

Mediating Orphans' Court Cases

By The Honorable Joyce M. Baylor-Thompson
Chief Judge, Orphans' Court for Baltimore City



Judge Joyce M. Baylor-Thompson

The Orphans' Court addresses disputes regarding assets of deceased persons, including guardianships of property for minors. Some of the disputes in our court are so heated that families tend to disintegrate right before our eyes. What better place to have mediation available than the Orphans' Court?

Many times, the underlying issue may be more about who Mom or Dad loved best, rather than about the legal issues. These underlying family concerns are not appropriate for a courtroom, but will often come out in mediation, thus assisting a family in the healing process. Mediation is also a faster and more

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Baseball and MPME



By Cheryl Jamison, Quality Assistance Director, MACRO

What do baseball and the Maryland Program for Mediator Excellence (MPME) have in common? That was the question put to the mediators who attended the four MPME kick-off baseball games this past summer and fall. The person with the most creative answer, chosen by our panel of judges, walked away with a gift basket containing Cracker Jacks™ (with a prize inside), baseball cards, a baseball, and MACRO give-a-ways. (See the winning answers at the end of this article.)

To mark this important event in the history of Maryland mediation, the program was launched by visiting minor league parks in Salisbury, Bowie, Aberdeen, and Frederick. More than 200 mediators, their families, and friends enjoyed an evening of baseball, a buffet meal, and the opportunity to sign up for

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Mediation is . . .
a faster and more
efficient way
to resolve disputes

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efficient way to resolve disputes, thereby increasing the efficiency of the court's resources and time.

Mediation in the Orphans' Court is a relatively new phenomenon. Prior to the Pilot Project on Mediation in Baltimore City, there was little or no mediation occurring in the Orphans' Court except in Montgomery County and Harford County, where the judges of the Circuit Court sit as Orphans' Court judges. The Baltimore City Orphans' Court was the state's first traditional three-person orphans' court to refer cases to mediation.

It was my vision to offer mediation to the litigants of the Orphans' Court in Baltimore City. It took approximately one year to gather relevant information from the surrounding courts in Maryland and nearby states. With the help of a volunteer intern, Mr. Matthews Bark, we submitted a grant application to the Mediation and Conflict Resolution Office (MACRO) for a pilot mediation project. We also had the assistance of an advisory board that was formed at the behest of the court, consisting of members from the Estates and Trust Law and Tax sections of the Bar as well as the Estate & Gift Tax Study Group, the executive director of MICPEL (Maryland Institute for Continuing Professional Education of Lawyers), the director of the Center

for Dispute Resolution at the University of Maryland School of Law, a private practitioner well versed in mediation from Mediation and Arbitration Services, and MACRO's court ADR resources director.

Beginning the Project

In September 2003, we received a MACRO grant that enabled us to begin. The first step was to hire a mediation intern to coordinate the daily tasks required for this project. The first year, we created forms, recruited mediators, and provided mediation training to the judges, court clerks, and other court personnel. We also developed training materials and trained our mediators. With the assistance of our advisory board, MICPEL developed an 8-hour training session on advanced probate for those mediators who had no previous probate experience.

The court decided that all caveat proceedings (a challenge to the validity of a will that has been admitted to probate) would be on an automatic track for mediation. In all caveat proceedings, a pre-trial order is prepared. After discovery, the court requests that the parties try mediation prior to proceeding to court. Additionally, in other contested matters, an order for mediation is within the discretion of the judge, or a party may request it. The court has submitted cases to mediation involving fiduciary misappropriation of assets by the personal representative as well as cases involving disputes over the distribution of assets. Many of these cases may include disputes arising from claims by a creditor, claims by an unknown or known heir, and exceptions to counsel or personal representative fees.

When a case is referred to mediation, an order for mediation is prepared, which includes the name, address, and phone number of a designated mediator from our court's list. Included in the order are instructions for either party to file an exemption from mediation and the rate of payment by each party to the mediator. The order is sent to each party with a set of instructions. These instructions include an agreement to mediate form that must be signed by both parties, and a confidential

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MPME: Sign Up to Join Today!, from 1

the MPME. In addition to the baseball events, a crab feast was held at Nick's Fish House to introduce the program to the Baltimore area.

The major goal of the MPME is to assist Maryland mediators in all venues to provide high quality mediation services to their clients. This is accomplished by providing participating mediators with stimulating choices for continued learning and improvement, along with appropriate recognition for their achievements. Symbolized by a tree with many roots and branches, the MPME integrates several non-regulatory, voluntary approaches for enhancing mediators' skills and their ability to address the needs of their clients.

Membership in the MPME signifies that you are making a commitment to continually improve the quality of your mediation services. The requirements for membership are:

1. Completion of 40 hours of mediation skills training;
2. Agreement to comply with the Maryland Standards of Conduct for Mediators as adopted by the Mediator Excellence Council;
3. Agreement to participate, in good faith, with the mediation ombuds program;
4. Commitment to complete two hours of ethics education each year;
5. Commitment to complete four continuing skills improvement activities each year.

This fall, the MPME initiated a skills-based mentoring program beginning in Cecil and Washington Counties. This program is a voluntary and collaborative relationship designed to stimulate and encourage the development of mediation skills for the mutual benefit of the mentor and learning partner. The mentor is a qualified volunteer who is a seasoned, experienced mediator acting as a teacher, guide, counselor and role model for a new mediator. The learning partner is a qualified volunteer who seeks improvement of technical and ethical skills in the practice of mediation or who is entering a new area of mediation, and is willing to engage in performance-based assessment and learning with a mentor.

What's in store for 2007? The MPME will be rolling out a mediation ombuds program that will give consumers of mediation services a place to take their concerns and questions. An enhanced online mediators' directory will be unveiled, and several pilot programs are being planned involving exit surveys and performance-based assessments. To learn more about the MPME or to join, go to MACRO's Web site and click on "MPME" or call Cheryl Jamison, (410) 841-2260.

And now, we report on the winners of the *What Do Baseball and the MPME Have in Common?* contest. At the Arthur W. Perdue Stadium in Salisbury, as the Delmarva Shorebirds played the Hagerstown Suns, the first place award went to **Michele Ennis-Benn**, while **Astrid Bravo** and **Danita Townsend** tied for second place.

At Prince George's Stadium in Bowie, with the Bowie Baysox squaring off against the New Hampshire

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Cheryl Jamison, Quality Assistance Director

Rachel's Notes

Understanding Maryland's Muslim Communities



Rachel Wohl, Executive Director

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Some cases that are mediated by community mediation programs have been referred there by a State's Attorney's Office. In many of these mediations, the participants know each other, and at least one of them has made allegations of criminal behavior against the other. In listening to their expressions of anger and hurt, it sometimes becomes clear that they have been operating under very different assumptions about one another, and see each other as enemies. They are engaged in "othering."

An online definition describes "othering" as "a way of defining and securing one's own positive identity through the stigmatization of an "other." Most of us have done this to someone at some point in our lives. We have observed "othering" also in turf battles; in the conflicts of some people of different races, cultures, religions, geographies, or economic status; and elsewhere. It is hard to imagine a war without "othering."

Thomas Merton, a Catholic Trappist Monk who was an influential spiritual writer, and a great civil rights and peace advocate, said:

Violence rests on the assumption that the enemy and I are entirely different: the enemy is evil and I am good. The enemy must be destroyed but I must be saved. But love sees things differently.

It sees that even the enemy suffers from the same sorrows and limitations that I do. That we both have the same hopes, the same needs, the same aspirations for peaceful and harmonious human life. And that death is the same for both of us. Then love may perhaps show me that my brother is not really my enemy and that war is both his enemy and mine. War is "our" enemy. Then peace becomes possible.

One of the great privileges of mediating is to be able, in some conflicts, to create a safe space in which the "othering" participants can reconnect, or connect for the first time, if they choose to do so. Sometimes it is a "live and let live" kind of connection, and sometimes it is a genuinely profound shift. When such a shift happens, it may affect the lives of many people who are not at the table, and it is always deeply inspiring to witness. For some, it is the core *raison d'être* for becoming mediators.

So, it is sad to note that, in addition to the "othering" we observe in the world around us, some mediators or groups of mediators have also "othered" one another. This may be based on having different backgrounds, practicing in different venues, or having different approaches to mediation practice. While this is not the belief or the behavior of many Maryland mediators, where it does exist, it is sadly ironic to see those who create connections in their work create separations in their field.

MACRO sees its mission, in part, as helping to create a more skilled and collegial mediation community as well as a more civil and peaceful society. In 2006, MACRO participated in two events that countered "othering" to some degree, and both are featured in articles in this edition of the MACROSCOPE.

The Maryland Mediators Convention, a biennial gathering is one of our favorite conflict resolution events. The collaborative, inclusive way it is planned and organized makes it very special. While MACRO's wonderful Public Policy Director, Ramona Buck, is the driving force behind the Convention, any mediator in Maryland is welcome to be on the planning committee or to propose a workshop and it was great to see so many new faces at this past

“Violence rests on the assumption that the enemy and I are entirely different...”

Thomas Merton

Convention. The event itself is entirely created by and for Maryland mediators. Amazingly, 400 Maryland mediators registered to attend. What a testament to the vibrancy of Maryland’s mediation community!

The convention diminishes “othering” by bringing together mediators of all stripes to share, learn and celebrate as one community. The MPME, Maryland Program for Mediator Excellence (see article in this edition), which is a quality assistance system created by and for all Maryland mediators, will do the same. And as the field evolves, we look forward to the mediation community, and others in the wider ADR community, coming together to advance the much needed art and craft of peacemaking.

The second anti-othering event was one of our Conflict Resolution Day projects. We co-sponsored an event with the American Visionary Arts Museum to help people gain a better understanding of Islam, and to spread skills that people can use when confronted with racial, cultural or religious “othering,” especially “othering” against Maryland’s Muslims. This is our third effort to help spread understanding of Maryland’s Muslim communities in response to the post-9/11 anti-Muslim backlash. While

that backlash appears to have dwindled, the ongoing media coverage of extremist Islamic militants with bombs has led some to believe, out of fear and ignorance, that all Muslims and people who look like Muslims are terrorists. The event, called “A Muslim, a Jew and a Christian Walk into an Art Museum Together,” was very successful, and MPT has made a videotape that we hope will be shared with schools and other interested groups.

Speaking of wonderful events, we are very proud of the amazing Lou Giezl, MACRO’s Deputy Executive Director. Lou has just been elected to serve as the Chapters Director on the Board of Directors of ACR, which is the national Association for Conflict Resolution. The voting was done by mediator members around the country. Lou’s brilliance and energy will be of great benefit to this organization, which has a local Maryland Chapter, and chapters across the country and around the world. Congratulations Lou!



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MACROSCOPE

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Should Mediators

by Martin Kranitz, Mediator and Trainer

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When I was trained as a divorce mediator 25 years ago, one major issue that was drilled into my head was that mediation is an activity, separate from therapy and separate from the law. It was not just that mediators did not have to come from psychology, social work, or the law, it was that they should not mix these functions even if they did happen to come from these “professions of origin.” I took these words to heart. I understood that blending these functions would not only confuse the clients for whom I was working, it also would confuse consumers, potential referral sources and the courts. I was told, and I believe, that the best way to explain mediation is to describe the role of the mediator and to be clear that mediation is not therapy, counseling, or the practice of law.

In the very early stages of my practice, the Maryland State Bar Association Ethics Committee was asked to review the work that non-attorney mediators

did, with regard to the “unauthorized practice of law.” We were cautioned by an Ethics Committee opinion that we were skating on thin ice (not their language). We were told that by no means should we be writing contracts for people, and there was even some question about writing memoranda of agreement (this document is now referred to as a memorandum of understanding -M.O.U.).

Back in the 1980s (the early days for me), mediators—even lawyer-mediators with whom I dealt—would write a memorandum for their clients. They would send their clients out to other lawyers to have the memorandum turned into a contract. As time has gone by, things have changed. More and more lawyers have been trained as mediators.

More and more lawyer-mediators now write contract agreements or separation agreements for their clients. Their rationale is that they can write contracts because they are lawyers and they have done this many many times before. They argue that this aids their clients by providing one-stop shopping. It allows the person who is familiar with the conflict and with the resolution to write an agreement/contract that is useful and “fair,” not skewed, to both people. I, however, believe this is an inappropriate function for the lawyer, or for that matter, for the non-lawyer who is working as a mediator.

Writing Contract Agreements

In a similar fashion, I have concerns about the parties in District Court, where day-of-trial mediators are writing agreements which are signed by the parties. So, why am I opposed to these people writing contracts?



Martin Kranitz

Write Contracts?

I am opposed because I think it does not provide for an independent set of eyes (and mind) to review the agreement for completeness, correctness, and legality. If it is the purview of the lawyer to write a contract, by virtue of his/her training, then it requires a lawyer who comes to the contract with neutral eyes and an open mind looking for loopholes and limitations.

More importantly, it mixes the role of the mediator with the role of a lawyer, thereby confusing the consumer, the public, and the courts. This, I believe, is harmful to mediation. The same argument can be made for therapist-mediators who provide counseling or therapy for their clients. I agree that this also is an inappropriate behavior. I have chosen to focus here on lawyer-mediators because I have not heard of therapist-mediators providing therapy for their mediation clients with the same frequency that I have heard about lawyer-mediators writing contracts.

If we are to become a profession, then we should be clear about what it is we do. We, as trainers and leaders in the profession, spend a lot of time telling new mediators (and students) that mediation is neither the practice of law nor the practice of counseling or therapy, or indeed anything other than the practice of mediation. How then can we condone the practice of law by a mediator? Some may argue that when the contract is written the mediation is over, thereby implying that another professional function can take over. However, what happens if the parties return for further negotiation? What happens if the parties return because they are unhappy with the details of contract or its enforceability? What is the role of the mediator at that point? It seems simple enough to me. Mediators provide mediation services; Lawyers provide legal services; Mediation is not the practice of law; Q.E.D., lawyer-mediators should write unsigned memoranda of understanding, not contracts.

Mediation is not
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contracts. ▲

Finally, what about the concern that one lawyer cannot represent two parties? Does the lawyer-mediator who drafts an agreement for both mediation participants then represent both parties? Is that a conflict of interest for the lawyer-mediator? And, if not, why has there been so much opposition to the concept of an “advisory attorney,” the neutral attorney who reviews an M.O.U. and drafts a separation agreement on behalf of both parties while representing neither?

The job of the mediator is to help facilitate a conversation and possibly memorialize the outcome with an MOU, not to write contracts. I hope that, upon reflection, you will see my point and that you will join with me in not drafting contracts for your mediation clients.

Mediation and

By Lorig Charkoudian, Executive Director
Community Mediation Maryland

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With this article, we continue the dialogue on the topic of mediation and money begun by Linda Toyo Obayashi's editorial in the September 2005 issue and supported by Roslyn Zinner in her letter to the editor in the June 2006 issue. Lorig Charkoudian now presents a different perspective. – Ed.

There is an underlying tension that is sometimes confronted directly and often hinted at and whispered about at mediator meetings in Maryland. It is the tension around participants paying for, or not paying for, mediation, and the implication of this dichotomy on relationships among private practitioners and community mediation centers. I hope to continue the dialogue with this article from my perspective as a community mediation advocate and as an economist with an interest in decisions around provision of services with “positive externalities” (this is an economist’s term meaning that when person A uses a service, person B benefits from the fact that person A used the service).

In dialogue about how participants in mediation value the service, the idea that “people value what they pay for” is often stated as though it were fact. As a product of public education, a regular user of the public library, a frequent player in playgrounds and parks, a fan of public radio, and someone who has called the police and fire department, I must challenge this assumption. In fact, I find that some of the finest journalism is on public radio, some of my family’s

favorite recreation is in public parks, my public education prepared me well for the world, and I was relieved by the fire department’s ability to put out the fire. I was not billed directly for any of this, and I feel grateful for services I received.

Free Services Can Enhance Value

Another assumption is that the provision of free mediation is detrimental to the ability of private practitioners to succeed in their business ventures. As someone who listens to commercial radio stations, purchases books in books stores, and pays for recreational opportunities, I would challenge this assumption as well.

As these other commercial ventures model, there is clearly both a place for people to pay for mediation as well as a place where people might access it at no cost. In fact, the societal value of education reinforced by a commitment to public education increases the amount some people will pay for private education. Who hasn’t taken a book out of the library and appreciated it enough to purchase a few copies for others as gifts? Because of the joy parents see in their children while they play in public playgrounds, those parents purchase jungle gyms for their backyards. These free services exist hand in hand with and support the fee for services, rather than competing with them. Free mediation may actually create more of a demand for the service of mediation and thus help bring business to the private practitioners.



Lorig with her children
Aline and Raffi

Money

This leads us to the public policy question—why, in a capitalist society, are there services provided for free and paid for by taxes, rather than provided through the free market alone? Even in a capitalistic society, it has been determined that there are “positive externalities” to education, access to information, recreation, and safety. The theory behind positive externalities is that there is both personal benefit and societal benefit as a result of the consumption of the product/service. For example, not only do those people who are educated benefit from the education, but society as a whole is better off because everyone has access to education regardless of their ability or willingness to pay. Not only is the person whose house stops burning helped by the fire department, but the folks next door and down the street are also protected. When one individual receives a vaccination, they personally benefit from being less likely to be sick. However, all of society also benefits from the decreased likelihood of that person being sick and spreading the disease.

Society Benefits

The problem with letting the free market determine how much of the good should be produced and consumed is that an individual will only purchase the amount of the good equal to his/her personal value of it. The value to society that would result with higher use is not usually considered at the individual level. One public policy solution to ensure the optimal amount of production and consumption of a good/service to benefit society as a whole is the use of government subsidies. This can offset the cost and can encourage greater consumption than would occur without government intervention.

When we consider the “cost of mediation,” it is important to consider both the financial cost as well as the emotional cost. Given the way our society regards conflict,

it can be very difficult to sit down and talk face to face with someone with whom one is in conflict. Since our culture tends to look to experts for answers and to seek quick fixes, it can be frightening to take responsibility for one’s own solutions, and to take all the time necessary to develop those solutions collaboratively. Again, I can speak from personal experience. I have used mediation several times, and even knowing what I know from years of experience as a mediator, I was an emotional wreck as I prepared to deal with my own conflicts in mediation.

The total cost, then, of using mediation includes the emotional costs, which cannot be measured directly, the opportunity cost (missed work, missed time with family, etc.), and any financial cost on top of that. The government and charitable subsidy of the financial cost (including provision of services by volunteer mediators) may bring the total cost down to a level where consumers are more likely to consume the socially optimal amount of mediation.

I am hopeful that the mediator community can continue this conversation in a way that builds understanding. Ultimately, I believe our first commitment is to build a peaceful society. We must ensure that the systems we develop to provide mediation services recognize the ripple benefits of mediation, the non-monetary costs that participants “pay” to participate in mediation, and the fact that we can create value for peace that goes far beyond the financial.

A Jew, a Muslim and a Christian walk into an art museum together.... no joke

Maryland Celebrates National Conflict Resolution Day

By Lou Gieszl, Deputy Executive Director, MACRO

Maryland joined with the Association for Conflict Resolution and dispute resolution advocates across the country to celebrate National Conflict Resolution Day on October 19. MACRO organized two statewide celebrations while community mediation centers throughout Maryland showcased their services and promoted peaceful conflict resolution at the local level.

Chief Judge Robert M. Bell of the Court of Appeals started the day welcoming more than 150 participants to an early morning workshop co-hosted by MACRO and the American Visionary Art Museum. The event brought together Jewish, Muslim, and Christian spiritual leaders for a panel discussion regarding post-9/11 emotions and biases and the need for stronger support systems across religious and ethnic lines. Moderated by WYPR's Marc Steiner, panelists and presenters included Rasheda Forman Bey, Rev. William Bolin, Lobna "Luby" Ismael, Rebecca Hoffberger and Rachel Wohl. After an engaging discussion, participants divided into small groups to reflect upon their own experiences with prejudice.

In addition, MACRO sponsored a conflict resolution themed art contest for K-12 students across Maryland and received more than 300 impressive entries from youngsters all over the state. The students' artwork touched on the nuances of conflict resolution and peace making from the international to the individual levels, complete with references to the war in Iraq and playground battles at home. During a reception on Conflict Resolution Day, Judge Bell presented awards to first, second, and third place finalists in elementary, middle, and high school categories. All the entries were on display at the Courts of Appeal Building in Annapolis until the beginning of December.

Across the state on October 19, community-based mediation programs held education, awareness, and "open house" events. Centers stressed the importance of helping people take control of their own conflicts to achieve satisfactory resolution without violence or court intervention. Programs honored their volunteers, celebrated their partnerships with supportive organizations at the local level, and displayed Conflict Resolution Day proclamations from the governor and numerous local officials.

Truly a memorable coalescence of events, Conflict Resolution Day 2006 highlighted the importance of bringing people together to advance the art, craft, and community of peace-making in Maryland. We at MACRO are grateful for the enthusiasm and support shared by so many Marylanders celebrating this important day.



Jonathan Rosenthal

MACROSCOPE

District Court ADR ... from there to here, and beyond

Jonathan S. Rosenthal, Executive Director,
District Court ADR Program

What would *you* say are the top two continuing issues when it comes to court sponsored ADR programs?

. . . Wow, I heard a lot of different answers out there. Here at the ADR Office of the District Court of Maryland, we are concerned with many of these issues. And over the next six to 12 months, we hope you will see the strides we will be taking to address them. So, let me see if I can respond to what I heard from you, in no particular order.

Quality of process (and quality of the neutral)

At District Court, we deal with landlord tenant cases, contract disputes, and neighbor-to-neighbor conflicts, among others. Whether it is a settlement conference or mediation, pre-trial or day of trial, we strive to make sure that each litigant is provided high-quality service that meets his/her needs. Several things make this particularly challenging for our programs.

Our first challenge is that our ADR roster is composed of mediators and settlement conference facilitators with a wide range of experience and backgrounds. While we have many experienced neutrals, some of our volunteers have just completed “beginner” mediation training, and they are looking for ways to get experience.

To help with our initial assessment of a neutral’s skills, we require new mediators to observe at least two mediations with a more experienced and skilled volunteer, and then to be observed at least twice. But this is only the beginning. In the coming months, we will be planning skills building and refresher programs for our ADR roster, including specialized skills building programs as well as working with the Maryland Program for Mediator Excellence (MPME).

The second and equally important challenge is that our mediators and facilitators are volunteers. They

recognize that one of the best ways to improve at our craft is to practice and learn from each experience. While there is no money to pay for their time and energy within our program, we hope our neutrals take advantage of the experience they get from participating in our programs. Of course, after accumulating this experience, some of our volunteers go on to other programs, and we must replenish our rosters. I am grateful both to those experienced volunteers who stay with us, and to our partnerships with community mediation programs. It is the dedication of those two groups that has become the backbone of our ADR programs.

Access to services in more locations

Providing high quality services is nothing without the provision of access to those services. With its 34 locations, the District Court of Maryland should be able to serve virtually any state citizen. And because the ADR Office of the District Court has partnerships with community mediation programs, access to our ADR programs is increased. In the coming months, we will be working to grow existing partnerships and to form new partnerships. Doing so permits us to provide high quality services, both day of trial and pre-trial, to more litigants, and it helps teach the Maryland citizens about mediation and its benefits. Perhaps the next time they have a conflict, they may choose to try mediation at a community mediation center first. Access to services grows as our partnerships grow.

Visibility of programs

Continuing with MACRO’s initiative of increasing public awareness of ADR, the District Court ADR Office hopes to expand the visibility of the programs we offer. Wouldn’t

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it be great if, at the time of filing a complaint in the District Court, or shortly thereafter, the litigants were informed of their ADR options? We also think it would be great if people knew of these options even before they became “litigants.” We want to provide the consumers of court services a complete list of the services available to them, the benefits of each, and the suitability of each. Posters and brochures in a courthouse are a great start, but we must work harder to find ways of getting the message to the public in a way that is cost-effective, and most important, noticeable.

The right process for the right case

In other publications, I’ve written about the need to distinguish between the two ADR processes of mediation and settlement conferences. This is important for several reasons, but the most important is not to confuse consumers regarding our services. It would be a shame to send a consumer into a settlement conference, but have it called mediation. The damage resulting from that situation is that the consumer leaves the room thinking that mediation is about the neutral cajoling and persuading the parties to compromise on a specific result. You and I know that this is not mediation. The District Court ADR Office takes this issue very seriously.

One of the first things we have done is to stop using a process called “settlement conference facilitation,” as defined previously in our office’s literature. Instead, we have moved back to settlement conferences, as defined in the Maryland Rules of Civil Procedure, Title 17. We believe this creates a much clearer distinction between two very useful processes, mediation and settlement conferences. We believe that both processes are useful, and both have their places. We want to see if one process or the other works better in certain situations. Some factors to be considered in determining which process to use: only one party is represented; neither party is represented; all parties are represented; contract disputes; torts; replevin actions; etc. We will be trying to see if such statistical distinctions exist.

Appreciation for volunteers

As noted earlier, our volunteers represent the backbone of our programs. Because the cost of filing a suit in the District Court is relatively low, it is not likely the court will begin to ask litigants to pay for services that are certainly valuable but which might double or triple the cost of the lawsuit. Benefits to the volunteers include receiving valuable experience, receiving additional training and being able to provide an important service to the community. We’ll continue to look for ways to say “thank you” to our volunteers. We couldn’t provide ADR to citizens through the District Court without them.

Whew! Sounds like we have a lot to do. I guess we’d better get busy.



Benefits to the volunteers include receiving valuable experience, receiving additional training, and providing a service to the community.

Baseball and MPME, from 3

Fisher Cats, first place was won by **Jean Whyte**, second place by **Pat Bendross**, and third place by **Sue Rose**.

In Frederick at the Harry Grove Stadium, while the Frederick Keys played the Lynchburg Hillcats, **Steve Moss** was awarded first place, **Cindy Faucette**, second place and **Anita Williams**, third place.

And, at the MPME kick off game at Ripken Stadium in Aberdeen on a chilly night in early September, the Aberdeen IronBirds won against the Vermont Lake Monsters. **Lorig Charkoudian** won the prize that night due to her commitment and fortitude during a weather delay and a long game.

Following are three of the winning answers to the question: **What do baseball and the MPME have in common?**

■ The MPME is like each position on the ball field. The positions represent the different branches on the MPME tree. Each position offers something different, each is equally important and carries a different responsibility. Each position relies on the others. You never know which position might be in play at a given time.

Jean Whyte

■ Both mediation and baseball involve two parties coming together and resolving their differences in an agreed-upon process.

Steve Moss

■ Top Ten Things Baseball and MPME have in Common:

10. Both regionally based throughout the state
9. Always in training
8. Code of ethics
7. Coaching, feedback, mentoring
6. Both have training standards
5. Success is based on performance
4. Umpires and mediators (supposedly) neutral
3. Both always looking for fans
2. Good looking bunch of folks
1. MACRO hosts great gatherings for both

Michele Ennis-Benn



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mediation conference statement form that each party must complete and provide to the mediator at least five days prior to the scheduled mediation. This statement is not shared with opposing counsel, nor does it have to be filed with the Register of Wills. No judge will have access to this conference statement. If the dispute is settled, a completed settlement order must be filed with the Register of Wills no later than five days after completion of mediation. In addition, the mediator files the ADR data sheet giving the court some generic statistical information on the success of the mediation session to the Register of Wills within seven days of the last session. There is also a participant evaluation form that we ask the parties to voluntarily complete regarding their thoughts on the mediation process and whether they saw it as a helpful alternative.

This court began referring cases to mediation in the summer of 2004. Since its inception, the Baltimore City Orphans' Court has referred approximately 40 cases for mediation, with 75 percent of those being successfully mediated. We now would like to increase the number of cases being referred.

For the future

I am delighted that the Orphans' Court for Baltimore County, under the direction of Chief Judge Theresa Lawler, has also implemented a mediation program, and I was happy to be able to share our materials with them. In the future, I hope to see mediation available in every Orphans' Court in Maryland. Courts that do not have this alternative yet are missing an opportunity to provide a valuable service to the litigants that come before them.

MACRO has been a strong supporter of our project, and I would like to thank them personally for helping to make mediation a reality in the Orphans' Court for Baltimore City.

Upcoming Events

**ABA Ninth Annual
Section of Dispute Resolution Conference**
April 25-28
Omni Shoreham Hotel
Washington, D.C.
www.abanet.org

AFCC 44th Annual Conference
*Children of Separation and Divorce:
The Politics of Policy, Practice and Parenting*
May 30-June 2
Capital Hilton
Washington, D.C.
www.afccnet.org

**Center for Alternative Dispute Resolution
20th Anniversary Celebration and Annual Conference**
June 20-22
Martin's Crosswinds
Greenbelt, MD
www.natlctr4adr.org

The Life of a Summer Intern at MACRO

By Mohammad Akbarieh,
Master's Degree Student, University of Baltimore

This past summer I was able to participate as an intern at MACRO. I am a student in the master's degree program at the University of Baltimore's Center for Negotiations and Conflict Management where a 150-hour internship in the field of conflict resolution is one of the requirements of the program.

Although I had been interviewed before being accepted into MACRO's summer program, I didn't know quite what to expect because the program is somewhat unusual. Rather than working on just one project, the interns were asked to contact managers of a number of different projects that had been funded by MACRO. We spoke or met with the project managers directly to try to find out what had gone well, what had gone less well, and about the "lessons" they had learned from their projects. Some of the ADR project managers I contacted were with two circuit court programs, a labor commission project, a county human relations commission program, a senior citizen mediation project, and the Maryland Department of Transportation.

In my report to MACRO and the grants committee, I indicated that according to all my project managers, MACRO is doing a spectacular job, overall. However, they did have some good suggestions. One of these is the need for MACRO to provide a batch of sample forms for mediation or ADR programs—intake forms, client exit surveys, agreement-to-mediate forms—all the forms that make up the administrative backbone of any program. Rather than having to start from scratch, the program managers I talked to wanted to benefit from what had already been done, in this regard. Another issue that the project managers mentioned to me is the need for help in

gaining recognition for their programs. If MACRO could help them publicize the good ADR projects they are conducting so that the heads of their agencies see them as really valuable, this might be helpful in mainstreaming their ADR programs for the future.



courtesy Mohammad Akbarieh

We interns attended weekly meetings with Ramona Buck, Public Policy Director. This was valuable in order to interact, to discuss any problems, and to share what we had learned in the past week. We also had the opportunity to attend conflict resolution workshops or mediation trainings. For example, I attended the annual ADR conference in Greenbelt run by Marvin Johnson's Center for Alternative Dispute Resolution, and I enjoyed it immensely.

However, perhaps the best benefit of the internship for me personally was that I was able to work intensively for a time within the Maryland Department of Transportation's (MDOT) Office of Fair Practices regarding their in-house mediation program. Because of the time I spent with MDOT, I was able to make a valuable connection with one of the MDOT managers one day over lunch. Through that connection, I was able to find a one-year paid internship with the MDOT contracts and procurements division, and I began that paid internship in the fall.

So, through my internship at MACRO, I was able to learn many things about the conflict resolution field, including some of the challenges of the field, and even to land a job. It doesn't get much better than that!

A Town, a Crusher and a Conflict

Issue 9

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February 2007

There is a stone quarry near the picturesque town of New Windsor in rural Carroll County. In the fall of 2004, the company that owns the quarry wanted to install a 400-ton per hour stone crushing and screening plant at the quarry, and submitted an air quality permit request to the Maryland Department of the Environment (MDE). Many citizens attended an MDE meeting, expressing strong objections to the stone crusher. MDE then contacted the Maryland Mediation and Conflict Resolution Office (MACRO).

“Many of the concerns raised by the citizens would not be addressed in an air quality permit for the crushing plant,” said Karen Irons of the Air and Management Administration (ARMA) of MDE. “Air quality permits don’t cover such things as truck routes, noise, the effect on well water, impact on property values, or the day to day operations of the plant.” MDE did not need the support of the citizens in order to issue a permit; however, MDE officials wanted to respond to the community’s concerns.

In this same time period, MACRO had asked Linda Singer and Michael Lewis to train experienced Maryland mediators in the art of facilitating multi-party, complex-issue public policy cases. The stone quarry dispute presented an opportunity for a team to work on an actual case.

The company director agreed to participate in the facilitation to improve and strengthen the company’s relationship with the community. Headed by Roger Wolf, the facilitation team gathered information and then held a group meeting in July 2005 at the New Windsor fire hall.

About 25 people attended, including two citizens’ groups, the mayor, the town council, representatives from the MDE, and company representatives. A list of issues was generated, and individuals volunteered to gather additional information.

Roger Wolf and his team facilitated a second meeting on August 25, and some general agreements were formed, including truck routes, blasting hours, and future communication protocols with the company. After small group meetings, and after citizens expressed support for the agreement, it was signed by the company plant manager and by New Windsor’s mayor in early 2006.

While not all of the concerns were addressed, there was a high level of satisfaction among many who participated. The final hearing on the matter was a relatively calm affair and the permit was issued by MDE.

This past summer, a community leader commented that regular communication between the citizens and the company has continued, and that the citizen groups are now focused on other more pressing issues. In a more recent development, Karen Irons reports, “When there was a change in ownership of the plant in the summer of 2006, there were no citizen challenges, and a new permit was issued to the new company on August 31, 2006. The plant started operating in September 2006.”

This project illustrates how a facilitated collaborative approach to a significant community conflict can result both in an agreement and in better ongoing relationships.

The facilitation team for this case was composed of Bob Baum, Joyce Mitchell, Brian Polkinghorn, Caryle Victor, and Roger Wolf.

This project illustrates how a facilitated collaborative approach to a significant community conflict can result both in an agreement and in better ongoing relationships.

Maryland Mediators Convention 2006

The third Maryland Mediators Convention was held Friday, December 1, 2006 at the Maryland Maritime Institute in Linthicum. An excited bevy of 400 Maryland mediators attended, eager to participate in an event that celebrates the Maryland mediator community.

The next Maryland Mediators Convention will be held in December 2008.



picture courtesy of Jonathan Rosenthal

L-R: George Spangler, Merle Rockwell, and Homer La Rue



picture courtesy of Lisa Cameron

Rachel Wohl directing the "Mediators' Chorus"



Jonathan Rosenthal portraying the Maryland Program for Mediator Excellence's 'tree of opportunities'

MACRO Funds Facilitation of Governor's

By Ruth Mascari, Project Manager, Workforce Housing, Maryland Department of Planning

In the last few years, it had become quite apparent to those of us in Maryland state government that the lack of work-force housing was reaching a tipping point. The divergence between the escalating cost of moderate housing and the much smaller proportional rise in take-home pay was widening. In late 2005, then-Governor Robert L. Ehrlich, Jr. created an Executive Task Force on Work Force Housing, naming the secretary of the Maryland Department of Planning, (MDP) Audrey E. Scott, as the chairperson. In January 2006, under Governor Ehrlich's direction, she assembled a 13-member task force of people with extremely diverse background and interests. The Governor's charge to the group was to analyze the situation, receive input, data and information, and create solid recommendations for improvement of the situation, all to be accomplished within six months.



Need for facilitator

Senior planners at MDP looked at the timeframe and the diversity of the group and quickly recognized the need to join forces with a facilitation firm. The Department of Planning applied to MACRO for a grant to underwrite the cost of the facilitators. Following the state procurement process, MDP publicized the project, received bids from three firms, and chose the Bickerman Group. The department used the firm to manage and facilitate each meeting, to write and provide minutes from the meetings, and also to create, in collaboration with one of the senior planners, a draft of the final report.

Secretary Scott convened the first meeting, hosted by Governor Ehrlich in the Governor's Reception Room in the State House. The members came from many walks of life—teaching, law enforcement, residential building companies, and local elected government, to name a few. Due to the large and successful outcome of Base Realignment and Closure (BRAC) in Maryland, the Governor also had asked that a U.S. Army commander from Fort Meade act as a liaison to the group. The first—and actually quite critical step—was the establishment of ground rules to determine the basis for the conduct of each meeting and indeed the process as a whole. The facilitators elicited ideas from the members on ground rules, which were developed as follows:

- The group would come to decisions by consensus.
- The meetings would be held in each region of the state.
- Work sessions would be open to the public for observation.
- Citizens would be part of each meeting and would be given an appropriate amount of time to be heard.

Task Force on Workforce Housing

- Recommendations would be generated throughout the meetings.
- All contributions from group members would be heard and accepted without criticism or attribution.

The task force members then created a time schedule and chose the meeting sites around the state. The facilitators, working in concert with the MDP project manager, established agendas and enlisted a variety of guest speakers and panels to present data, information, and a depiction of the existing workforce housing situation in the state.

Initial draft

In late Spring of 06, based on the work of the group, the MDP planning staff created an initial draft of the report. The facilitators reviewed the draft and provided a draft final report to each member for input. Facilitators then edited and analyzed as a second set of “eyes” the interim final report.

On July 10, Secretary Audrey Scott presented the final report, “Image of the Possible” to the governor at a cabinet meeting in Frederick. It included 20 clear and practical recommendations organized in three categories:

1. Those that can be implemented by the state alone;
2. Those that require coordination among state agencies, local government and interest groups; and
3. Proposals that require legislative action.

The final report is available on the MDP website at www.mdp.state.md.us

The well-integrated involvement and relationship of the facilitation firm with the task force members and MDP planners was a significant factor in the timely and effective creation of the report required by the governor’s executive order.

The facilitation team, **John Bickerman** and **Molly DeMaret-Tahu**, of Bickerman Dispute Resolution, comment on their role in this process:

“Given the tight deadline, it was important for the MDP project manager and facilitators to work together quickly to create a shared base of knowledge about the issue from which the group could begin working to develop informed recommendations.

While the complexity of the issues—including land and infrastructure costs, transportation and zoning issues, a rapidly growing population, and environmental concerns, to name a few—could seem overwhelming to the group at times, we were able to assist the task force members to focus on the ideas that they felt would best impact the problem in both the long and short term.

As the complexity of the problem became apparent, it also became clear that different counties and localities in Maryland face different challenges in providing workforce housing. Consequently, the best approach to addressing these challenges would be to create a toolbox of recommendations for them to work with. We encouraged the group to think broadly and creatively and to strive to develop a list of final recommendations that were not just acceptable to all members, but would be actively supported by them.

Because of the limited time frame, much of the debate and input took place electronically. We were able to assist by managing these communications, providing drafts and revisions as necessary, and working to make certain that all members’ perspectives were heard and considered.

We think that the use of outside facilitators allowed Secretary Scott and her staff to focus on listening to the group and to bring their own expertise to bear on the issues rather than attempting to juggle multiple roles or to maintain a sense of neutrality.”

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MACRO posters still available. Free to all within Maryland. Go to the MACRO website: marylandmacro.org and click on the poster in the top right corner to view posters and to order online.



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