set out clear specific guidelines (whether mandatory or voluntary)

#### Mentoring Task Force

- Complete three mentoring pilots, as proposed by the task group
- Design further proposed mentoring program, based on learning from the pilots

#### Continuing Education Task Force

- Create regional networks, promote membership/participation
- Rotate traveling ethics/case/self-reflection discussion panels to each region (with stipends)
- Plan Mediator Excellence Conference/Event

#### Certification Task Force

- Complete pilot to test proposed model
- Develop further refinements needed for broader use

#### Web and Consumer Task Forces

- Market the online directory in place, advising consumers to seek mediators who participate in the Mediator Excellence System
- Complete brochure and disseminate other public awareness materials
- Work on client feedback/evaluation

## **9. Meeting the Challenge: Conclusions and Recommended Future Steps to Promote Quality Mediation in Maryland**

### **A. The Committee's conclusions and goals for MPME**

*Conclusions.* Based on information from both rounds of statewide meetings and the Future Search conference, Committee members converged to support the draft conclusions they had reached earlier supporting the MPME program. here is wide agreement that a mediator QA program is needed for the state, that there should be some input from consumers or other users, that a grievance procedure is essential, and

that mediators need to be improving continually. It was also thought important that different mediator philosophies be included and accepted. While there is strong support among some mediators for a voluntary performance-based certification system, there is not yet a full consensus on this issue. One overriding conclusion is that the system needs to be dynamic rather than static and that the program should involve mediators from every venue, both in its administration and in its operation. (These venues include: the courts, business, family, community, environment, etc.)

*MPME Goals.* Given these conclusions, the Committee, in its deliberations, came to see great utility in pursuing a "quality assistance" strategy. The Committee opted for something that is both more than laissez faire and less than rigid regulation -- between those who prefer a "free market" with no constraints and others who prefer the "certainty" of hewing to prescriptive edicts as to "who can mediate."

MPME will promote and reward mediators' earnest, and hopefully even enthusiastic, commitment to ongoing education and improvement. The MPME approach avoids cumbersome regulatory systems and exclusionary practices, and seeks to build in customers' experiences and views. It deemphasizes artificial "pass-fail" barriers and substitute credentials ("high hurdles"), but strongly supports mediators wishing to engage in a variety of developmental activities that enhance their skills and awareness over time ("high maintenance").

Thus, obtaining admission into the MPME at the basic level will not pose difficulties for most mediators, even though MPME's basic criteria do not depart dramatically from paper-based "certification" standards now required in many states. On the other hand, taking full advantage of MPME's opportunities will require self-motivation and hard work and should yield commensurate benefits -- for individual mediators, as well as for the programs and clients they serve.

The Committee hopes that mediators will participate enthusiastically in the MPME "guildhall." The Committee also hopes that courts, provider organizations, and other users of mediation in Maryland will come to recognize the value of the MPME philosophy -- both as a vehicle for meaningful growth and as a trustworthy indicator of skilled performance.

## **B. The Committee's final reflections**

The MQA Committee offers the following reflections on promoting the long-term success of the MPME and high quality mediation in Maryland:

### *Final Process Reflections.*

- In many ways, the process to create and implement a QA system can be as important as the substantive choices made. Building a broad sense of ownership in the outcome through an inclusive process is crucial to long term success.
- The Committee encourages its successors to address implementation of the MPME concept in a collaborative, comprehensive manner.

- Judge Bell was a "champion with clout" and his clear interest and involvement was important to the Committee's ability to obtain attention, credibility, and results.
- The Committee process was a learning and growth experience for us all. Each member learned and changed some views, as we moved along.
- One cannot rush the process; time was required to get views, understanding, and buy-in from affected people across the state. It also took some time for members to open up and then engage in agreement-producing dialogue.
- The time required to set up and carry through a consensus process like the one adopted by the Committee is likely to be longer than participants anticipate at the outset.
- The size of the decision making group matters and should be manageable while also being inclusive of diverse perspectives.
- MACRO's providing staffing in support of the Committee's work was an important part of making process succeed. For instance, written summaries of Committee meetings were very useful in generating clarity and documenting progress.

*Final Substantive Reflections.*

- A key for a successful QA system will be the extent to which provider organizations or users of mediation employ, or at least heed, standards that are established; i.e., will Judge X, Attorney Y, or Roster Manager Z view these requirements as important in, or at least relevant to, his/her listing or selection decisions? Outreach and marketing will be crucial to reaching this goal.
- The Committee strongly supports placing greater focus on accrediting mediator training programs and putting some duties on trainers to advise trainees of their strengths and weaknesses (or provide mentoring or continuing feedback).
- QA system administrators should seek actively to involve customers and other users of mediation services, as well as mediator provider organizations, to the greatest extent possible. Without prescribing particular steps, this might include reaching out to consumers via the Internet to solicit their own experiences with mediation and mediators.
- Ongoing user education activities and related interaction that involve users and providers of mediation services will be important. They should explore what to look for in an ADR process and in a neutral, as well as the limits of "hurdles," certification, or any other credentialing approach.

### **C. Final thoughts**

Almost 2500 years ago, the Chinese philosopher Lao Tzu wrote:

Go to the people,  
Live with them.  
Learn from them.  
Love them.  
Start with what they know.  
Build with what they have.  
But with the best leaders,  
When the work is done,  
The task is accomplished.  
The people will say,  
"We have done it ourselves."

In this spirit, the MQA Committee sought to follow a course that involved reaching out widely, learning together, and building upon the knowledge and strengths of Maryland's courts and dispute resolution community. The Committee believes that the insights it has gained, the widespread acceptance of the MPME model, and Maryland mediators' enthusiastic efforts to put the new system into operation all demonstrate the value of this method.

If mediators and those who employ their services come to value a MPME "credential," then Maryland can offer the rest of the nation a compelling model -- one that (1) in terms of its substance, places it in the forefront of enlightened efforts to explore and advance the use of ADR and (2) in terms of its development process and decision making, highlights Maryland's commitment (in the words of Chief Judge Bell) to turning a "culture of conflict" into a "culture of conflict resolution."

## **10. For Further Information**

Contact Ramona Buck, Public Policy Director, Maryland Mediation and Conflict Resolution Office, 903 Commerce Road, Annapolis, MD 21401, phone: (410) 260-3540, fax: (410) 260-3541, email: [Ramona.Buck@courts.state.md.us](mailto:Ramona.Buck@courts.state.md.us).\*

\*Contact information updated July 2010.

## **APPENDIX: Selected Committee Documents**

*Document 1:* Membership list, Maryland Mediator Quality Assurance Committee

*Document 2:* Time Line for Mediator Quality Assurance Project

*Document 3:* Charles Pou, Mediator Quality Assurance: Final Report to the Maryland Mediator QA Committee; July 2003

*Document 4:* Charles Pou, Credentialing Chart; March 2002

*Document 5:* Charles Pou, Possible Approaches to Promoting Mediator Quality; October 2002

*Document 6:* Ramona Buck, Memorandum to Quality Assurance Committee members, A Summary of Feedback from Mediator Groups and Forums Around the State, February through May, 2002; July 2002

*Document 7:* Charles Pou, Memorandum to Quality Assurance Committee members, Synopsis – Outreach Sessions Attendees' Policy Option Preferences; August 2002

*Document 8:* Maryland Mediator Quality Assurance Committee, Concept paper, The Maryland Program for Mediator Excellence; October 2002

*Document 9:* Conference Agenda, Building a Revolutionary Future: Mediator Excellence in Maryland; July 10-12, 2003

*Document 10:* Future Search Conference Attendee and Address List; July 2003

*Document 11:* Sandra Janoff, Report on the Future Search Conference, Building a Revolutionary Future: Mediator Excellence in Maryland; September 2003

*Document 12:* Reports from the Future Search Task Groups on Mediator Quality in Maryland (January 30, 2004)

## POSSIBLE APPROACHES TO PROMOTING MEDIATOR QUALITY

One way to categorize QA systems employs a grid that displays the height of "hurdles" a mediator must meet at the outset to engage in practice and the amount of "maintenance," or continuing educational activities, expected later on. The quadrants of such a grid<sup>4</sup> look like this:

High hurdle/Low maintenance	High hurdle/High maintenance
Low hurdle/Low maintenance	Low hurdle/High maintenance

Selecting any given combination would likely produce differing results, including the following:<sup>5</sup>

### ***No hurdle/no maintenance programs (free market)***

#### **Pro's:**

- maximum diversity
- a large mediator population
- minimum bureaucracy

#### **Con's:**

- minimal consumer protection, ethics enforcement, and credibility
- possible undue emphasis on substantive expertise or background
- skill levels dependent on individual mediators' inherent abilities and desire to improve
- educating consumers and providing information would assume critical importance

### ***High hurdle/high maintenance programs (e.g., Family Mediation Canada)***

#### **Pro's:**

- highly professionalized system that could yield great credibility
- high mediator skill levels
- effective enforcement
- might enhance mediators' substantive knowledge (if acceptance criteria were written to include such knowledge)

#### **Con's:**

- would require a significant bureaucracy
- could lead to substantial contention
- probably would reduce diversity within the mediation field, absent outreach efforts
- could reduce responsiveness to individual clients' or programs' needs by promoting particular styles or leading to a bureaucratized approach
- unless some grandfathering provision were adopted, could run afoul of geographic variations, professional rivalries, and political uncertainty

### ***High hurdle/low maintenance programs (e.g., U.S. IECR, some other rosters)***

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<sup>4</sup> A program with a "high hurdle" would require considerable training, experience, and/or observation. A "low hurdle" program would typically demand only 20-40 hours of training, and, perhaps, a few co-mediators. A "high maintenance" approach may require little to become a mediator but would typically call for mediators to enhance their awareness and skills via co-mediation, follow-on training, in-services, coaching, or handling a large number of cases. A "low maintenance" program imposes few mandates on a mediator once s/he has been credentialed.

<sup>5</sup> Of course, this chart simplifies for easy understanding. The Committee consultant's report notes additional results, and points out other factors that also have a significant impact on how mediation practice ultimately develops. These include the extent to which the QA system is administered flexibly; what entity makes and enforces decisions regarding quality; the extent to which provider organizations or potential users of mediation services pay heed to the approach that is established; regional or other variations in access to assistance; the nature of education to help consumers understand what to look for; and economic incentives and professional factors affecting mediators, parties, courts, other DR provider organizations, and quality assurers – e.g., practical availability of mentoring services, available resources, and relative costs and benefits to mediators of obtaining particular credentials

**Pro's:**

- could provide effective enforcement and substantial credibility
- could result in good mediator skill levels (depending on the criteria selected)

**Con's:**

- some bureaucracy required
- would reduce attention to the value of mediators' continuing improvement of process skills and systematic attention to "reflective practice"
- could produce disagreements or even litigation over credentialing decisions
- could negatively affect collegiality among Maryland mediators

***Low hurdle/low maintenance programs (e.g., most states' court mediation programs)*****Pro's:**

- would likely yield considerable diversity and a sizeable numbers of mediators
- little bureaucracy, easily administered
- few disagreements over credentialing

**Con's:**

- limited quality assurance and marginal credibility
- little or no support structures for mediators and greatly variable skills levels
- reduced attention to the value of mediators' continuing improvement of skills and systematic attention to "reflective practice"
- could allow undue emphasis on "contacts" or substantive expertise

***Low hurdle/high maintenance programs (e.g., most community programs)*****Pro's:**

- could yield high mediator skills levels and effective enforcement
- would likely produce few disagreements over credentialing
- if a support structure were established that targeted mediators' developmental needs, could provide substantial credibility for the dispute resolution field
- could produce a greater sense of collegiality among Maryland mediators

**Con's:**

- would likely require some bureaucracy for a support system for mediators
- would require some long-term commitment to, and by, mediators
- could raise practicality concerns if embodied in a statewide system
- would require consumer education explicating how to select mediators

**Conclusion.** Basic mediation training is vital for effective mediation practice. Substantive knowledge, while necessary in some settings, is not generally determinative of a mediator's abilities or long-term potential. Most credentialing approaches involve some combination of training and experience requirements, occasionally with apprenticeship or mentoring; they can provide some generalized assurance of minimal skills, but also can send a message that "mediation is easy" and lead to complacency among some who have attained credentials.

"Hurdles," while occasionally useful, often prove exclusionary. They also fail to accomplish many of the important goals that can be promoted by advanced mediation training, ethics education, feedback, self-assessment, apprenticeship, co-mediation, continuing education, and grievance processes. Thus, the proposed MPME concept envisions a system that provides encouragement, incentives, and a support structure for Maryland mediators to work collaboratively to target developmental needs, improve, and enhance credibility.