

# A Winning Solution

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

May 2012 Volume 2, Issue 2

## ADR Research: Coming To a Courthouse Near You

By Toby Treem Guerin, Haleigh LaChance, and Jamie Walter  
with contributions from Lorig Charkoudian

Maryland courts employ mediation from “the people’s court” of the District Court to the second highest court in the state, the Maryland Court of Special Appeals. Despite its extensive use, little in-depth analysis has occurred nationally to explore the costs, benefits, and effectiveness of ADR. This article is intended to provide an overview of a groundbreaking research project undertaken by the Maryland Judiciary on this topic. This will serve as the first in a series of articles designed to keep you informed of the project’s progress and findings as it continues.

In 2010, the Administrative Office of the Courts (AOC), Court Operations (formerly known as the Court Research and Development Department) received a grant from the State Justice Institute to conduct a comprehensive policy and program analysis of the costs, benefits and effectiveness of alternative dispute resolution (ADR) supported by the Maryland Judiciary. To accomplish this task, Court Operations brought together a group of court-ADR stakeholders and researchers to define the scope, focus, and research methodology of the project.

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## Transformative Mediation in the District Courts

By Dusty and Vicki Rhoades, Calvert and St. Mary’s Community Mediation Center Mediators

Transformative mediation has become acknowledged and accepted as a well-established orientation of practice in Maryland. At the end of a two-year study sponsored by the Maryland Program for Mediator Excellence (MPME), transformative mediation was identified as one of the four officially recognized orientations of mediation practice in the state: facilitative, inclusive, transformative, and analytical. Still questions and misconceptions remain. Some people say that “transformative mediation is about transforming people”, implying that the practice isn’t appropriate for many court cases. Others worry that the “transformative mediation process takes too long for Day of Trial

settings.” Let’s examine these perceptions.

First, the focus of transformative mediation is not about transforming people, it is about **transforming the quality of the conflict interactions** between or among participants in conflict. By doing so, transformative mediators support the participants as they choose what they would like to address and how they wish to talk about it. As transformative mediators, we have no intention of changing or transforming people’s lives, nor do we believe that is even possible in the brief period we might spend with them.

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# My Two (or 3) Cents...Connecting the Dots

By Jonathan S. Rosenthal

## Dot number one...Maryland Mediation Confidentiality Act

Congratulations are in order. The Maryland Legislature passed, and the Governor signed, the Maryland Mediation Confidentiality Act (the Act) this past legislative session. As you probably know, confidentiality is one of the hallmarks of mediation. While the Act does not apply to court referred mediations, it is still worth discussing among the audience of this newsletter. On the whole, it really is mostly good news. If you want to know what I mean by “mostly,” read on. (Even if you don’t want to know, read on anyway.)

The Act does not apply to court referred mediations because, arguably, court mediations already have confidentiality protections via Title 17 of the Rules of Civil Procedure. It should be noted, however, that Title 17 only applies to mediations referred in *circuit* courts, although the District Court ADR Office believes that District Court judges use that rule as guidance when similar issues arise in the District Court. And, it should be noted that proposed District Court ADR Rules are currently awaiting approval by the Rules Committee, and from there they will go to the Court of Appeals.

But I digress... There are many mediations being conducted outside of the court arena, and those mediations generally only had confidentiality protections based on contract (in the agreement to mediate) or by programmatic rule. Community mediation, State’s Attorney mediations, Maryland Commission on Civil Rights mediations, and private mediations all fall into that category. So the goal of protecting all of those mediations with confidentiality makes a great deal of sense.

Roger Wolf, mediation guru emeritus, convened a group of practitioners from all frameworks, ADR venues, and practitioner organizations, to determine if consensus could be reached on what a suitable mediation confidentiality statute would look like. I was fortunate to be among that working group. It was agreed by all in the group that the best hope for not only getting a bill passed, but getting it passed *as we want it* would mean we should submit and support it as a unified group. In other words, the less we disagreed about its provisions, the less the legislators would seek to amend the language. After reviewing what other states had done, and considering a variety of options, the working group constructed a draft and went to Annapolis in search of sponsors.

It should be noted that the draft did not include a definition of mediation that mimicked the one in Title 17 of the court rules. Significantly, the definition in the draft took out the words “and shall not give legal advice.” This was a decision opposed by a majority of the working group, but that decision was made nonetheless to protect the hope that all would support the passage of some form of mediation confidentiality.

But there was another problem. The draft that everyone finally agreed on also included a provision that mediators have a minimum of 40 hours of mediation training. A small minority from the working group wanted that language taken out. It was decided instead that everyone would support the broad concept of the draft bill, but people could oppose specific provisions and testify as such if they so wanted. This was, of course, exactly the opposite of our intention to go to Annapolis as a unified group.

GOOD  
NEWS,  
BAD  
NEWS

APPROVED

“Wherever there is a human being, there is an opportunity for kindness.” - Seneca

## Transformative Mediation, *cont. from 1*

But in supporting participants as they reach clarity, discover options, and hear themselves and others in a way that opens to new information and understanding, we assist as they recover the capacity to make informed decisions in their own best interest. They can then respond to others in a way that might have seemed impossible a few minutes before. The quality of their interaction is transformed, from one that is more negative, destructive, demonizing and alienating to one that is more positive, constructive, humanizing and connecting. They are able, once again, to choose whatever solutions are best for them to move forward.

While our mediator focus is upon the quality of the participants' interaction, rather than specific agreement, we find that our participants are more likely to reach an agreement in mediation than not. Two Community

Mediation Centers (CMC) in Maryland practice transformative mediation exclusively: Calvert County Community Mediation Center and the St. Mary's County Community Mediation Center. Our Centers' agreement rates for Day of Trial cases are higher than the statewide average, and our satisfaction rates, as determined by comments on participant evaluation sheets, are also high. Out of 157 participants surveyed in 2011, the average satisfaction rate was 4.5 on a scale of 1 to 5, with 5 being the highest score (strongly agree). This also includes participants that did not come to an agreement, but felt they came to a better understanding of their own perspective as well as the other participant's point of view.

But does transformative mediation take too long? That simply hasn't been our experience. Our Day of Trial cases average one hour.

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## Practice Tip: The Key to Completing the ADR Practitioner Activity Report (Green Sheet)

By Maureen Denihan

If you've spent any amount of time around the nine of us here in the District Court ADR Office, you know how much we value the information our ADR practitioners provide on the "green sheet" (also known as the Practitioner Activity Report form). You might have even received an e-mail or a call from one of us after your scheduled Day of Trial ADR experience to inquire about some information not completed on your recent green sheet. And, in an effort to answer your questions for how to best handle and complete "green sheets," and to help explain why that piece of paper is so important, we've drafted this *Practice Tip* just for you!

First and foremost, above anything else, the green sheet is a receipt. Think of it as a "proof of purchase" regarding when, where and for how long you appeared at court. Because our four Regional ADR Programs Directors can't be in all 38 Day of Trial civil dockets each week, at a minimum the green sheet lets us know that you appeared and tells us what happened.

**We reconcile every single green sheet that comes into our office** against the quarterly ADR volunteer schedule, and we account for each date that a volunteer was scheduled for the entire calendar year in every District Court Day of Trial ADR program around the state. In 2011, we had 307 ADR practitioners volunteering 4,500 hours for 2,058 civil dockets!



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# ADR Research, *cont. from 1*

The AOC research team partnered with researchers from Community Mediation Maryland, Salisbury University's Center for Conflict Resolution, the Center for Dispute Resolution at the University of Maryland Francis King Carey School of Law, and the University of Maryland's Institute for Governmental Science and Research.

The District Court ADR Office was included as a member of the Advisory Committee early in the project development stages and ADR Office staff members contributed to the overall project design and focus. The project explores a variety of ADR processes as

they apply to a cross-section of case types and jurisdictions. In District Courts, the project will explore ADR in criminal cases and day-of-trial civil cases. And in the circuit courts, the research will examine the impact and role of ADR in civil family and civil non-family cases. As it is impractical for the research to be in every court throughout the state for all types of cases, this in-depth research will be supplemented by a broad overview of all ADR programs and processes across the Maryland Judicial System in an ADR landscape project.

This groundbreaking research project addresses three goals:

1. a comprehensive cost-benefit analysis of ADR in Several Maryland settings (both Circuit & District Court);
2. an assessment of the effectiveness of various ADR approaches and systems to understand what approaches are most effective in which settings; and,
3. an understanding of the role of ADR in promoting access to justice for all Marylanders.

**The Methodology** The unique aspect of this research is that it explores both traditional (time and money) and non-traditional (procedural and emotional) factors as well as short-term and long-term outcome measures to determine the cost-benefit and the efficiency/effectiveness of ADR processes. In the District Court civil cases (to determine the costs and benefits of ADR), the research will track cases over their lifespan, some of which will go through ADR and some of which go through traditional trials. Litigants (and their attorneys) will respond to surveys to assess what impact the ADR process had on the outcome of the case. These surveys will be conducted immediately before the ADR session or trial, immediately after, and again three months later, and will allow for a comparison of short and long-term costs and benefits for cases that went through ADR compared to cases that did not.



The research design goes further to include observations of the ADR session itself, noting the various strategies ADR practitioners use during the ADR process. Combined with the survey information, this data will allow the research to determine which strategies and program elements are the most effective and efficient in meeting various outcomes. This level of examination of ADR strategies and correlation to various outcomes is extremely rare in the ADR field and we are proud that the Maryland Judiciary will be at the forefront of this type of research.

In addition to the in-depth cost-benefit and efficiency/effectiveness analysis, the project will also explore the current court uses of ADR throughout the state.

This part of the research, termed the "ADR Landscape" will provide in one document a detailed picture of the various ADR processes and programs available to Maryland citizens.

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# Harford County Community Mediation Pre-Trial Program Partnership Reaches One Year Anniversary

By Shannon Baker

The District Court ADR Office and the Harford County District Court are celebrating the one-year anniversary of a pre-trial mediation program partnership with the Harford County Community Mediation Program (HCCMP).

With the support and assistance of the **Hon. Susan Hazlett**, Administrative Judge and **Michael Esposito**, Administrative Clerk, the partnership with the HCCMP, (a program of Harford County Government, Department of Community Services), was launched in March 2011, when the first batch of cases were screened and “invitation to participate in pre-trial

mediation letters” were mailed to litigants.

Procedurally, cases are screened six weeks in advance of their trial date. Cases which are deemed “appropriate for mediation” are sent a letter describing what mediation is, offering the opportunity to participate in mediation before the trial date, and inviting them to contact HCCMP to discuss mediation further and possibly schedule a session.



From March 2011 to February 2012, 138 cases were referred to HCCMP<sup>1</sup>. 347 litigants and counsel were offered the opportunity to participate in pre-trial mediation. Of those, “intake” conversations<sup>2</sup> took place with 218 potential mediation participants. Four cases resolved on their own through the intake process. Intake conversations resulted in 19 separate cases participating in 21 pre-trial mediation sessions, with a total of 47 participants involved. 14 of the 19 cases; or 73.68%, mediated by HCCMP reached an agreement.

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<sup>1</sup> 138 separate cases were opened and closed from 03/11/11-02/29/12. Additional cases that were opened during this time frame remained open at the time these statistics were reported.

<sup>2</sup> An “intake conversation” is the first contact between the HCCMP representative and one party in a particular case. Multiple intake conversations take place when coordinating a single pre-trial mediation session. During the intake conversation, the HCCMP representative explains the mediation process and the participant is given the opportunity to decide whether or not s/he would like to participate in a pre-trial mediation session.



## *The Center for ADR's 2012 Annual Conference & 25th Anniversary Celebration*

The Center for Alternative Dispute Resolution will convene its annual conference and celebrate its 25th Anniversary as a provider of dispute resolution programs and service on June 14-15, 2012 at Martin's Crosswinds in Greenbelt, MD. Led by a diversified faculty of business, government and academic experts, the conference offers more than 40 presentations that provide public and private sector dispute resolution professionals with the latest information on ADR skills, concepts, and strategies. This year's plenary speakers are Noah Brown (ACCT), Frank Ferris (NTEU), Jay Welsh (JAMS) and the Hon. David Young (Circuit Court for Baltimore City, MD). Visit [www.natlctr4adr.org](http://www.natlctr4adr.org) or

[http://natlctr4adr.org/docs/201206 Conf Brochure.pdf](http://natlctr4adr.org/docs/201206%20Conf%20Brochure.pdf) for registration information.

For questions, contact the Center at (301) 313-0800.

# Question and Answer Session

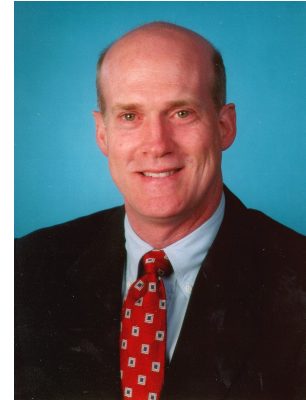
## 1.) Why did you join the District Court ADR Office Volunteer Roster?

**Holly Slack:** The District Court ADR Office was the most welcoming of all the programs and very encouraging toward all kinds of ADR practitioners and mediation frameworks. That openness is extremely attractive for a volunteer practitioner.

**Jonathan Claiborne:** I believe in mediation as a viable way to resolve conflicts. I believe the volunteers assist the participants by helping the parties to come up with solutions to their disputes. And I believe we also assist the court system by taking some cases off their crowded dockets and provide parties with an opportunity to resolve their disputes in a way that might not be available to the parties through traditional litigation.

**Mae Whitehead:** To continue learning and growing in the ADR profession, this time in the court setting. And to continue supporting the Office of Community Relations, Community Mediation in Prince George's County.

**Michael Benefiel:** I wanted an opportunity to sit quietly in small claims court and watch as citizens realized that it was going to be a long morning for them, unless they took a chance with a mediator at no risk and no charge.



Jonathan Claiborne  
Baltimore City

Mae Whitehead  
Prince George's County



## 2.) What would be your advice for someone that is interested in taking mediation training?

**George Hermina:** Take the training seriously, listen carefully, and participate regardless of how much you think you know about mediation.

**Mae Whitehead:** By all means receive training. However, first do your due diligence by researching the subject via the internet if you have not already done so. Look for reliable sources within an agency, group, or professional development organization to gain a better understanding of what mediation is and what it is not.

## 3.) What is your favorite meal/food?

**Michael Benefiel:** 1/3 cup of popcorn, using modest amounts of salt and a butter-flavored low calorie oil

**Jonathan Claiborne:** Pizza, a great steak, and chocolate of any kind.

**Elwood Stark:** Thai green curry with vegetables.

**Holly Slack:** Indian food.



Elwood Stark  
Harford County

## 4.) What is your favorite television show (current or historical)?

**Elwood Stark:** Breaking Bad

**George Hermina:** Seinfeld

**Mae Whitehead:** Court TV

**Jonathan Claiborne:** It's hard to beat MASH, Cheers, Seinfeld, and Friends.



Michael Benefiel  
Montgomery County

# with District Court ADR Volunteers

## 6.) When did you start practicing ADR?

**Mae Whitehead:** 1996  
**Jonathan Claiborne:** 1997  
**Elwood Stark:** 2004  
**George Hermina:** 2007  
**Michael Benefiel:** 2008  
**Holly Slack:** 2010



George Hermina  
Baltimore County

## 5.) What is your favorite all time movie?

**Michael Benefiel:** Frank Capra's It's A Wonderful Life, has my favorite line, about money: "It comes in pretty handy down here."

**Mae Whitehead:** Officer and a Gentleman

**Jonathan Claiborne:** Tough to pick one, but it's probably Butch Cassidy and the Sundance Kid, Wizard of Oz, or It's a Wonderful Life.

**George Hermina:** The Good, the Bad, and the Ugly.

## 7.) Why did you become interested in alternative dispute resolution?



Holly Slack  
Anne Arundel County

**Holly Slack:** I thought I wanted to go to law school and become an attorney but when I took courses at the local community college to see if that is really what I wanted to do with the rest of my life, I found ADR and have been in love with it ever since.

**George Hermina:** The cases are interesting and I enjoy the challenge of resolving difficult disputes and penetrating some immovable positions.

**Michael Benefiel:** I thought that the idea of learning how to work with conflict and help people develop an outcome for their disputes was a challenge.

**Mae Whitehead:** I enjoy working with people, interacting and observing them, and learning from them. Mediation was fascinating to me when I learned about the process in 1993 and it remains fascinating to me today.

## 9.) Right-handed, or left-handed?

**Elwood Stark:** Right-handed

**Mae Whitehead:** Right-handed

**Michael Benefiel:** I can type with all fingers on both hands, use both hands on the steering wheel, and prefer to write with my right hand.

**Holly Slack:** Righty- but wish I had gone lefty.

## 8.) What is one thing you like about our program and/or one thing you would change about our program?

**Holly Slack:** I think the staff is incredibly dedicated and I really appreciate the lengths they go to care for their volunteers. They go the extra mile to let me know how much they appreciate my service and I think that is an underestimated quality in volunteer programs these days.

**George Hermina:** I like the people that run the program they are friendly, kind, professional, willing to help, take the program seriously, send reminders, follow up, and are constantly working to improve the program.

**Mae Whitehead:** Creates outreach efforts for the District Court ADR volunteers to stay connected (i.e. annual recognition events, training, brown bags, newsletter, surveys) and feel like they are a part of the program. One thing I would like to see changed is the ability to have quarterly feedback from the District Court ADR volunteers.

# Quick Bits

Compiled by ADR Office Staff

- Two District Court mediators were honored at the 10th Annual Women of the World luncheon in Dowell, MD on Saturday, March 24, 2012. Congratulations to **Joan Anderson**, who was awarded the Community Mediation Center– Calvert Award, and **Anne Harrison**, who received the American Association of University Women for the Dare to Dream program which she developed in 2007.
- Congratulations to District Court Settlement Conference Attorneys **Debra Davis** and **Bryon Bereano** for their leadership in the Prince George's County Bar Association. Debra is completing her term as President, and Bryon will serve as President in the upcoming year.
- The District Court ADR Office will be hosting our first Local ADR Advisory Council Meetings. These once a year meetings are designed to improve the day of trial and pretrial practices, procedures, and effectiveness. Its another way to bring together all of our stakeholders. The meetings include judges, administrative clerks, other court staff, ADR volunteers and ADR office staff. If you have thoughts or concerns about how our programs operate, please contact your Regional ADR Program Director (see staff e-mail on page 19).



Susan Rork (left) presenting Joan Anderson (right) with an award at the 10th Annual Women of the World luncheon.



ADR staff members, Kate Quinn (left) and Leona Elliott (right).

- The Maryland Mediation and Conflict Resolution Office (MACRO) and the District Court ADR Office co-presented a course at the Judicial Education and Conference Center (JECC) entitled *Fairly Legal: The Value of Mediation and Conflict Resolution in Your Court* on March 23, 2012. They are scheduled to present this course for judiciary employees again on September 27, 2012 at the JECC.

- Congratulations to ADR Office staff members, **Leona Elliott** and **Kate Quinn**, on their recent appointment to co-chair the Maryland Chapter of ACR's Commercial, Consumer, and Courts Cluster. For more information about this cluster, please contact them at [Leona.Elliott@mdcourts.gov](mailto:Leona.Elliott@mdcourts.gov) or [Kate.Quinn@mdcourts.gov](mailto:Kate.Quinn@mdcourts.gov).



Anne Harrison (right) receiving an award at the 10th Annual Women of the World luncheon.

- We extend our condolences to the Wormwood family. **Ernie Wormwood** passed away on April 6, 2012. Ernie was a volunteer with the District Court of Maryland since 2009. She volunteered in St. Mary's County.
- For the 2nd year in a row, the District Court ADR office will celebrate its active volunteers with a half day of continuing education programs and a recognition and appreciation dinner on May 23, 2012.



# ADR Research, *cont. from 4*

## What *Our* ADR Practitioners Need to Know

Over the next year or so, the researchers will observe Day-of-Trial ADR sessions in Baltimore City, Calvert, St. Mary’s, Montgomery, and Wicomico Counties. If a case for which you are the practitioner is selected for possible inclusion in the project, you will have the opportunity to speak to the researchers in person, learn more about the project, and elect if you would like to participate. As the ADR practitioner, your participation in the project is strictly voluntary—there will be no negative repercussions to you, the litigants, or the District Court ADR program if you prefer not to be included in the project. At no point will any individual mediator or settlement conference attorney be individually identified, and the researchers will make no qualitative assessments of the ADR practitioner.

Members of the research team have met with the District Court ADR Office staff and court personnel in nearly all of the jurisdictions where the research is taking place and have obtained their approval and cooperation for the project. In all instances the researchers will do their best to minimize disruption of the regular operations of your ADR process and District Court ADR Programs. The surveys and observations by the researchers will be tested prior to the official implementation in a particular jurisdiction. That being said, feedback as to how things could be improved as the project progresses is always welcomed.



“The mind’s first step to self-awareness must be through the body.” - George A. Sheehan



## Conclusion

The results of this research will provide valuable information to the Maryland Courts, the District Court ADR Office, the ADR field, and you as an ADR practitioner. We look forward to providing you with periodic updates as the project progresses. For additional information on the project, please visit the project website at [www.marylandADRresearch.org](http://www.marylandADRresearch.org), or contact Jamie Walter, Senior Researcher, Court Operations, Administrative Office of the Courts at [jamie.walter@mdcourts.gov](mailto:jamie.walter@mdcourts.gov).

# PLEASE TAKE A LOOK

<p>Feel free to take a look at the surveys that are being utilized by the researchers in the District Court.</p>	<p><u>Day of Trial CONTROL Group</u></p> <ul style="list-style-type: none"> <li>• <a href="#">Participant Pre-Test</a></li> <li>• <a href="#">Participant Post-Test</a></li> </ul>	<p><u>Day of Trial ADR Group</u></p> <ul style="list-style-type: none"> <li>• <a href="#">Participant Pre-Test</a></li> <li>• <a href="#">Participant Post-Test</a></li> <li>• Mediator Pre-Test</li> </ul>
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## Connecting the Dots, *cont. from 2*

The long and short of it is that the bill passed without language that indicates that mediators need any training at all. Interestingly, the statute does require mediators to abide by Standards of Conduct. Which standards (MPME or Title 17) is still up for discussion.

In my opinion, this is a good news/bad news result... The good news is that mediation now will have the protection of confidentiality regardless of the venue in which the mediation takes place. The bad news is that, statutorily speaking, mediators need not have any mediation training whatsoever. (Individual programs might have training requirements, however). So, now that we have mediators who might not have any training, and they will be mediating cases behind closed doors with the assurance of confidentiality, what's next? Is what they do behind that door really mediation, or something else? And, do we care?

### Dot number two...Mediation Quality Assurance Committee (MQAC)

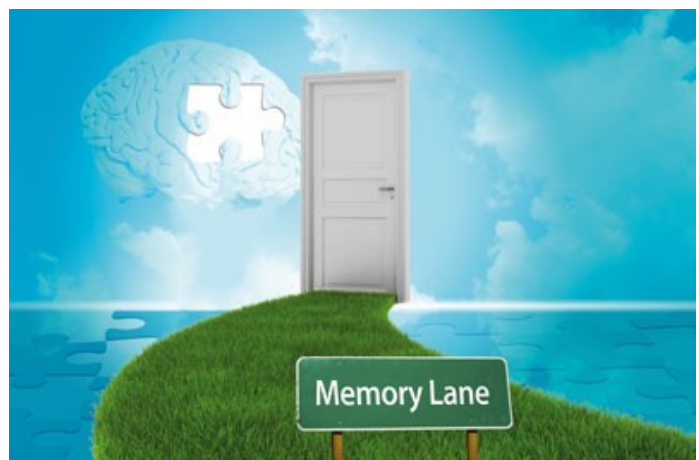
Many years ago, MACRO convened representatives from the four major mediation organizations in Maryland (MSBA ADR Section, CMM (formerly known as MACMC), MCDR, and the Maryland chapter of ACR (formerly known as SPIDR)<sup>1</sup>. The goal for that group was to see if the organizations, and the mediation field in Maryland, could come to agreement on what quality assurance in mediation should look like. This was the remaining piece of the ADR Commission's *Join the Resolution* action plan that was unable to be resolved by the Commission before it morphed into MACRO.

The Mediation Quality Assurance Committee (MQAC) hired a consultant to help swim through the information ocean and explore what options for mediation quality assurance might exist. After much research, many forums across the State, and input from hundreds of Maryland mediators during two years of exploration, it became clear that most people wanted a system that would have a low threshold for entry into the field, and flexibility for maintaining one's competencies. Thus, the Maryland Program for Mediator Excellence (MPME) was born. The MPME requires that member mediators:

- 1) have a minimum of 40 hours of mediation training;
- 2) commit to continuing education in whatever format works for them in each year (including an ethics component);
- 3) abide by any standards of conduct passed by the Mediator Excellence Council (the governing body of the MPME); and
- 4) participate in the MPME ombuds program if trouble arises.

This walk down memory lane is instructive to understand that the bulk of the field in Maryland did, and still does, subscribe to the idea that at a minimum, a mediator should have 40 hours of mediation training, and participate in continuing mediation education on an annual basis.

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<sup>1</sup>MACRO– Maryland Mediation and Conflict Resolution Office  
 MSBA– Maryland State Bar Association  
 CMM– Community Mediation Maryland  
 MACMC– Maryland Association of Community Mediation Centers  
 MCDR– Maryland Council for Dispute Resolution  
 ACR– Association for Conflict Resolution  
 SPIDR– Society for Professionals in Dispute Resolution

## Transformative Mediation, *cont. from 3*

But does transformative mediation take too long? That simply hasn't been our experience. Our Day of Trial cases average one hour. Extremely difficult conversations, like those had in Peace Order cases, may take longer, but this is not the norm. We often handle multiple cases during a single court docket. There are times when we are asked to take cases that the judges have previously heard. The judges know these cases will be difficult, and there is very little that they can do to find a lasting solution. These repeat cases are not really about the auto repairs, the shared driveway, the broken



fence, the daycare contract or the loud noise. The problem is the crisis in the interaction between the disputants. They are not able to talk to one another so they call the police or file a suit. When given the opportunity to sit down with the other in mediation,

transformative mediators support the participants' conversation in ways that enable them to regain their own strength and clarity to make decisions and their ability to respond to one another in a way that allows them to move forward.

Some people feel that transformative mediation's lack of apparent structure precludes ordered progress. Actually, transformative mediation does have structure in which participants are introduced to the context of the mediation, explore the situation and possible options, deliberate and make informed decisions. Transformative mediators support participants as they exercise self-determination in how, and in what order they wish to work through this process. Our experience would suggest that this takes no longer than in other mediation frameworks.

Other misperceptions persist. Some suggest that "transformative mediation may be effective for a conflict involving relationships but not for business, financial or contractual issues." The fact is every conflict involves

some type of relational interaction whether it is an employer/employee, merchant/consumer, landlord/tenant or contractor/consumer. We find that it's rarely or never "just about the money." It is most always about the crisis in interaction: a miscommunication, a loss of trust, a perception of unfairness or feeling of being disrespected.

Our partnership with the District Court ADR Office has been mutually beneficial. It provides invaluable experience and a tangible sense of accomplishment for the Center's mediators. In addition to our work in the District Courts, a number of transformative mediators have been accepted on the Circuit Court's roster to provide Children in Need of Assistance (CINA) mediation. We also provide parenting plan and property distribution mediations. The St. Mary's County Community Mediation Center has established a pre-release mediation program for inmates at the local detention center and the Calvert Community Mediation Center is soon to follow. Calvert CMC instituted a mediation program between Sherriff's Deputies and citizen complainants, the first of its kind in Maryland, with the St. Mary's CMC planning to follow. One can't argue with the results. Over the past eleven years, we have proven transformative mediation to be effective in and out of the courts across a wide range of conflict interactions.



*\*Vicki and Dusty Rhoades have been partners in life for 43 years and community mediators for the Community Mediation Centers of St. Mary's and Calvert Counties for the past 12 years. They were instrumental in establishing both centers. They have conducted hundreds of mediations in a variety of conflict situations, including small claims and peace orders at the District Court, Maryland Commission on Civil Rights discrimination cases, Child in Need of Assistance (CINA) and Parenting Plan cases for the Circuit Court, among many others.*

## Practice Tip, *cont. from 3*

We use the information our ADR practitioners provide to us on the green sheet to calculate volunteer hours annually! In other words we can't have an accurate total of volunteer (or *pro bono*) hours unless we know how much time you spent at the courthouse volunteering in our program.

Nearly all of the information in **Section I** can be completed before a case is even referred to the ADR practitioner (date, a.m./p.m. docket, courthouse, name/ID number, and community mediation center affiliation (if applicable)). Your total time donated for the day (item #3) and the check boxes to indicate if a case was not referred, and/or if an apprentice observation or review was scheduled to occur (item #4) can be completed once the ADR practitioner is dismissed by the judge, courtroom clerk or bailiff and before the ADR forms are returned to the designated form drop-off location.

**Section I**

**Section II**

**Comments**

Information pertaining to the specific case referred is also important because we use the case type, amount in controversy, whether counsel was present (and for which party), the ADR process practiced, amount of time spent in an ADR session, and whether the case settled together in the aggregate to help identify trends in regard to cases that resolved in a mediation or settlement conference.

This is the information in **Section II** of the form, beginning just below the solid black line.

We suggest that the best time to complete the name of the judge referring the case, the case number and case name is at the time you may be provided the case file to review prior to leaving the courtroom with the parties. Once you're in the ADR room, you may ask to see one of the participants' court notice (after introducing yourself, the process and while the participants are reviewing the Agreement to Participate in ADR form of course).

One of the most useful pieces of information we gather from the green sheets when talking to judges, court staff, partnering organizations, and litigants about the value and usefulness of ADR programs in the courts is the statewide settlement rate. While for us these programs are not just about settlement rates, we are proud to report that in 2011, 55.4 % of all cases referred to ADR resolved (either partially or fully). *And*, we can chop that data into even smaller subsets of information by using the data provided to us by our ADR practitioners from the "green sheet." For instance, we can calculate the settlement rate by courthouse, by county, by ADR process practiced, by case type, and by amount in controversy.

And, if practitioners really want to know, we can provide each individual with their own settlement rate, and other statistics about the cases referred to them, by request. (Requests should be made to Sarah Kauffman, Data Management and Public Information Coordinator, at [sarah.kauffman@mdcourts.gov](mailto:sarah.kauffman@mdcourts.gov).) Soon all of this information will be available at your fingertips with the integration and roll-out of the highly anticipated ADR Evaluation and Support System (ADDRESS) over the next 24 months.

We know that some of you who have been with our program for several years have seen the evolution of the content and design of the "green sheet." And, if you haven't attended a session at one of the ADR conferences that we put on regarding the Day of Trial program (which included info about our forms), or we haven't seen you at a local Brown Bag Lunch, then you may have some questions about the forms. Your Regional ADR Programs Directors are your "go-to experts" in the field on how to effectively and unobtrusively complete the necessary ADR forms when conducting your ADR sessions.

# District Court ADR Office Says Goodbye to a Dear Friend...Beverly Vitarelli

By Kate Quinn

Before even the longest-serving staff members in the District Court ADR Office (*Maureen and Cindy*) were around, Beverly Vitarelli was a part of the ADR Program in Rockville. Bev would come to work, with her husband, Bob, a bailiff at the Rockville courthouse, to generously volunteer her time and experience in the ADR Office. Our beloved Bev passed away on April 19th. She leaves behind her husband of 53 years, two grown children, Bob, Jr., and Kathy, several grandchildren and siblings, and her "boyz" (Lil' Bit and Sugar, pictured with Bev.). She will be profoundly missed at the courthouse.

Everyone knew Bev. People would stop by the office just to say hello, and catch-up with her (even Bob, Jr., who would purloin pens and candy from his Mom...well, that goes for most of us really).

Bev led a full and interesting life. She was in the Navy for a year, and that's where she met Bob. She worked on Capitol hill for nearly 27 years, as Congressman Benjamin A. Gilman's (R-NY) secretary/scheduler. And just as soon as Bev retired from federal service, she began volunteering and shared her smile, skills and sense of humor with us in Rockville. Bev's daughter, Kathy, worked on the Hill at the same time as her mother, and passes along this observation about



Bev at work: "I would see her handling a crazy-busy front office with admirable grace. Phones ringing off the hook, people stopping by wanting immediate attention, mail being dropped off, staff members walking in and out wanting things... I would have been a screaming maniac in a similar situation!"

It's no wonder Bev excelled at being the unofficial "information" desk at the old Rockville District Court with grace, humility, and candor when just about everyone and anyone would walk into the ADR Office to ask a question about Court, directions to the Circuit Court, or anything else that was on their mind. You name it; Bev had an answer for you. And if you had the pleasure of meeting Bev, there's no doubt she made an impression and touched a place in your heart. "She taught me so much about life, especially about being a working mother, and a professional. And that those two roles are not

exclusive! I'll miss her wisdom, witty sense of humor and her watchful eye on the ADR program and our volunteers," said Denihan.

Bev was born in Ohio, a buckeye at heart. And if you knew Bev, you knew that she and Bob spent countless vacation hours at their Ohio farmhouse. She always spoke so fondly of "the farm." As she wished, Bev will be buried in Ohio over the summer. Rest in Peace, our dear friend.

A note from Bonnie Bell, Rockville Civil Supervisor and Bev's very close friend:

*My friend Bev*

*I found myself (after the good cry) thinking about all the things I will miss about my friend Bev. I started asking myself so many questions.*

- *Who is going to share all the wonderful things their grandchildren are doing with me?*
- *Who could possibly love their dogs more and share all of the stories with me like Bev did?*
- *Who is going to share the enthusiasm of the animal print in clothes with me?*
- *Who could take me away for a few minutes to a wonderful home in Ohio where everything is so green and wonderful, not to mention bringing back the best baby swiss cheese in the world?*
- *Who actually knows every single thing that QVC sells?*

*My list goes on and on and then I realized something, I have my "Bev" list in my mind and if it's in my mind she lives in my heart and that makes everything ok.*

*Love you Bev.*

## Connecting the Dots, *cont. from 10*

Why, then, did a few people oppose such a requirement in a mediation confidentiality statute?

A small handful of people opposed the requirement because they claimed that mediation shouldn't be "regulated" in a confidentiality statute. I would counter that adding a 40 hour requirement isn't "regulation" at all. Rather, it helps to define what mediation is, or who might be considered a mediator. How can we have confidentiality protection for something we haven't defined? Isn't that putting the cart before the horse?

But I do have an alternate theory as to why a few people didn't want any training requirement for mediators. You ready for this? Hold on to your hat... It's all because of settlement conferences! Did I hear a gasp? What, you ask, could settlement conferences possibly have to do with all of this? Well, I'll tell you.

Settlement conferences were the most popular form of ADR being used by courts in Maryland back in the 1980's and early 90's before Title 17. Courts were routinely using both judicial and attorney-conducted settlement conferences as a regular part of the case management process. When Title 17 came into existence, not only did mediation make a grand entrance into the case management system, but mediators could get paid; settlement conference attorneys did not. Perhaps there was logic to this. Perhaps not. Certainly not everyone agreed with the premise. For example, in one large Maryland County, they didn't like that concept so much that they refused to refer cases to "mediation" as it was defined in the rules. Rather, they created a program in which cases were referred to "ADR", and those conducting "ADR" sessions could get paid.

### **Dot number three...It's Time: Pay Settlement Conference Attorneys**

Many of you reading this know that one of my constant talking points is about keeping mediation and settlement conferences as distinct processes. After all, they are. They should not be merged into one. They both have their own benefits and draw backs. And in court ADR programs there are different

requirements and qualifications for the individuals who practice these processes.

When the Circuit Court ADR rules were originally drafted, mediation was being formally introduced and added to many civil case tracks. Prior to that time, most, if not all circuit courts, had settlement conference programs as the *only ADR process* fully integrated into court case management.

Back then, as with now, settlement conferences were conducted by judges or attorneys who volunteered their time to help get cases settled and clear circuit court dockets. Based on the original idea of "settlement days," these volunteer attorneys would sign up for a morning or afternoon and try to settle six to eight cases set 30 minutes apart, sometimes conducting two conferences at a time. The service was a good one and it worked; cases were getting settled and being cleared from the trial schedules.



*Continued on Page 18*

# Thank You

The District Court ADR Office would like to say “thank you” to ADR interns, **Kenisha Caulley** and **Lynne Nash**. Kenisha and Lynne were selected to participate in the 2012 spring internship program from January to May.

**Kenisha Caulley** worked on the Day of Trial ADR Docket Observation project. She reviewed dockets prior to the trial date to determine if any of the cases (with and without a Notice of Intention to Defend filed) were suitable candidates for mediation. Then, Kenisha observed all civil trials in the courtroom with the greatest possible number of potential referrals, and she documented all cases tried on a case observation form. The purpose was to see if the information on case’s face (the complaint and answer, if filed) was a satisfactory enough indicator to identify if the dispute may have been appropriate for mediation (after having observed the trial and heard/seen all that was going on in the case). We’re hoping the information gained during this project will help us to improve our screening criteria when identifying cases appropriate for pre-trial and/or day of trial mediation.

**Lynne Nash** worked on the Day of Trial (DOT) Phone Call Follow-Up Survey project. Lynne contacted DOT ADR participants, who agreed to be contacted for follow-up purposes (on the back of the yellow Participant Feedback Form), three to seven months after the session. Participants whose case resolved in ADR, as well as those that did not resolve and proceeded to trial, were contacted. Stay tuned to future editions of *A Winning Solution* for a summary of Lynne’s findings.

Kenisha recently graduated with her Bachelor’s Degree from Montclair State University. Lynne plans to graduate this summer with her Master’s of Arts Degree from Abilene Christian University. Thank you to both Kenisha and Lynne for their hard work, dedication, and commitment to their internship projects.



Spring 2012 District Court ADR Office Interns: Kenisha Caulley (left) and Lynne Nash (right).

## Interns

\*If you are interested in interning with the District Court ADR Office, please contact the internship supervisor Deputy Director Maureen Denihan at 410-260-1678, or e-mail her at [Maureen.denihan@mdcourts.gov](mailto:Maureen.denihan@mdcourts.gov). Click [here](#) to download an ADR internship application.

# Volunteer Success Story

Submitted by Matthew Mellady, District Court ADR Volunteer

A number of cases that seemed like they might be able to be settled appeared on the Catonsville District Court's docket recently. As a volunteer mediator, I was pleased to have a case referred to me. The parties, a small business and one of its customers, had a dispute over a billing issue related to the customer's property that was being stored at the business. The customer (plaintiff) brought suit because he felt he had incurred some out of pocket expenses owing due to the business's (defendant) negligent repair of the customer's personal property. The defendant believed the suit to be unfair as it had provided some services and repair without charging the plaintiff. Both sides believed settlement was possible.

After the parties told their versions of the story that brought us together, it was apparent that the conflict was born out of a series of miscommunications. It quickly became evident that both sides intended to continue their business relationship. Moreover, confronted with a few reality checks, both sides were willing to admit that they each bore some responsibility for the conflict. With that formula, I knew there was a good chance the parties could settle their dispute, if they could focus on the problem and how to move forward rather than sorting out who was more to blame for what had transpired in the past.

I asked the plaintiff whether he would be willing to move from his original demand, since he had acknowledged he did in fact bear some of the fault for the damage to his property. He came down halfway. The defendant countered that the unpaid services and repairs exceeded half of plaintiff's demand, so he asked the plaintiff whether he'd be willing to settle the case for half the original demand, to be followed by defendant then bringing suit for the unpaid services and repairs. That did not sit well with the plaintiff and he indicated he'd rather take his chances with the judge. Defendant responded that he too would be more than happy to let the judge render a decision. I said nothing. I did not encourage the parties to return to court, and I did not wind up the mediation. Rather, I waited.

Plaintiff did not get up, nor did the defendant. Both then looked at me. Plaintiff asked me what heading back to the court meant. I told him that it meant the parties would no longer control the outcome of the case and that it would be decided by the court after hearing testimony from both sides. At that point, plaintiff and defendant began to talk about their relationship, the miscommunications made by each, and alternative settlement numbers. After some discussion, defendant leaned in and said, "since that is the difference ... and since there was a lot of miscommunication, maybe we should split that in half." The plaintiff asked how that would work, and the defendant indicated that if the plaintiff would absorb his half, then the defendant would give him an accounts receivable credit for his half.

Since both sides agreed that they were interested in continuing the contractual relationship, they also agreed that the credit was a fair way to resolve the case. So we drew up the agreement, the parties shook hands, and we headed back to court to inform the judge the case had settled.



Success in ADR 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](mailto:sarah.kauffman@mdcourts.gov).

**Matthew Mellady**, a mediator since 2010, volunteers for our program in Catonsville. Matthew is a member of the MPME and is currently working at the U.S. Department of Justice, Federal Bureau of Prisons as a supervising attorney.



# Harford County Pre-Trial, *cont. from 5*

*A success story from Susan Fisher, HCCMP Mediation Coordinator:*

When first introducing the pre-trial mediation program partnership with the District Court, several of my mediators voiced concerns about how to mediate ‘cut-and-dry’ cases that did not involve any emotions. I took the opportunity to remind them that there are always emotions involved in any dispute, and that



Susan Fisher,  
HCCMP Mediation Coordinator

District Court cases were no exception. I provided some additional training and feedback, and away we went.

One particular District Court referral was a landlord-tenant case that involved a private landlord and a young couple with two children. There had been some damage done to the apartment, causing the tenants to forfeit their deposit. The landlord was also suing for additional money beyond the security deposit for repairs, court costs, and interest. The dispute had been going on for nearly two years, so

the interest was pretty high.

The mediators reflected the landlord’s confusion and frustration at not being able to reach the former tenants, and feelings around her responsibility for repairs for the damages to the property. After much detailed discussion it was discovered that the tenants’ former roommate had lied about their whereabouts to the landlord in an effort to ‘help’ them. The tenants knew nothing about this and were upset and wanted to ‘make things right,’ but also could not afford to cover all of the extra fees the landlord was requesting.

The mediators continued to reflect the feelings and values of both parties, and helped them brainstorm possible solutions. Through the assistance of the HCCMP mediators, the dispute resolved with an agreement that included the case being dismissed in the District Court. The landlord remarked afterwards that she had always liked the tenants and was glad they were able to resolve the dispute out of court. The tenants were relieved to be able to finally move past the issue, as they were in the process of trying to purchase a home. The mediation not only helped resolve a court case without a trial, but helped ensure a landlord was going to get paid and tenants were able to move towards becoming homeowners. Success!

“Those who bring sunshine to our lives of others cannot keep it for themselves.” - James Matthew Barrie

## Save the Date Peace Walk 2012

**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.**

**When: Sunday, October 7, 2012, 1 pm—4 pm**

**Where: Rash Field, Baltimore City  
(Parking available on-site.)**

**Stay tuned for registration information  
coming soon!**



## Connecting the Dots, *cont. from 14*

Then, in the late 90's, mediation began to be incorporated into circuit court Differentiated Case Management (DCM's) plans of the Big Seven (Baltimore City and Anne Arundel, Baltimore, Harford, Howard, Montgomery, and Prince George's Counties). Other counties soon added their own mediation programs. Depending on the location, various civil case types were put on a case track that included going to mediation, and in almost every instance, the mediation services were provided by private mediators who had applied to be, and were, added to a roster for that court. The mediators on these rosters were able to charge hourly fees set by the courts. While these mediators were getting paid for their services, without regard to performance-based skills testing, their (arguably) more experienced counterparts, attorneys providing settlement conferences, were not getting paid.

Seeking to get paid for services they were providing for free, and because many were truly interested in this growing form of dispute resolution, many attorneys took mediation training courses. While not inherently a bad thing, one of the challenges that came out of that movement was the idea that some of those attorneys did not continue to develop their mediation skills in an earnest way. Instead, these attorneys practitioners remained on court mediation rosters and conducted processes that looked more like settlement conferences than mediation. Within the court ADR context, this worked for many litigating attorneys because they have experience with settlement conferences as a form of ADR. They understand the process. And it is a valuable process to the courts. In fact, it is a process that many litigators prefer for their clients and their cases. They ask for it by description, if not by name.

In many "mediations," the attorneys want a mediation that looks like a settlement conference. *They* want to do the opening statement, not their client. They want to *minimize* participation by their clients. They want to move

to *caucuses early* in the process. And they want to know the "*mediator's*" *opinion and analysis* of their case and the case of their opponents. In short, they **want** the mediator to conduct a **settlement conference**.

So why should we squeeze this square peg into a round hole? Why not permit attorneys to choose to pay for a settlement conference rather than a mediation if that best suits their case? To encourage attorneys to call what they do accurately, we should pay them for settlement conferences the same way mediators are paid for mediations. This referral should happen the same way it happens now with mediation, and at the same time in the case. But instead of a referral to mediation, it should be a referral to ADR (for a fee), and attorneys (and/or their clients) could choose mediation, neutral case evaluation, neutral fact finding, or a settlement conference.

This isn't an entirely new idea. [Click here](#) to check out the Health Care Article of the Annotated Code of Maryland. And if the concern of the courts is that they want to make sure that some ADR services remain free, they could implement the fee waiver portion of the mediation rule and apply it to settlement conferences as well. Plus, the settlement conferences that occur 30 days pre-trial could continue as they exist now.

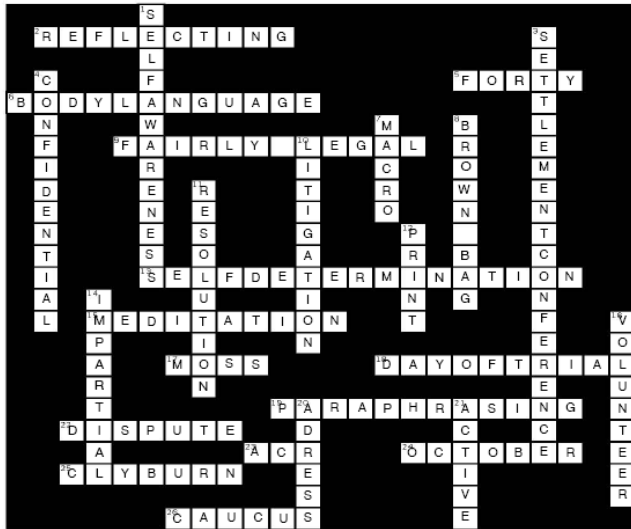
### Recap

So, it is good that all mediations are protected by confidentiality. But we should be careful to make sure that the process being conducted behind closed doors is mediation and not a settlement conference, for settlement conferences don't have that same protection of confidentiality (although they do have evidentiary protection).

Or, perhaps settlement conferences *should* have confidentiality protections by statute. Here we go again...<sup>2</sup>

<sup>2</sup>For brevity sake I did not elaborate on several points. Had I done so, this article likely would have been several pages longer. If you would like to discuss any points in greater detail, I welcome the conversation.

# Games



Answer Key for Crossword Puzzle from Volume 2, Issue 1

(M) \_ D \_ \_ \_ \_

\_ E \_ \_ - A \_ \_ \_ \_ O \_ \_ S \_

(D) \_ \_ P \_ \_ \_

\_ R \_ - \_ \_ \_ O \_ L

\_ \_ S \_ O \_ C \_

T \_ \_ \_ \_ \_ R \_ \_ \_ O \_ V \_

\_ L \_ \_ \_ N \_ \_ \_ (I) \_ E \_

\_ O \_ F \_ \_ C \_

V \_ \_ U O \_ \_ E \_

\_\_\_\_\_ is a process in which a trained neutral helps people in a dispute communicate to better understand each other, and if possible, to reach a solution that satisfies everyone in the dispute.

## District Court of Maryland ADR Office Staff

- |   |  |
|---|--|
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## Calendar of Events

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### Quote Corner

"It is amazing what you can accomplish if you do not care who gets the credit."

*-Harry S. Truman*

Visit us on the web!

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

### Calling for your BEST Practice Tip!

Have a 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).

Photos by Jonathan S. Rosenthal unless otherwise noted.

### May

- 8th– [MPME Mediator Confidential, Teleconference \(12pm-1pm\)](#)
- 10th– [ADR Practitioner Brown Bag Lunch Series, Towson District Courthouse](#)
- 16th– Mediator Ethics: Quality of Process, Careers Building, Room 253, Anne Arundel Community College, Arnold, MD
- 17th– [MPME Ethics Course, Talbot Hospice Foundation, Easton, MD](#)
- [17th-18th- Interdisciplinary Collaborative Law Training, 2-day, Basic Training, Anne Arundel Community College, Arnold, MD](#)
- 18th– [ADR Practitioner Brown Bag Lunch Series, Baltimore City District Courthouse \(Fayette Location\)](#)
- [19th– Interdisciplinary Collaborative Law Training, 1-day, Advanced Training, Anne Arundel Community College, Arnold, MD](#)
- 22nd– [MPME Ethics Course, Montgomery College, Rockville, MD](#)
- 23rd– District Court ADR Volunteer Appreciation & Recognition Event, Linthicum Heights, MD
- 28th– Memorial Day (Courts Closed)
- 29th– [MPME Ethics Course, Cecil College, North East, MD](#)

### June

- 1st– [ADR Practitioner Brown Bag Lunch Series, Frederick District Courthouse](#)
- 5th– [MPME Mediator Confidential, Teleconference \(12 pm–1 pm\)](#)
- 12th– [ADR Practitioner Brown Bag Lunch Series, Salisbury District Courthouse](#)
- 13th-15th– [Center for ADR 25th Anniversary Annual Conference, "Managing Conflict & Removing Barriers to Collaborative Decision Making," Greenbelt, MD](#)
- 13th-16th– [MSBA Annual Meeting, Ocean City, MD](#)
- 19th– [MCDR Quarterly Meeting, Location TBD](#)
- 23rd– [Community Mediation's Annual Gala, Temple Beth Shalom, Arnold, MD \(6pm-9pm\)](#)

### July

- 4th– Independence Day (Courts Closed)
- 10th– [MPME Mediator Confidential, Teleconference \(12 pm–1 pm\)](#)
- 13th– [Advanced Agreement Writing, Gaithersburg Training Center, Room 401, Montgomery College, Gaithersburg, MD](#)
- 17th– ["I'm Leading this Meeting Now What?," MPME Teleconference \(3 pm - 430 pm\)](#)
- 20th– [Getting Past Impasse in Mediation, Gaithersburg Training Center, Room 401, Montgomery College, Gaithersburg, MD](#)

### August

- 17th– [ADR Practitioner Brown Bag Lunch Series, Bel Air District Courthouse](#)
- 28th– [ADR Practitioner Brown Bag Lunch Series, Rockville District Courthouse](#)