

# A Winning Solution

A publication of the District Court of Maryland's  
Alternative Dispute Resolution (ADR) Office

August 2011 Volume 1, Issue 2

## Volunteer Appreciation 2010: A Success (Even if we do say so ourselves)

By Leona Elliott & Kate Quinn

District Court ADR Volunteers from around the State were invited to come together on May 3rd for an afternoon of continuing education programs, followed by an appreciation dinner, to recognize their outstanding contributions in 2010. The District Court ADR Office hosts annual appreciation and recognition events to acknowledge the dedication and hard work of more than 330 active ADR volunteers statewide.

Adding the continuing education component this year was an idea born out of a survey of volunteers following the 2010 Appreciation Events. In that survey, volunteers indicated that they have enjoyed the dinners in the past and want more continuing education opportunities in the future. The ADR Office listened to that feedback and responded by including continuing education programs in this year's Volunteer Appreciation Event.

The continuing education programs kicked off in the afternoon with a short plenary, followed by four different breakout sessions of one hour each. The breakout sessions were repeated, so volunteers could attend two of the four sessions. About 100 District Court ADR volunteers attended the continuing education program, held at the Judicial Education and Conference Center in Annapolis.

One of the themes of the continuing education program was ADR practitioner self-awareness. To provide this focus, the ADR Office partnered with the Self-Awareness Task Group of the Maryland Program for Mediator Excellence (MPME). "Self-awareness" is the concept that ADR practitioners, using various techniques and practices, develop the ability to notice and manage their own thoughts, feelings, judgments, and behaviors during an ADR session.

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## Q & A with Chief Judge Ben C. Clyburn

By Sarah E. Kauffman

District Court of Maryland Chief Judge Ben C. Clyburn has always believed the job of judge entailed more than just sitting on the bench. Before serving as the District Court Chief Judge ('04-present), he was the "Judge-in-Charge" at the Eastside District Court in Baltimore City. During his time in Baltimore City, he developed both the First-Time Offenders Diversion Program and the Early Resolution Program. He currently serves as the Vice-Chair of the Maryland Access to Justice Commission, and he is the Chair of the Maryland Integrated Case-Management System Advisory Committee. Always an advocate of Alternative Dispute Resolution, I sat down with Chief Judge Clyburn to hear more about why he supports this office and the work we and our ADR practitioners do.

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## Q & A, from 1



Chief Judge Clyburn speaks to ADR Volunteers at the 2010 Volunteer Appreciation Event in Annapolis on May 3, 2011.  
Photo courtesy of Edward Fanning, Judiciary Photographer

concerns]. Once they are given the opportunity to use ADR, they have the ability to vent to one another and not handle their problems on the street. ADR also gives the parties an opportunity to reach a win/win solution, whereas, litigation always results in one party winning and the other party losing.”

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### 1. What was your first experience with ADR?

“My first experience with ADR was as a Trial Judge in Baltimore City. Sometimes the parties in civil cases just needed the opportunity to express how they felt. There were many neighborhood conflicts in the criminal matters, so mediation was useful to resolve those disputes. Usually, the parties could get their matters resolved, given the opportunity to express their frustration and anger.”

### 2. You mentioned at the District Court ADR Office Volunteer Appreciation Event that “ADR is here to stay.” Could you please elaborate on that?

“ADR is a collaborative process that will be a permanent fixture in the Maryland judicial system. Members of society, members of the Bar, and members of the judiciary all realize just how valuable ADR is.”

### 3. Why do you think ADR is effective in the District Court of Maryland?

“The District Court has cases that are ideal for mediation. Many of the cases in District Court are neighborhood and peace order cases, where individuals just have a lack of understanding [of the other side’s issues or

## My Two Cents... Calling “It” What “It” Is

By Jonathan S. Rosenthal

**Welcome** to the second edition of *A Winning Solution*. By now you’ve had a chance to digest the first issue, and we’ve heard back from many of you. One thing we heard is that “scrolling” to follow the articles is a challenge in an *e-newsletter*. While we will try to monitor that, if it continues to present a problem, we recommend printing the articles in which you are most interested. For some, changing the percentage of the size of the newsletter within Acrobat Reader also helps, either making it larger or smaller. I hope either of those solutions work for you.

And now, a question for you... How important is it to differentiate **correctly** between the processes of mediation and settlement conferences? And does it **really** matter? Does it matter if the court introduces the practitioner as a mediator, but the practitioner conducts a settlement conference? Or vice versa? Does it matter if the process is described by the practitioner as mediation, but then a

settlement conference happens? Seriously, give it a thought and answer the questions in your mind. Have your answers?

We think it does matter. We think it is very important to keep the line between the two processes clear. This is not to suggest that one process is better than the other. To the contrary, they each have benefits to court and litigants. But because they are different processes, and are conducted in different ways, it is important to make sure the people to whom we are offering these services do not leave confused about the process in which they participate. Therefore, we think it is critical for practitioners to correctly identify the process they will provide at the outset, and for judges and court staff to identify the practitioner and service offered correctly in the courtroom. Doing so will match litigant expectations with their experiences, and will lead to less confusion and greater satisfaction.

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## Q & A, from 2

### 4. In your opinion, how do the District Court ADR Volunteers help the judges with their dockets?

“ADR saves the Judges a lot of docket time. [It] allows them to focus on the other cases they have to try that particular day. ADR also saves resources. [I] would have situations where I would try a case for several hours and at the very end the plaintiffs would say they did not want anything to happen to the other party, they just wanted someone to hear what they were trying to convey.”

### 5. If you had to convince someone that was not bought in to ADR, what would you say to try to change their mind?

“ADR is a unique opportunity to make yourself part of the solution. It provides you with the opportunity to speak what’s on your mind.”

### 6. Have you always been a supporter of ADR? If not, what specifically made you a supporter?

“Yes, I’ve always supported ADR because it works. ADR is needed in the District Court because there are many cases that are appropriate for ADR. ADR also gives the community a voice and a way to become more involved in the judicial process.”

### 7. How does ADR play a role in Access to Justice and the Case Management overhaul?

“The mission of the Access to Justice Commission is to provide members of the public with the opportunity to voice their concerns and feelings. The judicial system is so heavily worded and filled with so much legalese, it is hard for individuals to understand the process and how the process works. The goal of the Case Management project is to have ADR be an option earlier in the [litigation] process. However, one of my major concerns is not to let ADR become technology based and [to] make sure the people are still involved in the process.”

*Thank you to Chief Judge Ben C. Clyburn for taking the time to give us his thoughts and insight into ADR in the District Court.*



## My Two Cents, from 2

For example, if the expectation is that participants in a settlement conference want the practitioner to provide some evaluation of their respective cases, discuss the strengths and weaknesses of their cases, and even identify and recommend possible solutions, then that is what they should get, and a settlement conference will provide just that. If they want a settlement conference, but instead participate in a process that doesn’t yield the evaluation they desire, they likely will be disappointed in the process, perhaps even believing it was a waste of time. If the process they experience is one in which the neutral will not weigh in on possible outcomes, such as in a mediation, when doing so is what the participants want, the participants may feel discouraged.

On the other hand, if the participants want to have a different kind of conversation, one in which the discussion focuses on interest-based negotiations instead

of positional-based negotiations, then it would be equally as bad to have them participate in a settlement conference that is mislabeled as mediation. While they might want to discuss some of the underlying reasons that brought them to court in the first place, if the neutral seems more focused on finding a compromise to get the case resolved and have everyone move on, participants would be equally disappointed and dissatisfied. In that case, who really wins? The case might get settled, but the conversation the participants wanted still has not taken place, and they may feel they were pushed into compromising when that is not what they wanted to do.

In District Court, we believe it is very important not to confuse the two processes. They are distinct processes, have different qualifications to practice each, utilize different techniques, and they have, to some degree, different goals.

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# My Two Cents, *from 3*

## Why is this confusion happening?

First, a refresher on ADR 101. ADR, or alternative dispute resolution, is the *umbrella* term for various ADR processes, including mediation and settlement conferences. ADR is a term that describes any process used to resolve one's disputes that is an *alternative* to litigation. Because many people suggest that today ADR processes are mainstream, some believe the "A" in ADR should be changed to "appropriate," so that litigation and other choices should all be considered together, and none should be considered an "alternative" to the norm.

Of the ADR processes used most frequently, mediation is the one that seems to have the most cache. It has made its way into pop culture ("Wedding Crashers," "Fairly Legal," "The Office," among many others) more than settlement conferences, collaborative law, or even arbitration. But it would be a mistake to begin to use "mediation" as the umbrella term simply because it has a certain panache. To do so would diminish the definition and process of mediation itself. It would potentially water down a field that has worked diligently to create quality assurance and professionalism for its customers.

So it would seem that the first order of business is to either inform or remind people that mediation is not the umbrella term, or to educate and encourage people to correctly identify the ADR process to which one is referring. In fact, the first item in the District Court ADR Office Mission Statement is to "*educate all participants (including judges, clerks, court personnel, members of the Bar, litigants, and other ADR providers) on the uses and benefits of alternative dispute resolution [processes].*" This is important for many reasons, and chief among them is to make sure we meet the expectations that are being set by litigants. Meeting their expectations and offering high quality practices helps litigants gain or retain confidence in our courts. Creating confidence in consumers of our system of justice should be a fundamental goal for all of us who work for or provide services to the judiciary.

## Doing Our Part.

In our Day of Trial Program, litigants don't necessarily get to choose in which process they participate. It depends, instead, on which practitioner has volunteered for that docket time. But even if a litigant can't choose the process, it still makes sense to clearly explain the process in which



they participate. If a litigant has an opportunity to use ADR in the future, surely it benefits all of us as practitioners if we can help consumers understand their options. Experiencing one process but having it identified as something else can only lead to confusion when one discusses that experience with family, friends, co-workers, etc. And we know they will talk about their court experiences. That confusion might then lead to dissatisfaction or even mistrust of our system; results we cannot afford.

So we work very hard to encourage our judges, bailiffs, courtroom clerks, and our ADR volunteer practitioners to use the correct terminology at each and every opportunity; during introductions, explaining the processes, and on our forms. By working diligently to provide high quality processes and clear explanations, we help our consumers understand those processes and the options they have, and we will leave these consumers more educated about their choices in the future.

*For more information on the differences between mediation and settlement conferences, see Maryland Rule of Procedure 17-102 (d) and (h) for the definitions of mediation and settlement conference for court ADR.*

# Bar Goes 'Downy Ocean' for Annual Meeting

By Cindy Faucette

Several staff members of the District Court ADR Office joined hundreds of Maryland lawyers and judges in making the trip “across the bridge” to participate in the Maryland State Bar Association’s (MSBA) Annual Meeting in Ocean City, Maryland earlier this summer. The Annual meeting, from June 8-11, 2011, marks the beginning of the Summer season for hundreds of attorneys across the State.

While the attorneys and judges present and attend numerous continuing education programs, the ADR Office exhibits at this meeting to both inform attorneys about District Court ADR Programs and to recruit new volunteers for those programs. Bar members obtain information about volunteering in District Court ADR Programs and learn about how doing so is a way to give back to the legal profession and earn pro bono hours.

Among other things, visitors to the ADR Office exhibit were invited to spin the Wheel of “Mis-Fortune,” for which they might be rewarded with a water bottle, a pen, or a magnetic clip. Or, if their spin was unlucky, the visitor might have been asked to sing a song, tell a joke, or simply move on to the next exhibit. Still others were invited to a free drink (of water at the fountain of their choice). “Having the Wheel gets the guests to slow down and talk about the ADR programs and

services available in the District Court,” said Jonathan S. Rosenthal, Executive Director of the ADR Office.

Attorneys and judges who attended this “working vacation” had additional opportunities to learn more about ADR. The ADR Section of the MSBA presented two ADR-related programs: “Drafting in Mediation— Only for the Stout of Heart” and “The Use of ADR in Complex Construction Disputes” (presented jointly with the Construction Law Committee).

The “Drafting in Mediation” session was presented by attorneys Cecilia Paizs and David Simison (a long-time District Court ADR Volunteer.) The session opened with the Captain of Ship, Mr. Simison, and his first mate, Ms. Paizs, discussing what can be considered “safe harbors” for mediators. It was an interesting session in that there are different viewpoints across the state of who should and should not be writing settlement agreements and what should (and should not) be included in an agreement. True to many points in the field of mediation, agreement on where those “safe harbors” are is varied. While the discussion mainly focused on mediated agreements in family cases, the co-presenters agreed that mediation should remain flexible in order to address concerns in different venues.

The MSBA Annual Meeting is also an opportunity for friends to get reacquainted and to network with new colleagues, including meeting the newest members of the Bench. This year, the New Judges Reception included six new District Court Judges: Montgomery County (D6) — Honorable Audrey Anne Creighton; Baltimore County (D8) — Honorable Marsha Russell, Honorable Leo Ryan, Jr., and Honorable Steven Wyman; and Howard County (D10) — Honorable Ricardo Zwaig.

As always, the President’s Reception, welcoming new incoming President Henry E. Dugan, Jr. Esq. on his term at the helm of the Maryland State Bar Association for 2011-2012, was exceptional with great food and the opportunity to network with District Court ADR volunteers and judges who support our programs. The District Court of Maryland ADR Office would like to congratulate Mr. Dugan on his term as President of the MSBA for the coming year!

*To see a short video recounting the Annual Meeting, go to <http://www.msba.org/media/videos/AnM10.asp>*

Nobody can do everything, but everyone can do something. — Author Unknown

# Center for ADR 2011 Annual Conference

By Shannon Baker

The Center for Alternative Dispute Resolution (ADR) held its 2011 Annual Conference June 16-17 at Martin's Crosswinds in Greenbelt, Maryland, featuring a Pre-Conference Institute on June 15. The focus of this year's conference was *Managing Conflict and Removing Barriers to Collaborative Decision Making*.

Homer C. LaRue, Associate of the Center for ADR, conducted the Official Conference Opening on Thursday morning. Per tradition, the conference was officially opened by a call upon the elders in attendance to share the wisdom inherited from their ancestors and predecessors with all those present at the conference. Wisdom accumulated through both age and experience was acknowledged, where "elders" were defined as those sixty-five years of age and older, or those with twenty years of alternative dispute resolution (ADR) experience.

Executive Director of the Center for ADR, shared his perspective on the Conference's reputation: "We are known for having a broad brush. The Conference has diversity of practice, diversity of ethnicity; diversity all the way around. That's how we keep people coming back."

Lou Gieszl, President of the Association for Conflict Resolution (ACR) and Deputy Executive Director for the Maryland Judiciary's Mediation and Conflict Resolution Office (MACRO), echoed Marvin's sentiments in his opening remarks Thursday morning. Lou highlighted the Conference as unique in its appreciation of diversity, not just as defined by diversity of age, gender, race, and culture, but also diversity of practice.

Certainly, that diversity was well represented at this year's Conference. Presenters and attendees came from both the public and private sectors, and included roster managers, private practitioners, government employees, professors, mediators, arbitrators, negotiators, and facilitators. Workshops highlighted a wide variety of topics, including: racial conflict, the Middle East, politics and partisanship, community, culture, land use planning, competency, communication, justice, rejection, environmental conflict resolution, psychological barriers, self-awareness, impasse, negotiation, criminal mediation, decision making, and dealing with difficult participants.

The Center for ADR's Annual Conference has become known for its celebration of, and respect for, diversity in the ADR field. Marvin E. Johnson, Professor and



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# Center for ADR, *from 6*

Diversity of residence was present as well. Although a large number of those in attendance hailed from Maryland, presenters and attendees traveled from across the United States to take part in the Conference; Alabama, Arkansas, California, Delaware, the District of Columbia, Florida, Kansas, Massachusetts, Minnesota, North Carolina, Ohio, Pennsylvania, Virginia, and West Virginia were all represented in Greenbelt. The varied locales and distances traveled has become the norm for attendance at the Conference. “We do draw a broad breadth of presenters and participants,” Marvin reflected. “The Conference is at least regional if not

national,” and has “even drawn international [participants/presenters].”

One location is certain, however: the Annual Conference will always be based in Maryland. After the Center for ADR ended its relationship with Bowie State University, the 1999 Conference was held in Washington, D.C. Marvin distinctly recalls Chief Judge Robert M. Bell announcing to all those in attendance could hear, “This is a Maryland Conference! Don’t you ever have this Conference in another state again!” Since then, the Conference has always been hosted in the Center for ADR’s home state. Martin’s Crosswinds in

Greenbelt has been the host facility for the Conference since 2001.

Lou feels that one area where the Center for ADR’s Annual Conference separates itself from other conferences is that it embraces “high-quality practitioners from every aspect of the field” and allows participants to “broaden [their] horizons and expand [their] vision of the [ADR] field.” In his

opening remarks, Lou further emphasized the high quality of presenters and the sessions

***“The Conference is at least regional if not national, “ and has “even drawn international [participants/presenters].”  
- Marvin Johnson, Executive Director of The Center for ADR***

consistently offered each year. This year’s attendees seemed to agree with Lou. Having reviewed the evaluations from this year’s sessions, Marvin said he is “very, very pleased with the evaluations.” “Evaluations were off the charts. I’m always amazed. Every year attendees say it’s the best yet.”

When asked what was in store for attendees at the 25th Anniversary Celebration, Marvin responded, “We are going to do something big. We are working on getting a really neat plenary speaker.” The Center for ADR’s 25th Anniversary Celebration and Annual Conference is scheduled for June 14-15, 2012, at Martin’s Crosswinds in Greenbelt, MD.

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Greenbelt has been host to the Center for ADR Conference since 2001.

# Center for ADR's 2011 Annual Conference, *from 7*



Attendees gather to listen to a plenary speaker during lunch at the Center for ADR Conference .  
Photo courtesy of Linda Sternberg

Presenting at the Center for Alternative Dispute Resolution's 2011 Annual Conference from the District Court of Maryland ADR Office was Jonathan S. Rosenthal, Executive Director, in partnership with Michele Ennis-Benn, Director of Mediation and Training at the Center for Conflict Resolution at Salisbury University and District Court Day of Trial ADR volunteer. Jonathan and Michele teamed up to present *Caucusing: When to Caucus, Why Caucus, How to Caucus*. This interactive and high-energy session explored the reasons why mediators go into caucus, whether it is the best option, and what other options might be available. The session further examined what a caucus should look like once the decision has been made to use private sessions.

Jonathan and Michele shared their view that they believe, to varying degrees, that caucusing is a viable technique that might be used during mediation. Both are in agreement that caucusing probably occurs more than it should in a great number of mediations, and they wanted to use the session to teach mediators how to provide other options to the participants in mediation before resorting to caucus.

Michele and Jonathan feel that one of the benefits of mediation is the direct communication between the participants and what might happen because of that direct communication. They believe that working through uncomfortable moments or moving the negotiation forward with all of the participants together can yield more understanding and perhaps more complete solutions than trying to have those conversations in separate rooms. Additionally, Michele and Jonathan feel the participants' experience of having this direct communication under challenging circumstances may help them in dealing with future conflicts.

The ability to network with practitioners from different locales, different backgrounds, and different levels of experience is another hallmark of the Center for ADR's Annual Conference. Lou shared that the Conference is a place where you can "honor the connections" that people can make through networking and shared experiences. He encouraged those in attendance to embrace the Annual Conference as an opportunity to make friends and make connections "that will not only reshape the field, but that will reshape your life."





# Volunteer Success Story

Submitted by Maile Beers-Arthur, District Court ADR Volunteer in Frederick

The Peace Order mediation began as usual. He said she's a witch and the session is already a waste of time. She said he's stubborn, rude and self-centered, so she agreed, it probably *is* a waste of time, but she's tired of the status quo, so let's just get on with it. During their arguments over the last few months, they've both hurled words unprintable in a family forum at each other. They've both called the police several times. Each feels threatened by the other. They are neighbors in the townhouse

section of a suburban subdivision. He works on muscle cars and recently a motorcycle outside his house during the day. His job is a night-shift gig. He has a 4-year old. She is a graduate student with a 4-year old as well.

Her complaint: He revs the engine of the cars so loudly during the day, it wakes her napping son. His complaint: She's complained to every neighbor in the cul-de-sac and just yells across the street at him, instead of coming to talk to him.

As the stories unfold, both admit they haven't handled things well. Still, they both stand firm in their positions. Then, she gets to the reason behind her anger. Her child has a medical condition that puts him in the hospital fairly often and needs a lot of sleep to help him recover. The revving engines wake him up. This revelation was the turning point in the mediation. Her neighbor's whole demeanor changes. He apologizes. He understands her stress, her worries. He is ready to help. In fact their two children play together when outside and they both didn't want to take that away. She sees that he is being genuine and apologizes for the way she handled her anger and for

neighbor  
to  
neighbor

not approaching him in a gentler way.

Both make agreements not only to communicate better, but to also help each other with some neighborhood problems. Both agree that mediation was, in fact, an excellent use of their time. But for mediation, they

never would have understood each other and would have replayed the argument over and over, involving the police, involving the neighbors, escalating tensions.

From a mediator's perspective, I always hope parties will find at least some resolution. Often they do. This story illustrates the power of creating a space to foster a dialogue, enhance mutual understanding and re-build and transform a relationship. These parties came up with a far superior resolution than any that could be handed down by a judge. These parties, experts in their own situation, created their own best solution.

**Maile Beers-Arthur** has been mediating since 1995 and currently mediates for CALM (Frederick County Community Mediation Center), the Washington County Community Mediation Center, the District Court ADR Program in Frederick County and the Circuit Court for Frederick County.

Success in mediation means different things to different people: an agreement; a partial resolution; or simply a better understanding. ADR Practitioners often enjoy sharing successes with the mediation community. If you want to share one of your District Court success stories for publication on our website or in *A Winning Solution*, send your story to Sarah.Kauffman@mdcourts.gov

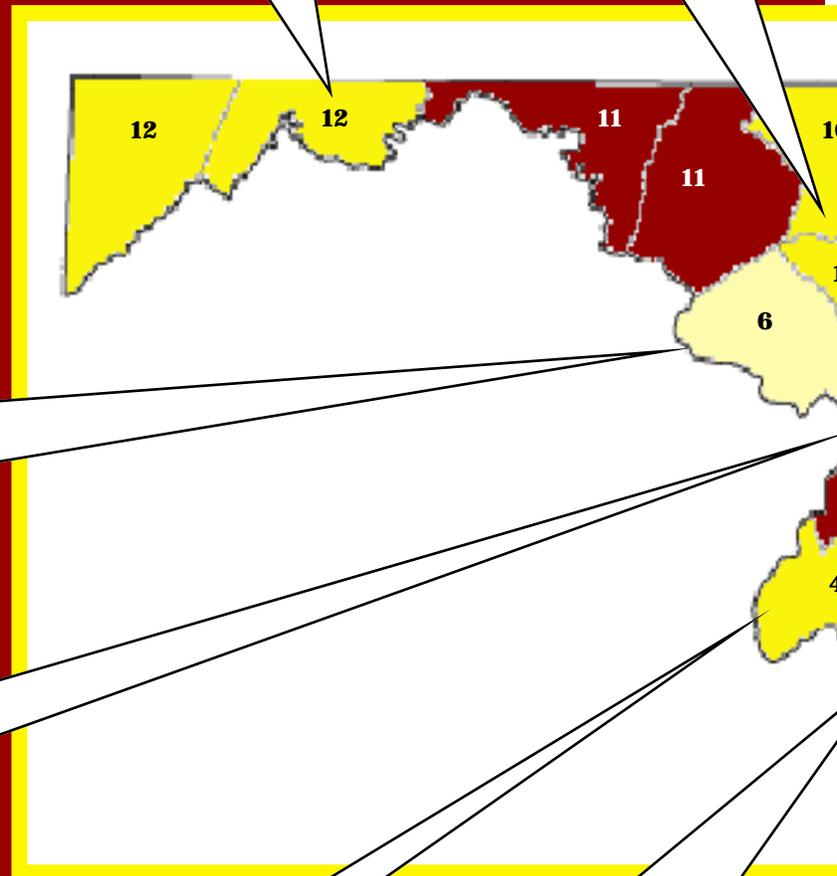


Find out what's happening in the county where you live, district(s) where you volunteer, and with our programs and partnerships around the State!

Compiled by ADR Office Staff

In the hope of expanding ADR programs west, to Allegany and Garrett Counties, Cindy Faucette and Jonathan S. Rosenthal met with D12 Administrative Judge Edward A. Malloy, Jr. and Judge Jack Price and D12 Administrative Clerk Kathy Stafford. More details about these program possibilities will be reported in future editions of *A Winning Solution*.

Thank you to the Judges, court support staff, and ADR practitioners in Howard and Carroll Counties for their continued support and ongoing dedication to the Day of Trial programs in these courthouses.



The new courthouse in Rockville opened its doors the week of July 25th. ADR practitioners were not scheduled that week, as there were no court proceedings conducted during the move. The new ADR suite hosts a reception area, two ADR rooms, and an office. Stop by and see the new space.

Community Mediation Prince George's (CMPG) held a basic mediation basic training, this August. CMPG graciously allowed District Court Regional ADR Programs Director Nancy Kreitzer to attend.

Charles County not only has a new District Courthouse in La Plata, but also a new Mediation Room to boot. The Mediation Room is located just outside of the Clerk's Office on the first floor.

The St. Mary's County Community Mediation Center (SMCCMC) held its Fourth Annual "Looking for Trouble" 5K Race/Fun Walk on April 2, 2011. This well-attended and successful event raised funds to support SMCCMC's mission to "provide free, quality alternative dispute resolution services to the Southern Maryland Community." Mark your calendars for next year's event to be held on April 7, 2012.

The District Court ADR Office, the District Court of Maryland, Baltimore County, and the Baltimore County Conflict Resolution Center (CRC), are exploring a Pretrial Program partnership to offer litigants the opportunity to mediate their disputes with the Baltimore County CRC prior to their court date.

The District Court ADR Office is partnering with the Harford County Community Mediation Program (HCCMP) to provide pretrial mediation services to Harford County litigants. Since the partnership began in March 2011, HCCMP has fielded 75 pretrial referrals from the District Court. Thank you to the Judges and Civil Court Support Staff for making the partnership possible, and to Susan, Megan, Tanya, Priscilla, and the mediators at HCCMP for their hard work handling all those intake calls and conducting the mediations.

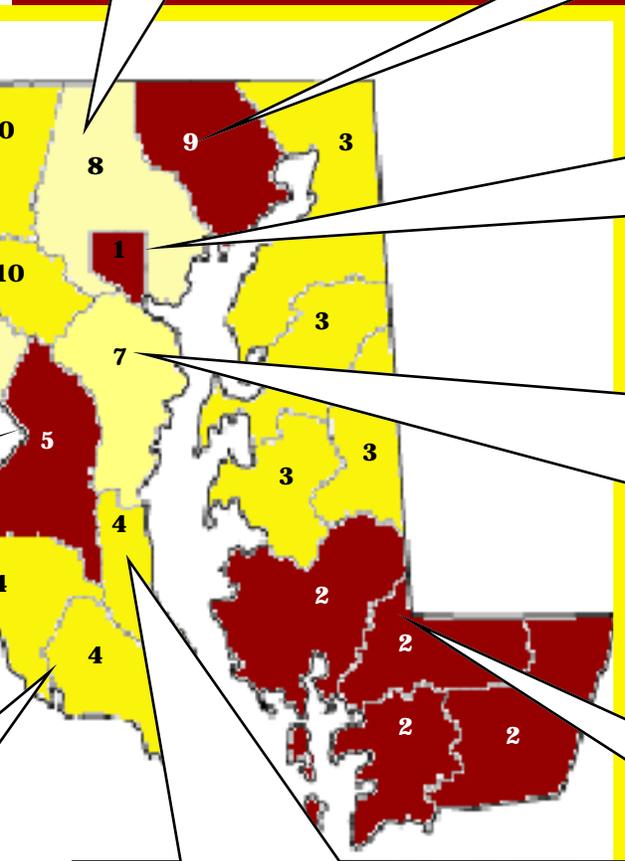
Thank you to the University of Maryland School of Law Mediation Clinic students and their professors, Toby Treem Guerin, Jonathan S. Rosenthal, and Stacy W. Smith, for their work in the Baltimore City Day of Trial and Pretrial Programs during the 2010-2011 academic year. The Clinic was scheduled for Day of Trial mediations twice a week during the school year and managed 125 pretrial referrals. Welcome to new Clinic Professor Deborah T. Eisenberg!

**Annapolis:** The District Court ADR Office staff has been busy answering numerous phone calls from litigants who see the ADR Office phone number on the bottom of their trial notices and express an interest in mediating their cases. Referrals are made to both Day of Trial programs and to the pre-trial mediation partner, Anne Arundel Conflict Resolution Center, depending on the timing of the inquiry.

**Glen Burnie:** The Self Help Center (a project of the Access to Justice Commission) has recently expanded its staff and may begin taking phone inquiries from around the State. The ADR Office continues to work with the Center to identify appropriate cases for ADR referrals.

Kudos to the Community Mediation Center of Calvert (CMCC) for moving up to a MACRO Level Three community mediation center. According to Executive Director Susan Rork, "We are very proud to have conducted 134 mediation sessions throughout the County. We look forward to more diverse mediations as CMCC begins a re-entry mediation program at the Calvert County Detention Center and a citizens' referral mediation program with the Calvert County Sheriff's Office." The District Court ADR Office was pleased to have an intern help screen cases for the pre-trial mediation program, and looks forward to continuing to support this partnership.

On the Eastern Shore, the rejuvenated Day of Trial Program is continuing in its pilot phase. In addition to the core group of attorneys mediating or conducting settlement conferences, the pilot has added community mediators from the Center for Conflict Resolution (CCR) at Salisbury University. The program has some unique features and to this point has proven to be a success. In creating the partnership with CCR, Judge Wade agreed to allow the mediators to proceed without interruption for up to two hours, with the promise that the mediators would provide a status update after that time period. The agreement was made based on the "a.m. only" docket structure at that court. Eliminating interruptions helps produce a more fluid process to the benefit of the participants.



# Quick Bits

Compiled by ADR Office Staff

- **Chief Judge Ben Clyburn** received the first ever Judge of the Year Award presented by the Maryland Access to Justice Commission.



Chief Judge Clyburn, pictured here with Judge Irma Raker, Ret. (center), and Chief Judge Robert M. Bell (right) accepts his award. *Photo credit to Maryland Judiciary*

- Our volunteers asked and we are set to deliver more continuing education opportunities this fall. The ADR Office will host the first teleconference on understanding the differences and similarities between settlement conferences and mediation. The ADR practitioner panel includes **Hutch Robbins**, **Tammy CitaraManis**, and **Susan Land**. Interested in participating in this teleconference series? Please contact Leona Elliott, 410-260-1677, for more information.
- October is just around the corner and the ADR Office is getting ready to promote and celebrate Conflict Resolution Month! Checkout the ADR Office website at <http://www.mdcourts.gov/district/adr/home.html> for more information about events in your area.
- This fall Regional ADR Program Directors will host **'Brown Bag Lunches'** for ADR Volunteers. Please look for an e-mail and check out pages 19 & 20 for brown bag information, dates, and locations.
- Congratulations to former District Court Chief Clerk **Joseph Rosenthal** on his retirement and an outstanding career with the Maryland Judiciary. The newly appointed District Court Chief Clerk is **Roberta "Bobbie" Warnken**, who started in that capacity on July 1, 2011. Prior to this position, Bobbie was the District Court Assistant Chief Clerk for Administrative Services. Congratulations to both Joe and Bobbie!
- Congratulations to **Judge Dorothy Wilson** (District 8) on being named one of Maryland's Top 100 Women by The Daily Record. Judge Wilson serves as the Chair of the District Court Judges ADR Committee.



# The Value of Mediation

By Hon. E. Gregory Wells, District Court Judge, District 4

The three District Courts located in Southern Maryland handle dozens, if not hundreds of Peace Order cases each month. These cases can be contentious, emotional, and lengthy, since more often than not several witnesses come to testify and, generally, they have a lot to say. Some hearings can last up to 45 minutes or more. With a large docket of cases, court sessions tend to be long. The judges of the District Court work patiently and conscientiously to do justice in these cases, however, with a large and growing number of these cases, we frequently rely on the volunteers from the Mediation Center to help us resolve them.



I'm a big believer in the mediation process. I have been trained in the techniques of mediation and participated in several mediations before becoming a judge. I know first-hand the power of this transformative process. In Peace Order cases, mediation can be very helpful. I have requested help from the mediators dealing with controversies as diverse as neighborhood disputes, run-ins between former girlfriends and boyfriends (and their friends), and conflicts between employees. A skillful mediator will allow both sides an opportunity to state their concerns, identify points of consensus, and, hopefully, reach a resolution of the problem. Such an outcome is preferable for the parties since they are involved in resolving the dispute with the mediator's assistance. My experience has been that when mediations go well the parties gain insight into their own motives and those of the other party, as well as learning techniques to avoid future conflicts. From the court's perspective, such a resolution is preferable, since the parties leave satisfied and one more case is removed from the crowded docket.

In Southern Maryland we are very fortunate to have a dedicated group of community mediators. The mediators come from a variety of backgrounds. This diversity of experience is critical in helping others resolve seemingly intractable disagreements. Although the mediators are volunteers, the work that they do is invaluable. The Mediation Center has my sincere thanks and undying support for the outstanding service they provide to the community and to the court. I encourage anyone who wants to help make a difference be trained to be a mediator. You will find the work you do to be intellectually and emotionally satisfying while helping others through a difficult situation.

*\*Originally published in the St. Mary's Community Mediation Center Newsletter, 2010.*



Stop!  
Let's try mediation!

# Volunteer Appreciation, *from 1*



Deputy Director, Maureen Denihan, presented *Agreement Writing in the District Court* at the Continuing Education program.  
Photo by Leona Elliott, ADR Office Staff Member

Two of the four sessions focused on self-awareness for ADR practitioners. One of the sessions presented by Scottie Reid and Linda Baron, both representing the Self-Awareness Task Group, was *Journaling and Other Self-Reflective Tools*.

**"Great sessions and a lovely dinner! A truly wonderful event!" - Vicki Rhoades, District Court ADR Volunteer in Calvert County**

Journaling is a practice that can be used to develop self-awareness. This session provided some techniques for beginning and maintaining a

journaling practice. To introduce and promote this practice, journals were distributed to all volunteers in attendance. All were encouraged to use the journals throughout the day.

ADR Office Regional Program Director Kate Quinn and District Court ADR volunteer Ed Ketchen, both also from the Self-Awareness Task Group, presented *A Self-Awareness Sampler*. This session introduced other techniques for developing self-awareness, such as meditation and using layered questions.

The two other sessions focused on practicalities of District Court ADR practice. Perhaps the most popular workshop, led by ADR Office Deputy Director Maureen Denihan, was *Agreement Writing in the District Court*, which addressed something all District

Court ADR volunteers are often called upon to do. Seig Poritzky, a Montgomery County practitioner, noted that the Agreement Writing session provided "reinforcement of good practices..." and was a useful connection "...with the reality of actual mediation practice [in the District Court]."

The final offering, *A New ADDRESS for ADR Volunteers* was led by ADR Office Data Management and Public Information Coordinator Sarah Kauffman and Executive Director Jonathan S. Rosenthal. Sarah and Jonathan provided the genesis of, and the most up-to-date information about, the Alternative Dispute Resolution Evaluation and Support System (ADDRESS). They described its potential use and benefits for both volunteers and to the courts. (For more information about ADDRESS, see the article on MACRO's website, "Creating a New ADDRESS for ADR Program Improvement".)

Following the continuing education program, ADR volunteers were invited to attend a statewide appreciation and recognition dinner at the Annapolis Doubletree Hotel. About 130 ADR volunteers, judges and select court support staff attended the recognition dinner, at which the keynote speaker was District Court Chief Judge Ben Clyburn.

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Judges & volunteers gather at the District Court ADR Office Volunteer Appreciation Dinner on May 3, 2011.  
Photo courtesy of Edward Fanning, Judiciary Photographer

# Volunteer Appreciation, *from 14*

Chief Judge Clyburn congratulated and thanked all of the ADR volunteers, noting that ADR is “here to stay” in the District Court and in the judiciary, because “it makes sense.” Other judges echoed Chief Judge Clyburn’s appreciation for ADR volunteers. In particular, Judge Krystal Alves (D5), from Prince George’s County, enthusiastically expressed her appreciation when she wrote on her evaluation form, “ADR volunteers are essential! Please do all you can to keep and enhance the program. It is a happy day in court when I see an ADR volunteer.”

This was the first time the District Court ADR Office hosted a single statewide Appreciation Event. Regional and local ADR dinners were held in years past. This change was also based on survey responses the ADR Office received



Chief Judge Ben C. Clyburn speaks to those in attendance at the District Court ADR Office Volunteer Appreciation Dinner on May 3, 2011  
Photo courtesy of Edward Fanning, Judiciary Photographer

from its volunteers following the appreciation event last year. A statewide event provided volunteers with the opportunity to meet and talk with colleagues from other Districts, and most appreciated that aspect of the event. “It was nice sitting with folks from other counties and hearing about their experiences,” noted Gary Schonman, a Montgomery County (D6) ADR volunteer.

Our judges also enjoyed the dinner event. Judge Mimi Cooper from Harford County (D9) said, “I have a new position regarding traveling to a central location to allow for a larger celebration. [This] was preferable to the smaller single jurisdiction celebration, and I will encourage more of our volunteers to join us next year.” Judge John McKenna, Administrative Judge for Anne Arundel County (D7), said he enjoyed “seeing all the mediators/judges from across the State. A statewide event is a very good idea.”

***“Great venue, interesting subjects, riveting presentations, fascinating company, delicious fare, amusing anecdotes, short snappy speeches. Thank you for a lovely evening!”  
- Eileen Bannach, District Court ADR Volunteer in Anne Arundel County***

ADR Volunteers for the District Court Day of Trial programs who joined the program in 2010 received a plaque engraved with their name. During subsequent years of service, active volunteers receive a year accessory, which can be attached to the bottom of the plaque for each year of service.

The ADR Office has already started planning the next ADR Volunteer Appreciation Event, to celebrate the dedication and time given by the volunteers during 2011. If you would like to be a part of that Appreciation Event, stay active during 2011— and many of you have already done so!



# ADR Office Welcomes *Two* New Additions

One of the best ways to persuade others is with your ears— by listening to them.— Dean Rusk



Please join us in welcoming the newest addition to the ADR Office staff, administrative assistant, Beth Heinle. Beth worked at a law firm in Bel Air, Maryland as a Legal Assistant and prior to that, Beth worked for the District Court of Maryland, a veteran of almost eight years, as a civil, criminal, and traffic court clerk in Harford County.

Beth graduated from Harford County Community College with an Associates Degree in Paralegal Studies. She received her mediation training in 2010 and volunteers for the Community Mediation program in Harford County.

When she isn't working, Beth is active with her church, rides with her husband, cheers on the Ravens, and enjoys making people smile! Beth lives in Harford County with her husband and three sons.

ADR Office Deputy Director, Maureen Denihan, and Joe Athey, recently welcomed a new addition to their family. On July 3, 2011 at 3:19 a.m. **Ellamae Harper Athey** was born. She was a beautiful 7 lbs. 7 oz. and 19 inches long. Ellamae's two brothers, Colin (7) and Egan (18 months) were more than excited to meet their baby sister.

Ellamae begins work in the ADR Office in July, 2035!



# The MPME: Celebrating 5 Years of Commitment to High Quality Practice

By Maureen Denihan \*



The Maryland Program for Mediator Excellence (MPME) is celebrating its five year anniversary this year. Why should five years matter? The Program was launched in August, 2006, at a Delmarva Shorebirds minor league baseball game. Forty people attended that inaugural event. Today, the MPME has grown to more than 800 strong and is still growing. Eight hundred Maryland mediators have made the commitment to continuing education and high quality mediation... Wow!

This commitment to high quality practice has been made not only by individuals, but by mediation service providers, like the District Court of Maryland ADR Office, which has encouraged its mediators to join the MPME since program inception.

Jonathan S. Rosenthal, Executive Director of the District Court ADR Office, spoke highly of the District Court's and MPME's shared commitment to high quality mediation practices, "Providing high quality services to District Court consumers is part of our mission, and in order to do that our practitioners have to be at the top of their game," said Rosenthal.

"Supporting the MPME and asking our mediators to join the Program makes sense. The MPME provides a range of continuing education and other skill-building opportunities from which mediators may choose. Mediators select 'a la carte' from a wide menu of continuing education, workshop, seminar, and training offerings throughout the year. In turn, providing mediators with opportunities to practice and improve upon their skills helps us raise the quality of our mediation programs," he continued.

The underlying premise of the MPME is that mediators want to improve their skills and provide high quality service. When mediators with 40 hours of mediation skills training become members of the MPME, they make a commitment to: (a) complete five continuing skills improvement activities (one of which must be ethics related) annually; (b) abide by the

Maryland Standards of Conduct as adopted by the MPME; and (c) cooperate in good faith with the MPME Ombuds Program. As Cheryl Jamison, MACRO Quality Assistance Director and MPME Administrator, explains, "What we've found is that if you give mediators affordable, convenient, and relevant opportunities to grow and develop, they will take advantage of them." And that's exactly what the Maryland Quality Assurance Committee (MQAC)<sup>1</sup> envisioned for the MPME more than five years ago.

The MPME's success is based on its responsiveness to its members needs. The program is member-driven, and member participation is the fertilizer and water that nourishes the tree to grow. "What excites me about this program is that its always growing and developing to meet the needs of its members," said Jamison, when asked about the MPME.

For example, earlier this year in response to member requests to better understand the breadth of mediation skills practiced in the state, the MPME Diversity Task Group hosted a *Diversity of Practice Series* to share information and create better understanding among mediators about the different mediation frameworks (inclusive, transformative, facilitative, and analytical) practiced in Maryland.

Back to the party though... MPME anniversary celebrations will kick off later this year and, similar to its launch five years ago, there may be a series of celebratory events across Maryland, followed by continuing education programs consistent with the goals and foundation of the MPME later in the fall. Check the MPME Calendar of Events for details ([www.mpmeonline.org](http://www.mpmeonline.org)). Contact Cheryl Jamison at [cheryl.jamison@mdcourts.gov](mailto:cheryl.jamison@mdcourts.gov) for more information.

<sup>1</sup> The MQAC was comprised of a diverse group of mediators from around Maryland who formulated the first set of policy goals for the MPME.

\* Maureen Denihan is the current Chair of the Mediator Excellence Council (MEC).





# Practice Tip:

By Jonathan S. Rosenthal+

Mediations and settlement conferences have at least two things in common: they both might have caucuses (sometimes referred to as *private sessions*) and they both have confidentiality implications, although to different degrees. And both of those elements are the subject of this edition of Practice Tips.

In District Court ADR programs, our practitioners, whether conducting a mediation or settlement conference, may decide that a caucus is an appropriate or necessary as part of the ADR process. And when used, at some point the practitioner will have to describe the caucus to the participants. It is during this description that “confidentiality” within the framework of a caucus should be discussed. Two questions, then, are **when** should confidentiality be explained in the context of a caucus, and **what** should be said in the explanation?

**The When** - We believe that confidentiality in caucuses should be mentioned several times during the ADR process. First, when the concept of caucusing is initially broached, either at the beginning of the session (during the neutral’s opening) or immediately preceding the caucus itself. Some practitioners prefer not to mention the possibility of a caucus until it seems one is needed or desired. In that case, confidentiality in a caucus needn’t be mentioned until that moment. If, however, during your opening to the process you prefer to mention the possibility of a caucus, you should at least cursorily mention that there is another layer of confidentiality beyond that which you

have described about the process as a whole. It might sound something like, “and if a caucus is used, we can talk about confidentiality as it applies to caucuses before we actually move into the caucus,” or something to that affect. The idea is that even as you mention confidentiality in the general sense in your opening, you should still note that there is an added layer of

attorneys, if represented), and for the benefit of the neutral. Just what should be said is covered next.

**The What** - From our perspective, there are two choices. One possibility, and my preferred choice, is to explain that *everything* said in the caucus **may be shared except what the participant wants kept confidential**. This option presumes that all information discussed in the caucus *may be shared* unless *expressly identified* and asked to be kept confidential.

The other option is to explain that *everything* said in the caucus **will be kept confidential except** the thing(s) specifically identified by the participant that may be shared. This option presumes that all information discussed in the caucus *may not be shared* unless *expressly identified* as points to be shared with the other participants.



confidentiality within the caucus itself. Explaining confidentiality prior to moving into a caucus cannot be ignored.

There are two other moments when the neutral should provide an explanation of confidentiality in a caucus, and both of those are during the caucus itself; once as you open the separate session with each participant, and once as you are about to close the caucus with each participant. It is critical that the participants understand what they have given the neutral permission to share *and* not share, with the other side. This is both for the benefit of the participants (and their

Note the difference. In the first option, participants identify the *specific items to keep confidential*, and everything else is free to be shared, thus creating the likelihood that more information may be “shared information” when the participants reconvene in a joint session. In the second scenario, participants identify the *specific items to share*, and keep everything else confidential. The former permits the neutral to utilize her/his skills and experience to determine what, if anything should be shared or held back in order to move the process and the conversation forward. The later is more likely to

*Continued on page 19*

# Confidentiality in a Caucus

restrict the neutral in terms of not being able to freely use everything s/he thinks might be helpful in moving the conversation forward. In either case, the participants are involved in determining what to keep confidential.

Surely there is so much more to say about caucusing and confidentiality without a caucus, and space does not allow for the full conversation here. But there may come a time in the near future when a

brown bag lunch or a teleconference may be used to expound on these topics. We hope you'll join us in these discussions.

*+ It should be noted that the author mediates from the facilitative framework. This practice tip might not be applicable in the same way for inclusive and transformative mediators.*



## Upcoming Events

### Brown Bag Lunches

Looking for a venue to talk with other ADR practitioners about your experiences? Want to bounce ideas off of your peers? Want to hear from other practitioners about their challenges, strategies, and best practice tips? Well, pack your lunch.



The Brown Bag Lunch series offers our ADR practitioners an opportunity to share their stories. These lunches will last one hour and will be held at a variety of locations throughout the state.

Join other ADR practitioners and ADR staff members for these casual yet informative conversations.

Currently scheduled are:

**September 26, Howard County District Court**

**September 30, Calvert County District Court**

**October 4, Baltimore City District Court**

### Peace Walk

Please join the District Court of Maryland ADR Office and the Maryland Mediation and Conflict Resolution Office (MACRO) in a 3k walk around the Inner Harbor of Baltimore to promote the use of conflict resolution in our communities.

**“Join the Resolution: Walk for Peace in Our Communities”** will help us kick off Conflict Resolution Month in October. This family friendly event is designed to raise awareness about the benefits of using mediation, community conferencing, and other conflict resolution processes. Join us for music, snacks, and fun!

When: October 1, 2011  
from 9 a.m.– 12 p.m.

Where: Rash Field,  
Baltimore City

\* Parking is available at  
Rash Field.



Walk for PEACE  
in our communities

Walk for Peace, Register at [www.tinyurl.com/adrwalk](http://www.tinyurl.com/adrwalk)

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#### Quote Corner

" We make a living by what we do, but we make a life by what we give."

*-Winston Churchill*



#### We're on the web!

<http://www.mdcourts.gov/district/adr/home.html>

#### Calling for your

#### **BEST Practice Tip!**

Have Quick Practice Tip? Send it in and we'll share it with others, and of course give you credit. Tips should be condensed to one paragraph. Help your peers become better ADR Practitioners!

*A Winning Solution* is edited by Sarah Kauffman. Letters to the editor are welcomed. If you have an idea for an article or would like to share your "success story" or a practice tip, please send them to [Sarah.Kauffman@mdcourts.gov](mailto:Sarah.Kauffman@mdcourts.gov).

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### Calendar of Events

#### August

16th — ADR Office Teleconference Series, Differences between Mediation and Settlement Conferences

#### September

13th — MCDR: Quarterly Meeting

16th — Center for ADR: Race and Health in America

20th — Center for ADR: Race Demystified

26th — Howard County District Court Brown Bag Lunch

30th — Tentative: Calvert County District Court Brown Bag Lunch

#### October

4th — Baltimore City District Court Brown Bag Lunch

12th-15th— Association for Conflict Resolution: ACR 2011 Annual Conference  
*San Diego, California*

16th — MCDR: Master Class— Advanced Tools/Techniques for Mediators

17th — Conflict Resolution Day

*For more information on the ADR Office Conflict Resolution Month events, please visit <http://www.courts.state.md.us/district/adr/home.html>*